

Moreland City Council

COUNCIL AGENDA

PLANNING AND RELATED MATTERS

WEDNESDAY 22 MAY 2019

COMMENCING 6.30 PM

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

Language Link

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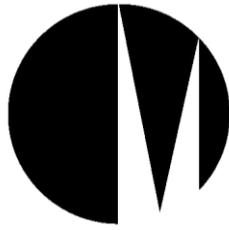
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यह काँसिल की बैठक का कार्यक्रम है। कार्यक्रम के किसी
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पर फोन कीजिए।

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ਇਹ ਕੌਂਸਲ ਦੀ ਮੀਟਿੰਗ ਦਾ ਏਜੰਡਾ ਹੈ।
ਏਜੰਡੇ ਦੀ ਕਿਸੇ ਆਈਟਮ ਬਾਰੇ ਮਦਦ ਲਈ,
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1. WELCOME

2. APOLOGIES

Leave of absence has been granted to:

- Cr Carli Hannan - 11 April 2019 to 12 August 2019
- Cr Davidson - 13 May 2019 to 5 June 2019

3. DECLARATION OF INTERESTS AND/OR CONFLICTS OF INTERESTS

4. CONFIRMATION OF MINUTES

The minutes of the Council Meeting - Planning and Related Matters held on 24 April 2019 be confirmed.

5. COMMITTEE REPORTS

CITY FUTURES

DCF35/19	212-214 ALBION STREET, BRUNSWICK - PLANNING APPLICATION MPS/2018/451 (D19/148583)	3
DCF36/19	33 MITCHELL PARADE, PASCOE VALE SOUTH - SP/2017/258 - 9 LOT SUBDIVISION (D18/495538)	71

6. URGENT BUSINESS REPORTS

DCF35/19 212-214 ALBION STREET, BRUNSWICK - PLANNING APPLICATION MPS/2018/451 (D19/148583)

Director City Futures

City Development

Executive Summary

This report considers an application currently before the Victorian Civil and Administrative Tribunal (VCAT) for the construction of a 6 and 8-storey building including two basement levels and a rooftop terrace, commercial tenancies and dwellings with a reduction of the standard car parking requirement.

The application was advertised and 20 objections were received. The main issues raised in objections were amenity impacts, car parking and access and building height. Council refused the application under delegation on 27 November 2018 with the applicant subsequently making application for a review against the refusal to grant a permit. There are now two objector parties to the VCAT proceedings:

- The owner of one dwelling at 6 Florence Street.
- The owners corporation at 6 Florence Street.

These 2 objector parties are representing multiple objectors.

At a Compulsory Conference on 10 May 2019, all parties reached agreement that a permit should be granted for a development consistent with the 'without prejudice' plans but subject to further modifications via agreed permit conditions. Settlement of the matter is now subject to the approval of Council.

This report details the assessment of the mediated proposal (comprising the without prejudice plans and agreed permit conditions) against the policies and provisions of the Moreland Planning Scheme.

The mediated proposal includes the following significant changes:

- The ground and first floor of the western half of Building B (southern building) setback 4.5 metres from the southern boundary to align with the setback proposed at 216 Albion Street, improving the safety and amenity of the rear lane for pedestrians;
- An increase in the southern boundary setback for the remaining levels of the western half of Building B and to the rooftop of the whole building, increasing the separation to 2 and 4 Florence Street;
- Improved daylight access for commercial premises and dwellings within the development;
- The provision of a light well at the interface of the site with 3/210 Albion Street; and,
- A reduction in the total number of dwellings from 72 to 70.

The key planning considerations are:

- The impact of the proposal on the amenity of 3/210 Albion Street and 9/4 Florence Street;
- Building height and the related objectives of Schedule 18 of the Design and Development Overlay (DDO18);
- The building separation requirements of Clause 22.07.

The mediated proposal will present largely as a 6-storey building when viewed from Albion Street and includes appropriate setbacks to ensure that the additional height to the rear will not impact upon the amenity of existing or future residents. A high degree of compliance with Clause 58 of the Moreland Planning Scheme is also achieved.

It is recommended that Council advises VCAT that it consents to the agreement reached with the parties at the Compulsory Conference.

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/2018/451 for the construction of a 6 and 8-storey building including 2 basement levels and a rooftop terrace, commercial tenancies and dwellings with a reduction of the standard car parking requirement at 212-214 Albion Street, Brunswick, subject to the following conditions:

Submission of documentation for endorsement

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans prepared by Six Degrees Pty Ltd, Reference TP100, TP102-115, TP117, TP119-120, TP123-126, TP131 and TP132, all plotted on 18 April 2019 and TP129 plotted on 15 March 2019 but modified to show:

Building layout

- a) Modifications to ensure the maintenance of appropriate levels of daylight to the adjoining properties and provision of improved daylight to the interior of the development, including:
 - i. The provision of an additional roof light to Retail/Office D in a location to the east of the balcony to dwelling B101.
 - ii. An increase in the width of the bedroom windows to dwellings A105, B106, A205, A304 and the eastern bedroom windows to dwelling A305 whilst maintaining screening to the south. Windows are to be maximised in area or to allow for at least 60% of the room to achieve a daylight factor of 0.5 or more, whichever is the lesser.

Daylight modelling and three-dimensional shadow diagrams are to be provided in support of the response to this condition.

- b) Relocation of the balconies to dwellings B307, B407, B507, B606 and B706 to align with the eastern edge of those dwellings. The balconies are to be reconfigured to have a maximum width of 3 metres, a minimum area of 8 square metres and to have a setback to the southern boundary which accords with that provided to dwelling B306.
- c) Additional detail to demonstrate compliance with Clause 58 of the Moreland Planning Scheme:
 - i. Internal alterations to the layout of the dwellings to demonstrate the provision of an appropriate functional layout for living and dining areas. This will include:
 - Modifications to the layout of dwellings B103, B203, B303, B403 and B503 to increase the effective area of living space provided by a relocation of the bedroom doors to a point adjacent to the bathroom door.
 - Modifications to dwelling B106 to provide a minimum of 900 millimetres between the dining table and any fixed structure such as stair balustrade or kitchen bench, with a minimum of 700 millimetres to be provided to movable objects such as lounge furniture.
 - Modifications to dwelling A304 to relocate the bedroom door such that it does not impede use of the adjoining dining and living areas.
 - Modifications to the kitchen and dining area of dwellings B604 and B704 to locate the dining table to the west side of the dwelling and provide a galley kitchen layout.

- Modifications to the kitchen and dining area of dwellings B605 and B705 to locate the dining table to the east side of the dwelling and provide a galley kitchen layout.
- ii. Balconies dimensioned with minimum dimensions and areas to meet the provisions of Standard D19. All dimensions are to be to the internal side of the relevant balustrade.
 - iii. The provision of a schedule of internal and external storage spaces for each dwelling, demonstrating compliance with Standard D20.
 - iv. An increase in the extent of natural ventilation in Building B by an increase in the depth of the light court provided adjacent to the eastern boundary by 150 millimetres with an associated increase in the width of the windows facing this area. The plans are to include cross sections which detail the provision of 2700 millimetre high louvre windows to kitchens abutting this space.
 - v. Internal breeze paths demonstrating that at least 40% of the dwellings meet the provisions of Standard D27 in a manner which will not be obstructed should the adjoining site at 57-59 Breese Street be developed to the boundary with a building of a comparable height to that hereby approved.
- d) Modifications to the point of access to Retail/Office B from the north to address the level difference between the floor of the premises and the adjoining footpath.
 - e) Dwelling A106 provided with a terrace with a maximum depth of 2 metres immediately to the south of the living area. Privacy of the adjoining living room is to be provided by means of angled louvres to the terrace perimeter where required, with clear glazing provided to the living area doors.
 - f) The provision of 1200 millimetre deep awning/s to the Albion Street footpath for the width of the site. The awning/s shall be detailed to provide continuous weather protection with awnings provided on the adjoining properties.

Car and bike parking

- g) Parking spaces to be allocated on the plans, including the allocation of:
 - i. The space marked 'visitor' to be made available to all tenancies for the charging of electric vehicles.
 - ii. Each tandem pair allocated to a single tenancy.
 - iii. A parking space, or tandem pair of parking spaces, to each commercial tenancy.
 - iv. The remaining parking spaces allocated to dwellings, with no dwelling provided with more than one space.
- h) The provision of a mirror on the building facade at the corner of the southern right of way could be utilised to improve laneway traffic safety.
- i) The provision of a sign on the southern façade of Building B identifying that the adjoining laneway supports 2-way movement of a range of vehicles.
- j) The provision of a sign/s at the exit from the proposed ground floor car park alerting users to the two-way nature of the right of way connecting to Breese Street and requiring users to give way to oncoming traffic.

Building detailing

- k) A detailed schedule of all proposed exterior decorations, materials, finishes and colours, including colour samples.
 - l) The replacement of 'MC01 – Corten Steel Cassette' with a painted white concrete, white bricks, fibre cement sheet or brick snaps to the southern elevation of the western-most dwellings and the south-west corner return.
 - m) Modifications to the screening of the southern edge of the balcony to dwelling B307 to provide a horizontal shelf. In the event that such a shelf does not restrict overlooking to a standard comparable to Standard B22 of Clause 55 of the Moreland Planning Scheme to the adjoining dwelling to the south vertical screening of a white colour is to be provided.
 - n) Replace BAL02 – 'Black Perforated Mesh Balustrade' with white perforated mesh balustrade, and OLS01 with a white colour to the south-western most apartments of Building B.
 - o) A screen diagram/s drawn at a scale of 1:50 which details the screens to be provided to restrict internal overlooking and overlooking to the adjoining properties at 3/210 Albion Street and 9/4 Florence Street including views from dwelling B307. This diagram must include dimensions, including the width of slats or fins and the gap between any slats or fins or other information as necessary to verify that views are directed to restrict overlooking of the adjoining properties whilst maintaining outlook for future residents.
 - p) To incorporate a waste and recycling storage area which is sufficiently dimensioned to accommodate the bins and hard waste storage area detailed in the endorsed Waste Management Plan.
 - q) The provision of planter beds within communal locations to facilitate the growth of façade planting as required by condition 2.
 - r) A landscape plan in accordance with condition 2 of this permit.
 - s) Any modifications or recommendations detailed within the Accessibility Report approved pursuant to condition 4 and the Acoustic Report approved pursuant to condition 5.
 - t) Initiatives contained within the Sustainability Management Plan required by condition 6.
2. Prior to the commencement of any development works, a landscape plan prepared by a suitably qualified and experienced landscape architect must be submitted to and approved by the Responsible Authority. The landscape plan must provide the following:
- a) Planting of at least 2 mature canopy trees generally in accordance with the plan prepared by John Patrick referenced as Landscape Plan for Compulsory Conference and dated March 2019 with the typical planting detail varied to show a cross section showing mounding of surface soil up from a depth of 450 millimetres from the edge of the planter to approximately 1 metre in height at the root balls of the trees.
 - b) Planting within the communal rooftop open space area which is designed to maximise the amenity of this space for users. This shall include the use of trees or climbing plants to provide shade and vegetation to mitigate against the impact of wind on use of the space.
 - c) The provision of vegetation within communally-held planter boxes to provide the façade greening depicted on the elevations and schedule of materials and finishes forming part of the documentation advertised for the application. This is to include planters on sufficient levels of the building to allow greenery to extend to the full height of the facades.

- d) The provision of food production planting space and composting facilities as detailed in the approved Sustainable Design Assessment.
 - e) A schedule of all proposed trees, shrubs and ground covers (including numbers, size at planting, size at maturity and botanical names), as well as sealed and paved surfaces. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland Landscape Guidelines 2009.
 - f) Details of the proposed planter boxes, including a section indicating the depth of soil to be provided and internal dimensions.
 - g) Details of the irrigation to be provided to the proposed landscape areas, which shall include automatic irrigation for all planter boxes including the planter described at sub-paragraph (a) of this condition.
 - h) Information about the maintenance of landscaping, including provision for communal maintenance of façade planting.
 - i) A detailed maintenance schedule for the proposed landscaping.
 - j) Any stormwater management details on the STORM report, including the specific location of the rainwater harvesting tanks etc.
3. Prior to the endorsement of plans, the Waste Management Plan prepared by Leigh Design and dated 14 December 2017 must be amended by a suitably qualified or experienced person to the satisfaction of the Responsible Authority to include the provision of food and organic waste collection. When submitted and approved to the satisfaction of the Responsible Authority, the amended Access Report will be endorsed to form part of this permit.
 4. Prior to the endorsement of plans, the Access Report titled DDA Compliance Statement prepared by Before Compliance Pty Ltd and dated 5 March 2018 must be amended by a suitably qualified person to the satisfaction of the Responsible Authority to reflect modifications made to the proposal during the intervening period. When submitted and approved to the satisfaction of the Responsible Authority, the amended Access Report will be endorsed to form part of this permit.
 5. Prior to the endorsement of plans, the Acoustic Report titled Acoustic Assessment prepared by Acoustic Logic and dated 15 March 2018 must be amended by a suitably qualified person to the satisfaction of the Responsible Authority to:
 - a) Reflect modifications made to the proposal during the intervening period.
 - b) Include materials, noise screening measures and maintenance requirements for the garage roller door and external walls of the bicycle parking area adjacent to the north-south laneway to minimise noise levels of mechanical noise and vehicle entry to avoid unreasonable night time sleep disturbance within the dwellings at 6 Florence Street.

When submitted and approved to the satisfaction of the Responsible Authority, the amended Acoustic Report will be endorsed to form part of this permit.

6. Prior to the endorsement of plans, a Sustainability Management Plan (SMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The SMP must be completed by a suitably qualified person/s, must demonstrate best practice environmentally sustainable design, identify the responsibilities and schedule for implementation and ongoing management of incorporated and proposed sustainability design initiatives to the satisfaction of the Responsible Authority and address the following:

- Energy efficiency
- Water resources
- Indoor Environment Quality
- Stormwater Management
- Transport
- Waste Management
- Urban Ecology.

This shall include information in relation to the provision of electric vehicle charging points, with one space to be provided as a minimum and provision of electrical infrastructure for ease of installation of additional spaces in the future.

When submitted and approved to the satisfaction of the Responsible Authority, the SMP and associated notated plans will be endorsed to form part of this permit.

7. As part of the ongoing consultant team, Six Degrees Architects or an architectural firm to the satisfaction of the Responsible Authority must be engaged to:
- a) Oversee design and construction of the development.
 - b) Ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.

Compliance with endorsed plans and documents

8. Subject to condition 9, 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.
9. Consent to alterations to the development cannot be granted where:
- a) The ground level, level 1 and level 2 of building B, with the exception of a cantilevered balcony generally above the vehicular access entry on level 2, is set back less than 4.823 metres from the southern boundary for a length of 14.2 metres from the western boundary.
 - b) The alteration is inconsistent with conditions 1(b), 1(l), 1(m) and 1(n), 2 or 5(b) or 12.

Except at the direction of the Victorian Civil and Administrative Tribunal after notice to the parties to VCAT P2398/2018.

10. All works must be undertaken in accordance with the endorsed Sustainability Management Plan (SMP) to the satisfaction of the Responsible Authority. No alterations to the SMP may occur without the prior written consent of the Responsible Authority.
11. The Waste Management Plan approved under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

12. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping shown on the endorsed plan must be established and thereafter maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority and any plants (including the two trees to be planted in the planter box located within the rear south boundary setback area adjacent to the west of the car park entry) must be replaced with semi-mature specimens of the same species of the same plants if at any time the plants are dead, diseased or otherwise damaged.
13. The building must be constructed and maintained in accordance with the recommendations contained within the approved Acoustic Report to the satisfaction of the Responsible Authority. The Acoustic Report endorsed under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

Prior to commencement

14. Prior to the commencement of the development, a Reflectivity Assessment of external glazing and any other visibly reflective material to the ground floor façade to Albion Street must be submitted to the Responsible Authority. The assessment must ensure that materials, including glazing, used on external walls must be of a type that do not reflect more than 15% of visible light when measured at an angle of 90 degrees to the surface. The Assessment must be to the satisfaction of the Responsible Authority and when approved will form part of this permit.
15. 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.
16. 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.
17. 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.
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).

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*.

Remediation Works plan required

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

19. Before the commencement of the development the owner of the property must:

- a) Enter into an agreement with the Responsible Authority pursuant to section 173 of the Planning and Environment Act 1987 (the Act) concerning:

Items within right of way

- b) The owners of the land to indemnify the Moreland City Council against any claims associated with those parts of the development (including the required mirror within the right of way to the south) projecting into airspace or sub-soil of land under the care and management of Council.
- c) Responsibility for the on-going maintenance of those parts of the development (including the required mirror within the right of way to the south) projecting into airspace or sub-soil of land under the care and management of Council is to be borne by the owners of the land.
- d) Disclaiming any right or intention to make or cause to be made at any time any claim or application relating to adverse possession of the land under the care and management of Council.

Windows adjacent to 57-59 Breese Street

- i. The windows facing the light court adjacent to the western boundary of 57-59 Breese Street be constructed of materials and specifications so as to comply with the relevant standards as required by the Building Act and regulations;
- ii. The windows referred to in sub-paragraph (a)(iv) of this condition must not be altered in any way following the installation;
- iii. The owner of the subject land acknowledges that:
- The objectives and standards of the Moreland Planning Scheme (as amended from time to time) which would otherwise regulate the form of any future building on the land at 57-59 Breese Street Brunswick and which would otherwise ensure that the window referred to in sub-paragraph (a)(i) receives daylight, sunlight and ventilation may not be used by the Responsible Authority in the assessment of an application or applications for the development of 57-59 Breese Street; and
 - as a consequence of the above, the owner may in the future lose all direct sunlight, indirect light, ventilation and views gained via the windows referred to in sub-paragraph (a)(i) as a result of building work undertaken at 57-59 Breese Street.
- e) 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.
- f) 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.

Prior to occupation

20. Prior to the issuing of Statement of Compliance or occupation of the development, whichever occurs first:
 - a) 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.
 - b) A report from the author of the Sustainability Management Plan (SMP) approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the SMP have been implemented in accordance with the approved plan.
 - c) A report from the author of the Access 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 Access Plan have been implemented in accordance with the approved Plan.
21. Prior to the occupation of the development, external lighting to the ground level rear southern boundary setback is to be installed and maintained on the land to automatically illuminate these areas between dusk and dawn to the satisfaction of the Responsible Authority.
22. Prior to the occupation of the development, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure Department).
23. Prior to the occupation of the development:
 - a) The car and bicycle parking shown on the endorsed plans must be installed; and
 - b) The car park entry doors must be installed to operate automatically and via remote controlto the satisfaction of the Responsible Authority.

Transport for Victoria condition

24. The permit holder must take all reasonable steps to ensure that disruption to bus operation along Albion Street is kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to Public Transport Victoria 8 weeks prior by telephoning 1800 800 007 or emailing customerservice@ptv.vic.gov.au.

Ongoing requirements

25. The car parking spaces provided on the land must be solely associated with the development allowed by this permit and must not be subdivided or sold separate from the development for any reason without the written consent of the Responsible Authority.
26. 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).
27. Stormwater from the land must not be directed to the surface of the right-of-way to the satisfaction of the Responsible Authority

Time limit

28. This permit will expire if one of the following circumstances applies:

- a) The development is not commenced within 2 years from the date of issue of this permit.
- b) The development is not completed within 4 years from the date of issue of this permit.

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

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

1. Background

Subject site

The subject site is located on the southern side of Albion Street, approximately 22 metres west of Breese Street. It enjoys proximity to a range of services and facilities, including Anstey Station which is located approximately 20 metres west of the site.

The site is L-shaped, with a frontage of 28.8 metres to Albion Street, a maximum depth of 56.2 metres, and an overall area of 1733 square metres. Laneway access is available to the southern boundary from Florence Street and to the eastern boundary from Breese Street, with both lanes having a width of approximately 3 metres. The southern laneway changes direction where it intersects with the subject site, running west before terminating at 8 Florence Street. The laneway currently provides car parking access to 4 Florence Street (6 spaces), 6 Florence Street (Nightingale 1 – 3 spaces) and 8 Florence Street (approved 18 spaces).

The site is currently occupied by a single storey brick industrial building. A setback of approximately 4.3 metres is provided to Albion Street, with parking and loading access provided within this setback. Extensive vehicular crossings are provided in association with this access.

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

Surrounds

The surrounding area is experiencing a period of change, with industrial properties on the southern side of Albion Street being redeveloped with multi-level residential and mixed use developments. Some developments include little or no car parking in response to the high level of accessibility to alternative modes of transport and share vehicles.

A location plan forms **Attachment 1**.

The advertised plans

Plans submitted with the planning permit application were advertised on 16 July 2018. The advertised plans are summarised as follows:

- The construction of a mixed-use development, comprising a shared basement and ground floor with 2 towers separated by approximately 9 metres at the upper levels.
- The northern tower, building A, would extend to an overall height of 20.2 metres, or 6 storeys above ground.
- The southern tower, building B, would have a height of 27.1 metres, or 8-storeys above ground.
- A 2-level basement car park, accommodating 72 cars (including one accessible space), 6 motorcycles and 72 bicycles, with vehicular access proposed from a laneway connecting to Florence Street to the south and egress via a right of way to Breese Street to the west.

Building A

- This building would accommodate four retail/office premises, including a food and drink premises at the ground floor level and commercial, office or retail space at the first floor level. Total commercial floor space of 877 metre square is proposed.
- Four residential levels above this would house 21 one and two-bedroom dwellings.
- The roof of the building would house solar photovoltaic panels and air conditioning facilities.

Building B

- Orientated to the south with an abuttal to the laneway, the ground floor level of this building would be utilised for parking and access, storage and a substation;
- Seven residential floor levels above this would accommodate a total of 45 one and two-bedroom dwellings; and
- The roof of the building would accommodate a 438 metre square rooftop terrace, along with air conditioning facilities and a tool shed. The terrace would include outdoor cooking and eating areas, recreation space, a vegetable garden, clothes line and compost.

Summary table

	Commercial	Retail	Dwellings		
			1 bedroom	2 bedroom	Total
Building A	444.9 square metres	432.0 square metres	9	12	21
Building B			27	18	45
Total	444.9 square metres	432.0 square metres	36	30	66

Car parking	13 spaces	33 spaces	30 spaces	76 spaces
Communal open space	438 square metres			

The advertised plans form **Attachment 2**.

Delegate decision

On 27 November 2018 Council issued a Notice of Refusal for the application, with the grounds of refusal relating to:

- The impact of the height of the proposal and its boundary setbacks on the amenity of the adjoining properties and dwellings within the development;
- Compliance with Clause 58 of the Moreland Planning Scheme; and,
- A lack of appropriate response to the Indoor Air Quality and Innovation provisions of the Built Environment Sustainability Scorecard.

VCAT process

The permit applicant has lodged a VCAT review against Council's refusal. Compulsory Conferences were subsequently held on 22 March and 10 May 2019. These were attended by Council officers, the permit applicant, their representatives and the objector's representatives.

Prior to the Compulsory Conference on 10 May 2019, without prejudice plans were circulated. 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 which are reflected in the recommendation (the mediated proposal).

If Council does not resolve to consent to the agreement reached, the matter will proceed to a merits hearing, commencing on 16 September 2019.

The mediated proposal

The without prejudice plans consist of the following changes:

- The ground and first floor of the western half of Building B setback 4.5 metres from the southern boundary to align with the setback proposed at 216 Albion Street, improving the safety and amenity of the rear lane for pedestrians.
- An increase in the southern boundary setback for the remaining levels of the western half of Building B and to the rooftop of the whole building, increasing separation to 2 Florence Street to 8.1 – 8.8 metres, and increasing the setback to 4 Florence Street to 5.2 – 8.0 metres.
- Improved daylight access for commercial premises and dwellings within the development.
- The provision of a light well at the interface of the site with 3/210 Albion Street;
- Relocation of balconies in the south-west corner of the building, as well as changes to materials to a lighter colour to maximise daylight to 6 Florence Street.
- A reduction in the total number of dwellings from 72 to 70.

The amended plans form **Attachment 3**. The agreed permit conditions are included in the recommendation.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Commercial 1 Zone	Clause 34.01-4: A permit is required to construct a building or construct or carry out works. Clause 34.01-1: A permit is required for the use of the land for 'Dwelling' because the frontage at ground level exceeds two metres. Office and Shop are Section 1 uses in the zone, meaning that a permit is not required for this use.
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 96 to 72 spaces.

The following Clauses of the Moreland Planning Scheme do not trigger a requirement for a planning permit but are relevant to the consideration of the proposal:

- Clause 45.03: Environmental Audit Overlay.
- Clause 45.06: Development Contributions Plan Overlay (Schedule 1). A condition is included in the recommendation requiring the payment of the DCP levy prior to the issue of a Building Permit for the development.
- Clause 45.09: Parking Overlay (Schedule 1). The parking overlay means that the 'Column B' rates in the table to Clause 52.06 apply. As a result, no residential visitor car parking is required for the development.
- Clause 52.34: Bicycle Parking. The requirements of this Clause have been met.
- Clause 52.36: Integrated public transport planning. The application has been referred to Public Transport Victoria.
- Clause 58: Apartment Development.

2. Internal/External Consultation

Public notification

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

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

Council received 20 objections to the planning application. A planning information and discussion meeting was held on 18 September 2018 to consider the key issues raised through objections including amenity impacts, car parking and access and the overall height of the building. This meeting was attended by Cr Abboud, Council staff, approximately 5 objectors and the permit applicant. The meeting resulted in the submission and circulation of additional shadow diagrams, however no changes to the proposal were made following this meeting. There are two objector parties to the appeal representing a number of other objectors and they have been present at both Compulsory Conferences.

A map identifying the location of objectors and parties to the review forms **Attachment 1**.

Internal/external referrals

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

External Agency	Objection/No objection
Transport for Victoria	No objection subject to conditions included in the recommendation.

Internal Branch/Business Unit	Comments
Urban Design Unit	No objections were offered to the proposal, including the overall height proposed, subject to conditions which have been addressed in the without prejudice plans.
Development Advice Engineer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
ESD Unit	<p>The advertised proposal does not meet Council's ESD standards, and modification is required. Key issues to be addressed are:</p> <ul style="list-style-type: none">• Clarity and greater detail in the information provided.• The provision of an appropriate level of daylight for dwellings and the southern commercial tenancy.• The use of innovation credits for items which are not innovative. <p>These matters have been partially addressed by the without prejudice plans, with the remaining able to be addressed by conditions detailed in the recommendation.</p>

3. Policy Implications

Planning Policy Framework (PPF)

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

- Plan Melbourne (Clause 9)
- Settlement (Clause 11)
- Metropolitan Melbourne (Clause 11.06), including:
 - Housing Choice (Clause 11.06-2)
 - Integrated Transport (Clause 11.06-3)
 - Neighbourhoods (Clause 11.06-5)
 - Sustainability and Resilience (Clause 11.06-6)
- Soil Degradation (Clause 13.03)
- Water Conservation (Clause 14.02-3)
- Built Environment and Heritage (Clause 15), including:
 - Urban Environment (Clause 15.01)
 - Sustainable Development (Clause 15.02)

- Residential Development (Clause 16), including:
 - Integrated Housing (Clause 16.01-1)
 - Location of Residential Development (Clause 16.01-2)
 - Housing Opportunity Areas (Clause 16.01-3)
 - Housing Diversity (Clause 16.01-4)
- Economic Development (Clause 17)
- Transport (Clause 18)

Local Planning Policy Framework (LPPF)

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

- Municipal Strategic Statement:
 - Clause 21.01 Municipal Profile
 - Clause 21.02 Vision
 - Clause 21.03-1 Activity Centres
 - Clause 21.03-3 Housing
 - Clause 21.03-4 Urban Design, Built Form and Landscape Design
 - Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)
- Local Planning Policies:
 - Clause 22.01 Neighbourhood Character
 - Clause 22.03 Car and Bike Parking and Vehicle Access
 - Clause 22.07 Apartment Development of Five or More Storeys
 - Clause 22.08 Environmentally Sustainable Design

Planning Scheme Amendments

Planning Scheme Amendment GC34 was gazetted on 1 February 2018 and removed a Special Building Overlay from a portion of the rear of the site as it is no longer considered by Melbourne Water to be subject to inundation. Whilst the appearance and accessibility of the ground floor frontage to Albion Street would be improved by a lowering of the finished floor level and deletion of the steps and ramps currently indicated, Melbourne Water have advised the applicant that the raised floor level should be maintained despite formal removal of the flood status of the land. As a result, the without prejudice plans have not included lowered finished floor levels.

Human Rights Consideration

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the Victorian Charter of *Human Rights and Responsibilities Act 2006*.

4. Issues

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

Does planning strategy support development in this location?

The subject site is located within the Brunswick Activity Centre, where a substantial increase in density is supported by Council's MSS. Appropriate levels of internal and external amenity must be maintained in achieving this density, and subject to the recommended conditions the proposal has now been amended to ensure that this occurs.

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

The proposal is an acceptable response to Clause 22.01 (Neighbourhood Character), which outlines that it is policy to:

Ensure new development is designed to meet the relevant built form provisions set out in any relevant zone, overlay, Structure Plan and/or Place Framework.

Schedule 18 to the Design and Development Overlay seeks to provide the following built form guidance for the site:

- A 17-metre maximum preferred overall height.
- Development should be constructed to the frontage, with the street wall height corresponding to the width of Albion Street (ie. between 9 metres and 12 metres), with upper levels to be set back at least 5 metres from the street frontage.
- Adopt the same street setback for at least 75% of the height of the upper levels to avoid 'wedding cake' built form outcomes.
- No side or rear boundary setbacks are nominated for allotments abutting other commercially zoned land.
- A Commercial frontage, with a display window and/or entrance measuring at least 60% of the width of the street frontage should be provided.
- Locate vehicular access and services to the rear.

In this context, a mixed-use development including construction on or near the street frontage with the provision of commercial spaces at ground floor level, including display windows for 90% of the ground floor frontage and a street wall height of 11.7 metres is appropriate. The proposed overall height of 20.2 metres to building A exceeds the preferred height within the Overlay by approximately 1 storey, whilst the proposed construction to eight storeys (27.1 metres) to building B incorporates a significant departure from the preferred building height. It is appropriate to consider the implications of this additional height having regard to the objectives of the Overlay.

The built form objectives of relevance to the site are:

- *To encourage a new mid-rise built form character with buildings generally ranging from 4-10 storeys with lower built form at the interfaces with the adjoining low rise residential areas.*
- *To establish a new built form character in off-corridor locations to the east and west of Sydney Road to achieve an appropriate balance between a sense of enclosure and openness by applying a 1:1 ratio of building height to distance from the opposite side of the street boundary.*
- *To ensure new street walls reinforce the existing character of street walls in nominated off-corridor streets.*
- *To ensure building design incorporates best practice environmentally sustainable design initiatives.*
- *To create accessible, adaptable and visitable housing within the activity centre to ensure housing caters for all residents' needs.*

The schedule also includes the following objective with respect to Amenity:

To maintain reasonable amenity for residential properties within and adjacent to the activity centre.

In refusing the application Council officers considered that the setback of the upper levels maintained an appropriate presentation to Albion Street, but that the additional height proposed, when combined with inadequate boundary setbacks and internal building separation resulted in an unacceptable impact upon surrounding properties and a lack of appropriate amenity for future residents. The mediated outcome addresses these shortfalls by increasing setbacks from the south and from the adjoining dwelling at 3/210 Albion Street, whilst ensuring that the internal separation between buildings A and B does not result in inadequate amenity for future residents.

Council at its April 2019 meeting, approved amendments to planning permit MPS/2012/848 at 216 Albion Street, allowing the construction of 2 buildings, comprising a 7-storey northern portion and a 9-storey southern portion, with a maximum overall height of 27.4 metres. The proposal would be complementary in form to that approval, with a 6-storey building and a 3-storey podium facing Albion Street, increasing to eight storeys to the south with an overall height of 27.1 metres, 10 metres more than the preferred height guidance of the DDO. In both instances the northern building obscures view of the southern building from Albion Street, and Levels 3-5 are located at a setback of 5 metres from the street.

Level 7 of the southern building (building B) has been provided with additional setbacks from the southern boundary during the mediation process, which ensures that the property at 9/4 Florence Street maintains daylight access during the afternoon at the equinox.

Traffic and parking

Does the proposal result in any unreasonable traffic impacts?

Whilst advice from the applicant's traffic engineer and Council's development advice engineer that the surrounding roads are able to cater for the additional demand generated by the proposal, it is noted that the increased use of the laneways abutting the site will result in a significantly increased potential for conflict with existing users of the laneways. Whilst the number of properties accessing both laneways is such that conflict is not anticipated to be frequent, the provision of an additional 220 vehicle movements to and from the site represents a significant increase in usage and conflict potential. A condition of the recommendation requires the installation of a mirror at the north-eastern corner of the lane to improve visibility.

Similarly, whilst the bluestone surface of the lane assists in reducing traffic speeds, the recommendation includes a requirement for the applicant to install signage to promote awareness of the use of the lane by pedestrians and cyclists and its two-way nature. Signage sought at the exit of the site to the east also requires drivers to give way to oncoming traffic so as to minimise the impact of traffic conflict in the lane on movement within Breese Street.

Has adequate car and bicycle parking been provided?

Car parking

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

Use	Total spaces required	Total spaces provided	Reduction sought
Dwelling (1 and 2 bedroom)	68 spaces	66 spaces	6 spaces
Dwelling (3 bedroom)	4 spaces		
Food and drink premises (172 square metres)	6 spaces	6 spaces	8 spaces
Commercial/office/retail (251 square metres)	8 spaces		
Total	86 spaces	72 spaces	12 spaces

It is considered that the proposed reduction in on-site car parking is acceptable given the site's location within proximity to a range of services and facilities, including alternative transport options and car share facilities. This is further supported by Council's Development Advice Engineers, who support the proposed parking reduction. In light of these ownership rates, Council's Development Advice Engineer has advised that between 58 and 97 parking spaces is acceptable. The proposal is within this range.

Conditions of the recommendation include a requirement that the parking spaces be allocated in an appropriate manner and that a space currently marked for visitors is available to all occupants as an electric vehicle charging bay. Additionally, the recommendation requires the amended Sustainability Management Plan to include the provision of electrical infrastructure so that additional EV charging points can be added in the future.

Bicycle parking

The mediated proposal includes a total of 87 bicycle parking spaces, which exceeds the statutory requirement of 21 spaces. The proposed development satisfies the Moreland Planning Scheme with respect to the provision of bicycle parking.

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

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

- Utilises the laneways for vehicle access to allow the street frontage to prioritise pedestrian movement and safety and to create an active frontage.
- Provides a setback from the southern boundary to increase the safety and amenity of the adjoining laneway for use by pedestrians and cyclists.
- Provides 87 bicycle spaces.
- Provides a verandah over the Albion Street footpath for weather protection.

Are adequate loading/unloading facilities provided?

Clause 65 of the Moreland Planning Scheme requires consideration of the adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts. Council's Development Advice Engineer has advised that use of the rear car park for delivery vehicles is unlikely to be practical given the rear access proposed. On-street loading is acceptable in principle. This is currently prohibited by the existing 'No Standing' restriction in the street, however, and the applicant is encouraged to seek a modification to 'No Parking' to allow loading to occur. This will be made possible by the removal of crossovers in front of the site.

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

The mediated outcome includes a number of modifications which improve the ESD features of the development. These are now considered to be adequate and include:

- Minimum average NatHERS rating of 7.0 stars.
- An appropriate Indoor Environmental Quality for the development.
- 14.5kW rooftop solar PV system.
- Commitment to STORM rating of 100% or greater.
- Natural cross ventilation to 70% of apartments.
- Substantial bicycle parking provision and communal bicycle repair station.
- The provision of an electric vehicle charging point.
- Provision for both composting and the collection of food and organic waste.

Is the proposal accessible to people with limited mobility?

Objective 9 of Clause 23.03-3 (Housing) is to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. All of the apartments will be visitable and 87% of them have been designed to meet the accessibility requirements of Clause 58. This exceeds the Clause's requirement that 50% of dwellings be accessible.

An Accessibility Report was submitted with the application confirming that the proposed design could comply with the relevant *Disability Discrimination Act 1992* (DDA) requirements. The recommendation includes conditions requiring the submission of an updated Accessibility Report to confirm the details of the adaptable, accessible and visitable design features and to ensure these measures are implemented.

Does the proposal provide an acceptable level of amenity for future residents?

A detailed assessment of the proposal has been undertaken against the objectives and standards at Clause 58 as they relate to internal amenity. The proposal meets all standards related to internal amenity, with the exception of Standard D24 (Functional Layout). The mediated proposal, including conditions outlined in the recommendation, seeks to ensure that all living and dining areas are appropriately dimensioned to allow the flexible layout of furniture and practical use by future residents, however 24 of the living rooms do not meet the Standard. All bedrooms comply.

Where the standard is not met, the proposal must achieve the objective, which is to:

ensure dwellings provide functional areas that meet the needs of residents.

In determining this, the decision guidelines require Council to consider, amongst other things, the useability, functionality and amenity of habitable rooms. Subject to conditions in the recommendation requiring minor modifications to improve the layout of some living areas, it is considered that the objective is met.

Certain aspects of the proposal also exceed the requirements of Clause 58, including the following:

- 197 square metres of communal open space (Standard D7 requires 175 square metres);
- 87% of apartments are suited to those of limited mobility (Standard D17 requires 50%); and
- Claimed 43% of apartments have natural cross ventilation (Standard D27 requires 40%).

The internal building separation requirements of Clause 22.07 are complex in this situation, with 5 levels of residential built form facing each other across the central courtyard, and relationships between bedrooms, living rooms, balconies and blank walls. In this context, the proposed 9 metre to 10.1 metre separation between the buildings, with some balconies intruding into the space, is considered to be a practical approach to building separation, where requirements range between three metres and 18 metres, as detailed below:

	Living room/balcony	Bedroom
Living room/balcony	12 metres (18 metres for fifth level)	9 metres (13.5 metres for fifth level)
Bedroom	9 metres (13.5 metres for fifth level)	6 metres (9 metres for fifth level)
No outlook	6 metres (9 metres for fifth level)	3 metres (4.5 metres for fifth level)

Importantly, rooms are provided with appropriate levels of outlook and whilst the southern orientation of some dwellings results in poor daylight outcomes to a small number of rooms, this is as a result of the dwelling layout, rather than the separation of the buildings. Conditions in the recommendation include an increase in window area to a number of bedrooms to assist in addressing this issue.

The mediated proposal has also reduced the level of non-compliances with Clause 22.07 related to setbacks from the southern boundary. Key aspects of the proposal here are:

Western portion

A 4.8 metre rear setback provided to the lower two levels, where construction on the boundary is permissible.

- Setbacks of 3.6 metres to 6.4 metres from the centre of the laneway for Levels 3 to 8, compared with a requirement for 3 metres for bedrooms and 6 metres for living rooms and primary balconies. Where a view is available down the lane connecting to Florence Street to provide surveillance and activation of this space, the proposal incorporates balconies on the boundary, without compromising the amenity of 2 or 9/4 Florence Street.

Eastern portion

- An 8.3 metre rear setback, with balconies at a setback of 6 metres, compared with a requirement for 3 metres for bedrooms and 6 metres for living rooms and primary balconies for the lower four levels and 4.5 metres and 9 metres respectively to levels 5 to 8.

Again, these setbacks include windows which meet, exceed, and in some instances fall short of the Clause 22.07 requirements, however on balance the proposed dwellings receive an appropriate level of light and outlook without reducing the development potential of the adjoining property.

Does the proposal have any unreasonable impacts on neighbouring properties?

The adjoining properties at 3/210 Albion Street and 9/4 Florence Street include construction which does not meet the setback requirements of Clause 22.07. This, and the single aspect nature of the Albion Street dwelling results in them being vulnerable to amenity impacts associated with any construction on the subject site. The mediated proposal however provides appropriate setbacks to these properties, so as to ensure maintenance of light and outlook to both dwellings, with sunlight also available to sections of the north facing windows of the Florence Street dwelling during the afternoon hours. It is considered that as a result, the proposal will not result in an unreasonable impact upon these properties.

As has been detailed above, it is considered that the proposal will not result in a reduction in the development potential of the adjoining properties at 2 Florence Street (to the south) and 57-59 Breese Street (to the east), and the recommendation includes a requirement that the applicant acknowledge no ongoing rights to light and air across the latter property.

The approved development at 216 Albion Street will not be detrimentally impacted by the proposal, as it has been designed to complement the proposal and includes an internal courtyard which approximately aligns with that proposed on the subject site.

Remaining properties are more distant and will also not be unreasonably impacted by the proposal.

Does the proposal provide for appropriate landscaping?

The mediated proposal provides a communal rooftop open space area of 195 square metres as well as extensive planting area at both the ground and first floor level. Whilst these spaces do not provide deep soil planting, due to their location above the basement car park, it is considered that the space provided is acceptable as:

- 229 square metres of landscape space is available, compared with a deep soil requirement of 173 square metres.
- The proposed landscaping includes the planting of trees, albeit within planter boxes.
- Additional landscaping is proposed on the facades of the building.
- The site is not located in an area which is characterised by dense landscaping coverage.

Standard D10 anticipates that the deep soil requirement may not be met and alternatively requires that an equivalent canopy cover should be achieved by providing either canopy trees or climbers (over a pergola) with planter pots sized appropriately for the mature tree soil volume requirements; or vegetated planters, green roofs or green facades.

Is the site potentially contaminated?

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

5. Response to Objector Concerns

Subject to Council confirming its consent the objector party has consented to the mediated proposal. The objectors' key concerns, including contrasting concerns amongst objectors that the proposal is provided with insufficient or too many parking spaces, have been responded to in section 4 of the report. In addition, the following matters are relevant:

Impact upon solar panels at 6 Florence Street

It is a decision guideline within the Zone that the responsible authority consider:

The impact of overshadowing on existing rooftop solar energy facilities on dwellings on adjoining lots in a General Residential Zone, Mixed Use Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.

The property at 6 Florence Street is included within the Commercial 1 Zone, and as such this consideration does not apply. However, it is noted that the supplementary shadow diagrams provided prior to Council determining the application indicate that there will be no shading of the roof at 6 Florence Street during the day on the equinox.

Loss of air flow to 4 Florence Street

Wind studies have not been required to be supplied, however it is anticipated that the proposal would not result in their being inadequate air flow to the development at 4 Florence Street.

Preference for vehicular access to be from the east rather than the south

Whilst providing vehicular access from the east will reduce traffic in the laneway to the south, the change would have a potentially significant impact upon properties using the laneway from Breese Street. Such a change would require further traffic engineering advice, as well as further public notification.

The findings of the traffic report in relation to parking occupancy differ greatly from other recent reports prepared by another engineer

It is acknowledged that traffic engineers, as experts, may differ in their opinions as to what is an appropriate number of parking spaces for a development. The report supplied is considered to be acceptable in its findings.

6. Officer Declaration of Conflict of Interest

Council officers involved in the preparation of this report do not have a conflict of interest in this matter.

7. Financial and Resources Implications

There are no financial or resource implications.

8. Conclusion

It is considered that the mediated proposal responds appropriately to the objectives of DDO18, provides good internal amenity and does not unreasonably impact on the amenity of surrounding properties. The proposal has been setback from both the south and the adjoining dwelling at 3/210 Albion Street. Building heights and the southern boundary setback to the lane accord with those approved at 216 Albion Street, creating an appropriate consistency of built form in this location. Elements of the proposal comply with Clause 22.07, and where non-compliances remain these do not have a detrimental impact upon the amenity of either the proposed dwellings or the surrounding properties. The proposal also provides an acceptable ESD response and a high quality of architecture.

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/2018/451 for the construction of a 6 and 8-storey building over 2 basement levels and a rooftop terrace, commercial tenancies and dwellings with a reduction of the standard car parking requirement subject to the conditions included in the recommendation of this report.

Attachment/s

1	Objector Location Map	D19/155199
2	Advertised Plans	D19/155402
3	Amended Plans	D19/155417

**DCF36/19 33 MITCHELL PARADE, PASCOE VALE SOUTH - SP/2017/258
- 9 LOT SUBDIVISION (D18/495538)**

Director City Futures

City Development

Executive Summary

The application seeks approval for a 9 lot subdivision, removal of native vegetation and roadworks within the Erosion Management Overlay with a common property driveway.

Specifically, the proposal seeks to create 9 vacant residential lots accessed via a central common property driveway. The lots proposed vary in area with the smallest being 335 square metres and the remaining 8 ranging between 500 square metres to 575 square metres.

The application was advertised and 30 objections were received, 16 of which were proforma objections. The main issues raised in objections relate to traffic issues along with the lack of visitor parking, the narrow accessway, the future development of the allotments, the waste collection and the site topography.

A Planning Information and Discussion meeting was held on 16 January 2019. Following the meeting, the permit applicant agreed to a restriction on title allowing no more than 1 dwelling per lot. A condition of the recommendation requires the applicant to submit Building Design Guidelines which include building envelopes to be registered against the title by way of a Section 173 Agreement and which would limit each lot to 1 dwelling.

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

The key planning considerations are:

- Parking/traffic issues.
- Further development of proposed lots.
- Waste collection.
- Accessway functionality.
- Emergency access
- Topography of site.

It is recommended that a Notice of Decision to Grant a Planning Permit be issued for the proposal.

Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. SP/2017/258 be issued for a 9 Lot Subdivision, removal of native vegetation and roadworks within the Erosion Management Overlay at 33 Mitchell Parade, Pascoe Vale South, subject to the following conditions:

1. Before the plan of subdivision is endorsed and prior to the certification of the plan of subdivision, amended plans must be submitted and when approved by the Responsible Authority. These plans must be generally in accordance with the Design Response Plan - version A, but must be amended to show:
 - a) All easements necessary to allow for the efficient removal of stormwater, drainage and sewerage from land within this plan, when the outfall drain is proposed to go through an allotment.
 - b) Mailboxes for lots 1 - 9 located along the Mitchell Parade frontage that must be wholly contained within the Common Property.
 - c) The proposed title boundaries on the Design Response plan to be clearly dimensioned and identifiable.

- d) The deletion of the common property (stairs) located between lot 4 and lot 5 leading to the Moonee Ponds Creek. This area of land may be added to either or both allotments.
- e) The building envelopes amended so that the garages of lots 1 to 8 (both inclusive) are setback a minimum of 5.5 metres from the common property to allow for additional visitor cars to be parked without impeding upon the Common Property driveway.
- f) The building envelopes of lots 1, 2, 3, 7 and 8 with a minimum setback of 5 metres from the common boundary interface at the front of each respective lot. The rear setbacks of lots 4, 5 and 6 must be a minimum of 15.00 metres.
- g) The building envelope of lot 9 not projecting any further forward than the average front setback of 31 and 35 Mitchell Parade. The setbacks of 31 and 35 Mitchell Parade are to be dimensioned on the plan.
- h) The car parking and lighting plan as contained in condition 25.

All amended plans must be made to the satisfaction of the Responsible Authority.

2. The subdivision as shown on the endorsed plan must not be altered without the consent of the Responsible Authority.
3. Prior to the certification of any plan of subdivision:
 - a) Three copies of building design guidelines must be submitted and approved by the Responsible Authority for lots 1 to 9 (both inclusive). The building design guidelines must be given effect in the form of either a restriction on the certified plan of subdivision or through an agreement with the Responsible Authority under Section 173 of the *Planning and Environment Act 1987* which is recorded on the Certificate of Title to the land. The restriction or agreement for the building design guidelines must provide for, but are not limited to:
 - i. A dimensioned building envelope applying to each of the proposed lots.
 - ii. That no building or part of a building may be constructed outside of a building envelope except with the written consent of Moreland City Council.
 - iii. The encouragement of split level house designs to minimise the use of site cut and fill.
 - iv. That each of the proposed nine lots will not contain more than one dwelling.
 - v. That each dwelling must be provided with a minimum of 2 under cover car parking spaces.
 - vi. The collection of household waste from this site must be performed by a private waste contractor in accordance with the Waste Management Plan prepared by Leigh Design dated 11 August 2014 and that all waste will only be collected from the Common Property driveway.
 - vii. That lots 4, 5 and 6 will not construct or permit to remain, any access, gate or opening to the Moonee Ponds Creek environment to the south west of these lots.
 - viii. That separate and further approval will be required from the Moreland City Council for the development of any lot under the Erosion Management Overlay.
 - ix. The recommendations of the Acoustic Report required by condition 31.

Where entered as a section 173 agreement on title, the owner of the land must:

- b) 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
 - c) 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.
4. Prior to the issue of a Statement of Compliance, a Development Infrastructure Levy must be paid to Moreland City Council in accordance with the approved Development Contributions Plan. The Development Infrastructure Levy amount is charged per dwelling/lot (x8) in accordance with the approved Development Contributions Plan.
 5. Prior to the issue of Statement of Compliance, the applicant or the owner must pay to the Municipal Council a sum equivalent to 3.4% of the site value of all the land in the subdivision (in accordance with the Schedule of Clause 53.01 of the Moreland Planning Scheme) intended to be used for residential, commercial or industrial purposes. The applicant/owner must:
 - a) Make a written request to Council for a valuation of the land to determine the invoice value; and
 - b) Upon the applicant/owner's receipt of the valuation, make a written request to Council for an invoice for payment of the Public Open Space Contribution.

If payment of the Public Open Space Contribution is not made within 12 months of the valuation date, the land will be re-valued at each anniversary of the first issue date of the original valuation. Any and all costs associated with the revaluation of the land will be at the applicant/owner's expense. The applicant/owner must then pay the percentage rate of the re-valuation.
 6. Prior to the issue of a Statement of Compliance, the existing dwelling partially contained within Lot 9 and the Common Property must be demolished to the satisfaction of the Responsible Authority.

Erosion Management

7. Prior to the commencement of any buildings and/or works, including the removal, destruction or lopping of any vegetation, and/or the certification of any plan of subdivision:
 - a) The impact of the final design of the buildings and/or works, removal, destruction or lopping of vegetation and/or subdivision on slope stability must be assessed and certified by a chartered geotechnical practitioner with experience in slope stability;
 - b) Certification by way of a completed 'Geotechnical Declaration and Certification' form generally in accordance with the Geotechnical Declaration and Certification Form, Moreland City Council, November 2012, must be lodged with the responsible authority.
 - c) Any changes to the final design/plan which are recommended by the chartered geotechnical practitioner must be shown on amended plans submitted to, and approved by, the responsible authority.
8. The buildings and/or works, including removal, destruction or lopping of vegetation, and/or subdivision must be undertaken in accordance with any requirements of a chartered geotechnical practitioner.

9. If the certification by the chartered geotechnical practitioner includes any recommendations or requirement for ongoing maintenance of the buildings and/or works, prior to the commencement of building and/or works the owner must enter into an agreement with Council pursuant to Section 173 of the *Planning and Environment Act 1987* which is to be registered on the title to the land. The agreement will set out a regime for the recommended or required maintenance and the obligation of the owner to comply with such recommendations and/or requirements. The owner is to pay all reasonable costs of Council in the preparation and execution of the agreement.

Completion of Works in accordance with Approved Plans

10. Prior to the issue of Statement of Compliance, all works shown on the endorsed plans, including mailboxes and landscaping, must be completed to the satisfaction of the Responsible Authority.

Native Vegetation

11. Before works start, the permit holder must advise all persons undertaking the vegetation removal and works on site of all relevant conditions of this permit.
12. Prior to the commencement of works and certification of plans, a Biodiversity Assessment Report must be prepared by a suitably qualified and experienced arborist or environmental scientist to accord with and meet the requirements of the *Permitted Clearing of Native Vegetation - Biodiversity Assessment Guidelines (DEPI 2013)* and the *Native Vegetation Gain Scoring Manual*.

The report must:

- a) Provide the strategic biodiversity score of the native vegetation to be removed;
 - b) Provide an off-set gain equivalent to the loss of the Blackwood trees 'general biodiversity units' from the site; and,
 - c) Provide an off-set location within the Port Phillip and Westernport Catchment Management Authority boundary or the Moreland City Council.
13. Prior to any native vegetation being removed, evidence must be provided to Council that an offset has been secured to the satisfaction of the Responsible Authority. This offset must meet the offset requirements set out in this permit and be in accordance with the requirements of *Permitted clearing of native vegetation – Biodiversity assessment guidelines (DEPI 2013)* and the *Native Vegetation Gain Scoring Manual*. Offset evidence can be either:
 - a) A security agreement, to the required standard, for the offset site/s including a 10-year offset management plan; or
 - b) A credit register extract from the Native Vegetation Credit Register.
 14. Prior to the removal of any native vegetation, the native vegetation permitted to be removed must be clearly marked on-site.
 15. Prior to the issue of Statement of Compliance, evidence must be provided demonstrating that all recommendations of the Biodiversity Assessment Report including the requirements of condition 13 have been implemented to the satisfaction of the Responsible Authority.

Landscaping

16. Prior to the issuing of the statement of compliance, a landscape plan prepared by a suitably qualified person must be submitted to and approved by the Responsible Authority for the Common Property. The landscape plan must show the location, quantity, size and botanical names of all proposed trees, shrubs and ground covers, the treatment of all landscape surfaces, the specifications of any furniture items and be in accordance with the Moreland Landscape Guidelines and Technical Notes. An endorsed copy of the landscape plan will form part of this permit. The landscape plan must be generally in accordance with the Arboricultural Assessment and Report prepared by Stem Arboriculture Pty Ltd and plans TP301, TP302 and TP303 prepared by SACBW which must provide for the following:
 - a) Identification of any existing tree(s) and vegetation on site and adjoining land proposed to be removed and retained, including the tree protection zone(s). Vegetation retainment must include strategies for the retainment (i.e. barriers and signage during the construction process).
 - b) A schedule of all proposed trees, shrubs and ground covers (including numbers, size at planting (including pot sizes,) size at maturity and botanical names), as well as sealed and paved surfaces. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland Landscape Guidelines 2009.
 - c) Provide trees/shrubs along and within the subject site adjacent to the boundary with 31 Mitchell Parade to mitigate any noise generated by vehicles egressing the subject site.
 - d) Details of the location and type of all paved and sealed areas. Extensive hard surfaces are not supported. The adoption of porous/permeable paving, rain gardens and other water sensitive urban design features are encouraged.
17. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), all council trees and the trees marked on the endorsed plans as being retained must have a Tree Protection Zone (TPZ) to the satisfaction of the Responsible Authority. The fencing associated with this TPZ must meet the following requirements:
 - a) Extent

The tree protection fencing (TPF) is to be provided to the extent of the identified TPZ within Appendix 3 of the Arboricultural Assessment & Report prepared by Stem Arboriculture Pty Ltd.

If works are shown on any endorsed plan of this permit within the confines of the calculated TPZ, then the TPF must be taken in to only the minimum amount necessary to allow the works to be completed.
 - b) Fencing

All tree protection fencing required by this permit must be erected in accordance with the approved TPZ.

The TPF must be erected to form a visual and physical barrier and must be a minimum height of 1.5 metres and of wire mesh or similar fencing material with 1.8 metre support posts (e.g. treated pine or similar) every 3-4 metres, including a top line of high visibility plastic hazard tape erected around the perimeter of the fence.
 - c) Signage

Fixed signs are to be provided on all visible sides of the TPF clearly stating 'Tree Protection Zone – No Entry', to the satisfaction of the Responsible Authority.

d) Irrigation

The area within the TPZ and TPF must be irrigated during the summer months with 1 litre of clean water for every 1cm of trunk girth measured at the soil/trunk interface on a weekly basis.

e) Provision of Services

All services (including water, electricity, gas and telephone) should be installed underground, and located outside of any TPZ, wherever practically possible. If underground services are to be routed within an established TPZ, they must be installed by directional boring with the top of the bore to be a minimum depth of 600mm below the existing grade, to the satisfaction of the Responsible Authority.

Bore pits must be located outside of the TPZ or manually excavated without damage to roots, to the satisfaction of the Responsible Authority.

f) Access to TPZ

Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

18. Prior to the issue of a Statement of Compliance, the TPZ works including fencing associated with the TPZ must be removed from the site.
19. Prior to the removal of any of the native vegetation (Blackwoods) the owner or their landscape consultant must collect seeds from the Blackwood trees. The owner or their landscape consultant must liaise with Council's Open Space Unit prior to the collection of the seeds. Once collected, all the seeds must be provided to Council's Open Space Unit for later propagation.
20. Prior to the commencement of any works a tree management plan to the satisfaction of the responsible authority must be submitted and approved by the Responsible Authority. This plan must identify any works (demolition and construction works) including services >10% incursion of the TPZ of any of the retained vegetation or vegetation on adjoining properties. Vegetation protection measures are required for significant trees on adjoining land that are noted for retention on the Landscape Concept Plan. The subdivision as proposed may result in trenching and construction of retaining walls which will have a significant impact on the structural root zone of neighbouring trees. A condition of works is that they accord with the Australian Standards namely AS 4970 and AS 4373.

Engineering

21. Prior to the commencement of any works, the owner must obtain a Legal Point of Discharge for the whole of the land in the subdivision from the Responsible Authority.
22. Prior to the issuing of the Statement of Compliance, a stormwater drainage plan showing how the site will be drained to the stated point of discharge, is submitted to and approved by the Responsible Authority and constructed (not bonded) to the satisfaction of the Responsible Authority.
23. Council charges plan checking (0.75%) and supervision (2.5%) fees on the cost of constructing the drain.

24. The design of the Common Property driveway must consider and incorporate the following:
 - a) The future use of the driveway that includes the later delivery of concrete, brick, tiles etc for the construction of all future dwellings;
 - b) The surface of the Common Property driveway must be designed and constructed to achieve maximum traction during inclement weather that may include, but not limited to, the use of saw cuts; and
 - c) The inclusion of a fire hydrant located in front of the proposed Lot 8.
25. Prior to the certification plans must be submitted to the Responsible Authority that shows the following:
 - a) Provision of a car parking signage plan that limits the parking of vehicles to the south-east side of the Common Property driveway and prohibits the parking of vehicles on the other side of the Common Property driveway;
 - b) The proposed lighting along the Common Property driveway. The lighting must be baffled to prevent light affecting the adjoining properties. This lighting must be operational between dusk until dawn every night.
26. Prior to the issue of a Statement of Compliance, the works along the Common Property driveway must have reached the stage at which full completion has been achieved, this includes the construction of all services (water, electricity, sewerage, gas and telecommunications), drainage, crossovers, the reinstatement Council's assets, communal lighting, parking signage and all other communal facilities, to the satisfaction of the Responsible Authority.

The owner must also provide to the Responsible Authority a letter from a suitably qualified engineer that states all works undertaken in the common property area have been completed to the relevant standards.

ESD

27. Prior to the commencement of works, a Water Sensitive Urban Design (WSUD) Report and MUSIC Model(s) demonstrating that water sensitive urban design initiatives to be included as part of the subdivision(s) comply with the best practice stormwater management targets to the satisfaction of the Responsible Authority be submitted to and approved by the responsible authority.

If an on-site response on the site is not technically feasible, the applicant may explore offsets through the Melbourne Water offsets scheme process (subject to the approval of the Responsible Authority).
28. Prior to the commencement of works, a Water Sensitive Urban Design (WSUD) initiative implementation schedule to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. This must identify the different areas of responsibility and provide a schedule for implementation, ongoing management, maintenance and monitoring of WSUD initiatives included in the approved WSUD Report and MUSIC model.
29. All works must be undertaken in accordance with the approved Water Sensitive Urban Design (WSUD) Report and MUSIC model including the type and area of treatment measures specified and to the satisfaction of the Responsible Authority. No alterations to the WSUD Report and MUSIC Model(s) may occur without written consent of the responsible authority. An application to amend the WSUD Report and MUSIC Model(s) must be accompanied by an updated WSUD Report and MUSIC Model(s) and WSUD implementation schedule to the satisfaction of the Responsible Authority and must incorporate the proposed changes.

30. Prior to the issuing of the statement of compliance, a report from the author of the Water Sensitive Urban Design (WSUD) Report and MUSIC model(s) 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 WSUD Report and MUSIC model to have been implemented in accordance with the approved report.
31. Prior to the commencement of works detailed plans of stormwater treatment initiatives and devices shall be submitted and approved to the satisfaction of the Responsible Authority. Once approved the Stormwater Treatment Plan shall form part of the endorsed plans and all initiatives must be incorporated into any development in the subdivision to the satisfaction of the Responsible Authority.

Acoustic Report

32. Prior to the endorsement of plans pursuant to this planning permit an assessment of the noise emanating from CityLink must be carried out and submitted to the Responsible Authority. The recommendations of the Acoustic Report including any required maintenance of obligation on individual lot owners in the design and construction of a dwelling must form part of the building design guidelines required by condition 3 of this permit and subsequently registered on title. The report must include, but not be limited to the following:
 - a) Noise impacts generated from the adjoining CityLink road arterial upon future dwellings as part of this subdivision. It must include an assessment over a 24-hour period and across both weekdays and weekends.
 - b) Recommendations of acoustic attenuation measure/s to be incorporated into the any future residential development in the subdivided lots.
 - c) Guidance for future builders about how to comply with condition b) above. I.e. guidance about glazing types, acoustic insulation and other noise mitigation strategies.

General

33. Prior to the issue of a Statement of Compliance:
 - a) Reticulated water, sewerage and electricity must be available to each lot shown on the endorsed plans to the satisfaction of the Responsible Authority.
 - b) Each lot shown on the endorsed plans must be drained to the satisfaction of the Responsible Authority.
 - c) All public works relating to the construction of footpath, crossing and the reinstatement of Council's assets must be constructed or bonded to the satisfaction of the Responsible Authority.

Yarra Valley Water

34. The owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of water services.
35. The owner of the land must enter into an agreement with Yarra Valley Water for the provision of sewerage services.

Melbourne Water

36. Prior to Certification, an easement, MCPAA1107 - Wetland floodway drainage and storm water quality management must be created in favour of Melbourne Water 10.0 metres from the interface of lots 4, 5, and 6 and the adjacent waterway corridor reserve as shown on the submitted Plan of Subdivision.
37. Existing canopy vegetation within lots 4, 5, and 6 must be retained within future development to lessen the visual impacts to Moonee Ponds Creek, with adequate space to maintain future succession planting of an equivalent scale.

38. Runoff from the site is to be treated through onsite treatment works to Best Practice Standards for pollution removal, complying with Clause 56.07 of the Victorian Planning Provisions. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
39. Prior to Certification, a stormwater management and drainage strategy must be submitted and approved by Melbourne Water, demonstrating the proposed alignment for the 1 in 5 year drainage infrastructure and the overland flow path directions for the 1 in 100 year ARI flood event. The strategy must demonstrate how stormwater runoff from the subdivision will achieve State Environment Protection Policy (Waters of Victoria) objectives for environmental management of stormwater. This strategy must also detail the proposed outfall to Moonee Ponds Creek.
40. Prior to the issue of a Statement of Compliance, a separate application (on-line) direct to Melbourne Water, must be made for any new or modified storm water connection to Melbourne Water's watercourse. Prior to accepting an application, evidence must be provided demonstrating that Council considers that it is not feasible to connect to the local drainage system.
41. Prior to the issue of a Statement of Compliance, the proponent will need to formally apply to Melbourne Water's Asset Services Team to conduct any works on or near a Melbourne Water asset (including waterways). Prior to undertaking any works, the proposal must be accepted by Melbourne Water and the contractor must be in receipt of a Melbourne Water Permit to Work. Please contact Melbourne Waters Asset Services Team on telephone 9679 6614 for more information.
42. Prior to Certification, the Plan of Subdivision must be referred to Melbourne Water, in accordance with Section 8 of the Subdivision Act 1988.

Jemena

43. The plan of subdivision submitted for certification under the Subdivision Act 1988 shall be referred to Jemena Electricity Networks (Vic) Ltd in accordance with Section 8 of that Act.
44. The applicant shall:
 - a) Enter into an agreement for the extension, upgrading or re-arrangement of the electricity supply to lots on the plan of subdivision as required by Jemena Electricity Networks (Vic) Ltd. (A payment to cover the cost of such work will be required and easements internal and external to the subdivision and provision of sites for substations may also be required).
 - b) Where buildings or other installations exist on the land to be subdivided and are connected to the electricity supply, they shall be brought into compliance with the Supply and Installation Rules issued by the Local Government Electricity Supply Association (Vic) and Distribution Authorities to the extent determined by Jemena Electricity Networks (Vic) Ltd.

Downer

45. The plan of subdivision submitted for certification must be referred to AusNet Gas Services in accordance with Section 8 of the *Subdivision Act 1988*.

Telecommunications

46. The owner of the land must enter into an agreement with:
- A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
47. Before the issue of a Statement of Compliance for any stage of the subdivision under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:
- A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
 - A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

Other

48. Permit conditions numbers 1 to 47 inclusive must be satisfied prior to the issue of a Statement of Compliance.

Time

49. This permit will expire if one of the following circumstances applies:
- a) The subdivision is not commenced within two years of the date of issue of this permit as evidenced by a Plan of Subdivision being certified by the Council within that time.
 - b) The Certified Plan of Subdivision 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 (as referred to in point (a) above).

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

Note 1 This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning-building/> and click on '[Moreland Development Contributions Plan \(DCP\)](#)'. Alternatively, please contact Moreland City Council on 9240 1111 and ask to speak to the DCP Officer.

Note 2 A Cultural Heritage Management Plan has been approved in relation to the permitted high impact activity on the land in accordance with the requirements of the Aboriginal Heritage Act 2006. Activity on the land must comply with the approved Cultural Heritage Management Plan. The *Aboriginal Heritage Act 2006* details offences and penalties that apply when a person knowingly does an act that harms or is likely to harm Aboriginal cultural heritage which is not in accordance with an approved cultural heritage management plan or other listed exemptions. Aboriginal cultural heritage is defined as Aboriginal places, Aboriginal objects and Aboriginal human remains.

- Note 3** Any tree and vegetation planting on Council land needs to be discussed with Council's Open Space Unit. All removal of trees and planting within Council land must be undertaken by Council with costs borne by the Applicant.
- If further information is required in relation to conditions 17 to 21 (both inclusive) shown above, please contact Council's Open Space Maintenance section on telephone 8311 4300, quoting the street address.
- Note 4** If further information is required in relation to conditions 22 to 26 (both inclusive) shown above, please contact Council's Engineering Services on telephone 9240 2330, quoting the street address.
- Note 5** 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.
- Note 6** If further information is required in relation to Yarra Valley Water's permit conditions shown above, please contact Developer Services Officer on telephone 9872-2559 quoting Yarra Valley Water's reference 294135 or, email us via easyACCESS@yvw.com.au including the property address in the subject field.
- Note 7** If further information is required in relation to Melbourne Water's permit conditions shown above, please contact our Customer Service Centre on 131722, quoting Melbourne Water's reference MWA-1036006.
- Note 8** If further information is required in relation to Jemena Electricity Networks (Vic) Ltd's permit conditions shown above, please contact John Alchin on telephone 9173 7000 quoting Jemena Electricity Networks (Vic) Ltd's reference 130220.
- Note 9** If further information is required in relation to Downer's permit conditions shown above, please contact Kris Wojcysz on telephone 7379 8846 quoting Downer's reference S17-4239.

1. Background

Subject site

The subject site is located at 33 Mitchell Parade, Pascoe Vale South. It is situated on the western side of Mitchell Parade 307 metres north of Reynard Street and approximately 34 metres south of Wheeler Street. The site has a 16.61 metre frontage to Mitchell Parade and extends approximately 50 metres to the south west where the site widens out to the north and to the south by 25.36 metres and 29.36 metres (respectively). The site extends to the south west a further 100.94 metres along the northern boundary and a further 67.33 metres along the southern boundary resulting in a total site area of 5,341 square metres. The south western (rear) boundary shares an abuttal with the reserve adjacent to the Moonee Ponds Creek.

The site has a significant slope from Mitchell Parade to the rear boundary of approximately 28 metres over approximately 140 metres thus having an average grade of 1 in 5 or 20 percent slope. This slope leads to the site enjoying views both across and along the Moonee Ponds Creek corridor.

The site currently contains a single storey weatherboard dwelling that is currently occupied. This dwelling is proposed for demolition as part of the subdivision.

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

Surrounds

The surrounding area is characterised by medium to large allotments occupied by either single storey or double storey dwellings. There are 2 sites in proximity to the subject site that have been developed and now contain two dwellings.

A location plan forms **Attachment 1**.

The proposal

The proposal is summarised as follows:

- To subdivide the land into 9 residential lots that obtain their vehicular access via a central common property driveway.
- The proposed lot that faces Mitchell Parade has a site area of 335 square metres, the other lots have a minimum site area of 500 square metres with the largest allotment having a site area of 575 square metres.
- There is no proposal to construct any dwellings as part of this application thus leaving the final design, floor plan and the number of storeys to the purchaser of each allotment.

The subdivision plans form **Attachment 2**.

Planning Permit and site history

A Planning Permit (MPS/1998/962) for the 'Use and development of 18 dwellings' was issued on 30 September 1999. This planning permit was never acted upon and subsequently expired.

MPS/2005/77 was a Notice of Refusal for the 'Development of the land for nineteen two and three storey dwellings' on 2 April 2008. This decision was appealed to the Victorian Civil and Administrative Tribunal (VCAT) who affirmed Council's decision on 26 September 2008.

MPS/2009/272 was a Notice of Refusal for the 'Development of the land for 19x2 and 3-storey dwellings' on 15 September 2009. This decision was appealed to VCAT who affirmed Council's decision on 16 April 2010.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Neighbourhood Residential Zone (NRZ1)	Clause 32.09-3 - A permit is required to subdivide land.
Erosion Management Overlay (EMO)	Clause 44-01-5 - A permit is required to subdivide land demolish and to construct a building or construct or carry out works including roadworks. A permit is required to remove, destroy or lop any vegetation.
Particular Provisions	Clause 52.17 – Native Vegetation - A permit is required to remove, destroy or lop native vegetation including dead native vegetation. The table exempting vegetation removal from planning approval at Clause 52.17-7 do not apply in this instance.

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 (DCPO1). A condition will require the payment of the Development Contribution levy prior to the issuing of the Statement of Compliance.
- Clause 53.01: Public Open Space Contribution and Subdivision – A condition will require the payment of the Public Open Space Contribution prior to the issuing of the Statement of Compliance.
- Clause 56: Residential Subdivision.

Aboriginal Heritage

The *Aboriginal Heritage Act 2006* and *Aboriginal Heritage Regulations 2007* provide for the protection of Aboriginal places, objects and human remains in Victoria.

Under these provisions the proposed development is defined as a High Impact Activity and the land is within an Area of Cultural Heritage Sensitivity. As such, Council is prevented from granting a planning permit unless a Cultural Heritage Management Plan (CHMP) is first approved.

The permit applicant has provided Council with a copy of the necessary CHMP approved by the Wurundjeri Tribe Land Council in accordance with the requirements of the *Aboriginal Heritage Act 2006*.

2. Internal/External Consultation

Public Notification

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

- Sending notices to the owners and occupiers of adjoining and nearby land; and
- By placing a sign on the Mitchell Parade frontage of the site.

Council has received 30 objections including 16 proforma objections to date. A map identifying the location of objectors forms **Attachment 3**.

The key issues raised in objections are:

- Parking/traffic issues
- Noise
- Further development of proposed lots
- Waste removal
- Narrow accessway to the common property driveway and where it intersects with Mitchell Parade
- Emergency access
- Topography of site/excessive earthworks/site stability/construction issues
- Lot yield/site coverage/overlooking
- Retaining walls
- Removal of native vegetation
- Vegetation to buffer adjoining properties
- Disability access
- Poor site and context description
- Damage to adjoining properties.

All objectors were invited to a Planning Information and Discussion meeting that was held on 16 January 2019 and attended by Cr Yildiz, council officers, the applicant and approximately 11 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

Although the Planning Information and Discussion meeting did not result in any amendments to the plans, the permit applicant has offered to place a restriction on title that requires that:

- Each lot shall contain no more than 1 dwelling.
- Each lot to contain a double car garage to ensure car parking is confined to individual lots.

This application was sent to the Melbourne & Metropolitan Fire Brigade (MFB) under Section 54 of the *Planning and Environment Act 1987*. The MFB researched the site including trialling fire vehicles on similar slopes and are accepting of the proposal with a number of recommendations including the installation of a fire hydrant in front of lot 8, limiting the parking of vehicles to one side of the driveway and the roadway to be constructed in concrete to ensure maximum traction in the wet. These are included as conditions of the Recommendation.

Internal/external referrals

The proposal was referred to the following external agencies and internal branches of Council:

External Agency	Objection/No objection
Yarra Valley Water (sewerage and water)	No objection subject to conditions which are included in the recommendation.
Melbourne Water (stormwater drainage and floodplain management authority)	No objection - subject to conditions which are included in the recommendation.
Jemena (electricity)	No objection subject to conditions which are included in the recommendation.
Downer Utilities (gas)	No objection subject to conditions which are included in the recommendation.

Internal Branch/Business Unit	Comments
Strategic Transport and Compliance Branch	No objections were offered to the proposal subject to conditions which are detailed in the recommendation.
Property Unit	No objections were offered to the proposal as Property agreed with the matters raised by Open Space.
ESD Unit	No objections were offered to the proposal subject to conditions which are detailed in the recommendation.
Open Space Design and Development Unit	No objections were offered to the proposal subject to conditions which are detailed in the recommendation.

3. Policy Implications

State Planning Policy Framework (SPPF)

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

- Settlement (Clause 11.01S)
- Metropolitan Melbourne (Clause 11.01-1R1)
- Environmental and landscape values (Clause 12)
- Biodiversity and protection of biodiversity (Clause 12.01-01S)
- Native vegetation management (Clause 12.01-2S)
- Floodplain (Clause 13.03-1S)
- Soil Degradation (Clause 13.04)
- Erosion and landslip (Clause 13.04-2S)
- Aboriginal cultural heritage (Clause 15.03-2S)
- Sustainable personal transport (Clause 18.02-1S)
- Open Space (Clause 19.02-6S)

Local Planning Policy Framework (LPPF)

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

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-3 Housing
- Clause 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)

Local Planning Policies:

- Clause 22.01 Neighbourhood Character
- Clause 22.03 Car and Bike Parking and Vehicle Access

The MSS envisages minimal housing growth in areas outside of Activity Centres within the Neighbourhood Residential Zone (NRZ), to ensure an ongoing supply of single dwellings and low density multi-dwelling developments. Whilst the NRZ aims to limit opportunities for increased residential development, the proposal is considered to appropriately respect the existing character of lot sizes and street interface. Through conditions contained within the recommendation, future development of each lot will ensure contribution towards an open, landscaped character.

Planning Scheme Amendments

There are no current planning scheme amendments that have any affect upon the merits of this particular subdivision application.

Human Rights Consideration

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the Victorian Charter of *Human Rights and Responsibilities Act 2006*.

4. Issues

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

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

The proposal provides an acceptable response to Clause 22.01 (Neighbourhood Character) and Clause 56.02 (Neighbourhood Character and Infrastructure) of the Moreland Planning Scheme.

In context:

- The proposal seeks to create nine residential lots, eight of which exceed 500 square metres.
- Lot areas and dimensions are comparable to lots on the east side of Mitchell Parade.
- Each lot provides an area to the rear of the building envelope of 75 square metres. This offers a generous opportunity for open space.
- Each lot has a frontage to, and therefore activating, either Mitchell Parade or the internal private road.

Has adequate car parking been provided?

It has been proposed by the permit applicant that each lot will be encumbered by a restriction that obligates the owner to provide a double car garage. With the exception of lot 9, a condition of the recommendation requires the building envelope to be amended so that any garage is setback a minimum of 5.5 metres from the common property driveway. This setback will allow additional visitor car parking onsite, reducing the need for visitor parking along the common property driveway or on Mitchell Parade.

Vehicles, whether related to this or other developments in the street, can only park on Mitchell Parade 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 as well as some visitor parking forward of the garage, with the exception of lot 9 (front allotment).

In regard to the car parking within the development along the common property driveway a condition will be included on any approval requiring the submission of a car parking signage plan indicating where car parking is to be prohibited.

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

In relation to traffic impacts, Council's Strategic Transport and Compliance Branch have assessed the proposal and consider that the subdivision will result in 54 additional vehicle movements per day along Mitchell Parade. It is noted that the Traffic Report submitted by the applicant specifies that the proposal may generate up to 90 additional vehicle movements per day (based on NSW RTA data). Even if there were to be between 54 and 90 additional vehicle movements per day, this remains within Mitchell Parade's design capacity and is not expected to cause traffic congestion to the existing street network. Council's engineers have confirmed that with the independent traffic engineers assumptions of 90 vehicle movements per day, this remains within the design capacity of Mitchell Parade.

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

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

- Limits the number of vehicle crossings to Mitchell Parade to one for the entire development site (nine allotments).
- Is located to limit the removal of a street tree with an increase in the width of the existing crossover from approximately 3 metres to 5.5 metres.
- Allows for vehicles to leave the site in a forward direction.

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

Council's ESD Unit have been consulted regarding this subdivision proposal and have recommended permit conditions that form part of the Recommendation. This includes, amongst other matters:

- Provision of a Water Sensitive Urban Design (WSUD) Report and MUSIC Model(s).
- Provision of a Water Sensitive Urban Design (WSUD) initiative implementation schedule.
- Provision of a report from the author of the Water Sensitive Urban Design (WSUD) Report and MUSIC model(s) confirming that all measures specified in the WSUD Report and MUSIC model to have been implemented.
- Provide detailed plans of stormwater treatment initiatives and devices.

Is the proposal accessible to people with limited mobility?

Objective 9 of Clause 21.03-3 (Housing) is to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. The future dwellings do not form any part of this application and will be the subject of the future owners to design and construct.

Whilst individual lots and dwellings can be appropriately designed to provide ease of access for persons with limited mobility, the common driveway is steep and includes a pedestrian walkway with steps. This is unavoidable given the topography of the land.

Does the proposal satisfy the requirements of Clause 56?

A detailed assessment of the proposal against the objectives and standards at Clause 56 has been undertaken. The proposed subdivision complies with the objectives of Clause 56. Key issues from the Clause 56 assessment are discussed under the headings below.

Clause 56.04-2 – Lot area and building envelopes objective

The objective to Clause 56.04-2 is:

To provide lots with areas and dimensions that enable the appropriate siting and construction of a dwelling, solar access, private open space, vehicle access and parking, water management, easements and the retention of significant vegetation and site features.

This site contains some remnant Blackwoods towards the western half of the site. This application was referred to Council's Open Space unit who have accepted the removal of the Blackwoods subject to the seeds being collected for future propagation.

Furthermore, within this standard a lot with an area of between 300 square metres to 500 square metres must be able to contain a rectangle measuring 9 metres by 15 metres. The proposed lot 9 (front allotment facing Mitchell Parade) is unable to contain the recommended 9 metre width. This lot is proposed to have a width of 8.75 metres. The variation sought to this standard is considered to be minor and can be managed through the nominated building envelope to be registered on title.

Clause 56.04-5 – Common area objective

Clause 56.04-5 contains within the standard:

The proposed management arrangements including maintenance standards for streets and open spaces to be commonly held.

The applicant has not provided details of the proposed maintenance standards of the future common property. This will need to be carried out as part of the obligations of the future Owners Corporation.

Clause 56.06-5 – Walking and cycling network detail objective

The objective to Clause 56.06-5 is:

To design footpaths to accommodate wheelchairs, prams, scooters and other footpath bound vehicles.

Whilst the footpath proposed is 'private' and serving only the 9 lots created by this subdivision, the existing topography of the site limits the ability to provide a safe environment for the use of footpath bound vehicles. Council officers accept that this is not achievable due to the site's topography and is not detrimental to this application.

Does the proposal result in excessive loss of trees and habitat?

Clause 56.01-2 and 56.05-1 requires any subdivision to respond appropriately to existing and context features. This includes a response to existing vegetation onsite. The Landscaping Objective of Clause 56 requires consideration to be given to the retention of existing trees and protection of any predominant landscape features of the neighbourhood. Decision Guidelines relevant to Clause 52.17 require consideration of minimising the removed vegetation.

The land is zoned for residential purposes and there are no specific vegetation protection overlays applicable to the site. The trees proposed to be removed have been classified by Council's Open Space unit as 'Blackwoods'. The trees are not considered of such importance to warrant significant redesign to enable their retention.

A condition contained in the recommendation requires a landscape plan to be submitted and endorsed as part of the planning permit. This will require the planting of Blackwoods as an avenue as replacement vegetation and demonstrate that the offset requirements of Clause 52.17 are met. A separate condition requires collection of seeds from the trees being removed for later propagation.

5. Response to Objector Concerns

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

- Parking/traffic issues
- Construction issues
- Removal of native vegetation
- Disability access
- Further development of proposed lots
- Emergency access.

Other issues raised by objectors are addressed below.

Lot yield/site coverage/overlooking

The proposal satisfies the requirements of Clause 56 in respect to site coverage, setbacks, permeability, car parking, and garden area provision (where appropriate) and therefore the proposal is not considered to be an over development of the site. State Government Policy, particularly Plan Melbourne, as well as Council Policy supports minimal change that contribute to a lower density in areas that are within a Neighbourhood Residential Zone.

Given the site's location in a Neighbourhood Residential Zone and its proximity to public transport the level of development proposed is appropriate and consistent with State and Local planning policy frameworks, and the surrounding context.

Objectors also expressed concern of the potential for further development upon the proposed lots (converting one lot into two lots thus the site could become 18 lots). The permit applicant has agreed to place a restriction on title by use of a Section 173 Agreement or a Notice of Restriction upon the plan of subdivision that will prevent the possibility of further development within this site.

Waste collection

An objector concern is the waste collection of the dwellings along with the possibility of having 27 bins located along Mitchell Parade on collection day. As part of the application the permit applicant has provided a Waste Management Plan that nominates that the waste collection will be carried out by a private waste collection agency. This will be controlled by the future Owners' Corporation. The Recommendation contains a condition requiring the collection of waste from within the common property.

Narrow accessway to the common property driveway and where it intersects with Mitchell Parade

Council's Senior Development Engineer has stated that there is no significant concern with the driveway width as there remain adequate sight lines when entering from Mitchell Parade. Should a vehicle be egressing the site, there will be sufficient space on the proposed crossover for the incoming vehicle to wait for the egressing vehicle to pass.

The proposal to have the internal road/driveway vested in Council is not practical. The proposed road/driveway does not meet the minimum width of 13.5 metres within the Moreland Planning Scheme. The road/driveway near the entrance to Mitchell Parade narrows to approximately 4 metres (3 metres road pavement and 1 metre footpath). Accordingly, it is appropriate that the maintenance of the road/driveway be the responsibility of the future Owners Corporation.

Topography of site/excessive earthworks/site stability

It is accepted that the site is steep however the site is also affected by an Erosion Management Overlay that seeks to prevent future slippage of the soil and substrate.

A planning permit will be required for the construction of future buildings on the land under the EMO. This will ensure that the design of the dwellings is signed off by a geotechnical engineer. In addition, it is proposed that Building Design Guidelines include the encouragement of split level designs to minimise cut and fill.

The permit applicant has not indicated upon any plans a need for the construction of retaining walls. The proposed driveway is to be constructed 'on grade' thus limiting the extent of excavation.

Matters regarding the site's stability are reflected in the subject site being affected by an Erosion Management Overlay (EMO). Any permit that may issue will contain condition/s ensuring that the site complies with this overlay provision by providing the declaration from a geotechnical engineer.

Reduction in lots

It is understood that the objectors seek to reduce the number of allotments proposed to reduce the impact of traffic within Mitchell Parade. The matter of traffic and car parking has been mentioned previously within part 4 of this report.

Noise and vegetation to buffer adjoining properties

Objectors have requested the inclusion of vegetation along the common driveway to ameliorate the sound of vehicles along this corridor. A condition of the recommendation requires a landscape plan that provides for screen vegetation along the common driveway at the abuttal to 31 Mitchell Parade and proposed lot 9.

Views

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

Poor site and context description

It is acknowledged by Council officers that the site and context description has some deficiencies however it is considered by Council officers that the information provided is sufficient to determine this application.

Site coverage/future overlooking

Any future construction of a dwelling upon a proposed allotment will need to comply with the Victorian Building Regulations that cover such matters as overlooking.

Construction issues

Noise and amenity impacts during the construction process are not generally a planning matter. The *Environmental Protection Act* (s.48A(3)), provides noise control guidelines for commercial construction sites which set working hours and noise management expectations. Council's General Local Law 2018 also includes provisions regarding control of noise associated with residential building work.

Concern has been raised in relation to potential closure of roads and footpaths during construction. Such closures are not a planning consideration. Closure or occupation of public spaces requires a Public Occupation Permit under Council's General Local Law 2018. Council's Environmental and Civic Assets Local Law 2018 requires an Asset Protection Permit to be obtained to ensure infrastructure assets within the road reserve are protected or repaired if damaged.

A range of other approvals are required from Council's City Infrastructure Department related to construction impact on public space. Consideration of such closure and notice as required is undertaken through these processes.

Damage to adjoining properties

Concern has been raised in relation to damage of the adjoining vegetation during construction.

A condition is contained within the Recommendation that requires fencing to be constructed on the perimeter of the tree protection zone. The condition will also seek to ensure that the root system is not compromised by the installation of subterranean services normal to a dwelling.

Protection of adjoining properties during construction is not a matter that can be addressed through the planning permit process, however the owners of the land proposing to build have obligations under the *Building Act 1993* to protect adjoining property from potential damage. It is the responsibility of the relevant Building Surveyor to require protection work as appropriate.

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 on balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No SP/2017/258 should be issued for a nine lot subdivision, removal of native vegetation and roadworks within the Erosion Management Overlay at 33 Mitchell Parade, Pascoe Vale South subject to the conditions included in the recommendation of this report.

Attachment/s

1 ↓	Locality Plan - 33 Mitchell Parade, Pascoe Vale South - SP/2017/258	D19/151361
2 ↓	Development Plan - 33 Mitchell Parade Pascoe Vale South - SP/2017/258	D19/151369
3 ↓	Location of Objectors - 33 Mitchell Parade Pascoe Vale South - SP/2017/258	D19/151373