VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P259/2019Permit Application no. TP490/2018 |
| CATCHWORDS |
| Maribyrnong Planning Scheme; higher density development in a Metropolitan Activity Centre; Footscray Activity Centre Zone; built form outcomes on land at the interface of a higher order activity centre; condition of land to be handed over as public open space; provision of car parking in a Parking Overlay; traffic impacts in an edge of activity centre location.  |

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| APPLICANT | ANPLUS Development Pty Ltd |
| responsible authority | Maribyrnong City Council |
| Referral Authorities | Transport for Victoria, Melbourne Water, Department of Transport (VicRoads) |
| RESPONDENTs | David Vasudevan, Charles Hardman, Tracy Batt, Linda Rose, Russell Griggs, Benjamin Thompson, Athena Thompson, Michael Ledingham & Agneta Hjort, Petrina White, Vesna Dupor, Mark Shrubsole, Ron Flierman, Benjamin Hopper, Lucy Line & Ajit Jacob, Dusan Velevski, Toby Box |
| SUBJECT LAND | 43-57 Buckley Street, Seddon |
| WHERE HELD | Melbourne |
| BEFORE | Michael Deidun, Presiding MemberAnn Keddie, Member |
| HEARING TYPE | Major Case Hearing |
| DATE OF HEARING | 5, 6, 7 & 9 August 2019 |
| DATE OF ORDER | 11 September 2019 |
| CITATION | ANPLUS Development Pty Ltd v Maribyrnong CC [2019] VCAT 1385 |

# Order

1. Pursuant to section 60 of the *Victorian Civil and Administrative Tribunal Act* 1998, the following person is joined as a party to the proceeding:

Toby Box

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act* 1998, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| * Prepared by:
 | DKO Architecture |
| * Drawing numbers:
 | TP001, TP200 to TP205, TP205a, TP206 to TP213, TP300 to TP304, TP304a, TP305, TP306, TP400 to TP404, TP404a, TP405 to TP410, TP500 to TP512, TP600, TP601, TP701 to TP706, TP711 to TP715, TP721 to TP724, TP731 to TP734. |
| * Dated:
 | 25 June 2019 |

1. In application P259/2019 the decision of the responsible authority is set aside.
2. In planning permit application TP490/2018 a permit is granted and directed to be issued for the land at 43-57 Buckley Street, Seddon in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* To use land for retail premises
* To construct a building and construct or carry out works
* To remove native vegetation
* To reduce the minimum car parking requirement for residential visitors and to provide more than the maximum number of spaces for three bedroom dwellings
* To alter an access to a road in a Road Zone, Category 1

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| **Michael Deidun** **Presiding Member** |  | **Ann Keddie****Member** |

# Appearances

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| For applicant | Jeremy Gobbo QC and Jennifer Trewhella, Barristers instructed by Rigby Cooke LawyersThey called the following witnesses:* Stuart McGurn (town planner) of Urbis
* Mark Sheppard (urban designer) of David Lock Associates
* Stephen Hunt (traffic engineer) of Ratio Consultants
* Matt Ainsaar (economist) of Urban Enterprise
* Lindsay Richardson (daylight assessment) of Sustainable Development Consultants
* Chris Goss (visualisation) of Orbit Solutions

As none of the parties sought to cross examine Mr Richardson and Mr Goss, they were not called to give oral evidence |
| For responsible authority | James Lofting, Solicitor of HWL Ebsworth |
| For referral authorities | No appearance |
| For respondents | Sarah Varney and Louise Martin, Barristers by direct brief, appeared on behalf of David Vasudevan, Charles Hardman, Benjamin Thompson, Michael Ledingham & Agneta Hjort, Vesna Dupor, Mark Shrubsole, Ron Flierman, Benjamin Hopper, Lucy Line & Ajit Jacob, Dusan Velevski, and Toby Box |

# Information

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| Description of proposal | Construction of a mixed use development comprising three buildings of between three and eleven storeys in height |
| Nature of proceeding | Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time.[[1]](#footnote-1) |
| Planning scheme | Maribyrnong Planning Scheme |
| Zone and overlays | Activity Centre Zone 1Special Building OverlayParking Overlay 2Environmental Audit OverlayDevelopment Contributions Plan Overlay 6 |
| Permit requirements | Clause 37.08-2 to use land within the Activity Centre Zone for a retail premisesClause 37.08-5 to construct a building and construct or carry out works on land within the Activity Centre ZoneClause 44.05-2 to construct a building and construct or carry out works on land to which the Special Building Overlay appliesClause 52.06-3 and Clause 45.09-3 to reduce the minimum car parking requirement for residential visitors and to provide more than the maximum number of spaces for dwelling residentsClause 52.17 to remove native vegetationClause 52.29 to alter an access to a road in a Road Zone, Category 1 |
| Relevant scheme policies and provisions | Clauses 10, 11, 15, 16, 17, 18, 19, 21, 22.05, 22.07, 37.08, 44.05, 45.03, 45.06, 45.09, 52.06, 52.17, 52.29, 52.34, 53.01, 58, 65 and 71.02. |
| Land description | The land is a rectangular allotment which is surrounded on all four sides by roads. It has frontages to Buckley Street to the north and Walter Street to the south of 130 metres, and frontages to Albert Street to the east and Arran Street to the west of 110 metres. The land has an area of 1.43 hectares, and has historically been used as a bus depot. |
| Tribunal inspection | The Tribunal inspected the site and surrounding area on 6 August 2019. |

# Reasons[[2]](#footnote-2)

## What is this proceeding about?

1. ANPLUS Development Pty Ltd (the ‘Applicant’) seeks a review of the decision of the Maribyrnong City Council to refuse to grant a permit for the proposed development of the land at 43-57 Buckley Street, Seddon (the review site). The proposal is a mixed use development comprising four separate buildings of up to eleven storeys in height. Council opposes the grant of a permit, having regard to the scale and mass of the proposed buildings, and the treatment of the interfaces to the surrounding residential areas. The Council argues that the heights proposed far exceed the Planning Scheme’s preferred heights, and detrimentally impact the value of the strategic work and planning controls applying to this activity centre. The Council is also concerned about the size of the secluded private open space provided to a number of dwellings, and the proposed condition of the public open space to be delivered to Council.
2. The proposal is also opposed by a large number of residents. In addition to the concerns raised by Council, in their submissions they oppose the traffic and car parking impacts of the proposal, including that presented by loading and waste vehicles, and argue that the proposed area of public open space will bring no benefit to the surrounding residents.
3. The Applicant relies on grounds that essentially seek to refute the Council’s grounds of refusal.
4. The issues or questions for determination are:
	1. what is the strategic intent for this locality?
	2. is the proposal an appropriate built form response to its context?
	3. is the proposed provision of public open space appropriate?
	4. will there be any unreasonable off-site amenity impacts?
	5. is an appropriate level of internal amenity achieved?
	6. does the proposal appropriately provide for car parking and traffic movements?
5. The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Maribyrnong Planning Scheme, we have decided to set aside the Council’s decision, and direct the grant of a planning permit subject to conditions. Our reasons follow.

## What is the strategic intent for this locality?

1. There are three key policy themes that shape the analysis contained in these reasons. We explore the key policy themes under the headings below.

### Activity centre policies

1. The first key policy theme is that relating to activity centres. The review site forms part of the Footscray Metropolitan Activity Centre (FMAC), as it is within the identified boundaries of the FMAC. As such, there are a range of policies at a State level that seek to encourage the review site, and other land within the FMAC, to be a focus for more intense urban development, including higher density housing. This policy intent is captured in the following policy extracts.

Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns and investment in transport, utility, social, community and commercial infrastructure and services.[[3]](#footnote-3)

Focus investment and growth in places of state significance, including:

* …
* Metropolitan Activity Centres.
* …

Develop a network of activity centres linked by transport; consisting of Metropolitan Activity Centres supported by a network of vibrant major and neighbourhood activity centres of varying size, role and function.

Create mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts, that offer more choice in housing, create jobs and opportunities for local businesses and deliver better access to services and facilities.[[4]](#footnote-4)

Build up activity centres as a focus for high-quality development, activity and living by developing a network of activity centres that:

* Comprises a range of centres that differ in size and function.
* Is a focus for business, shopping, working, leisure and community facilities.
* Provides different types of housing, including forms of higher density housing.
* Is connected by transport.
* Maximises choices in services, employment and social interaction.

Support the role and function of each centre in the context of its classification, the policies for housing intensification, and development of the public transport network.

Encourage a diversity of housing types at higher densities in and around activity centres.[[5]](#footnote-5)

Support the development and growth of Metropolitan Activity Centres by ensuring they:

* Are able to accommodate significant growth for a broad range of land uses.
* Are supported with appropriate infrastructure.
* Are hubs for public transport services.
* Offer good connectivity for a regional catchment.
* Provide high levels of amenity.[[6]](#footnote-6)

Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.[[7]](#footnote-7)

Identify areas that offer opportunities for more medium and high density housing near employment and transport in Metropolitan Melbourne.

Manage the supply of new housing to meet population growth and create a sustainable city by developing housing and mixed use development opportunities in locations that are:

* …
* Metropolitan activity centres and major activity centres.
* …
1. This policy intent is continued at a local level within the Maribyrnong Planning Scheme. Policy at Clause 21.04-1 identifies Footscray as the municipality’s highest order activity centre, and sets out the following:

**Objective 2**

To transform the Footscray CAD, Highpoint PAC and Central West MAC into mixed use retail, commercial, residential and community services centres with a sense of place.

**Strategies**

Increase housing intensification within and adjacent to the Footscray CAD, Highpoint PAC and Central West MAC in accordance with centre structure plans.

1. Policy[[8]](#footnote-8) identifies the FMAC as being a substantial change activity centre where the following encouragement applies to the review site.

Direct most of the residential development to identified substantial change areas, and substantial change activity centres.[[9]](#footnote-9)

In the future the Highpoint PAC and Footscray CAD will assume a stronger role and greater capacity for substantial medium and higher density housing developments.

Encourage higher density residential and mixed use developments within activity centres that are well served by public transport.[[10]](#footnote-10)

Support increased residential densities in keeping with the level of change identified for precincts across the FMAC and increase opportunities to live close to transport and services.

Provide for a diversity of dwelling types, sizes and tenures across the FMAC, including higher density dwellings, shop top housing, affordable housing and student accommodation.[[11]](#footnote-11)

1. There is a clear policy intent to develop the FMAC with higher density housing, in a manner that will bring about substantial built form change. The extent of change is sought to be managed by the application of the Activity Centre Zone Schedule 1 (ACZ1) to the FMAC. The purposes of the Activity Centre Zone are set out below.

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To encourage a mixture of uses and the intensive development of the activity centre:

* As a focus for business, shopping, working, housing, leisure, transport and community facilities.
* To support sustainable urban outcomes that maximise the use of infrastructure and public transport.

To deliver a diversity of housing at higher densities to make optimum use of the facilities and services.

To create through good urban design an attractive, pleasant, walkable, safe and stimulating environment.

To facilitate use and development of land in accordance with the Development Framework for the activity centre.

1. These purposes are refined at a local level by the Housing objectives of ACZ1, which are set out below.
* To facilitate a significant proportion of the new housing required to meet the projected population growth to be developed within the Footscray Metropolitan Activity Centre (FMAC).
* To encourage housing to locate above commercial uses to create a mix of land uses.
* To support increased residential densities in line with the precincts identified level of change.
* To encourage housing intensification in areas with the greatest capacity for change.
* To provide for housing growth by providing a mix of housing types that includes medium to higher density housing in appropriate locations.
* To provide a diversity of dwelling types, sizes and tenures across the FMAC.
* To encourage appropriate student housing in FMAC.
* To encourage affordable housing, including social housing, in the FMAC.
* To ensure new housing developments address potential amenity impacts including noise, vibration and emissions and implement measures to attenuate any adverse impacts for future residents.
* To ensure housing is adequately serviced by physical and community infrastructure.
* To improve the environmental performance of new dwellings.
* To encourage high quality design outcomes that will provide high internal and external amenity for future residents.
1. The weight of planning policy at both a State and local level encourages a high level of more intensified development on land within the FMAC, including the review site.  The provision of higher density housing, providing a diversification of housing forms, is particularly encouraged.  This strong level of policy support is to be tempered by the housing objectives contained the ACZ1, which seek to accommodate a significant portion of the new housing expected in the municipality within the ACZ1, whilst at the same time recognising that there are some areas with greater capacity for change, and that medium and higher density housing needs to be provided in appropriate locations.  This locational guidance for different rates of change is contained within the provisions of the ACZ1, and is explored in the following policy theme.

### Built form policies

1. The ACZ1 also seeks to implement the second key policy theme, which is to guide the future built form in particular through the achievement of different building heights in different locations. The policy basis for this objective is set out below.

Encourage development that implements the relevant Urban Design Framework or Structure Plan.[[12]](#footnote-12)

Determine the form, amount and mix of housing of substantial change areas through site planning.

Ensure the site planning of larger sites facilitates the development of diverse, high amenity precincts which have an identifiable sense of place.

…

Ensure new development integrates with existing areas and communities.

Ensure new larger scale developments establish a preferred urban design and architectural character that complements existing areas and creates safe and liveable communities.

Encourage new higher density development to provide space for planting, communal spaces and rooftop gardens to improve amenity and liveability of dwellings.

Ensure developments with sensitive interfaces have a scale and massing that respects the character and scale of their context.

Support developments located away from sensitive interfaces that create a new, higher density urban character.[[13]](#footnote-13)

To ensure new development is of high quality design, environmentally sustainable and has regard for the existing built form context.[[14]](#footnote-14)

1. These policies are supported by the following built form guideline.[[15]](#footnote-15)
* The bulk and scale of new development should consider the potential future built form and land use on adjacent sites.
* New lower level built form façade treatments should provide a pedestrian environment that has visual interest and activates the street.
* Building frontages should seek to enhance existing adjoining streets and be designed to be visually interactive, with passive surveillance opportunities, and be visually interesting and engaging through use of contemporary, durable materials.
* New built form in transition areas should provide a transition in scale from larger buildings to adjacent areas with smaller scale built form.
* Ensure heights of buildings located within transition areas are at the lower end of the preferred height ranges.
1. The review site falls within Precinct 6B of the FMAC under the ACZ1. This precinct is provided with a discretionary preferred height of 6 storeys (19.2 metres) and a discretionary preferred street frontage/podium level of 2-3 storeys (6.4-9.6 metres). The ACZ1 does not provide any guidance as to the relevant considerations when a proposal exceeds the discretionary preferred height. This is a deliberate approach, as explained in the following extracts from the Panel Report *Maribyrnong C125* (PSA) [2014] PPV 16.

The Panel is aware of other zone and overlay examples that contain criteria to judge whether greater heights than the preferred outcome is appropriate. These may refer to a superior architectural design, use of ESD principles or others. Council stated in its primary submission that relevant considerations would include the quality and sustainability of the proposal. Others may include siting, relationships to other buildings, overshadowing, overlooking, connectivity or protection of view lines. The Panel agrees with Council that setting a prescribed set of criteria to guide this discretion across a significantly large area and where there are a variety of built form outcomes sought would be a challenge. There is evidence already that sites of a considerable size or context have been able to justify a height that may exceed those contained in Council’s strategic work. The Panel considers this as evidence the policy framework provides the rigour where required and the flexibility to achieve a higher built form. For this reason the Panel does not support any additional guidance for built form higher than the preferred maximum heights.[[16]](#footnote-16)

…

This precinct covers large areas of the FCAA at the periphery of the core precincts. The Panel’s approach with this precinct is consistent with submissions that request increased height limits for other precincts. The fact that approvals have been granted for developments at greater heights is not a sufficient justification to depart from the exhibited heights. As stated previously it is perhaps an indication that the framework is working in a manner that it is designed to. That is, it provides the ability for increased heights to be considered but that this should be informed by site context and the objectives and design guidelines of the precinct. The Panel is reluctant to consider any departures from this on a site by site basis as this would undermine the need for an overall framework for the precinct and create other unintended consequences such as increase development potential for other sites. The Panel agrees with Council’s concluding statement on the Dobinson Nominees submission that if the case for a taller building is as strong as Mr Connor suggests then on that large site, they should have no trouble in persuading the responsible authority of that.

The Panel is comfortable with the 6 storey height limit for the Bus Depot site decreasing to its sensitive interface (similar to the Ryco site) but notes, in Chapter 13, that the site should be the subject of a master planning exercise.[[17]](#footnote-17)

1. We should therefore regard the 6 storey preferred height limit as a discretionary control that can be exceeded on a site by site basis, having regard to the merits of an individual proposal, the context of a particular site, and the manner in which a proposal achieves the broader objectives of ACZ1 and the relevant policy matrix.
2. Guidelines are provided for Precinct 6. They include the following.
* Buildings within the Transition Area should provide appropriate reductions in building height and mass toward the existing lower scale buildings at the interface and should not exceed 3 storeys within the transition area.
* Maintain a low-scale residential interface to Walter Street in future development of the Bus Depot site.
* …
* Side setbacks should reflect the existing context within the MAC and should maintain a continuous street wall frontage, where appropriate along key streets such as Barkly Street and Buckley Street.
* Larger sites should accommodate medium density development to maximise land use, whilst maintaining the existing fine grain, active streetscape presentation.
* Tower forms at upper levels should be set back from the streetscape at least 5 metres, to reduce visual bulk and the effect of wind downdrafts.
1. It is evident from these precinct guidelines that a transition in built form is sought within the review site, and at its interfaces with Arran Street (in part) and Walter Street. This is also reinforced by the following Precinct 6 objective.

To ensure development in areas identified as Transition Areas is designed to make an appropriate transition in height, scale and built form to adjoining residential areas.

1. There is a Precinct Map for the southern part of Precinct 6, set out below, which indicates the areas where a transition is sought. It is the form of this transition, and the relationship of the heights proposed on the review site to the adjacent residential areas, that was a key focus in this proceeding.



**Review site**

### Public open space policies

1. The final key policy theme relates to the provision of public open space. It is relevant in this proceeding, as the review site is identified as a preferred location for the provision of public open space. This identification occurs in the *Footscray Structure Plan[[18]](#footnote-18)* and also through the following words in the *City of Maribyrnong Open Space Strategy[[19]](#footnote-19)*:

If the bus depot site redevelops in the future resulting in a change to the population forecasts, then additional open space may be required at this location, however this is not included in the Strategy Actions.

1. These reference documents are supported by a range of policy guidance, which includes the following:

In the central and southern parts of the city, a combination of seeking opportunities to provide new open space and improve the diversity, quality and accessibility of existing open space will create a better connected network of open spaces, activity centres and facilities. The northern part of the city includes significant redevelopment sites with opportunities for providing new open space to meet the sport and recreation needs of new communities.

…

**Objective 7**

To expand and improve the network of open space throughout the municipality.

**Strategies**

Provide new open space in areas identified as underserved.[[20]](#footnote-20)

Require larger scale residential land redevelopment to contribute to high quality, accessible open space for a range of activities.[[21]](#footnote-21)

**Objective 6**

To ensure the centre is well served by accessible high quality public open space and community infrastructure to meet community needs.

**Strategies**

Provide for new community facilities, including within large new developments.

Ensure developers contribute towards the provision of community infrastructure.

Ensure new development enhances the open space network.

Protect open spaces from overshadowing from new development.[[22]](#footnote-22)

1. Policy at Clause 22.07 seeks to implement the *City of Maribyrnong Open Space Strategy[[23]](#footnote-23)*. The policy identifies the FMAC as a preferred area for land contributions of public open space, applying the following policy.

Land contributions for public open space will generally be preferred over cash contributions for the purposes of Clause 52.01 of the scheme within the areas identified in Map 1. Not every subdivision will be appropriate for a land contribution. Council will assess the appropriateness of the land in accordance with the open space land requirements identified in the City of Maribyrnong Open Space Strategy and the criteria for open space included in this policy. Land will be requested and accepted at Council’s discretion.

1. The ACZ1 continues this theme with the following objectives.

To ensure Footscray’s residents, workers and visitors are well served by usable, functional and high quality areas of public open space.

To ensure new developments contribute to the creation and/or enhancement of public open spaces and the public realm.

1. Finally, the Schedule to Clause 53.01 of the Maribyrnong Planning Scheme is used to set a public open space requirement, which is in the following terms.

5.7 per cent where provided as a percentage of the site value of the land

5.7 per cent or greater to the satisfaction of Council where provided as land

### Summary

1. The review site provides an exceptional opportunity to achieve all of these policy objectives. It is very large, at 14,300 square metres, surrounded on all four sides by roads, two of which are main roads. It is also underutilised land, being a former bus deport that has relatively recently closed down, and is now vacant.
2. With these attributes, the review site can assist in implementing the overarching policy themes for this part of the FMAC, playing its role of providing for more intense urban development in metropolitan Melbourne, including the provision of higher density housing. The key dispute in this proceeding is the extent to which the proposed built form should achieve those broader urban consolidation objectives, whilst balancing competing policies which seek an appropriate transition to the residential areas, and the provision of public open space. This key dispute is addressed in the analysis that follows.

## Is the proposal an appropriate built form response to its context?

1. The proposed development of the review site comprises four buildings arranged across the site, which will achieve the following overall heights:
	1. Building 1, in the north-west quadrant, ranging in height from 3-8 storeys;
	2. Building 2, in the south-west quadrant alongside the proposed public open space, at 4 storeys in height;
	3. Building 3, in the south-east quadrant, ranging in height from 2-7 storeys;
	4. Building 4, in the north-east quadrant and fronting the intersection of the two main roads of Buckley and Albert Streets, ranging in height from 3-11 storeys.
2. The Council submits that the proposed range of building heights fails to appropriately respond to the expectation created by the ACZ1 for this precinct to provide a range of building heights that act as a transition at the edge of the FMAC. In particular, the Council opposes the extent to which the proposed Building 4 will exceed the preferred height limit, which they argue will render the preferred height meaningless. The Council also contends that the development as a whole fails to provide an appropriate built form transition to the residential interfaces on the west and south of the review site, which are identified as incremental and limited change areas respectively. It says that the approval of a number of high buildings nearby does not justify the height proposed on the review site. Rather, these approvals demonstrate that the preferred heights under the ACZ1 have been closely followed.
3. The Respondents submit that while the review site forms part of the FMAC, it retains a Seddon address, and should therefore contain a built form that better represents the character of land contained within the suburb of Seddon, as compared to the remainder of the activity centre that is within the suburb of Footscray. They support the Council’s submissions that the proposal fails to achieve an appropriate transition in built form to the surrounding residential neighbourhood. They also argue that the proposed development of the review site should have greater setbacks to those elements of the built form above three storeys in height, and a character that better reflects the preferred character of the adjacent residential neighbourhood. In support of these submissions the Respondents identify the narrow profile of Arran Street, and the resultant likely impact of the proposed built form within this narrow streetscape.
4. In respect of the proposed 11 storey building at the corner of Buckley and Albert Streets, the Respondents submit that the scale of this building seeks to bring the higher built forms of precinct 6C under the ACZ1 onto the review site. They also note that the proposed building contains a sheer wall element marking the corner of this intersection, in contrast to the podium and tower form encouraged by the ACZ1.
5. We are not persuaded by these submissions, and instead find that the built form proposed on the review site, comprising a range of heights and steps in heights and setbacks, and transitions to the adjacent context, are an appropriate response to the breadth of guidance provided for the review site. We make this finding for the following reasons, starting first with the response of the proposal to its main road interfaces, and then proceeding to the residential interfaces to the review site. While we adopt this method of setting out our reasons, we note that the proposed built form needs to respond to all of its interfaces insofar as the built form is modelled across the whole of the site.

### Main Roads context

1. When viewed from the adjacent main roads of Buckley and Albert Streets, the review site will be read as part of the FMAC. Policy at Clause 21.11-1 of the Maribyrnong Planning Scheme, supported by the ACZ1, encourage a range of built form outcomes throughout the FMAC, with a series of preferred heights nominated that will bring about a substantial level of change to the activity centre. The review site sits within a streetscape which comprises land located within precinct 6B on either side of Buckley Street to the west of Albert Street, where there is a preferred height under the ACZ1 of six storeys. Within this precinct there have been a number of approvals already granted, which we summarise below.

|  |  |
| --- | --- |
| Address | Height |
| 40-44 Buckley Street (under construction) | 7 storeys (SFL36.56)[[24]](#footnote-24) |
| 90-92 Buckley Street(constructed) | 8 storeys (RL44.16) |
| 94-104 Buckley Street | 10 storeys (AHD52.0) |
| 59-63 Buckley Street | 5 storeys (RL36.2) |

1. From this table, we observe that in the existing approvals granted for this part of the activity centre there has already been some variation to the preferred height limits. This outcome is consistent with the approach anticipated by the Planning Panel for Amendment C125, which considered the implementation of the ACZ1 into the Maribyrnong Planning Scheme, as evidenced by the parts of the Panel Report quoted above.
2. The proposed development of the review site includes the development of four separate built forms with a range of building heights which integrate with the heights already approved within this precinct. To Buckley Street, the proposed buildings range in height between RL35.95 and RL42.15 (6 to 8 storeys) for Building 1, and between RL47.45 and RL48.4 (10 storeys with a recessed and largely hidden 11th storey) for Building 4. To Albert Street the proposed building heights range from RL46.85 to RL50.4 (10 to 11 storeys) for Building 1, and RL36.0 (7 storeys) for Building 3. All of these building heights fall within the range of building heights that have been approved for this precinct, relying on the overall comparative height above sea level reached by various properties. Having made this observation, we acknowledge that land further to the west along Buckley Street has a slightly higher natural ground level, and therefore, in the case of 94-104 Buckley Street, a slightly lower overall building height.
3. In addition, there are two nearby approvals that are located to the north-east of the intersection of Buckley and Albert Streets in Precinct 6C of the ACZ1, but which are sufficiently proximate to the review site to be within an area of influence. A 14 storey development been approved on the north-western corner of Nicholson and Buckley Streets to an overall height of RL58.1, and a 12 storey building has been approved on the north-eastern corner of Buckley and Albert Streets to an overall height of RL54.4. Both of these overall heights comfortably exceed that proposed for the review site.
4. The intent of this analysis is to demonstrate that the building heights proposed for the review site are similar to other approvals within the same 6B precinct. Further, they represent a clear step down in height, compared to the two nearest approvals of new development in the adjacent Precinct 6C, as is intended by the ACZ1 controls. As a result, we are not persuaded that the heights proposed for the review site are such that they would render meaningless the planning policies and controls set out under ACZ1. The heights contained within ACZ1 are nominated only as preferred heights, and the structure of the ACZ1 is intended to retain flexibility for proposals of greater height to be considered on their individual merits and context, as observed by the Panel.
5. We also consider that the unique attributes of the review site lend substantial weight to the potential for building heights that exceed those preferred under the ACZ1. These attributes include the generous proportions and overall size of the site, and its abuttal to four roads. While we acknowledge that these attributes would have been known by the Planning Panel at the time of its consideration of the controls contained in ACZ1, we think that they lend weight to the approval of a meritorious design which contains buildings that exceed a height limit that applies equally to all lots within precinct 6B.
6. We also consider that the proposed heights as they present to Albert and Buckley Streets form part of a high quality architectural and urban design response to these parts of review site’s context. Varied building forms are proposed along both streets that include a range of building heights, complete breaks between them along each of the streetscapes, a range of podium heights, and the adoption of a singular tower form marking the intersection of the two main roads. In addition, the buildings display a high level of articulation through a range of high quality building materials, interesting and varied façade treatments, and a good level of activation of the street frontages at the lower levels.
7. In his evidence Mr Sheppard opined that the balance between built form at 6 and 8 storeys in height in Building 1, as it presents to Buckley Street, should be adjusted so as to increase the extent of built form at 6 storeys in height in order to create a more varied skyline. A further basis for his opinion was the material improvement in solar access available to the communal open space and apartments to the south, which we are persuaded would enhance the amenity of the development.
8. It is our finding that the overall heights proposed, with this small change, are acceptable having regard to the surrounding physical context and guidance from the Maribyrnong Planning Scheme, and that the varied heights have been arranged throughout the site in a manner that achieves an appropriate level of built form articulation and visual interest. We agree with Mr Sheppard that overall the proposal is, *‘a well-considered composition that will contribute to the visual experience of the area and provide excellent amenity,’* and find that the proposed built forms are an appropriate response to the main road interfaces to the review site.

### The residential interfaces

1. The proposed development responds to the remaining two interfaces in a very different way. That is in direct response to the heightened sensitivity of the interfaces to the south and west in relation to the proposed built form on the review site, and to the guidance provided by the ACZ1. To the west of the review site across Arran Street is a development site facing Buckley Street which has an approved for a six storey development. To the south of that site is a streetscape of mostly single storey traditional housing forms, within a General Residential Zone where a mandatory three storey height limit prevails. To the south of the review site across Walter Street sits another traditional streetscape with some infill development, at a height of between one and two storeys, within a Neighbourhood Residential Zone.
2. The proposal responds to this context in a variety of ways. At the south-western corner of the review site, which addresses the intersection of Walter and Arran streets, the development provides an area of public open space with a frontage of 21.5 metres to Arran Street, and 79.0 metres to Walter Street. To the north of this public open space along Arran Street there are proposed a series of four storey townhouses that present a narrow side profile to Arran Street. Further north is an apartment building that presents with a three storey podium to the streetscape. Beyond this podium, setback between 5.5 and 6.9 metres from the street boundary, is a building that ranges in height between five and eight storeys. The majority of the eight storey component of the proposed building is sited adjacent to the approved six storey building on the opposite side of Arran Street, at 59-63 Buckley Street.
3. To the east of the area of public open space, along Walter Street, the proposal includes the construction of an apartment building that presents a street wall of between two and three storeys in height. Above the street wall a 6 to 7 storey apartment component is setback between 6.1 and 18.4 metres from the boundary to Walter Street.
4. The provisions contained within the ACZ1 strongly encourage a transition in built form to the residential interfaces. However, it is also a reasonable expectation that any future built form on the review site will be quite different from the surrounding housing stock. From a planning perspective, that is the anticipated outcome when one side of a street is contained within a substantial change area, an Activity Centre Zone and the identified boundaries of a Metropolitan Activity Centre, and the other side of the street is contained in either a General Residential Zone seeking incremental change, or a Neighbourhood Residential Zone seeking limited change. The boundaries between these precincts which are marked by Aaron and Walter Streets respectively, will be the location of a sharp transition in built form and character, given the very different planning controls and policy regimes that exist on either side of these streets.
5. The controls contained in the ACZ1 seek to guide this sharp transition. However, in real terms the level of guidance is fairly thin, with preference stated for a three storey interface, but no guidance as to the depth of the three storey form sought, nor what should occur beyond that transitional three storey form. While guidance does occur within this precinct for higher forms to be setback 5 metres from the street above the three storey podium, we are not necessary persuaded that those words were intended to apply to locations such as these. To the extent that they may apply, they are achieved by Buildings 1 and 3 at the interfaces with Arran and Walter Streets.
6. While Building 2 does not achieve this setback, this building is also not in a form where it presents a three storey podium and ‘tower’ form above. Instead, Building 2 comprises a row of attached townhouses, and presents to Arran Street as a narrow three storey form setback between 2.59 and 2.87 metres from the street, and with an even narrower fourth level setback a further 1.3 metres. We consider that that the profile of these townhouse forms is a polite insertion into this part of the Arran Street streetscape, and that the range of buildings heights and setbacks proposed are appropriate. We also note that these townhouse forms present a more modest built form than the comparable three and four storey townhouses in nearby Bute Street, located in a Mixed Use Zone, and which demonstrate a far more abrupt transition from the adjacent traditional housing stock. Expectations of greater built form should certainly prevail on the review site, located within the boundaries of a Metropolitan Activity Centre and to which the Activity Centre Zone applies, compared to land within the Mixed Use Zone.
7. Despite the presentation of a 2 to 3 storey podium to both Walter and Arran Streets, the proposed development includes building forms at a range of heights and setbacks that will be clearly visible, indeed prominent, from the adjacent residential neighbourhood. However, we consider that this outcome is entirely consistent with the range of built form and policy controls applying to the review site, in recognition that it forms part of the FMAC. The higher built forms within the proposal have been provided at the least sensitive locations along each of these interfaces, at the northern end of Arran Street adjacent to an approved six storey building and at the eastern end of Walter Street, where a corner property on the southern side of the street presents its side to the street, and where the built form character is already heavily influenced by the taller forms within the adjacent Victoria University.
8. Here again Mr Sheppard opines that a built form change is desirable, to remove the increased setback to the top floor of Building 3 from Walter Street, and thus slightly increase the extent of built form visible at the upper level along this part of the southern interface. We do not agree with this recommendation, and instead find that an increased setback to the upper level is an appropriate response to the sensitivity of this southern interface. The combination of this upper level setback, along with the lower podium element and greater setbacks to the two tower forms, combine to achieve an appropriate built form response in this location.
9. We acknowledge the submissions made by Respondents that the narrow width of Arran Street will influence the manner in which the proposed buildings on the review site are viewed within that streetscape. However, we not persuaded that the more narrow confines of Arran Street demand a more limited built form response on the review site, for the reasons that follow. Firstly, we observe that the traditional housing forms on the western side of Arran Street comprise narrow front yards and consistent front verandas that allow limited surveillance of, and interaction with, the street, particularly from internal spaces. It is evident that many of the dwellings on the western side of Arran Street are configured so as to direct their internal and external focus to their rear areas of secluded private open space, away from the review site. Secondly, we note that the narrow confines of Arran Street mean that a pedestrian on the opposite side of Arran Street from the review site will have the view to the proposed built form more highly obscured by the podium levels on the review site, compared to the outcome if the street were wider. As a result, we do not consider that the narrowness of Arran Street is a relevant factor in determining an appropriate built form response to it.
10. We recognise that the proposed Building 1 along Arran Street, with its built form ranging from 5, to 6, to 8 storeys in height, will be a large built form that is highly visible along Arran Street. In the future, the built form represented by Building 1 will be read amongst a host of buildings of similar height in this part of the activity centre. That includes the approved six storey building at 59-63 Buckley Street, which will be sited much closer to the single storey traditional dwellings in Arran Street, than the proposed Building 1. We are persuaded that an appropriate level of modulation has been incorporated into the design of Building 1, principally through a three storey street podium and setbacks to the upper levels, to achieve an appropriate built form insertion in this sensitive interface location. While a large building will be visible from the adjacent residential area, that is an outcome we find to be consistent with the strategic importance of land within a Metropolitan Activity Centre, and the guidance provided by the Maribyrnong Planning Scheme.
11. We also observe that there is a wide variety of built form proposed for both of the residential interfaces. The provision of a sizeable area of public open space at the most sensitive location along each of these interfaces is a substantial benefit to a number of nearby residential properties, as well as the broader neighbourhood, for reasons which we come to below. Throughout the site, areas of no development break up the taller forms. There is a significant break provided between Buildings 1 and 2 along Arran Street. We consider that the balance that is proposed for the review site is an appropriate response, providing a significant benefit to a number of residential properties in the adjacent residential neighbourhood, while increasing the extent of built form in less sensitive parts of the interface.
12. We consider that this balance of built form, transition of heights and space between and around the proposed built forms also achieves the Objectives set out in the *Urban Design Guidelines for Victoria.[[25]](#footnote-25)* During the course of the hearing the Respondents and Council referred us to the following objectives:

Create a transition from large development sites to adjacent residential neighbourhoods using scale, built form and uses.[[26]](#footnote-26)

Provide a transition in scale from larger buildings to adjacent areas of smaller built form.[[27]](#footnote-27)

1. For the reasons set out above, we consider that the proposed development uses scale, built form and spacing to provide an appropriate transition from the Metropolitan Activity Centre to the adjacent low scale residential areas. In terms of land uses, the provision of residential land use along these interfaces on the edge of the review site will also provide a transition in land use.
2. We also consider that the extent of public open space proposed on the review site provides a context which supports the achievement of greater building heights elsewhere on the site. The Maribyrnong Planning Scheme sets an open space requirement of 5.7% and the proposed development of the review site provides an area of public open space that equates to 11.9% of the review site. We consider that the location and setting of this public open space will likely create a significant public benefit for the surrounding neighbourhood, particularly when one has regard for the extent to which residents within the proposed development will also have in addition generous areas of communal open space available to them.
3. Finally, we note that the Respondents made submissions which contrasted the nature of the proposed built form on the review site with the preferred character statements set out in policy for the adjacent residential neighbourhood. It is instructive to note that the Council’s neighbourhood character policy at Clause 22.05 does not apply to the review site, or to other land that is included within the Activity Centre Zone. That is one clear indication that a very different built form character is expected on land within the Activity Centre Zone, compared to land within the residential zones. Given the policies and provisions that apply to the review site, we do not consider it appropriate to create any expectation that the proposed development of the review site will respond to, or in some way reflect, the character of the adjacent residential areas. Instead, what the Maribyrnong Planning Scheme expects is that there will be a transition in built form to the adjacent residential areas. For the reasons set out above, we consider that this transition in built form has been successfully achieved, through the:
	1. adoption of two and three storey podium elements in buildings 1 and 3;
	2. appropriate setback and positioning of higher built form elements in buildings 1 and 3;
	3. positioning of a four storey townhouse form with a narrow side profile presenting to Arran Street; and,
	4. siting of a sizeable area of public open space along part of the frontages to both Aaron and Walter Streets, in a location which we consider to be the most sensitive part of this transitional area.
4. For these reasons we find that the proposed development is an appropriate built form response to the residential interfaces to the review site.

### Conclusion

1. We acknowledge that the proposed development on the review site includes built form elements that exceed the preferred height limit of six storeys set out under the ACZ1, including a part 11 storey building that significantly exceeds this preferred height. However, those heights need to also be considered in the context of a development that:
2. Is sited on one of the largest, if not the largest, potential redevelopment site within this part of the activity centre, where the size of the review site provides a very real opportunity to position taller built forms on less sensitive parts of the review site, and transition heights down to the more sensitive interfaces;
3. Provides a great variation in building heights across the review site, with a high level of built form articulation;
4. Proposes giving a significantly sized parcel of land to the Council as an area of public open space, more than double the size of the area that is required under the Maribyrnong Planning Scheme;
5. Provides other breaks in the built form to each of the road interfaces to the review site, including the creation of a pedestrianised Central Plaza providing valuable pedestrian spaces and a route through the middle of the review site; and
6. Successfully addresses the sensitive interfaces to the residential neighbourhood to the south and west, through a series of buildings and spaces between buildings that present an appropriate scale in the streetscape, and setback to higher building elements.
7. For these reasons, we find that the proposed built form is an appropriate response to its physical context, to the range of building heights already approved within this part of the FMAC, and to the detailed policy and provision guidance provided within the Maribyrnong Planning Scheme.

## Is the proposed provision of public open space appropriate?

1. As noted earlier in these reasons, the application proposes the creation of an area of public open space of 1710 m², equivalent to 11.9% of the site area of the review site. The Council submits that in addition to providing this area of public open space, the Applicant should also be required to improve the public open space with a playground, shared paths, landscaping, and other improvements.
2. The Respondents submit that the combination of public open space and additional housing provided on the review site is inappropriate, as when one adds the area of open space and the likely increased population from the review site to the existing data for Seddon, there is actually a reduction in the amount of public open space available per head of population in the suburb as a whole.
3. Section 18(1)[[28]](#footnote-28) of the *Subdivision Act* 1988 establishes the principle that an open space contribution can be provided in the form of land or cash, or a combination of both land and cash, but that the land and cash together cannot exceed the requirement for open space, which in the case of Section 18(1) is 5% of the site value of the land.

(1) A Council acting as a responsible authority or a referral authority under the Planning and Environment Act 1987 may require the applicant who proposes to create any additional separately disposable parcel of land by a plan of subdivision to—

(a) set aside on the plan, for public open space, in a location satisfactory to the Council, a percentage of all of the land in the subdivision intended to be used for residential, industrial or commercial purposes, being a percentage set by the Council not exceeding 5 per cent; or

(b) pay or agree to pay to the Council a percentage of the site value of all of the land in the subdivision intended to be used for residential, industrial or commercial purposes, being a percentage set by the Council not exceeding 5 per cent; or

(c) do a combination of (a) and (b) so that the total of the percentages required under (a) and (b) does not exceed 5 per cent of the site value of all the land in the subdivision.

1. To further clarify the issue, s18A(4) confirms that:

(4) A public open space requirement may be made only once in respect of any of the land to be subdivided whether the requirement was made before or after the commencement of this section, unless subsection (5) applies.

1. Section 20(2) of the Subdivision Act 1988 then limits the purposes for which an open space contribution in the form of cash can be used.

(2) The Council must use any payment towards public open space it receives under this Act or has received under section 569B(8A) of the Local Government Act 1958 but has not applied under subsection (8C) of that section or the proceeds of any sale of public open space to—

(a) buy land for use for public recreation or public resort, as parklands or for similar purposes; or

(b) improve land already set aside, zoned or reserved (by the Council, the Crown, a planning scheme or otherwise) for use for public recreation or public resort, as parklands or for similar purposes; or

(c) with the approval of the Minister administering the Local Government Act 1989, improve land (whether set aside on a plan or not) used for public recreation or public resort, as parklands or for similar purposes.

1. In our view the effect of the combination of these provisions is clear, that cash sought from an Applicant to pay for improvements to public open space is part of an open space contribution, and that where both land and cash is sought, the combined value of the land and cash cannot exceed the amount required, whether that be an amount set out in 18(1) of the *Subdivision Act* 1988, or the Schedule to Clause 53.01 of the Maribyrnong Planning Scheme.
2. In this instance, the Applicant has voluntarily offered to provide land that exceeds the requirement under the Maribyrnong Planning Scheme. There is every indication from the Council that it is content with the amount of land and the location of the land that is being provided on the review site for public open space. However, in addition, the Council is asking the Applicant to fund the improvements of that public open space. We consider that this is an attempt to take a second contribution of public open space from the Applicant. The first contribution is the land that already exceeds the amount required under the Maribyrnong Planning Scheme, and the second contribution sought is a cash contribution for improvement of public open space.
3. It is evident that it is the contribution of the public open space as land on the review site that satisfies the requirement under both the *Subdivision Act* 1988, and the Schedule to Clause 53.01 of the Maribyrnong Planning Scheme. It would therefore be contrary to both the *Subdivision Act* 1988, and the Schedule to Clause 53.01 of the Maribyrnong Planning Scheme for the Council to require a second contribution, in the form of cash for improvements to the public open space. In our reading, the planning framework does not enable this second contribution to be legally required by the Council, unless the first contribution falls short of the amount required under the planning framework. That is not the case here. Instead, to the contrary, the first contribution of land exceeds the amount required under the Schedule to Clause 53.01 of the Maribyrnong Planning Scheme.
4. As the intent is for public open space in the form of land to be provided, we consider it appropriate that the land be provided by the Applicant in a form where it is able to be used and maintained as public open space. To that end, it is appropriate that the Applicant provide the public open space in a form that is free of contamination, and able to be used and maintained as public open space, from the day that it is handed to the Council, without the need for Council to undertake additional improvements to enable the land to be used as public open space. We consider that this outcome is achieved by the land being provided in a manner where it is remediated, graded, free from any tripping hazards, and grassed, in a manner that is easily able to be mowed by the Council.
5. We understand that the Council may be in a financial position where it cannot afford to undertake the improvements to the area of public open space that it would like to undertake. The extent of any improvements that are required to the proposed area of public open space, and the Council’s chosen method to fund those improvements, is a matter entirely for the Council, and is not a matter for this Tribunal. Improvements are not necessary to enable the land that is to be provided by the Applicant, to be used as public open space. All that is required for a contribution to be made under the *Subdivision Act* 1988, is for the land to be provided in a manner where it can be utilised as open space, which, as noted above, we consider is fulfilled if the land is contaminant free, levelled in a manner where it can be used and easily maintained, and grassed.
6. During the course of the hearing we invited the Applicant to draft permit conditions that would ensure this outcome. We are satisfied that, subject to a minor change, those conditions will achieve what we consider to be a fair outcome in terms of the provision of public open space on the review site, consistent with the guidance provided by the relevant planning framework.
7. We are not persuaded by the submissions of the Respondents that the area of public open space provided on site is insufficient having regard to the likely population increase arising from the development of the review site, or that the public open space is unlikely to be used by residents external to the review site. These submissions ignore the fact that a range of communal open space is also proposed to be provided on the review site, in locations that will be convenient to a wide range of future residents. Within the proposed development, in addition to the area of public open space, it is also proposed to provide a pedestrianised plaza with an area of 1650 m², and areas of communal open space within each of the proposed buildings that total approximately 1765 m².[[29]](#footnote-29) All of this does not include the additional internal residential amenity spaces also provided in Buildings 1 & 4.
8. For these reasons, we are not persuaded that the future residents of the review site will rely solely on the public open space being provided in the south western corner of the review site. Nor are we persuaded that this area of public open space will not be attractive and available to some of the existing residents in the broader neighbourhood. In fact, we find it highly unlikely that a resident residing on the western side of Aaron Street, or on the southern side of Walter Street, will not on regular occasions simply walk across the street and take advantage of the area of public open space that is so conveniently located to their own dwellings. That is particularly our view having regard to the distance that exists to the next nearest available area of public open space in this neighbourhood.
9. For these reasons we consider that the Applicant’s intent to provide public open space, but not improve it, is an appropriate response to the planning framework in the context of the review site.

## Will there be any unreasonable off-site amenity impacts?

1. Off-site amenity impacts to the surrounding residents are generally measured in terms of visual bulk, overlooking, overshadowing, loss of daylight, and noise impacts. In our assessment of the proposed built form earlier in these reasons, we considered the potential visual bulk impacts to the surrounding residential properties. It is our finding, for the reasons which we have already set out, that the proposed development provides an appropriate transition of built form to sufficiently reduce the visual bulk impacts to a level that is appropriate for this edge of activity centre location.
2. The proposed development will not create any unreasonable off-site amenity impacts by way of overlooking, overshadowing or loss of daylight to the nearby residential properties, as the review site is separated from the nearest residential properties by the width of Arran and Walter Streets. As the streets are each wider than 9 metres there will be no unreasonable levels of overlooking to the surrounding properties. Further, the shadow diagrams submitted with the amended plans demonstrate that the shadows at the equinox mostly fall within the road reserves that surround the review site. While there will be overshadowing of the front yards and front windows of some of the houses on the western side of Arran Street, this will only occur at 9:00am at the equinox, and is removed from the properties by 10:00am at the equinox. Given the location of the site within an activity centre, and the dwellings in Arran Street at the edge of it, we consider that this level of overshadowing is more than reasonable.
3. The final area of potential off-site amenity impacts is that relating to noise impacts. It is a reasonable expectation that a vacant site that is then subject to a relatively intense form of development as encouraged under the Maribyrnong Planning Scheme, will result in a level of increased noise to this residential neighbourhood, including from increased traffic, which we assess later in these reasons. While we acknowledge that there will be an increased level of noise from new residents, we do not consider that there is anything unique about this site, such that we should seek to avoid the creation of noises associated with residents living adjacent to a residential area. We do not consider that the proposed development of the review site will result in any unreasonable noise impacts to the surrounding residential neighbourhood.
4. In summary we find that the proposed development will not result in any unreasonable off-site amenity impacts.

## Is an appropriate level of internal amenity achieved?

1. The Council submits that the proposed dwellings at ground level of the three apartment buildings are not provided with sufficient areas of secluded private open space as they do not measure at least 25 m² each. Further, they also submit that some of the apartments at the podium level do not meet the minimum dimensions required to open space areas due to the encroachment of planter boxes.
2. We are satisfied that the ground level areas provided to the apartments are of a sufficient size, as they exceed the area that is required for an apartment in the form of the balcony or terrace. As each of the apartments vary from the natural ground level in one way or another, it is reasonable to treat these areas of secluded private open space as balconies or terraces, rather than ground level areas of secluded private open space. This approach also recognises the fact that the recreation needs of residents in the ground level apartments do not vary from those in an apartment above ground level, and that the landscaping opportunities as part of this proposed development are provided in other areas apart from those provided to those at ground level. Finally, any minor shortfall in the size or dimensions of the areas of secluded private open space to individual apartments, which we consider occurs to a relatively minor extent, is more than balanced out by the sizeable areas of public open space, communal open space and pedestrian plaza provided throughout the review site.
3. The Applicant circulated expert evidence from Mr Richardson that examines the daylighting outcomes to be achieved by each of the proposed living areas and bedrooms. While we note that some of the bedrooms in particular achieve poor daylight outcomes, the number of bedrooms so affected are very low, such that the overall level of daylight to be enjoyed by the proposed apartments still achieve the relevant standards as set out by the BESS tool. Accepting the analysis conducted by Mr Richardson, and the evidence of Mr McGurn, we are satisfied that the level of daylighting to be enjoyed by the proposed apartments is acceptable.
4. Having regard to the other attributes that contribute to the internal amenity of a dwelling, we are satisfied that a reasonable level of internal amenity will be achieved for each of the proposed apartments and townhouses. We make this finding having regard to the size and functionality of the individual rooms, their ability to receive solar and daylight access, the orientation of the areas of secluded private open space, the accessibility to a range of communal and public open space, and the convenient car parking provided on site.

## Does the proposal appropriately provide for car parking and traffic movements?

### Car parking assessment

1. The review site is covered by Schedule 2 to the Parking Overlay (PO2). The Parking Overlay operates in conjunction with Clause 52.06 of the Maribyrnong Planning Scheme. PO2 contains the following parking objectives.

To identify appropriate car parking rates for various uses within the outer area of the Footscray Metropolitan Activity Centre (FMAC) so that:

* Parking demand and supply satisfies user needs
* Parking provision is minimised, where appropriate, in recognition of its role in generating vehicle trips and traffic congestion
* Use of active and sustainable modes of transport is encouraged in preference to increased private vehicle travel, thereby reducing traffic congestion and noise and air pollution and increasing road safety
* Pedestrian amenity within the FMAC is improved
1. Under PO2 the following permit requirements apply.

A permit is required to:

* Reduce (including reduce to zero) the minimum number of car parking spaces required for a use as specified in this schedule.
* Provide more than the maximum number of car parking spaces for a use as specified in this schedule.
1. In this proceeding car parking and traffic evidence was provided by Mr Hunt. It is the evidence of Mr Hunt that the proposal provides more than the maximum number of car parking spaces required for residents to dwellings, and less than the minimum number of car parking spaces required for visitors to dwellings.
2. In terms of parking for residents of the dwellings, the proposal development provides more than the maximum number of car parking spaces as each of the three bedroom dwellings within the development, whether they be apartments or townhouses, are each provided with two car parking spaces. This compares to the maximum statutory rate under PO2 of 1.5 spaces per three bedroom dwelling. As the PO2 deals with dwellings as a single use (as opposed to dealing with one, two and three bedroom dwellings as separate uses), and as the provision of car parking spaces for the one and two bedroom dwellings on the review site are both under the maximum rate, overall the proposed development provides 437 spaces for the residents to the dwellings, as compared to the maximum requirement of 432 spaces under PO2. The Applicant seeks permission for the provision of an extra 5 resident spaces on the review site.
3. On a development of this scale, which has access points to two roads, we consider that the grant of a permit to allow 5 additional resident car parking spaces, will not have an appreciable impact on the generation of vehicle trips and traffic congestion, and on the use of more sustainable forms of transport. This view is shared by Mr Hunt, who in his oral evidence opined that there will be no discernible impact on traffic generation arising from the provision of 5 extra car spaces on the review site. Accepting this, we consider that the proposed provision of an extra 5 resident car parking spaces is appropriate, and that a permit can be granted to exceed the maximum number of car parking spaces for dwelling residents.
4. In terms of parking for residential visitors, the proposal provides 10 car parking spaces on site. Mr Hunt says, relying on empirical data, that as the development comprises 404 dwellings, the required number of visitor car parking spaces under PO2 is 40 spaces. It is also his evidence that 40 visitor car parking spaces represents the likely peak visitor car parking demand generated by the proposal, and that this demand would drop to 24 visitor car parking spaces at the time of the lowest demand, which is likely to occur during weekday business hours.
5. The proposed development of the review site will therefore create an on-street demand for visitor car parking spaces ranging from 14 spaces during weekday business hours, up to 30 spaces outside of business hours. In addition, there will also be a demand created by visitors to the various retail spaces created within the proposed development of the review site, for which there are no car parking spaces to be provided on site. Further, there will also be demand for on-street car parking from vehicles making deliveries to the proposed retail spaces, as no loading bay is proposed on site, and no loading zone currently exists on-street and proximate to the review site.
6. Mr Hunt’s evidence provides details of a survey conducted of the current demand for on-street car parking spaces, in a likely catchment area surrounding the review site. That survey reveals that while there is currently a significant supply of vacant on-street car parking spaces after business hours, during the weekday business hours there exists a supply of only 14 vacant car parking spaces throughout all of the streets that form the catchment to the review site for a period of more than 4 hours. This is the time when the proposed development of the review site will be generating on on-street demand of 14 visitor car parking spaces for the dwellings, 7 visitor spaces for the retail floorspace, plus vehicles seeking space on street to perform loading activities.
7. As set out above, the parking objectives for PO2 seeks that parking supply satisfy user needs, while minimising car parking, and encouraging more sustainable modes of travel. We do not consider that the proposed supply of car parking on the review site achieves the right balance in terms of these objectives. That is because the supply of visitor car parking on site will not satisfy user needs at any time of the week, while creating such a significant demand for on-street car parking so as to completely accommodate the presently available on-street resource during business weekday times.
8. We understand that in some activity centre contexts it will be highly desirable to provide less than the likely car parking demand, or no car parking at all, in order to force people onto more sustainable forms of transport. In the right context, we support that approach. However, we do not support that approach in this case, as the review site sits at the interface of an activity centre and a residential area, and it is the evidence of Mr Hunt that the proposed development will create a significant demand for on-street car parking that will compete with the current demands of nearby residents. Further, the objectives of PO2 are very clear in expecting that new development will satisfy the parking demand it generates.
9. When balanced against the other objectives, we do not read the first parking objective as requiring 100% of the demand for car parking to be provided on the review site. However, we do consider that the proposal to create an on-street demand that outstrips supply in this edge of activity centre location is not the right outcome. In our view, a fair approach is to require the proposed development to provide 24 residential visitor car parking spaces on site. This will meet the demand for residential visitors during the peak demand time for on-street parking, while still requiring retail visitors and loading vehicles to use the on-street resource. As the provision of 24 visitor spaces still requires the grant of a permit to provide less than the minimum number of visitor spaces, we will grant such a permit.
10. The options remain for the Applicant to provide the additional visitor car parking spaces as new spaces on site, or to convert some of the resident spaces for the one or three bedroom dwellings to visitor spaces, or to adopt a combination of these two approaches. Subject to one of these changes, we are satisfied that the provision of car parking on site is acceptable.

### Traffic assessment

1. The proposed development will clearly result in an increased level of traffic to the surrounding road network, as compared to the current vacant condition of the review site. The Respondents submit that the proposed development will result in an increase to existing traffic in Arran Street, resulting in an unreasonable reduction in resident amenity. They also argue that the increased traffic levels on the review site will cause the intersection of Buckley and Albert Streets to operate in a manner which causes unacceptable delays to traffic flow.
2. We are not persuaded by the Respondents’ submissions, for the following reasons. In relation to Arran Street, it is Mr Hunt’s evidence that the proposed development of the review site will add up to 72 vehicle movements in the peak hour to the existing traffic levels. However, as these vehicle movements are split between traffic moving north and south along Arran Street, no point along that street will experience that level of increased traffic. We consider that this level of increased traffic is acceptable as:
	1. The resultant traffic flows in Arran Street will be a daily volume of 724 vehicles in the busiest part of this street. This amount will still be well under the environmental capacity of the street, which according to the evidence of Mr Hunt, is between 1,000 and 2,000 vehicles per day.
	2. While cars park on both sides of Arran Street, there remains enough street width for traffic to flow around these parked cars. We acknowledge that in parts of the street this flow of traffic narrows to one trafficable lane, but that is a common occurrence in residential streets across Melbourne, and can lead to a positive outcome of slowing traffic to a safe and desirable speed.
	3. The likely increase in traffic from the review site is not dissimilar to the traffic levels that would have occurred when the land was used as a bus depot. The former bus depot had an employee car park of 78 car parking spaces accessed solely off Arran Street, and with shift work would have generated a noticeable level of traffic on Arran Street.
	4. The review site is a large vacant allotment within a higher order activity centre. The Maribyrnong Planning Scheme strongly encourages an intense development of the land, and this will necessarily result in additional traffic to the surrounding road network.
	5. Council’s traffic engineers have reviewed the proposal, and in addition Council engaged an external firm of traffic engineers to conduct a further review. Based on this independent traffic engineering advice, the Council does not oppose the traffic impacts of the proposal.
3. In relation to the increased traffic to the Buckley and Albert Streets intersection, we note that the Respondent’s concerns regarding traffic delays are based on the current layout of this intersection. However, VicRoads’ requested permit conditions include a requirement for changes to be made to this intersection, and for a Transport Impact Assessment Report to be undertaken after the intersection changes, and after the completion of the development, to see if any further changes are required. These conditions are not opposed by the Applicant. Further, Mr Hunt in his evidence has modelled the effect of these changes, and found that the intersection will operate with acceptable delays and queues, even accounting for the likely increase in traffic as a result of the proposed development on the review site.
4. Mr Hunt was subject to thorough cross examination from the Respondents on traffic matters. Having regard to his answers under cross examination, we are satisfied that the proposed development, including the required improvements to the Buckley and Albert Streets intersection, will not unreasonably impact the efficient movement of vehicles on the surrounding road network.
5. The application does not provide vehicle loading bays for use of vehicles delivering to the various retail spaces proposed in buildings 1 & 4. We consider it appropriate to allow loading activities to occur on street, and that with an increased supply of residential visitor car parking on site, that sufficient capacity will exist on street to support this activity.
6. Finally, waste collection is proposed to occur within Buildings 1, 3 & 4, within each of the respective car parking areas. We note that this will require a garbage truck to prop in a parking aisle for a short time, though not to the extent that would block vehicle movements. We consider that to be an appropriate approach, given the relatively short length of time that rubbish collection would take place in each building. For Building 2, there is the option for the rubbish to either be collected along the laneway to the north of this building, or directly from Arran Street. We consider that either scenario presents as an acceptable outcome. While we understand that the residents are opposed to bins being collected directly from Arran Street, we consider that prospect to be no different from the current experience where existing residents in Arran Street have their bins collected from the street. We anticipate that a truck collecting such bins would prop in Arran Street for a short time, and create a level of noise usually associated with a rubbish truck performing its role in a residential area.
7. For these reasons we find, subject to an increased provision of residential visitor car parking spaces, that the proposed development appropriately provides for car parking and traffic movements.

## What conditions are appropriate?

1. A number of other matters about permit conditions were raised by the parties. With respect to those matters, other than those already addressed above, we summarise our conclusions as follows:
	1. There were a number of editing and other changes recommended by the Applicant, and where these have not been opposed by the other parties, we have mostly implemented those suggested changes.
	2. We will delete the Council’s drafted permit condition requiring the roof top decks to the townhouses in building 2 provide surveillance of the area of public open space, as we consider that sufficient surveillance of the public open space is already provided from various areas within Buildings 2 and 3.
	3. We have agreed to the Applicant’s request to redraft one of VicRoads conditions (Condition 68) in an attempt to assist to clarify what is being sought, without intending to change the effect of the words as drafted by VicRoads.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

|  |  |  |
| --- | --- | --- |
| **Michael Deidun** **Presiding Member** |  | **Ann Keddie****Member** |

# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No | TP490/2018 |
| Land | 43-57 Buckley Street, Seddon |

|  |
| --- |
| What the permit allowS |
| In accordance with the endorsed plans:* To use land for retail premises
* To construct a building and construct or carry out works
* To remove native vegetation
* To reduce the minimum car parking requirement for residential visitors and to provide more than the maximum number of spaces for three bedroom dwellings
* To alter an access to a road in a Road Zone, Category 1
 |

## Conditions

1. Before the development start(s), amended plans must be submitted to the satisfaction of the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and provided in a digital format (where possible). The plans must be generally in accordance with the plans prepared by DKO Architecture (marked TP001, TP200 to TP205, TP205a, TP206 to TP213, TP300 to TP304, TP304a, TP305, TP306, TP400 to TP404, TP404a, TP405 to TP410, TP500 to TP512, TP600, TP601, TP701 to TP706, TP711 to TP715, TP721 to TP724, TP731 to TP734 and dated 25 June 2019) but modified to show:
	1. Reduction in the extent of the eastern ‘wing’ of levels 6 and 7 in building 1, by increasing the setback to the eastern edge of this building by 11.0 metres (to a setback of 30.1 metres).
	2. Details of the external appearance of the Residents’ Amenity space provided on TP206, to be shown on the southern, western and eastern elevations of building 1.
	3. Modification of the roof plant screen on building 1 shown on elevations on TP211 and TP212 (sited above apartments B.7.01 to B.7.07) so that the height and extent of the roof plant shown on the elevations, matches the smaller extent and height of the roof plant shown on TP208.
	4. The provision of a total of 25 residential visitor car parking spaces across the site. This can be achieved by reducing the number of car parking spaces provided for residents on site, or by providing an additional 15 car parking spaces on site, or a combination of both approaches.
	5. Details of any screening to the carpark to prevent light spill from the podium level car parking area of Building 1 and the adjacent habitable rooms in Building 2.
	6. Provision of a safe pedestrian path to the south of Dwelling A.G.08 in Building 1 to provide a pedestrian refuge area and a more prominent entry lobby to the south-west corner of Building 1, with no changes to the laneway width.
	7. Location of letterboxes and rubbish chutes to the dwellings accessible from south-west lobby area of Building 1.
	8. Alternative design treatment (such as use of glazing and/or urban art) to the blank southern side elevation on Dwelling A.G.08 adjacent to the accessway.
	9. Alternative design treatment (such as use of glazing and/or urban art) to the blank eastern side elevation at ground floor level adjacent to Albert Street frontage on Building 3 currently indicated with ‘EF04’.
	10. Modifications to the building to incorporate any changes required by the amended Waste Management Plan required by condition 38, Acoustic Report required by condition 9, Environmental Sustainability Management Plan required by condition 36, Tree Management Plan required by condition 21 and Wind Assessment Report required by condition 35.
	11. Inclusion of solar panels to support lighting in common areas of Buildings 1, 3 and 4.
	12. Buildings 1 & 4 (including canopies) modified to ensure the existing street trees along Buckley Street (Trees 100 and 101 as identified in the Vegetation Survey & Arboricultural Impact Assessment prepared by Landscape Dept October 2018) are retained, and the provision of a notation to show the retention of these trees. Any changes must be in accordance with a Tree Management Plan as per Condition 21.
	13. The location of all bicycle parking spaces within the site (excluding the bicycle parking spaces associated with the town houses).
	14. Section plans for each ramp demonstrating a minimum headroom clearance of 2.2m along the accessways in accordance with the requirements of AS2890.1-2004.
	15. The columns located on Level 2 to Building 1 at the north end of the car park located in accordance with Diagram 1 of Clause 52.06-9 of the Planning Scheme, or otherwise located to the satisfaction of the Responsible Authority.
	16. Demonstration of car stackers to provide minimum height clearance in accordance with Clause 52.06-9 of the Maribyrnong Planning Scheme.
	17. A maximum reflectivity of 20% for west facing external walls to Buildings 1, 3 and 4 and/or other design treatments to reduce sun glare towards the west.
	18. Deletion of the roof top terrace to TH03 (Lot 1) to maintain a four storey form.
	19. Further details of access to the roof terraces of Building 2 to avoid enclosing stair cases and raising the overall building height.
	20. A public realm upgrade and landscape plan to the satisfaction of the Responsible Authority in accordance with Condition 15.
	21. Any changes as required by Melbourne Water, VicRoads and Transport for Victoria as specified in the conditions of this permit.
	22. The allocation of storage cages in compliance with Standard D20 of Clause 58.05-4 of the Maribyrnong Planning Scheme.
	23. Two car spaces within Building 4 that are located adjacent to a stair case (being one on each of plans TP501 and TP502, which each have a stair case on their northern sides) signed as ‘Small Car Only’ spaces.
	24. The 1:20 gradient within the accessible car space within Building 1 relocated so that it does not encroach into the accessible space.
	25. The southernmost cars stackers (4 spaces) in the south-eastern corner of Building 3 be shifted south so that they are not located under the ramp, which will allow a headroom clearance of 3.8 metres to be provided.
	26. An intercom be provided within the central island of each entrance accessway to enable visitor/customer access to the secure car parking areas.
	27. The 24 vertical bicycle racks within the Ground Floor Car Park of Building 1 provided on a 45 degree angle.
	28. The provision of a landscaping solution or screening to provide a level of privacy to the areas of secluded private open space in townhouses CGL07, CGL08, CG14 in Building 3, from people walking along the adjacent footpath.
2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clause 62 of the Maribyrnong Planning Scheme. NOTE: This does not obviate the need for a permit where one is required.
3. Once the development has started, it must be continued and completed to the satisfaction of the Responsible Authority.
4. All boundary walls must be cleaned and finished using a graffiti proof finish or alternative measure to prevent or reduce the potential of graffiti. Any graffiti that appears on the wall must be cleaned or removed as soon as practicable to the satisfaction of the Responsible Authority. The cost of any clean-up or removal of the graffiti from the wall must be paid for by the developer and/or future owners of the land.
5. The use of the land for retail may operate only between the hours of 6.00 a.m. and 9.30 p.m. Monday to Sunday, except with the written permission of the Responsible Authority.
6. All visual screening and measures to prevent overlooking to adjoining properties must be erected prior to the occupation of the buildings to the satisfaction of the Responsible Authority.
7. External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the Responsible Authority.
8. Noise levels emanating from the retail premises must not exceed the noise levels as determined by the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. N-1.
9. Concurrent with the endorsement of plans, an acoustic report prepared by a qualified Acoustic Engineer must be prepared to the satisfaction of the Responsible Authority. If satisfactory, the acoustic report will be endorsed to form part of the permit. The acoustic report must consider a range of matters including the following:
	1. the impact of the commercial uses on the residential uses within the development and surrounds and provide solutions to mitigate these impacts;
	2. the noise from the bin chutes which abut bedrooms;
	3. the noise from the car stackers on any sensitive uses; and
	4. the impacts of traffic noise on dwellings abutting Buckley Street.

All of the recommendations of the acoustic report must be implemented prior to the occupation of the relevant building, to the satisfaction of the Responsible Authority.

1. Prior to the issue of the Statement of Compliance for any stage of the development, or by such later date as is approved by the Responsible Authority in writing, a report/letter from a qualified Acoustic Engineer with expertise in acoustic matters must be prepared. The report/letter must detail that all acoustic measures outlined in condition 9 have been satisfactorily implemented for that stage, building or part of the development permitted by this permit (which ever the case may be). The letter/report must be provided to the Responsible Authority for its consideration. If satisfactory, the letter/ report will be approved by the Responsible Authority.
2. A Staging Plan is required to be prepared and submitted to the Responsible Authority for its consideration. If satisfactory, the Staging Plan will be approved by the Responsible Authority prior to commencement of any works within each Stage (excluding demolition or any works associated with the remediation of the land as sought by Conditions 41 & 42).
3. The Staging Plan must include all public realm works to be constructed within each Stage.
4. The Staging Plan must include the provision of Public Open Space within the stage that includes the first 50% of dwellings ready for Statement of Compliance or a Certificate of Occupancy.
5. Before the occupation of the buildings associated with each stage, or by such later date as is approved by the Responsible Authority in writing, the public realm upgrades and landscaping works shown on the endorsed Staging Plans required by condition 11 must be undertaken to the satisfaction of the Responsible Authority.
6. Before the development starts in each stage, a Public Realm and Landscape Plan must be prepared to the satisfaction of the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must show:
	1. A minimum 50% selection of native trees for plantings within the site.
	2. A three metre wide footpath/naturestrip along Buckley Street, adjacent to Buildings 1 and 4.
	3. Raised threshold treatments at the intersections of Arran/Buckley Street (east-west), and Walter/Albert Street (north-south).
	4. Bicycle spaces close to the Buckley Street frontage such as within the pedestrian plaza.
	5. Details of all surface levels including finishes of pathways and features on the street frontage/s.
	6. Details of all new kerbs, tree pits, parking control signage, etc. around the site.
	7. A planting schedule for all streets and common areas, including the communal open spaces on all buildings (including the communal open space at level 6 of building 1), which includes all proposed trees, shrubs, ground covers, including botanical names, common names, pot sizes, sizes at maturity, quantities of each plant.
	8. Any alterations to significant electrical assets, including removal of the electricity and light pole.
	9. Any replacement, redesign or redesign of street lighting.
	10. Infill planting of Plane Street trees along Buckley Street (which comply with any recommendations of the Wind Assessment required by Condition 35).
	11. Inclusion of street tree planting along Albert Street (using Melia azerderach) in footpath cut outs.
	12. Tree species within the park and internal laneways to be of a larger canopy including a mixture of deciduous trees, or in compliance with Melbourne Water’s Planting Near Sewers, Drains and Water Mains Guide.
	13. All street trees to be selected from City of Maribyrnong Street Tree Strategy.
	14. Street trees to be protected (including Trees 100 and 101 as identified in the Vegetation Survey & Arboricultural Impact Assessment prepared by Landscape Dept October 2018).
7. All works outlined in the Public Realm and Landscape Plan must be completed to the satisfaction of the Responsible Authority, aside from the works depicted within the area of secluded private open space, where the land must be provided in a form described in Condition 18(b)(i), plus the construction of paths to the south of building 2 and the west of building 3, with all costs borne by the owner/developer.
8. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, this includes the replacement of any dead, diseased or damaged plants within the land for a period of two years from the date of the completion of the development permitted by this permit.
9. Prior to the issue of:
	1. a Statement of Compliance for a plan of subdivision, together with any previous plan of subdivision that creates 50% of the allotments permitted by this permit; or
	2. Prior to the issuing of a Certificate of Occupancy for not more than 50% of the dwellings permitted by this permit:
		1. the public open space must be generally level, topsoiled, grassed and free of holes and tripping or other hazards, and able to be easily mowed and maintained, to the satisfaction of the Responsible Authority;
		2. the land must be vested in Council and be made publicly available.
10. At the time of vesting in Council, the designated public open space must be remediated to be suitable for use as public open space (issued with statement or certificate of environmental audit) and in compliance with all requirements of the environmental audit (required by conditions 41 and 42) to the satisfaction of the Responsible Authority.
11. Unless otherwise agreed by the Responsible Authority in writing, prior to the commencement of works for the development the permit holder must enter into an agreement with the Responsible Authority made pursuant to section 173 of the Planning and Environment Act 1987. The agreement must be in a form to the satisfaction of the Responsible Authority and the permit holder must be responsible for the expense of the preparation of the agreement, including the responsible authority’s reasonable costs and expenses (including legal expenses) incidental to the preparation, execution, registration on title and enforcement of the agreement. The agreement must provide for the following:
	1. Prior to the issue of:
		1. a Statement of Compliance for a plan of subdivision, together with any previous plan of subdivision that creates 50% of the allotments permitted by this permit; or
		2. a Certificate of Occupancy for not more than 50% of the dwellings permitted by this permit:

the public park must be generally level and grassed and be made publicly available. The land must be vested in Council and constitutes its public open space contribution as required by Clause 53.01 of the Planning Scheme.

* 1. The designated public open space must be remediated to be suitable for use as public open space and issued with statement or certificate of environmental audit in compliance with all requirements of the environmental audit (required by condition 41and 42) to the satisfaction of the Responsible Authority.
	2. The graded and grassed surfaces within the park must be maintained by the permit holder for a period of 2 years from the date it is constructed and made available for use.
	3. Before a Statement of Compliance is issued for each stage, the public realm upgrades shown on the plans and identified in Condition 11 of the relevant stage must be completed by the permit holder as outlined above.
	4. The associated costs to install the public realm improvements in accordance with the plan must be borne by the permit holder.
	5. Any ongoing management requirements of the environmental audit are to be carried out by the Applicant or its successor in title, of the land not including the public open space.
1. Concurrent with the endorsement of plans, a Tree Management Plan (TMP) must be prepared to the satisfaction of the Responsible Authority. The TMP must be completed by a suitably qualified and experienced Arborist and must identify the Tree Protection Zone, volume of Tree Protection Zone encroachment (%) and how it is intended to carry out site works with minimal impact on tree health including tree protection measures that align with AS4970 in regard to street trees to be retained around the edges of the site. When approved, the TMP will form part of the permit.
2. Before the development commences, a bond equal to the combined amenity value of the tree or an amount otherwise specified by Council must be paid to Council’s Parks and Open Space team. The bond will be held for a period of 6 months after the certificate of occupancy for the last dwelling/building has been issued (associated with each stage of construction) and will be released pending a final inspection. If any tree (excluding any tree which is of dead or poor health as identified in the Vegetation Survey and Arboricultural Assessment prepared by Landscape Department dated October 2018) is damaged or goes into decline within the 6 month period the bond amount will be retained to recover the loss of amenity and establishment of new trees.
3. Before the development starts (including any demolition works), tree protection measures in accordance with AS4970-2009 (Protection of trees on Development Sites) must be erected around existing street trees. The tree protection measures must remain in place until construction is completed for each stage.
4. Any pruning that is required to be done to the canopy of any tree to be retained along Buckley Street is to be done by a qualified arborist to Australian Standard – Pruning of Amenity Trees AS4373-2007 (Pruning of Amenity Trees). Any pruning of the root system of any tree to be retained is to be done by hand by a qualified arborist.
5. Before the development starts a fee must be paid to the Responsible Authority for the removal of the existing street tree(s) as identified in the approved Public Realm and Landscape Plan.
6. Vehicular crossing(s) must be constructed and/or modified to the road to suit the proposed driveway(s) to the satisfaction of the Responsible Authority.
7. All disused or redundant vehicle crossings must be removed and the area reinstated with either/or footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.
8. Before the commencement of the use and/or occupation of each stage of the development, the area(s) set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and be:
	1. constructed;
	2. properly formed to such levels that they can be used in accordance with the plans;
	3. surfaced with an all weather seal coat;
	4. drained;
	5. line marked to indicate each car space and all access lanes;
	6. clearly marked to show the direction of traffic along access lanes and driveways.
	7. Over-bonnet storage must be provided with a suitable clearance for larger vehicles.
	8. Internal lighting within the car park and accessway areas.

Car spaces, access lanes and driveways must be kept available for these purposes at all times.

1. The mechanical stackers must be routinely serviced and maintained to the satisfaction of the Responsible Authority to ensure satisfactory access to all car spaces and to prevent any adverse effect on adjoining land by the emission of noise.
2. The site must be drained to the satisfaction of the Responsible Authority and is subject to any requirements, conditions and subsequent approval from VicRoads. Stormwater run-off from the site must not cause any adverse impact to the public, any adjoining site or Council asset. Stormwater from all paved area has to be drained to underground stormwater system. Any cut, fill or structure must not adversely affect the natural stormwater runoff from and to adjoining properties.
3. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development.
4. Prior to the commencement of any works on the site and/or subdivision of the land, the permit holder must submit for approval to the Responsible Authority drainage plans to the requirements outlined in the Stormwater Discharge Permit.
5. Prior to the commencement of any works on the site, ‘Build Over Easement’ consent must be obtained from Maribyrnong City Council’s Building Department, and any relevant service or utility authority.
6. Prior to any works commencing on the land a Construction Management Plan (CMP) must be prepared to the satisfaction of the Responsible Authority, detailing how the permit holder will manage the environmental and construction issues associated with the development. When approved, the CMP will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The CMP must address a range of matters including:
	1. the contact name and phone number(s) of the site manager,
	2. bulk excavation,
	3. management of the construction site,
	4. land disturbance,
	5. hours of construction,
	6. noise mitigation measures in regard to breaking up of concrete and rock and at reasonable hours,
	7. control of dust,
	8. public safety,
	9. traffic management,
	10. construction vehicle road routes,
	11. soiling and cleaning of roadways,
	12. discharge of any polluted water,
	13. security fencing, disposal of site waste and any potentially contaminated materials,
	14. crane locations during construction,
	15. location of site offices,
	16. redirection of any above or underground services,
	17. site lighting during any night works;
	18. considerations as to how deliveries will be managed and to avoid blocking vehicle traffic in the laneway and maintaining access for existing users.
7. Concurrent with the endorsement of plans, a modified wind assessment report must be prepared to the satisfaction of the Responsible Authority. When approved, it will form part of the permit. All of the recommendations of the wind assessment report must be implement prior to the occupation of the building to the satisfaction of the Responsible Authority.
8. Concurrent with the endorsement of plans, a modified Sustainability Management Plan must be prepared to the satisfaction of the Responsible Authority. If approved, it will form part of the permit. All of the recommendations of the Sustainability Management Plan must be implemented prior to the occupation of the building and/ or stage (which ever as the case may be) to the satisfaction of the Responsible Authority. No alterations to the Sustainability Management Plan may occur without the written consent of the Responsible Authority. The Responsible Authority may vary the requirements of this condition at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes in association with the development.
9. Prior to the occupation of any dwelling under each stage as shown in the staging plan approved under condition 11 of this permit, a report must be prepared to the satisfaction of the Responsible Authority, confirming all measures specified in the Sustainability Management Plan that forms part of the application, have been implemented in accordance with the approved Plan. The author of the Sustainability Management Plan report that forms part of the application, or similarly qualified person or company must prepare the report. If satisfactory, the report will be approved by the Responsible Authority and form part of the permit.
10. Concurrent with the endorsement of plans, an updated Waste Management Plan must be prepared to the satisfaction of the Responsible Authority and include the following matters:
	1. Increased waste room dimensions to avoid temporary placement of bins outside of the room when changing bins.
	2. Risk Management plan.
	3. Hard waste collection point.
	4. Bin chute deposit points in plan.
	5. Acknowledgement that future occupants would still be required to pay the waste-surcharge despite private collection.
	6. Improved bin room access Building 4 retail to avoid opening out onto the ramp and with internal access to it.

Once submitted, the Waste Management Plan will be endorsed to form part of the permit.

1. Waste management must be carried out in accordance with the Waste Management Plan approved as part of condition 38 of this permit.
2. Concurrent with the endorsement of plans, a Storm Water Assessment must be prepared to the satisfaction of the Responsible Authority. If satisfactory. The Storm Water Assessment will be endorsed by the Responsible Authority and form part of the permit. All of the recommendations of the assessment must be implemented prior to the occupation of the relevant building to the satisfaction of the Responsible Authority.
3. Before:
	1. the use; and
	2. the construction of the development,

authorised by this permit commences. an Environmental Auditor appointed under Section 53S of the *Environment Protection Act* 1970 (EP Act) must undertake an Environmental Audit in accordance with the provisions of the EP Act and issue:

* 1. a Certificate of Environmental Audit for the land in accordance with Section 53Y of the EP Act (Certificate); or
	2. a Statement of Environmental Audit for the land in accordance with Section 53Z of the EP Act (Statement),

and the Certificate or Statement must be provided to the Responsible Authority.

1. If, pursuant to the above condition, a Statement is issued:
	1. the:
		1. use; and
		2. development,

authorised by this permit must not be undertaken unless the Statement of Environmental Audit clearly states that the land is suitable for that use;

* 1. the use authorised by this permit must not commence until compliance is achieved with all terms and conditions that the Statement states must be complied with prior to the use commencing;
	2. the development authorised by this permit must not be undertaken until compliance is achieved with the terms and conditions that the Statement states must be complied with prior to development commencing;
	3. prior to the commencement of the use authorised by this permit, a letter prepared by an Environmental Auditor appointed under Section 53S of the EP Act which states that the terms and conditions contained in the Statement have been complied with must be submitted to the Responsible Authority; and
	4. if any term or condition of the Statement requires any ongoing maintenance or monitoring, the Owner must enter into an agreement with Council pursuant to section 173 of the Planning and Environment Act 1987 (Agreement). The Agreement must:
		1. provide for the undertaking of the ongoing maintenance and monitoring as required by the Statement by the owner/ developer; and
		2. be executed before the development authorised by this permit commences.

The Owner must pay all expenses involved in the drafting (including legal expenses), negotiating, lodging, recording and execution and enforcement of the Agreement, including those incurred by the Responsible Authority.

1. This permit will expire if one of the following circumstances applies:
	1. The first stage is not started within four years of the date of this permit.
	2. The final stage is not completed within eight years of the date of this permit.
	3. The use of the retail premises is not started within four years of the completion of relevant stage.
	4. The use of the retail premises ceases to operate for a period of two years once started.

In accordance with section 69 of the *Planning and Environment Act 1987,* an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

### Transport for Victoria

1. Before the development starts, or other time agreed in writing with the Head, Transport for Victoria, amended plans to the satisfaction of the Head, Transport for Victoria must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans submitted with the application but modified to show:
	1. An annotation that identifies only the removal of the bus shelter from the existing bus stop on Buckley Street and hard stand area to be ‘made good’;
	2. The proposed development awning over the footpath along Buckley Street to be setback 600mm from the back-of-kerb to the tactile indicators at the existing bus stop and be a minimum height of 3.6meters from the ground along Buckley Street;
	3. The construction of a seat at the existing bus stop to service bus passengers;
	4. An annotation showing a footpath clear zone for a distance equivalent to the ‘bus zone’ area on Buckley Street.
2. Prior to the commencement of the development, or other time agreed in writing with Public Transport Victoria, the permit holder may remove the bus shelter at the existing bus stop on Buckley Street and must make good the existing concrete hard stand area. The works must be done at the cost of the permit holder and be to the satisfaction of Public Transport Victoria
3. Before the use of the land commences, or other time agreed in writing with Public Transport Victoria, a seat must be constructed to replicate the existing seat at the bus stop on Buckley Street, for bus passengers. The works must be done at the cost of the permit holder and be to the satisfaction of the Responsible Authority and Public Transport Victoria.
4. Prior to the commencement of the development and after the commencement of the use, the permit holder must ensure that the footpath along Buckley Street is kept clear of any obstacles or street furniture at all times for a distance equivalent to the ‘bus zone’ area along Buckley Street, to the satisfaction of Public Transport Victoria.
5. Before the occupation of the development all works to the bus stop and associated infrastructure as shown on the endorsed plans must be constructed at a cost borne by the permit holder to the satisfaction of Public Transport Victoria and deemed compliant with the Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002.
6. The permit holder must ensure that public transport infrastructure is not altered without the consent of Public Transport Victoria or damaged. Any damage to public transport infrastructure must be rectified to the satisfaction of Public Transport Victoria and at the full cost of the permit holder.
7. The permit holder must take all reasonable steps to ensure that disruption to bus operation along both Buckley Street and Albert Street are kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to Public Transport Victoria eight (8) weeks prior by telephoning 1800 800 007 or emailing customerservice@ptv.vic.gov.au.

### Melbourne Water

1. All building Finished Floor Levels must be set 300mm above the graded flood level.
2. All common paths/easements must be built at the levels identified in the hydraulic modelling submitted, to convey overland flows through the site.
3. The applicant must enter into a Works Offer with Melbourne Water for the realignment of the Melbourne Water drain crossing the site within 14 days of the Planning Permit being granted.
4. A 14 metre-wide easement aligned with the building structures and covering the full extent of the drain must be created within the property boundaries in favour of Melbourne Water for drainage purposes at the time of subdivision in accordance with Melbourne Water’s Developer guides and resources, land development reference 5.3.3.
5. A Build Over agreement is required to be entered into for temporary structures within the lateral clearance zone.
	1. All structures located within the easement must be designed as a simple pinned connection that facilitates for ease of removal within a reasonable time of <4 hrs;
	2. All overhangs must be either easily removable or retractable to provide an easy access to the MW drain;
	3. Street furniture and wind barriers elements must be independent and self-supporting;
	4. Where manholes are located within the proposed site, a 2.0 metre clearance zone is required surrounding the manhole.
6. The owner shall remain responsible for both removal of the structure and its reinstatement resulting from works by MW, as per the Build Over agreement. MW’s responsibility is limited to reinstating to surface level.
7. All connections to the newly constructed Melbourne Water asset must be as per standard drawing 7251/08/324 if direct connection to the pipe or 7251/08/424 if the connection is to a junction pit.
8. A post construction CCTV inspection of the underground drain is required to be carried out at the cost of the developer in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia.
9. When the construction is completed, “As-Constructed” plans must be submitted to MW for future record.
10. Any damage caused to MW’s assets due to the development shall be paid for by the developer.
11. New trees must comply with Melbourne Water’s Planting Near Sewers, Drains and Water Mains Guide (trees must be set minimum of 3m clear of the outside edge of the drain to the mature canopy).
12. Prior to undertaking any works on or near a MW asset, the contractor must be in receipt of a MW Permit to Work. A Permit to Work can only be issued to contractors who have undertaken MW’s permit recipient training. This requirement is to be included as part of the general notes on the final drawings.
13. Melbourne Water must still have access unrestricted access to the underground drain at all times, during construction and after.
14. Any works to be conducted surrounding the underground drain must be undertaken in a manner that protects adjacent Melbourne Water asset(s) (i.e. minimum vibration and loading). It is suggested that a peak particle velocity of 2mm/sec be adopted for limiting vibration in the vicinity of high risk assets (brick/masonry drains). A limit of 10mm/sec can be adopted for reinforced concrete structures subject to a structural condition assessment.

### VicRoads

1. Before the works associated with the development starts, functional layout plans for the intersection Buckley Street and Albert Street must be submitted to and approved by the Roads Corporation and the Responsible Authority. When approved by the Roads Corporation and the Responsible Authority the plans may be endorsed by the Responsible Authority and will then form part of the permit. The plans must demonstrate the proposed works identified in the Traffic Impact Assessment prepared with the application, including the following:
	1. The proposed lane changes on Albert Street, signal modifications and any associated works.
2. Prior to the commencement of the use or the occupation of the works hereby approved. A functional layout plan must be submitted to and approved by the Roads Corporation showing:
	1. The proposed lane changes on Albert Street, signal modifications and any associated works.
3. Prior to the commencement of the use or the occupation of the works hereby approved. The approved road works must be completed at no cost and to the satisfaction of the Roads Corporation including:
	1. The proposed lane changes on Albert Street, signal modifications and any associated works.
4. Within 12 months upon occupation of the proposed building, a Transport Impact Assessment Report must be submitted to the Roads Corporation. This report must address traffic and access issues at the intersection of Buckley Street and Albert Street in relation to the changes made to the intersection and any recommendations to mitigate any issues. Based on the findings of such report and any other independent assessment, the Roads Corporation may make recommendations for improvement works to make the road safe and at no cost to and to the satisfaction of the Road Corporation.

### Essendon Fields Airport

1. The Applicant must obtain consent under the Airports (Protection of Airspace) Regulations 1996 for any activity in the prescribed airspace for Essendon Fields Airport (i.e. buildings, antennas or cranes during construction). Approval will be required for any activity 227 metres above Australian Height Datum (AHD) in this location.

**– End of conditions –**

1. Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision. [↑](#footnote-ref-1)
2. The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons. [↑](#footnote-ref-2)
3. Clause 11 of the Maribyrnong Planning Scheme [↑](#footnote-ref-3)
4. Clause 11.01-1R [↑](#footnote-ref-4)
5. Clause 11.03-1S [↑](#footnote-ref-5)
6. Clause 11.03-1R [↑](#footnote-ref-6)
7. Clause 16.01-2S [↑](#footnote-ref-7)
8. Clause 21.07-1 [↑](#footnote-ref-8)
9. Clause 21.04-2 [↑](#footnote-ref-9)
10. Clause 21.07-1 [↑](#footnote-ref-10)
11. Clause 21.11-1 [↑](#footnote-ref-11)
12. Clause 21.04-1 [↑](#footnote-ref-12)
13. Clause 21.07-1 [↑](#footnote-ref-13)
14. Clause 21.11-1 [↑](#footnote-ref-14)
15. At Clause 4 of the ACZ1 [↑](#footnote-ref-15)
16. Page 29 [↑](#footnote-ref-16)
17. Page 49 [↑](#footnote-ref-17)
18. City of Maribyrnong, March 2014, p31 [↑](#footnote-ref-18)
19. Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd, 2014, p210 [↑](#footnote-ref-19)
20. Clause 21.04-4 [↑](#footnote-ref-20)
21. Clause 21.07-1 [↑](#footnote-ref-21)
22. Clause 21.11-1 [↑](#footnote-ref-22)
23. Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd, 2014 [↑](#footnote-ref-23)
24. While we acknowledge that only one of these heights is to AHD, we have studied the SFL and RL used in each of the approvals, and consider that the levels used are directly comparable to those used for the plans of the proposed development of the review site. [↑](#footnote-ref-24)
25. Department of Environment, Land Water and Planning, 2017 [↑](#footnote-ref-25)
26. Objective 1.3.3a [↑](#footnote-ref-26)
27. Objective 5.1.2a [↑](#footnote-ref-27)
28. Whilst we recognise that s18(1) of the *Subdivision Act* 1988 does not apply to instances such as this site where an open space requirement is set out in a planning scheme, we still consider the principle espoused in s18(1) is relevant, though the reference to a 5% figure is not relevant to this proceeding. [↑](#footnote-ref-28)
29. We acknowledge that there will be a margin of error in this figure, as we have had to make our own calculations of the areas of communal open space while relying on scaling off the plans. [↑](#footnote-ref-29)