

Moreland City Council

COUNCIL AGENDA

PLANNING AND RELATED MATTERS

WEDNESDAY 18 DECEMBER 2019

COMMENCING 6.30 PM

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

Language Link

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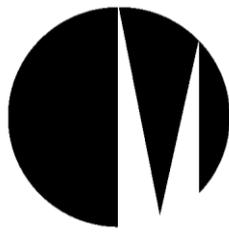
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ਏਜੰਡੇ ਦੀ ਕਿਸੇ ਆਈਟਮ ਬਾਰੇ ਮਦਦ ਲਈ,
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1. WELCOME

2. APOLOGIES

Leave of absence has been granted to:

Cr. Abboud - 12 December 2019 to 10 February 2020 inclusive.

3. DECLARATION OF INTERESTS AND/OR CONFLICTS OF INTERESTS

4. MINUTE CONFIRMATION

The minutes of the Planning and Related Matters Meeting held on 27 November 2019 be confirmed.

5. COUNCIL REPORTS

CITY FUTURES

**DCF99/19 4 PEARSON STREET, BRUNSWICK WEST -
AMENDMENT TO PLANNING PERMIT MPS/2017/823
(D19/451363)**

3

6. URGENT BUSINESS

DCF99/19 4 PEARSON STREET, BRUNSWICK WEST - AMENDMENT TO PLANNING PERMIT MPS/2017/823 (D19/451363)

Director City Futures

City Development

Executive Summary



Property:	4 Pearson Street, BRUNSWICK WEST VIC 3055			
Approved permit allows:	Use of the land for an Indoor Recreation Facility (gymnasium), display of business identification signage and reduction in the standard car parking requirement			
Proposal:	<ul style="list-style-type: none"> Amendment to the plans to relocate bicycle parking internally and use of the bicycle parking area for carparking Variation to Condition 3 to allow expanded hours of operation (Monday to Friday 5.15am to 9pm, Saturday 6.00am to 12.00pm and Sunday 7.00am to 12.00pm) Variation to Condition 6 to allow roller doors to be open during classes between 9.00am and 6.30pm 			
Zoning and Overlay:	<ul style="list-style-type: none"> Industrial 1 Zone (IN1Z) Development Contributions Plan Overlay 			
Strategic setting:	<table border="1" style="width:100%; text-align:center;"> <tr> <td style="background-color:#cccccc;">Core Industry and Employment Areas</td> <td style="background-color:#00a0e3; color:#fff;">Employment Areas</td> <td style="background-color:#cccccc;">Transition – Residential Areas</td> </tr> </table>	Core Industry and Employment Areas	Employment Areas	Transition – Residential Areas
Core Industry and Employment Areas	Employment Areas	Transition – Residential Areas		
Objections:	<ul style="list-style-type: none"> 12 objections Key issues: <ul style="list-style-type: none"> Car parking Operating hours Noise 			
Planning Information and Discussion Meeting:	<ul style="list-style-type: none"> Date: 24 October 2019 Attendees: 7 objectors, the applicant, two Council officers, and Cr Riley The following agreements were reached at the meeting: <ul style="list-style-type: none"> Withdrawal of proposed amendment to Condition 6 Modification to proposed amended hours of operation 			
Key reasons for support	<ul style="list-style-type: none"> The applicant has withdrawn the proposed amendment to the condition relating to the roller door Modified proposed hours of operation are acceptable within the physical and policy setting (employment area) 			
Recommendation:	It is recommended that a Notice of Decision to Grant an Amended Planning Permit be issued for the proposal.			

Officer Recommendation

That a Notice of Decision to Grant an Amended Planning Permit No. MPS/2017/823 be issued for the 'Use of the land for an Indoor Recreation Facility (gymnasium), display of business identification signage and reduction in the standard car parking requirement' at 4 Pearson Street, Brunswick West, subject to the following conditions (new conditions in bold):

1. **Before the increased hours allowed by this permit commence, 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 17 July 2019 but modified to show:**
 - a) **The internal area set aside for bicycle parking showing two horizontal bicycle parking devices capable of holding two bicycles each placed at 45 degrees as shown in Figure B6 of the Australian Standard for Bicycle Parking AS2890.3.**
 - b) **Location of speakers shown on the plans. Speakers must be located within 'Pod 3' of the gym.**
2. **The use of land as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clauses 62.01 of the Moreland Planning Scheme unless specifically noted as a permit condition.**
3. **The use allowed by this permit must operate only between the following hours:**

Monday to Friday	5.15 am to 7.45 pm
Saturday	7.00 am to 12.00 noon
Sunday	8.30 am to 12.00 noon

These hours apply to the use (gymnasium) and do not include activities such as maintenance, cleaning, administration and set up or pack up of equipment.
4. The maximum number of patrons permitted on the premises must not exceed 36.
5. Noise levels associated with the use must at all times comply with the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2. Should the Responsible Authority deem it necessary, the owner and/or occupier of the land must submit an Acoustic Report to the satisfaction of the Responsible Authority to demonstrate compliance, or which outlines any measures considered necessary to achieve compliance. The recommendations of the Acoustic Report must be implemented to the satisfaction of the Responsible Authority. The endorsed plans must be amended to accord with the recommendations contained in the Acoustic Report to the satisfaction of the Responsible Authority.
6. **At all times during the operation of the use, music settings must not exceed two speakers set at 75% of maximum volume capacity.**
7. All external doors including the front roller door must remain closed during all classes.
8. The use allowed by this permit must at all times be conducted in a manner, which ensures that the residential amenity of any nearby residential property is not detrimentally affected.
9. This permit will expire if the use is not commenced within two 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 afterwards.

The permit will expire if the use is ceased continuously for a period of more than two years.

Signage conditions

10. The location, dimensions, shape and associated structures of every sign must accord with the endorsed plans and must not be altered, unless with the consent of the Responsible Authority.
11. The signs approved by this permit must not be animated or contain any flashing light.
12. This permit expires 15 years from the date of issue, at which time the sign and all supporting structures must be removed and the site made good to the satisfaction of the Responsible Authority.
13. **Prior to the commencement of the increased hours allowed by MPS/2017/823/A:**
 - a) **Internal signage must be installed to the building's exit reminding all patrons to be respectful of the adjoining residential neighbourhood when arriving or leaving the area, particularly outside of normal business hours**
 - b) **Speakers must be located within 'Pod 3'**
 - c) **Bicycle parking facilities must be installed.**

1. Background

Subject site

The subject site is located at 4 Pearson Street, Brunswick West, on the east side of Pearson Street and approximately 40 metres north of Dawson Street. The Pearson Street frontage of Gilpin Park is approximately 50 metres north of the site.

The site is rectangular in shape with front and rear boundaries of 9.1 metres and side boundaries of 32.92 metres, contributing to an overall site area of 299.5 square metres. A warehouse structure used for the purpose of a gymnasium currently occupies the site with two carparking spaces located within the front setback area, accessed by a central vehicle crossing shared with the abutting industrial tenancy to the south (2 Pearson Street).

The site is contained in the Industrial 1 Zone (IN1Z) and is within the Dawson Street Precinct of the Moreland Industrial Land Strategy (MILS Area 66). This precinct is a 'Category 2 – Employment Area'. The purpose of this category is to 'Maintain for industry and employment uses and support a transition to a broader business base and employment opportunities'.

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

Surrounds

The surrounding area has a mixed character of land uses and planning controls. The IN1Z and Dawson Street Industrial Precinct is applied to land on the northside of Dawson Street between 108 and 146 Dawson Street (corner of Pearson Street) and extends to the two lots fronting the east side of Pearson Street. Various industrial and employment generating uses are present in this precinct. Residential land occupies the southside of Dawson Street with zoning varying from Residential Growth Zone, General Residential Zone and Neighbourhood Residential Zone. The Heritage Overlay – Schedule 30 (Brickworks Housing Precinct) is applied to land east of Grantham Street. Land on the west side of Pearson Street is residential and is contained in the Neighbourhood Residential Zone. The Heritage Overlay – Schedule 60 (Dawson Street Precinct) is applied to land fronting the northside of Dawson Street (from 160 Dawson Street) to Daly Street in the west and includes Halpin Street. Gilpin Park occupies a significant portion of the east side of Pearson Street and extends to Albert Street in the north.

A location plan and zoning map forms **Attachment 1**.

Planning Permit and site history

The original permit was issued on 13 April 2018 and allows 'Use of the land for an Indoor Recreation Facility (gymnasium), display of business identification signage and reduction in the standard car parking requirement, in accordance with the endorsed plans'. Public notification of the application was undertaken, and no objections were received. Plans pursuant to Condition 1 of the permit were endorsed on 18 April 2018. No previous amendments have been sought. The use operates as a 'F45 gym' with instructed scheduled gym classes running for a 45-minute period. The original permit contains several conditions. Most relevant to the amendment application are:

- Condition 3 which limits the hours of the use to:
 - Monday to Friday (morning) 5.15 am to 9.45 am
 - Monday to Friday (evening) 5.30 pm to 7.45 pm
 - Saturday 7.00 am to 12.00 pm

- Sunday 9.00 am to 12.00 pm
- Condition 4 which sets patron numbers to a maximum of 36
- Condition 5 which limits noise associated with the use to comply with the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2
- Condition 6 which requires all external doors and the roller door to remain closed during classes.

Planning enforcement investigations of the use are ongoing. It has been alleged that the existing permit has been breached in relation to hours of operation, use of the roller door and noise. Permit conditions resulting from the amendment would resolve some matters identified in the enforcement investigation.

The proposal

The proposal seeks to amend the endorsed plans and permit conditions and is summarised as follows:

- Amendment to the plans to relocate bicycle parking internally and use of the bicycle parking area in the front setback for carparking;
- Variation to Condition 3 to allow expanded hours of operation (Monday to Friday 5.15am to 9pm, Saturday 6.00am to 12.00pm and Sunday 7.00am to 12.00pm), and;
- Variation to Condition 6 to allow roller door to be open during classes between 9.00am and 6.30pm

The amended plans form **Attachment 2**.

Statutory Controls – why was a planning permit required?

Control	Permit Requirement
Industrial 1 Zone	Clause 33.03-1: A planning permit is required for the use of the land for uses not listed in Section 1 or 3 of the table of uses, including a gymnasium.
Particular Provisions – Car Parking	Clause 52.06-6: Where a use of land is not specified in Table 1 or where a car parking requirement is not specified for the use in another provision of the planning scheme or in a schedule to the Parking Overlay, before a new use commenced, car parking spaces must be provided to the satisfaction of the responsible authority.

Condition 2 of the permit requires:

‘The use of land as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clauses 62.01 of the Moreland Planning Scheme unless specifically noted as a permit condition’.

An amendment to the endorsed plans and permit conditions is required for the proposed changes.

2. Internal/External Consultation

Public notification

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

- Sending notices to the owners and occupiers of adjoining and nearby land; and
- Placing a sign on the Pearson Street frontage of the site.

Council has received 12 objections to date. A map identifying the location of objectors forms **Attachment 3**.

The key issues raised in objections are:

- Traffic
- Carparking
- Bicycle parking
- Noise
- Hours of operation
- Proposed opening of the roller door.

A Planning Information and Discussion meeting was held on 24 October 2019 and attended by Cr Riley, two Council Planning Officers, the applicant and 7 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

Following the discussions at the Planning and Information Discussion meeting, it was resolved by the applicant to modify the proposal to address some of the concerns raised by objectors. The following has been agreed upon by the applicant:

Changes to the proposed amendment

- Withdrawal of proposed amendment to Condition 6 which sought approval to allow the roller door to be open during classes between 9.00 am and 6.30 pm.
- Hours of operations modified from the initial amendment. The additional hours would be between 9.45 am and 5.30 pm Monday to Friday and 30 minutes earlier on Sunday morning (commencing at 8.30 am).

Changes to operating practices

- Investigate installation of noise attenuation curtains to the roller door
- Investigate location and settings of speakers
- Install signs within the site reminding patrons to enter and exit the facility in a courteous manner
- Remind patrons to park vehicles in a responsible manner.

Internal/external referrals

The amendment application did not require any statutory referrals. The scope of the amendment meant no internal referrals were necessary.

3. Policy Implications

Planning Policy Framework (PPF)

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

- Clause 11 - Settlement
- Clause 17 - Economic Development
- Clause 18 - Transport

Local Planning Policy Framework (LPPF)

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

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile

- Clause 21.02 Vision
- Clause 21.03-2 Land for Industry and Economic Regeneration

Local Planning Policies:

- Clause 22.03 Car and Bike Parking and Vehicle Access

Council through its MSS, seeks to support the transition from traditional industrial uses to a broader range of employment uses and prioritise employment uses over residential uses within Employment Areas (Category 2). Although the suitability of the use has been assessed under the original permit, consideration should be given to how the amendment responds to strategic policy. Expanded operating hours remain consistent with policy which seeks to prioritise broader employment uses. Changes to the location of bicycle parking remains consistent with Clause 22.03 (Car and Bike Parking and Vehicle Access) because bicycle parking is proposed to be relocated; not reduced.

Human Rights Consideration

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the Victorian Charter of *Human Rights and Responsibilities Act 2006*. The applicant has the right to seek an amendment to their planning permit. The right to freedom of expression has been taken into consideration. Freedom of expression through the permit process has occurred for objectors. Public notification was undertaken, a meeting was held, and objectors have an opportunity to present at the Council meeting

4. Issues

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 and the merits of the application. The scope of consideration is confined to the amendments being proposed. Key changes are assessed below.

Amendment to the plans to relocate bicycle parking internally and use of the bicycle parking area for carparking

Permit conditions required the eastern car parking space in the front setback area to be converted and provide a minimum of two bicycle parking devices under the original permit. The proposed relocation of the bicycle parking within the building is acceptable. There is sufficient space inside the building to accommodate two bicycle devices in the location shown on the advertised plans (north-west corner of the building). This area is also easily accessible for patrons via the entry door. Additionally, relocating bicycle parking internally creates an additional onsite car parking space. Permit conditions will require the plans to show a minimum of two horizontal bicycle parking devices capable of holding two bicycles each and for bicycle parking to be installed prior to the commencement of the increased use.

Variation to Condition 3 to amend hours of operation

Condition 3 of the permit currently allows the following hours of operation:

- Monday to Friday (morning) 5.15 am to 9.45 am
- Monday to Friday (evening) 5.30 pm to 7.45 pm
- Saturday 7.00 am to 12.00 pm
- Sunday 9.00 am to 12.00 pm

Following the Planning Information and Discussion meeting the applicant has agreed to modify the proposed hours of operation from what was initially sought in the amendment application. The following hours of operation are now proposed:

- Monday to Friday 5.15 am to 7.45 pm
- Saturday 7.00 am to 12.00 noon
- Sunday 8.30 am to 12.00 noon

Weekday opening and closing times remain unchanged from the approved permit. The amendment proposes expanded operations between 9.45 am and 5.30 pm on weekdays to facilitate afternoon classes. This is acceptable because these hours are within what is generally accepted as business hours and does not extend the use into sensitive hours. The amenity of residential areas in the surrounds will not be further unreasonably impacted by increased weekday hours.

The initial amendment proposal sought approval to commence hours of operations an hour earlier on Saturdays (from 7.00 am to 6.00 am). The applicant no longer seeks to pursue this change. Saturday hours of operation remain unchanged from the approved permit.

The applicant has also agreed to modify proposed Sunday hours of operation. The initial amendment proposed Sunday operations to commence at 7.00 am. The permit currently allows the use to commence at 9.00 am. Following the Planning Information and Discussion meeting the applicant has proposed a compromised commencement time of 8.30 am; 30 minutes earlier than the approved permit. On balance this change is acceptable. Although this would result in an earlier Sunday commencement time, the expansion is for 30 minutes and will only result in one additional class.

Expansion of operating hours are supported by Council's Strategic Framework (Clause 21.03-2). The Strategic Framework includes the following strategy (Strategy 5.8) for Employment Area:

Encourage the amenity expectations for residential or other sensitive uses within or adjacent to Employment Areas to be reflective of the multi-use nature of the areas and the priority given to employment uses

The amendment to Condition 3 proposes expanded operating hours during weekday business hours and an additional 30 minutes on Sunday mornings. This is acceptable when considering the minor increase to operations during morning hours and Council's strategic framework which seeks to prioritise employment uses and to encourage amenity expectations of residential uses adjacent to Employment Areas to be reflective of the multi-use nature of these areas. Furthermore, noise impacts can be managed through permit conditions, as detailed in Section 5 of this report.

Variation to Condition 6 to allow roller doors to be open during classes between 9.00 am and 6.30 pm

The applicant has agreed to withdraw this component of the proposal. Conditions requiring the roller door to be closed during classes will remain.

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

Council's Development Engineers assessed the initial proposal and concluded that the proposal was supportable based on access to public transport, bicycle infrastructure and availability of on street car parking. Multiple objections raised car parking and traffic as concerns. Following discussions during the Planning Information and Discussion Meeting, Council Planning Officers have referred car parking concerns to Council's Transport Branch. The applicant has also agreed to remind patrons to park vehicles in a responsible manner through their communications and social media channels.

5. Response to Objector Concerns

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

- Traffic
- Carparking
- Bicycle parking
- Hours of operations
- Proposed opening of the roller door.

Other issues raised by objectors are addressed below.

Noise

Multiple objections raised concerns about noise created from the use. The objections identify music generated from the site as their primary concern. Condition 5 of the permit requires the use to operate within the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N2). The applicant has undertaken an 'Environmental Noise Assessment' completed by JTA Health, Safety and Noise Specialists which has been provided to objectors. The report modelled different scenarios (speaker settings) and concludes that the onsite music equipment can exceed SEPP N-2 'night time noise limits', under certain conditions.

For the SEPP N2 limit to be exceeded all three speakers on the site would need to be set at between 90% and 100% of maximum volume capacity. The report provides different noise mitigation techniques and equipment settings recommendations to achieve compliance with SEPP N-2 under all conditions. The acoustic testing and predicted results show that compliance can be demonstrated during all periods with a maximum of 2 speakers set at 75% of maximum volume capacity, where the bass does not fall below 63 hertz. The applicant has agreed to a permit condition requiring music equipment to operate with on two speakers set to 75% of their maximum volume. Additionally, the applicant has also agreed to conditions requiring the speakers to be located within the 'Pod 3' section of gym. This section of the gym is furthest from the residential interface. These changes form conditions of the recommendations.

The existing condition (condition 5) requiring the use operate within SEPP N-2 limitations is maintained on the amended permit. This allows Council to enforce noise limits and request further acoustic assessments if necessary. If a future acoustic report requires further acoustic treatments, such as a noise limiter, then this must be implemented to Council's satisfaction.

Noise concerns relating to patrons accessing and departing the venue (including closing of car doors and patron behaviour in the street) were also raised and discussed at the Planning Information and Discussion Meeting. To assist in addressing these concerns the applicant has agreed to permit conditions requiring the installation of signage in the venue reminding patrons to be respectful of surrounding residential properties when entering and exiting the venue.

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 proposed amendments are acceptable. Relocating bicycle parking within the building will create an additional onsite car parking space and there is adequate space and access to facilitate this change. Similarly, changes to hours of operation are also acceptable when considering the physical and policy settings. The changes will only result in an expansion to the use during weekday business hours and an additional 30 minutes on Sunday mornings. This is acceptable within an Employment Area and meets strategic aims relating to amenity expectations for land in and adjacent to Employment Areas. Furthermore, conditions agreed to by the permit applicant will assist with managing amenity impacts.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant an Amended Planning Permit No MPS/2017/823 should be issued for 'Use of the land for an Indoor Recreation Facility (gymnasium), display of business identification signage and reduction in the standard car parking requirement' subject to the conditions included in the recommendation of this report, including:

- New condition 1 to show the location of the speakers and two bicycle parking devices within the site
- Amendment to Condition 3 to reflect changed hours of operation
- New Condition 6 requiring music settings to not exceed two speakers set at 75% of maximum volume capacity
- Renumbering of subsequent conditions
- New condition 13 requiring the installation of signage to be installed to the building's exit reminding all patrons to leave the venue in a respectful and courteous manner, speakers to be located within 'Pod 3' and installation of bicycle parking devices prior to the commencement of the expanded use allowed by MPS/2017/823/A

Attachment/s

1 ↓	Attachment 1 - 4 Pearson Street, Brunswick West - Location and Zoning Map	D19/464260
2 ↓	Attachment 2 - 4 Pearson Street, BRUNSWICK WEST VIC 3055 - Advertised Plans	D19/464274
3 ↓	Attachment 3 - 4 Pearson Street, Brunswick West - Objector Location Map	D19/465178