



**Moreland**  
City Council

## COUNCIL AGENDA

# PLANNING AND RELATED MATTERS

Wednesday 28 April 2021  
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 Σύστημα (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 ਟੇਲੀਫੋਨ ਕਰੋ।

## **Acknowledgement of the traditional custodians of the City of Moreland**

Moreland City Council acknowledges the Wurundjeri Woi Wurrung people as the Traditional Custodians of the lands and waterways in the area now known as Moreland, and pays respect to their elders past, present, and emerging, as well as to all First Nations communities who significantly contribute to the life of the area.

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- 1. WELCOME**
- 2. APOLOGIES**
- 3. DISCLOSURES OF CONFLICTS OF INTEREST**
- 4. MINUTE CONFIRMATION**

The minutes of the Planning and Related Matters Meeting held on 24 March 2021 be confirmed.

**5. COUNCIL REPORTS**

5.1 495-511 LYGON STREET, BRUNSWICK EAST - PLANNING APPLICATION MPS/2020/57 4

5.2 20 STALEY STREET, BRUNSWICK - PLANNING APPLICATION MPS/2017/419/A 102

**6. URGENT BUSINESS**

## 5. COUNCIL REPORTS

### 5.1 495-511 LYGON STREET, BRUNSWICK EAST - PLANNING APPLICATION MPS/2020/57

Director City Futures, Kirsten Coster

City Development

#### Executive Summary



<b>Property:</b>	495-511 Lygon Street, Brunswick East				
<b>Proposal:</b>	Part demolition of existing buildings, and the construction of a seven storey building above basement levels, use of the land for a place of assembly (function centre), and dwellings.				
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"> <li>Commercial 1 Zone</li> <li>Development Contributions Plan Overlay</li> <li>Heritage Overlay Schedule 435</li> <li>Design and Development Overlay Schedule 19</li> <li>Parking Overlay Schedule 1</li> </ul>				
<b>Strategic setting:</b>	<table border="1"> <tr> <td>Minimal housing growth</td> <td>Incremental housing growth</td> <td>Increased house densities encouraged</td> <td>Significant housing growth</td> </tr> </table>	Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth
Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth		
<b>Objections:</b>	<ul style="list-style-type: none"> <li>219 objections; one letter of support</li> <li>Key issues:               <ul style="list-style-type: none"> <li>Building height</li> <li>Parking and traffic</li> <li>Amenity impacts including overlooking and overshadowing</li> </ul> </li> </ul>				
<b>Planning Information and Discussion (PID) Meeting:</b>	<p>First meeting: 1 December 2020</p> <ul style="list-style-type: none"> <li>Attendees: approximately 25 objectors, the applicant, two Council officers, and Cr Conlan, Cr Bolton and Cr Riley.</li> <li>Amended concept drawings were presented showing a reduction in building height to seven storeys. Following the consultation meeting, these plans formed the basis of an amendment to the application.</li> </ul> <p>Second meeting: 11 March 2021</p> <ul style="list-style-type: none"> <li>Attendees: 26 objectors, the applicant, Council officer, and Cr Riley, Cr Yildiz, Cr Pavlidis and Cr Bolton.</li> <li>No further changes have been made following the second meeting and no consensus was reached.</li> </ul>				
<b>ESD:</b>	<ul style="list-style-type: none"> <li>Average NatHERS rating of 7.2 stars.</li> </ul>				
<b>Accessibility:</b>	<ul style="list-style-type: none"> <li>Adaptable apartments comprise 71% of all dwellings.</li> </ul>				

<b>Key reasons for approval</b>	<ul style="list-style-type: none"> <li>• Acceptable level of amenity for future residents.</li> <li>• Retains function centre use.</li> <li>• Acceptable retention of heritage building.</li> <li>• Appropriate built form subject to a height reduction to six storeys.</li> </ul>
<b>Recommendation:</b>	A Notice of Decision to Grant a Planning Permit be issued.

## Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2020/57 be issued for the part demolition of existing buildings, and the construction of a multi-storey building above basement levels, use of the land for a place of assembly (function centre), and dwellings, subject to the following conditions:

### Amended plans required

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to, and approved by, the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must generally accord with the plans advertised on 19 February 2021 prepared by Cera Stribley Architects but be modified to show:
  - a) The overall height of the building reduced by approximately 3.1 metres (or one storey), by the removal of either levels 4 or 5.
  - b) Deletion of the canopies above the apartments on the top level (except for the requirements for external shading devices as required by Condition 8 of this permit) and deletion of the columns from the floor to ceiling of the top level.
  - c) Relocation of the balcony for Apartment 4.10 to the southern elevation in the same configuration as Apartment 3.10.
  - d) Retention of the original roof of the former Liberty Theatre building for a minimum of 11 metres from the Lygon Street frontage.
  - e) The three southernmost piers/columns above the former Liberty Theatre building deleted to preserve the original roof form.
  - f) A maximum wall height on the western site boundary (rear laneway) of 8 metres to adhere to the rear setback requirements of the Design and Development Overlay (Schedule 19).
  - g) All west facing windows (not including the skylights) for the function hall to be fixed and obscured to a height of at least 1.7 metres above the finished floor level.
  - h) The corridor on the uppermost level of the building provided with at least one source of natural daylight and ventilation. This could be achieved through an alteration to the layout of Apartment 6.01.
  - i) Deletion of the statement 'Extent of heritage façade to be retained (refer to heritage report)' from the East Elevation plan.
  - j) Details of the retention, conservation and restoration of the former Liberty Theatre heritage building in accordance with the Heritage Report required by Condition 4.
  - k) The proposed verandahs (to Lygon Street) setback a minimum of 750mm from the kerb and with a height of less than 3 metres above the level of the footpath in accordance with Clause 507 of the *Building Regulations* 2006.

- l) The entry to the basement from the rear laneway designed with an apex height along the basement access ramp equivalent to 47.21AHD +150mm to prevent stormwater inundation of the basement from the road reserve.
- m) The provision of stairs with an adjacent ramp for cyclists to roll their bicycle wheels on when accessing lifts to and from the residential bike storage area on Basement Level 3(A). The stairs must be constructed with 355mm treads and have a non-slip surface.
- n) Dimensions, line-markings and bollard in accordance with Australian Standard 2890.6 shown to the accessible parking bay on Basement Level 1(A) and adjacent shared space.
- o) An offset of at least 1 metre for all car parking spaces adjacent to walls on Basement Level 3(B).
- p) 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.
- q) All residential and employee bicycle spaces secured with walls, with self-closing and self-locking doors that are only accessible using keys, codes or swipe cards in accordance with the Australian Standard for Bicycle Parking (AS2890.3).
- r) The Environmentally Sustainable Design initiatives that are required to be shown on plans, as detailed in Condition 8 of this permit.
- s) Any changes required by the amended Sustainability Management Plan in accordance with Condition 8 of this permit.
- t) Any changes required by the amended Landscape Plan in accordance with Condition 11 of this permit.
- u) Any changes required by the amended Waste Management Plan in accordance with Condition 15 of this permit.
- v) Any changes required by the Accessibility Report in accordance with Condition 17 of this permit.
- w) Any changes required by the amended Acoustic Report in accordance with Condition 19 of this permit.
- x) Any changes required by the Loading Management Plan in accordance with Condition 22 of this permit.
- y) Any changes required by the Wind Assessment Report in accordance with Condition 33 of this permit.

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

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

#### **Easement to be removed**

3. This permit shall have no force or effect until such time as the issue of a separate planning permit in accordance with Clause 52.02 of the Moreland Planning Scheme for removal of the passageway easement reserved by Transfer A773707 shown on Lot 1 on Title Plan 959398C and the easement is removed in accordance with section 23 of the Subdivision Act 1988.

## Heritage

4. Prior to the endorsement of plans, a Heritage Report must be submitted to and then endorsed to the satisfaction of the Responsible Authority. Once endorsed, the Heritage Report will form part of this permit. The Heritage Report must:
  - a) outline the precise retention of the former Liberty Theatre building generally in accordance with the plans advertised on 19 February 2021 prepared by Cera Stribley Architects, other than any updates resulting from the changes required by Condition 1 of this permit including the retention of at least 11 metres of the original roof of the former Liberty Theatre as required by Condition 1d.
  - b) outline the restoration and conservation of the former Liberty Theatre building based on available historic material and inspections of the building fabric.
5. The original roof must not be altered without the further written permission of the Responsible Authority

## Function Centre use

6. The function centre use allowed by this permit (except cleaning) must operate only between 8:00am and 11:00pm. Cleaning may take place until 11:30pm.
7. The maximum number of patrons permitted on the function centre premises must not exceed 100 at any one time.

## Sustainability Management Plan

8. Prior to the endorsement of plans, a Sustainability Management Plan (SMP) and associated plans 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 Sustainable Development Consultants dated 22 December 2020 version v5D but modified to include the following changes:
  - a) An amended Green Star 'Design & As Built' assessment which:
    - i. Confirms with evidence how all of the claimed credits will be achieved and maintained;
    - ii. Includes accompanying supporting documentation as per the claimed credits;
    - iii. Deletes claimed Innovation credit 30D Financial Transparency and other Innovation credits that are not suitably claimed or explained how they will be ensured as being met; and
    - iv. Includes a minimum of 10% buffer points to achieve the minimum points required in a 4 star Green Star building.
  - b) The NCC 2019 JV3 modelling for the commercial area's improvement increased from 4% to a minimum of 10%.
  - c) Confirmation of the overall NatHERS ratings as an average of 7.2 stars and deletion of other contradictory wording.
  - d) Show the following ESD initiatives on the development plans:
    - i. External operable shading devices to exposed north, east and west facing glazing of all bedrooms and living rooms, to block peak summer afternoon sun. An indicative product diagram of the proposed device must be provided;
    - ii. The capacity of the total 23kW solar PV system on the rooftop and size of the panels as 385 watts;
    - iii. Solar panels on top of the solar canopy and the communal lobby/lift cores (as per the SMP);

- iv. The electric vehicle car charging spaces available for use by all residents and tenants as per the SMP and a power capacity of 32A (unless otherwise justified by supporting electrical infrastructure information);
  - v. Apartment waste chutes within the corridors nominated as one for garbage (landfill waste) and one for recycling ; and
  - vi. The colour and material schedule to contain reference to materials in the SMP and the Green Star credits (including steel, timber, PVC, extra low VOC, low formaldehyde, etc).
- e) A MUSIC model and stormwater management response that achieves the best practice stormwater targets but is modified so that:
- i. Proprietary devices are not used;
  - ii. Rainwater tank harvesting and reuse is justified, including reuse rates and irrigation rates that accord with the plans and planning report; and
  - iii. An electronic copy of the MUSIC model is included.
- f) An amended stormwater catchment plan that is consistent with the MUSIC model, clearly showing:
- i. The entire site area;
  - ii. The rainwater harvesting tanks noted on the basement plan as being used for toilet flushing and landscape irrigation; and
  - iii. The catchment plans for the rainwater harvesting tanks and any other treatments.
9. Prior to the issue of a Statement of Compliance or Certificate(s) of Occupancy, whichever occurs first, all works must be undertaken in accordance with the endorsed Sustainability Management Plan report to the satisfaction of the Responsible Authority. No alterations to these plans may occur without the written consent of the Responsible Authority.
10. Prior to the issue of a Statement of Compliance or Certificate(s) of Occupancy, whichever occurs first, of any dwelling approved under this permit, a report from the author of the Sustainability Management Plan (SMP) approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm (and include evidence) that all measures specified in the SMP have been implemented in accordance with the approved plan.

### **Landscape Plan**

11. Prior to the commencement of any development works, an amended landscape plan must be submitted to and approved by the Responsible Authority. When to the satisfaction of the Responsible Authority, the report will be endorsed and will form part of this permit. The landscape plan must be generally in accordance with the landscape plan prepared by Rupert Baynes Landscape Design and dated December 2020 (Revision C) but amended to show:
- a) Any updates resulting from the changes required by Condition 1 of this permit;
  - b) Landscaping in the form of planting within planter boxes on or adjacent to all west-facing balconies;
  - c) Details of all planter boxes, above basement planting areas, green walls, rooftop gardens and similar, including:
    - i. Soil volume sufficient for the proposed vegetation
    - ii. Soil mix
    - iii. Drainage design



- iv. Details of an automatic irrigation system, including maintenance program and responsibility for maintenance.
- 12. All vegetation in planter boxes, green walls and rooftop gardens or similar must be maintained and any dead, diseased or damaged plants replaced with a suitable species to the satisfaction of the Responsible Authority.
- 13. Prior to the issuing of a Statement of Compliance or occupancy permit for any part of the development, whichever occurs first, all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority.
- 14. Prior to the commencement of works a tree protection zone must be established around the existing street trees with barriers/fencing placed at a distance of at least 12 times the trunk diameter (measured 1.4m above the ground) or 2 metres (whichever is greater) in accordance with the Australian Standard for Protection of trees on development sites (AS4970-2009) or in accordance with the direction of Council's Arborist to the satisfaction of the Responsible Authority. Alternatively, if construction scaffolding and movement of construction materials are determined to have an impact on the health of the street trees, they may be removed and replaced prior to the issuing of a Statement of Compliance or occupancy permit for any part of the development, whichever occurs first, with replacement species selection and planting method to the satisfaction of the Responsible Authority.

#### **Waste Management Plan**

- 15. Prior to the endorsement of plans an amended waste management plan must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the Waste Management Plan prepared by One Mile Grid and dated 2 February 2021 but must be amended to include the following:
  - a) Any updates resulting from the changes required by Condition 1 of this permit;
  - b) Provision for food waste collection in accordance with Clause 58.06-3 of the Moreland Planning Scheme; and
  - c) Provision for separate glass collection when that becomes available.

When the waste management plan is to the satisfaction of the Responsible Authority it will be endorsed and will form part of this permit.

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

#### **Accessibility Report**

- 17. Prior to the endorsement of plans an accessibility report prepared by a suitability qualified professional must be submitted to and approved by the Responsible Authority. The report must:
  - a) Detail how the residential portion of the development will incorporate design features in accordance with Standard D17 (Accessibility) of Clause 58 of the Moreland Planning Scheme, including the detailed design of the bathrooms; and
  - b) Detail how the retail, function centre and café uses will be accessible by people with limited mobility.

When submitted and approved to the satisfaction of the Responsible Authority, the Accessibility Report will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority. The recommendations of the report must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development.

18. Prior to the issue of a Statement of Compliance or an occupancy permit for any part of the building approved under this permit, whichever occurs first, a report from the author of the accessibility report approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the accessibility report have been implemented in accordance with the approved report.

### **Acoustic Report**

19. Prior to the endorsement of plans an amended acoustic report must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the Acoustic Assessment prepared by Watson Moss Growcott and dated 17 February 2021 but must be amended to:
  - a) include the any updates resulting from the changes required by Condition 1 of this permit;
  - b) include an assessment of the noise impact of the function centre use on the proposed apartments within the development and the surrounding area, taking into account the approved patron numbers and hours of operation (as detailed by Conditions 5 and 6 of this permit); and
  - c) state whether any measures are necessary to reduce noise impacts of the function centre to both the dwellings within the development and dwellings in the nearby area and detail those measures.
  - d) include recommendations based on the existing music venue at 524 Lyon Street complying with SEPP N-2, from existing noise sensitive residential uses within 50 metres of 524 Lygon Street with windows and doors closed (Schedule B1 of SEPP N2 does not apply).
20. 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. Prior to the issue of a Statement of Compliance or occupancy permit for any part of the building approved under this permit, whichever occurs first, a report from the author of the Acoustic Report approved pursuant to this permit or similarly qualified person or company must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Acoustic Report have been implemented in accordance with the approved Acoustic Report.

### **Loading management plan**

22. Prior to the endorsement of plans a loading management plan prepared by a suitability qualified professional must be submitted to and approved by the Responsible Authority. The report must include all recommendations for loading bay operation outlined on page 33 (Loading Dock Use) of the Acoustic Assessment prepared by Watson Moss Growcott dated 17 February 2021. When submitted and approved to the satisfaction of the Responsible Authority, the Loading Management Plan will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority. The recommendations of the plan must be implemented to the satisfaction of the Responsible Authority.

### **Development Contributions**

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

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

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

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

### **Environmental Audit**

24. 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:
25. 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,
26. 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.
27. 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).
28. Prior to any remediation works (if required) being undertaken in association with the Environmental Audit, a 'remediation works' plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of a Certificate or Statement of Environmental Audit.
29. No works to construct the development hereby approved shall be carried out on the land and no building contract to construct the development hereby approved may be entered into, other than in accordance with a building contract that stipulates that works must not be commenced until such time as Conditions 23, 24 and 25 are satisfied.
30. 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.

31. 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.

### **Public Works Plan**

32. Prior to the commencement of development, a Public Works Plan and associated construction drawing specifications detailing the works to the public realm adjacent to the site must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must be in accordance the Moreland City Council Technical Notes July 2019 or any updated version and detail works in front of the approved building along Lygon Street and including:
  - a) The upgrade of the public realm adjacent to the site including new or reconstructed footpaths, water sensitive urban design treatments, seating, bicycle hoops, nature strips and other associated street furniture/infrastructure.
  - b) The footpaths are to be reinstated with the standard crossfall slope of 1 in 40 from the top of roadside kerb to the property boundary, with any level difference made up within the site.
  - c) A detailed level and feature survey of the footpaths and roads.
  - d) Any crossovers not required removed and the kerb and channel, footpath and nature strip reinstated to Council's standards using construction plans approved by Moreland City Council, City Infrastructure Department.
  - e) The location, method and number of bicycle parking to be accommodated within the road reserve.
  - f) Tree(s) and other landscaping in the street frontages adjacent to or near the development.

The approved Public Works Plan will form part of the endorsed plans under the permit and must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, prior to the issue of a Statement of Compliance or occupancy permit for any part of the development, whichever occurs first, unless otherwise agreed with prior written consent of the Responsible Authority.

### **Wind Impact**

33. Prior to the endorsement of plans a Wind Impact Assessment Report must be prepared by a suitability qualified person. The report must assess the possible wind impacts of the building to Lygon Street and the adjacent laneways and make recommendations for design changes, if required, to mitigate these impacts. When submitted and approved to the satisfaction of the Responsible Authority, the Wind Impact Assessment Report will be endorsed to form part of this permit.
34. The building must be constructed and maintained in accordance with the recommendations contained within the approved Wind Impact Assessment Report to the satisfaction of the Responsible Authority. The report endorsed under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority.

### **Car parking**

35. The area set aside for the parking of vehicles and access lanes shown on the endorsed plan must, to the satisfaction of the Responsible Authority:
  - a) Be completed prior to issue of an Occupancy Permit or issue of a Statement of Compliance, whichever occurs first.

- b) Be maintained.
- c) Be properly formed to such levels that it can be used according to the endorsed plan.
- d) Have the boundaries of all vehicle parking spaces clearly marked on the ground to accord with the endorsed plan.
- e) Not be used for any other purpose other than the parking of vehicles, unless with the prior written consent of the Responsible Authority.
- f) Be numbered to facilitate management of the car park.

### **General**

- 36. Prior to the issue of a Statement of Compliance or an occupancy permit for any part of the development, whichever occurs first, all telecommunications and power connections (whereby means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.
- 37. Prior to the commencement of the development, a legal point of discharge is to be obtained, and where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge, must be submitted to and approved by the Responsible Authority.
- 38. 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).
- 39. Stormwater from the land must not be directed to the surface of the laneway to the satisfaction of the Responsible Authority.
- 40. The ramp to the basement must be designed to avoid stormwater run-off flowing along the laneway from entering the basements to the satisfaction of the Responsible Authority.
- 41. The pump we-well for the basement must be designed so that it can cater for a 1% AEP instead of 10% in accordance with Section (8) of A/NZS3500.3:2018 to the satisfaction of the Responsible Authority.
- 42. Prior to the issue of a Statement of Compliance or an occupancy permit for any part of the development, whichever occurs first, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure Department).
- 43. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance of each stage of the development, whichever comes first, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.
- 44. Prior to the commencement of the development, a 3D digital model of the approved development which is compatible for use on Council's Virtual Moreland tools and software for Council and community must be submitted to the satisfaction of the Responsible Authority. The model must be prepared in accordance with Moreland City Council's 3D model submission guidelines. A copy of the 3D model submission guidelines and further information on the Virtual Moreland Project can be found at <https://www.moreland.vic.gov.au/planning-building/3D-Guidelines/>. In the event that substantial modifications to the building envelope are approved under an amendment to this planning permit, a revised 3D digital model must be submitted to, and be to the satisfaction of the Responsible Authority.

45. Prior to the issuing of Statement of Compliance or occupation of each stage of the development, whichever occurs first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.
46. All lighting of external areas must be designed not to emit direct light onto adjoining and nearby dwellings to the satisfaction of the Responsible Authority.

#### **Time**

47. This permit will expire if one of the following circumstances applies:
  - a) The development is not commenced within 3 (three) years from the date of issue of this permit;
  - b) The development is not completed within 5 (five) years from the date of issue of this permit; or
  - c) The use is not commenced within 5 (five) years from the date of issue of this permit.

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

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

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

#### **Note 1:**

Should Council impose car parking restrictions in this street, the owners and/or occupiers of the dwellings would not be eligible for resident parking permits to park on the street. See Council's website for more information: <https://www.moreland.vic.gov.au/parking-roads/parking-permits/residential-parking-permits/>.

#### **Note 2:**

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

#### **Note 3:**

#### **NOTES ABOUT ENVIRONMENTAL AUDITS**

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.

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.

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.

## 1. Background

### Subject site

The site is located at 495-511 Lygon Street, 30 metres south of Albion Street. The site is a regular shaped lot formed from 3 titles. It has a combined frontage of 53.2 metres to Lygon Street, a depth of 33.1 - 33.3 metres and an overall area of 1765 square metres. The site has a rear abuttal to a 3.05 - 3.35 metre wide lane to its west and a 3.05 metre wide lane to its south.

The land is occupied by two buildings. On the southern part of the site is the two storey former Liberty Theatre, currently used as the Cyprus Community Centre. This building forms part of Heritage Overlay Schedule 435 (HO435) – Lygon Street Precinct A. The Statement of Significance for this precinct notes the building as a ‘significant’ heritage place and a ‘landmark building’. On the northern part of the site are two vacant attached single storey buildings. The southernmost of these buildings is of contributory heritage significance and forms part of HO435. The northernmost building is not within the Heritage Overlay.

A 1.37-1.8 metre wide passageway easement runs east-west through the site. The only beneficiary of this easement is the owner of the subject site. A condition of the recommendation requires that the easement be removed before the permit has any force or effect.

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

### Surrounds

Development in the immediate context is characterised by 1-3 storey built form. There are a few examples of higher development in the wider area, including approximately 48 metres to the south-east at 462-470 Lygon Street (five storeys) and approximately 90 metres south at 495-497 Lygon Street (six storeys). Lygon Street is located within the Brunswick Activity Centre.

The adjoining property to the north (513 Lygon Street) is the former Lyndhurst Club Hotel, currently used as a bottle shop. This site is of individual heritage significance (HO107). A single storey later addition to this building directly abuts the subject site for a depth of approximately ten metres, with the original three storey hotel building located further north at the corner of Lygon and Albion Streets.

Abutting the site to the south beyond the lane is a two-storey commercial brick building with undercover car parking within the front setback.

Opposite the site to the east are a number of single and double storey attached buildings generally comprising ground floor commercial uses and first floor apartments.

Abutting the site to the west beyond the lane are single storey brick dwellings that front Stanley Street located within a Neighbourhood Residential Zone Schedule 1. These dwellings are located outside the Brunswick Activity Centre. Further north of these sites is a car park associated with the bottle shop at 513 Lygon Street.

A location plan forms **Attachment 1**.

### The Proposal

The proposal as amended pursuant to Section 57A in February 2021 is summarised as follows:

- Demolition of the single storey buildings on the northern part of the site and partial demolition of the former Liberty Theatre building on the southern part of the site. The east (façade) wall, part of the south and north walls and part of the

roof of the theatre will be retained for a depth of approximately 7.6 metres from Lygon Street, with the southern wall retained for a further 7.1 metres.

- Construction of a seven storey 26.1 metre high building (plus roof services) above three basement levels (each occupying the entire site footprint, apart from the section underneath the heritage building to be retained).
- At ground level, provision of a 699 square metre retail space, 158 square metre function centre lobby/lounge plus back of house services areas/a 51 square metre food and drink premise (noted as 'café') and separate apartment entry lobby and bicycle parking. The basement car parks, loading bay and ten at-grade car parking spaces for the use of the retail space and function centre will be accessed from the rear lane.
- At first floor, a 1067 square metre function centre plus services/back of house areas.
- At second to sixth floor, 48 apartments (6 x 1 bed, 35 x 2 bed and 7 x 3 bed).
- A 272square metre communal terrace for residents at rooftop level.
- Materials include a stone street wall and pre-cast concrete walls above with metal finishes.

The development plans form **Attachment 2**.

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

<b>Control</b>	<b>Permit Requirement</b>
Commercial 1 Zone	Retail premises (including food and drink premises) is a Section 1 use, meaning that a permit is not required. A permit is required to use the land for the purpose of a Dwelling as the ground floor frontage exceeds two metres. A permit is required to use the land for a Place of Assembly (including Function Centre). A permit is required to construct a building or construct or carry out works.
Overlays	Clause 43.01-1 (Heritage Overlay) – A permit is required to demolish or remove a building, construct a building or construct or carry out works, and externally alter a building. Clause 43.02-2 (Design and Development Overlay) – A permit is required to construct a building or construct or carry out works.

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
- Clause 52.06: Car Parking
- Clause 53.18: Stormwater Management in Urban Development
- Clause 58: Apartment Developments

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

### **First public notification**

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

- Sending notices to the owners and occupiers of adjoining and nearby land; and
- By placing signs on the Lygon Street and laneway frontages of the site. Council received 204 objections and one letter of support.



The key issues raised in objections are:

- Excessive height and overdevelopment.
- Insufficient architectural/material quality.
- Loss of daylight and overshadowing.
- Overlooking.
- Obstruction of views.
- Impact of commercial/function centre lighting on surrounding properties.
- Noise impacts of the proposed uses.
- Exhaust fumes from food and drink premises.
- Wind impact.
- Insufficient car and bicycle parking.
- Traffic congestion on road network and laneways.
- Adverse impact on heritage significance of the site and former Lyndhurst Hotel.
- Insufficient public transport and infrastructure.
- Insufficient communal indoor and outdoor space.
- No provision of community housing.
- No consideration of nearby live music venue.
- Lack of demand for apartments and ground floor tenancies.
- ESD unclear from design drawings.
- Insufficient planter beds for planting depicted in artist's impression.
- Lack of awnings impacts on pedestrian amenity.
- Waste collection impacts.
- Construction impact and possible property damage.
- Loss of property value.

A Planning Information and Discussion (PID) meeting was held on 1 December 2020. At the PID, the applicant presented amended concept drawings including a reduction in building height of three storeys. These plans formed the basis of a section 57A amendment to the application received on 2 February 2021.

### **Second public notification – Amended plans**

An application to amend the proposal pursuant to Section 57A of the Act was received on 2 February 2021. The amendment includes:

- Reduction in the height of the building from ten to seven storeys.
- Deletion of the proposed bar, restaurant and ancillary youth and lounge areas.

Notification of the amended application has been made pursuant to Section 52 of the Act with the extent of notice the same as the first public notification.

At the time of writing this report, a total of 219 objections have been received. This includes 23 additional objections following the second notice period, 15 of which were from residents who did not object during the first notification period. The concerns raised generally reflected those raised during the first notification, with the addition of the following matters:

- Increased litter

- Proposal does not meet the objectives of Council's Vehicle Crossing Policy
- Concerns with the status of Moreland Planning Scheme overlays, reference documents and Council policies.

A second Planning Information and Discussion (PID) meeting was held on 11 March 2021. No changes to the proposal have been made following the second PID meeting. A map identifying the location of objectors forms **Attachment 3**.

### Referrals

The proposal was not required to be referred to any external agency. Transport for Victoria were provided notice of the application and had no objection. The proposal was referred to the following internal branches/business units. The summary of advice provided in the table below is based on the amended proposal.

Internal Branch/Business Unit	Comments
Urban Design Unit	The building articulation, design and materials palette are supported. The proposed building height should be reduced to six storeys to ensure the street wall remains the visually dominant element and that the upper levels are visually recessive.
Sustainable Built Environment - Development Engineering Team	No objection subject to conditions. Supportive of the proposed car parking provision and no concern with traffic generation.
Sustainable Built Environment -ESD Team	Subject to conditions, the development will demonstrate best practice environmentally sustainable design in accordance with Clause 15.02-1L.
Open Space Design and Development Unit	No objection subject to conditions. Supportive of the proposed landscaping. Street trees may need to be removed during construction and replaced.
Heritage Advisor	Recommended a number of changes including reducing the height to five storeys with potential for a sixth storey if adequately recessed. Extent of demolition supported subject to increasing the upper level setback behind the retained former Liberty Theatre building to at least 11 metres.
Drainage Engineer	No objection subject to conditions.

## 3. Policy Implications

### Planning Policy Framework (PPF)

The following policies are of most relevance to this application:

- Municipal Planning Strategy (Clause 2), including:
  - Vision (Clause 2.02)
  - Settlement (Clause 2.03-1)
  - Environmental and Landscape Values (Clause 2.03-2)
  - Environmental Risks and Amenity (Clause 2.03-3)
  - Built Environment and Heritage (Clause 2.03-4)
  - Housing (Clause 2.03-5)
  - Economic Development (Clause 2.03-6)
  - Transport (Clause 2.03-7)

- Infrastructure (Clause 2.03-8)
- Settlement (Clause 11)
- Environmental Risks and Amenity (Clause 13):
  - Contaminated and Potentially Contaminated Land (Clause 13.04-1S)
  - Noise Abatement (Clause 13.05-1S and 13.05-1L)
  - Live music (Clause 13.07-3S)
  - Floodplain management (Clause 13.03-1S)
- Built Environment (Clause 15.01), including:
  - Urban Design (Clause 15.01-1S, 15.01-1R & 15.01-1L)
  - Vehicle Access Design in Moreland (Clause 15.01-1L)
  - Building Design (Clause 15.01-2S & 15.01-2L)
  - Apartment developments in Moreland (Clause 15.01-2L)
  - Healthy Neighbourhoods (Clause 15.01-4S and 15.01-4R)
- Sustainable Development (Clause 15.02), including:
  - Energy and resource efficiency (Clause 15.02-1S)
  - Environmentally Sustainable Development (Clause 15.02-1L)
  - Energy efficiency in Moreland (Clause 15.02-1L)
- Heritage (Clause 15.03), including:
  - Heritage conservation (Clause 15.03-1S)
  - Heritage in Moreland (Clause 15.03-1L)
- Residential Development (Clause 16.01), including:
  - Housing Supply (Clause 16.01-1S and 16.01-1R)
  - Homes in Moreland (Clause 16.01-2L)
  - Housing for People with Limited Mobility (Clause 16.01-1L)
  - Housing Affordability (Clause 16.01-2S & 16.01-2L)
- Economic Development (Clause 17), including:
  - Diversified economy (Clause 17.01-1S & 17.01-1R)
  - Business (Clause 17.02-1S)
- Transport (Clause 18), including:
  - Sustainable Personal Transport (Clause 18.02-1S & 18.08-1R)
  - Sustainable Transport in Moreland (Clause 18.02-1L)
  - Car parking (Clause 18.02-4S & 18.02-4L)
- Infrastructure (Clause 19.02), including:
  - Cultural Facilities (Clause 19.02-3S, 19.02-3R & 19.02-3L)
  - Development infrastructure (Clause 19.03)
  - Integrated water management (Clause 19.03-3S)

### **Human Rights Consideration**

This application has been processed 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, including Section 18 (Taking part in public life). In addition, the assessment of the application has had particular regard to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 20: Property rights

The proposed development on private land does not present any physical barrier preventing freedom of movement. The privacy of nearby residential properties has also been considered as part of the assessment of the application. The right of the landowner to develop and use their land has been considered in accordance with the Moreland Planning Scheme.

## 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 have strategic policy support?**

The site is located within the Brunswick Activity Centre. Both State and Local planning policies support increased residential densities in Activity Centres, to take advantage of the excellent access to public transport and other services within these locations.

The proposal meets the objectives and strategies of the Planning Policy Framework (PPF) by providing substantial change and housing growth in an area with excellent access to public transport and other services. The proposal enjoys strong strategic support at both State and Local level.

### **Is the extent of demolition acceptable?**

Council's Heritage Policy at Clause 15.03-1L outlines a number of tests for assessing whether part demolition of a heritage building is appropriate. These include:

- Whether sufficient heritage fabric has been retained to maintain the original streetscape appearance.
- Whether the fabric proposed to be removed contributes to the heritage significance of the place.
- Whether removal will enhance the significance of the place or facilitate conservation outcomes.
- Whether the extent of demolition will result in facadism.

It is proposed to retain the existing theatre building, including the roof, for a depth of approximately 7.6 metres, and the southern façade for a further 7.1 metres. There is an opportunity to retain more of the original roof due to the location of development above. A condition is included in the recommendation to increase the retention of the original roof to 11 metres from the frontage. Subject to this condition, the extent of retention is supported by Council's Heritage Advisor and is considered appropriate as it ensures an acceptable amount of heritage fabric is retained.

It is proposed to demolish the single storey building to the immediate north of the former Liberty Theatre. This is acceptable as the building forms part of the brick factory to the immediate north which is outside of the heritage overlay. The Heritage Impact Statement submitted with the application states that this building appears to have been included in the heritage precinct erroneously. A review of Council records appears that this may be the case given that the majority of the building sits outside of the overlay. Council's Heritage Advisor did not raise any concerns about the building's demolition.

A condition of the recommendation requires submission and approval of a Heritage Report that will outline details of the restoration and conservation of the former Liberty Theatre.

### **Does the proposal respond to neighbourhood and heritage character and enhance the public realm?**

Subject to conditions of the recommendation, namely the reduction to six storeys, the proposal is an acceptable response to the preferred character of the area as outlined in the built form requirements of Design and Development Overlay Schedule 19 (DDO19) and Heritage Overlay.

## Building Height

The overall building height of 26.1 metres exceeds the DDO19 preferred height of 17 metres. Objectives of DDO19 include:

- *To create a new mid rise built form character that provides a built form transition between the Lygon Activity Corridor and adjoining low-rise residential areas.*
- *To ensure highly visible development is limited to key redevelopment sites and responds to specific design objectives.*
- *To ensure the street wall remains the visually dominant element of all development in Lygon Street and that any height above the street wall is visually recessive, subservient and does not dominate the streetscape appearance.*

Objectives of DDO19 also refer to heritage and include *'to ensure development is designed to respect the form, design and context of buildings of individual heritage significance'*.

Council's Heritage Policy at Clause 15.03-1L encourages new buildings to respect the existing scale, massing form and siting of contributory and significant heritage fabric. It discourages built form that dominates heritage places.

Council's Heritage Advisor does not support the seven storey height and recommended it be reduced five storeys, with potential for a sixth storey provided it is lightweight and not visible from Lygon Street.

Council's Urban Design team recommended that, if the height of the building were reduced to six storeys this, combined with the upper level setback of five metres and the materiality, architectural detailing and differentiation between the street wall and upper level forms, would result in an upper level that is visually recessive when viewed from Lygon Street.

At seven storeys the proposed upper level is considered too dominant in the streetscape to achieve the DDO19 objective of ensuring upper levels are visually recessive, subservient and not dominant of the streetscape appearance. A relevant DDO19 objective is also *'To ensure highly visible development is limited to key redevelopment sites.'* The site is not an identified key redevelopment site as per DDO19. The seventh storey is considered to be the 'tipping point' for this development, that brings the building to a point where the upper levels dominate the street wall and the former Liberty Theatre and the Lyndhurst Hotel.

A reduction of one of the full width storeys (i.e. deletion of Level 4 or 5) is considered necessary and will reduce the building to six storeys. This is still one storey above the preferred maximum building height of five storeys and it is noted that the sixth storey will be visible from Lygon Street. A six storey building is considered acceptable because:

- The building design uses darker, heavier weight materials for the street wall and lighter weight materials above to differentiate the two elements and make the upper levels read as a more lightweight and recessive form.
- The upper levels are setback five metres from the street wall, exceeding the DDO requirement by two metres and are further setback behind the former Liberty Theatre.
- A condition to remove the canopy above the top level and all the columns at the top level will further reduce the dominance of the built form above the street wall. A further recommended permit condition is for the removal of the three columns above the former Liberty Theatre. This will further decrease the dominance of the upper level and ensure the remaining original roof is not modified by penetrating columns.

- The building will be separated from the individually significant Lyndhurst Club building by a single storey building to the immediate north, providing a visual break between the two forms. In addition, the sixth storey is further recessed from the north boundary away from the Lyndhurst Club.

#### Building setback behind former Liberty Theatre

At Level 2, the new building above the retained theatre will be setback 11 metres, ensuring a strong visual separation between the two elements. This setback is reduced to approximately 7 metres from Level 3 and to 5 metres (to balconies) from Level 4 and above. Council's Heritage Advisor recommended that all levels behind the former Liberty Theatre be setback a minimum of 11 metres. This is not recommended, however, as it will result in an exposed blank wall visible from Lygon Street associated with the lift core.

A condition is included in the recommendation to delete the balcony for Apartment 4.10 that overhangs the former Liberty Theatre and relocate it to the southern elevation. This condition, combined with a reduction in height to six storeys and removal of the columns above the former Liberty Theatre is considered an acceptable outcome which will ensure that the new built form is visually recessive behind the former Liberty Theatre and is not dominant in the heritage precinct. Principles of good urban design to minimise blank walls will also be achieved.

#### Ground level public interface and detailed design

The development incorporates active edges commensurate with the retail frontage type for the site. Vehicle access is located to the rear ensuring no impact on the Lygon Street footpath and building frontage. The Lygon Street façade is appropriately articulated, with the new façade well differentiated from the retained former Liberty Theatre, to respond to the varied character of the street. The proposal provides a quality architectural response to the street that includes appropriate articulation and materiality. In particular, the materials are considered to be of a high quality, the street wall employs darker masonry to contrast appropriately with the light coloured heavily glazed upper levels, and faceting is employed to break up the massing and reflect the rhythm of buildings in Lygon Street.

#### Internal design impacts on heritage

Council's Heritage Advisor recommended that the proposed internal design be modified to allow access to the upper level front windows. First floor windows of the original building will be located within a void space to the atrium below. The internal design of the building would require substantial modification to make the suggested change. Given the internal layout will not impact the appearance of these windows from the public realm, on balance it is considered acceptable in its proposed form.

#### **Does the proposal result in any unreasonable off-site amenity impacts?**

The objectives of DDO19 include to '...maintain reasonable amenity for residential properties adjacent to or within the activity centre'. The assessment below addresses the key off-site amenity impacts.

#### Visual bulk

Located adjacent to the Brunswick Activity Centre, dwellings in Stanley Street cannot expect minimal change to their outlook. The setbacks of the building from the rear lane comply with those set out in DDO19 for sites adjacent to residential land outside the activity centre, apart from the 8.3 metre high wall at the rear exceeding the DDO19 requirement by 300mm. A condition of the recommendation requires the height on the laneway to be reduced to 8 metres. Further, the upper levels employ an articulated, faceted façade to break up the built form. A condition of the recommendation requires additional landscaping to be provided to the west façade balconies to soften the appearance of the building. Combined with a reduction in height to six storeys, the visual bulk impacts to adjacent residential properties on Stanley Street are considered acceptable.

### Overshadowing

A Decision Guideline within the Commercial 1 Zone is the consideration of overshadowing as a result of building or works affecting adjoining land in a Neighbourhood Residential Zone. However, unlike other zones, there are no numerical standards that relate to overshadowing of land in a Neighbourhood Residential Zone from a development in a Commercial 1 Zone. In a fully residential context, Rescode (Clause 55 of the Scheme) provides numerical guidance as to what level of overshadowing is reasonable. The rear gardens of dwellings on the east side of Stanley Street will experience additional overshadowing at 9am until approximately 10:30am (at the equinox). The rear gardens will receive good solar access from approximately 10:30am. Were the Rescode standard to be applied to these dwellings, the proposed shadow impact would be non-compliant by approximately 30 minutes. The amenity of the residences must be balanced against the strategic objectives for the Brunswick Activity Centre. It is considered reasonable that amenity outcomes will not be of the same level in this context as in an exclusively residential area (ie. where Rescode applies). Given the shadow impact will be close to the Rescode standard, on balance this outcome is considered reasonable. Further, the recommended deletion of one storey of the building will further reduce shadow impacts.

### Overlooking

Nine metres is the accepted standard for preventing unreasonable overlooking. Residential properties within nine metres of the subject site are those on the east side of Stanley Street. At second floor level, west-facing balconies will be fitted with 1.7 metre high obscure glazed (reeded glass) screens. From third floor, including the roof top terrace, habitable room windows and balconies will be more than nine metres from the rear boundaries of the Stanley Street properties. The windows from the function hall at first floor level would overlook the dwellings facing Stanley Street located approximately 3 metres away. A condition of the recommendation requires that all these windows be fixed and obscured to 1.7 metres above the finished floor level of the hall.

#### **Are the proposed uses appropriate?**

The proposed function centre use is appropriate in the Commercial 1 Zone, where the purpose is to create a vibrant mixed-use commercial centre. The function centre is proposed to be used by the current occupiers of the subject site, the Cyprus Community and will be similar in nature to the current use. Proposed operating hours for the function centre are 8:00am to 11:00pm, seven days a week, which is considered reasonable in an activity centre setting. Further, it is proposed to limit patron numbers to 100. The hours and patron numbers form conditions of the recommendation.

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

The applicant's traffic report concluded that the development would generate 61 additional residential vehicles movements during peak hours. Council's Sustainable Built Environment (Development Engineering) Unit assessed the proposal and concurred that the increase was acceptable for the surrounding road network. Concerns were raised about vehicle manoeuvring in the laneways. This was addressed on the amended plans by including a splay in the building at ground floor level. The Development Engineering team considered this change to be acceptable.

#### **Have adequate car and bicycle parking and loading/unloading facilities been provided?**

Pursuant to Clause 52.06 (Car Parking) a total of 110 car parking spaces are required for the development (55 for the apartments, 30 for the function centre, 24 for the retail premises and 1 for the food and drink premise). The development provides 131 spaces.

The recommended conditions to delete a storey would reduce the number of apartments to 45, resulting in a surplus of 32 car parking spaces.

A total of 22 bicycle spaces are required for the development (10 for residents, 2 for employees, 6 for visitors and 4 for the function centre) pursuant to Clause 52.34. The development exceeds this requirement by providing 56 spaces.

The proposal includes a loading bay at ground floor level, accessed from the rear lane, which is considered to provide adequate loading and unloading facilities. Vehicle access from the rear lane is the appropriate response, as this avoids the need for a crossing on the heavily pedestrianised Lygon Street. This is consistent with a strategy of Clause 15.01-1L (Vehicle Access Design in Moreland) to 'ensure development utilises rear laneways for vehicle access where possible to allow street frontages to prioritise pedestrian movement and safety and to create active frontages.'

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

The proposal includes a number of environmentally sustainable features including a 4 star Green Star rating and 23kW PV system. Council's ESD Unit confirmed that, subject to conditions included in the recommendation, the proposal will achieve best practice in accordance with the requirements of Clause 15.03-1L.

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

71 per cent of dwellings meet the Clause 58 accessibility requirement, exceeding the Standard of 50 per cent. This satisfies the strategy of Clause 16.01-1L to encourage the provision of housing that can be lived in by people with limited mobility.)

The non-residential elements of the proposal are provided with accessibility features including an accessible car parking space at-grade, step-free access within the function centre and café, and lift and escalator access from the function centre lobby to the function hall above.

### **Does the proposal provide appropriate onsite amenity and facilities?**

Most of the standards of Clause 58 are met or exceeded. It is noted that:

- Communal open space of 273sqm substantially exceeds the 120sqm required by the relevant standard.
- 60% of apartments achieve cross ventilation, in excess of the 40% required.
- The dwellings meet minimum room dimension requirements.

Key issues from the Clause 58 assessment are discussed below.

#### ***Clause 58.03 – Site Layout***

Standard D10 requires 176.5 square metres of deep soil planting and one large tree or two medium trees. No deep soil planting is proposed. The site is currently devoid of vegetation. Canopy trees are not characteristic of the area. Landscaping provided within balcony planter boxes and the rooftop terrace areas is considered an acceptable outcome. A condition of the recommendation requires detail of all planter boxes to ensure the planting will be viable.

#### ***Clause 58.05-2 – Building entry and circulation***

Objectives of this clause include to ensure internal communal areas provide adequate access to daylight and natural ventilation. The standard requires that common areas and corridors have at least one source of natural light and natural ventilation. All levels of the building achieve this except Level 6. condition of the recommendation requires a window to be provided to the Level 6 corridor.



## **Does the proposal comply with Clause 15.012L (Apartment development in Moreland)?**

This policy sets out building setback standards for apartments. The objectives relate to daylight and outlook, future development opportunities of adjoining site and amenity impacts. The proposal is compliant with the standards set out in this clause apart from the sixth level. At the sixth floor, the northern setback of 7.57m is 1.43m short of the standard. With the recommended condition to reduce the height of the development, compliance will be achieved.

### **Noise impacts**

#### Does the proposal comply with Clause 53.06 (Live Music Venues)?

The objectives of Clause 53.06 include to protect live music entertainment venues from the encroachment of noise sensitive residential uses. The live music venue 'Whole Lotta Love' at 524 Lygon Street is 25 metres north-east of the site. The clause requires that a residential use must include acoustic attenuation measures to reduce noise levels from any indoor live music entertainment venue to below those specified in State Environment Protection Policy No. N-2 (SEPP N2). An acoustic assessment submitted with the application notes that measurements indicate the existing live music venue is non-compliant with SEPP N-2. The assessment makes recommendations to ensure the proposed development complies with the requirements of Clause 53.06 in relation to wall construction within apartments. These recommendations are based on the existing live music venue complying with SEPP N-2. A condition in the recommendation requires that the acoustic report updates its recommendations in relation to the music venue and the requirements of Clause 53.06 so that the development is constructed in a way that meets the requirements of this Clause.

#### Noise impacts from the proposal to surrounding residents and future occupants

The submitted acoustic report includes an assessment of potential noise emissions associated with the proposed residential and commercial uses. In general it found noise impacts to be acceptable. The submitted acoustic report did not undertake a detailed analysis of the impact the function centre would have on future occupants within the development. The acoustic report states that this was not possible because details of the function centre (i.e. patron numbers, hours etc) were not available. A condition of the recommendation requires the report to be amended to include this analysis and any resultant recommendations to be implemented. Given the moderate patron numbers (100) and hours of operation (8am – 11pm) proposed, the assessment is not anticipated to require any significant alteration to the building.

The general use of a lane for vehicle access is considered reasonable in an urban setting. In relation to the use of the at-grade loading bay, accessed via the rear lane, the acoustic report found it was likely SEPP-N-1 requirements would be met, but that there was potential for noise impacts on the acoustic amenity of the surrounding area. The report made a number of recommendations to mitigate these impacts, including requiring vehicles to be turned off whilst in the loading area, to be unloaded by hand and to be fitted with broadband reverse alarms which vary their noise output according to the ambient noise level. A condition of the recommendation requires submission of a Loading Management Plan which incorporates these recommendations.

In relation to balconies and the residents' rooftop terrace, residential noise associated with a dwelling is considered normal and reasonable in an urban setting. Residents are no more or less likely to generate excessive noise than the occupiers of the surrounding dwellings and businesses. Several objectors raised concerns about noise from a commercial terrace and outdoor dining area which were deleted as part of the section 57A amendment to the application.

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

Whilst the site is not affected by an Environmental Audit Overlay, information submitted by the applicant indicated a past use of the site for electrical engineering. The State Government Potentially Contaminated Land Practice Note identifies 'electrical/electrical component manufacture' as a use with high potential for contamination. A condition contained in the recommendation would require a Certificate or Statement of Environmental Audit be issued before commencement of the development.

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

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

- Excessive height and overdevelopment.
- Insufficient architectural/material quality.
- Loss of daylight and overshadowing.
- Overlooking.
- Insufficient car and bicycle parking.
- Traffic congestion on road network and laneways.
- Adverse impact on heritage significance of the site.
- Adverse heritage impact to former Lyndhurst Hotel.
- Noise impacts of proposed uses
- No consideration of nearby live music venue.
- Proposal does not meet the objectives of Council's Vehicle Crossing Policy.

The remaining grounds of objection are discussed below.

### *Obstruction of views*

In relation to views, whilst it is recognised that views may form part of residential amenity, VCAT has consistently held that there is no legal entitlement to a view.

### *Exhaust fumes from food and drink premises*

The food and drink premises will be required to comply with Australian Standards or the equivalent level regarding the discharge and emission of odour from the premises.

### *Wind impact*

A wind impact assessment is required as a condition of the recommendation.

### *Waste collection impacts*

Concerns were raised with potential amenity impacts related to the number of rubbish bins required for the development and how they would be collected. The applicant submitted a waste management plan detailing private collection which includes collection of bins from the basement car park. This is considered reasonable. A condition of the recommendation requires the waste management plan to be implemented and complied with.

### *Insufficient public transport and infrastructure*

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

The site owner will be required to address infrastructure servicing demands of the development 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.

*Insufficient communal indoor and outdoor space*

The development includes communal outdoor space in excess of Clause 58 requirements. There is no planning scheme requirement for communal indoor space.

*Lack of demand for apartments and ground floor tenancies*

These uses are considered appropriate for the subject site. The design of the ground floor tenancy will provide an active street frontage appropriate to the activity centre context. Further, possible lack of demand is not a valid planning reason for refusal or modification of the proposal.

*Lack of awnings impacts on pedestrian amenity*

The proposal includes canopies above the Lygon Street footpath.

*Health risks associated with demolition*

All construction activity, including demolition, must comply with Occupational Health and Safety Standards and WorkSafe requirements. This is the responsibility of the owner or their agent appointed for the site development and is not managed through the planning process.

*Construction impact and possible property damage*

Construction techniques and effects – noise, dust, stability of existing foundations and damage to nearby dwellings - are dealt with under separate further permissions required should a planning permit be issued, including at the building permit stage.

*Loss of property value*

VCAT has consistently found that 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 Act or the Moreland Planning Scheme.

*Impact of commercial/function centre lighting on surrounding properties*

Lighting of premises facing Lygon Street is considered a reasonable and expected outcome in an activity centre. In relation to light impacts to the residential area to the west, the only function centre lighting proposed to face west will be interior lighting visible through windows. The west-facing windows and skylights will be located at least three metres from the nearest residence, and the function centre will be limited in hours of operation to no later than 11.30pm (including cleaning). It is considered that this will not result in an unreasonable impact to the adjoining residential area.

*No provision of community housing*

There is no mandatory requirement in the Moreland Planning Scheme for community housing to be included in this development.

*ESD unclear from design drawings*

The application, including design drawings, were assessed by Council's Environmental Sustainable Design team who found them to be acceptable subject to conditions of the recommendation.

*Insufficient planter beds for planting depicted in artist's impression*

The application was assessed by Council's Open Space team who were supportive of the proposed planting. A condition of the recommendation requires detail of proposed planter boxes to be added to the landscape plan to Council's satisfaction. This will ensure planters are of sufficient size for the proposed landscaping.

### *Increased litter*

There is no aspect of this proposal that would directly lead to an increase in rubbish in the surrounding area.

### *Numerous concerns with the status of Moreland Planning Scheme overlays, reference documents and Council policies*

One objection raised numerous issues with the status of a number of Council policies, overlays and reference documents in the Moreland Planning Scheme, including:

- The Parking Overlay which applies to the site is not specific to the activity centre;
- Council's Parking Management Policy has not been reviewed in line with the Council Plan 2017-2021;
- Brunswick Structure Plan reference documents are out of date (specifically the Place Action Plan for Brunswick Activity Centre has not been reviewed since October 2018).

These matters are not within the scope of assessment of 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**

On the balance of policies and controls within the Moreland Planning Scheme, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2020/57 should be issued subject to the conditions in the recommendation.

## **Attachment/s**

- |                   |  |            |
|-------------------|--|------------|
| <a href="#">1</a> | 495-511 Lygon Street Brunswick East - location map | D20/482583 |
| <a href="#">2</a> | 495-511 Lygon Street Brunswick East - plans        | D20/482628 |
| <a href="#">3</a> | 495-511 Lygon Street Brunswick East - objector map | D20/484811 |

## 5.2 20 STALEY STREET, BRUNSWICK - PLANNING APPLICATION MPS/2017/419/A

Director City Futures, Kirsten Coster

City Development

### Executive Summary



<b>Property:</b>	20 Staley Street, Brunswick				
<b>Proposed Amendments</b>	<ul style="list-style-type: none"> <li>Remove car stackers from Dwellings 2, 3 and 4</li> <li>Reduce car parking provision by three spaces on-site to provide only one space to Dwellings 2, 3 and 4</li> <li>Delete condition 1d (relating to car stackers heights)</li> </ul>				
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"> <li>General Residential Zone (GRZ1)</li> <li>Development Contributions Plan Overlay (DCPO1)</li> </ul>				
<b>Strategic setting:</b>	<table border="1"> <tr> <td>Minimal housing growth</td> <td style="background-color: #00AEEF; color: white;">Incremental housing growth</td> <td>Increased house densities encouraged</td> <td>Significant housing growth</td> </tr> </table>	Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth
Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth		
<b>Objections:</b>	<ul style="list-style-type: none"> <li>15 Objections</li> <li>Key issues:             <ul style="list-style-type: none"> <li>Car Parking Reduction</li> <li>Traffic Impacts</li> <li>Removal of Car Stackers</li> </ul> </li> </ul>				
<b>Planning Information and Discussion (PID) Meeting:</b>	<ul style="list-style-type: none"> <li>Date: 19 April 2021</li> <li>Attendees: 3 objectors, the applicant, 2 Council officers, and Cr Helen Pavlidis-Mihalakos, Cr Mark Riley and Cr James Conlan</li> <li>No changes were agreed to, however the meeting provided an opportunity for the objectors concerns to be discussed and helped inform the preparation of this report.</li> </ul>				
<b>Key reasons for support:</b>	The further reduction in car parking is acceptable as the site has excellent access to multiple modes of public transport and is adjacent to the Brunswick Activity Centre.				
<b>Recommendation:</b>	An amended Planning Permit be issued for the proposal.				

## Officer Recommendation

That a Notice of Decision to Grant an Amended Planning No. MPS/2010/419/A be issued for the construction of four dwellings (three triple storey and one double storey) with roof top decks and a reduction in the car parking requirement at 20 Staley Street, Brunswick, subject to the following conditions (**new condition bolded**):

**1A. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans (advertised 8 January 2021) but modified to show:**

**a) An additional bicycle parking space for each of dwellings 2, 3 and 4. This must be provided internal to the dwelling by removing the door to the ground level courtyard. A sliding door to the bedroom can be provided to allow access to the courtyard.**

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans prepared by Neil Architecture dated 19/09/2017, TP1 – TP19 Rev A but modified to show:

a) Dimensions of the title boundaries on all plans to match the plan of subdivision.

b) A survey plan confirming the ground-level AHD to demonstrate/confirm that there is a 2.5-degree slope along an 8-metre section of the site in accordance with the provisions of Clause 32.08-10 of the Moreland Planning Scheme.

In the event that this cannot be demonstrated, the building is to have a maximum overall height no greater than 11 metres.

c) Initiatives contained within the Sustainable Design Assessment (SDA), including:

i. Confirmation that the rainwater harvesting tanks (within the STORM and BESS reports) are completely independent of any detention requirements (through the Legal Point of Discharge process), and, an annotation that the tanks will capture the roof areas specified in the SDA. The location of the tanks must also be clearly specified on the plans.

ii. Double glazing (or better) provided for all living room windows (including sliding door glazing), kitchens and bedrooms, indicated on each individual window on the floor plans and elevations.

**d) (deleted)**

e) The colour and material schedule amended so that the glazing is specified as being double glazing (or better) for all living room windows (including sliding door glazing), kitchens and bedrooms.

f) The garage doors to be automatic and remote controlled.

g) An internal door or large operable window to the ground-floor light-court of Dwellings 2, 3 and 4, allowing maintenance access.

h) Letter box and street number to each dwelling.

i) The location of all water, gas, and electricity metres for each dwelling. These cannot be freestanding structures within the front setback and must be integrated into the design of the building and screened from view from the public realm.

- j) Alternative screening to the northern window of the kitchen of Dwelling 1 at first-floor demonstrating compliance with Standard B22 (overlooking) of Clause 55 of the Moreland Planning Scheme, whilst allowing a northern outlook.
  - k) Relocation of the air-conditioning condensers from the northern side to the southern side of the dwellings, suitably integrated into the design of the dwellings and screened from the public realm.
  - l) A warning light system fitted on the outside (south-facing) wall of each garage, to provide extra notice to passing pedestrians when a vehicle is in the process of exiting or entering any of the three garages.
  - m) The first-floor south-facing bathroom windows of Dwellings 2, 3 and 4 to have an upstand of a minimum of 1 metre.
  - n) The pedestrian walkway along the southern boundary to be in a material and colour to differentiate it from the right-of-way.
  - o) Metal cladding to have horizontal not vertical banding.
  - p) 1:50 detail of the art work for the garage doors in full colour.
  - q) An 0.8-metre-wide and 1.2-metre-high planter box to replace the northern balustrade of the roof terrace of Dwellings 2, 3 and 4, to be planted with "Murraya Paniculata".
  - r) A cross-section of Dwellings 2, 3 and 4, demonstrating compliance of the amended roof terraces with Standard B22 (Overlooking) of Clause 55 of the Moreland Planning Scheme, regarding the private open space and habitable room windows of the northern dwelling at 22 Staley Street.
  - s) A balustrade to the western end of the planter box on the first-floor south-facing balconies of Dwellings 2, 3 and 4.
  - t) A cross-section of the screening louvres on the northern windows, demonstrating compliance with Standard B22 of Clause 55 of the Moreland Planning Scheme.
  - u) Taps to be shown on the south-facing balconies and roof terraces of Dwellings 2, 3 and 4.
  - v) Removal of the metal dividing fences at ground-floor as shown on Diagrams 3 Sections C on TP07 Rev A.
  - w) Sensor lighting to the under-croft at the entry of each of Dwellings 2, 3 and 4, baffled to ensure no light spill onto any other land.
  - x) Provision of a minimum of 6 cubic metres of storage for each dwelling.
  - y) Suitable B22 compliance with the screening of the staircase of Dwelling 4 with cross-section to demonstrate.
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clauses 62.02-1 and 62.02-2 of the Moreland Planning Scheme unless specifically noted as a permit condition.
3. Prior to the commencement of any development works, an amended landscape plan must be submitted to and approved by the Responsible Authority. The landscape plan must provide the following:
- a) The details of irrigation and drainage of all landscaping areas including ground-floor courtyards, ground-floor front garden beds, second-floor planter boxes and roof terrace planter boxes, by way of:
    - i. a dedicated Irrigation Plan, and
    - ii. an Irrigation Management Plan.

- b) Maintenance responsibilities (and the access arrangements) regarding clipping of the ground-floor olive trees.
  - c) All permeable and impermeable areas within the STORM Report.
  - d) Any storm water management details on the STORM report, including raingardens, rainwater harvesting tank locations,
  - e) Any requirement of Condition 1.
4. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority.
  5. Prior to the endorsement of plans, a Sustainable Design Assessment (SDA) must be submitted to and be to the satisfaction of the Responsible Authority. All works must be undertaken in accordance with the endorsed Sustainable Design Assessment report to the satisfaction of the Responsible Authority. No alterations to the Sustainable Design Assessment report may occur without the written consent of the Responsible Authority.
  6. Prior to the issue of a Building Permit in relation to the development approved by this permit, a Development Infrastructure Levy and Community Infrastructure Levy must be paid to Moreland City Council in accordance with the approved Development Contributions Plan.

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

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

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

7. Prior to the issuing of Statement of Compliance or occupation of the development, whichever occurs first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.
8. Prior to the occupation of the development, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Moreland City Council, City Infrastructure Department).
9. 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).
10. Prior to the commencement of the development, a legal point of discharge is to be obtained, and, where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge must be submitted to and approved by the Responsible Authority.
11. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.



12. Prior to the occupation of the development all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land (including all existing and new buildings) must be underground to the satisfaction of the Responsible Authority.
13. Prior to the occupation of the development, any Council or service authority pole or pit within 1 metre of a proposed vehicle crossing, including the 1 metre splays on the crossing, must be relocated or modified at the expense of the permit holder to the satisfaction of the Responsible Authority and the relevant service authority.
14. This permit will expire if one of the following circumstances applies:
  - a) the development is not commenced within two (2) years from the date of issue of this permit;
  - b) the development is not completed within four (4) years from the date of issue of this permit.

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

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

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

**Note 1: Should Council impose car parking restrictions in this street, the owners and/or occupiers of the dwellings would not be eligible for resident parking permits to park on the street. Occupiers are eligible for the resident A parking permit which only permits parking in limited areas. The resident parking permits and Resident A parking permit are subject to future reviews and change. See Council's website for more information:**  
<https://www.moreland.vic.gov.au/parking-roads/parking-permits/residential-parking-permits/>.

## 1. Background

### Subject site

The subject site is located on the west side of Staley Street, between Stewart Street to the north and Blyth Street to the south.

The site is an irregular shape, with five boundaries. The plan of title shows the northern boundary has a length of 26.67 metres, the eastern boundary has a length of 11.46m to the Staley Street frontage, the southern boundary has a length of 22.92 metres to a named laneway (Curtis Place), there is an angled splay at the corner of the laneway for a length of 2.59 metres and the western boundary to Curtis Place has a length of 9.93m, yielding an overall site area of 287.34 metres.

The subject site is developed with a double-fronted, single-storey Edwardian-era weatherboard dwelling. The dwelling has no on-site car parking.

The title contains a restrictive covenant (Covenant Number 0611911). The restriction on the covenant states:

*The transferee for himself, his executors, administrators and transferees hereby covenants with the transferors... shall not at any time hereafter quarry in the above described land or any part of or carry away any stone gravel soil sand therefrom or any part thereof or make any excavations therein or any part thereof except such as necessary for laying the foundations of any building to be erected thereon...*

The proposed amendment to the car stackers and number of car parking spaces provided on-site will not change the fact that the development of the site for new dwellings, including excavation for foundations does not constitute quarrying and therefore is not in breach of the covenant restriction.

### Surrounds

The surrounding area is characterised by a mix of commercial and residential uses. Properties to the west of the subject site, beyond the laneway, (within the Commercial 1 Zone) are located within the Brunswick Activity Centre and predominately contain commercial premises that range from one to two storeys in height. Properties to the immediate north, east and south of the subject site (within the General Residential Zone) predominately contain dwellings that range from one to three storeys in height.

To the north of the subject site are similar double-fronted single-storey Edwardian-era dwellings.

To the east of the subject site are four, three-storey 1960-1970's blocks of flats, with 33, 35 and 37-39 Staley Street having rear car parking off an eastern laneway. 31 Staley Street has a car park within the front setback and a cross-over to the street frontage.

To the south and west of the subject site is Curtis Place, a concrete laneway that traverses the southern and western boundaries of the subject site. Beyond the laneway is a public car park with 38 car spaces. The car park has 2-hour restrictions from 8am to 6pm Monday to Friday, and 8am to 1pm Saturday. All other times are unrestricted.

A location plan forms **Attachment 1**.

### The proposal

This application seeks to amend Planning Permit MPS/2017/419 to:

- Remove car stackers from Dwellings 2 to 4

- Reduce car parking by three car spaces, resulting in only one car space being provided to Dwellings 2, 3 and 4 on-site.

The advertised plan forms **Attachment 2**.

### Planning Permit and site history

The application was originally refused by Council officers under delegation on grounds relating to built form and amenity. This decision was appealed by the permit applicant and following a merits hearing, VCAT directed that a planning permit be issued. Planning permit MPS/2017/419 was issued on 18 March 2019 for the construction of four dwellings (three triple storey and one double storey) with roof top decks and a reduction in the car parking requirement. Plans were endorsed on 31 March 2020. No prior amendments have been approved. Works have not commenced on site.

A copy of the endorsed plans is provided at **Attachment 3**.

### VCAT Decision P1496/2018

Of relevance to this application to further reduce the car parking provision on site are the findings of VCAT for this development application in March 2019. At paragraphs 51 to 61, provides discussion on the car stackers and whether these were actually necessary given the strategic context of this area, previous VCAT decisions approving substantial car parking reductions and the Moreland Integrated Transport Strategy 2010-2019 and concludes the following:

*“... Ultimately I see the appropriate course with my discretion here as being to make a decision on the as-is proposal, including the car stackers. While I can indicate in-principle that I can see a real case for granting additional car parking dispensation so as to dispense with the car stackers, this is now an issue for another day, if this possibility was to be pursued further” (p. 61). (emphasis added)*

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

Control	Permit Requirement
General Residential Zone	Clause 32.08-6: Construction of two or more dwellings on a lot
Car Parking	Clause 52.06: A permit is required to reduce the car parking requirement from 7 spaces to 3 spaces.

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

- Clause 45.06: Development Contributions Plan Overlay. The existing planning permit includes a condition requiring the payment of the development contributions levy.
- Clause 52.34: Bicycle facilities. Clause 52.34 does not require any bicycle parking to be provided for dwellings in developments that are less than four storeys.

## 2. Internal/External Consultation

### Public notification

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

- Sending notices to the owners and occupiers of adjoining and nearby land.
- Placing signs on the Staley Street frontage of the site and on the rear boundary facing Curtis Place.

Council has received 15 objections to date. A map identifying the location of objectors forms **Attachment 1**.

The key issues raised in objections are:

- Car Parking Reduction
- Traffic Impacts
- Construction impacts
- Removal of Car Stackers
- Inadequacy of original traffic report

A Planning Information and Discussion meeting was held on 19 April 2021 and attended by Cr Helen Pavlidis-Mihalakos, Cr Mark Riley, Cr James Conlan, two Council Planning Officers, the applicant and 3 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

#### **Internal referrals**

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

<b>Internal Branch/Business Unit</b>	<b>Comments</b>
Sustainable Built Environment - Development Engineering Team	<p><b>Parking Provision</b></p> <p>The good access to alternate transport routes means that dispensation for a further 3 parking spaces can be accepted if appropriate bicycle parking is provided for Dwellings 2, 3 and 4. An additional bicycle parking space for these dwellings should be provided so that each dwelling has 2 bicycle spaces.</p>

### **3. Policy Implications**

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

The following policies are of most relevance to this application:

- Municipal Planning Strategy (Clause 2), including:
  - Vision (Clause 2.02)
  - Settlement (Clause 2.03-1)
  - Housing (Clause 2.03-5)
  - Transport (Clause 2.03-7)
- Settlement (Clause 11)
- Built Environment (Clause 15.01), including:
  - Urban Design (Clause 15.01-1S, 15.01-1R & 15.01-1L)
  - Vehicle Access Design in Moreland (Clause 15.01-1L)
  - Building Design (Clause 15.01-2S & 15.01-2L)
  - Neighbourhood Character (Clause 15.01-5S)
  - Minimal and Incremental Change Areas (Clause 15.01-5L)
- Residential Development (Clause 16.01), including:
  - Housing Supply (Clause 16.01-1S and 16.01-1R)
  - Homes in Moreland (Clause 16.01-2L)

- Transport (Clause 18), including:
  - Sustainable Personal Transport (Clause 18.02-1S & 18.08-1R)
  - Sustainable Transport in Moreland (Clause 18.02-1L)
  - Car parking (Clause 18.02-4S & 18.02-4L)

### Human Rights Consideration

This application has been processed 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, including Section 18 (Taking part in public life)*. In addition, the assessment of the application has had particular regard to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 20: Property rights

The proposed amendment to a building on private land does not present any physical barrier preventing freedom of movement. The right of the landowner to develop and use their land has been considered in accordance with the Moreland Planning Scheme.

## 4. Issues

The scope of this assessment is limited to the proposed changes to the car stacker and the further reduction in car parking. The assessment of this amendment cannot reconsider other aspects of the originally approved development. In considering this application, regard has been given to the State and Local Planning Policy frameworks, the provisions of the Moreland Planning Scheme, objections received, the previous VCAT decision and the merits of the application.

### Does the proposal have strategic policy support?

The subject site is located within the General Residential Zone. The purposes of this zone include encouraging a diversity of housing types and growth, particularly in locations offering good access to transport and services. Clause 16.01-1R also seeks to facilitate increased housing in established urban areas to create a city of 20 minute neighbourhoods.

The subject site is in an established urban area, that is close to the Brunswick Activity Centre, approximately 230 metres from trams along Sydney Road and is within walking distance of shops, entertainment and services. The site is well located with regard to consideration of a development with reduced car parking provision. This is discussed in further detail below.

### Has adequate car parking been provided?

The table below outlines the car parking requirements for the development based on the provisions of Clause 52.06 of the Moreland Planning Scheme:

Use	Total spaces required	Approved Reduction	Further Reduction sought	Total Car Parking Reduction	Total spaces provided
Dwellings	7	1	3	4	3

Clause 18.02-4L (Car parking in Moreland) supports reduced car parking rates in developments:

- within and close to activity centres
- with excellent access based on frequency and location to a range of public transport options

with increased provision of bicycle parking above the rates specified in Clause 52.34.

A further reduction of three car parking spaces is considered acceptable in this location as:

- The three bedroom dwellings are still provided with one car space each.
- The site has excellent proximity to multiple modes of public transport, including the north-south tram line on Sydney Road and east-west bus connections on Blyth Street.
- The site is proximate to a Major Activity Centre and is within walking distance of shops, entertainment and services.
- The site has good access to cycling routes.
- Council's Development Engineers are satisfied that the car parking requirement can be reduced for this application, subject to a condition that an additional 3 bicycle parking spaces be provided. Clause 52.34 of the Moreland Planning Scheme does not require any bicycle parking for a development of less than four storeys. The conditions included in the recommendation will ensure that 8 bicycle spaces are provided for the development.
- The site is approximately a 500 metre walk to the nearest car share vehicle, for the occasions when residents require a car.
- The previous VCAT decision indicated in-principle support for a further reduction in car parking.

Vehicles, whether related to this or other developments in the street, can only park on the street in accordance with any parking regulations. The number of vehicles that can park on the street and at what time will be dictated by the parking restrictions and the availability of on-street car spaces. It is expected that the level of parking provided will cater for car ownership levels of the occupiers.

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

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

In relation to traffic impacts, Council's Development Engineers have assessed the proposal and consider that the amendment will generate 5 fewer vehicle movements (total of 10 additional vehicle movements per day) along the laneway and Staley Street than the original approval. This is a positive outcome of the amendment. Predicted vehicle movements remain within the street's design capacity and is not expected to cause traffic problems.

### **Deletion of Condition 1d**

Condition 1d states the following:

*A minimum depth for each car stacker of 1.85 metres.*

As it has been determined that the further reduction in car parking is acceptable and that the car stackers can be removed, Condition 1d which refers to the car stackers will become obsolete and should be deleted accordingly.

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

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

- Car Parking Reduction
- Traffic Impacts
- Removal of Car Stackers

Other issues raised by objectors are addressed below.

## **Construction impacts**

The Environment Protection Authority (EPA) provide guidelines and regulations that specify times for construction, to limit noise impacts. Noise and amenity impacts during the construction process are also regulated through Council's General Local Law, 2018.

A range of other approvals are required from Council's transport, engineering and asset protection teams related to construction impacts on public space. Consideration of such closure and public notice, as required, is undertaken through these processes.

## **Inadequacy of original traffic report**

Several objectors raised concern with the inadequacy of the traffic report that was relied upon for the original application. The findings of the report were supported by VCAT and the re-examination of the expert traffic report that was determined as adequate in the VCAT decision, is not within the scope of consideration for this amendment application.

A letter from Traffix Group dated 21 December 2020 was lodged with the application in support of the proposed car parking reduction. This was reviewed by Council's Development Advice Engineer when providing advice on the amendment request. As discussed in this report, there is strategic support for a car parking reduction in this location and Council's Development Engineers also support the car parking reduction.

## **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**

It is considered that the removal of car stackers and the reduction in car parking is acceptable having regard to the site's proximity to the Brunswick Activity Centre and excellent access to multiple modes of public transport.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2017/419/A should be issued subject to the conditions included in the recommendation of this report.

## **Attachment/s**

<a href="#">1</a>	Objector Location Map - 20 Staley Street, Brunswick	D21/119187
<a href="#">2</a>	Advertised Plan - 20 Staley Street, Brunswick	D21/119191
<a href="#">3</a>	Endorsed Plans - 20 Staley Street, Brunswick	D21/144910