

*Planning and Environment Act 1987*

**Advisory Committee Report**

**Former Moonee Ponds Market Site**

**VCAT Application for review P1634/2016 and Planning  
Permit Application MV/491/2015**

Front page

**11 April 2017**

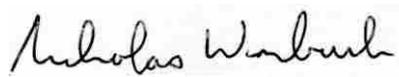
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Advisory Committee Report pursuant to section 151 of the Act

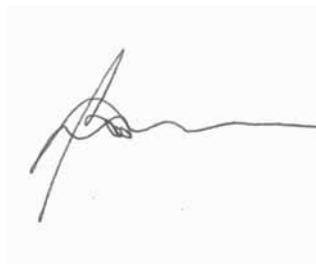
Former Moonee Ponds Market

VCAT Application for review P1634/2016 and Planning Permit Application MV/491/2015

11 April 2017



Nick Wimbush, Chair



Ray Tonkin, Member

# Contents

	Page
<b>1 Introduction and background.....</b>	<b>1</b>
1.1 The subject site.....	1
1.2 The site within Activity Centre Planning .....	2
1.3 The Stage 1 Application.....	3
1.4 The Stage 2 Application.....	4
1.5 The Advisory Committee.....	5
1.6 Approach in this report .....	7
<b>2 Development height and building separation .....</b>	<b>8</b>
2.1 The issue.....	8
2.2 Evidence and submissions.....	8
2.3 Discussion.....	16
2.4 Conclusions.....	18
<b>3 Public benefits .....</b>	<b>19</b>
3.1 The issue.....	19
3.2 Background.....	19
3.3 Evidence and submissions.....	19
3.4 Discussion.....	22
3.5 Conclusions.....	23
<b>4 Other Issues .....</b>	<b>24</b>
4.1 Daylight and internal amenity.....	24
4.2 Overshadowing.....	27
4.3 Car parking .....	28
<b>5 Planning Permit assessment .....</b>	<b>32</b>
5.1 The issue.....	32
5.2 Evidence and submissions.....	32
5.3 Referrals .....	33
5.4 Discussion and conclusions .....	33
5.5 Recommendation .....	33
<b>Appendix A Terms of Reference</b>	
<b>Appendix B Document list</b>	
<b>Appendix C Recommended Planning Permit conditions</b>	

## List of Tables

	<b>Page</b>
Table 1	Advisory Committee Hearing dates and issues..... 6
Table 2	Parties to the Hearing..... 7
Table 3	Summary of public benefits ..... 19
Table 4	Proportion of living areas/bedrooms achieving daylight access benchmarks ..... 26
Table 5	Development summary – Stage 2 ..... 30

## List of Figures

	<b>Page</b>
Figure 1	The subject site..... 1
Figure 2	Zoning of the MPAC..... 1
Figure 3	Structure Plan Preferred Built Form Plan..... 2
Figure 4	Stages 1 and 2..... 4
Figure 5	Development Scenario 1 – Stage 1 and 2 ACZ1 compliant ..... 12
Figure 6	Development Scenario 2 – Stage 1 as approved and Stage 2 ACZ1 compliant..... 13
Figure 7	Development Scenario 3 – Stage 1 as approved and Stage 2 as proposed ..... 14
Figure 8	Northern elevation of proposed form in relation to preferred maximum 50 metre height..... 16

## List of Abbreviations

ACZ	Activity Centre Zone
ACZ1	Activity Centre Zone – Schedule 1
DELWP	Department of Environment, Land, Water and Planning
MPAC	Moonee Ponds Activity Centre
MPACSP	Moonee Ponds Activity Centre Structure Plan
VCAT	Victorian Civil and Administrative Tribunal

NOTE: Heights are given in storeys and metres in this report. The following approximate heights and storeys are used:

- 16 storeys = approximately 50 metres
- 23 storeys = approximately 71 metres
- 30 storeys = approximately 93 metres

## Executive Summary

### (i) Summary

The Former Moonee Ponds Market Site Advisory Committee (the Committee) was appointed under the *Planning and Environment Act 1987* to consider a planning permit application (the Application) by Caydon Property Group (the Applicant) for development of Stage 2 at 40 Hall Street, Moonee Ponds.

A permit for Stage 1 of the development was issued by Moonee Valley City Council (Council) at the direction of the Victorian Civil and Administrative Tribunal (VCAT) in 2016 following a compulsory conference. Stage 1 includes a mix of retail tenancies and 612 apartments across part of the site in a number of buildings at heights ranging from 6 storeys to 23 storeys.

The Stage 2 Application was lodged in 2015 and refused by Council on 26 July 2016. Stage 2 as considered by Council included 793 apartments, retail tenancies and three storeys of office space in buildings ranging from 6 storeys to 34 storeys.

An application for review of the Council decision was lodged in August 2016. In November 2016, amended plans were lodged with VCAT including 695 apartments, retail tenancies and three storeys of office space in buildings ranging from 6 storeys to 30 storeys. The latter height was to be achieved in a feature building on the corner of Homer Street and Everage Street.

The Minister for Planning called in the Stage 2 Application from VCAT in late 2016 and appointed this Committee to provide him with advice on the Application. According to the Terms of Reference (TOR) the Committee is to consider whether a permit should be issued, and more particularly, whether the application is an appropriate response to the preferred building heights in the planning scheme.

The preferred height in the planning scheme for the subject site is 16 storeys. An application for a 30 storey development would seem at face value to be a serious overdevelopment within the limited consideration of the preferred height.

However, planning requires a more comprehensive and integrated decision framework. Following consideration of the evidence and submissions made through the Committee's Hearing and a review of the relevant planning controls, the Committee concludes that whilst a building in Stage 2 is nearly double the preferred height, a permit should issue.

This conclusion is based largely on:

- universal agreement amongst urban design and planning experts that the height of the Everage Street building is of itself not an issue and a suitable design response
- the need to see the Everage Street building within the 'campus' style design of the whole site
- approval by Council (through the VCAT process) of Stage 1 up to 23 storeys; seven storeys over the preferred height

- the provision of the majority of Application public benefits through the approved Stage 1; a situation that in the Committee's view raises an issue of fairness for the Applicant.

In the Hearing, the Council submitted that it could accept development up to 23 storeys as per Stage 1. The Applicant submitted it has already reduced the proposal from 34 to 30 storeys. It is tempting for the Committee to choose the middle ground, but ultimately it has no grounds to do so.

The Committee is also cognisant that the Application attracted limited objections for such a significant development. The Committee understands that there were six objections which raised a number of concerns including height, but none of these objectors requested to be parties to the VCAT hearing. It is difficult to sustain the criticism that approving the Application will undermine public confidence in planning in the face of such limited public opposition.

This is a large site in an activity centre rich in public transport. The development as a whole will not only set its own character for the site, but will also strongly influence the development of the centre as a whole.

If the Application points to a broad problem in height controls and activity centre planning, and the Committee has not turned its mind to whether there is, then this is an area that should be considered at a strategic level. The Committee does not think it should seek to set such planning policy through this Application.

## **(ii) Findings**

In relation to the purposes outlined in the TOR provided to the Committee, the Committee finds:

1. A planning permit should be issued for the Stage 2 development of the former Moonee Ponds Market site at 40 Hall Street, Moonee Ponds with conditions.
2. The proposed building heights in the proposal have had proper regard to the preferred building heights in the Moonee Valley Planning Scheme in the development of the Stage 2 Application.

## **(iii) Recommendation**

Based on the reasons set out in this Report, the Committee recommends:

- 1. The Minister for Planning advise the Governor in Council that a planning permit for the Stage 2 development of 40 Hall Street, Moonee Ponds should be issued in accordance with Appendix C of this report.**

# 1 Introduction and background

## 1.1 The subject site

The subject site is located at 40 Hall Street and 34-36 Margaret Street, Moonee Ponds. It is located approximately 6 kilometres west of the Melbourne Central Business District and is bounded by Hall, Homer, Everage and Margaret Streets. The site area is 5,296 square metres. It is located within the Moonee Ponds Activity Centre (MPAC) as shown in context in Figure 1 and the zoning is shown in Figure 2.



Figure 1 The subject site



Figure 2 Zoning of the MPAC

## 1.2 The site within Activity Centre Planning

Council and the Applicant provided an overview of activity centre planning in Moonee Ponds. A brief summary of some of the key elements is provided below.

### (i) Moonee Ponds Activity Centre Structure Plan

The Moonee Ponds Activity Centre Structure Plan (MPACSP) was adopted in March 2010 and updated in June 2012. The subject site was referred to as the 'Readings' site and was identified as a potential development site. MPACSP includes the following directions:

- *North-south pedestrian links envisaged on the west side of the site*
- *East-west links encouraged*
- *Site recognised as future mixed use opportunity*
- *Encouraged varied heights of 10-16 storeys on the Hall Street site and 4-8 storeys for the Margaret Street site*
- *Open Space was identified on a parcel of land (Council owned), to the south-west of the site.*



Figure 3 Structure Plan Preferred Built Form Plan<sup>1</sup>

The subject site is located in precinct 2D which includes a preferred height of 50 metres (16 storeys).

<sup>1</sup> Moonee Ponds Activity Centre Structure Plan, March 2010.

**(ii) Amendment C100 (Activity Centre Zone)**

Amendment C100 to the Moonee Valley Planning Scheme was gazetted on 30 March 2015. It gave effect to the Structure Plan and rezoned the MPAC to the Activity Centre Zone – Schedule 1 (ACZ1).

Amendment C100 implemented the following preferred heights, over three sub-precincts across the site:

- Precinct 2D: 50 metres
- Precinct 2E: 26 metres
- Precinct 2F: 20 metres.

It also implemented a new pedestrian link and identified open space on a parcel of Council owned land, south-west of the site.

**(iii) Amendment C147**

At its Ordinary Meeting on 23 September 2014, Council resolved to prepare, adopt and approve Amendment C147, which applies and inserts a new Development Plan Overlay (DPO) for the site. The Development Plan, adopted by Council on 28 October 2014, incorporated the following for the future development of the site:

- a variety of building heights across the site, ranging from 6-26 levels
- two new north/south pedestrian/cycling links through the site
- ground floor retail uses along Hall and Everage Streets and part of the Homer Street frontages
- ground floor community use along the Everage Street frontage
- new public open space with a minimum 600 square metres and frontage to Homer Street.

As submitted by Council, the purpose of the DPO and subsequent Development Plan was to provide a *'statutory mechanism to guide the development of the site in an integrated manner'*. DELWP advised that given the gazettal of the ACZ, it did not support the introduction of a DPO over the site as an additional planning control. Amendment C147 and the DPO/Development Plan thus did not proceed.

**(iv) Amendment C132**

Amendment C132 is currently with the Minister for Planning. It proposes to apply column B parking rates, confirms that reductions cannot be granted for less than column B parking rates and that financial contributions are proposed to apply to all reductions below column B rates. Council is also seeking to introduce a new Parking Overlay schedule through this Amendment.

### **1.3 The Stage 1 Application**

Caydon Property Group (the Applicant) has an approved permit for Stage 1 (the Stage 1 and Stage 2 areas are shown in Figure 3 below) which allows:

*... for the construction of four tower forms ranging in height from six to 23 storeys accommodating 612 apartments and provision for 1,585 square metres of retail space. The proposal also features north/south pedestrian*

*linkages, a civic plaza, widened footpaths along with provision for basement car parking and a centrally located private communal area.<sup>2</sup>*

Moonee Valley City Council (Council) initially refused a permit for Stage 1. It was issued on 11 April 2016 following revisions agreed at a compulsory conference with VCAT.



Figure 4 Stages 1 and 2

## 1.4 The Stage 2 Application

The Stage 2 Application was lodged with Council on 30 June 2015. By the time the Application was considered by Council on 26 July 2016 it comprised:

- *Construction of multiple buildings ranging in height from 6 to 34 storeys*
- *691 apartments (414 x 1 bedroom, 258 x 2 bedroom and 19 x 3 bedroom apartments)*
- *102 serviced apartments*
- *2,550m<sup>2</sup> office space*
- *648m<sup>2</sup> retail space*
- *191m<sup>2</sup> café*
- *731 car spaces (726 within basement levels and 5 at ground level accessed via Aspen Street)*
- *Waiver of loading bay.<sup>3</sup>*

The Application was supported by Council officers with a reduction in height to 28 storeys and a number of other changes. Council refused the Application.

An Application for Review of the Council decision was lodged with VCAT on 11 August 2016. On 28 November 2016, amended plans were lodged with VCAT including buildings ranging in height between 6 and 30 storeys and featuring:

- 595 apartments and 97 serviced apartments

<sup>2</sup> Document 8, Council submission paragraph 7.1.

<sup>3</sup> From Item 9.1, Council agenda 26 July 2016.

- 1,610 square metres of retail floorspace
- 3,195 square metres of office space
- car parking, motorcycle parking and bicycle parking.

On 9 December 2016, the Application was called-in from VCAT by the Minister for Planning under section 58(2)(a) of Schedule 1 to the *Victorian Civil and Administrative Tribunal Act 1998*.

## **1.5 The Advisory Committee**

### **(i) Appointment and Terms of Reference**

Nick Wimbush (Chair) and Ray Tonkin were appointed, as the Former Moonee Ponds Market Site Advisory Committee, by the Minister for Planning on 5 February 2017 under section 151 of the *Planning and Environment Act 1987* (the Act).

The Committee's Terms of Reference (TOR) are attached at Appendix A.

Clause three of the TOR state that the purpose of the Advisory Committee is to:

- *Provide advice to the Minister for Planning on whether a planning permit should be issued for the proposed development for Stage 2 of 40 Hall Street, Moonee Ponds (Former Moonee Ponds Market Site) and if so, the appropriate conditions for the permit.*
- *Examine whether the proposed building heights of the proposal have had proper regard to the preferred building height provisions within precinct 2D under schedule 1 of the Activity Centre Zone to the Moonee Ponds Planning Scheme.*

### **(ii) Process**

#### **Initiation**

On 9 February 2017, the Committee wrote to the parties to the VCAT proceeding P1634/2016 giving them notice of the Advisory Committee appointment and providing them with the opportunity to present at the forthcoming Hearing.

#### **Council position pre-Hearing**

Council held a Special Council Meeting on 27 February 2017 and resolved to advise the Committee that the Application be refused on the following grounds:

- *The proposal fails to meet the strategies contained at Clause 15.01-2 (Urban design principles) and Clause 21.06-4 (Urban Design) of the Moonee Valley Planning Scheme as building separation and heights do not appropriately respond to the location and surrounding context.*
- *The proposal exceeds the preferred heights nominated within Precinct 2D under Schedule 1 to the Activity Centre Zone (ACZ1).*
- *The proposal fails to provide sufficient degree of housing diversity contrary to the objectives and strategies contained within Clause 21.05-2 (Housing Diversity) of the Moonee Valley Planning Scheme.*
- *The proposal fails to achieve an appropriate level of internal amenity for apartments.*

- *The proposal fails to minimise off-site amenity impacts and would lead to unreasonable wind impacts on surrounding areas.*
- *The proposal fails to provide sufficient car parking as required under Clause 52.06 (Car Parking) of the Moonee Valley Planning Scheme and is expected to lead to an increased pressure for on-street parking in the surrounding area to an unacceptable degree.*
- *The proposal, by its degree of exceedance of the preferred heights nominated within Precinct 2D under Schedule 1 to the ACZ, is pursuing a 'de facto' strategic planning review and amendment, contrary to Moonee Valley Planning Scheme Amendment C100 and contrary to the planning scheme amendment regime established by Parliament under Part 3 of the Planning and Environment Act 1987.*

## Hearing

The Committee TOR state:

*The Advisory Committee must undertake proceedings that allow each party to the VCAT review (or their representative) to give a summary on whether a permit should be issued, and if so, what conditions should apply. The Advisory Committee may choose to do this by a hearing, forum or other consultation mechanism of its choosing.*

The Committee conducted a Hearing for four days as per Table 1 below. The parties to the Hearing are listed in Table 2. A roundtable discussion and without prejudice discussion of conditions was held on 9 March 2017 including a brief confidential session where a number of issues were explored separately with Council and the Applicant.

Table 1 Advisory Committee Hearing dates and issues

Date	Hearing Type	Key issues
2 March 2017	Hearing	
3 March 2017	Hearing	
9 March 2017	Hearing/Without Prejudice session including discussions between parties/Parties negotiation over issues and conditions	Heights and permit conditions
15 March 2017	Hearing	Daylight and internal amenity

Table 2 Parties to the Hearing

Party	Represented by
Moonee Valley City Council	Louise Hicks, Barrister assisted by Matt Spozio of Council who called evidence from: - Rob McGauran of MGS Architects in Urban Design
Caydon Property Group	John Cicero of Best Hooper Lawyers, who called evidence from: - Brendan Rogers of Urbis in Evolution of the redevelopment proposals - Catherine Heggen of Message Consultants in Planning - Charmaine Dunstan of Traffix Group in Traffic - Chris Goss of Orbit Solution in Visual Amenity (evidence tabled, he did not appear) - Zhuyun Xu of Vipac in Wind Assessment - Mark Sheppard of David Lock Associates in Urban Design - Phillip Greenup of Arup in Daylight

## Inspections

The Committee undertook a number of unaccompanied inspections of the subject site and surrounds through the course of the Hearing.

### 1.6 Approach in this report

The Committee has structured the report to address the key issues identified in the TOR and submissions, being:

- development height
- public benefit
- other Issues including:
  - daylight and internal Amenity
  - overshadowing
  - car parking.

Following consideration of these issues, the Committee undertakes an assessment against the relevant local and state planning policy to determine whether a permit should be issued.

Council initially had some concerns around wind impacts. The Committee understands that these concerns have been addressed in the without prejudice permit conditions, which are included in Appendix C. The Committee does not address this issue further.

## 2 Development height and building separation

### 2.1 The issue

The key issue is whether the proposed development heights, and particularly the Everage Street tower, have had proper regard to the preferred building heights in the Moonee Valley Planning Scheme.

As outlined in Chapter 1.2(ii), the site is located within Precinct 2D in ACZ1. This nominates a preferred height of 50 metres (16 storeys) across the site.

### 2.2 Evidence and submissions

#### (i) Council evidence and submissions

In its submission, Council noted that it had met on 27 February 2017 and resolved to advise the Committee to refuse the Stage 2 Application on numerous grounds including:

*The proposal fails to meet the strategies contained at Clause 15.01-2 (Urban design principles) and Clause 21.06-4 (Urban Design) of the Moonee Valley Planning Scheme as building separation and heights do not appropriately respond to the location and surrounding context.*

*The proposal exceeds the preferred heights nominated within Precinct 2D under Schedule 1 to the ACZ.*

...

*The proposal, by its degree of exceedance of the preferred heights nominated within Precinct 2D under Schedule 1 to the ACZ, is pursuing a 'de facto' strategic planning review and amendment, contrary to Moonee Valley Planning Scheme Amendment C100 and contrary to the planning scheme amendment regime established by Parliament under Part 3 of the Planning and Environment Act 1987<sup>4</sup>*

Council also highlighted Clause 21.06 – Built Environment in the Municipal Strategic Statement where one of the strategies (Clause 21.06-4) is to:

*Encourage new developments up to but not exceeding preferred heights as outlined in relevant design guidelines, overlays or plans. In cases where a development seeks to exceed preferred maximum building heights it must clearly demonstrate a net community benefit to be delivered through this increased height, and an exemplary urban design outcome.<sup>5</sup>*

Council's submission made the following comments about the height issue:

*While Council acknowledges the applicant has made some concessions to the vexed question of building height particularly in the Everage Street form the resultant massing of the building mass to maintain building yields has*

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<sup>4</sup> Document 8, Council submission paragraph 1.3.

<sup>5</sup> Ibid, paragraph 5.2.

*undermined many of the urban design benefits negotiated with Council officers through the planning process. The siting strategy particularly at the public edges of the site lacks a generosity to be effectively absorbed into the existing urban fabric without a reduction to the amenity of the place.<sup>6</sup>*

When questioned, Council indicated that it would accept a proposal that set the height of the Everage Street tower at 23 storeys, similar to the tower approved as part of Stage 1.

Council called Mr Rob McGauran as an expert witness to address urban design issues with respect to this Application. In his written evidence he made the following comments:

*Generally speaking the design language and the manner in which it is applied is appropriate in the context delivering a campus of building forms with related but differing expression. In concert with the proposed public realm and streetscape responses these are generally appropriately applied.<sup>7</sup>*

In addressing the TOR to the Advisory Committee, he acknowledged that the Homer Street West and East buildings did not comply with the preferred height limits set out for this precinct in ACZ1. However, he concluded:

*It is my view however that as a preferred rather than mandated maximum and given the lower scale inclusion of elements in the balance of this north western complex of buildings that the outcome is generally consistent with the stated ambition of ACZ1.<sup>8</sup>*

With respect to the Everage Street tower he said:

*Unambiguously, it can be concluded that the height of this building has not had proper regard for the preferred building height provisions within the Precinct 2D Schedule 1 of the ACZ of the Moonee Ponds Planning Scheme.<sup>9</sup>*

In discussing the Committee's TOR, he made the following recommendation:

*In response to the Ministerial request to the Committee to consider whether or not a Planning Permit should be granted, in the case of the Everage Street building one of two outcomes should be proposed. Either:*

- a) The building be reduced to a building of comparable height to that provided for in the Homer Street west tower or;*
- b) Should the applicant seek to provide for a building of greater scale, that a suite of measurable and substantial community benefit investments should be provided for against the increased sellable floor space ultimately agreed.*
- c) The final height of this form should be reduced to ensure that the main Everage Street Spine is protected during the key lunchtime zone of the day*

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<sup>6</sup> Ibid, paragraph 10.1.

<sup>7</sup> Mr McGauran evidence, paragraph 36.

<sup>8</sup> Mr McGauran evidence, paragraph 39.

<sup>9</sup> Mr McGauran evidence, paragraph 42.

*when community life and activity through the precinct should be maximised.*<sup>10</sup>

Mr McGauran did not support the proposal as presented to the Committee, but his specific concerns were primarily related to issues of overshadowing (in his view an unsatisfactory impact of the proposed height of the Everage Street tower), contributions to public benefit and daylighting issues to individual apartments.<sup>11</sup>

When asked by the Committee whether he believed that the nearly 100 percent increase in height over that provided for in the ACZ1 was a problem, he responded that it wasn't as long as you provide a good environment at the ground level and the proposal delivers something more to the community. In his mind, given a good overall outcome a tower of 20 to 25 storeys would be acceptable. He reinforced this view when cross examined by the Applicant, indicating that he wasn't against height *per se* as long as it can be fitted into an environment without great detriment.

Council submitted that it was concerned about building separation, and particularly the above podium separation distances between the Everage Street Tower and the easternmost Homer Street building.

## **(ii) Applicant evidence and submissions**

The essential arguments made by the Applicant in support of the Application in relation to height were, in summary:<sup>12</sup>

- The starting point for considering height must be 23 storeys given the Stage 1 approvals. There have been significant changes in planning that would warrant a reduction from that height.
- It is conceivable in Precinct D that a development of 50 metres uniform height across the precinct could occur. Such a development would only have to provide one north south pedestrian link; not the two proposed.
- Such a development would not be required to provide the plaza to vest in Council and would not require the widening of footpaths proposed as there is no requirement in the zone.

The Applicant submitted:

*If there is to be any change in the way that the exercise of discretion in relation to preferred heights is to be undertaken then that should be done prospectively and not retrospectively against an application that has been in the system now since June 2015 and which has been the subject of whole of site planning and place making ...*<sup>13</sup>

The Applicant called expert evidence from Ms Catherine Heggen on planning and Mr Mark Sheppard on urban design along with a series of photomontages which were pertinent to this issue.

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<sup>10</sup> Mr McGauran evidence, paragraph 70.

<sup>11</sup> These detailed issues are considered later in this report.

<sup>12</sup> Document 17, Applicant's submission, paragraph 2.1 onwards.

<sup>13</sup> Document 25, Applicants closing submission, paragraph 6.3.

Ms Heggen stated:

*I consider that the height of the Everage Street building, whilst exceeding the preferred Structure Plan building height in this Precinct, will ensure an improved urban planning outcome and a richer more interesting street urban fabric and skyline ...<sup>14</sup>*

Her evidence included useful diagrammatic models which showed the site developed totally in accordance with the preferred height provisions of the ACZ1 (Figure 5), with Stage 1 as approved and Stage 2 in accordance with the preferred height provisions of the ACZ1 (Figure 6) and as proposed (Figure 7).

The Committee has reproduced these figures below.

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<sup>14</sup> Ms Heggen's evidence, page 5.

**ACZ1 Relevant Dimensions - Stages 1 and 2**

Street Wall Height = 11m

Upper Floor Setback = 3m

Overall Building Height = 50m, 26m and 20m

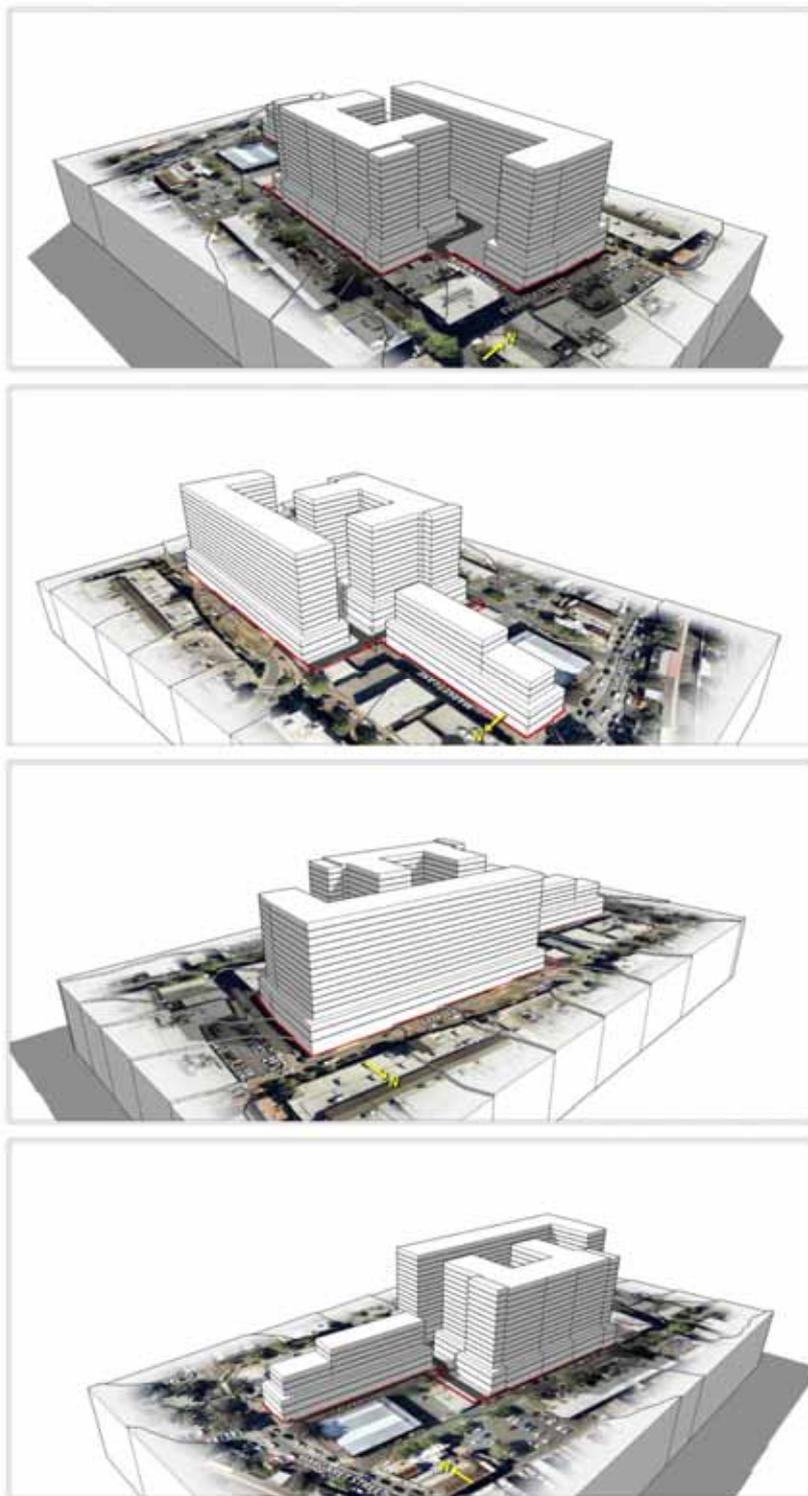


Figure 5 Development Scenario 1 – Stage 1 and 2 ACZ1 compliant

**ACZ1 Relevant Dimensions - Stage 2**

Street Wall Height = 11m

Upper Floor Setback = 3m

Overall Building Height = 50m, 26m and 20m

Stage 1 - Planning Permit No: MV/434/2015

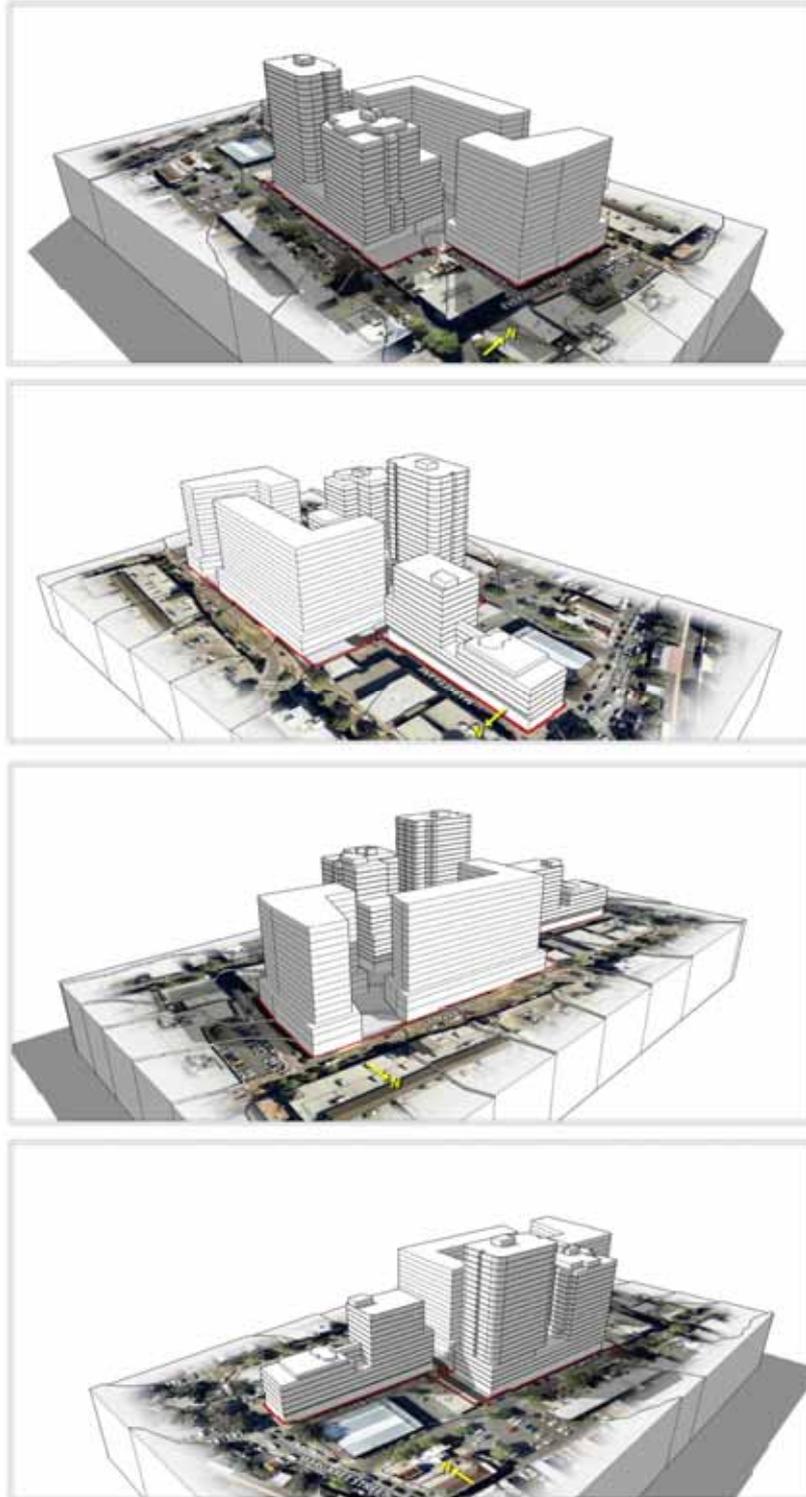


Figure 6 Development Scenario 2 – Stage 1 as approved and Stage 2 ACZ1 compliant

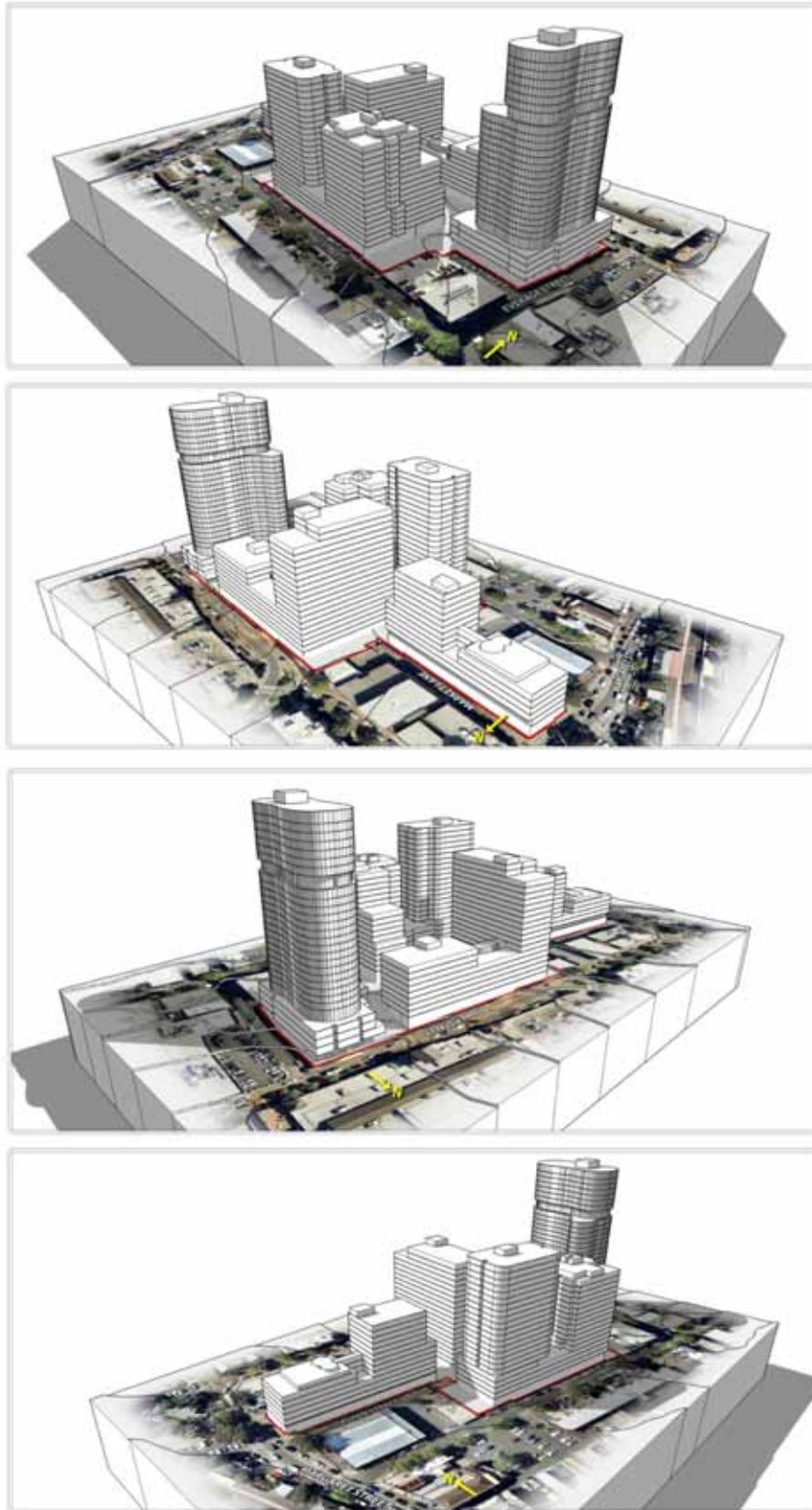


Figure 7 Development Scenario 3 – Stage 1 as approved and Stage 2 as proposed

In response to cross-examination, she indicated that focussing on the preferred height limits of ACZ1 was hardly warranted given the previous agreement of Council to allow 23 storeys of development in Stage 1.

Mr Sheppard offered the following evidence in support of the proposal:

*I consider that this configuration of buildings responds to the characteristics of the subject site in the following ways:*

- *The specific configuration of height reduces the extent of overshadowing of the proposed southern abutting public plaza (Stage 1) by limiting height where immediately north and northwest of this space;*
- *The proposed configuration reduces the sense of ‘enclosure’ experienced by users of the proposed open space by enhancing the proportion of sky view;*
- *The proposed heights limit overshadowing of Hall Street and the Stage 1 approval to acceptable levels; and*
- *The configuration provides a more visually interesting and varied skyline in comparison to consistent 50m high forms.*<sup>15</sup>

During his presentation of evidence, there was discussion about the expectations of a member of the community given the preferred 50 metre height limit. In essence, Mr Sheppard indicated that interpreting the 50 metres in literal terms was not useful and it couldn't be expected that a developer would build to a uniform height across the precinct and it is clear that Council has not expected that.

In his evidence, he provided a diagram showing the northern elevation of the proposal with the 50 metre preferred height shown as a line. This is shown in Figure 8 below.

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<sup>15</sup> Mr Sheppard evidence, paragraph 44.

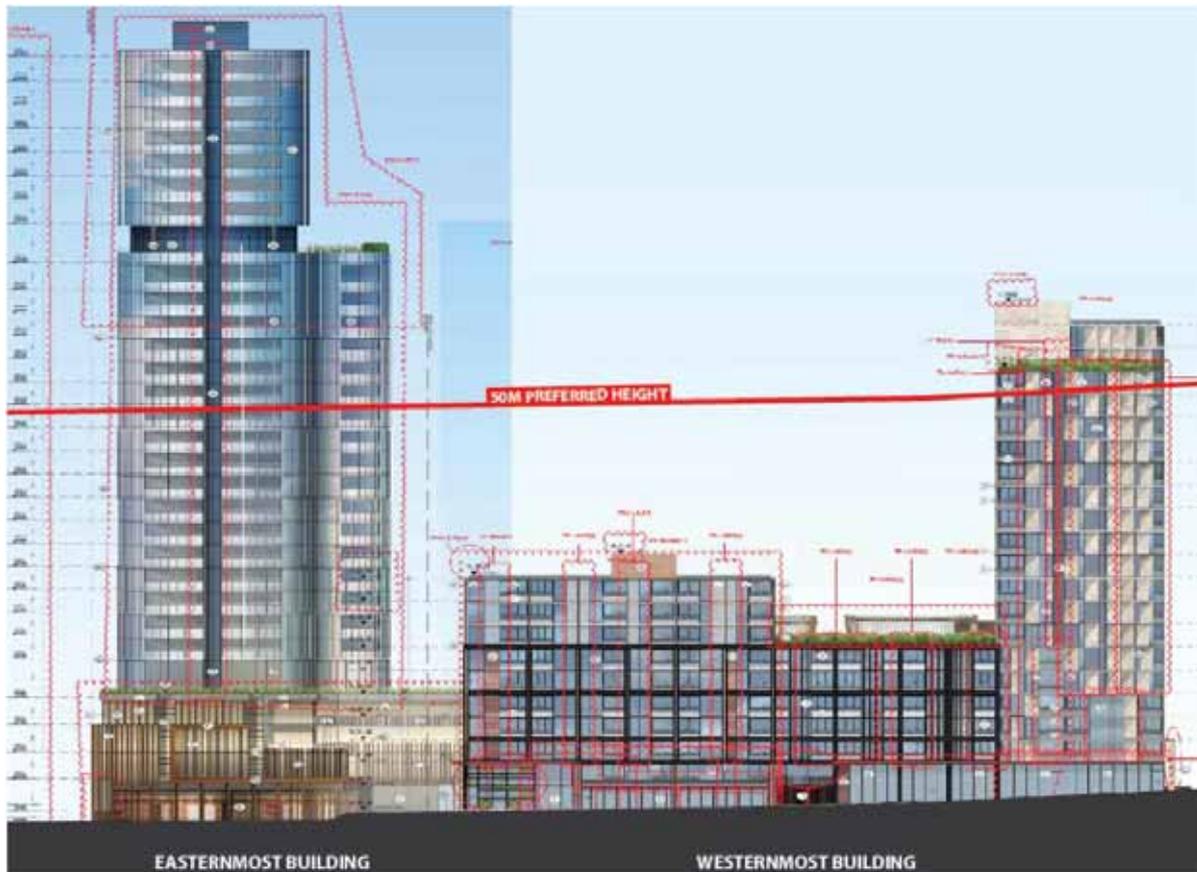


Figure 8 Northern elevation of proposed form in relation to preferred maximum 50 metre height

Under questioning from the Committee, he agreed that the proposed Everage Street tower would become a landmark and dominant form on the Moonee Ponds hill and in his mind this was a good result.

The Applicant provided photomontages developed by Orbit Solutions to demonstrate the visual impact of the proposed Everage Street tower from a range of vantage points and to support Mr Sheppard's view that this tower will become a landmark from more distant vantage points.

In relation to building separation, Mr Sheppard's evidence was that the building separation between the Everage Street tower and the easternmost Homer Street building, at a minimum 17.5 metres above the podium, is appropriate for a 10 storey building adjacent to the 30 storey tower. His view was that for longer views the taller building will be viewed as a standalone form.

### 2.3 Discussion

A useful way to analyse the current proposal's building height and separation issues is to consider what the community expectations for the site may be. This was touched on in the discussion about the attitude of a person on the street. Given the provisions of ACZ1, they are likely to anticipate that nothing taller than 50 metres would be constructed on the site. However as pointed out in the submissions for the Applicant and virtually all of the expert evidence pertinent to this issue, development at a uniform height of 50 metres is an unrealistic and unnecessary response to the provisions of ACZ1.

The Committee also notes the Applicant's submission when this issue was discussed that the level of opposition or engagement by the community in the Application process has been relatively limited. Therefore it cannot be assumed that there is widespread concern about the height or the exceedance of the preferred level.

By Council agreeing to a tower of 23 storeys (approximately 71 metres) in Stage 1 and indicating to the Committee that it would see that as the upper limit for the Everage Street tower, it has set an alternative benchmark, presumably a benchmark that it feels confident that the community will ultimately accept.<sup>16</sup>

In planning, it is well established that discretionary planning provisions operate as guides only and can be exceeded under certain circumstances. In this instance, the argument put by the Applicant and the expert witnesses is that this is a reasonable approach as long as the additional height is accompanied by good design and appropriate community benefit. In this instance, the Applicant and its experts believe that it has met this test. Mr McGauran for the Council accepted that the height was negotiable, but was looking for additional benefits and amenity from the development. Public benefit is considered in more detail in the following Chapter.

If there is a broader problem in height controls and activity centre planning the Application is illustrating, and the Committee has not turned its mind to whether there is, then this is an area that should be considered at a strategic policy level. The Committee does not consider it appropriate to review strategic planning policy through this Application, particularly in a case where an earlier Stage has been approved already at seven storeys over the preferred height and many of the public benefits have already been 'handed over' through Stage 1.

The Committee understands that Council considered the Stage 1 Application in full knowledge of what was proposed in Stage 2.

A move to greater use of mandatory controls, or giving additional guidance to discretionary controls, could certainly be undertaken, but again this is a matter for State policy.

The Committee does not accept the position put by Council that the Application seeks to 'make policy' by considering such an exceedance over the preferred heights in the planning scheme. The Application can be considered under the existing planning scheme and given the number of approvals already made by Council (and VCAT) over the scheme's preferred heights, the Committee does not consider this a defensible position.

In terms of urban design, the Committee accepts that the proposed 'campus' style development is a better outcome than a universal 50 metre high development. It also accepts that this will inevitably lead to some buildings standing out 'above the crowd'.

The Committee considered the photomontages presented by Orbit Solutions. The impact of a large tower (either 23 or 30 storeys) on the site of the Everage Street building will have a

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<sup>16</sup> Council provided a hand-annotated plan (Document 10) of the MPAC showing a number of instances where the preferred height has been exceeded, either by Council as responsible authority or at the direction of VCAT. These included approvals at 39 metres on a preferred 26 metres (VCAT) and 50.7 metres on a preferred 32 metres (Council). None of the examples were to the extent of the Stage 2 application. The Committee also notes that the Development Plan adopted by Council in late 2014, but not in the planning scheme, envisaged development to 26 levels at that time.

significant impact on the immediate surrounds of Everage, Hall and Homer Streets, but this impact will be the same regardless of the height. The greatest opportunity for a difference of impact will be when viewed from afar. The photomontage view from the intersection of Kellaway Street and Mt Alexander Road demonstrates this. However, the visual impact from this vantage point will be dramatic, regardless of whether it is 23 or 30 storeys.

Any difference in visual impact between the two options would only become apparent at a much greater distance from the site than those provided for in the photomontages. Hence the visual impact would become more about establishing a landmark for the Activity Centre as suggested by Mr Sheppard.

On this basis, the Committee believes that the visual and physical impact of a 30 storey tower on Everage Street will not be significantly greater than a 23 storey development in the same location. It is important to remember that when the 30 storey building is constructed, it is likely it will be already in context with the newly constructed 23 storey building, rather than the existing 10-12 storey context in the MPAC.

Subject to the public benefit discussion, the Committee is then left to question whether the Everage Street tower should be 30 storeys (its current configuration in the VCAT amended plans before the Committee), the preferred 23 storey maximum put forward by the Council or somewhere in between.

The Committee was not presented with any rationale to choose a random “splitting the difference” height to recommend a height of say 26 storeys. The evidence before the Committee supports the design response put forward across the whole site, including the 30 storey Everage Street tower. This building will be a very significant change for Moonee Ponds, as will the already approved 23 storey building. This does not mean it must be a negative change.

The Committee has reviewed the evidence of Mr Sheppard in particular in relation to building separation and does not hold any concerns in this area.

## **2.4 Conclusions**

The Committee concludes:

- At face value, the proposed Everage Street tower proposed at 30 storeys would not appear to have had proper regard to the preferred height of 50 metres (16 storeys) in the Moonee Valley Planning scheme. However, when put in the context of the broader planning framework and other approvals on the site and in the MPAC, the Committee considers the preferred height has been appropriately considered.
- The amended plans for Stage 2 at 40 Hall Street should be approved, including the 30 storey Everage Street tower.

The Committee has provided a set of recommended permit conditions in Appendix C.

## 3 Public benefits

### 3.1 The issue

The issue is whether adequate public benefit has been provided to justify the taller heights in the Stage 2 Application.

### 3.2 Background

The development includes the following public benefit provisions.

Table 3 Summary of public benefits<sup>17</sup>

Provision	Percent of overall site area	Area (square metres)
Public open space contribution at north-east corner of the site	11.02 percent	1,475
Widened footpaths to all adjacent streets	4.14 percent	555
Two publicly accessible north-south pedestrian links at both east and west ends of the site	12.42 percent	1,663
<b>TOTAL</b>	<b>27.58 percent</b>	<b>3,693</b>

The Applicant is required to provide open space at the north-east corner and the two public pedestrian links as per the Stage 1 permit and Development Plan. A section 173 agreement requires 1,255 square metres of open space to be vested in Council, or otherwise Council must be satisfied that the area would be available for unrestricted public access.

In total, the contributions result in approximately 27 per cent of public benefits for the entire development and equate to approximately \$12,900 for each dwelling.

The public benefits do not include Affordable Housing or Social Housing provisions.

### 3.3 Evidence and submissions

#### (i) Council evidence and submissions

In relation to the public benefits, Council submitted that:

*... without substantial adjustment to both the placement and height of buildings to reduce the amenity impacts, the perceived net community benefit provided by the public link and widened footpaths proposed in the design response [are] diminished.<sup>18</sup>*

Council submitted that the cumulative impact of the proposal only came to light during the Stage 2 assessment process. The staged approach of the applications limited Council's

<sup>17</sup> Information for this table was derived from Document 1, Urbis letter to John Cicero, Best Hooper dated 1 March 2017. The figures include Stages 1 and 2.

<sup>18</sup> Document 8, Council submission, paragraph 10.1.

ability to view and assess the entire Application as a whole, thereby limited its understanding of the true implications on the public realm.

As such, Council submitted that the permit for Stage 2 should include a condition to provide social housing. It argued that support for affordable housing is found in both the State and Local Policy Frameworks.

Mr McGauran gave evidence on public benefits on behalf of Council. On the topic of public benefits, he was of the view that:

*... the opportunities for the applicant to warrant support for the taller tower form are necessarily associated with the sharing of the value of this uplift with the broader community to achieve broader ambitions for the area and mitigation of offsite impacts.<sup>19</sup>*

Mr McGauran suggested that the following additional benefits might include:

- *Incorporated community facilities within ground level or disability accessible zones of the development.*
- *Affordable housing to be gifted to a registered Community Housing agency, with housing provided aligned to local need.*
- *Collaborative and making spaces for the community.*
- *Affordable not-for-profit workplaces for start-ups.*
- *Increased public space.*
- *End of travel bicycle facilities for the Town Centre.*
- *Childcare facilities.*
- *Health and wellbeing facilities.<sup>20</sup>*

In relation to public benefit and affordable housing Mr McGauran submitted:

*... the minimum of 5 percent of the sellable floor area of additional space over and above preferred heights or as nominated in the imminent Government Affordable Housing Policy, should be gifted for community housing accommodation.<sup>21</sup>*

After further information was received from the Applicant upon request from the Committee, Council circulated draft permit conditions that included the following condition:

*Prior to the occupation of any part of any building constructed on the subject land, the owner must produce evidence to the satisfaction of the Responsible Authority that it has entered into a Contract of Sale to sell to a Registered Housing Provider at least 9 dwellings<sup>22</sup> constructed on the subject land.*

## **(ii) Applicant evidence and submissions**

The Applicant submitted that significant contributions had already been made for public benefit. It was submitted that the level of “*public benefit give back is significant*” and

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<sup>19</sup> Mr McGauran evidence, paragraph 59.

<sup>20</sup> Ibid, paragraph 57.

<sup>21</sup> Ibid, paragraph 71.

<sup>22</sup> The calculation for this number is mentioned in the next section.

*“significant proposed improvements to the public realm including a major new open space for the Activity Centre<sup>23</sup>”* have been incorporated which are *“very generous ... at over double what is being proposed at the Moonee Valley Racecourse development.”*

Further, it was submitted that the public benefits being delivered outweigh the additional levels proposed:

*What’s more, [public benefits] have a direct and beneficial outcome on the Activity Centre. Those additional seven levels will have no impact upon Mrs Smith but the community benefits from what the Permit Applicant will deliver by way of private and public realm works.<sup>24</sup>*

The full scale of public benefits provided was described by the Applicant:

*...what the Permit Applicant proposes for Stage 1 and 2 is ... an exemplary example of place making, including the creation of a campus of buildings. This includes the delivery at no cost to the Council of fully constructed open spaces, fully constructed additional publically accessible links through this Activity Centre, widened footpaths, improved roads, improved public realm, all at considerable cost of the order of \$18,000,000 to the Permit Applicant and yet all the Council can focus on is the height of the Everage Street building which it now says is seven storeys too high.<sup>25</sup>*

The Applicant referred to the recent gazettal of Amendment C270 to the Melbourne Planning Scheme. It submitted that the *“C270 principle”* of providing public benefits in order to achieve additional building height is relevant and should prevail. One of the most significant features of Melbourne C270 is the Floor Area Uplift/public benefits scheme, which allows developers to deviate from discretionary height requirements through the delivery and provision of public benefits. The Applicant submitted that the proposal does exactly this, in a *“real and meaningful way”* that delivers benefits consistent with those specified in the associated practice note *“How to calculate floor area uplifts and public benefits”*.

The Applicant submitted that an analysis was conducted to cost both the site area and construction costs. In total, the contribution to be delivered by the proposal is \$18.2 million, or the equivalent of \$12,900 for each dwelling<sup>26</sup>. In comparison to the Moonee Valley Racecourse Redevelopment Advisory Committee recommendations for Amendments C120 and C124, that Committee concluded that *“the total contribution (including public open space contribution) of \$6,000 per dwelling, is reasonable and at the high end for a proposal such as this.”*

Consequently, the Applicant strongly opposed the inclusion of Affordable Housing in the permit conditions. It was submitted that there is no basis for this requirement in the planning scheme, the public benefits already being provided are significant and there is no reference to Affordable Housing in ACZ1 for this precinct.

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<sup>23</sup> Document 1, Caydon letter to Council dated 14 December 2015.

<sup>24</sup> Document 25, Applicant closing submission, paragraph 2.30.

<sup>25</sup> Ibid, paragraph 2.18.

<sup>26</sup> Document 1, Urbis letter to John Cicero, Best Hooper dated 1 March 2017.

Notwithstanding, the Applicant submitted that if Affordable Housing was to be considered, then the calculation should be based on the percentage of the increased yield above the 50 metre preferred height, rather than the whole building. The Committee requested clarity on this point and received an email on 13 March 2017 stating the following:

*There are 155 apartments in the Everage Street building and 31 apartments in the Homer Street West building above the 50m preferred height referred to in the Activity Centre Zone. This gives a combined total of 186 apartments and 5 percent of that number is 9.3 apartments or rounded down to 9 apartments.*

The Applicant concluded that this Application:

*... has been the subject of extensive discussions between Council and the Permit Applicant, which has led to a commitment on the part of the Permit Applicant in relation to the Stage 1 approval to the delivery of significant public benefits in good faith on the strength of a whole of site place making exercise which Council's own witness applauds.<sup>27</sup>*

It was summarised in closing that:

*This is not a case where a permit applicant is receiving the benefit of an increase in height above a preferred outcome without having to deliver substantial community benefits. There is no need to repeat those benefits but on any view and as agreed by Mr McGauran, they are significant. What's more, they have a direct and beneficial outcome on the Activity Centre.<sup>28</sup>*

### **3.4 Discussion**

The public benefit being provided far exceeds what is statutorily required by the planning scheme (Clause 52.01 specifies 5 per cent for open space). The Committee considers it entirely appropriate for a development to provide public benefit which exceeds the statutory requirement where the proposed building height exceeds the preferred height. The question then becomes what amount of public benefit should be required and in what form.

The planning scheme provides limited guidance on this matter therefore discretion must be exercised in the broader consideration around the permit. The Applicant said it provided more than enough; Council said the Applicant should provide more.

Having viewed the analysis done by both parties, the Committee considers the contribution for each dwelling to be generous when compared to recent large scale developments in the area. The public domain improvements should contribute significantly to the activity centre more broadly.

The Committee notes that the Application is not subject in the planning scheme to a Melbourne C270 type uplift assessment. The Applicant submitted it had tried to fit the C270 metric to its Application but it was not transferrable and was too complicated.

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<sup>27</sup> Document 25, Applicant closing submission, paragraph 2.16.

<sup>28</sup> Ibid, paragraph 2.29.

There was considerable discussion in the Hearing about the provision of social and affordable housing. Whilst Council submitted, and the Committee agrees, that social and affordable housing are mentioned in State and local policy, there is no statutory 'hook' to require such housing through the Application.

As Mr McGauran submitted, the State Government is active in this area<sup>29</sup> and there is no dispute that social and affordable housing provision is an issue requiring significant attention and action. However that acknowledgement is a long way from trying to force such provision via, for example, a permit condition.

The Applicant has not offered to provide such housing voluntarily in this Application; it was satisfied that the provision of public benefit is sufficient without it within the current planning framework. The Committee agrees with this position in principle.

Turning to the suggested permit condition, the Committee notes it requires a sale to a registered housing provider, not a gift as suggested by Mr McGauran. The Committee is not clear how this would work in practice. For example, is the expectation the sale would be at market rates (then what is the benefit) or at some reduced, but undefined rate?

Either way, the Applicant was lukewarm in their objection to the condition. The Committee has supported its inclusion in the permit.

### **3.5 Conclusions**

The Committee concludes:

- The public benefits to be provided as part of the overall site development (Stages 1 and 2) are generous and sufficient to support the elevated heights sought for the Everage Street building.
- Whilst there is no particular mechanism to require social or affordable housing in the development at this time, the Committee has supported the condition put forward as a 'requirement to sell' rather than a 'requirement to provide'.

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<sup>29</sup> See the recently released 'Homes for Victoria' initiative.

## 4 Other issues

### 4.1 Daylight and internal amenity

#### (i) Evidence and submissions

With respect to on-site amenity and liveability, Council had the following to say:

*Concerns are highlighted regarding a number of south facing apartments, including south facing saddleback arrangements to bedrooms throughout the development.*

Council called Mr Rob McGauran who had the following to say about the access to daylight in the development.

#### ***Internal corner arrangements***

*The natural light provided to the south facing units at lower levels including G03, M03, 221, 420 and 520 is of concern. The primary living space for these units and the adjoining units 501, 401, etc. to the east are presently indicated as screened. Views from the balconies of these south facing units would appear to have views into the adjoining bedrooms and living spaces within 9m to the west which are similarly screened. Detailing of the proposed screens is sparse in the material provided but its extent will have significant impact not only on the built form expression of the building but also on the amenity and daylighting levels internally enjoyed by occupants. This is a matter that was raised in earlier evidence and remains an outstanding issue for the project.*

*The configuration of the north-easternmost units on each level embeds balconies away from the corner interface with the internal laneway network. Desirably balcony areas should engage with these corners and internal street networks to maximise the perception of informal surveillance that arises to these important spaces.<sup>30</sup>*

and for the bedrooms and natural light:

*In the western tower the provision of inbound bedrooms to the western and eastern side of the lift core raise issues of concern for internal daylighting and amenity raised in earlier feedback and yet to be addressed via evidence of compliance by the applicant.<sup>31</sup>*

Council in its submission expressed concern about the size of balconies provided to some apartments:

*With respect to the balcony sizes, it is noted there are a number of instances of 6-7 square metre arrangements throughout the development. These are below the recommended 8 square metre requirement and are unacceptable.<sup>32</sup>*

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<sup>30</sup> Mr McGauran evidence, paragraphs 80-81.

<sup>31</sup> Ibid, paragraph 85.

<sup>32</sup> Council submission, paragraph 10.3.

Mr McGauran expressed concern about access to private open space:

*Of ongoing concern is the modest extent of private open space provided for residents of the development with a large number of units incorporating only 6sqm of open space. In the case of the eastern block of units this is in the absence of any substantive access to open space that is not substantially impacted by overshadowing arising from the built form of this and the adjoining proposed tower to the east or separated from the precinct by highly trafficked arterial roads. This is a major failing of the project in my view and warrants a more generous response to open space for individual dwellings in locations where their accommodation has access to sunlight. The site is not one where the residents have ready and convenient access off site to high quality open space in contrast to projects such as the redevelopment of the Toorak Station precinct for example.<sup>33</sup>*

These submissions and evidence were essentially pointing to the internal amenity of “saddleback” apartments that faced south. This was essentially a concern about access to natural light.

The Applicant, on the other hand relied on the evidence of Dr Phillip Greenup who pointed out that there is a difference between access to sunlight and daylight, and provided the following advice to the Advisory Committee:

*For ‘acceptable’ performance, it is recommended that at least 70 percent of living rooms have access to direct sunlight for at least two hours per day for at least six months of the year. Ideally winter sunlight access is preferred over summer sunlight access, but this is not necessary. For ‘best practice’ performance, it is recommended that at least 70 percent of living rooms have access to direct sunlight for at least three hours between 9am and 3pm on the winter solstice.<sup>34</sup>*

His analysis of the 692 apartments in the proposal showed that 617 (89 percent) reached acceptable standards of sunlight and 358 (52 percent) reached best practice.

For daylight he advised that acceptable standards were:

- *At least 90 percent of living rooms and bedrooms (considered collectively) should achieve average daylight factors of 0.5 percent for bedrooms and 1.0 percent for living rooms;*
- *At least 80 percent of living rooms should achieve an average daylight factor of 1.0 percent; and*
- *At least 80 percent of bedrooms should achieve an average daylight factor of 0.5 percent.<sup>35</sup>*

and best practice:

- *At least 80 percent of bedrooms should achieve a daylight factor greater than 0.5 percent to 90 percent of the floor area in all bedrooms; and*

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<sup>33</sup> Mr McGauran evidence, paragraphs 79.

<sup>34</sup> Dr Greenup’s evidence, paragraph 3.1.

<sup>35</sup> Ibid, paragraph 3.2.

- At least 80 percent of dwellings should achieve a daylight factor greater than 1 percent to 90 percent of the floor area of each living area, including kitchens (BESS); or
- At least 80 percent of dwellings should achieve a daylight factor greater than 1.5 percent (living rooms, dining rooms) or 2 percent (kitchens) to 40 percent of the floor area of each living area, including kitchens (Green Star).

He went on to tabulate the proportion of living areas and bedrooms achieving daylight access benchmarks:

Table 4 Proportion of living areas/bedrooms achieving daylight access benchmarks<sup>36</sup>

Proportion of areas achieving daylight access benchmarks	Acceptable	Best Practice (BESS)	Best Practice (Green Star)
Living areas and bedrooms	98%	76%	90%
Living areas	97%	51%	86%
Bedrooms	98%	93%	93%

Dr Greenup's opinions were that the daylight results were acceptable to the point where he supports a permit being granted. He stated:

*Occupants in the dwellings will, in the majority of cases, experience sufficient daylight that they will notice the passing of time and external sky conditions, and electric lighting will not be required for large parts of the day. In this respect the dwellings will 'feel' daylit. Although daylight amenity is more compromised in a small number of spaces, these represent only a small proportion of the rooms within the development.*<sup>37</sup>

In relation to sunlight, he stated the outcome across the development is acceptable rather than best practice. In particular, he noted that:

*The single-aspect south-facing dwellings are not expected to achieve acceptable sunlight access. Some of the lowest level east and west facing dwellings are also not expected to achieve acceptable sunlight access. These dwellings represent a small proportion of all dwellings within the proposed development.*<sup>38</sup>

He concluded that overall that the results are acceptable when the development is considered as a whole and particularly in an activity centre context.

## (ii) Discussion and conclusion

The Committee notes the evidence of Dr Greenup that the overall outcome is acceptable albeit with a small proportion of rooms within the development not meeting daylight targets and a proportion not meeting sunlight access targets.

<sup>36</sup> With the base case of surrounding buildings.

<sup>37</sup> Dr Greenup's evidence, page 4.

<sup>38</sup> Ibid, page 6.

It is clear from Dr Greenup's evidence that the great majority of apartments reach acceptable and best practice (Green Star) standards for daylight, whilst the sunlight performance was less satisfactory.

Clearly it would be best if 100 percent of apartments could reach the acceptable standards for daylight. Therefore, if there are opportunities to refine the design further with this aim in mind these should be pursued. The Committee however notes that the evidence of Dr Greenup that a permit should be issued and that there was no opposing evidence.

In relation to internal overlooking, the Committee is satisfied that the issue can be addressed through a permit condition, and an agreed condition (1(f)) is included in Appendix C accordingly.

The Applicant has made some adjustments to the amount of private open space in the form of balconies available to apartments. It appears to the Committee that the generally accepted standard is 8 square metres for each balcony. The Committee supports the permit condition (1(c)) proposed by Council to ensure this minimum is achieved.

The Committee concludes that internal amenity and access to daylight has been satisfactorily addressed subject to fine-tuning in the final design.

The Committee notes the recently released Better Apartment Design Standards. At the time of writing, these are not in the planning scheme and the Applicant did not undertake an assessment against them.

## **4.2 Overshadowing**

### **(i) Evidence and submissions**

Council in its submissions made the following comments about overshadowing:

*Having regard to the above, coupled with the acknowledgment of the site's location within the Moonee Ponds Activity Centre, it is considered the proposed shadow impacts will not have a detrimental impact on the operation, amenity or functionality of the public realm for pedestrians. The level of shadows is what would be expected of buildings of this scale, which is generally supported by Council's vision for the area.*

However, in his evidence Mr McGauran spent some time discussing the impact of overshadowing on the intersection of Hall and Everage Streets. He considered that this intersection was an important public space and that the overshadowing impact of a 30 storey tower over and above a 23 storey tower was excessive.

The Applicant rejected these assertions and in making final submissions provided shadow diagrams which considered the impact of the potential redevelopment of adjacent sites along with that of the Stage 2 development of the site.

### **(ii) Discussion and conclusion**

The Advisory Committee believes that Mr McGauran's evidence was a reasonable reflection of the impact of the Everage Street tower on the intersection of Hall and Everage Streets. However, in the context of the total development and the shadows cast by various buildings

in this and future potential adjacent developments, the impact on neighbourhood amenity will be minimal.

It is also observed that the Stage 2 development makes available other spaces which are open and not subject to excessive overshadowing.

The Committee concludes:

- The overshadowing projected for the various parts of the site is not unreasonable and insufficient reason to seek further changes to the proposal.

### **4.3 Car parking**

#### **(i) Background**

The Stage 2 Application proposes the following parking provisions:

- 726 car spaces
- 534 bicycle spaces.

The Application seeks approval to reduce the car parking requirements and waiver the loading bay requirements. Four levels of basement car parking have previously been approved for Stage 1.

For Stage 2, Clause 52.06-5 of the Moonee Valley Planning Scheme requires 940 car spaces, plus parking for the serviced apartments to the satisfaction of the Responsible Authority. This results in a shortfall of 253 car parking spaces.

As part of the Stage 1 approval and as directed by VCAT, the applicant was required to provide:

- *A cash contribution in lieu of the provision of 107 car parking spaces in the amount of \$802,500 to be paid on or before the occupation of any part of the development.*
- *The provision of not less than an additional 124 car parking spaces over and above those shown on the amended plans across Stages 1 and 2. Of these spaces, not less than 38 spaces must be located in Stage 1.*

Council opposed the Stage 2 Application and issued a Notice of Refusal, including the following traffic related ground:

*The proposal fails to provide sufficient car parking as required under Clause 52.06 (Car Parking) of the Moonee Valley Planning Scheme and is expected to lead to an increased pressure for on-street parking in the surrounding area to an unacceptable degree.*

**(ii) Evidence and submissions**

**Council submissions**

Council submitted that the shortfall of car spaces is only acceptable if a cash contribution in lieu of parking as per the non-statutory draft Moonee Ponds Parking Overlay was imposed<sup>39</sup>, otherwise the shortfall was unacceptable. It was submitted that:

*Absent a Parking Overlay or DCP, Council accepts it cannot require a contribution. There was considerable discussion of the use of such a mechanism in the C270 Panel re. the use of section 173 agreements. Council shares the Panel's concerns that such a condition cannot be mandated. It is only where the s173 is voluntarily entered into that such a contribution can be sought.*

*It is not ultra vires or 'illegal' to ask for that contribution. Whether such a request is reasonable in all the circumstances must be assessed in light of clause 21.06 and the stage the Parking Overlay amendment is at.*

Council requested that the Applicant enter into a section 173 agreement to provide a cash contribution in lieu of the car parking shortfall.

**Applicant evidence and submissions**

The Applicant maintained that the car parking shortfall was acceptable and in closing, submitted that:

*It is common ground that a condition requiring a financial contribution in lieu of car parking absent a Car Parking Overlay is unlawful. There is no basis for the inclusion of such a condition on any permit absent an empowering provision in a Parking Overlay affecting the site.*

The Applicant called on Ms Charmaine Dunstan to give evidence in relation to the car parking aspects of the Application. The following parking summary was provided in relation to Stage 2:

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<sup>39</sup> Council provided a copy of the draft Parking Overlay schedule (Document 9) to the Committee that it is seeking to have introduced into the planning scheme through Amendment C132.

Table 5 Development Summary – Stage 2

Use	Size/No.	Parking Provision	Notes
<b>Residential Component</b>			
One-bedroom apt.	302	207	0.69 spaces / apt.
Two-bedroom apt.	245	245	1 space / apt.
Three-bedroom apt.	49	98	2 spaces / apt.
Four-bedroom apt.	1	2	2 spaces / apt.
<b>Resident Subtotal</b>	<b>597</b>	<b>552</b>	0.92 spaces / apt.
Visitors	597	0	None
<b>Commercial Component</b>			
Serviced Apartments	97	39	0.4 spaces / apt.
Retail	1,601m <sup>2</sup>	56	3.5 car spaces per 100m <sup>2</sup>
Office	3,144m <sup>2</sup>	79	2.5 car spaces per 100m <sup>2</sup>
<b>Commercial Subtotal</b>		<b>174</b>	-
<b>TOTAL</b>		<b>726</b>	

It was submitted in her written evidence that the short fall of 253 car parking spaces is acceptable for a number of reasons outlined below.

#### *Car Parking Demand Assessment*

Clause 52.06-5 specifies that an application to reduce the number of car parking spaces must be accompanied by a Car Parking Demand Assessment.

The assessment indicated that adequate car parking is provided for residents, serviced apartments, office and retail staff and visitors during weekday business hours. The assessment also indicated that there is a shortfall of parking associated with visitors and retail customers. Ms Dunstan submitted that residential visitors would share the retail customer parking.

#### *Amendment C132*

Ms Dunstan referred to Amendment C132 to the Moonee Valley Planning Scheme, which sought to implement the Moonee Ponds Car Parking Plan to the Moonee Ponds Activity Centre. That Amendment proposed to activate the Column B parking rates in Clause 52.06 and a cash-in-lieu scheme. That Panel ultimately recommended adoption of the Column B Parking rates. If visitor parking was discounted in accordance with the Column B rates, in this instance, there would be no parking shortfall, as the supply for retail customers is enough to meet the demand. Moreover, Ms Dunstan submitted that if the Column B rates were used to count commercial, car parking, that would result in a shortfall of only 110 spaces.

#### *Availability of alternative car parking and transport*

The site is located centrally in the Moonee Ponds Activity Centre and has good access to a wide range of public transport, services and employment.

GTA investigated the traffic impacts of the development extensively and concluded that the shortfall was acceptable given the availability of alternative car parking in the Activity Centre. GTA commissioned parking surveys during significant time periods (eg. 8am – 9pm) over a number of days and concluded that the overflow generated could be accommodated in the nearby area without adverse impacts on the Activity Centre.

Moreover, public transport options such as buses, trains and trams are all located within walking distance of the site. The site is highly walkable and there is good access to bicycle parking. Stage 1 also included car share vehicles.

Ms Dunstan concluded that she was *“satisfied that the proposed level of car parking provision for this development is appropriate and .... it is acceptable to provide fewer car spaces on the site than required under Clause 52.06-5.”*

**(iii) Discussion and conclusions**

As submitted by Council in its opening submission, the provision of car parking was largely settled across Stage 1 and Stage 2 through the Stage 1 assessment. The outstanding item appears to be the wish of Council to attract a cash-in-lieu payment for the shortfall in parking in Stage 2. Council did not seek to argue that the parking reduction was not supported in principle.

There appears to be common ground that it is beyond power to enforce the cash-in-lieu contribution sought by Council of \$7,500 for residential parking spaces and \$15,000 for commercial spaces and the Committee recommends deleting condition 6 calling for a section 173 agreement to achieve that contribution. Council was correct to say that it could enter into a section 173 agreement for the contribution with the Applicant’s agreement, and this could still occur, but such an agreement cannot be forced by a permit condition that makes the development contingent on it.

The outcome of the Parking Overlay sought by Council has not been part of the Committee’s considerations and no comment is made on that course of action.

The Committee concludes that the reduction in parking sought by the Applicant is acceptable.

## 5 Planning permit assessment

### 5.1 The issue

The issue is whether a planning permit should be issued when the Application is assessed against the policy framework in the planning scheme.

### 5.2 Evidence and submissions

The Applicant provided an assessment of the Application against the planning scheme. Ms Catherine Heggen was called to give planning evidence and her assessment concluded:

- *The proposal is a successful urban planning outcome and is consistent with the intent and general directions of the Structure Plan. Importantly, I consider that the Stage 2 proposal when integrated with the Stage 1 development will deliver significant 'place making' outcomes that are transformative to the Moonee Ponds Activity Centre.*
- *It is consistent with relevant strategic policy directions relating to the efficient use of urban land and the provision of housing choice and diversity.*
- *It represents a considered design response which recognises the strategic importance of this large redevelopment site within the Moonee Ponds Activity Centre (MPAC).*
- *Its overall form and composition results in buildings of high architectural quality and will make a positive contribution to the urban renewal of the MPAC.<sup>40</sup>*

Ms Heggen undertook a comprehensive assessment of the proposal against the ACZ1 provisions, Clause 15.01 provisions and the Design Guidelines for Higher Density Development called up in Clause 15.01-2. These assessments, in her appendices, all supported her position that a permit should issue.

In its opening submission, Council outlined the relevant State and Local planning policies relating to activity centre planning and the Application in particular. Council submitted that the Application is consistent with State policy in terms of Housing, Economic Development, Transport and Airports.

Council's main objections, as discussed in Chapter 2, related to the issues of consistency with policy for urban design (Clause 15.01-2 and 21.06-4).

In terms of local policy, Council submitted that the Application is consistent with some policies such as Sustainable Environment, and is partially consistent with the Housing policy at Clause 21.05. Council maintained concerns in relation to the apartment mix and the number of apartments suitable for families (Clause 21.05-2 – Housing diversity).

Whilst identifying much in policy to support the Application, Council maintained that the design response and scale of the proposal was not consistent with the outcome sought by the planning scheme, submitting overall:

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<sup>40</sup> Ms Heggen's evidence.

*The current proposal results in a building that is in excess of 50 percent higher than the heights envisaged under the Schedule to the ACZ and reaches a point where it becomes disproportionate in its scale to the balance of the precinct particularly given the height at which nearby development has been approved and the preferred height and character.<sup>41</sup>*

Council expressed concern that the Application was attempting to undertake strategic planning through an application. In closing, Council reiterated:

*What the applicant is seeking is a transformation of the controls. The interpretation of the controls are being stretched to breaking point.*

*If such a significant departure from the discretionary controls is sought, that should be properly and transparently ventilated in a Planning Scheme amendment not through a strained application of the planning controls.*

### **5.3 Referrals**

The original Application was referred externally to Public Transport Victoria, VicRoads, Essendon and Melbourne Airports, and no objections were received. Urban design advice was sought from both MGS Architects and the Office of the Victorian Government Architect. Council submitted concerns were raised in relation to building height, site lines through the public open space, wind impacts and internal amenity, but these have all been mitigated through design and appropriate conditioning.

### **5.4 Discussion and conclusions**

The Committee considers that the proposed development is an appropriate response to the purposes of the ACZ and the objectives of the ACZ1. The Application proposes a campus style cluster of buildings with good access to existing transport, services and infrastructure and will contribute to increased housing supply in this precinct. The Committee considers that the proposal responds well to its context and relevant interfaces.

The site is a relatively large key development site in close proximity to the existing centre and a comprehensive public transport network of heavy rail, light rail and buses.

The Committee notes that there are still some areas of disagreement between Council and the Applicant at the Hearing in relation to the issues identified in this report. The principle of these relates to height and its relationship to public realm benefits and this issue is addressed in detail in Chapters 2 and 3.

Other matters the Committee considers can be managed through planning permit conditions and a recommended set of conditions is attached in Appendix C.

### **5.5 Recommendation**

The Committee recommends:

**The Minister for Planning advise the Governor in Council that a planning permit for the Stage 2 development of 40 Hall Street, Moonee Ponds should be issued in accordance with Appendix C of this report**

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<sup>41</sup> Document 8, Council submission, paragraph 10.2.

## Appendix A Terms of Reference

Version 1: February 2017

**Advisory Committee appointed pursuant to Part 7, Section 151 of the *Planning and Environment Act 1987* to consider an application for the Stage 2 redevelopment of 40 Hall Street, Moonee Ponds (Former Moonee Ponds Market Site).**

### Name

1. The Advisory Committee is to be known as the 'Former Moonee Ponds Market Site Advisory Committee'.
2. The Advisory Committee is to have member/s appointed who have knowledge and experience in
  - strategic and statutory planning; and
  - urban design and architecture.

### Purpose

3. The purpose of the Advisory Committee is to:
  - Provide advice to the Minister for Planning on whether a planning permit should be issued for the proposed development for Stage 2 of 40 Hall Street, Moonee Ponds (Former Moonee Ponds Market Site) and if so, the appropriate conditions for the permit.
  - Examine whether the proposed building heights of the proposal have had proper regard to the preferred building height provisions within precinct 2D under schedule 1 of the Activity Centre Zone to the Moonee Ponds Planning Scheme.

### Background

4. The subject site is located between Hall, Homer, and Everage Streets, Moonee Ponds. Redevelopment of the site is being undertaken in two stages. The current application represents Stage 2 of 2.
5. The site is located in Precinct 2D under Schedule 1 to the Activity Centre Zone. This has a preferred building height (excluding basement) of 50 metres.
6. Stage 1 (Planning Permit MV/434/2015) was approved on 11 April 2016 following resolution at a Victorian Civil and Administrative Tribunal (VCAT) Compulsory Conference proceeding allowing for the construction of multi-storey buildings and associated works, use of the land for dwellings and a reduction in car parking.
7. The site is partly vacant with Stage 1 having commenced work in late 2016.
8. On 7 July 2015, Moonee Valley City Council (Council) received a planning permit application for Stage 2 (MV/491/2015) proposing the following:
  - construction of multi-storey buildings comprising retail, office and dwellings, reduction in the car parking requirements and waiver of loading bay requirements. It also includes serviced apartments with a ground floor café component.
9. The application considered by Council includes buildings ranging in height from 6 storeys (21.45 metres) to 34 storeys (107.90 metres).

10. Notice of the proposal was given and a total of six (6) objections were received.
11. Council refused the Stage 2 Planning Permit Application on 26 July 2016.
12. An appeal to VCAT was lodged on 11 August 2016 seeking a review of the decision of the responsible authority. No objectors lodged statements of grounds. The only parties to the review are Council and the applicant.
13. The Minister for Planning wrote to Council on 9 December 2016 to advise of his decision to call in the application. Since then, the applicant has advised the Department of Environment, Land, Water and Planning (DELWP) that it is amenable to mediate an outcome to the application.

## Method

14. The Advisory Committee must undertake proceedings that allow each party to the VCAT review (or their representative) to give a summary on whether a permit should be issued, and if so, what conditions should apply. The Advisory Committee may choose to do this by a hearing, forum or other consultation mechanism of its choosing.
15. The Advisory Committee may inform itself in any way it sees fit, and must consider all relevant matters, including but not limited to:
  - relevant provisions of the *Planning and Environment Act 1987* and the Moonee Valley Planning Scheme
  - all relevant material prepared by or for the applicant
  - all material filed in VCAT in the proceeding P1634/2016
  - the views of the applicant and Moonee Valley City Council
16. The Advisory Committee is bound by the rules of natural justice.
17. The Advisory Committee may regulate its own proceedings.
18. The Advisory Committee may ask the Minister for Planning to vary these terms of reference in any way it sees fit prior to submission of its final report.

## Submissions are public documents

19. The Advisory Committee must retain a library of any written submissions or other supporting documentation provided to it until a decision has been made on its report or five years has passed from the time of its appointment.
20. Any written submissions or other supporting documentation provided to the Advisory Committee must be available for public inspection until the submission of its report, unless the Advisory Committee specifically directs that the material is to remain confidential.

## Outputs

21. The Advisory Committee must produce a written report for the Minister for Planning, responding to its terms of reference.

## Timing

22. The Advisory Committee must commence its proceedings within 20 business days from the date of its appointment.

23. The Advisory Committee is required to submit its report in writing as soon as practicable but no later than 20 business days from the completion of its proceedings.

**Fee**

24. The fee for the Advisory Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.
25. The costs of the Advisory Committee will be met by the Moonee Valley City Council.



HON RICHARD WYNNE MP

Minister for Planning

Date: 5/2/17

**Note: Project Management (Note this does not form part of the Terms of Reference)**

- 1 Day to day liaison for this matter from the Department of Environment, Land, Water and Planning will be through Adam Henson on 8392 5468 or by email adam.henson@delwp.vic.gov.au.
- 2 Day to day liaison for the Advisory Committee will be through Emily To of Planning Panels Victoria on 8392 5217 or by email emily.to@delwp.vic.gov.au.

## Appendix B Document list

No.	Date	Description	Tabled by
1	2/3/17	Memo addendum to Mr Rodgers evidence with attachments	Mr Cicero for Caydon
2	2/3/17	Plan set – Stage 1 Endorsed Plans	Mr Cicero for Caydon
3	2/3/17	Plan set – Refused by RA	Mr Cicero for Caydon
4	2/3/17	Plan set – Amended plans for VCAT Hearing	Mr Cicero for Caydon
5	2/3/17	Plan set – Clarification plans to Amended VCAT plans	Mr Cicero for Caydon
6	2/3/17	Plan set – Shadow diagrams	Mr Cicero for Caydon
7	2/3/17	Background folder	Ms Hicks for Moonee Valley
8	2/3/17	Submission	Ms Hicks for Moonee Valley
9	2/3/17	Parking Overlay Schedule with DELWP/Minister for approval	Ms Hicks for Moonee Valley
10	2/3/17	Plan of heights in MVAC above preferred	Ms Hicks for Moonee Valley
11	2/3/17	Permit and endorsed plans for 4 Homer Street, 687 Mt Alexander Road	Ms Hicks for Moonee Valley
12	2/3/17	Table of changes to Parking Overlay	Ms Hicks for Moonee Valley
13	2/3/17	Bundle of reports provided to DELWP (detail to be provided)	Ms Hicks for Moonee Valley
14	2/3/17	Development Plan (October 2014)	Mr Cicero for Caydon
15	2/3/17	MVPS Amendment C100 Panel Report	Mr Cicero for Caydon
16	2/3/17	MPS Amendment C270 Panel Report	Mr Cicero for Caydon
17	2/3/17	Submission	Mr Cicero for Caydon
18	3/3/17	Draft Without Prejudice Planning Permit Conditions	Ms Hicks for Moonee Valley
19	3/3/17	A3 Aerial Photograph and Lot Plan	Ms Heggen called by Caydon
20	3/3/17	Memo from VIPAC to Caydon	Mr Cicero for Caydon
21	3/3/17	Revised VIPAC Report – copies to be provided	Mr Cicero for Caydon
22	3/3/17	<i>Port Melbourne Land Custodians Pty Ltd v Minister for Planning</i> [2016] VCAT 1643	Ms Hicks for Moonee Valley
23	9/3/17	Revised statement from VIPAC in relation to wind dated 8 March 2017	Mr Cicero for Caydon
24	9/3/17	Closing submission	Mr Cicero for Caydon
25	9/3/17	Closing submission	Ms Hicks for Moonee Valley

No.	Date	Description	Tabled by
26	9/3/17	MV Racecourse Development Advisory Committee Report dated 19 December 2013	Ms Hicks for Moonee Valley
27	9/3/17	Flemington Hill and Epsom Road Advisory Committee Report dated 3 June 2016	Ms Hicks for Moonee Valley
28	9/3/17	Moonee Ponds Activity Centre Structure Plan 5 June 2012	Ms Hicks for Moonee Valley
29	9/3/17	Shadow diagrams for potential development on corner of Hall and Everage Streets	Mr Cicero for Caydon
30	9/3/17	Draft permit conditions approx. 11.00am	Ms Hicks for Moonee Valley
31	9/3/17	Doc 23 with Council comments in red	Ms Hicks for Moonee Valley
32	9/3/17	Correspondence from Minister to Mayor of MV dated 9/12/16	Ms Hicks for Moonee Valley
33	9/3/17	Draft permit conditions approx. 3.00pm	Ms Hicks for Moonee Valley
34	9/3/17	Revised statement from VIPAC in relation to wind dated 8 March 2017	Mr Cicero for Caydon
35	14/3/17	Without Prejudice Draft Conditions	Mr Spozio for Moonee Valley (via e-mail)
36	14/3/17	Permit Conditions Table	Mr Spozio for Moonee Valley (via e-mail)

## Appendix C Recommended Planning Permit conditions

Advisory Committee Note: The base for these conditions is the version circulated by Council on 14 March 2017 titled *Without Prejudice Draft Conditions - 40 Hall Street, Moonee Ponds (2nd Version)*. All changes shown are recommended by the Advisory Committee.

### Permit Preamble

Construction of multi-storey buildings and associated works, use of the land for dwellings and reduction in the car parking requirements

### Address

40 Hall Street, Moonee Ponds (PC354406)

### Conditions

1. Before the use and the development starts, amended plans (three copies) must be submitted and approved to the satisfaction of the Responsible Authority. The plans must be drawn to scale, with dimensions, and be generally in accordance with the plans by Caydon Property Group, identified as drawing nos. TP-000 to TP-003, TP-008, TP-101 to TP-111 (Revision 6) and TP111 to TP118, TP-201 to TP-211 (Revision 7) TP212 (Revision 6), TP213, TP214 (Revision 7) and TP215 (Revision 6) dated 21 November 2016 (Revision 6) and 21 December 2016 (Revision 7) but modified to show;
  - a) ~~The Everage Street building reduced by 7 levels, with 5 levels to be removed from the mid-section and 2 levels from the top section of the building;~~
  - b) ~~The retraction of the Homer Street East building to provide a minimum 18 metre separation from Level 1 Everage Street building along with any subsequent internal modifications;~~
  - c) The primary balcony of 2 bedroom apartments (excluding serviced apartments) increased to a minimum 8 square metres and minimum dimension of 1.6 metres;
  - d) A notation to indicate the incorporation of an urban art installation located at a prominent position within the development to be subject to further consultation with Council;
  - e) Allocation of commercial car parking;
  - f) Notations detailing screening measures to avoid internal overlooking between the apartments at right angles in the Homer Street building (i.e. between apartments G03 and 101 and similar configurations above);
  - g) Amendments in accordance with the 'Proposed Streetscape Improvement & Mitigation Works' plan identified as Appendix D contained within the GTA Assessment dated 17 June 2015 in accordance with Condition 3;

- h) Any design modifications as detailed within an amended wind assessment in accordance with Condition 5;
- i) A schedule of all external material and finishes. The schedule must show the material, colour (including colour samples) and finishes;
- j) Any water sensitive urban design measures in accordance with Condition 21.
- k) A notation in accordance with Condition 26.

Once approved these plans become the endorsed plans of this permit.

- 2. The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plan and must not be altered or modified without the further written consent of the Responsible Authority.
- 3. Changes to the 'Proposed Streetscape Improvement & Mitigation Works' as follows:
  - a) Deletion of the following notations applicable to Puckle Street & Margaret Street;
    - (i) 'Prohibit right turn into Margaret Street and remove redundant turn lines';
    - (ii) 'Prohibit on-street parking and lengthen left turn lane';
    - (iii) 'Extend right turn lane as shown';
    - (iv) Prohibit on-street parking opposite lengthened right turn lane'.
  - b) Deletion of the larger kerb radii and splay at the corner of Homer and Everage Street;
  - c) Unless otherwise agreed, the pedestrian signalised crossing on Margaret Street to be relocated from the north of Aspen Street to the south of Hall Street (subject to VicRoads approval);
  - d) Pedestrian zebra crossings on Homer and Hall Street to be shown as raised zebra crossings and to incorporate flashing lights (subject to VicRoads approval);
  - e) Provision for a raised pedestrian crossing treatment at the intersection of Everage Street and Aspen Street; and
- 4. Prior to occupation, the owner must, at its own cost, undertake and complete the following work to the satisfaction of the Responsible Authority:
  - a) Replacement of any damaged infrastructure (drainage pits, kerb and channel, footpaths, nature strips and lighting) on the surrounding road network applicable to Stage 2 (Homer Street and Everage Street);
  - b) Construction of the pedestrian walkway zones between Homer Street and Hall Street; and

- c) All mitigation works as detailed within the GTA plan described as 'Proposed Streetscape Improvement & Mitigation Works' in accordance with the requirements of Condition 3.

With the consent of the Responsible Authority, the above works may be undertaken at a later stage subject to the owner providing a bond or other security to the satisfaction of the Responsible Authority.

- 5. Concurrent with the submission of plans for endorsement under Condition 1 of this permit, an amended wind assessment must be submitted and approved to the satisfaction of the Responsible Authority.
  - a) Such a wind assessment shall include modelling of the existing ground conditions at the following locations;
    - (i) The main entry to the Moonee Ponds Central Shopping Centre;
    - (ii) A mid-point on the east side of Everage Street opposite to the site;
    - (iii) A point which represents approximately the middle of the site; and
    - (iv) The intersection of Homer and Everage Streets.
  - b) The wind control outcomes will generally be in accordance with the outcomes shown on figures 20, 21, 22, 23 and 24 of the Vipac Engineers & Scientists Ltd report dated 8 March 2017, except that the owner shall use its best endeavours to achieve standing comfort wind conditions at the main entrance to the Moonee Ponds Central Shopping Centre and along the retail frontages of the shops on the east side of Everage Street opposite to the site but the owner shall not be required to make any changes to the building envelope approved by this permit as part of any best endeavours obligations imposed by this condition.
  - c) The amended wind assessment shall include the details of the methodology used in undertaking the assessment and shall also take into account other developments approved in the immediate area that might have an impact on wind conditions associated with the proposed development.

The amended wind assessment must be prepared by a suitably qualified expert.

- ~~6. Prior to commencement of construction or carrying out of works, the Owner must enter into an Agreement under Section 173 of the Planning and Environment Act 1987 satisfactory to the Responsible Authority. That agreement must be registered on the title to the land, be free of cost to the Responsible Authority (by the Owner paying the costs and expense of negotiation, preparation, execution and registration of the Agreement and the Section 181 Application) which provides for the following;~~
  - ~~a) The making of a financial contribution to the Responsible Authority applicable to a rate of \$7,500 per residential space and \$15,000 per commercial space that would otherwise be required to be provided on the land with provision that such contribution must be paid on or prior to occupation of any part of Stage 2.~~

7. Prior to the issue of an Occupancy Permit, all boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
8. Service units, including air conditioning units, must not be located on any of the balconies or terrace areas unless appropriately visually and acoustically screened to the satisfaction of the Responsible Authority.
9. A minimum 30 days prior to any building or works commencing, a Construction & Site Management Plan (CSMP) must be submitted to and be approved by the Responsible Authority detailing the construction activity proposed and the site and environmental management methods to be used. The plan must include, but is not limited to;
  - a) Hours of construction;
  - b) Parking and traffic movement of all workers vehicles and construction vehicles;
  - c) Scaffold and hoarding for the site;
  - d) Allocated areas for loading and unloading;
  - e) Site evacuation plan and procedure;
  - f) Occupational health and safety policy;
  - g) Hazard identification and control;
  - h) Environmental management and waste minimisation;
  - i) Management of onsite stormwater and contamination: a statement or report outlining all construction measures to be taken to prevent litter, sediments and pollution from entering the stormwater systems;
  - j) Protection of surrounding roads from site contamination and damage including rumble grid and or wash down bay facility;
  - k) Chemical storage;
  - l) Noise and vibration;
  - m) Risk assessment;
  - n) Works timetable; and
  - o) Number of workers expected of work on the site at any one time.

Once submitted and approved the works detailed by the Construction & Site Management Plan must be carried out to the satisfaction of the Responsible Authority.

10. A minimum 30 days prior to any building or works commencing, all Water Sensitive Urban Design (WSUD) details, such as cross sections &/or specifications, to assess the technical effectiveness of the proposed stormwater treatment measures, must be submitted to and be approved by the Responsible Authority.
11. A maximum 30 days following completion of the building or works, a WSUD Maintenance Program must be submitted to and approved by the Responsible

Authority which sets out future operational and maintenance arrangements for all WSUD measures. The program must include, but is not limited to:

- a) Inspection frequency;
- b) Cleanout procedures;
- c) As installed design details/diagrams including a sketch of how the system operates; and
- d) A report confirming completion and commissioning of all WSUD Response initiatives by the author of the WSUD Response and STORM or MUSIC model approved pursuant to this permit, or similarly qualified person or company. This report must be to the satisfaction of the Responsible Authority and must confirm that all initiatives specified in the WSUD Response and STORM or MUSIC model have been completed and implemented in accordance with the approved report.

The WSUD Maintenance Program may form part of a broader Maintenance Program that covers other aspects of maintenance such as a Builder' User's Guide or a Building Maintenance Guide.

12. Floor levels shown on the endorsed plan(s) must not be altered or modified without written consent of the Responsible Authority.
13. The area set aside for parking of vehicles, together with the associated access lanes as delineated on the endorsed plans must be to the satisfaction of the Responsible Authority and must;
  - a) Be provided and completed prior to the commencement of the use hereby permitted;
  - b) Thereafter be maintained;
  - c) Be made available for such use at all times and not used for any other purpose;
  - d) Be properly formed to such levels that it can be used in accordance with the endorsed plan; and
  - e) Have the boundaries of all vehicle spaces clearly indicated on the ground in conformity with the endorsed plan.
14. All obsolete and unnecessary vehicle crossings must be removed and reinstated to footpath, nature strip and kerb and channel, to the satisfaction of the Responsible Authority.
15. Standard concrete vehicular crossing(s) must be constructed to suit the proposed driveway(s) in accordance with the Responsible Authority's standard specification and any vehicle crossing(s) no longer required must be removed and the land, footpath and kerb and channel replaced all to the satisfaction of the Responsible Authority. All vehicle access points must be located a minimum of 1.0 metre from any infrastructure including service pits. Alternatively, such assets may be incorporated into the crossover with the written consent of the Responsible Authority and the relevant servicing authority/agency. Subsequent works and costs in association with relocation and/or amendment must be

- incurred at the owner's cost, to the satisfaction of the relevant servicing authority/agency and the Responsible Authority.
16. Provision must be made for the drainage of the land including landscaped and pavement areas. The discharge of water from the land must be controlled around its limits to prevent any discharge onto any adjoining or adjacent property or streets other than by means of an underground pipe drain which is discharged to an approved legal point of discharge to the satisfaction of the Responsible Authority.
  17. Unless otherwise agreed, an on-site stormwater detention drainage system must be installed on the subject land to the satisfaction of the Responsible Authority. Prior to the commencement of building and works a drainage layout plan, together with computations and manufacturers specifications, must be prepared by a suitably qualified Civil Engineer and submitted to and approved by the Responsible Authority. Once approved by the Responsible Authority the plan must be carried out to the satisfaction of the Responsible Authority.
  18. Within three months of the issuing of this permit or later as agreed by the Responsible Authority, detailed construction engineering plans must be submitted to and approved by the Responsible Authority. The construction plans must be prepared by a suitably qualified person and must show and include:
    - a) Design for construction of damaged infrastructure including road pavements paths, parking bays, drainage pits, kerb and channel, footpaths, and nature strips on Homer Street and Everage Street;
    - b) Widening of the Aspen Street East road reserve;
    - c) Design of the north/south pedestrian walkway/zones, bicycle parking between Homer Street and Hall Street;
    - d) Where practicable, the development shall be in accordance with the *Disability Discrimination Act (DDA)*; and
    - e) A plan with appropriate road signs and line marking.
    - f) Road safety audit of the design including pedestrian paths and signals.
  19. Prior to the issue of Statement of Compliance a copy of a DDA certificate of detail design compliance must be forwarded to Council's Technical Services Unit. The DDA certificate must refer to parking onsite, access and mobility from Homer, Everage Streets, Aspen Street East and walkways as a minimum.
  20. Upon practical completion of roads and drainage works including any deferred works to the satisfaction of the Responsible Authority, the Developer must lodge a maintenance bond to the value of 5% of the cost of the works. The maintenance bond will be held and the defects liability period will continue for twelve (12) months from the date of the Responsible Authority's approval of practical completion of the works.
  21. Prior to the commencement of works, an updated Sustainability Management Plan (SMP) must be submitted and approved by the Responsible Authority. The SMP must be generally in accordance with the plan prepared by Lucid

Consulting Australia' dated 6 October 2015 and all recommendations must be implemented and appropriately managed to the satisfaction of the Responsible Authority.

22. Before the use of the land commences, a Green Travel Plan must be prepared to the satisfaction of the Responsible Authority. The Plan must be prepared by a suitably qualified person and must encourage the use of non-private vehicle transport modes by the occupiers of the land. The Plan must include, but is not limited to, the following;
- a) A description of the location in the context of alternate modes of transport and objectives for the Green Travel Plan;
  - b) Outline Green Travel Plan measures for the development including, but not limited to;
    - (i) Household welcome packs – tram, train and bus timetables relevant to the local area must be included in the pack of information provided to purchasers upon a purchaser's occupation of an apartment;
    - (ii) Include a minimum of one MYKI pass (of at least \$20 value) and registration information per bedroom for each dwelling within the household welcome pack;
    - (iii) Bicycle parking and facilities available on the land; and
    - (iv) Monitoring and review.
  - c) A plan showing the bicycle parking areas to be provided for use by residents; and
  - d) Inclusion of monitors on the ground floor lobbies displaying real time public transport information.

Once approved the Green Travel Plan must form part of the planning permit and any ongoing Management Plan for the land, to ensure the Green Travel Plan continues to be implemented by residents/owners to the satisfaction of the Responsible Authority.

23. Buildings or works must not be commenced until a landscape plan prepared by a suitably qualified and experienced person or firm has been submitted to and approved by the Responsible Authority. The landscape plan(s) must be generally in accordance with the plans prepared by Oculus (Drawings LP01-LP06) dated 24 February 2017 but modified to show:
- a) Any modifications as a consequence of Condition 1;
  - b) A planting schedule of all proposed vegetation (trees, shrubs and ground covers) which includes, botanical names, common names, pot size, mature size and total quantities of each plant; and
  - c) Further detailing of landscaping and pavement treatments along Homer Street and Everage Street.

Landscaping in accordance with this approved plan and schedule must be completed before the development is occupied. Once approved by the

Responsible Authority these plans become part of the endorsed plans of this permit.

With the consent of the Responsible Authority, the above works may be undertaken at a later stage subject to the owner providing a bond or other security to the satisfaction of the Responsible Authority.

Upon practical completion of the landscape works to the satisfaction of the Responsible Authority, the developer must lodge a maintenance bond to the value of 10% of the cost of the landscape works. The maintenance bond will be held and the defects liability period will continue for twenty four (24) months from the date of the Responsible Authority's approval of practical completion of the works.

24. Should any activity occur above 123.5m AHD (i.e. building antennas or cranes during construction) approval will be required. At this height, the Airports (*Protection of Airspace*) Regulations 1996 take effect. Further, any proposed activity above 120m AHD must be submitted to Essendon Airport for formal assessment.
25. Prior to the commencement of the development, the applicant shall submit an amended Waste Management Plan to the Responsible Authority for approval. This must include an operation management plan demonstrating adequacy of access, turning circles and loading areas. The Waste Management Plan shall be in accordance with the City of Moonee Valley's "Waste Management Plans – Guidelines for Applicants" and once approved shall be implemented to the satisfaction of the Responsible Authority.

The proposed waste collection must limit frequency across the entire site (all stages) to three (3) collections per week.
26. Prior to the occupation of any part of any building constructed on the subject land, the owner must produce evidence to the satisfaction of the Responsible Authority that it has entered into a Contract of Sale to sell to a Registered Housing Provider at least 9 dwellings constructed on the subject land.
27. This permit will expire if one of the following circumstances applies;
  - a) The development is not commenced within three (3) years from the date of issue of this permit; or
  - b) The development is not completed and the use is not commenced within five (5) years from the date of issue of this permit.

Before the permit expires or within six (6) months afterwards the owner or occupier of the land may in writing request the Responsible Authority to extend the expiry date.

Once the development has commenced the owner or occupier of the land may in writing request the Responsible Authority to extend the expiry date within twelve (12) months of the lapse date.

#### **Permit Notes**

- This is not a building permit under the *Building Act*. A separate building permit is required to be obtained for any demolition or building works.

- Before commencement of the development occurs, the applicant should contact the Moonee Valley City Council's Engineering Services Unit regarding legal point of discharge, new crossings, building over easements, erection of hoarding etc.
- A permit must be obtained from Council for all vehicular crossings.
- This permit does not authorise any advertising signs except those which are exempted by the Moonee Valley Planning Scheme.
- Owners of properties may be asked to pay an inspection fee and provide a bond to ensure that Council assets in the vicinity of their works are not damaged during construction.
- No on street parking permits will be provided to the occupiers of the subject site.
- All drainage works undertaken must be in accordance with the requirements of Stormwater Drainage Requirements for Development Works as prepared by the Moonee Valley City Council.
- All works undertaken within any existing road reserves must accord with the requirements of the Moonee Valley City Council's Engineering Services Unit and to the satisfaction of the Responsible Authority.
- It is recommended that the required on-site detention system be designed to limit the rate of stormwater discharge from the property to pre-development levels in accordance with the following calculation;  $C=0.4$ ,  $t_c=5$ mins, ARI 1 in 5. An ARI of 1 in 10 should be used for storage and the greater of post development C or  $C=0.80$ .