



Moreland City Council

COUNCIL AGENDA

PLANNING AND RELATED MATTERS

WEDNESDAY 26 FEBRUARY 2020

COMMENCING 6.30 PM

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

Language Link

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

The minutes of the Planning and Related Matters Meeting held on 29 January 2020 be confirmed.

5. **COUNCIL REPORTS**

CITY FUTURES

DCF8/20	2-4 KIRKDALE STREET AND 15 ALBERT STREET, BRUNSWICK EAST - PLANNING APPLICATION MPS/2019/520 (D20/25465)	3
DCF9/20	73 NICHOLSON STREET, BRUNSWICK EAST PLANNING PERMIT APPLICATION MPS/2018/879 (D20/9634)	55

6. **URGENT BUSINESS**

**DCF8/20 2-4 KIRKDALE STREET AND 15 ALBERT STREET,
BRUNSWICK EAST - PLANNING APPLICATION MPS/2019/520
(D20/25465)**

**Director City Futures
City Development**

Executive Summary



Property:	2-4 Kirkdale Street and 15 Albert Street, Brunswick East
Proposal:	Construction of a five-storey building (plus roof top terrace), use of the land for offices and retail premises (other than bar, hotel and gambling premises) and a reduction in the standard car parking requirements
Zoning and Overlay/s:	<ul style="list-style-type: none"> • Industrial 3 Zone (IN3Z) • Development Contributions Plan Overlay (DPCO1)
Objections:	<ul style="list-style-type: none"> • 13 objections • Key objector concerns: <ul style="list-style-type: none"> ○ Closure of the Performing Arts School ○ Car Parking and Traffic Impacts
Planning Information and Discussion Meeting:	<ul style="list-style-type: none"> • Date: 4 February 2020 • Attendees: 2 objectors, the applicant, 2 Council officers, and Cr Mark Riley • The following agreement was reached at the PID meeting: <ul style="list-style-type: none"> ○ Carpark 01 to be directed to enter and exit via Kirkdale Street and Carpark 02 to be directed to enter and exit via Albert Street
ESD:	<ul style="list-style-type: none"> • Four Star Green Star Rating; • 30 000 litre water tank volume; • Exceeds best practice stormwater management; and • Provision of 136 bicycle spaces with end of trip facilities.
Key reasons for support	<ul style="list-style-type: none"> • The proposal has employment generating uses which is supported within the Core Industry and Employment Area; • The design and height of the building is acceptable within its context that includes the Brunswick Activity Centre and an interface with industrial land; • The car parking reduction is acceptable having regard to the amount of bicycle parking spaces provided on-site and excellent access to multiple modes of public transport; and • The development will not unreasonably impact the amenity of the adjoining residential properties.
Recommendation:	It is recommended that a Notice of Decision to Grant a Planning Permit be issued for the proposal.

Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2019/520 be issued for the construction of a five-storey building (plus roof top terrace), use of the land for offices and retail premises (other than bar, hotel and gambling premises) and a reduction in the standard car parking requirements at 2-4 Kirkdale Street and 15 Albert Street, Brunswick East, subject to the following conditions:

Amended Plans

1. Before the use and/or 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 21 November 2019) but modified to show:
 - a) Changes in accordance with the plans TP16A and TP26 Revision B prepared by Clarke Hopkins Clarke with revision date 6 February 2020, including:
 - i. Overlooking sightline diagrams from the terraces into the adjoining residential properties to the west of the site; and
 - ii. Changes to the car parking area so that carpark 01 will be directed to enter and exit via Kirkdale Street and carpark 02 will be directed to enter and exit via Albert Street.
 - b) The setback of the fourth and fifth floor from the southern (Albert Street) boundary increased to a minimum of five metres.
 - c) The Exterior Finishes schedule modified to show:
 - i. The feature brick pattern on the concrete
 - ii. The material used for Item 6- 'Colour Charcoal'
 - iii. The material used for Item 7- 'Colour Light Grey'
 - d) The use of hit and miss brickwork for portions of the western side of the ground floor.
 - e) The canopy above the retail premises, as shown on the ground floor plan TP07 modified to be perpendicular to the northern and southern sides of the building and in accordance with condition 21 of this permit.
 - f) Internal elevations of the northern and southern sides of the landscaped corridor in the middle of the site.
 - g) Location of access doors to the northern and southern most roof top terraces.
 - h) The external walls and doors to the substation to be acoustically treated.
 - i) Initiatives contained within the Sustainability Management Plan including:
 - i. A 50 kW solar photovoltaic array
 - ii. Type and location of the hot water system
 - iii. External shading devices to the internal elevation north facing windows and west facing windows of levels 3 and 4
 - iv. Windows operability on all elevations and internal elevations to demonstrate that effective natural ventilation can be achieved
 - v. Indication that the proposed 30kL rainwater tank will service all toilets and will be independent of any detention requirements
 - vi. A minimum of 2 EV dedicated car parks complete with chargers and signage unless otherwise approved by the Responsible Authority.

- j) Specifications for the car stacker system, including specific model numbers and upper and ground floor vehicle clearance heights are to be provided, and the amended plans are to dimension the car stackers in accordance with the specifications. At least 25 per cent of the mechanical car parking spaces are to be able to accommodate a vehicle clearance height of at least 1.8 metres.
- k) Where practical, the conclusions of the Acoustic Report prepared by Renzo Tonin & Associates dated 8 November 2019 to be clearly annotated on the plans. The Acoustic Report must be amended and updated as appropriate, in response to any other condition of this permit that may impact on the recommendations of the Acoustic Report.

Secondary Consent

- 2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clauses 62.01, 62.02-1 and 62.02-2 of the Moreland Planning Scheme unless specifically noted as a permit condition.

Sustainability Management Plan

- 3. Prior to the endorsement of plans, a Sustainability Management Plan (SMP) must be submitted to and approved to the satisfaction by the Responsible Authority. The SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the advertised SMP, but modified to include the following changes:
 - a) A preliminary energy modelling report proving that a 10 per cent improvement in heating and cooling loads will be achieved from the building fabric.
 - b) An amended stormwater catchment area that include collection from all roof and terraces and retained in the proposed rainwater tank.
 - c) An amended stormwater management plan including details on the potential water contaminants resulting from the expected use of the areas of collection and the relevant water treatment measures proposed. Also provide a maintenance plan, stating periodic actions, requirements and responsibilities.
 - d) A maintenance plan, stating periodic actions, requirements and responsibilities.

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

- 4. All works must be undertaken in accordance with the endorsed Sustainable 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

Landscaping

- 5. 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.

Development Contributions

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

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

- A maximum of 12 months from the date of issue of the Building Permit; 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.

Acoustic Attenuation

7. Prior to the commencement of the development allowed by this permit, the Acoustic Report prepared by Renzo Tonin & Associates dated 8 November 2019 must be updated as appropriate under Condition 1 (k) and endorsed to form part of the permit. The development must be constructed and maintained in accordance with the requirements and recommendations of the approved Acoustic Assessment to the satisfaction of the Responsible Authority. No alterations may occur without the prior written consent of the Responsible Authority.
8. Prior to the occupation of the development, 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. Post-construction testing is to be undertaken as part of this report by a suitably qualified acoustic expert. The testing should include but not limit to the:
 - a) Mitigation of noise emissions from surrounding industrial uses, for conformance with internal ambient noise level criteria;
 - b) Background music provided inside the café (food and drink) tenancy conforms with SEPP N-2 noise limits; and
 - c) Garage door and car stacker is expected to conform with SEPP N-1 and sleep disturbance criteria at surrounding dwellings at all times;

The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Acoustic Assessment have been implemented in accordance with the approved Report.

9. Construction and maintenance of the car stacker and the building must be in accordance with the recommendations contained in the acoustic report to the satisfaction of the Responsible Authority.
10. Upon request of the Responsible Authority an acoustic review must be undertaken at the land owner's cost to verify ongoing compliance with Condition 7. In the event that the nominated decibel levels specified in the endorsed acoustic report are not being met, a report from the author of the endorsed Acoustic Report, approved pursuant to this permit, or a similarly qualified person or company must recommend further noise attenuation measures to ensure compliance with the condition.

Environmental Assessment

11. Prior to the commencement of construction or carrying out of works pursuant to this permit, or any works associated with the proposed use, or where no works are proposed, prior to the commencement of the permitted use an Environmental Assessment Report must be submitted to and be to the satisfaction of the Responsible Authority. The Responsible Authority may require the applicant to contribute financially to an independent review of the environmental site assessment information by a suitably qualified environmental professional. The Environmental Assessment Report is to be conducted by a competent professional practitioner with relevant experience in the field. The owner must comply with the findings of the site assessment to the

satisfaction of the Responsible Authority. The Environmental Assessment Report must:

- a) Specify the name and qualifications of the person who has conducted the Report;
 - b) Provide comment on the potential for offsite contamination to have migrated to the subject land from neighbouring land. Soil sampling and analysis of the subject site may be required where access to definitive information regarding neighbouring land is not obtainable or is inconclusive;
 - c) Specify the industrial process or activity, waste or substance in respect of which the Report was conducted;
 - d) Specify the segment of the environment in respect of which the Report was conducted;
 - e) Include an evaluation of the environmental quality of the relevant segment of the environment;
 - f) Include an assessment of any clean up that is necessary, including recommendations relating to the carrying out of the clean up, and any compliance requirements to enable the land owner to ensure that the land is suitable for the proposal;
 - g) Include a further recommendation to the Responsible Authority as to whether the condition of the land is such that an Environmental Audit should be conducted taking into consideration the proposed use.
12. If pursuant to condition 11 of this planning permit an environmental audit is required then prior to the commencement of the permitted use either:
- a) A Certificate of Environmental Audit for the land must be issued in accordance with Section 53Y of the *Environment Protection Act 1970* and provided to the Responsible Authority; or
 - b) An Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must make a Statement in accordance with Section 53Z of that Act that the environmental conditions of the land are suitable for the use and development that are the subject of this permit and that statement must be provided to the Responsible Authority.

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

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

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

Waste Management Plan

13. 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.

General Conditions

14. 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.
15. Prior to the occupation of the development, the car park entry roller doors must be automatic and remote controlled.
16. Any ramp constructed to access the garage floor from the laneway must be contained entirely within the site to ensure that the level of the laneway remains as constructed by Responsible Road Authority.
17. 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:
 - Be completed prior to the commencement of the use/occupation of the development.
 - Be maintained.
 - Be properly formed to such levels that it can be used according to the endorsed plan.
 - Be drained and surfaced.
 - Have the boundaries of all vehicle parking spaces clearly marked on the ground to accord with the endorsed plan.
 - Have signage and line marking in accordance with the endorsed plans.
 - Not be used for any other purpose other than the parking of vehicles.
18. Prior to the occupation of the development, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure Department).
19. Prior to the occupation of the development, the laneway is to be constructed with all associated drainage works for the full length between Kirkdale Street and Albert Street. The works are to be completed in accordance with endorsed engineering construction plans to Council's standards and satisfaction. All works are to be supervised by Council
20. The canopy must be setback at a minimum of 750mm from the kerb and at a height not less than 3m above the level of the footpath in accordance with Clause 507 of the Building Regulations 2006 to the satisfaction of the Responsible Authority.
21. Prior to the occupation of the development all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.
22. 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).

23. Stormwater from the land must not be directed to the surface of the right-of-way to the satisfaction of the Responsible Authority.
24. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

Time Limit

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

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

- 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: Further approvals are required from Council's City Infrastructure Department who can be contacted on 8311 4300 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.

Note 2: Council charges supervision (2.50 per cent) and plan checking (0.75 per cent) fees on the cost of constructing the laneway as permitted by Sections 5 and 6 of the Subdivision (Permit and Certification Fees) Regulations 2000.

At the subdivision stage public realms works for the laneway must be completed prior to the occupation and use of the development.

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

Note 4: Notes about environmental audits:

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

- iv. Where a Statement of Environmental Audit issued for the land contains conditions that the Responsible Authority considers to be unreasonable in the circumstances, the Responsible Authority may seek cancellation or amendment of the planning permit in accordance with Section 87 of the *Planning and Environment Act 1987*.

1. Background

Subject site

The subject site consists of two lots located at 2-4 Kirkdale Street and 15 Albert Street, Brunswick East. The subject site is approximately 55 metres east of Nicholson Street and 300 metres north of Glenlyon Road. Combined, the two lots provide a continuous land parcel spanning between Kirkdale and Albert Streets totalling 2,140 square metres, with street frontages of 24.69 metres and a combined maximum depth of 86.65 metres. A 4 metre wide right of way abuts the western side of the subject site providing access between Kirkdale and Albert Streets.

The land is currently developed with a double storey warehouse at 2-4 Kirkdale Street, Brunswick East and a double storey building at 15 Albert Street, Brunswick East, the latter used as a performing arts school.

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

Surrounds

The surrounding area is characterised by a mix of residential, commercial and industrial premises that range from one to four storeys in height.

Sites along the southern side of Albert Street and to the immediate west of the subject site (within the Neighbourhood Residential Zone, Residential Growth Zone and Mixed-Use Zone) contain a mix of single and double storey dwellings as well as contemporary multi-storey apartment developments. The sites to the immediate west of the subject site are located within the Brunswick Activity Centre and are within the Design and Development Overlay Schedule 20, which has preferred maximum building height of three storeys. These sites are mostly undeveloped with original single storey dwellings set towards the Nicholson Street frontage. The exceptions to this are 15A Albert Street, Brunswick East which contains a three-storey apartment building and 90 Nicholson Street, Brunswick East, which contains a four-storey apartment building.

Sites to the immediate north and east of the subject site (within the Industrial 3 Zone) comprise mainly of single and double storey warehouses built to both side boundaries and used for industrial and commercial purposes.

To the immediate north of the subject site at 1 and 3 Kirkdale Street, Brunswick East are single storey (1 Kirkdale Street) and double storey (3 Kirkdale Street) buildings that are used for industrial or commercial purposes.

To the immediate east of the subject site at 6-32 Kirkdale Street, Brunswick East there are several single storey buildings used for industrial and storage purposes.

Land to the immediate south of the site at 12 and 14 Albert Street, Brunswick East comprise two single storey dwellings.

A location plan forms **Attachment 1**.

The proposal

The proposal is summarised as follows:

- Use of the land for offices and retail premises (other than bar, hotel and gambling premises).
- The construction of a five-storey building. Details of the development are as follows:
 - The ground floor of the building will comprise of 3 retail premises/offices, a food and drink premises, car and bicycle parking and end of trip facilities.

- A total of 48 offices will be provided on the upper levels of the building.
- Lift and stair access is provided to communal roof top terraces above the fifth floor.
- A total of 64 car parking spaces will be provided on the site, with 62 car spaces being provided within car stackers. Car parking facilities are to be accessed via the laneway to the west of the subject site.
- A reduction in the standard car parking requirements from 165 to 64 car spaces (101 spaces) is sought.
- The provision of 136 bicycle parking spaces with end of trip facilities at ground floor.
- A maximum building height of 22.15 metres.
- External finishes include brick, concrete and render.

The development plans form **Attachment 2**.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Industrial 3 Zone	Office and retail premises are Section 2 uses in the zone, meaning that a permit is required for the uses. A permit is required to construct a building or construct or carry out works.
Car Parking	A permit is required to reduce the car parking requirement from 165 spaces to 64 spaces

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 53.18: Stormwater Management in Urban Development

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
- By placing signs on the street and laneway frontages of both lots

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

The key issues raised in objections are:

- Closure of the performing arts school;
- Traffic impacts;
- Car Parking;
- Use and noise impacts of unpaved laneway;
- Overdevelopment of the site;
- Amount of development in the area;
- Appearance and height of the development; and
- Off-site amenity impacts.

A Planning Information and Discussion meeting was held on 4 February 2020 and attended by Cr Riley, two Council Planning Officers, the applicant and two objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond. An agreement between the objectors present at the meeting and the Applicant was reached which required carpark 01 to be directed to enter and exit via Kirkdale Street and carpark 02 to be directed to enter and exit via Albert Street. The Applicant submitted informal plans on 6 February 2020 reflecting this change.

Internal/external referrals

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

Internal Branch/Business Unit	Comments
Urban Design Unit	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
Sustainable Built Environment Unit – Development Engineer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
Sustainable Built Environment Unit - ESD	No objections were offered to the proposal subject to modification, which are addressed in the conditions detailed in the recommendation.

3. Policy Implications

Planning Policy Framework (PPF)

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

- Settlement (Clause 11.01S)
- Metropolitan Melbourne (Clause 11.01-1R1)
- Water Conservation (Clause 14.02-3S)
- Built Environment and Heritage (Clause 15), including
 - Built Environment (Clause 15.01)
 - Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)
 - Sustainable Development (Clause 15.02)
- Economic Development (Clause 17)
- Transport (Clause 18)

Local Planning Policy Framework (LPPF)

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-2 Land for Industry and Economic Regeneration
- Clause 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)

Local Planning Policies:

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

The subject site is located within a Core Industry and Employment area. This is a location in which Council through its MSS, actively supports the location of employment generating uses, such as offices.

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*. In particular, regard was given to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 15: Freedom of expression
- Section 18: Taking part in public life

This application does not limit human rights but rather provides more opportunities for fair employment in the area.

4. Issues

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

Does the proposal respond to the preferred future built form of the area?

Clause 21.02-4 seeks to ensure that *'development responds and contributes to its context.'* The relevant strategies of Clause 21.02-4 are:

Ensure the overall siting and building envelope is based on a considered analysis of the site's context and features, including site size, shape and orientation.

Ensure site design, building frontages, design articulation and internal layout achieve a good interface with and surveillance of the public realm.

Ensure development is designed to contribute to a fine grain urban structure

Subject to the conditions detailed in the recommendation, the proposal would respond to the IN3Z, Clause 21.02 and the context of the site in the following ways:

Building Height and Setbacks

The overall height and proposed setbacks of the building are deemed appropriate for the following reasons:

- While it is acknowledged that a five-storey building will be the highest building within the immediate context, the site is in proximity to properties that range from one to four storeys in height. The site is within a context of industrial land and the Brunswick Activity Centre. The Brunswick Activity Centre has a preferred height proximate to the site of 3 storeys, with the Residential Growth Zone setting a mandatory height of 4 storeys.
- The consolidation of two lots creates a larger site, which enables the upper levels of the building to be recessed, reducing the visual impacts of upper levels.
- The development has been designed to respond to the preferred future character of Nicholson Street by providing a three-storey street wall to both street frontages and the laneway. This approach responds to the preferred maximum three-storey height for developments along this part of Nicholson Street. At a pedestrian scale, the building will read as a three storey form, due to the street wall.

- To reduce the dominance of the upper levels above the street wall, a setback of 3 metres has been provided to both street frontages and a minimum 4.6 metres to the laneway. However, further recession is needed to Albert Street, acknowledging the modest and proximate housing. Council's Urban Design Unit have recommended that a setback of 5 metres be provided to the fourth and fifth storey from Albert Street to reduce the dominance of the upper levels.
- The laneway to the west combined with the industrial uses to the east means that the higher parts of the building do not cause unreasonable amenity impacts, which will be discussed in more detail later in this report.

Subject to conditions, the form of the building and its scale will positively contribute to the preferred character of the area.

Public Realm Interface

The proposal contributes to improving the public realm interface by way of the following:

- The development provides entrances to the buildings and retail premises fronting both Kirkdale Street and Albert Street. This provides surveillance of the public realm and activation of the sites frontages.
- The development contains windows and balconies at all levels facing the laneway and vertical louvre screens to the car parking areas to provide activation and surveillance of the laneway. To further improve activation and surveillance of the laneway, a condition will require the use of hit and miss brickwork for portions of the ground floor.
- The car parking facilities do not dominate the streetscapes as vehicle access is via the laneway on the western side of the subject site. This allows the development to maximise surveillance opportunities to the public realm and the activation of the street frontages.

Appearance

The design represents good contemporary architecture that is anticipated in the area and makes a positive contribution to the preferred character of the area, while referencing the buildings currently surrounding the site through the building's form and materials. Subject to conditions included in the recommendation, the development will adopt all the changes recommended by Council's Urban Design Unit, except for a recommendation that the fourth and fifth floor be setback an additional two metres from the landscaped corridor in the middle of the site, to improve the experience of the communal space. The fourth and fifth floor provide a 6-metre setback above the landscaped corridor, which is an acceptable setback to ensure that there is adequate light into the communal space.

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

The subject site is in an Industrial 3 Zone with dwellings to the immediate west and south of the subject site. The key off-site amenity impacts for these dwellings associated with the proposed building would be overshadowing, overlooking and noise impacts, which will be discussed in turn below.

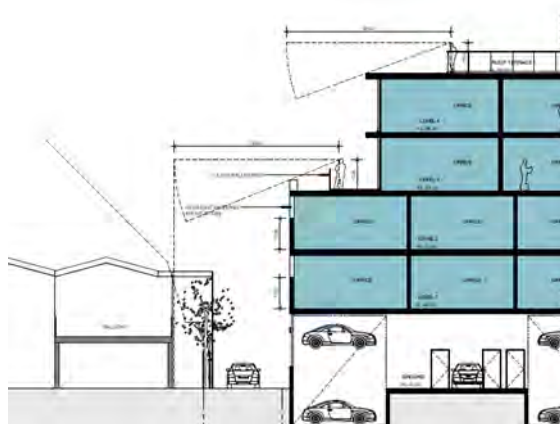
Overshadowing

The purpose of the Industrial 3 Zone is to '*ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses*'. The proposed development will generate additional overshadowing to the secluded private open spaces of 2C Kirkdale Street, Brunswick East and 76 to 84 Nicholson Street, Brunswick East. The Industrial 3 Zone does not apply any overshadowing standards and therefore dwellings adjoining an Industrial Zone are not afforded the same amenity protection as land within a wholly residential context. An assessment against the ResCode overshadowing standard reveals a slight impact at 9am onto one property (2C

Kirkdale Street) of approximately 0.87 square metres. This variation is acceptable given the impacted property is within an Activity Centre that adjoining an Industrial Zone. These zoning characteristics should temper the amenity expectations of residents.

Overlooking

Despite no overlooking standard applying to the development of the land within an Industrial 3 Zone, the proposed development has been designed to prevent unreasonable overlooking into the secluded private open spaces of the dwellings to the immediate west of the subject site through the use of screening to a height of 1.7 metres and by providing setbacks to the upper levels of 9 metres to further reduce the potential for overlooking. Although the west facing terraces on the third storey are less than 9 metres from the nearby secluded private open spaces, following the Planning Information and Discussion Meeting, a sectional diagram was provided by the applicant that confirms the terraces will limit views into the adjoining secluded private open spaces.



Sightline diagrams from the terraces

Noise Impacts

The application includes the use of car stackers. A report from a suitably qualified acoustic engineer has been submitted with the application to verify that the car stackers will operate in accordance with the Environment Protection Act 1970 (the Act) and the Environment Protection (Residential Noise) Regulations 2008 (Regulations). The acoustic report recommends further noise control measures to ensure compliance with the Act. A condition detailed in the recommendation will ensure that the additional measures are implemented to the Council's satisfaction, prior to the occupation of the development. The Acoustic Report has also assessed the noise from the retail premises including any background music as well as the noise from waste collection and has determined that these elements will comply with the relevant noise level requirements. The development has adopted the *agent of change principle* by incorporating the noise attenuation measures recommended in the Acoustic Report to protect the occupiers of the building on the subject site from noise from the nearby industrial uses. This will ensure that the proposed office building will not impact on the ongoing operation of the nearby industrial uses.

Are the proposed uses appropriate for the location?

The subject site is located within the Core Industry and Employment Area as defined by Clause 21.03-2 (Land for Industry and Economic Regeneration) of the Moreland Planning Scheme.

The relevant objective of this policy is:

To reinforce and enhance Core Industry and Employment Areas as places for industry and complementary employment uses.

The relevant strategies of this policy are to:

Support the continued operation of existing industry and encourage new industry and complementary employment uses to locate within Core Industry and Employment Areas.

Support the transition to a broader range of employment generating uses in Core Industry and Employment Areas, including a mix of industry and office-based uses and other compatible employment uses, as permitted within the relevant zone.

Encourage development in Core Industry and Employment Areas to be of a high quality to contribute to an overall improvement in the amenity of the area, including low maintenance landscaping and upgrades to adjoining streetscapes

Encourage the amenity expectations for residential or other sensitive uses within or adjacent to Core Industry and Employment Areas to be reflective of the industrial nature of the precincts.

The subject site is located within the Industrial 3 Zone, which has the following relevant purposes:

To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required or to avoid inter-industry conflict.

To provide a buffer between the Industrial 1 Zone or Industrial 2 Zone and local communities, which allows for industries and associated uses compatible with the nearby community.

To allow limited retail opportunities including convenience shops, small scale supermarkets and associated shops in appropriate locations.

To ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses.

The proposed use of the land for offices and retail premises responds to the above objectives in the following ways:

- Council's MSS expressly encourages the location of offices within Core Industry and Employment Areas.
- While retail premises are not expressly encouraged in an Industrial Zone, this component of the development comprises of only three tenancies and would comply with the strategic policy framework in that it provides for employment.
- The provision of offices (48) and retail premises (3) would generate more employment opportunities within the City of Moreland.
- The office use performs the buffer function specified in the purpose of the Industrial 3 zone well, given that there is less amenity impacts such as noise, dust and odour associated with offices when compared to typical industrial uses.
- There is no on-site customer car parking. However, the subject site is well serviced by multiple modes of public transport, including bus and tram.
- The design of the proposed development represents good contemporary architecture, that makes a high-quality contribution to the streetscapes.

For these reasons, the proposed uses are consistent with the key strategic policy framework.

Has adequate car and bicycle parking been provided?

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

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

A reduction in the car parking requirements from 165 spaces to 64 spaces (101 space reduction) is required for the proposal development. The proposal is adjacent to the Brunswick Activity Centre and has excellent access to public transport including a north/south tram connection and east/west bus connection and provides 136 bicycle parking spaces which is 112 spaces above the requirement specified in Clause 52.34.

Council's Development Engineer is satisfied that the car parking requirement can be reduced for this application. They are also satisfied that no customer car parking will be available onsite, particularly given that there is currently unrestricted and 1-2 hour car parking restrictions along Kirkdale Street and Albert Street.

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.

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

Traffic impacts were a key issue for the objectors, particularly in relation to the use of the laneway for vehicle access. The use of laneways for vehicle access is actively supported by local planning policy at Clause 22.03. Council's Development Engineers has not raised any concerns with the use of the laneway, subject to a condition requiring the laneway to be constructed for the full length between Kirkdale and Albert Street.

In relation to traffic impacts, Council's Development Engineers have assessed the proposal and consider that the additional vehicle movements per day on Kirkdale Street and Albert Street arising from the proposed use/development remain within the street's design capacity and are not expected to cause traffic problems.

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

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

- Utilises the laneway for vehicle access to allow street frontages to prioritise pedestrian movement and safety and to create active frontages.
- Limits the removal of on-street public parking spaces and removal of street trees.
- Provides 136 bicycle spaces, including end of trip facilities.

Is the site potentially contaminated?

The site is considered to be potentially contaminated due to its former use as a quarry and the subsequent landfilling of the site. The applicant has submitted an environmental site assessment report detailing the extent of site contamination and confirming that the site would be appropriate for the use of the site for commercial purposes, subject to the completion of an Environmental Assessment Report. A condition is therefore contained in the recommendation requiring an Environmental Assessment Report to be undertaken before the development commences. This will

ensure that the site is remediated to an appropriate standard to ensure the land is safe for future occupants.

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

ESD features of the development are considered to be adequate and include:

- Four Star Green Star Rating
- 30 000 litre water tank volume
- STORM score of 113; and
- Provision of 136 bicycle spaces with end of trip facilities, being 112 spaces above the requirements of the Moreland Planning Scheme.

Council's ESD Unit are generally supportive of the proposed development due to the good daylight levels, communal space, sustainable transport and due to the STORM score exceeding the best practice score of 100. Conditions are included in the recommendation requiring additional details to ensure a satisfactory response to the requirements of Clause 22.08.

5. Response to Objector Concerns

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

- Traffic impacts;
- Car Parking;
- Use and noise impacts of unpaved laneway;
- Appearance and height of the development; and
- Off-site amenity impacts.

Other issues raised by objectors are addressed below.

Closure of the Performing Arts School on the site

Concerns have been raised that the approval of this development will result in the eventual closure of the Performing Arts School located at 15 Albert Street, Brunswick East. The impact of the development on the Performing Arts School does not warrant refusal of this application, as lease agreements between tenants and landowners are outside the scope of a planning application. The decision guidelines of the Planning Scheme and *Planning and Environment Act* do not accommodate consideration of the impact of a new development on an existing business.

Overdevelopment

Given the sites location adjacent to an Activity Centre and its proximity to public transport, the level of development proposed is appropriate and consistent with State and Local planning policy frameworks.

Amount of development in the area

Concern was expressed regarding the amount of development within the surrounding area. While many residents would prefer their area to remain unchanged, this must be balanced against the broader imperatives of state and local policy, which are supportive of employment generating uses and infill developments in appropriate locations. The proposed development sufficiently responds to the purposes of the Industrial 3 Zone, the relevant policy objectives and the preferred character of the area.

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, subject to the conditions of approval, the development strikes an acceptable balance between providing employment generating uses within Core Industry and Employment Areas while limiting off-site amenity impacts and providing a positive contribution to the preferred built form character of the area.

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/2019/520 should be issued for the construction of a five-storey building (plus roof top terrace), use of the land for offices and retail premises (other than bar, hotel and gambling premises) and a reduction in the standard car parking requirements, subject to the conditions included in the recommendation of this report.

Attachment/s

- | | | |
|----|--|-----------|
| 1↓ | Objector Location Map - 2-4 Kirkdale Street and 15 Albert Street, Brunswick East | D20/50884 |
| 2↓ | Advertised Plans - 2-4 Kirkdale Street and 15 Albert Street, Brunswick East | D20/50881 |

**DCF9/20 73 NICHOLSON STREET, BRUNSWICK EAST PLANNING
PERMIT APPLICATION MPS/2018/879 (D20/9634)**

Director City Futures

City Development

Executive Summary



Property:	73 Nicholson Street, Brunswick East, VIC 3057			
Proposal:	Development of a mixed-use building, reduction in car parking requirement and alteration to access to a road in a Road Zone.			
Zoning and Overlay/s:	<ul style="list-style-type: none"> Commercial 1 Zone Design and Development Overlay Schedule 23 Development Contributions Plan Overlay Schedule 1 Environmental Audit Overlay 			
Strategic setting:	Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth
Objections:	<ul style="list-style-type: none"> 3 Key issues: <ul style="list-style-type: none"> Loss of daylight Loss of access to the car park at 71 Nicholson Street Building height Equitable development Overlooking 			
Planning Information and Discussion Meeting:	<ul style="list-style-type: none"> A PID meeting was not conducted. The planning officer contacted the objectors individually. 			
ESD:	<ul style="list-style-type: none"> Minimum average NatHERS rating of 6.5 stars. 			
Accessibility:	<ul style="list-style-type: none"> Accessible apartments comprise 52 per cent of the proposal. 			
Key reasons for support	<ul style="list-style-type: none"> The proposal generally meets the requirements of the Moreland Planning Scheme including the internal amenity requirements of Clause 58. Subject to the deletion of one level the additional height sought is appropriate given the context and limited impact upon surrounding properties. 			
Recommendation:	It is recommended that a Notice of Decision to Grant a Planning Permit be issued for the proposal, subject to the conditions contained within the officer recommendation			

Officer Recommendation

That a Notice of Decision to Grant Permit No. MPS/2018/879 be issued for the development of a mixed-use building, use of land for dwellings, reduction in car parking and alteration to access to a road in a Road Zone at 73 Nicholson Street Brunswick East, 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 be generally in accordance with the plans prepared by Architecton, dated 22-08-2019 (Issue G), drawing numbers TP01-001 to TP11-400 but modified to show:
 - a) Level 4 (3 dwellings) deleted so that the development is reduced to no more than 6 storeys in height with a street-wall of no more than 14.5 metres.
 - b) Deletion of 2 car parking spaces.
 - c) Deletion of the passing bay, with a corresponding decrease in the width of the vehicle accessway and crossover and increase in the width of the retail space.
 - d) The floor plans with the east facing balconies of level 5 to have open sides as shown on the elevations.
 - e) A detailed materials schedule demonstrating the application of the timber battens and screening materials.
 - f) A ground level façade diagram drawn at a scale of 1:50 detailing all the ground level façade materials and details including paving, the treatment of the services cabinet, windows, doors and planter.
 - g) Details of lighting to the pedestrian entry and vehicle accessway.
 - h) Materials of the balcony soffits and internal balcony walls.
 - i) The location and size of any air conditioning units to be placed on balconies including any screening or housing.
 - j) The surface material proposed for the vehicle accessway.
 - k) Initiatives contained within the amended Sustainability Management Plan (SMP) in accordance with condition 18 of this permit including:
 - i. External shading devices to apartments 15, 17 and 19 west facing bedroom windows.
 - ii. 10kL rainwater tank independent of any detention requirement, including the number of storeys that it will service for toilet flushing.
 - iii. An irrigation tap and a floor waste to each balcony.
 - l) All commercial spaces marked 'retail' re-labelled as 'shop/food and drink premises'.
 - m) Windows as openable where necessary to achieve cross ventilation, including windows to communal corridors.
 - n) The location of any substation required by the power company for this development. Any substation must be incorporated within the building (i.e. not free standing or pole mounted in the street) to ensure minimal impact on the visual amenity of the public realm.

- o) Each bicycle parking devices dimensioned with all spaces 500mm wide and the horizontal and vertical bicycle spaces 1800mm and 1200mm long respectively, with every space accessed from a 1500mm wide access aisle as required by the Australian Standard for Parking Facilities – Bicycle Parking (AS2890.3).
- p) The lifts large enough to easily accommodate two cyclists with bicycles.
- q) The verandah over the footpath setback 750mm from the kerb and to have a height not less than 3m above the level of the footpath in accordance with Clause 507 of the Building Regulations 2006 to the satisfaction of the Responsible Authority.
- r) Any practical changes to the plans sought by the additional reports and plans required by conditions of this Permit.
 - i. The landscape plans required by Condition 3 of this permit.
 - ii. The Waste Management Plan required by Condition 21 of this permit.
 - iii. The Accessibility Report required by Condition 24 of this permit.
 - iv. The Acoustic Report required by Condition 25 of this permit.

Development not to be altered

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

Landscaping

3. Prior to the commencement of any development works, amended landscape plans must be submitted to and approved by the Responsible Authority. The landscape plans must be generally in accordance with the plans prepared by John Patrick dated April 2019 but modified to show:
 - a) Details of proposed watering methods and maintenance of the plants, including an automatic irrigation system for all planter boxes.
 - b) Details of the location and type of all paved and sealed areas. Extensive hard surfaces are not supported. The adoption of porous/permeable paving, rain gardens and other water sensitive urban design features are encouraged.
 - c) The location of any rain gardens as detailed in the endorsed Sustainability Management Plan.
4. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority.
5. All planting shown on the endorsed landscape plans must be maintained and any dead, diseased or damaged plants replaced to the satisfaction of the Responsible Authority.

Parking and access

6. 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 the commencement of the use or occupation of the development.
 - 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) Be marked with the associated apartment or shop number to facilitate management of the car park.
7. Public footpaths are to be reinstated with a crossfall slope of 1 in 40 (2.5 per cent)
 8. All bicycle parking racks must be installed in a secure manner that accords with the specifications in Australian Standard for Bicycle Parking (AS2890.3), to the satisfaction of the Responsible Authority.

Stormwater

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. Stormwater from the land must not be directed to the surface of the right-of-way to the satisfaction of the Responsible Authority.

Development Contributions Plan

11. 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.
12. If an application for subdivision of the land in accordance with the development approved by this permit is submitted to Council, payment of the Development Infrastructure Levy can be delayed to a date being whichever is the sooner of the following:
 - a) For a maximum of 12 months from the date of issue of the Building Permit for the development hereby approved; or
 - b) 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

13. Prior to the commencement of construction or carrying out works pursuant to this permit, or any works associated with a sensitive use, or where no works are proposed, prior to the commencement of the permitted use, either:
 - a) A Certificate of Environmental Audit for the land must be issued in accordance with Section 53Y of the *Environment Protection Act 1970* and provided to the Responsible Authority; or
 - b) An Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must make a Statement in accordance with Section 53Z of that Act that the environmental conditions of the land are suitable for the use and development that are the subject of this permit and that statement must be provided to the Responsible Authority.
14. 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.

15. 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.
16. 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).
17. Prior to any remediation works being undertaken in association with the Environmental Audit, a 'remediation works' plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of a Certificate or Statement of Environmental Audit.

Sustainable Management Plan

18. Prior to the endorsement of plans, a Sustainability Management Plan (SMP) must be submitted to and approved to the satisfaction by the Responsible Authority. The SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by Ark Resources dated 30 August 2019, but modified to include the following changes:
 - a) Delete the claim to the BESS credit 'Water 4.1 Building Systems Water Use Reduction' or show pump recirculation tanks on plans.
 - b) Remove reference to clotheslines from SMP or show them on plans.
 - c) Remove reference to basement carpark from SMP.
 - d) Delete the claim to the BESS credit 'Transport 1.2 Bicycle Parking – Residential Visitor' or show 4 visitors bicycle parking on plans.

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

19. 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
20. Prior to the commencement of occupation or issue of a Statement of Compliance, whichever comes first, of any dwelling approved under this permit, a report from the author of the Sustainability Management Plan (SMP) approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the SMP have been implemented in accordance with the approved plan.

Waste Management Plan

21. Prior to the endorsement of plans, a Waste Management Plan generally in accordance with the Waste Management Plan prepared by Ratio dated 25 October 2018 but updated to reflect the plans required by Condition 1, must be submitted and approved to the satisfaction of the Responsible Authority. When submitted and approved to the satisfaction of the Responsible Authority, the Waste Management Plan and associated notated plans will form part of this permit.
22. 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

23. Prior to the endorsement of plans, an Accessibility Report prepared by a suitably qualified person must be submitted and approved to the satisfaction of the Responsible Authority. The report must be generally in accordance with the report prepared by Equal Access dated April 2019 but updated to refer to the plans required by condition 1 of this permit and detail how the development complies with Standard D17 (Accessibility) of Clause 58 of the Moreland Planning Scheme, including the detailed design of the adaptable bathrooms. The recommendations of the report must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development. No alterations to the plan may occur without the written consent of the Responsible Authority.
24. Prior to the occupation of any dwelling approved under this permit, a report from the author of the Accessibility Report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Accessibility Report have been implemented in accordance with the approved report.

Acoustic Report

25. Prior to the endorsement of plans an Acoustic Report must be prepared by a suitably qualified person. The report must:
 - a) Verify that the car stackers will operate in accordance with the *Environment Protection Act 1970* (the Act) and the *Environment Protection (Residential Noise) Regulations 2008* (Regulations). In the event that it is considered that the Act and Regulations would be breached, the acoustic report must recommend further noise attenuation measures to ensure compliance with the Act.
 - b) Provide noise attenuation measures to ensure the development is designed to incorporate noise attenuation measures to minimise tram noise levels and other external noise sources within precinct.
26. Construction and maintenance of the building must be in accordance with the recommendations contained in the acoustic report to the satisfaction of the Responsible Authority.

Vic Roads Conditions

27. Prior to the commencement of the use hereby approved, the crossover and driveway must be constructed at no cost to the Department of Transport and to the satisfaction of the Responsible Authority.

General

28. Prior to the occupation of the development, the bicycle parking racks must be installed in a secure manner that accords with the specifications in Bicycle Victoria's Bicycle Parking Handbook, to the satisfaction of the Responsible Authority.

29. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.
30. Unless with the prior written consent of the Responsible Authority, any plumbing pipe, ducting and plant equipment must be concealed from external views. This does not include external guttering or associated rainwater down pipes.
31. Prior to the occupation of the development, any air-conditioning and other plant and generator equipment must be screened from the view of adjoining properties and the street to the satisfaction of the Responsible Authority.
32. Prior to the occupation of the development, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.
33. Prior to the occupation of the development the public footpath is to be reinstated with the standard cross-fall slope of 1 in 40 from the top of roadside kerb to the property boundary, with any level difference made up within the site.
34. 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).
35. Stormwater from the land must not be directed to the surface of the laneway to the satisfaction of the Responsible Authority
36. The verandah must be setback 750 millimetres from the kerb and at a height less than 3m above the level of the footpath in accordance with Clause 507 of the Building Regulations 2006 to the satisfaction of the Responsible Authority.

Permit expiry

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

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

- i. Within six months after the permit expires to extend the commencement date.
- ii. Within 12 months after 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.

This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit

<http://www.moreland.vic.gov.au/planning-building/> and click on 'Moreland Development Contributions Plan (DCP)'. Alternatively, please contact Moreland City Council on 9240 1111 and ask to speak to the DCP Officer.

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

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.

Where a Statement of Environmental Audit issued for the land contains conditions that the Responsible Authority considers to be unreasonable in the circumstances, the Responsible Authority may seek cancellation or amendment of the planning permit in accordance with Section 87 of the Planning and Environment Act 1987.

The proposed development requires the construction of a crossover. Separate approval under the Road Management Act for this activity may be required from the DoT. Please contact DoT prior to commencing any works.

1. Background

Subject site

The subject site is located at 73 Nicholson Street, Brunswick East and comprises Lot 1 on Title Plan 745692X. It is located on the west side of Nicholson Street and has a width of approximately 12.19 metres, a length of approximately 36.26 metres and a total area of approximately 441.2 square metres.

The site is occupied by a double storey building used as a showroom and distribution centre.

There is an existing vehicle crossing of 6.8 metres in width providing access to the rear of the site via a carriageway easement. The 2.4-metre-wide carriageway easement is located south of the site and is used to provide vehicle access to the rear. Whilst this carriageway easement forms part of the adjoining land (71 Nicholson Street) the subject site has rights over this carriageway easement.

Surrounds

The surrounding area is characterised by a diverse mix of land uses including residential of varying scales, commercial and some light industry. The older building stock ranges in height from double to single storey whilst the newer buildings are between 3 and 6 storeys.

To the north are existing commercial buildings ranging in scale from 1 to 3 storeys. Further north there is currently a 6-storey development under construction at 77-83 Nicholson Street, this building comprises 67 dwellings and a ground floor retail space. This site is an L shaped block that also adjoins the rear (western) boundary of the subject site. This development will provide a pedestrian link between Nicholson Street and Balfe Park. An amendment application is currently under consideration (MPS/2016/975/A) which seeks to increase the number of dwellings to 73 but does not propose to increase the overall building height. This site adjoins Balfe Park.

To the east on the opposite side of Nicholson Street are residential buildings ranging in scale from 1-5 stories. North-east of the subject site is 22-26 Nicholson Street, North Fitzroy where a 5 storey building is currently under construction.

To the south are 2 storey industrial and commercial buildings. Further south is 67 and 81 Nicholson Street which are both occupied by residential buildings of 5 storeys in height.

A location plan forms **Attachment 1**.

The proposal

The proposal is summarised as follows:

- Construction of a seven-storey building with a proposed height of 27.95 metres.
- A 16.8 metre or 5 storey street wall height with a 3 metre upper level setback to the face of the building and 1.65 metre setback to the balcony edge.
- 19 dwellings, comprising 14 with one bedroom, 2 with two bedrooms and 3 with three bedrooms.
- A retail space of 69.5 square metres accessed from Nicholson Street.
- 83 per cent site coverage.
- 11 car parking spaces occupied within stackers, 10 are accommodated in double stackers at ground floor. The spaces are accessed via an existing double crossover from Nicholson Street and utilises the existing carriageway easement.

- 21 bicycle parking spaces are located in the basement level.
- 10 of the 19 dwellings are accessible (52 per cent).
- All dwellings have natural cross ventilation.
- Each dwelling has 6.2-7.7m³ of external storage located in the basement.
- Each dwelling has a balcony of 10-31 square metres, 4 dwellings have 2 balconies.
- A communal roof terrace area of 252 square metres.
- The building is finished in charcoal brick, timber battens, black metal composite panel, cement precast, cement render and a metal fin balustrade.

The development plans form **Attachment 2**.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Clause 34.01 Commercial 1 Zone (C1Z)	A permit is required to construct a building or construct or carry out works.
Clause 43.02 Design and Development Overlay Schedule 23 (DDO23)	A planning permit is required to construct a building or construct or carry out works.
Clause 52.06 Car Parking / Clause 45.09 Parking Overlay Schedule 1	A planning permit is required to reduce the number of resident car spaces required to be provided from 22 to 11.
Clause 52.29 Land adjacent to a Road Zone, Category 1	A planning permit is required to alter access to a Road Zone, Category 1.

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

- Clause 45.03: Environment Audit Overlay
- Clause 45.06: Development Contributions Plan Overlay
- Clause 52.35: Bicycle Parking
- Clause 58: Apartment Developments

2. Internal/External Consultation

Public notification

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

- Sending notices to the owners and occupiers of adjoining and nearby land
- By placing a sign on the Nicholson Street frontage of the site

Council has received 3 objections to date. A map identifying the location of objectors' forms **Attachment 1**.

The key issues raised in objections are:

- Loss of daylight
- Loss of access to the car park at 71 Nicholson Street.

- Building height – should not exceed 5 storeys.
- Does not achieve an equitable development outcome for the building to the rear.
- Overlooking
- Errors on the plans (omits a notation regarding dwelling at 75 Nicholson Street).

The planning officer discussed the application with the objectors individually and provided a copy of the objections to the applicant. A Planning Information and Discussion meeting was not considered necessary given this consultation.

Internal/external referrals

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

Internal Branch/Business Unit	Comments
City Strategy and Design Branch – Urban Design Unit	No objections were offered to the proposal subject to modifications including the deletion of a level, which are addressed in the conditions detailed in the recommendation.
City Change Branch – ESD Unit	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
City Change Branch – Development Advice	No objections were offered to the proposal subject to modification, which are addressed in the conditions detailed in the recommendation.

The proposal was referred to the following referral authority:

Internal Branch/Business Unit	Comments
Vic Roads	No objections were offered to the proposal subject to a condition detailed in the recommendation.

3. Policy Implications

Planning Policy Framework (PPF)

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

- Clause 11 - Settlement
- Clause 15 Built Environment and Heritage including:
 - Built Environment (Clause 15.01)
 - Healthy Neighbourhoods (Clause 15.01-4S and 15.01-4R)
 - Sustainable Development (Clause 15.02)
- Clause 16.02 Housing including:
 - Integrated Housing (Clause 16.01-1S and 16.01-1R)
 - Location of Residential Development (Clause 16.01-2S)
 - Housing Opportunity Areas (Clause 16.01-2R)
- Clause 17.0: Economic Development
- Clause 18: Transport

Local Planning Policy Framework (LPPF)

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

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-1 Activity Centres
- Clause 21.03-2 Land for Industry and Economic Regeneration
- Clause 21.03-3 Housing
- Clause 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)

Local Planning Policies:

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

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

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 the Victorian Charter of *Human Rights and Responsibilities Act 2006*. In particular, regard was given to:

- Section 12: Freedom of movement
- Section 13: Privacy and reputation
- Section 15: Freedom of expression
- Section 18: Taking part in public life

The application does not limit human rights and supports freedom of movement, privacy and engagement in safe public life within the public realm through passive surveillance and active frontages.

4. Issues

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

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

The proposal is an acceptable response to Clause 22.01 (Neighbourhood Character) of the Moreland Planning Scheme. In this location Clause 22.01 seeks:

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

The Design and Development Overlay Schedule 23 applies the has the following relevant objectives:

- *To ensure that development is consistent with the objectives of the Balfe Park Precinct, Brunswick East, Urban Design Framework (Figure 1), Brunswick Structure Plan and Clause 22.11 Development of four or more storeys.*
- *To encourage multi-level development adjacent to Nicholson Street that provides transitional heights and design attenuation to Balfe Park and John Street.*
- *To balance incremental multi-level development, internal amenity outcomes and development potential across the Precinct.*
- *To encourage development to provide high density forms of residential accommodation above ground floor commercial spaces.*
- *To ensure the scale of development creates a consistent Nicholson Street streetscape.*

The DDO23 also sets out a building envelope with preferred built form outcomes including:

- A preferred building height of 18 metres (5 storeys);
- A preferred street wall height of 14.5 metres (4 storeys);
- A mandatory upper level setback of 3 metres.

The variations sought to the DDO23 by this proposal include:

- A building height of 24.9 metres and a variation of approximately 6.9 metres.
- A street wall height of 16.8 metres and a variation of 2.3 metres.

The upper level setback of 3 metres complies with DDO23.

Building Height

The proposal seeks a maximum building height of 24.9 metres (taken from the Nicholson Street frontage). The lift overrun, stairwell and roof garden facilities including the partly covered outdoor dining area is an allowable encroachment in this instance. The total variation sought is 6.9 metres (2 storeys). The DDO seeks consistency in height along Nicholson Street. While the preference is for 5 storeys, there is an emerging character of 6 storeys in this section of the street. Significantly the development to the north (77-83 Nicholson Street) is a 6 storey building within the same DDO.

To this extent Council's Urban Design Unit advised:

"The proposal seeks a 7 storey maximum height where the immediate prevailing context is 6 storey, and the preferred height is 5 storeys. The dimensions of the site are not suitable to integrate the additional height of a full 7th storey without significant visual impact. Redesign the overall height to 6 storeys, in keeping with the prevailing context."

55 Nicholson Street, Brunswick East, is located to the south of the subject site at the intersection with Miller Street. This site was subject to a VCAT hearing (55-63 Nicholson St Pty Ltd v Moreland CC [2017] VCAT 1082) where the Tribunal determined that a 6 storey building was appropriate at this location (with a 7th service level). When considering the appropriateness of a 7th level the Tribunal noted:

“There is an evident emergence of six-storey buildings in the section of Nicholson Street within the DDO23... The proposed overall height, however, detracts from the desired outcome of a consistent scale of development. While the upper levels may be recessive or even obscured from view from locations immediately proximate to the subject site, this will not be the case in longer range views. From these more distant vantage points, the full height will be apparent and will clearly appear as noticeably higher than that of the existing and approved developments. It will not contribute to the achievement of a consistency of scale. I agree with the Council that the corresponding design objective will not be achieved, as the building will have an undue prominence and stand in distinction to the other developments.”

In this instance the Tribunal determined in favour of Council and required the proposal to be reduced by a storey. It therefore allowed a for a seven-storey building (plus basement). While technically comprising seven above-ground levels, the top floor is confined to a relatively small element comprising the stair/lift core, laundry and roof terrace. The building will largely read as a six-storey building.

It is therefore recommended that the overall height to reduced to no more than 6 storeys, with partial 7th storey roof top elements

While still above the preferred height, DDO23 states that, in departing from the preferred height, the remaining design objectives and requirements of the schedule should be met. Subject to the reduction in height to 6 storeys. The development generally achieves these, as follows:

- There is an emerging character of 6 storey buildings facing Nicholson Street. Several developments have been approved nearby and are under construction or recently complete, including on the sites at 65, 85 and 91-93 Nicholson.
- The development includes provision of commercial floor space at ground floor level which will provide opportunity for employment generating uses. This provision will be further increased by the proposed conditions which include the deleting of a passing lane.
- The development provides a high level of compliance with the internal amenity Standards of Clause 58. These are discussed in further detail below.
- An accessibility report submitted with the application confirms the development will be accessible in accordance with DDA and Building Code requirements, and that 52 per cent of dwellings are accessible.
- The recommended conditions require an acoustic report to be submitted confirming the development incorporates appropriate noise attenuation measures in relation to internal noise within the development (including from car stackers) and traffic noise from Nicholson Street.

Street Wall Height

The preferred built form envelope in DDO23 includes a podium height of 14.5 metres to the street, with a 3 metre upper level setback. The proposal includes a 5 storey (16.8 metres) street wall with a 3 metre setback to 2 levels above. The balcony to Apartment 16 at level 5 is located within the setback. There is a discrepancy on the plans as the elevations show this space to be open sided and the floor plans show the space enclosed by side walls. The recommended permit conditions require this balcony to be open sided to minimise the amount of blank side wall visible from the street.

The proposed street wall height, above the preferred height, is contrary to the objective of the DDO that seeks ensure the scale of development creates a consistent Nicholson Street streetscape. In contrast, the approved development to the north at 73-83 Nicholson Street, Brunswick East has a 14 metre street wall, in keeping with the DDO. This is an appropriate outcome. There are no locational or unique design considerations which would warrant a higher street wall for the subject site.

A permit condition will require the street wall not exceed 14.5 metres, which can be achieved with the reduction of building height considered above by deleting level 4. The deletion of level 4 would be appropriate given this level has the larger rear setback and it would have the least impact upon yield with the loss of 3 dwellings.

Upper Level Setback

At 3 metres the proposed street wall complies with the mandatory upper level setback requirement for Nicholson Street. It is noted that the balcony at level 5 encroaches into the setback (the actual setback being only 1.65 metres). This is appropriate given the encroachment would only be a light-weight balustrade structure (as shown on the elevation). A permit condition requires this to be shown on the floor plans.

Building Design, Architecture and Materials

The DDO23 includes the following relevant objectives:

- *To encourage development to provide high density forms of residential accommodation above ground floor commercial spaces.*
- *Properties fronting Nicholson Street should have a zero lot line, and clear glazed frontages with canopies at ground level that contribute to a consistent preferred streetscape.*
- *Residential entries fronting Nicholson Street should be designed to limit indentation and not detract from the commercial function of the street.*



Nicholson Street frontage.

Through the provision of a ground floor commercial area along Nicholson Street, the proposal provides an active frontage. The frontages are transparent to ensure optimal interest and will effectively contribute to an inviting, safe and vibrant streetscape. These aspects of the proposal also provides a safe and inviting entry to the dwellings. However, the frontage of the site is largely dominated by the vehicle access which occupies 6.12 metres of the frontage (approximately 40 per cent of the site frontage including the carriageway easement). The frontage appears to be largely impeded by the passing area which is required by Clause 52.06-9 (Design Standards for Car Parking) which states:

Provide a passing area at the entrance at least 6.1 metres wide and 7 metres long if the accessway serves ten or more car parking spaces and is either more than 50 metres long or connects to a road in a Road Zone

The recommendation deletes 3 dwellings, which will decrease the car parking demand. As such, it recommended that at least 2 car parking spaces (one bay of the car stacker system) also be deleted. This would bring the total number of car parking spaces to below 10 and there would no longer be a requirement for a passing bay pursuant to Clause 52.06-9. With no requirement for a passing bay, the ground level retail space could be increased in width to provide better activation to the street and achieve the objectives of the DDO. The recommended permit conditions require these changes.

While retaining the sense of a simple overall form, the design of upper levels has enough detail and articulation to provide interest. The following additional recommendations regarding design detail from Council's Urban Designer are incorporated within the conditions of the recommendation:

- A materials schedule including the application of timber battens and screens.
- Details of the lighting of the pedestrian entry and vehicle accessway.
- Details of the surface material proposed for the vehicle accessway within the title boundaries.

The plans appear to show timber cladding to the balcony soffits and internal balcony walls, which will be visible from street level. The recommended permit conditions confirm the use of these high-quality materials.

Overall the building will present as an appropriate contribution to the streetscape.

Landscaping

The proposal will provide a vegetated planter at ground floor, landscaping within the light court and a vegetated roof top communal space. The proposed various forms of vegetation at all levels will soften the built form and create a visually attractive roof area and ground level entry to the shop. The recommended permit conditions require a landscape plans to ensure the landscaping is easily and efficiently maintained. There is no requirement for deep soil planting pursuant to Clause 58.03-5 (Landscaping) as the site area is less than 750 square metres.

Does the proposal result in unreasonable impacts on neighbouring properties?

Given the existing neighbouring uses are mostly commercial or industrial, there are limited impacts upon the existing properties in terms of residential amenity.

Overshadowing

The DDO states that:

Development should consider height and shadowing impacts to adjoining properties, in particular access to sunlight and the development objectives of this schedule.

Shadow diagrams submitted with the original application, demonstrate that most of the shadow caused by the proposal falls upon the rooves of the existing buildings or within the road reserve. There is some shadow that will fall upon the private open space of the dwellings proposed at the rear adjoining site (79-83 Nicholson), this is only at 9am and the area is unaffected for the remainder of the day. Given the activity centre context, the impact of these shadows is considered acceptable.

Privacy/overlooking

Clause 55.04-6 (Overlooking) of the Moreland Planning Scheme is not applicable to an apartment building but provides a useful guide for considering overlooking. The Clause does not aim to eliminate all overlooking, but rather seeks to prevent unreasonable overlooking. Up to 9 metres is the standard accepted by state-wide provisions as being a reasonable distance where screening is required to minimise overlooking.

The building is adequately setback from the rear to avoid overlooking to the neighbouring property and its future development. Levels 4, 5 and 6 are setback 9 metres. Levels 1, 2 and 3 are setback 6 metres. This is appropriate given 6 dwellings will face the rear. The endorsed plans for the rear adjoining site show terraces at ground level, four of which adjoin the subject site. Above ground level the dwellings have been orientated to face the park and the building is setback from the common boundary 3 metres. This 9-metre building separation is appropriate given the site constraints and inner-city context. Each dwelling will maintain an appropriate level of privacy.

Does the proposal offer an appropriate level of amenity for future occupants?

The proposal offers a high level of onsite amenity for future occupants; notable features include:

- The living room windows and main balconies of all dwellings face either Nicholson Street or the rear boundary providing a positive outlook and offering passive surveillance opportunities of the public realm.
- The proposal includes a generously sized communal open space at the roof level which provides amenities for residents. This goes beyond the requirements of Clause 58, which only requires communal space for developments with more than 40 dwellings.
- The proposal was accompanied by an acoustic report which demonstrates that noise sources such as the plant, lifts and car stackers have been located away from sensitive rooms and provided with a buffer to limit noise impacts.
- Each dwelling has adequate storage in excess of the minimum requirements of Clause 58.
- The dwellings all have a minimum of one balcony which exceeds the minimum area requirement with an appropriate depth to ensure its usability.
- The room depths range between 3.8 and 6.6 metres with floor to ceiling heights of 2.7 metres. This ensures a high level of internal amenity with good access to daylight.
- All the dwellings have effective natural cross ventilation which exceeds the 40 per cent (7) required by Clause 58.

Key internal amenity considerations and variations are discussed below:

Functional Layout

The room sizes mostly exceed the minimum area and depth requirements. However, two-bedroom dwellings are required to have a minimum living area of 12 square metres and a minimum depth of 3.6 metres. The two-bedroom dwellings have a living area of 12.8 square metres exceeding the standard and a depth of 3.3 metres. This minor variation of 0.3 metres only applies to 2 dwellings (dwelling 18 and 16) and is of negligible consequence as the rooms are well design and orientated with an appropriate overall size to ensure functionality. This has been demonstrated on the plans through the placement of a practical amount of furniture drawn to scale.

Internal Views

Windows from the communal corridors will have views into the western balcony (or northern lightcourt) of Dwelling 2 at level 1. This is considered acceptable given that this balcony adjoins a bedroom, with the main balcony for this dwelling facing toward Nicholson Street. A proposed planter within this light court will also offer some privacy to this bedroom balcony.

Private Open Space

Standard D19 of Clause 58 requires an additional 1.5 square metres to the minimum area required for each balcony if an air conditioning unit is located on the balcony. The location of air conditions units has not been shown on the plans. All of the one- and two-bedroom dwellings have a balcony area which exceeds 9.5 square metres, which provides sufficient space for an air conditioning unit. The three-bedroom dwellings (15, 17 and 19) are required to have an area of 13.5 square metres if an air conditioning unit is located on the balcony. The balconies to these 3 dwellings (reduced to 2 dwelling subject to the recommended permit conditions) are only 12 square metres and therefore would not comply with the Clause 58 Standard if air conditioning unit is included on the balcony. This minor variation to the Standard is considered acceptable given the provision of communal open space above the requirements of Clause 58.

A condition will require details of any air conditioning units proposed to be placed on the balconies including any housing or associated structures. This will ensure they are appropriately located and do not impede upon the usability of the space.

Dwelling Diversity

The proposal includes 19 dwellings. Where a development proposes more than 10 dwellings a range of dwelling types including a variety of bedroom sizes should be provided. The proposal achieves this, offering a range of dwelling sizes which includes 3 three-bedroom dwellings (reduced to 2 dwellings subject to the recommended conditions).

Does the proposal comply with Clause 22.07 (Development of Five or More Storeys)?

The Design and Development Overlay 23 has the following relevant objective:

- *To balance incremental multi-level development, internal amenity outcomes and development potential across the Precinct.*
- *Development should be designed to provide naturally lit internal amenity*

This is reinforced by Clause 22.07 which seeks equitable development opportunities to neighbouring sites and a positive outlook from the subject site.

The proposal is appropriately designed to allow for the amenity and equitable development of the adjoining properties with consideration to habitable room windows and the size of lightwells. Whilst the development is built to both side boundaries this layout in an activity centre does not unreasonably impact on the development potential for the adjoining sites.

Rear Setbacks

From the rear, levels 1-3 are setback 6 metres and levels 4-6 are setback 9 metres. These setbacks comply with Clause 22.07. This will ensure an appropriate outlook for the rear facing dwellings avoiding the use of screening. This setback from the rear ensures there's adequate building separation and daylight to the proposed dwellings at the rear of the adjoining property (81-83 Nicholson Street).

Light-wells

At levels 1-4 the light-wells are required to have a minimum area of 9 square metres and a depth of 2 metres, the proposal exceeds this. The northern light-well has an area of 24 square metres and a minimum depth of 2.29 metres. The southern light-well has a total area of 19.6 square metres and a minimum depth of 2.7 metres.

At levels 5-6 the light-wells are required to increase in size to a minimum area of 29 square metres with a minimum depth of 4.5 metres. The lightwells do not increase in size from the lower levels and therefore do not comply with the clause.

Overall, the non-compliance is considered to be acceptable for the following reasons:

- The light-wells of the lower levels, which are most affected by the non-compliance, only serve bedrooms and not living rooms, where a higher level of daylight is required.
- A daylight analysis report accompanying the application advises that each bedroom facing the light-wells will receive appropriate daylight access, concluding that 18 of the 19 bedrooms will receive the best practice daylight level.
- Subject to the recommended conditions, the deletion of one level will reduce the non-compliance to one level and improve daylight penetration to the bedrooms of the lower level dwellings.
- The proposal exceeds the minimum light-well size requirements at the lower levels, which offsets the non-compliance at the top level.

Furthermore, it is noted that the southern light-well faces a carriageway easement that is currently open to the sky. While it is not impossible that the easement could be built over in the future, it is less likely. Nevertheless, it is considered that any future building over this easement would not result in an unacceptable impact on daylight to the proposed development for the reasons listed above.

Has adequate car parking been provided?

A total of 22 spaces are required for the 19 dwellings, 10 are proposed for the dwellings and 1 for the retail space.

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

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

The proposal is located within the Brunswick Activity Centre and has excellent access to public transport including the north-south tram route (210 metres from the site) and the bus routes for east – west travel (170 metres from the site). Furthermore, the proposal includes a generous bicycle parking provision of 22 spaces, providing 16 in excess of the Clause 52.34 requirement.

Council's City Change Branch (Development Engineering) is satisfied that car parking requirement can be reduced for this application. A parking survey was undertaken by the applicant, which demonstrates adequate temporary visitor car parking is available along Nicholson Street.

Another factor that supports a car parking reduction is Amendment C183 Moreland Parking Implementation Plan which represents Council's current strategic intention for parking provisions within the Municipality. It seeks to reduce car parking rates and encourage sustainable transport use within new developments. The amendment will apply an overlay to the subject site requiring maximum car parking provision where a permit is required to exceed a specified rate.

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 on-street parking permits this is included as a note on the planning permit 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 City Change Branch (Development Engineering) have assessed the proposal and concur with the applicant's traffic impact assessment, which concludes the development will result in six additional vehicle movements during each peak hour on Nicholson Street. This remains within the street's maximum traffic volume under the Moreland Integrated Transport Strategy and is not expected to cause traffic problems.

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

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

- Utilises an existing crossover for vehicle access to allow the frontage to Nicholson Street to maintain pedestrian movement and safety.
- Creates an active street frontage through the provision of a retail space and lobby/entry (subject to the recommended permit condition).
- Limits the removal of on-street public parking spaces and removal of street trees.
- There is a provision of 2 bicycle spaces on site per dwelling which significantly exceeds the requirements of Clause 52.34 of the Moreland Planning Scheme.

Does the proposed car stackers comply with the Environment Protection (Residential Noise) Regulations 2008?

The application includes the use of a car stacker containing 11 spaces. In order to ensure the car stacker does not unreasonably impact on amenity, a condition of the recommendation requires the submitted acoustic report to be amended to verify that the car stacker will operate in accordance with the Environment Protection Act 1970 (the Act) and the Environment Protection (Residential Noise) Regulations 2008 (Regulations). In the event that it is considered that the Act and Regulations would be breached, the acoustic report must recommend further noise attenuation measures to ensure compliance with the Act and these additional measures must be implemented at the owner's cost and to Council's satisfaction prior to the occupation of the development.

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

The proposal is required to achieve best practise ESD in accordance with Clause 22.08 of the Moreland Planning Scheme. Some of positive sustainability aspects of the proposal include:

- The development will achieve a minimum average NatHERS energy rating of 6.5 stars.
- The proposal includes a renewable energy system of 4kW solar photovoltaic system.
- Rainwater harvesting system for toilet flushing and irrigation.
- High performance glazing and energy efficient building services, appliances and fixtures.
- The development meets the best practice standard for stormwater quality.
- 22 bicycle spaces are provided which exceeds the requirement of 6 spaces sought by the planning scheme.

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

Is the proposal accessible to people with limited mobility?

Objective 9 of Clause 23.03-3 (Housing) is to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. All the proposed dwellings are visitable. Standard D17 (Accessibility) of Clause 58 requires at least 50 per cent of apartments to be accessible and to meet certain design criteria, including clear paths of travel and adaptable bathrooms.

10 dwellings are designed to meet the requirements of the accessibility standard (dwellings 1, 2, 5, 6, 9, 10, 13 and 14). A total of 52 per cent of dwellings would meet the requirements of Standard D17.

Is the site potentially contaminated?

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

5. Response to Objector Concerns

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

- Loss of daylight
- Building height – should not exceed 5 storeys.
- Does not achieve an equitable development outcome.
- Overlooking

Other issues raised by objectors are addressed below.

- Errors on the plans (omits a notation regarding dwelling at 75 Nicholson Street). The location of the dwelling has been discussed with the applicant and objector. There is a single dwelling to the rear of 75 Nicholson north of the subject site. The dwelling has been considered within the assessment above.

- Loss of access to the car park at 71 Nicholson Street. The objector from the southern adjoining property at 71 Nicholson Street advised they access their car park by backing onto the subject site. This is a private matter to be managed between the owners and there is no reasonable requirement for the subject site to maintain access for the benefit of the neighbour. However, the car parking area is open sided, and the proposal would not stop the neighbour from backing onto the subject site. There is no restriction stopping this area being fenced or changed in the future.

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

Subject to the deletion of a level and expansion of the retail frontage at street level the proposal achieves an appropriate design outcome that will contribute positively to the streetscape. The building offers a high level of internal amenity and will not unreasonably impede upon neighbouring sites. On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that a Notice of Decision to Grant a Planning Permit No. MPS/2019/879 should be issued for the development of a mixed-use building, use of land for dwellings, reduction in car parking and alteration to access to a road in a Road Zone subject to the conditions included in the recommendation of this report.

Attachment/s

- 1 [↓](#) MPS/2018/879 – 73 Nicholson Street Brunswick East – Attachment 1 – D20/34902
Objector and Location Map
- 2 [↓](#) MPS/2018/879 – 73 Nicholson Street Brunswick East – Attachment 2 – D20/34929
Development Plans