



Moreland
City Council

COUNCIL AGENDA

PLANNING AND RELATED MATTERS

Wednesday 24 March 2021

Commencing 6.30 pm

Council Chamber, Moreland Civic Centre, 90 Bell Street, Coburg

Language Link

This is the Agenda for the Council meeting.
For assistance with any of the agenda items,
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ਇਹ ਕੌਂਸਲ ਦੀ ਮੀਟਿੰਗ ਦਾ ਏਜੰਡਾ ਹੈ। ਏਜੰਡੇ ਦੀ ਕਿਸੇ ਆਈਟਮ ਬਾਰੇ ਮਦਦ ਲਈ, ਕ੍ਰਿਪਾ ਕਰਕੇ 9280 0751 ਤੇ ਟੇਲੀਫੋਨ ਕਰੋ।

Acknowledgement of the traditional custodians of the City of Moreland

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

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

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

5. COUNCIL REPORTS

5.1 6 HOPE STREET, BRUNSWICK - PLANNING APPLICATION
MPS/2010/427/B 4

5.2 9-21 WILSON AVENUE, BRUNSWICK - PLANNING APPLICATION
MPS/2020/213 22

6. URGENT BUSINESS

5. COUNCIL REPORTS

5.1 6 HOPE STREET, BRUNSWICK - PLANNING APPLICATION MPS/2010/427/B

Director City Futures, Kirsten Coster

City Development

Executive Summary



Property:	6 Hope Street, Brunswick				
Proposed Amendments:	Change of use to a residential village and associated reduction of car parking requirements. The request is being reported to Council at the request of Councillors.				
Zoning and Overlay/s:	<ul style="list-style-type: none"> Commercial 1 Zone (C1Z) Design and Development Overlay (DDO18) Parking Overlay (PO1) Development Contributions Plan Overlay (DCPO1) 				
Strategic setting:	<table border="1"> <tr> <td>Minimal housing growth</td> <td>Incremental housing growth</td> <td>Increased house densities encouraged</td> <td>Significant housing growth</td> </tr> </table>	Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth
Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth		
Objections:	<ul style="list-style-type: none"> 5 Objections Key issues: <ul style="list-style-type: none"> Car Parking Traffic Impacts 				
Planning Information and Discussion (PID) Meeting:	<ul style="list-style-type: none"> Date: 9 March 2021 Attendees: the applicant, the owner, 2 Council officers, and Cr James Conlan, Cr Helen Pavlidis-Mihalakos and Cr Oscar Yildiz. No objectors were in attendance. No changes were agreed to however the meeting provided an opportunity for the objectors concerns to be discussed with the Councillors in attendance and helped inform the preparation of this report. 				
Key reasons for support	The use of the land for a residential village will be limited by a sunset clause condition, which will provide flexibility for the use of the building, while retaining the original use of the building as student accommodation.				
Recommendation:	A Notice of Decision to Grant an Amended Planning Permit be issued for the proposal.				

Officer Recommendation

That a Notice of Decision to Grant an Amended Planning Permit No. MPS/2010/427/B be issued for the construction and use of a five-storey building that contains a residential building (student accommodation), residential village, a shop, associated floodlit signage and waiver of the standard car-parking requirements at 6 Hope Street, Brunswick, subject to the following conditions (**new condition bolded**):

- 1A Before the use 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 10 July 2020) but modified to show:**
- a) **Any changes required by the Green Travel Plan in accordance with Condition 15 of this permit.**
 - b) **Any changes required by the Acoustic Report in accordance with Condition 19 of this permit.**
 - c) **Any changes required by the Waste Management Plan in accordance with Condition 21 of this permit.**
1. Before the use and development commences, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans advertised but modified to show:
- a) The bicycle storage area to be increased in size to accommodate the 22 bicycle spaces.
 - b) The bicycle store room also accessible from the adjacent right-of-way through an external door at least 850mm wide and any internal door between this entry and the bicycle room is to be automatic.
 - c) Balconies of 5-7,10-12,15-17,19-21 all to adopt the "Typical balcony plan alternative."
 - d) Modification of the apartments to comply with condition 3 of this permit and an accompanying statement from the author of the Equal Access P/L "Accessibility Report for 6 Hope Street Brunswick for Peter L Brown Architects P/L 28 April 2010" report or other suitably qualified professional confirming that the requirements of condition 3 have been satisfied.
 - e) Balcony of dwelling 4,9,14 to not extend beyond the southern title boundary.
 - f) Amend the ESD management plan as required by condition 10.
 - g) Location of clothes drying facilities indicated.
 - h) Waste bin storage room, with dimensions, increased in size to accommodate seven 240 litre garbage bins and seven 240 litre recycling bins in a manner where a resident does not have to reach over one bin to access another bin.
 - i) The location of any air-conditioning units and other plant equipment, including any screening.
 - j) A schedule of all proposed exterior decorations, materials, finishes and colours, including colour samples (3 copies in a form that can be endorsed and filed).
2. The use and development as shown on the endorsed plan(s) must not be altered or modified unless with the further written approval of the Responsible Authority.

3. The location, dimensions, shape and associated structures of every sign must accord with the endorsed plans and must not be altered, unless with the consent of the Responsible Authority.
4. In association with the recommendations on Page 3 "Accessibility Report for 6 Hope Street Brunswick for Peter L Brown Architects P/L 28 April 2010" 10 per cent of apartments are adaptable in accordance with the applicable Australian Standard and apartments 100 per cent visitable.
5. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.
6. Prior to the commencement of construction or carrying out works pursuant to this permit, or any works associated with a sensitive use, or 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 off site 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.
7. If in accordance with condition 6 of this permit, an Environmental Audit is required, prior to the commencement of construction or carrying out works pursuant to this permit, 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.

8. Prior to any remediation works being undertaken in association with the Environmental Audit, a 'remediation works' plan must be submitted to and approved by the responsible authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of a Certificate or Statement of Environmental Audit.
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 (Moreland City Council, City Infrastructure Department).
10. Before the development commences, an amended report to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. The Environmentally Sustainable Development (ESD) Management Plan must be in accordance with Sustainability Statement submitted 16 July 2010, but modified to show:
 - a) All initiatives are to be annotated on plans.
 - b) Further details of ESD initiatives:
 - i. Information about natural cross ventilation;
 - ii. Information about low VOC paints;
 - iii. A full STEPS report;
 - iv. Information about initiatives in commercial areas.
 - c) Building management, maintenance and monitoring schedule.
11. All works must be undertaken in accordance with the endorsed Environmentally Sustainable Development (ESD) Management Plan to the satisfaction of the responsible authority. No alterations to the ESD Management Plan may occur without written consent of the responsible authority.
12. Prior to the occupation of any dwelling approved under this permit, a report from the author of the Environmentally Sustainable Development (ESD) Management Plan 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 Environmentally Sustainable Development (ESD) Management Plan have been implemented in accordance with the approved Plan.
13. The amended plans are to show the bicycle room increased in size to hold the required 22 parking racks and show the dimensions of the room, dimensions of the bicycle parking areas and dimensions of the accessways in a manner that accords with the specifications in Bicycle Victoria's Bicycle Parking Handbook, to the satisfaction of the Responsible Authority.

14. Bicycle signage at least 300mm wide and 450mm high showing a white bicycle on a blue background must be erected directing cyclists to the location of the bicycle parking as required by Clause 52.34-5 of the Moreland Planning Scheme.
15. **Prior to the endorsement of plans under Condition 1A, a Green Travel Plan in relation to the residential village use, prepared by a suitably qualified person outlining site-specific initiatives and actions to encourage the use of more sustainable transport options, must be submitted to the satisfaction of the responsible authority. At the commencement of the residential village use, the Green Travel Plan approved as part of this permit must be implemented until such time as the residential village use ceases. Ongoing implementation, management and monitoring of the Plan must be undertaken to the satisfaction of the Responsible Authority to ensure ongoing commitments to alternative modes of transport are met.**
16. 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.
17. **Within 6 months of the date of issue of this amendment permit, an agreement under Section 173 of the *Planning and Environment Act 1987* must be entered into between the owner and the responsible authority in a form satisfactory to the responsible authority including:**
 - a) **That the building can be used for a residential village for 3 years from the date of issue of the amended permit.**
 - b) **That tenants of the residential village must vacate the building within 2 months of the end of the three-year expiry for the residential village.**
 - c) **That the building only be used for Student Accommodation after the three-year expiry of the residential village.**
 - d) **A requirement that the owner pay the costs of the responsible authority in relation to the agreement.**
18. Prior to the commencement of the development approved by this permit, a report prepared by a qualified Acoustic Engineer must be submitted to the satisfaction of the responsible authority outlining specific noise attenuation measures to ensure residents are not unreasonably affected by external noise sources from the adjoining business at 8 Hope Street. Construction and maintenance of the buildings must be in accordance with the recommendations contained in this report to the satisfaction of the Responsible Authority.
19. **Prior to the endorsement of plans under Condition 1A of this permit, a report prepared by a qualified Acoustic Engineer must be submitted to the satisfaction of the responsible authority that assesses the noise levels experienced from various sensitive locations within the building including spaces most likely to be exposed. The report must outline whether the noise impacts from the adjoining business at 8 Hope Street have been adequately attenuated as required by Condition 18 of this permit and in accordance with SEPP N-1 (Control of Noise from Commerce, Industry and Trade). In the event the noise levels experienced within the building do not meet SEPP N-1 criteria, recommendations are to be outlined to retrofit the building to bring it into compliance to the satisfaction of the responsible authority.**
20. Prior to the commencement of the development a stormwater drainage plan and calculations showing a detention system and how the site will be drained to the point of discharge stated in LPOD/2010/274 previously issued to the applicant, must be submitted to and approved by and constructed under the supervision of, the responsible authority.

21. **Prior to the endorsement of plans, a Waste Management Plan (WMP) must be submitted to the satisfaction of the Responsible Authority. The WMP must include, but not limited to the following:**
- a) **A description of ease of disposal for residents that does not disadvantage recycling;**
 - b) **Confirmation that educational material will be displayed in the waste bin storage area explaining what material can be recycled;**
 - c) **Calculations showing the amount of garbage and recycling expected to be generated;**
 - d) **A statement of whether the garbage, hard waste and recycling will be collected by Council or a private collection, stating the size of bins, frequency of collection and hours of collection;**
 - e) **Include a plan showing the location of the bin storage area on the site and details of screening from public view;**
 - f) **Include a dimensioned plan showing the storage area is sufficient to store the required number of bins in a manner that allows easy access to every bin;**
 - g) **Detail the ventilation to prevent garbage odours entering the car park and/or dwellings;**
 - h) **Detail the ease of taking the fully loaded waste bins to the point of waste collection;**
 - i) **State where and when the bins will be placed for waste collection;**
 - j) **Confirm that the bins will be removed from the street promptly after collection; and**
 - k) **Include a plan showing where the waste trucks will stop to service the waste bins and state whether No Parking restrictions will be required for the waste trucks to access that space (eg 6am-midday, Wed).**

When submitted and approved to the satisfaction of the Responsible Authority, the WMP will be endorsed to form part of this permit. No alterations to the WMP may occur without the written consent of the Responsible Authority.

22. A mailbox, with separate aperture for newspapers and other non-mail articles must be provided for each of the premises at the street frontage. The mailbox dimensions, placement and numbering must comply with the Australia Post – General Post Guide 2004 (Point G4.3) as published on its website to the satisfaction of the responsible authority.
23. Prior to the occupation of the development all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land (including all existing and new buildings) must be underground to the satisfaction of the Responsible Authority.
24. Unless with the 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.
25. Every sign on the land must be maintained in good condition to the satisfaction of the Responsible Authority.
26. In the event that the adjacent land to the east is developed, the sign on the eastern boundary wall must be removed and the wall cleaned and finished to the satisfaction of the Responsible Authority.

27. **This permit will expire if one of the following applies:**
- a) **The residential village use is not commenced within two years from the date of issue of this amended permit.**
 - b) **The residential building and shop uses are not commenced within four years from the date of issue of this amended permit.**

The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or within six months afterwards.

28. The approval of the sign will expire fifteen years from the date of issue of the permit, prior to which time the sign and any supporting structure must be removed and the building surface or land made good to the satisfaction of the Responsible Authority.

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

Notes: 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, being Lot 1 on Title Plan 241023E and Lot 2 on Title Plan 942974N, known as 6 Hope Street, Brunswick. The site is 'L-shaped' with a frontage of 7.33 metres to Hope Street, a frontage of 3.08 metres to Little Breese Street and a combined maximum depth of 45.57 metres. The site has an overall area of 341 square metres. The subject site is currently occupied by the five-storey student accommodation building approved by Planning Permit MPS/2010/427. There are currently no car parking spaces provided on site.

There are no restrictive covenants indicated on the Certificate of Title. However, Condition 15 of Planning Permit MPS/2010/427 required a S173 agreement be entered into between the owner and Responsible Authority to ensure the building only be used for student accommodation. This S173 agreement is yet to be entered into and will be discussed later in this report.

Surrounds

The subject site is located within the Brunswick Activity Centre. The surrounding area is characterised by a mix of residential, commercial and industrial premises that range from one to seven storeys in height.

To the immediate north of the subject site at 2 Hope Street, Brunswick is a seven-storey apartment building. Vehicle access is provided to the site via Little Breese Street.

Land to the east of the site at 4 Hope Street, Brunswick is currently used as a privately-owned car park. This property has an expired planning permit (MPS/2014/285), that allowed a five-storey apartment building.

To the immediate south of the site at 3-5 Hope Street, Brunswick is a single storey building that is used for motor repairs.

To the immediate west of the site at 8 Hope Street, Brunswick is a six-storey apartment building. Vehicle access is provided to the site via Hope Street.

A location plan forms **Attachment 1**.

The proposal

This amendment seeks to change the use of the land from student accommodation to a residential village, with the associated reduction in car parking. No buildings and works are proposed as part of this amendment.

The development plans form **Attachment 2**.

Planning Permit and site history

- Planning permit MPS/2010/427 was issued on 25 January 2011 for the construction and use of a five-storey building as a residential building (student accommodation) for 22 student apartments, an office and waiver of the standard car parking requirements. Plans were endorsed on 5 April 2011.
- An amendment pursuant to Section 72 was approved on 18 March 2016 and allowed changes to the building design and layout and altered the use of the ground floor from an office to a shop.
- The development approved by the above permits has been completed on the site.

- There is an active enforcement case against the owner of the site after a complaint was received about a private rental advertisement that did not relate to student accommodation. It was also found that the S173 agreement was drafted but not executed on title.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Commercial 1 Zone	<p>A planning permit is not required for the proposed change of use to a residential village.</p> <p>Accommodation (Residential Village) is a Section 1 use in the zone, meaning that a permit is not required for the use.</p> <p><i>Note: Clause 73.03 defines Residential Village as:</i> <i>‘Land, in one ownership, containing a number of dwellings, used to provide permanent accommodation and which includes communal, recreation, or medical facilities for residents of the village’.</i></p> <p>No buildings and works are proposed as part of this amendment.</p>
Car Parking	<p>A planning permit is required to reduce the car parking requirement from 22 spaces to 0 spaces in association with a residential village.</p>

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. A levy is not required to be paid as there is no increase in floor area.
- Clause 45.09: Parking Overlay

2. Internal/External Consultation

Public notification

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

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

Council has received 5 objections to date. A map identifying the location of objectors forms **Attachment 1**.

The key issues raised in objections are:

- Student Accommodation Use
- Car Parking
- Traffic Impacts
- Poor internal amenity for a permanent residence
- Inadequate noise attenuation to existing building
- Amenity of the common room
- Residential Village Use
- Removal of S173 Agreement

A Planning Information and Discussion meeting was held on 9 March 2021 and attended by Cr James Conlan, Cr Helen Pavlidis-Mihalakos and Cr Oscar Yildiz, two Council Planning Officers, the applicant and the owner. No objectors attended the meeting. The meeting provided an opportunity to explain the application, provided an opportunity for the objectors concerns to be discussed with the Councillors in attendance and for the applicant to respond.

Internal referrals

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

Internal Branch/Business Unit	Comments
Sustainable Built Environment - Development Engineering Team	Supports the proposal. Council's Development Engineers recommended a Waste Management Plan be conditioned to ensure the waste storage area is adequate for the new use. Recommended changes are addressed by conditions of the recommendation and are considered further in Section 4 of this report.

3. Policy Implications

Planning Policy Framework (PPF):

The following policies are of most relevance to this application:

- Municipal Planning Strategy (Clause 2), including:
 - Vision (Clause 2.02)
 - Settlement (Clause 2.03-1)
 - Housing (Clause 2.03-5)
 - Transport (Clause 2.03-7)
- Settlement (Clause 11)
- Environmental Risks and Amenity (Clause 13):
 - Noise Abatement (Clause 13.05-1S and 13.05-1L)
- Residential Development (Clause 16.01), including:
 - Housing Supply (Clause 16.01-1S and 16.01-1R)
 - Homes in Moreland (Clause 16.01-2L)
 - Student Accommodation (Clause 16.01-1L)
- Transport (Clause 18), including:
 - Sustainable Personal Transport (Clause 18.02-1S & 18.08-1R)
 - Sustainable Transport in Moreland (Clause 18.02-1L)
 - Car parking (Clause 18.02-4S & 18.02-4L)

Human Rights Consideration

This application has been processed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006, including Section 18 (Taking part in public life)*. In addition, the assessment of the application has had particular regard to:

- Section 12: Freedom of movement

- Section 13: Privacy and Reputation
- Section 20: Property rights

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

4. Issues

The Applicant has stated that the amendment is being sought due to the declining demand for student accommodation during the COVID-19 pandemic, which has resulted in a high level of vacancy within the building, that is causing financial stress for the owner. As a result, the amendment seeks to allow tenants, other than students, to occupy the building, which provides for diversity and affordable accommodation that is usually limited to students.

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

Does the proposal have strategic policy support?

Both State and local planning policies support increased residential densities in Activity Centres, to take advantage of the excellent access to public transport and other services within these locations.

Does the proposal meet the objectives of the Planning Policy Framework (PPF)?

The temporary use of the land for a residential village will allow the existing building to be utilised by more sectors of the community than just students. This improves the diversity of housing choice in the area in accordance with Clause 2.03-5. The retention of student accommodation in a location supported by Clause 16.01-1L (Student Accommodation) given its location within an Activity Centre and with convenient access to public transport is also considered to be an appropriate outcome for the site. Given that the building has been designed for student accommodation and not dwellings, along with the fact that there is no car parking provided on site, it is considered that a three-year limit on the residential village use will allow flexibility for the use of the building during the COVID-19 pandemic without allowing the use to change permanently in a building that has not been designed to be used as dwellings.

Does the proposal provide acceptable internal amenity?

There are no design standards for a residential village in the planning scheme, and while the residential village use is as of right, it is reasonable to consider internal amenity in the context of amending the existing planning permit to facilitate this use in the existing building. Consideration has been given to a previous VCAT decision to develop the land at 4 Hope Street, adjacent to the site.

The VCAT decision of *Hope St Student Accommodation Pty Ltd & Galbuwti Pty Ltd*, considered the appropriateness of a five-storey apartment building on the adjoining property (4 Hope Street, Brunswick). This decision noted that the inward facing student rooms at 6 Hope Street have compromised internal amenity, which will be worsened should No. 4 Hope Street, Brunswick be redeveloped. At paragraph 16, the Tribunal noted that:

“ ...

This proposal will impact the amenity of student housing for tertiary students, as compared to permanent dwellings. Student housing is not permanent housing, it is used for a transitional period for students, who may spend a significant part of the year living elsewhere, and who will use the student housing as a ‘base’ while spending much time elsewhere in study and social activities.

The review site and adjoining property are both located within the Commercial 1 Zone, where a lower level of residential amenity is expected as a result of the mix of uses that prevail, as compared to the suite of residential zones.

...”

This proposal seeks to make the accommodation permanent, by changing the use from student accommodation to residential village. It would be an unacceptable planning outcome, to allow permanent dwellings in this building, given the lower level of internal amenity. Whilst the planning permit for 4 Hope Street has since expired, there is a possibility that the adjoining site (currently an open car park) will be re-developed, which will further compromise the internal amenity of the building.

Having regard to other aspects of the accommodation which contribute to the amenity of future residents, it is noted that balconies are provided for each room, ranging in size between 2.8 square metres to 7.9 square metres. These sizes are smaller than what would be required if Clause 58 was applicable to the proposal but having regard to the fact that the residential village use will only be permitted for a fixed period, and a balcony isn't mandated for this use, it is considered an acceptable outcome.

The apartments have not been provided with external storage spaces. However, it is considered that there is adequate space inside the apartments for storage, considering the temporary nature of the one-bedroom dwellings within the residential village.

Has adequate car parking been provided?

A total of 22 car parking spaces are required for the residential village. The development provides no on-site car parking spaces and therefore a complete waiver of car parking is sought.

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

- within and close to activity centres
- with excellent access based on frequency and location to a range of public transport options
- with increased provision of bicycle parking above the rates specified in Clause 52.34.

A complete waiver of the standard car parking requirements is considered acceptable in this location as:

- The proposal is located within the Brunswick Activity Centre and has excellent access to public transport including Anstey Station and nearby tram stops along Sydney Road.
- The development provides 22 bicycle parking spaces, which exceeds the statutory requirement at Clause 52.34 and has excellent access to bicycle routes.
- Council's Development Engineers are satisfied that car parking requirement can be waived for this application.
- The site is within at least a 180 metre walk to the nearest car share vehicle, for the occasions when residents require a car.
- While a residential village caters for a broader range of residents who may be more likely to require a car, the use of the land for a residential village is temporary and is in an ideal location to provide no on-site car parking spaces. By providing no car parking spaces, the development promotes the use of alternative modes of transport.

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. A condition will require a Green Travel Plan be provided to ensure ongoing commitment to encouraging sustainable modes of transport.

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

In relation to traffic impacts, Council's Development Engineers have assessed the proposal and consider that no unreasonable additional traffic will be generated from the site onto the local street network by the new use. This amendment is therefore not expected to cause traffic problems.

5. Response to Objector Concerns

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

- Car Parking
- Traffic Impacts
- Poor internal amenity for a permanent residence
- Residential Village Use

Other issues raised by objectors are addressed below.

Student Accommodation Use

Several objectors raised concern about the building being converted into student accommodation. However, Planning Permit MPS/2010/427 allowed the construction and use of the building for student accommodation. This use is already approved by the permit and cannot be reconsidered as part of this application to amend the permit. As discussed in this report, the student accommodation use will be retained as part of the permit.

Inadequate noise attenuation to existing building

Condition 17 of Planning Permit MPS/2010/427/A required an Acoustic Engineer to confirm that residents of the building are not unreasonably affected by external noise sources. This report was endorsed on 8 June 2012. However, an objector has stated that noise complaints have been received to nearby businesses from residents of the building, which indicates that the noise attenuation of the building may be inadequate. A condition will therefore require an acoustic report to determine whether any further noise attenuation measures are needed.

Amenity of the common room

The common room provides a communal area with kitchen facilities and a balcony. The amenity of the common room is considered adequate given it provides a good outlook to Hope Street and would provide an adequate space for residents to use.

Removal of S173 Agreement

As a result of the proposed change of use to a residential village, condition 16 of Planning Permit MPS/2010/427/A would require the amendment of the Section 173 agreement. Condition 16 will be amended to include the timeframe of 3 years for the residential village use and require the S173 agreement be entered into within 6 months of issue of the amended permit.

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 conditions of approval, including limiting the timeframe for the residential village use, the proposed amendment appropriately balances the need to provide greater flexibility for the use of the building without comprising the amenity of occupants of the building or surrounding residents and businesses.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant an Amended Planning Permit No MPS/2010/427/B should be issued subject to the conditions included in the recommendation of this report.

Attachment/s

- | | | |
|-------------------|--|-----------|
| 1 | Objector Location Map - 6 Hope Street, Brunswick | D21/59314 |
| 2 | Advertised Plans - 6 Hope Street, Brunswick | D21/59323 |

5.2 9-21 WILSON AVENUE, BRUNSWICK - PLANNING APPLICATION MPS/2020/213

Director City Futures, Kirsten Coster

City Development

Executive Summary



Property:	9–21 Wilson Avenue, Brunswick			
Proposal:	Buildings and works in association with the staged construction of a multi-storey development plus roof terrace and basement car park. Use of the land for dwellings Reduction in the car parking requirement under clause 52.06 Removal of easements			
Zoning and Overlay/s:	<ul style="list-style-type: none"> Commercial 1 Zone Development Contributions Plan Overlay (DCPO) Parking Overlay (PO1) Design and Development Overlay (DDO18) Environmental Audit Overlay 			
Strategic setting:	Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth
VCAT Appeal:	<ul style="list-style-type: none"> Applicant has lodged an appeal against Council’s refusal to grant a permit. This report details assessment of the ‘without prejudice’ amended plans and an agreement reached as a result of the compulsory conference. The ‘without prejudice’ amended plans increase the setback at level 6 by 2.2 metres and level 7 by 0.8 metres. The parties to the Appeal have signed a Heads of Agreement outlining the terms of settlement which include a new condition to have the rear lane upgraded and the condition relating to the Wilson Avenue public works requirements reworded. Settlement of the matter is now subject to Council approval. 			
Objections:	<ul style="list-style-type: none"> 15 objections to the original application Key issues: <ul style="list-style-type: none"> Neighbourhood character and height Amenity impacts to neighbouring dwellings Impact on traffic flow in laneway 			
Parties to the Appeal	<ul style="list-style-type: none"> Four objectors submitted Statement of Grounds to the Victorian Civil and Administrative Tribunal (VCAT) appeal. Three of those parties attended the Compulsory Conference (or were represented), the fourth party did not attend and is not joined as a party to the proceeding. 			

ESD:	<ul style="list-style-type: none"> • Commitment to average NatHERS rating of 7.5 stars.
Accessibility:	<ul style="list-style-type: none"> • 83% meet the Silver Level Liveable Housing Design Guidelines • 55% will achieve compliance with Standard D17 (Accessibility)
Key reasons for support:	<ul style="list-style-type: none"> • Appropriate building envelope which subject to conditions achieves the objectives of DDO18 • Good level of compliance with Clause 58 • Delivery of new employment floorspace • Delivery of at least one affordable apartment • The 'without prejudice' amended plans reduce overshadowing to the properties to the south-west. • Public realm improvements will be added into the development outcome with the upgrading of the rear laneway.
Recommendation:	It is recommended that Council consents to the agreement reached, based on the conditions of this recommendation.

The Officer Recommendation set out below is the same as the conditions contained in the Planning and Related Matters report that was presented to Council on 21 October 2020, with the changes agreed to at the Compulsory Conference highlighted in **bold** font.

Officer Recommendation

That Council advises the Victorian Civil and Administrative Tribunal (VCAT) and all parties to the appeal that it consents to the issue of Planning Permit No. MPS/2020/213 in accordance with the terms of settlement reached at the Compulsory Conference on 26 February 2021 for the buildings and works in association with the staged construction of a multi-storey apartment development, use of the land for the purpose of dwellings, reduction in the car parking requirement and removal of easements at 9-13 and 15-21 Wilson Avenue, Brunswick, subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised 20 August 2020 but modified to show:
 - a) **Level 6 setback generally in accordance with the plan prepared by MA Architects TP905C dated 26 February 2021 (i.e. an additional setback of 2.2 metres from the southern boundary at the south western corner and associated reconfiguration to apartment layouts).**
 - b) **Level 7 setback generally in accordance with the plan prepared by MA Architects TP906C dated 26 February 2021 (i.e. an additional setback of 800mm from the southern boundary at the south western corner and associated reconfiguration to apartment layouts).**
 - c) Modifications to Level 6 and 7 of the building in accordance with the discussion plans received by Council on 1 October 2020, but further modified to:
 - i. Delete the roof projection over the level 7 balconies facing Wilson Avenue.
 - ii. Include a window on the east facing wall of Apartment 702.
 - d) A south facing window to the eastern bedroom of Apartments 310, 409, 507, 607 and 706. The east facing bedroom window of each dwelling may be retained if it is fixed shut and obscure glazed, or the east facing wall must show alternative detailing that suitably breaks down the mass of this wall.

- e) Canvas awnings between the columns facing Wilson Avenue, that project at least 1.5 metres beyond the title boundary, or another suitable awning or verandah projection to provide weather protection for pedestrians on Wilson Avenue. Any awning or verandah must be setback not less than 750mm from the kerb and at a height of not less than 3 metres above the level of the footpath.
- f) Textured or patterned pre-cast concrete to the east and west elevations of the northern building.
- g) Wire trellis to the east elevation of the northern building, to support climbing plants. Details of the wire pattern and fixing points should be shown.
- h) An amended schedule of all proposed exterior decorations, materials, finishes and colours, including colour sample images. The schedule must include:
 - i. Any sustainable materials committed to in the endorsed Sustainable Management Plan, which could be present in the external building envelope; and
 - ii. Details of the concrete finish required by Condition 1d.
- i) Each material labelled on the elevations, clearly showing the material selection for all parts of the building.
- j) The privacy shelves depicted on "Screen Detail Plan" noted on the relevant floor plans.
- k) The three 'live/work units' at ground floor converted to 'office' or 'retail'.
- l) The balconies to dwelling types A, B, E and M modified to comply with Standard D19 of Clause 58.05-3 of Moreland Planning Scheme, with all measurements taken from the internal edge of the balcony balustrade.
- m) Type B dwellings modified to provide access to the balcony directly from the living room, rather than via the bedroom.
- n) Type F dwellings amended to comply with Standard D24 'Functional Layout' of Clause 58.07-1 of Moreland Planning Scheme.
- o) Type B, D and L dwellings modified to provide additional storage, to comply with Standard D20 of Clause 58.05-4 of Moreland Planning Scheme.
- p) A plan showing the removal of party wall easements (the land marked B and C on Lot 3 and marked C on Lot 2 on Plan of Subdivision 125486).
- q) Modifications as follows to comply with Standard D17 'Accessibility' of Clause 58.05-1 of the Moreland Planning Scheme:
 - i. Type A dwellings modified to show an 850mm wide bathroom door that either opens outwards or is sliding; and a clear circulation area in front of the shower that is 1.2 by 1.2 metres.
 - ii. Type F dwellings modified to show the toilet located closest to the bathroom door and a bathroom door that opens outwards or is sliding.
 - iii. Type L dwellings modified to show bathroom doors with readily removable hinges; a clear circulation area in front of the shower that is 1.2 by 1.2 metres; and a 1.2 metre wide clear path of travel to the main bedroom (i.e. the larger bedroom).
 - iv. The bathroom of Type N dwellings modified to show the shower located opposite the door and the toilet closest to the door, or other suitable modification to comply with 'Table D4: Bathroom Design' of Standard D17.

- r) Bicycle Parking arrangements amended as follows:
 - i. Each bicycle parking device in the basements 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).
 - ii. The double tier bicycle parking racks dimensioned to provide bicycle parking spaces 1800mm long, 500mm wide and 1200mm high on both levels as required by the Australian Standard for Bicycle Parking (AS2890.3).
 - iii. A notation that the bicycle storage room on the ground floor is to have self-closing and self-locking doors or gates that are only accessible using keys, codes or swipe cards in accordance with the Australian Standard for Bicycle Parking (AS2890.3).
 - iv. Demonstration that the lifts can accommodate two cyclists with standard sized bicycles.
 - v. Ensure the number bicycle spaces shown on the development plans matches the development schedule and Sustainability Management Plan.
- s) Any modifications required to align with the landscape plan required by Condition **13** of this permit.
- t) The Environmentally Sustainable Design initiatives as contained within the Sustainable Design Assessment required by Condition **21** of this permit, which should include:
 - i. Size and location of the rainwater tank/s as per the amended stormwater management response; and
 - ii. Any other ESD initiatives as per Condition **21**.
- u) Acoustic attenuation measures as recommended in the acoustic report required by Condition **28** 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.

Public Works

- 3. **If, prior to the commencement of the development, Council has resolved not to pursue the 'Wilson Avenue Stage 2 Streetscape Improvements', then a Public Works Plan and associated construction drawing specifications detailing the works to the land must be submitted prior to commencement and be to the satisfaction of the Responsible Authority. The Plan must be in accordance the Moreland City Council Technical Notes July 2019 or any updated version and detail works in front of the approved building and include:**
 - a) **A detailed level and feature survey of the footpaths and roads, immediately in front of the site.**
 - b) **The existing crossovers at the site removed and the kerb and channel and footpath reinstated.**
 - c) **The public footpath is to be reinstated with the standard crossfall slope of 1 in 40 from the top of roadside kerb to the property boundary, with any level difference made up within the site.**

- d) **The provision of street tree planting (3no. street trees) and street furniture (5no. bicycle hoops).**

When submitted and approved to the satisfaction of the Responsible Authority, the Public Works Plan will be endorsed to form part of the permit.

If the 'Wilson Avenue Stage 2 Streetscape Improvements' are not pursued by Council, the endorsed Public Works Plan must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, prior to the issuing of a Statement of Compliance or Certificate of Occupancy for each stage of the development, whichever occurs first, unless otherwise agreed with the prior written consent of the Responsible Authority.

4. **If the 'Wilson Avenue Stage 2 Streetscape Improvements' have been substantially completed by Council prior to the occupation of each stage of the development, then prior to the issuing of a Statement of Compliance or Certificate of Occupancy for each stage of the development, whichever occurs first, the owner of the land must:**
- a) **Reinstate any public works damaged during construction of the development to the satisfaction of the Responsible Authority; and**
 - b) **Remove any redundant vehicle crossovers that remain and construct any remaining road works and landscaping in this location in accordance with the Functional Layout Plan identified as drawing number M1094 prepared by CRE Consulting Engineers dated September 2020,**
- at the expense of the owner to the satisfaction of the responsible authority, unless otherwise agreed to with prior written consent of the responsible authority.**
5. **If the 'Wilson Avenue Stage 2 Streetscape Improvements' proposed by Council have not commenced by the time each stage of the development has been completed, then prior to the issuing of a Statement of Compliance or Certificate of Occupancy for each stage of the development, whichever occurs first, the owner of the land must:**
- a) **Remove any existing vehicle crossings at the site and reinstate the kerb, channel and footpath; and**
 - b) **Undertake any works to reinstate all public assets to their previous condition, or better**
- to the satisfaction of the responsible authority.**
6. **Prior to works commencing, engineering construction plans are to be submitted to the Road Authority for approval, for the construction of the northern portion of the rear laneway along its entire length, including widening of the vehicle crossing in Black Street. The plans are to show the northern edge of the existing constructed laneway saw-cut to a straight edge for the length of works, and show longitudinal and cross-sectional levels of the laneway, the abutting private property and the proposed matching ground levels inside the site, with the new pavement dowelled to the existing pavement.**
7. **Prior to the issuing of a Statement of Compliance or Certificate of Occupancy for each stage of the development, whichever occurs first, the northern portion of the rear laneway is to be constructed in accordance with engineering construction plans approved by, and under the supervision of, the Road Authority.**

Engineering

8. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).
9. Stormwater from the land must not be directed to the surface of the laneway to the satisfaction of the Responsible Authority.
10. Prior to the commencement of the development, a legal point of discharge is to be obtained, and where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge, must be submitted to and approved by the Responsible Authority.
11. Prior to the issuing of a Statement of Compliance or Certificate of Occupancy for each stage of the development, whichever occurs first, 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.
12. Prior to the issuing of a Statement of Compliance or Certificate of Occupancy for each stage of the development, whichever occurs first, all car parking spaces must be marked with the associated apartment or shop number to facilitate management of the car park to the satisfaction of the Responsible Authority.

Landscape plan

13. Prior to the endorsement of plans, an amended landscape plan must be submitted to the Responsible Authority. The landscape plan must be generally in accordance with the plan prepared by MUD Office Landscape Design and dated 12 June 2020, but amended to show:
 - a) The addition of two open-form evergreen trees within the central courtyard;
 - b) Landscaping to the eastern terrace of Apartment 210 (level 2), including climbers that run up the eastern wall of the building;
 - c) Details of how the climbers required by Condition 9b will be supported, including details of wires affixed to the eastern wall, automated irrigation and soil depths;
 - d) Details of any landscaping to the eastern terrace of Apartment 602, as shown in the discussion plans dated 1 October 2020;
 - e) Sectional diagrams of all planters, ensuring a minimum 700mm soil depth is achieved to any areas with canopy trees;
 - f) The landscape maintenance period extended from 2 weeks to 13 weeks, including a defects liability period to ensure the plants successfully establish, with any dead plants to be replaced;
 - g) Details of a maintenance program of the landscaping and irrigation, including responsibility for maintenance; and
 - h) Any stormwater management details on the STORM report (which forms part of the endorsed Sustainable Management Plan) including rainwater harvesting tank size and location.

When submitted and approved to the satisfaction of the Responsible Authority, the landscape plan will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

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

15. All landscaping and associated infrastructure shown on plans endorsed under this permit must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed landscape plans. Any dead, diseased or damaged vegetation must be replaced to the satisfaction of the Responsible Authority.

Affordable Housing Contribution

16. Prior to the issuing of a Statement of Compliance or Certificate of Occupancy for the Stage 1 of the development, whichever occurs first, an agreement under Section 173 of the *Planning and Environment Act 1987* must be entered into between the Owners of the land and the Responsible Authority in a form satisfactory to the Responsible Authority requiring:
 - a) An affordable housing contribution of \$415,000, which is to be put towards the purchase of at least one dwelling within the approved development by a registered affordable housing provider, within the timeframe specified in Condition 12(c);
 - b) The affordable housing contribution of \$415,000 shall be indexed on 1 July each year in accordance with CPI;
 - c) Within 12 months of the issuing of a Statement of Compliance or Certificate of Occupancy for the development of Stage 1, the affordable housing dwelling(s) must be transferred to a registered housing agency as defined in the *Housing Act (1983)* unless with the prior written consent of the Responsible Authority;
 - d) The affordable housing dwellings must be used for the purpose of providing affordable housing for a period of at least 10 years;
 - e) If an affordable housing provider cannot be obtained, an alternative affordable housing contribution of the same value may be made to the Moreland Housing Reserve, only following a reasonable attempt to provide the affordable housing contribution set out in Condition 1(a);
 - f) A mechanism that requires the Owner to provide evidence of compliance with the Section 173 Agreement at the request of the Responsible Authority.

The Owner must do all things necessary to enable the Responsible Authority to register the agreement with the Registrar of Titles in accordance with section 181 of the Act and pay to the Responsible Authority its costs and disbursements incurred in relation to the negotiation, preparation, execution and registration of the agreement on the certificate of title to the land.

Development Contributions

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

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

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

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

Potential Contamination

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

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

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

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

19. Prior to any remediation works (if required) being undertaken in association with the Environmental Audit, a 'remediation works' plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of a Certificate or Statement of Environmental Audit.
20. No works to construct the development hereby approved shall be carried out on the land and no building contract to construct the development hereby approved may be entered into, other than in accordance with a building contract that stipulates that works must not be commenced until such time as Conditions 14 and 15 are satisfied.

Environmentally Sustainable Design

21. Prior to the endorsement of plans, a Sustainability Management Plan (SMP) must be submitted 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 Urban Digester dated 08/04/2020, but modified to include the following changes:
- a) No longer claim Management credit 1.1 'Pre-application meeting'.
 - b) Provide completed preliminary energy rating for all thermally unique dwellings including complete preview energy rating certificates that demonstrate that a 7.5-star average energy rating will be achieved across the development. The preliminary energy ratings must demonstrate that the maximum cooling load as specified in Table D1 of Clause 58.03 (30MJ/sqm) has not been exceeded.
 - c) Provide evidence to support the Energy Deemed-to-satisfy Method in the form of either:
 - i. A copy of the NCC glazing calculator showing glazing performance characteristics (U-value, SHGC) of the commercial space that achieve 10 per cent improvement above NCC; or
 - ii. If the JV3 method is chosen as the compliance pathway; then a modelling report demonstrating that the proposed building fabric as modelled with the reference building services achieves a 10 per cent improvement above the reference buildings heating and cooling energy consumption. The 10 per cent improvement cannot be offset by solar PV.
 - d) Demonstration of best practice stormwater management as per clause 22.08 by amending the on-site stormwater management response that maintains a minimum STORM score of 100 per cent but is modified so that:
 - i. Stormwater collection from balconies is excluded, or (should balconies need to be collected from) provide more details on the potential water contaminants resulting from the expected use of the areas of collection, the relevant water treatment measures proposed upstream and downstream the tanks, and their effectiveness in achieving the required water quality suitable for the end use. If stormwater from balconies is collected, a maintenance plan, stating periodic actions, requirements and responsibilities must be provided.
 - ii. Planter boxes are categorised as an impervious area in STORM and are not listed as 'buffer strip' treatment or categorized as permeable area if supporting evidence is provided in the landscape plans demonstrating that planter boxes consist of deep soil/substrate planting (e.g. Soil depth greater than 500mm).
 - iii. The 'tank water supply reliability' for the rainwater tank treatment type to be 100 per cent, which may require a larger rainwater tank.
 - e) Provide marked up natural ventilation pathways for all dwellings (bedrooms and living areas) to demonstrate how the 100 per cent was achieved or amend the percentage of dwellings that are effectively naturally ventilated in accordance with BESS definitions.
 - f) No longer claim innovation points for Biophilic design of public space and operations waste to landfill reduction.

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.

When submitted and approved to the satisfaction of the Responsible Authority, the amended Sustainability Management Plan and associated notated plans will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

22. Prior to the issue of a Statement of Compliance or Certificate(s) of Occupancy whichever occurs first, all works must be undertaken in accordance with the endorsed Sustainability Management Plan report to the satisfaction of the Responsible Authority. No alterations to these plans may occur without the written consent of the Responsible Authority.
23. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, for each stage of the development, a report from the author of the Sustainability Management Plan (SMP) approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm (and include appropriate evidence such as photos and receipts) that all measures specified in the SMP have been implemented in accordance with the approved plan.

Accessibility

24. Prior to the endorsement of plans, an Accessibility Report prepared by a suitably qualified person must be submitted to and approved to the satisfaction of the Responsible Authority. The report must be generally in accordance with the report prepared by Access Consultants dated 3 July 2020 (Project Number 11182) but updated to refer to the plans required by Condition 1 of this permit. 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.
25. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, for each stage of the development, a report from the author of the Access Plan, 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 Access Plan have been implemented in accordance with the approved Plan.

Waste Management

26. Prior to the endorsement of plans, a Waste Management Plan (WMP) generally in accordance with the WMP prepared by Ratio dated 9 April 2020, must be submitted to the satisfaction of the Responsible Authority. When submitted and approved to the satisfaction of the Responsible Authority, the WMP will be endorsed to form part of this permit. No alterations to the WMP may occur without the written consent of the Responsible Authority.
27. 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.

Acoustic Report

28. Prior to the endorsement of plans, an Acoustic Report prepared by a qualified Acoustic Engineer generally in accordance with the Acoustic Report prepared by Acoustic Logic 8 April 2020 must be submitted to and approved by the Responsible Authority.
29. The building must be constructed and maintained in accordance with the recommendations contained within the approved Acoustic Report to the satisfaction of the Responsible Authority. The Acoustic Report endorsed under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the written approval of the Responsible Authority.

30. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, for each stage of the development, a report from the author of the Acoustic Report approved pursuant to this permit or a similarly qualified person or company must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Acoustic Report have been implemented in accordance with the approved Acoustic Report.

Removal of easements

31. Prior to the commencement of the development, the permit holder must make application to Council under the *Subdivision Act 1988* to remove the party wall easements (the land marked B and C on Lot 3 and marked C on Lot 2 on Plan of Subdivision 125486).
32. Prior to the issue of a Statement of Compliance for the removal of easement, the boundary wall at 1-7 Wilson Avenue must be demolished, to the satisfaction of the Responsible Authority.

Boundary walls

33. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance of each stage of the development, whichever comes first, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

3D model

34. Prior to the commencement of the development, a 3D digital model of the approved development which is compatible for use on Council's Virtual Moreland tools and software for Council and community must be submitted to the satisfaction of the Responsible Authority. The model should be prepared in accordance with Moreland City Council's 3D model submission guidelines. A copy of the 3D model submission guidelines and further information on the Virtual Moreland Project can be found at <https://www.moreland.vic.gov.au/planning-building/3D-Guidelines/>. In the event that substantial modifications to the building envelope are approved under an amendment to this planning permit, a revised 3D digital model must be submitted to, and be to the satisfaction of the Responsible Authority.

Privacy screens to be installed and maintained

35. Prior to the issuing of Statement of Compliance or occupation of each stage of the development, whichever occurs first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.

Baffled Lighting

36. All lighting of external areas must be designed not to emit direct light onto adjoining property or properties on the south side of the Right of Way to the satisfaction of the Responsible Authority.

Retention of Architect

37. MAA or an equivalent Architect must be retained to complete and provide architectural oversight during construction of the detailed design as shown on the endorsed plans, to the satisfaction of the responsible authority.

Time

38. This permit will expire if one of the following circumstances applies:
 - a) The development of Stage 1 is not commenced within three (3) years from the date of issue of this permit;

- b) The development Stage 1 is not completed within five (5) years from the date of issue of this permit.
- c) The development of Stage 2 is not commenced within five (5) years from the date of issue of this permit;
- d) The development Stage 2 is not completed within seven (7) years from the date of issue of this permit.
- e) The use is not commenced within five (5) years from the date of issue of this permit.
- f) The plan of removal of easement is not commenced within two (2) years of the date of issue of this permit as evidenced by a plan of removal of easement being certified by the Council within that time.
- g) The Certified plan of removal of easement is not registered within five years from the date of the Certification of the Plan.

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

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

Notes

- No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
- 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.
- The City of Moreland is committed to creating an environmentally sustainable city. A critical component in achieving this commitment is to encourage new development to meet appropriate environmental standards. Applicants are encouraged to include environmentally sustainable design principles within new developments via the online BESS tool.
- The BESS tool is a sustainability assessment tool designed for planning assessments of all development types and sizes. Using the BESS tool involves entering data about the proposed design into the BESS assessment tool found at <http://www.bess.net.au>. BESS will produce a report for submission to Council and is free for applicants to use. This allows applicants to design more environmentally sustainable developments. For more information or help on ESD or BESS please contact Council's Sustainable Development Department on 9240 1188.
- 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.

Notes about environmental audits

- A copy of the Certificate or Statement of Environmental Audit, including the complete Environmental Audit Report must be submitted to the Responsible Authority within 7 days of issue, in accordance with Section 53ZB of the *Environment Protection Act 1970*.

- Where a Statement of Environmental Audit is issued for the land a copy of that Statement must be provided to any person who proposes to become an occupier of the land, pursuant to Section 53ZE of the *Environment Protection Act 1970*.
- The land owner and all its successors in title or transferees must, upon release for private sale of any part of the land, include in the Vendor's Statement pursuant to Section 32 of the *Sale of Land Act 1962*, a copy of the Certificate or Statement of Environmental Audit including a copy of any cover letter.
- 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 site is located on the southern side of Wilson Avenue between the Upfield Railway Reserve and Black Street in Brunswick. The combined lots are rectangular in shape with a frontage to Wilson Ave of 42.55 metres and a depth of 39.2 metres. The site area is approximately 1700 square metres.

The site is currently occupied by two attached single storey brick warehouses, constructed to the east and south boundaries with a one metre setback from the west boundary. Car parking areas are located within the front setback, accessed via two crossings from Wilson Avenue. There is limited vegetation within the front setback.

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

Surrounds

The site is located within the Brunswick Activity Centre, to the west of Sydney Road. Wilson Avenue has a width of approximately 18.2 metres, including the footpaths, and is a key pedestrian connection from Sydney Road to Jewell Railway Station. Wilson Avenue comprises of large lot sizes with wide street frontages, reflective of the former industrial land uses. On the opposite side of Wilson Avenue are medium density dwellings and commercial buildings which range in height from one to three storeys. Approval has been granted for an eight storey building at 6-8 Wilson Avenue.

East of the subject site is 1-7 Wilson Avenue, which is currently occupied by a warehouse building. Planning Permit MPS/2017/314 was issued at the direction of VCAT allowing the development of an eight storey building over a basement accessed from Black Street.

South of the site is an unnamed right of way (ROW), which runs east-west and has a width of 4.3 metres to 4.8 metres. South of the ROW at 311-315 Barkley Street is a double storey warehouse building used for motor vehicle repairs. Either side of 311-315 Barkly Street is a row of single and double storey terrace dwellings which front Barkly Street. These dwellings have their private open space adjoining the rear laneway and use the laneway for vehicle access.

West of the subject site is 25 Wilson Avenue, which is occupied by a single storey warehouse building used for indoor recreation. It is constructed to the boundary and contains windows on the boundary wall facing the subject site. Further west at 27 Wilson Avenue is an eight storey building which forms part of the Jewell Station development.

A location plan forms **Attachment 1**.

The proposal (as advertised August 2020)

Plans submitted with the planning permit application were advertised on 24 August 2020. The advertised proposal is summarised as follows:

- Construction of an eight-storey building of 26.57 metres (excluding lift-overrun and rooftop facilities) with a street-wall height of 18.62 metres and upper level setback to Wilson Avenue of 5 metres.
- The building is arranged in two eight storey blocks either side of a 9 metre wide open plaza running east-west, connected by an elevated walkway from two lift cores.
- Two levels of basement car parking contain 73 car parking spaces, 78 storage cages, 100 bicycle spaces and a 25,000 litre water-tank.

- Ground floor contains five shop tenancies and a food and drink premise (334m²), three offices (167m²), three live/work tenancies (234sqm) facing the rear laneway, a 5.5 metre pedestrian access from Wilson Avenue, a bicycle storage room containing 64 spaces and vehicle access via the ROW.
- Level 1 contains 14 live-work tenancies and an office of 56m².
- Levels 2-7 contain a total of 59 dwellings (2 one bedroom, 48 two bedroom and 9 three bedroom).
- A common terrace (88m²) and screened communal drying area (14sqm) will be provided at roof level.
- The material schedule includes red tinted and natural concrete, clear and obscure glazing, and natural anodized and red powder coated metal framing.

The advertised development plans form **Attachment 2**.

Planning and Related Matters Meeting

On 21 October 2020 the application was reported to the Planning and Related Matters (PARM) Council meeting for a decision. The officer recommendation was that the proposal be supported as outlined in the report tabled at the meeting. Council resolved to refuse the application on the following ground:

The building will unreasonably overshadow residential dwellings at 317, 319 and 321 Barkly Street, for 3-4 hours at the equinox, which is considered to be contrary to the design objective of Schedule 18 to Clause 43.02 which seeks to 'maintain reasonable amenity for residential properties within and adjacent to the activity centre'.

VCAT process

The permit applicant has lodged a review at the Victorian Civil and Administrative Tribunal (VCAT) against Council's refusal of the planning application (reference P1831/2020). A Compulsory Conference was held on 26 February 2021 and attended by Council officers, the permit applicant, their representative and objecting residents from 319 Barkly Street and 298 Barkly Street.

At the Compulsory Conference, 'without prejudice' plans were submitted by the applicant which included increased setbacks from the south boundary at levels 6 and 7 to the south-west corner of the building. At the Compulsory Conference all parties reached agreement that a permit should be granted for a development consistent with the without prejudice plans and subject to a set of agreed permit conditions as outlined in the Heads of Agreement signed by all parties.

The 'without prejudice' plans form **Attachment 3**. The permit applicant has given permission for these plans to be included as an attachment to this report.

The mediated proposal

The without prejudice plans consist of the following changes:

- The 7th floor (level 6) setback an additional 2.2 metres from the south boundary to the south-west corner of the proposed building for 17 metres.
- The 8th floor (level 7) setback an additional 0.8 metres from the south boundary to the south-west corner of the proposed building for 17 metres.

The parties to the Compulsory Conference also resolved that the rear lane which provides vehicle access to three development sites on Wilson Avenue should be upgraded. The applicant also requested that proposed Condition 3 be re-worded to better account for the unknown timing of the 'Wilson Avenue Stage 2 Streetscape Improvements' which is a Council Capital Works project.

The draft conditions as outlined in the officer's report dated 21 October 2020 with the agreed to changes have been signed and accepted by all parties and subsequently forwarded to the Tribunal.

The purpose of this report is to determine whether Council supports the proposed changes agreed to by the parties. If the changes are supported, a consent order can be issued.

If Council does not support the proposed changes, the matter will proceed to a full hearing on 19, 20 and 21 May 2021.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Commercial 1 Zone	A permit is required for the use of the land for ‘Dwelling’ because the frontage at ground level exceeds two metres (5.5 metres). A permit is required to construct a building or construct or carry out works.
Design and Development Overlay	Clause 43-02-2: A permit is required to construct a building or construct or carry out works.
Particular Provisions Clause 52.06	A permit is required for a reduction in the standard car parking requirement from 102 to 73 spaces.

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

- Clause 45.03: Environment Audit Overlay. A condition of the recommendation requires an Environmental Audit to be undertaken before the development commences, to ensure that the site is remediated to EPA required standard.
- Clause 45.06: Development Contributions Plan Overlay
- Clause 45.09: Parking Overlay
- Clause 53.18: Stormwater Management in Urban Development

2. Internal/External Consultation

Public notification

Council received 15 objections to the planning application when it was advertised in August 2020. The main concerns raised by these objectors included issues relating to the height, amenity impacts through overshadowing and overlooking, traffic and car parking, over development and a lack of commercial floor space.

Parties to the VCAT appeal

Initially, only two objectors sought to become a party to the VCAT appeal. However, another two objectors requested to join as late parties.

Two objectors (including one representing the third party) attended the VCAT Compulsory Conference.

Amended Plans

The ‘without prejudice’ amended plans increase setbacks to part of the building but do not make any other substantive changes to the built form. As such, the changes do not result in any material detriment and public notification was not required through the VCAT process.

Internal/external referrals

The proposed changes as outlined in the Heads of Agreement from the Compulsory Conference were referred to the following internal branches/business units:

Internal Branch/Business Unit	Comments
Urban Design Unit	The Urban Design unit have reviewed the proposed changes to the condition(s) relating to the Wilson Avenue Streetscape Improvements. The Urban Design unit support the updated conditions addressing this matter.
Sustainable Built Environment - Development Engineering Team	<p>The Development Engineering Team were consulted on the proposal to have the rear lane re-surfaced. The resurfacing of the existing concrete laneway was not supported as this would change the existing site levels (increase the height) and make it problematic for vehicles to exit the properties fronting Barkly Street and create potential flooding impacts.</p> <p>Instead Council Development Engineering Team recommended that the developer upgrade the rear laneway by constructing the sections of the lane which are currently not made (on the northern edge). Conditions requiring these works to be undertaken by the developer to the satisfaction of the Road Manager were provided by the engineer and are the proposed new Conditions 6 and 7.</p> <p>This arrangement has been outlined to the parties to the VCAT proceedings and have been accepted.</p>

3. Policy Implications

Planning Policy Framework (PPF):

The following policies are of most relevance to this application:

- Municipal Planning Strategy (Clause 2), including:
 - Vision (Clause 2.02)
 - Settlement (Clause 2.03-1)
 - Environmental and Landscape Values (Clause 2.03-2)
 - Environmental Risks and Amenity (Clause 2.03-3)
 - Built Environment and Heritage (Clause 2.03-4)
 - Housing (Clause 2.03-5)
 - Transport (Clause 2.03-7)
- Settlement (Clause 11)
- Environmental Risks and Amenity (Clause 13):
 - Contaminated and Potentially Contaminated Land (Clause 13.04-1S)
- Built Environment (Clause 15.01), including:
 - Urban Design (Clause 15.01-1S, 15.01-1R & 15.01-1L)
 - Vehicle Access Design in Moreland (Clause 15.01-1L)
 - Building Design (Clause 15.01-2S & 15.01-2L)
 - Apartment developments in Moreland (Clause 15.01-2L)
 - Building Design in Neighbourhood and Local Centres (Clause 15.01-2L)

- Healthy Neighbourhoods (Clause 15.01-4S and 15.01-4R)
- Neighbourhood Character (Clause 15.01-5S)
- Sustainable Development (Clause 15.02), including:
 - Energy and resource efficiency (Clause 15.02-1S)
 - Environmentally Sustainable Development (Clause 15.02-1L)
 - Energy efficiency in Moreland (Clause 15.02-1L)
- Residential Development (Clause 16.01), including:
 - Housing Supply (Clause 16.01-1S and 16.01-1R)
 - Homes in Moreland (Clause 16.01-2L)
 - Housing for People with Limited Mobility (Clause 16.01-1L)
 - Housing Affordability (Clause 16.01-2S & 16.01-2L)
- Economic Development (Clause 17), including:
 - Diversified economy (Clause 17.01-1S & 17.01-1R)
 - Core Industry and Employment Areas (Clause 17.01-1L)
 - Employment Areas (Clause 17.01-1L)
 - Business (Clause 17.02-1S)
- Transport (Clause 18), including:
 - Sustainable Personal Transport (Clause 18.02-1S & 18.08-1R)
 - Sustainable Transport in Moreland (Clause 18.02-1L)
 - Car parking (Clause 18.02-4S & 18.02-4L)

Human Rights Consideration

This application has been processed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006, including Section 18 (Taking part in public life)*. In addition, the assessment of the application as originally undertaken in October 2020 and currently with the proposed amendments has had particular regard to:

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

This matter is now being overseen by the Victorian Civil and Administrative Tribunal which is governed by the Victorian Civil and Administrative Tribunal Act. All persons who were originally notified and or objected to this application were informed of the Appeal and provided with the opportunity to be joined as a party to these proceedings.

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.

A full assessment of the proposal was undertaken and outlined in the report presented at the PARM meeting held on 21 October 2020. Council resolved that the proposal was not acceptable on the following ground:

The building will unreasonably overshadow residential dwellings at 317, 319 and 321 Barkly Street, for 3-4 hours at the equinox, which is considered to be contrary to the design objective of Schedule 18 to Clause 43.02 which seeks to 'maintain reasonable amenity for residential properties within and adjacent to the activity centre'.

Given that this is the only ground of refusal, the discussion below will not cover those areas of assessment that were previously considered acceptable including the built form, siting, use and detailed design associated with the development application. The purpose of this report is to discuss the outcomes of the Compulsory Conference held on 26 February 2021 between the Parties to the Appeal.

Do the 'without prejudice' amended plans satisfactorily address Council's Ground of Refusal?

The site and land to the immediate west, east and south is located within a Commercial 1 Zone and affected by Schedule 18 to the Design and Development Overlay (DDO18).

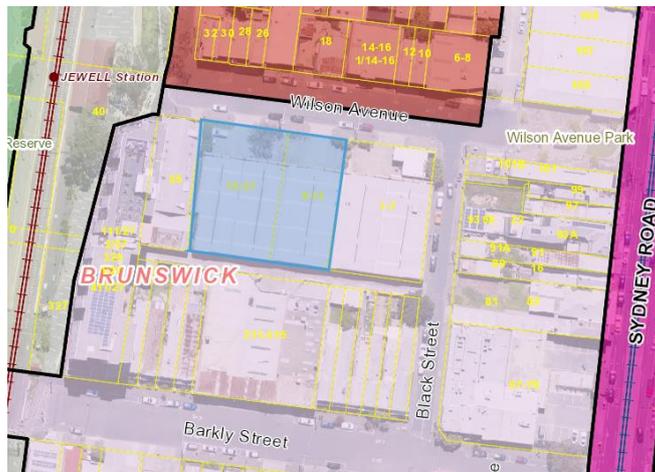
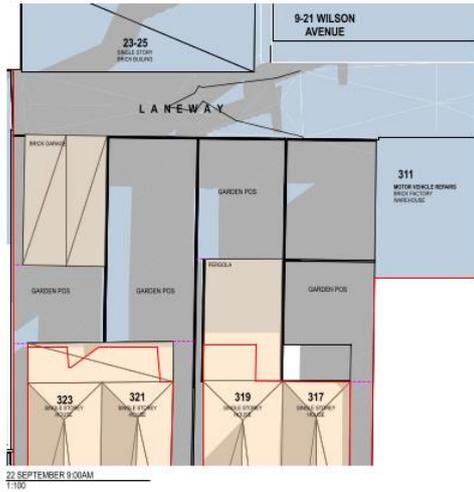


Image: Zoning map taken from Moremaps dated November 2020

As outlined in the 21 October 2020 report, the proposed eight storey building will create overshadowing impacts in the morning to the properties at 317, 319, 321 and 323 Barkly Street. In taking into consideration the decision of the Tribunal relating to overshadowing impacts to the dwellings to the south of 1-7 Barkly Street and the zoning and policy context, officers considered that the extent of overshadowing was acceptable. However, Council determined that the Design Objective of DDO18 to 'maintain reasonable amenity for residential properties *within* and adjacent to the activity centre' had not been met and refused the application on that one ground.

In response to this, the applicant has reviewed the plans and has offered to setback the south-western corner of the building at Levels 6 and 7 to reduce the extent of overshadowing to the residential properties in the morning hours. In assessing the changes and resultant overshadowing to the impacted properties at 317, 319 and 321 Barkly Street, the following is observed:

9am



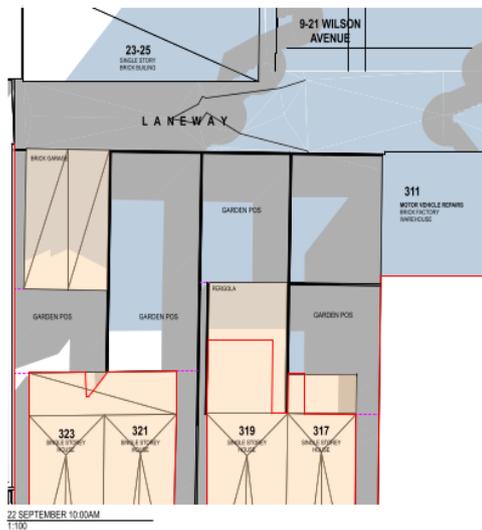
The overshadowing impacts are the same as originally proposed to all three dwellings.

The grey sections indicate the existing shadows cast by the surrounding built form and boundary fencing.

Both the October 2020 plans (indicated with a red line) and the 'without prejudice' February 2021 plans (the blue shadow) impose shadows over any remaining space that currently may receive sunlight at 9am to these properties.

No improvement is realised at this time.

10am



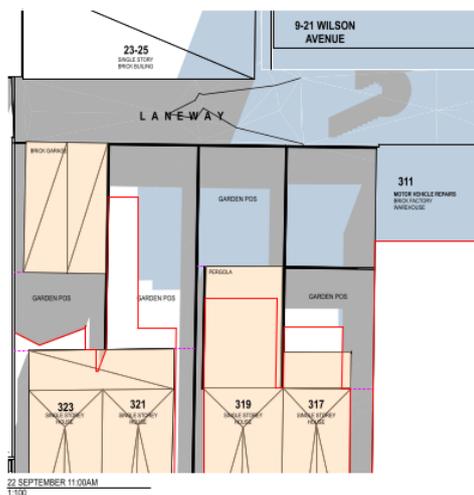
Shadows cast over 323 Barkly from the proposed development are now completely gone.

Shadows cast over 321 Barkly are reduced providing an additional 9 square metres of sunlight.

Shadows cast over 319 Barkly are slightly improved but not seen on the ground. There is a reduction of 5 square metres of shadowing under the rear verandah. A rear extension has been approved for this property that seeks to reduce the existing secluded private open space (SPOS) area in half. An improved outcome will be achieved to the rear north facing windows of this rear addition, but not to the remaining area of SPOS.

Shadows cast over 317 Barkly are slightly improved but not seen on the ground.

11am

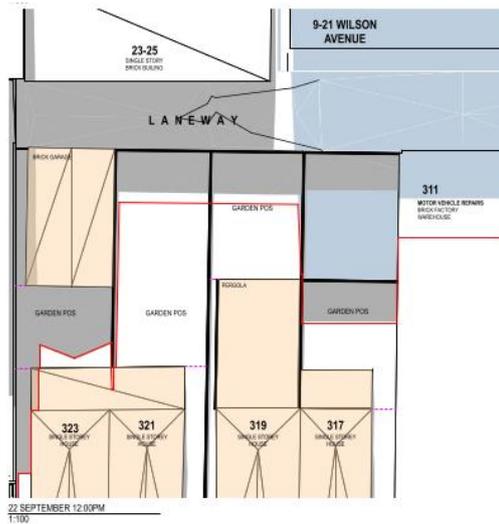


Shadows cast over 321 Barkly are improved providing an additional 7 square metres of sunlight (roughly half of the SPOS area will now be unshadowed).

Shadows cast over 319 Barkly are improved with an additional 10 square metres of sunlight provided under the rear verandah (and the approved rear extension north facing windows).

Shadows cast over 317 Barkly are improved so that they will not exceed that already imposed by the internal dividing fence separating the rear car parking and service yard area from the central garden area.

12 noon



The shadowing impacts are completely clear at this time to the properties at 319 and 321 Barkly Street.

Shadows are still cast over the rear car parking and service yard area to 317 Barkly Street, but not the garden space to the south.

Whilst overshadowing impacts will still be experienced from the proposed development, the 'without prejudice' amended plans do provide an improved outcome for the properties to the south. The Parties to the Appeal, including the owner of 319 Barkly Street, have reviewed these plans and have accepted the offer from the applicant to have the south-west section of the building slightly setback at levels 6 and 7. Consequently, an agreement has been made between the objecting parties and the applicant which has resulted in consent orders being reached.

The owner of 317 Barkly Street objected to this development proposal in August 2020. However, they did not lodge a Statement of Grounds to this Appeal. Attempts have been made to contact the owner but there has been no response to email messages or phone calls.

Given the commercial zoning of the properties to the south of the site, the policy context, the existing site conditions and the previous VCAT determination relating to 1-7 Wilson Avenue for a very similar development outcome, it is considered that the proposed modifications to the south-west corner of the building offered by the applicant are reasonable. Consent with the parties has been reached and there is a risk of the changes proposed in the without prejudice plans being 'withdrawn' if consent is not reached and the application proceeds to a full Merits Hearing. For these reasons, it is considered that a reasonable outcome has been reached between the applicant and the objecting parties and the Ground of Refusal has been suitably addressed.

The changes as shown in the 'without prejudice' plans dated 26 February 2021 are addressed in Conditions 1a and 1b in the Recommendation.

Upgrading of Rear Laneway

One of the concerns raised by the objecting parties to the Appeal at the Compulsory Conference related to the condition of the rear laneway which will provide the sole means of vehicle access to this development together with the apartments at 1-7 Wilson Avenue and 27 Wilson Avenue to the west. The laneway is currently constructed with concrete; however, sections of the lane are still unmade. The objecting parties requested that the developer make improvements to the laneway which will also provide benefit to the properties to the south side fronting Barkly Street. The applicant has agreed to this arrangement for the laneway to be upgraded along its entire length.

The Heads of Agreement signed by the parties indicated that the upgrading of the lane should be re-surfacing. Council's Development Engineering Team were consulted about this matter. It was advised that the resurfacing of the laneway was not acceptable as this would result in the height of the pavement being raised creating issues for vehicles to exit into the lane from adjoining properties and potentially directing stormwater into these properties as well.

The concrete surface is acceptable and does not require resurfacing, however the northern edge of the lane has some unmade sections which should be constructed and the crossover at the Black Street end needs to be corrected with splays. Council's Design Engineer prepared a set of conditions requiring these upgrades to occur (Conditions 6 and 7 of the recommendation). The parties to the Appeal agree with these arrangements and consent to these conditions being added to the permit.

Wilson Avenue Public Realm Works

At the Compulsory Conference the applicant requested Council's planning officers to review the wording of Condition 3 which relates to the 'Wilson Avenue Stage 2 Streetscape Improvements' project which Council is undertaking as part of its Capital Works program. The timing of the delivery of this project is unknown. As such, the intent of the amended condition is to ensure that if the public realm works have been completed before this development has commenced, that any damage to these works be suitably repaired and made good by the developer.

On the other hand, if this development is commenced prior to the Wilson Avenue streetscape works commencing, then the developer will only be responsible for undertaking the usual public realm works associated with a development, including the reinstatement of vehicle crossovers to kerb and channel and other public assets.

A third eventuality has also been factored in to account for the unlikely (but possible) outcome that the 'Wilson Avenue Stage 2 Streetscape Improvements' project is not pursued by Council, that the developer will be responsible for undertaking additional streetscape improvements including street tree planting and installing bicycle hoops.

At the time of drafting the original condition, the public works proposed by Council were at 'concept stage' only. The recommended condition therefore required the developer to submit a public works plan. Since this time, Council has undertaken further detailed work and a functional layout plan has now been prepared.

Council officers have worked with the applicant to make clear the responsibilities of the developer regarding the Wilson Avenue road reserve (proposed new conditions 3, 4 and 5). These conditions have been reviewed by Council's Urban Design Unit who are overseeing this Council project and have confirmed the updated conditions are satisfactory.

Although this matter was more of an administrative one, having no implication on the objecting parties and their concerns, all parties have consented.

5. Response to Objector Concerns

Subject to Council confirming its consent, the objector parties have consented to the mediated proposal which is confirmed with a signed set of updated draft conditions. The objectors' key concerns that the proposal imposes an unreasonable level of overshadowing to the properties to the south at 317 – 321 Barkly Street have been suitably addressed through the proposed 'without prejudice' amended plans. This consequently also addresses the reason why Council determined to refuse this application in October 2020.

Other concerns by the objecting parties included the condition of the rear lane, noting that it will be used a lot more as a result of this development and others along Wilson Avenue. This matter has also been suitably addressed by requiring the lane to be fully constructed along its northern edge for its entire length where required.

With these changes imposed in the updated set of draft conditions, the parties to the appeal have all consented to a planning permit being issued.

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

If Council accepts the terms in the Heads of Agreement and consents to the agreement reached, there will be no further financial implications for any of the parties to the Appeal.

If Council do not consent, legal representation will be required for Council at the three day Hearing on 19, 20 and 21 of May. This representation may include expert witnesses particularly if the applicant chooses to contest any of the draft conditions which includes a contribution to affordable housing.

The applicant has indicated that they will be represented by lawyers and will call several expert witnesses.

The objecting parties will also need to attend to have their concerns properly considered by the Tribunal.

8. Conclusion

It is considered that the mediated proposal responds appropriately to the design objectives of DDO18, provides good internal amenity and does not unreasonably impact on the amenity of surrounding properties within a Commercial 1 Zone and in an area designated for substantial growth and change. The 'without prejudice' amended plans incorporate setbacks from the south west corner that provide an improvement to the overshadowing impacts on the residential properties at 317-321 Barkly Street. The proposal has strong policy support at both a state and local level, has a high level of compliance with Clause 58 whilst providing a contribution to affordable housing.

On the balance of policies and controls within the Moreland Planning Scheme, it is considered that Council should inform VCAT that it consents to the issue of Planning Permit No. MPS/2020/213, subject to the updated set of conditions included in the recommendation of this report.

Attachment/s

1	9-21 Wilson Avenue, Brunswick - Location Plan	D20/413804
2	9-21 Wilson Avenue, Brunswick - plans	D20/424843
3	9-21 Wilson Avenue, BRUNSWICK MPS/2020/213 P1831/2020 Without Prejudice Plans from CC	D21/82824