

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1683/2020
PERMIT APPLICATION NO. MPS/2020/260

CATCHWORDS

Bunnings including timber trade supplies; Extent of policy support; Urban design and built form; Amenity expectations and impacts; Excess car parking supply; Traffic generation and impact on surrounding road network.

APPLICANT	Brunswick Investment Project Pty Ltd
RESPONSIBLE AUTHORITY	Moreland City Council
RESPONDENTS	A Gray, A Bunting, A Johnston, A Parkhill, B Tominc, B Ciantar, C Fraser, C Johnston, C McDonald, C Moore, D Guest, D Holmes, D Allen, D Lazarides, E Mignon, F and P Osborne, Irene Group Inc., J Standen, J Fraser, J DiBlasi, J Stark, J Stanley, K Outhred, K Wellings, K Georgakopoulos, L Henley, L New, L Brnjak, M Allen, M Ingamells, M Gray, M Khalil, Moreland Bicycle Users Group Inc., N Atkin, N Macdonald, N Farr, N Maclellan, N Papadopoulos, P Ryan, R Gale, T Gellert, W McLellan, W McCartney Ramsay, D Ladd & E Blomkamp, S Nemani & A Ajarapu, E Warburton, W Davies & Others
SUBJECT LAND	145 Glenlyon Road & 6 Pitt Street BRUNSWICK VIC 3056
HEARING TYPE	Hearing
DATES OF HEARING	26, 27, 28, 29 & 30 April and 3, 4 & 5 May, 21, 22 & 23 June and 14 July 2021
DATE OF DIRECTIONS HEARING	16 July 2021
DATE OF DECISION ON QUESTION OF LAW	12 October 2021
DATE OF INTERIM ORDER	10 December 2021
DATE OF FINAL ORDER	8 April 2022
CITATION	Brunswick Investment Project Pty Ltd v Moreland CC [2022] VCAT 387



ORDER

Amend permit application

- 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:

Prepared by: Stokes Architects

Drawing numbers: TP00, TP01, TP02, TP03, TP04, TP05, TP10, TP11, TP12, TP13, TP15, TP16, TP17, TP18, TP19, TP20, TP21, TP22, TP23, TP24, TP2 & TP26. All Rev N

Dated: 04.03.21

No permit granted

- 2 In application P1683/2020 the decision of the responsible authority is affirmed.
- 3 In planning permit application MPS/2020/260 no permit is granted.

Rachel Naylor
Senior Member

Stephen Axford
Member



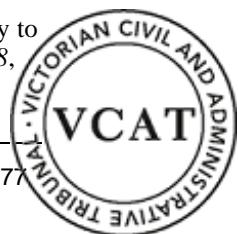
APPEARANCES

- For Brunswick Investment Project Pty Ltd (the applicant) Ms S Brennan SC and Ms A Guild of counsel instructed by Planning & Property Partners
They called the following expert witnesses:
- Mr B Watson of Pointilism regarding the preparation of the photomontages;
 - Mr C Czarny, urban designer of Hansen Partnership;
 - Mr R Milner, town planner of Kinetica;
 - Mr J Walsh, traffic engineer of Traffix Group; and
 - Mr J Kiriakidis, traffic engineer of Stantec.
- For Moreland City Council (the Council) Ms J Lardner of counsel instructed by Maddocks.
She called the following expert witnesses:
- Ms A Roberts, urban designer of Lat37 Studios; and
 - Mr B Young, traffic engineer of Ratio Consultants.
- For A Bunting Mr S Rowley, planning consultant of RCI Planning
He called the following expert witness:
- Mr J Sellars, traffic engineer of Tread Consulting.
- For J Stanley, F & P Osborne, A & C Johnston, E Mignon, P Ryan, C McDonald, N Macdonald, B Tominc, D Lazarides, C Moore & L Claiborne Ms J Stanley
She called the following expert witness:
- Ms C Boyce, social planner of Equity Justice Access.
- For E Plompen, M Khalil, B Ciantar, J Fraser, D Ladd, E Blomkamp, J DiBlasi, Irene Group Inc., R Gale, L Brnjak, M Ingamells Ms E Plompen



For N Moreton, L New, N Papadopoulos, M Gray, T Gellert, N Farr, C Fraser, K Larson, R Curren, M & T Vinzintin	Mr N Moreton
For K Outhred, D Allen, J Standen, D Guest, M Allen, J Stark	Ms K Outhred
For E Warburton & W Davies	Ms E Warburton
For D Holmes & A Parkhill	Mr D Holmes
For K Wellings	Ms K Wellings
For W Ramsay	Mr W Ramsay
For A Gray	Ms A Gray
For Moreland Bicycle Users Group Inc.	Ms F Hunter
For N Maclellan ¹	Mr N Maclellan
For W McLellan	Mr W McLellan
For N Atkin	Ms N Atkin

¹ Mr Maclellan's statement of grounds says that he is a member of the Brunswick Residents Network and is making the submission 'on behalf of the network, drawing on a survey of residents conducted in September 2020'. There is no material before the Tribunal to confirm whether Brunswick Residents Network is incorporated. An unincorporated association cannot be a party to a proceeding pursuant to section 61 of the *Victorian Civil and Administrative Tribunal Act 1998*, therefore this order has referred to Mr Maclellan as the relevant party.



INFORMATION

Land description

The site is located on the north side of Glenlyon Road, approximately 60m west of the intersection with Lygon Street.

It comprises two lots – 145 Glenlyon Road and 6 Pitt Street. Both lots create a total area of about 5,967sqm.

145 Glenlyon Road is a generally rectangular site with a narrow vertical section about 3.66m wide extending through to Pitt Street to the north. 6 Pitt Street is also rectangular and has a northern frontage to Pitt Street.



Figure 1 – Aerial photo of subject site (Nearmap)

Extracted figure from Mr Milner's evidence statement

(Note the 3m wide section of 145 Glenlyon Road that extends to Pitt Street is located along the eastern (right hand) side of 6 Pitt Street shown in this figure)

Description of proposal	<p>Construction of a two storey building with two basement levels of car parking to accommodate a Bunnings store offering retail and nursery sales and timber trade supplies. Signage is included in the proposed design.</p> <p>Car parking and access for the retail/nursery areas and for the entry to the timber trade supplies will be available from the west end of the Glenlyon Road frontage. Loading entry access will be available from the east end of the Glenlyon Road frontage. Loading and timber trade supplies vehicles will exit via Pitt Street. This involves the creation of a carriageway easement over part of 6 Pitt Street (about 2.84m) to create an overall driveway width of 6.5m.</p> <p>This Bunnings store will operate 6am to 10pm seven days a week. The loading, deliveries and waste collection will occur between 7am and 6pm Monday to Friday and between 7am and 1pm on Saturday.</p> <p>Parts of the signage proposed that are visible from Glenlyon Road will be externally illuminated.</p>
Nature of proceeding	<p>Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time.²</p> <p>The Council subsequently decided that it would have refused to grant a permit.</p>
Planning scheme	Moreland Planning Scheme

² 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.



Zone and overlays

Industrial 3 Zone at 145 Glenlyon Road (IN3Z)

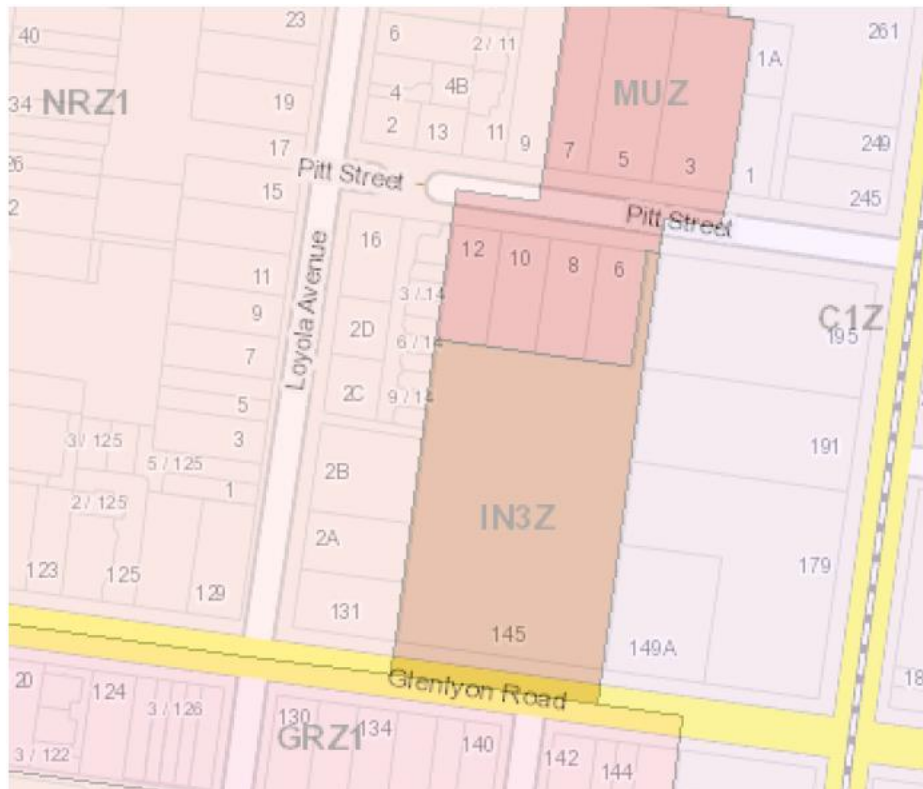
Mixed Use Zone at 6 Pitt Street (MUZ)

Design and Development Overlay Schedule 19
– Brunswick Activity Centre – Lygon Street
Local Area affects the whole site (DDO19)

Development Contributions Plan Overlay
Schedule 1 – Moreland Development
Contributions Plan Overlay affects the whole
site (DCPO1)

Parking Overlay Schedule 1 – Mixed Use,
Residential Growth, Commercial and Activity
Centre Zones affects 6 Pitt Street (PO1)³

Environmental Audit Overlay affects 6 Pitt
Street (EAO)



Extract from Applicant's submission of the various zones

³ Clause 2.0 of PO1 states that the number of car spaces required for a land use is calculated using Column B rates in Table 1 of clause 52.06-5.

Permit requirements

Clause 33.03-1 To use the site for trade supplies and restricted retail premises in IN3Z⁴

Clause 33.03-4 To construct a building or construct or carry out works in IN3Z

Clause 32.04-2 To use the site for trade supplies and restricted retail premises in MUZ⁵

Clause 34.02-9 To construct a building or construct or carry out works for trade supplies and restricted retail premises (permit required uses) in MUZ

Clause 43.02-2 To construct a building or construct or carry out works in DDO19

Clause 52.02 To create an easement (carriageway easement) on part of 6 Pitt Street

Clause 52.05 To construct or put up for display business identification signage including high-wall signage, major promotion signage and flood lit signage

Procedural matters

On the last day of the hearing, a question of law arose. This was the subject of a directions hearing on 16 July 2021 and a process for submissions and replies by three of the parties on the questions of law. These questions were then referred to a legal member for a determination. The President considered the submissions on the questions of law and the replies to the submissions on the papers. The determination on the questions of law was issued on 12 October 2021.⁶

⁴ Restricted retail premises and trade supplies are separately defined land use terms, each of which is nested into the land use term 'retail premises', which is a permit required land use in IN3Z.

⁵ Restricted retail premises and trade supplies are separately defined land use terms, each of which is nested into the land use term 'retail premises,' which is a permit required land use in MUZ.

⁶ *Brunswick Investment Project Pty Ltd v Moreland CC* [2021] 1191



Procedural matters
(continued)

On 9 December 2021, Amendment VC204 came into effect in all planning schemes. Summary documentation associated with this amendment describes it as updating ‘the state planning policy to support a more integrated transport system’ and ensuring ‘land use planning decisions are made using clear and up-to-date information about state transport policy and the transport system’. An order was issued on 10 December 2021 allowing all parties to address the relevance, if any, of the amendment to the consideration of the merits of the proposal by 17 December 2021.



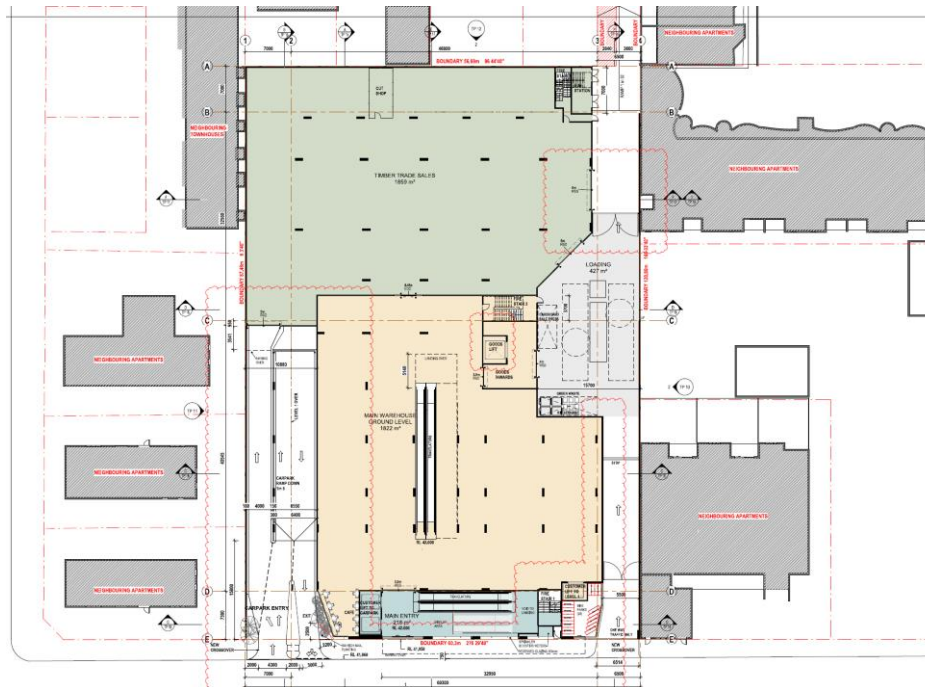
REASONS⁷

Overview

- 1 Brunswick Investment Project Pty Ltd (the applicant) seeks a review of the failure by Moreland City Council to grant a permit within the prescribed time for the development and use of a Bunnings store (including trade supplies) on the land at 145 Glenlyon Road and 6 Pitt Street in Brunswick.



Extract of photomontage image on front of Tribunal book (above) and ground floor plan (below)



⁷ The submissions and evidence of the parties, the supporting exhibits given at and after 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. A three part Tribunal book was created during the hearing and, where appropriate, the documents in this book have been referred to in these reasons.

- 2 This proposal is opposed by members of the surrounding community and the Council for a number of reasons. These reasons generally relate to the acceptability of the site for this proposal, including the detail of the proposed layout and design.
- 3 There are circumstances associated with the context of this site that make this a somewhat unusual situation for such a use. One obvious example of these circumstances is that, unlike many Bunnings stores that are on very large lots surrounded by space and car parking, this proposal is in what would generally be described as an “inner city” location that forms part of an established activity centre. Largely as a result of this circumstance, this site has a number of constraints including accommodating access arrangements for loading, parking and trade supplies in the road network; and responding to residential developments within the immediate context.
- 4 The applicant submits their objective is to provide a “Brunswick Bunnings” rather than a Bunnings located in Brunswick. Achieving this objective would contribute to achieving policies in the planning scheme that call for responsive development contributing to a desired future character with an emphasis on developing a pedestrian focussed activity centre environment. Unfortunately, this proposal has failed to achieve this outcome in an acceptable manner when all relevant policies are balanced in favour of sustainable development and net community benefit. Apart from some relatively minor adjustments to the façade of the proposal in the substituted amended plans that provide a canopy over the footpath, some bicycle storage accessible from the footpath, and views into the entrance lobby and the internal café, the proposal otherwise delivers a store that functions in an identical way to many other Bunnings stores across metropolitan Melbourne.
- 5 The frontage has poor interaction with the street. The café operates internally with no functional relationship to the street. The layout of the development is demonstrative of a car dependent store given the amount of frontage lost to accessways associated with car parking, trade supplies and loading. Whilst some of this will be a necessity, the overall layout does not persuade us that this proposal responds to the policies for a pedestrian focussed activity centre. The design should seek to achieve a predominantly active frontage along Glenlyon Road including views into the retail activity; a café that serves the street; a bicycle parking area that links directly to the entry and preferable allows for a wide range of bikes including large cargo/trailer and electric bikes; and a street elevation that draws upon the emerging character of the area.
- 6 The traffic generated by this proposal is in contention in this case, particularly for the respondents and the Council. Alternative modes of transport are encouraged in this municipality and throughout the transport policies in the planning scheme. There is general consensus amongst the parties and the traffic engineering expert witnesses that this inner urban area already experiences high traffic volumes. The submissions and materials



provided by the respondents illustrate widespread use of bicycles and walking as modes of local transport. Within this existing context, new development is encouraged to minimise its traffic impact through the encouragement of alternative modes of transport over car-based travel. We are not persuaded this proposal acceptably contributes to such policy aspirations. The applicant's case suggests that traffic will be generated at the anticipated car parking demand identified by the applicant's expert traffic engineering witnesses regardless of whether car parking is accommodated on this site. Planning policy specifically encourages modal shift in transport, and this will not occur without encouragement of sustainable transport alternatives and design details that seek to protect and enhance existing alternative transport modes. This may require innovation in the functional arrangements of the proposed land uses (restricted retail and timber trade sales) to encourage a greater percentage of pedestrian, bicycle or public transport based customers. This proposal does not strike an acceptable balance in its encouragement of sustainable transport modes.

- 7 The reasons for our decision highlight the positive and acceptable aspects of this proposal as well as the reasons why we have decided that no permit shall issue. It is hoped that this will assist all parties in the event that a new planning permit application is proposed for a similar type of development and land uses.

Key issues

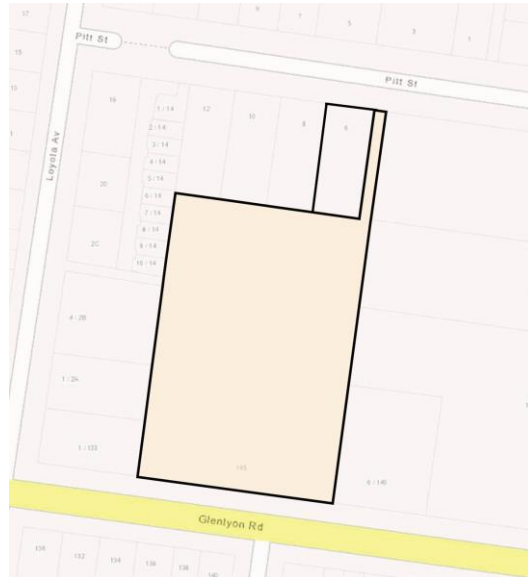
- 8 This hearing was lengthy and raised many issues. The reasons contained in this decision focus on the key issues that have led us to determine that no permit shall issue. They are:
- The physical and policy context relevant to this site and this proposal for a Bunnings store and trade supplies in this location;
 - The acceptability of the design response having regard to DDO19 and urban design and built form policy;
 - The acceptability of the social impacts including whether there is a significant social impact associated with this proposal;
 - The acceptability of the amenity impacts to the abutting residentially zoned or residentially used properties; and
 - The acceptability of the access arrangements and the impacts associated with the traffic generation.

The relevant physical context

- 9 The site is located about 60-70 metres west of the intersection of Glenlyon Road and Lygon Street in Brunswick. It forms part of the western edge of the Brunswick Activity Centre, a Major Activity Centre that affects a broad area including the 'Lygon Street Corridor' (within which this site is located).



- 10 The majority of this site comprises the lot known as 145 Glenlyon Road, which is about 5,369 square metres in area. It has an industrial zoning (IN3Z), contains a warehouse building and at grade car parking, and has been used for industrial purposes for many years. This lot contains a narrow (approximately 3.66 metre wide) section of land that enables direct access to Pitt Street.



Extract from cadastral map in Tribunal Book

- 11 The proposal is seeking to utilise the Pitt Street access for large vehicles, so it is proposing to widen this access to 6.5 metres. This involves utilising part of the vacant land at 6 Pitt Street (about 2.84 metres in width), which is the other part of this site. At present, 6 Pitt Street has an area of about 598 square metres.
- 12 As previously mentioned, the main section of the 145 Glenlyon Road part of the site forms part of the western edge of the activity centre. Hence, the site's immediate interfaces in terms of physical context and planning controls vary.

To the west

- 13 To the west, extending northward from Glenlyon Road with frontage to Loyola Avenue, is a row of three separate three-storey buildings containing residential apartments. The southernmost apartment building is located on the corner of Glenlyon Road and Loyola Avenue (133 Glenlyon Road), and it shares a double crossover with this site.
- 14 This is followed by a row of three storey townhouses at 14 Pitt Street, the five southernmost townhouses share their rear (eastern) boundary with this site.
- 15 All of these properties are zoned Neighbourhood Residential.



Figure 10 – Adjoining townhouses (northwest of site) and older style apartments (south west of site) along Loyola Avenue (Nearmap, 2021).

Extract from Mr Milner’s evidence statement (note 2C and 2D should be referring to 2A and 2B).
The roof at the bottom of this extract is 133 Glenlyon Road.

To the north

- 16 To the north of the lot known as 145 Glenlyon Road and to the west of the lot known as 6 Pitt Street is a vacant property at 8 Pitt Street and houses at 10 and 12 Pitt Street. These properties together with 6 Pitt Street are zoned Mixed Use.



Figure 9 - Pitt Street frontage (Nearmap, 2021)

Extract from Mr Milner’s evidence statement



- 17 On the northern side of Pitt Street are a number of single and double storey residential dwellings and a mix of commercial/retail and warehouse style developments. The houses have a residential zoning whilst the warehouse and commercial/retail developments are zoned Mixed Use.

To the east

- 18 The properties to the east of the site have frontage to either Lygon Street or Glenlyon Road.
- 19 195-197 and 191-193 Lygon Street contain 3 to 5 storey residential apartment buildings. Many of these apartments have inward frontages towards a shared central communal open space that includes a swimming pool. There are a number of apartments in 195-197 Lygon Street that have rear west facing bedrooms with balconies constructed adjacent to the 3.66 metre wide section of 145 Glenlyon Road. 191-193 Lygon Street has an apartment on each floor level of the southwest corner of the building that contains a light court and balconies abutting the boundary with 145 Glenlyon Road.
- 20 149-151 Glenlyon Road contains a couple of office suites in a two storey section of the building fronting Glenlyon Road, with residential apartments in the balance of the four storey building that is set back between 6 and 10 metres from Glenlyon Road. The entire building is built to its western side boundary with this site. The residential apartments in this building are oriented to either have a northern or southern outlook.
- 21 The open area with a small building between 191-193 Lygon Street and 149-151 Glenlyon Road is a car wash and car parking associated with an existing petrol station located on the corner of Glenlyon Road and Lygon Street. All of these properties are zoned Commercial 1.



Figure 5 - Subject site and adjoining apartment development at 191-193 and 195-197 Lygon Street (Nearmap 2021)

Extract of Mr Milner's evidence statement

To the south

- 22 On the opposite side of Glenlyon Road are a mix of single and double storey residential houses that are zoned General Residential. There are limited crossovers to individual lots along this side of Glenlyon Road.

Summary

- 23 The majority of the surrounding properties are used for residential purposes. However, the differing zoning and their inclusion in, or exclusion from, the activity centre results in variations in policy expectations about what is acceptable in terms of the interfaces and amenity between these properties and the site having regard to built form and land use outcomes.

The relevant policy context

- 24 Bunnings has established through the relevant courts and this Tribunal that it provides timber trade and retail sales, so in this case the land use terms applicable are restricted retail premises and trade supplies.⁸ Both of these land uses require planning permission under IN3Z and MUZ. We agree with the submissions made that the planning scheme makes it clear just because a planning permit can issue does not automatically mean that a permit should be issued.⁹
- 25 Each of the two zones outline various matters that should be considered in deciding if an acceptable outcome is produced. These considerations including the relevant planning policies and controls, the layout and form of the building and its signage, any amenity impacts that arise, and the impact of traffic on the surrounding streets. The planning policy framework contains various policies that assist in exercising the discretion as to whether to grant a permit.

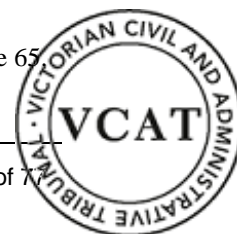
Activity centre, economic growth and built form policies

- 26 The site, the MUZ properties in Pitt Street, the C1Z properties along Lygon Street and at 149-151 Glenlyon Road are all contained within the area of the Brunswick Major Activity Centre (MAC/activity centre). The role and function of this MAC is to provide a broad mix of retail uses, commercial and cultural activity, and employment options (amongst others). It is also to accommodate substantial residential and mixed use growth and change.¹⁰ There is no specific encouragement or discouragement for restricted retail land uses in or outside of activity centres. The built form policies include

⁸ For example, *Crick & Ors v Bunnings Group Limited & Ors* [2011] VSC 398 where a Bunnings was found to include trade supplies, timber yard, retail premises and restricted retail premises and *O'Shea v Ballarat CC* [2007] VCAT 2140 at [34], a Bunnings includes shop, restricted retail premises and trade supplies, noting that other land uses such as landscape garden supplies fall within retail premises that was also a land use that required no planning permission in that case.

⁹ Clause 71.03-2 states – Because a use is in Section 2 does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the Municipal Planning Strategy, the Planning Policy Framework, the purpose and decision guidelines of the zone and any of the other decision guidelines in Clause 65

¹⁰ Clause 02.03-1



improving the design quality of the built environment and note that ‘good design is intrinsically linked to safety, health and well-being and environmental sustainability’.¹¹ Development is encouraged to integrate with landscape design to improve aesthetic quality and amenity for occupants and the public realm. Signage is encouraged to be sensitive to the style, size and character of the host building, nearby buildings and streetscapes.¹²

- 27 In terms of further built form growth, the C1Z properties other than the petrol station have all been developed with multi-storey buildings containing apartments or mixed uses. The development potential of the MUZ along Pitt Street has not yet been realised as the majority of the existing buildings have been in place for some time. The NRZ properties to the west are developed already with townhouses and apartments. The GRZ properties to the south are identified in the planning scheme for incremental change¹³, which means there could be more development in the future. We anticipate such development may involve site consolidation as the existing lots are quite small and larger allotments could be necessary to achieve incremental change. Given the combination of these physical and policy contexts, it is unlikely that there will be significant change around this site other than for potential future development to the north in Pitt Street and to the south on the opposite side of Glenlyon Road.
- 28 The economic development policies in the planning scheme seek to create a sustainable economy and diversity of employment opportunities by:
- Retaining areas identified as Core Industry and Employment Areas in the Strategic Framework Plan at Clause 02.04 as areas for industry and employment.
 - Maintaining industry and employment uses in areas identified as Employment Areas and potentially transition to a broader business base that contributes to economic regeneration and more diverse employment opportunities.
 - Supporting the economic viability and growth of activity centres.
- 29 This site is in an Employment Area in the clause 02.04 Economic Development Framework Plan. The objective for these areas is to support the transition from traditional industrial uses to a broader range of employment uses. However, the strategies also support the continued operation of existing viable industries as well as a mix of new industry and office based uses and other compatible employment uses. In terms of built form, flexible floor plates and increased floor to ceiling heights at ground and first floors are encouraged to facilitate a variety of employment uses

¹¹ Clause 02.03-4

¹² ibid

¹³ Clause 02.04



over time. Building layouts and designs that minimise potential for adverse amenity impacts on residential uses is also encouraged.

- 30 The Council points out the Employment Areas objective and strategies do not explicitly encourage restricted retail land uses. The same can be said for the Core Industry and Employment Areas. These areas are intended to support existing and encourage new industry and complementary employment uses. One of its strategies is to discourage large scale retail uses other than restricted retail uses. Hence, this policy does not explicitly 'encourage' restricted retail but certainly makes it clear it is a land use that is presumably considered to be a 'complementary employment use' in this Area. The fact that this policy provides encouragement for restricted retail uses and the policy for Employment Areas makes no such similar statement does not mean that Core Industry and Employment Areas are the only location where restricted retail uses can locate.
- 31 The policy for Employment Areas encourages a range of uses that generate employment. As there is no explicit encouragement or discouragement for restricted retail land uses, a Bunnings restricted retail land use may be an acceptable land use subject to balancing all relevant policies in favour of sustainable development and net community benefit.

Acceptability of the design response

- 32 The Council and the respondents who are members of the surrounding community have raised a number of issues related to the proposed design of the building. These include the interface to Glenlyon Road; the overall built form in terms of its height and bulk; and the interfaces to the adjoining properties being used for residential purposes.
- 33 Overall, the proposal involves the construction of a generally two storey building of a warehouse appearance built to the majority of each property boundary. In general terms, the overall proportions of the building including the height of the façade and the roof form behind are acceptable. This scale and form are reflective of the industrial form of the existing development on the site, albeit it is more expansive and extends to much of the property boundaries including adjacent to residentially zoned properties (e.g., NRZ and MUZ).
- 34 Furthermore, the site and surrounding properties to the north and east are affected by Design and Development Overlay Schedule 19 (DDO19) that specifies particular design requirements for new development. For this site and the neighbouring properties to the north, DDO19 suggests a preferred building height of 14 metres. Ms Roberts identifies that the proposed maximum height is 15.4 metres and 'slightly exceeds' DDO19 but is acceptable as the sections of increased height do not have any public realm impacts. The applicant says the exceptions where the building height is increased are related to the slight fall of the land across the site and the inclusion of plant equipment, etc. The applicant points out the proposed



built form would have been exempt from public notice and objections if the 14 metre building height had been met. That may be so, but the proposal has chosen to include some variations to the preferred building height across the various elevations. This means the proposal is not exempt from public notice.

- 35 In regard to the NRZ interface to the west that is outside of the activity centre, DDO19 specifies a maximum 5 metre building height on the boundary and then a 1:1 ratio of height to setback for every metre of height up to a maximum 10 metre setback. This is met in this proposed design.
- 36 There are no specific setback requirements specified within the activity centre or for interfaces with properties in C1Z or MUZ (i.e., to the north and east of this site). There is a design objective to maintain reasonable amenity for residential properties adjacent to or within the activity centre. Hence, these interfaces must be considered individually based on the relevant physical context and the relevant planning provisions and policies.
- 37 DDO19 also seeks ‘to invigorate street life and contribute to a safe and pedestrian friendly environment’ by activating street frontages. For the Glenlyon Road frontage, DDO19 seeks a display window and/or entrance measuring at least 60% of the width of the street frontage of each individual premise.¹⁴ DDO19 seeks windows in all upper level facades facing streets and awnings over the footpath for the full width of the building frontage. It also seeks to minimise the impact of vehicle access and parking on the public realm by locating vehicle access at the rear of buildings where possible or at the side of corner properties away from the front façade and locating car parking where it cannot be seen from the public realm.

The southern elevation and interface with Glenlyon Road

- 38 The southern elevation, particularly aspects of the way the building form is detailed, composed and finished, is an unacceptable design response having regard to both the physical and policy contexts.

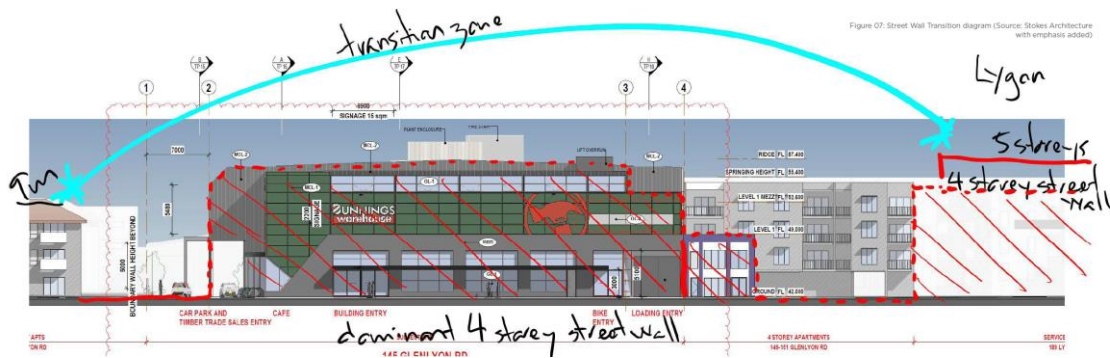
Street wall height

- 39 A 14 metre height is considered in DDO19 to be about four storeys and there is no street wall height specified for the Glenlyon Road frontage of this site. This proposal contains a 14 metre street wall. Ms Roberts considers a transition in building height across the site’s frontage is preferable, namely a three storey street wall with the upper level set back about 5 metres. She states a transitional element would take account of the two storey commercial frontage to the east, the 9 metre maximum height to the west, and an indication in the 2010 version of the Brunswick Structure

¹⁴ This is identified through cross-referencing to the Brunswick Structure Plan which is a background document in the schedule to clause 72.08. It is noted that the Pitt Street frontage is nominated in the Structure Plan as having a Residential frontage type, but in the circumstances of this proposal where the proposal comprises of a 6 metre wide accessway, the frontage guidelines in DDO19 are not of direct relevance.



Plan for a three storey street wall on this site.¹⁵ She provided an illustration in her evidence:



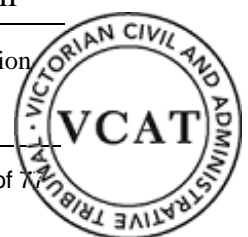
40 We are not persuaded that a transition involving a whole street wall of three storeys in height is necessary across the Glenlyon Road frontage. We agree with applicant that, in general terms, a building height transition is built into the provisions of DDO19. The fact that not all built form guidelines in the Structure Plan (such as those in the 2010 version) were translated into DDO19 is not a relevant consideration in deciding whether the street wall is acceptable. The fact is that there is no requirement in DDO19 for a street wall or podium along this site’s frontage. However, our finding does not mean the building does not need to fit in to its surrounds. The DDO19 objectives and the IN3Z decision guidelines require consideration of the streetscape. Ms Roberts’ illustration above shows that there is a generous separation between 133 Glenlyon Road to the west and this proposed building. A transition to about 14 metres as proposed at the western end of the frontage is acceptable with the setbacks that are proposed from the western side boundary. At the eastern end of the frontage, there is already a transition as the proposed building height at the boundary is about three storeys and then steps up to the fourth storey. This is an acceptable design response.

Streetscape presentation

41 The Council says the streetscape interface to Glenlyon Road does not respond to policy that calls for a response to the emerging character of the activity centre. The Council submits the proposal “reads” as a standard Bunnings warehouse form and does not contribute in any meaningful way through either image or function, to the emerging character of the activity centre.

42 Ms Roberts gave urban design evidence for the Council and acknowledges the amended plans have made efforts to break up the façade to Glenlyon Road. However, she does not consider the design responds acceptably to the local character and the pedestrian environment. In her opinion, the large expanse of green facade above the lower ground level façade is still

¹⁵ Ms Roberts acknowledged during cross-examination that she had had regard to the 2010 version rather than the 2018 version where no street wall and upper level setback is shown.



too visually dominant and the proposed signage is also unnecessarily dominant. She says the choice of applying the “Bunnings green” to the façade effectively makes the whole façade work as a sign/advertisement. She considers the design has failed to respond to the Lygon Street character that is emerging where designs have built upon their mixed use past and picked up on (what she described as) the grit and the grain.

- 43 The community members support the Council’s submission and Ms Roberts’ evidence. They say that the Lygon Street Corridor of the activity centre has been developing a unique local style with a focus on smaller specialised stores that have a distinctive local character. They fear the excessive bulk of this proposed storefront with its large area of advertising created in part through the use of corporate colours is effectively turning the building into a billboard that will dominate Glenlyon Road and be detrimental to the image of the activity centre.
- 44 Ms Roberts has referred to the Hawthorn Bunnings store (below) as an example of how Bunnings have created a façade and signage with more subtlety, responding to the context of that location. In her opinion, street trees, or a landscaped front setback, a slated façade like that at Hawthorn or additional fine grain materials, or variety to the upper levels should all be considered.



Figure 09: Bunnings Hawthorn demonstrating a slated facade design and canopy planting within the public realm (Source: Amanda Roberts site inspection)

45 The Applicant says that the proposed development is responsive to the local environment, and that this store will be a ‘Brunswick Bunnings’ and not a ‘Bunnings in Brunswick’. Mr Czarny gave urban design evidence for the applicant. He considers the proposed development provides a ‘well composed and complementary principal public presentation’. Mr Czarny identifies a number of features that he says taken together deliver a ‘Brunswick Bunnings’ including:

- the introduction of a canopy over the footpath;
- the brick façade to the lower level that he says is reflective of industrial heritage;
- the alignment of the brick façade with the adjoining two storey commercial façade to the east;
- the overall building proportions that are reflective of the industrial character of the existing building;
- the division of the façade into segments with the introduction of expressed vertical bars and with a distinct modulated tile form in between;
- the horizontal windows into the first-floor offices that address the street;
- the location of the café to allow views in and out to the street;
- the introduction of the bicycle parking area within a glazed area that opens on to the street; and
- the glazed entry foyer that will allow passers-by to see into the entrance and to view people moving up and down the travelators. He notes that this approximates to 60% of the site frontage.

46 In Mr Czarny’s opinion, these features result in a subtly refined façade treatment that is quite different from the typical Bunnings presentation and is responsive to this more urban location.

47 We will make findings about the layout of the frontage separately. At this point in our reasons, we agree with Mr Czarny that the design of the Glenlyon Road interface contains some refinement that goes beyond the typical Bunnings presentation. The question for us is whether in combination these features and this refinement provides an acceptable response to this activity centre context. We have come to the conclusion they do not. The design elements and their distribution are too subtle to overcome the overall impression of a large warehouse with its Bunnings green and signage that wraps around from the Glenlyon Road frontage to the return wall that faces west along Glenlyon Road. The subtleties become lost, and the overall impression is that this has a rather typical Bunnings store overall presentation with little acknowledgement of its urban context.

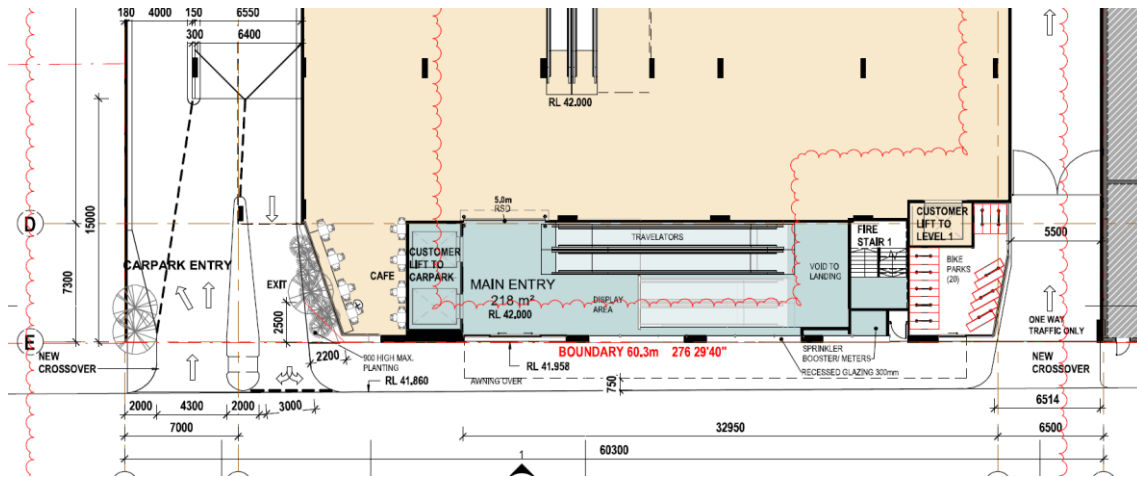


- 48 Like Ms Roberts, we note differences in the design response at Brunswick in comparison to Hawthorn. Whilst we do not expect or consider the Hawthorn design solution is appropriate for this site, the various features on that Hawthorn streetscape façade appear distinct and unique to that store and that location. Further, because the Hawthorn Bunnings does not feature large areas of corporate colour, the signage appears more constrained.
- 49 Reference was made to other old and new Bunnings stores including new premises being built in Preston and Doncaster as well as the Collingwood store that is located within an adapted existing building. The applicant advises us that Bunnings has been in Australia for almost 30 years now. There is no doubt that the Bunnings ‘brand’ is well known. It is a brand that has been related to building form, colours and materials, and signage. The variety in the Bunnings store designs that were mentioned during the hearing illustrates to us that Bunnings can see and appreciate the value in a design that responds to its context. The type of design response necessary or appropriate will depend upon a particular site’s physical and policy context. An acceptable design response may involve variation in the built form or choice of materials and colours, yet also with a sense of familiarity of the Bunnings ‘brand’ through signage and perhaps the choices of materials and colours. Hawthorn is an example of this – a different shape, colours and façade treatments yet also easily recognisable through its colours and signage as a ‘Bunnings’.
- 50 Despite the features identified by Mr Czarny, their subtlety means this proposal has no obviously unique features that distinguish it from the warehouse form or colours and signage details that are typically found on a Bunnings store. This proposed design response is not acceptably invigorating street life (to use DDO19’s expression). There are recent examples of innovative design emerging along Lygon Street with the new mixed-use developments, including close to the intersection with Glenlyon Road. There are also several examples of signage with artistic or even playful characteristics that are perhaps quite specific to this locality. In combination, we find these characteristics of façade evident in the immediate surrounds stimulate positive feelings and delight in both design and signage. We see no evidence of either in this proposal. The external presentation of the building needs re-consideration to draw upon the emerging local design trends.

Ground floor activation

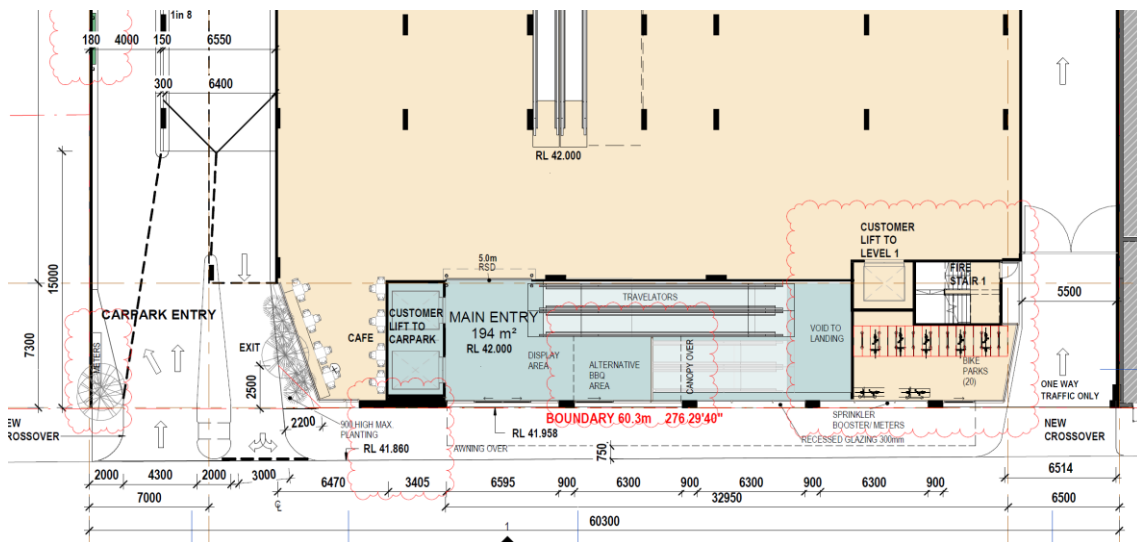
- 51 Mr Czarny has been involved in modifications to the ground floor to contribute to the street activation. Mr Czarny’s oral evidence identified the café, glazed area of bicycle parking and the glazed foyer entry as approximating the 60% of the frontage required to be a display window or entrance as sought by DDO19.





Extract of substituted amended ground floor plan

52 However, during cross-examination, it became evident that the activation was about 60% of the building frontage including the fire sprinklers as opposed to 60% of the premises frontage or the street frontage. Mr Milner's oral evidence also pointed out that some of the glazing is opaque, so he acknowledged whether it contributes to the 60% activation depends on whether it is used for display purposes, for example advertising. Mr Milner suggests focussing on a percentage is not helpful, rather the question should be whether the proposal is making a genuine contribution to activation. Later during the hearing, the applicant provided an alternative ground floor frontage layout:



Extract of ground floor plan Rev P dated 17.05.21

53 These changes do not address some of the concerns expressed by Ms Roberts. She supports the canopy over the footpath but considers the ground floor frontage is not particularly attractive for pedestrians. It lacks



activity that will engage with the street and is effectively dominated by movement with limited opportunity to see into the retail activity or product display. The main activity on view will be the travelers heading to the car park underneath.

- 54 The café although visible from the street is entirely internal with no connection to the entry foyer or street. Similarly, the bicycle parking does not link to the entry foyer so users would have to move out to the street to enter the building.
- 55 Ms Roberts' concern about the basement space allocated for a "sausage sizzle" in the substituted amended plan has been addressed in the above Rev P plan, as an alternative area is shown in the entry foyer.
- 56 Overall, Ms Roberts recommends that the ground floor be re-designed to 'work harder' to bring activity to the street. She says this could include pushing the travelers further into the building to allow space for the foyer to accommodate activity such as connections to the café and bicycle store, product display, and periodic community activity such as the sausage sizzle.
- 57 We agree with Ms Roberts that the arrangement of the front of the ground level provides insufficient activity at the street. Views into an internal café may create a more attractive outlook for café users, but it is unlikely to add much interest or activation to the street because the café is inaccessible from the public realm. The views into the foyer are almost entirely limited to the movement of patrons to and from the car park, with limited visibility to the actual retail activity, and there is little space to display products adjacent to the street.
- 58 Consideration should be given to a direct connection from the bike store into the main entry lobby. To achieve such an outcome and to provide more space for actual retail activity and product display will require a re-consideration of the ground floor arrangements, possibly pushing the travelers further into the building or re-orienting them.

Extent of driveways and crossovers

- 59 The other factor contributing to the available area of frontage for activation is the extent of driveways and crossovers. Ms Roberts considers three crossovers are excessive in comparison to other Bunnings layouts such as Hawthorn or Coburg. These crossovers are creating gaps in what should otherwise be an active frontage, making this part of Glenlyon Road less attractive for pedestrians and disconnected from the Lygon Street corridor.
- 60 The eastern crossover is providing the access to the loading bay for deliveries. Given it needs to service large vehicles, the crossover is about 6.5 metres wide across the Glenlyon Road footpath. The western crossover comprises of two crossovers, one for vehicles entering and another for vehicles exiting the site. The entry crossover leads to an immediate split into two driveways, one leading to the timber trade supplies area and the other leading down into the basement customer car parking levels. The



dimensions on the Rev P plan (shown earlier) suggest the crossovers including a pedestrian refuge in the centre occupy about 9.3 metres of the site's frontage. Both of the extracted ground floor plans above show small garden beds on either side of the broader driveways at the site's frontage. It is questionable how effective these will be in contributing positively to the ground floor presentation.

- 61 The extent of crossovers and driveways is a function of the proposed land uses but can also be a detrimental feature that unacceptably impacts on the way the building interacts with the street. The eastern crossover does break the pedestrian connectivity and activation that has been contributed to in a positive way through the offices provided next door at 149-151 Glenlyon Road. However, we also appreciate that the ability to accommodate large vehicles in a one way movement from Glenlyon Road through to Peel Street is a preferable design outcome (if Peel Street is not considered to be a preferable location for all loading activity)¹⁶. It is the combination of this crossover with the broader western crossovers that creates an unacceptable design outcome.
- 62 The crossovers at the western end in combination are relatively wide and present a break for pedestrians moving along this footpath, even with the pedestrian safety refuge. The eastern crossover dedicated to heavy vehicles a short distance away, even if infrequently used, contributes to the creation of an uninviting streetscape character. We cannot see a design solution that can achieve the applicant's preferences for access and loading as well as 'a safe and pedestrian friendly environment' and an invigorated street life (to use DDO19's words). This is a design challenge that requires further thought, including reconsidering the amount of frontage devoted to driveways and crossovers.

Conclusion

- 63 As is no doubt evident from the above reasoning, the ground floor street frontage is a key concern and a reason why we have decided that no permit should issue. Achieving a design response that can balance the access requirements together with a contribution to a pedestrian friendly and invigorated street life is a design challenge.

Significant social impacts

- 64 One of the Council's grounds of refusal is that the use and development will cause significant social effects for the community. The Council received a total of 538 objections, 414 prior to this review application being lodged with the Tribunal and a further 124 thereafter. It considers these objections 'reflect the significant social effect that the proposal will have on the community'. The Council's submission then states that the Tribunal will be

¹⁶ Whether Peel Street should be used for all loading is an issue that was raised in the hearing. As we have determined to refuse this proposal for a variety of reasons based on the proposed design before us, we make no finding on this point.



informed by the evidence of Ms Boyce, who is being called by Ms Stanley, in respect of the issue of social effects.

- 65 The applicant has referred to the assessment of this issue in the Council officer's report and concurs with the conclusion of this assessment, namely that there is not a sufficient case for the Council to include this social impact argument as a ground of refusal for this proposal. The Council officer's report refers to the Tribunal decisions in *Minawood v Bayside CC*¹⁷ and *Rutherford & Ors v Hume CC*¹⁸. Another more recent decision that also considers social impacts and significant social effects is *Hoskin v Greater Bendigo CC and Anor*¹⁹. At paragraphs 106 to 114 of this more recent decision, it identifies the obligations and principles for considering social effects and significant social effects. These include that:
- i The effects are demonstrable and significant upon the community rather than individuals;
 - ii They have a causal connection to the proposal;
 - iii The identification of the effects occurs through a formal and independent social impact or socio-economic assessment;
 - iv The consideration of social effects must be objective, specific, concrete, observable and likely consequences of the proposal;
 - v The social effects must be sufficiently probable to be significant;
 - vi Mere opposition or a large number of objections is not of itself evidence of social effect; and
 - vii Effects must be balanced with any other significant social and economic effects.
- 66 Ms Stanley submits there are significant social effects relating to this proposal resulting in detriment to residents living adjacent to the site or close to the intersection of Glenlyon Road and Lygon Street, and detriment to residents that use the intersection, with effects also to the broader community. She called Ms Boyce to provide evidence about the social impact assessment that Ms Boyce undertook.

Evidence of Ms Boyce

- 67 The applicant submits we should give no weight to Ms Boyce's evidence about the social impact of this proposal. The applicant questions the independence of Ms Boyce as she is a resident of the broader area, a friend of Ms Stanley and has a working professional relationship with another party. The applicant submits Ms Boyce has a lack of understanding of her role as an expert witness, and she is lacking in objectivity.

¹⁷ (includes Summary) (Red Dot) [2009] VCAT 440

¹⁸ (includes Summary) (Red Dot) [2014] VCAT 786

¹⁹ [2015] VCAT 1124



68 What weight to place on expert evidence is a matter the Tribunal always needs to consider. In *SMA Projects Pty Ltd v Yarra CC & Ors*²⁰, the Tribunal observed:

102 The weight that the Tribunal accords to each witness that appears before it, needs to be considered in the context that the Tribunal is an expert Tribunal, the members of which are expected to bring to their task of adjudication those qualities which have qualified them for membership of the Tribunal. It is also an expertise that is valuable in assessing the weight that should be given to the opinions of an expert witness.

103 In assessing the weight to be given to evidence, the Tribunal not only need[s] to be alert to the extent of the witnesses involvement in the project, but it also needs to be realistic about the extent to which a witness engaged by a party to a proceeding, can ever be completely impartial. The Tribunal must assume the responsibility of assessing the credibility and reliability of the witness by focusing on the merits of the evidence being presented.

69 Ms Boyce's assessment of Council demographic data identifies that there is an unusually high number of young children and young adults in the vicinity of this intersection. Other data in the assessment indicates that the percentage of pedestrian and cycle activity in this precinct is above State averages. The assessment also identifies the Moreland Open Space Strategy acknowledgement that there are limited opportunities to provide green space in the core of the Activity Centre and private open space is being lost through urban consolidation. The strategy also acknowledges green space must generally be on the periphery of the activity centre, and that pedestrian and cycle links such as along Glenlyon Road are important. These are existing circumstances, and they are not social impacts per se. This site is privately owned and has a right to be developed and used in accordance with the planning scheme. There is nothing in terms of planning policies or controls that earmark or require any part of this land to be set aside for open space.

70 Ms Boyce's assessment identifies immediate social and health impacts such as construction, congestion and 'everyday' noise; heat from the metal structure, overshadowing and loss of sunlight to living rooms, bedrooms and private open spaces; diesel emissions from trucks, loss of capacity to comfortably and safely walk or cycle around this site and the surrounding area, and stress impacting human health and well-being. Her assessment also identifies secondary and cumulative impacts on 'the death of Lygon Street as an entertainment precinct' and 'loss of attraction as a place to live'. At face value, many of these 'impacts' are typical impacts considered from a town planning perspective and are not necessarily social effects or a significant social impact.

²⁰ (Includes Summary) (Red Dot) [2013] VCAT 436



- 71 The applicant submits it is regrettable that Ms Boyce’s evidence is very deficient in its quality and integrity. The applicant describes Ms Boyce’s responses to cross-examination as characterised by sarcasm and argumentative and ridiculous responses. The applicant provided examples of this in its oral submissions. We agree that there are personal statements throughout the assessment, and many of Ms Boyce’s answers to questions during cross-examination displayed personal rather than professional opinions. Moreover, of concern to us is that the social impacts identified in Ms Boyce’s assessment are really of a general nature. At times the impacts are not even specific to this proposal but about the change occurring in the area generally including ‘a vapid and unattractive wasteland of poorly constructed, overshadowing apartments’.²¹ The impacts are not objective, specific, concrete, observable or likely consequences of this proposal. Further, the assessment does not credit this proposal with any social benefits at all such as employment, which is indicative of this assessment lacking in objectivity and independence.
- 72 The applicant submits a qualitative assessment is a legitimate approach to take in a social impact assessment, but Ms Boyce’s evidence provides no acknowledgement of quantitative measures that effectively form the role of benchmarks as to what may be an acceptable outcome. For example, the noise limits regulated by the *Environment Protection Act 2017* or the overshadowing standard that applies in clause 55 of the planning scheme. In Ms Boyce’s assessment, she identifies widespread overshadowing but does not refer to or acknowledge the shadow diagrams of this proposal that illustrate the confined areas of shadow impact. We agree that the lack of acknowledgement of quantitative measures in Ms Boyce’s evidence means there is insufficient balancing of the social impacts against relevant considerations such as quantitative measures that may mean an impact is acceptable in planning terms.
- 73 In making these findings, we acknowledge there could be negative social impacts from this proposal. Whether they are significant has not been shown by Ms Boyce. Whether the identified social impacts are existing impacts or impacts specifically attributable to this proposal has not been shown. What positive social impacts there may be as a result of this proposal are not explored or acknowledged, hence there is no balancing of the net impact. Overall, the evidence is not independent or balanced and we have given little weight to this evidence.

Amenity impacts to abutting residentially zoned or residentially used properties

- 74 Amenity is a planning term often used in Victoria’s planning schemes as a means of referencing, in particular, the notion or concept of enjoyable residential living. Yet, ‘amenity’ is also an undefined term in planning in Victoria. It is not a term used at all in the objectives of the *Planning and*

²¹ Page 89 of Ms Boyce’s evidence statement.



Environment Act 1987 ('the P&E Act'). Rather, amongst the objectives of planning in Victoria in the P&E Act that are relevant to this proposal are providing for the fair and orderly use and development of land²², and securing a pleasant and safe living environment for all Victorians.²³ In looking further afield for any other explanation of amenity, we note the 'Understanding Neighbourhood Character' planning practice note²⁴ describes amenity on page 2 as being about 'the pleasantness and good functioning of an area'. 'Pleasant' is defined in the Macquarie Dictionary²⁵ as 'pleasing, agreeable, or affording enjoyment; pleasurable'.

- 75 Having regard to this explanation, amenity appears to have a focus upon a pleasant environment and residential living. Having made these observations, 'amenity' itself is not protected in the planning scheme. Rather, the planning scheme recognises amenity in general terms in policy as something to be valued, but it is inherent in town planning that circumstances can and will change over time, so individual impacts on amenity must be considered as to whether that impact is acceptable. Acceptable is a term often used in planning as it effectively acknowledges that there can be an impact (as opposed to no impact at all) and a judgement needs to be made about that impact i.e., whether it is an acceptable impact.

Differing amenity expectations in the planning scheme

- 76 Considering the acceptability of the amenity impacts upon the surrounding properties in this case is a challenging exercise for the following reasons:
- a The majority of the site (149 Glenlyon Road) is zoned IN3Z. As such, the nature of its former industrial use means its interface with adjoining residentially zoned and used properties already has some amenity impacts.
 - b The neighbours in residential apartments to the east are zoned C1Z where high density residential is encouraged. These properties are also part of the Lygon Street corridor of the Brunswick major activity centre together with this site. This circumstance does potentially place some tempering upon what is an acceptable amenity impact particularly in terms of issues such as overlooking, overshadowing, sunlight access and visual bulk.
 - c The neighbours to the north are a mix of primarily residential and commercial properties zoned MUZ. This zone allows for various residential, commercial and industrial land uses (often with the grant of a planning permit). These properties are also part of the Lygon Street corridor of the Brunswick major activity centre and this, again, places some tempering upon what is an acceptable amenity impact.

²² Part of objective 4(1)(a)

²³ Part of objective 4(1)(c)

²⁴ Understanding Neighbourhood Character Planning Practice Note 43 dated January 2018

²⁵ Sixth edition 2013



- d The neighbouring properties to the west are zoned NRZ and are outside of the activity centre. However, they share a boundary with this site that is zoned IN3Z and is part of the activity centre. Their amenity in regard to matters such as visual bulk is influenced by the built form outcome at the interface that is provided for in DDO19.
 - e The neighbours to the south, on the opposite side of Glenlyon Road, are zoned GRZ.
- 77 Various surrounding properties have raised concerns about the traffic and vehicle noise associated with this proposal. The traffic generation is a separate issue that we have dealt with later in these reasons.
- 78 The vehicle noise of customer parking is a consequence of the acceptability of the layout of the development and the traffic generation. That type of vehicle noise is already a part of the surrounding environment given this activity centre location. The noise associated with the timber trade supplies and the loading bay vehicles is a different consideration. For reasons that we will come to, the interface with 195-197 Lygon Street apartments does need to consider the acceptability of the noise impacts of larger vehicles upon the balconies and habitable room windows of the rear western apartments in this development.
- 79 We do not share the same view in regard to 149-151 Glenlyon Road. During our site inspection accompanied by representatives for the Council and the applicant, we experienced the noise presently affecting some of the south facing apartments. The proximity of these apartments to the Glenlyon Road and Lygon Street intersection generates sound due partly to the proximity to the conditions of traffic stopping and starting as a result of the traffic lights. Our inspection revealed that the internal conditions were improved for those apartments that had chosen to install double glazing. So, any traffic noise from the loading bay entry is acceptable within these existing conditions.
- 80 The amenity considerations that this part of our reasons focus upon are the visual appearance of the building and its overshadowing, access to sunlight/daylight and privacy impacts.

Eastern interface with 149-151 Glenlyon Road apartments

- 81 As mentioned earlier in these reasons, the apartments at 149-151 Glenlyon Road are set behind the two storey offices at the front. The apartments are located in two rows extending east-west with a central lobby area dividing the two rows. This means the north row has an outlook across the car wash area of the adjacent petrol station and the south row has an outlook towards Glenlyon Road. The western side of both rows of apartments abuts this site.





Extract from Dr Bunting's photographs showing the south row of apartments behind the two storey offices that have an outlook to Glenlyon Road.



Extract from Mr Milner's photographs of the north row of apartments. The ground level courtyards are located behind the solid wall in the foreground.

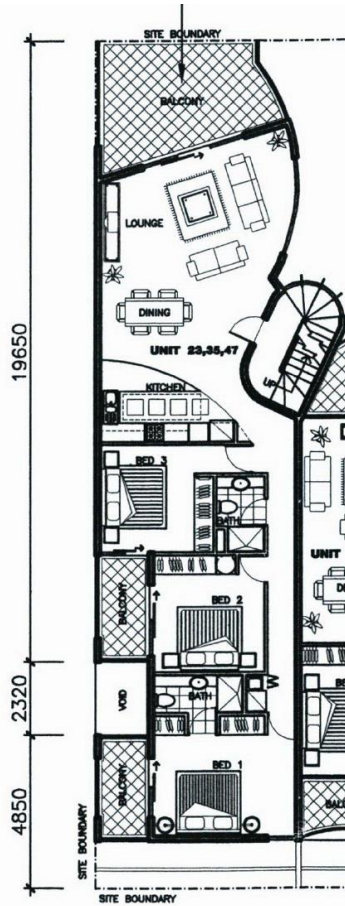
- 82 The key amenity concern of the residents is overshadowing of the courtyards and balconies that would be caused by the additional height of the wall on boundary, which extends to approximately 14.2 metres above

the ground level compared to the existing wall on the common boundary that is about half this height.

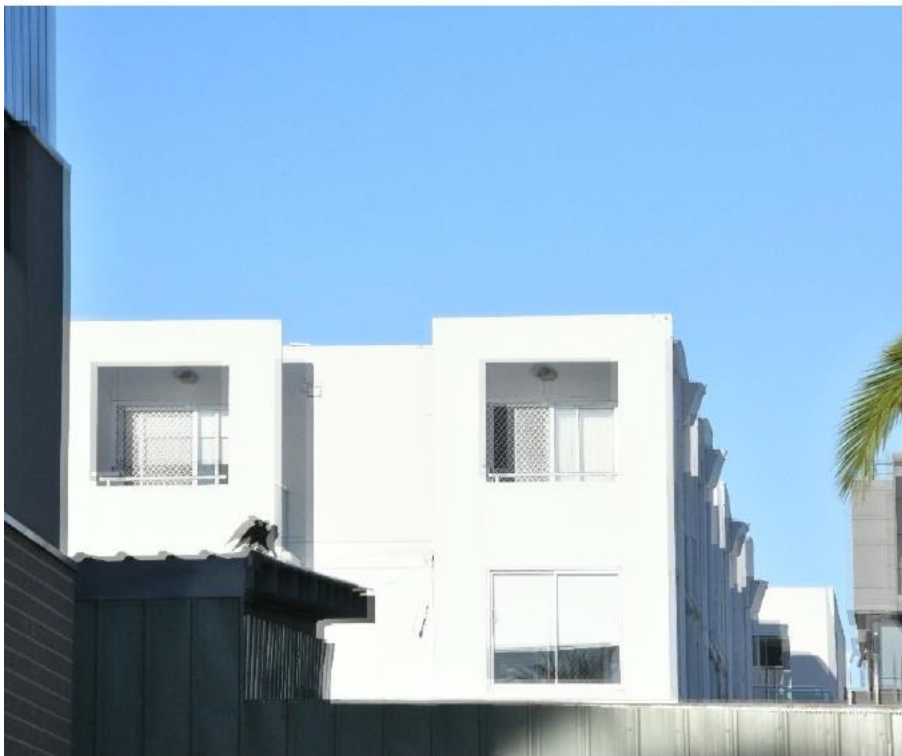
- 83 There is already shadow cast onto the southern balconies at the west end of 149-151 Glenlyon Road from the apartment building itself. This will be worsened when the afternoon shadow of this proposal falls onto these end balconies. For all balconies and courtyards at the western end of 149-151 Glenlyon Road, the shadow analysis provided by the applicant indicates that there will be no additional shading until after 12 noon, but progressive impacts will occur thereafter. The shadow diagrams illustrate a worst case scenario for the north facing ground level courtyards will be by 2pm all of the western-most courtyard is in shade compared to approximately half of it in shade in existing conditions, and by 3pm the shadow would extend to nearly all of the adjoining courtyard to the east.
- 84 The applicant submitted that this impact is reasonable, considering both properties have commercial/industrial zonings and are part of the activity centre. What we find more influential in reaching our decision is the fact that both properties are contained in DDO19 and the proposed building form with its height and setbacks generally accords with DDO19, including a marginally higher wall height of 14.2 metres rather than the suggested 14 metres. This difference of 0.2 of a metre has limited impact on the extent of shadow impact upon these apartments. So, the shadow impact is a direct consequence of the preferred built form outcomes of DDO19 and is an acceptable impact.

Eastern interface with 191-193 Lygon Street

- 85 191-193 Lygon Street is a four storey apartment development, which includes apartments built to the boundary with this site. This construction on the boundary includes a lightwell with balconies on either side of it that are built to the boundary. The lightwell provides light and air to the bedrooms of four levels of apartments (a total of four apartments). A further opening/window to each apartment is also located on the boundary at the northern end of these apartments that is associated with a balcony, noting that the example we inspected has chosen to enclose this space somewhat. The endorsed plans of this development were provided that do not include a west elevation, but we have extracted the floor plan for the first, second and third levels illustrating the location of the light court, balconies and glass sliding doors from the balconies to each of the bedrooms. This is provided on the following page. Also provided is a photograph from Mr Milner of the current western view of these apartments, noting that the top two levels are visible above the roof of the existing building.

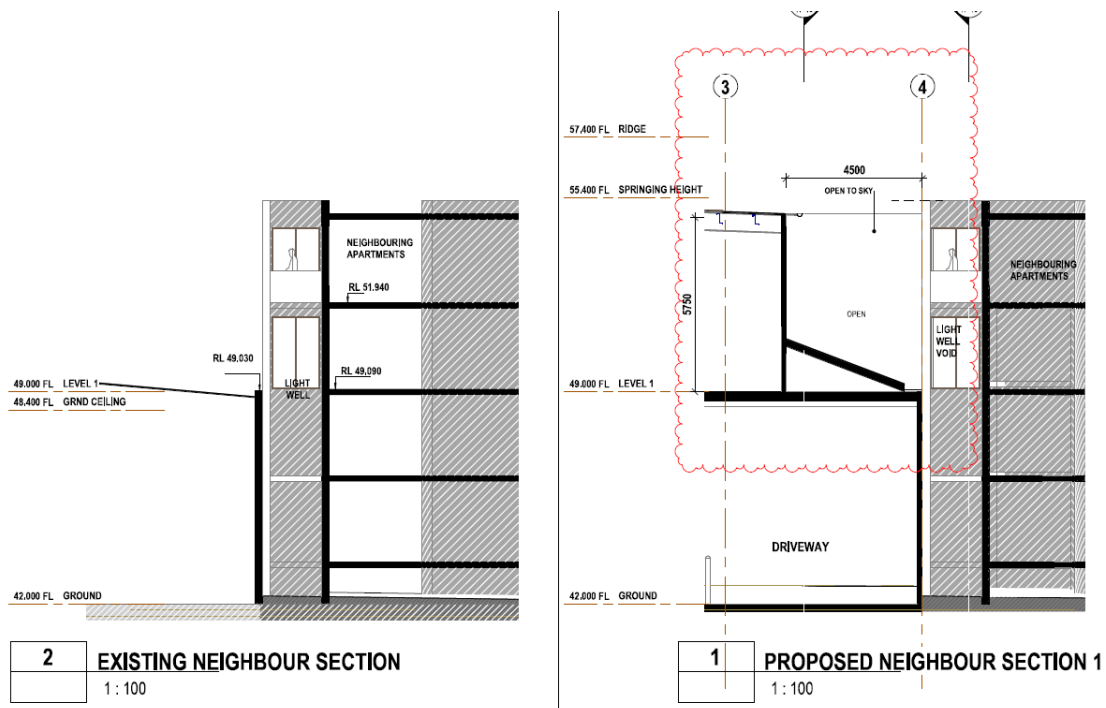


Extract of endorsed floor plan of the rear apartment on levels 2, 3 and 4 of 191-193 Lygon Street



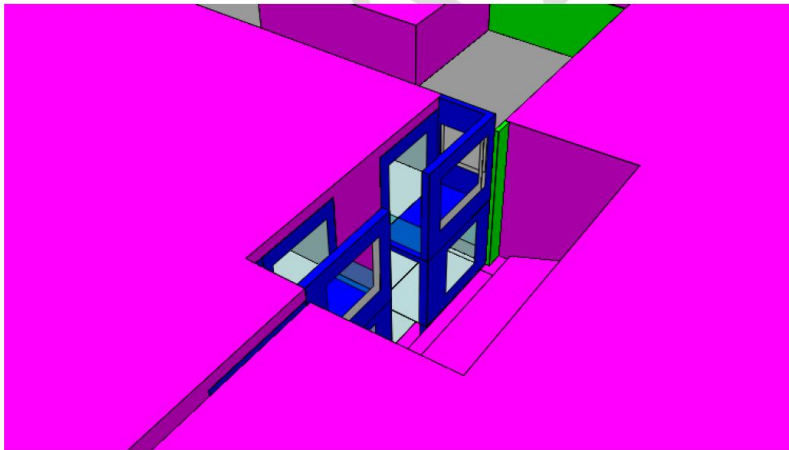
Extract from Mr Milner's photographs of the apartments built to the common boundary. Visible are the two upper level apartments.

- 86 The two upper level apartments presently have an open outlook to the west over the top of the single storey roof of the existing building on the site as is evident in the Mr Milner’s photograph on the previous page. The lower level (first floor) apartment also utilises the inset lightwell but has no outlook as it is adjacent to the existing building on the site.
- 87 Ms Warburton and Mr Davies reside in one of these apartments and are concerned about the ‘severe’ impact on their loss of natural light, sky and openness. This existing interface situation is unusual and unfortunate. It is doubtful that such an arrangement would gain planning approval today given the circumstances and the relatively limited proportions of the lightwell. We have visited their apartment and fortuitously it was on a sunny day. This inspection gave us an understanding of the light and outlook that this lightwell provides. From this upper level apartment, we observed that the lower first floor level apartment is already impacted in terms of daylight as a result of the existing wall on the boundary. Hence, the main impact of this proposal will be felt by the apartments on the top two levels.
- 88 We agree with the applicant that there is no provision in the planning scheme that requires any development on this site to fix this unfortunate situation. Indeed, like with 149-151 Glenlyon Road, the apartments and this site are both within DDO19 that contains built form expectations for new buildings. DDO19 suggests a maximum height of 14 metres and there is no specific requirement for side setbacks. Despite this, this proposal has analysed the impact upon this lightwell in both the amended plans and through a daylight investigation report.



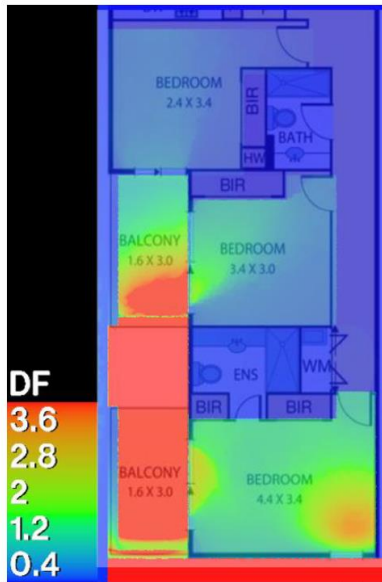
Extract of part of the analysis contained in the amended plans, showing a section through this site and the lightwell/apartments (existing and proposed)





3 dimensional model view from north-west (proposed development)

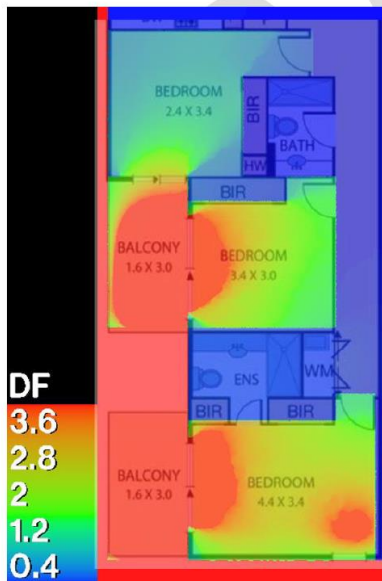
2. Daylight Contour Plots



Existing conditions Level 1



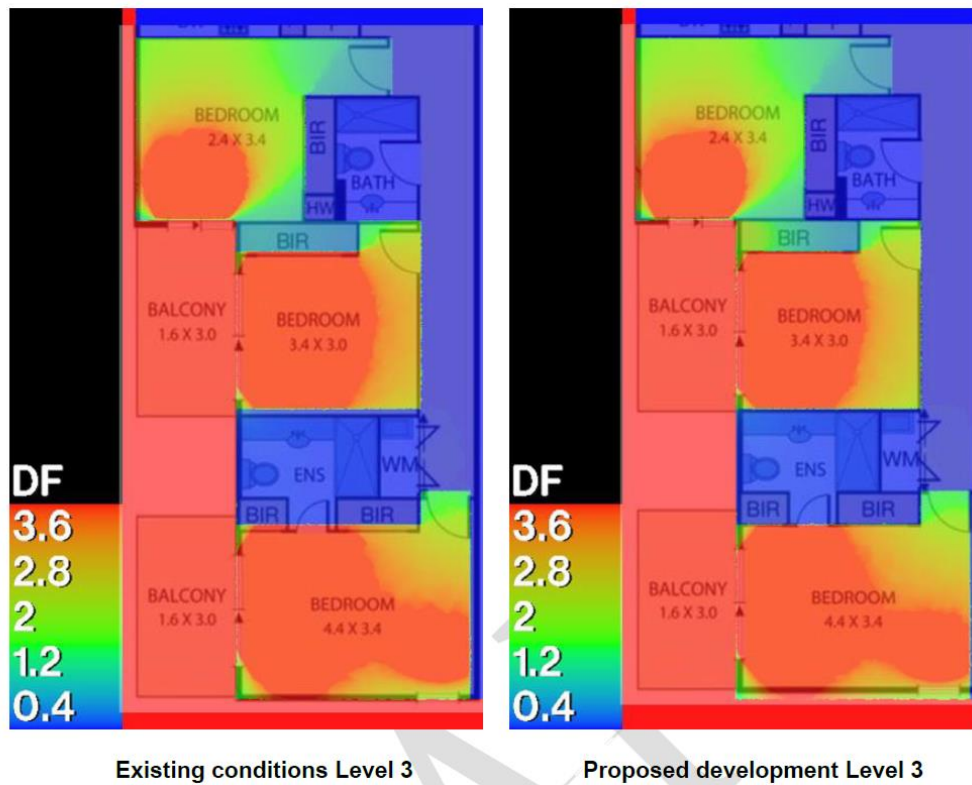
Proposed development Level 1



Existing conditions Level 2



Proposed development Level 2



Extract from Ark Resources daylight investigation report dated 6 April 2021

- 89 Ms Warburton and Mr Davies point out some incorrect assumptions in the daylight analysis and submit that the conclusions about the daylight impact are invalid. The applicant subsequently provided a response to this submission from Ark Resources that prepared the initial assessment, including that the simulation model was updated. This suggests of Ms Warburton and Mr Davies' apartment that bedroom 3 receives more light than originally modelled and bedrooms 1 and 2 continue to exceed the 0.5% daylight factor threshold for 100% of the floor area.
- 90 The proposed design includes a light court that begins at the third level of the 191-193 building, which is approximately the same height as the roof line of the existing building on the site. The light court is relatively generous in size with dimensions of 10 metres by 4.5 metres and a shallow pitched roof forming a "floor" to the light court. The finishes would be metal or similar cladding and could be finished in a light colour to maximise light reflection.
- 91 We are satisfied that the light court is a reasonable design response, providing volume for air and light resulting in daylight levels that are acceptable, even for the lower level apartments. The light court and the overall proposed building height around it will result in a loss of outlook from the bedrooms and balconies. Overall, this proposal will create detrimental changes to the amenity of the top two apartments at 191-193 Lygon Street, but in planning terms these detrimental changes are an acceptable impact on the amenity of these apartments. It is acceptable

having regard to the fact that this is an unfortunate existing situation. It is also acceptable having regard to the built form expectations of DDO19. A boundary wall is an acceptable outcome, and so too is a building height of around 14 metres. In this case, the wall height surrounding the light court is lower than 14 metres, and is lower again adjacent to the existing light well.

- 92 The opening/window on the boundary at the northern end of the apartments at 191-193 Lygon Street is catered for with an approximately 7 by 7 metre return in the proposed building that will allow light and air and some outlook to this opening/window at each level. We find this aspect of the proposal is acceptable.

Eastern interface with 195-197 Lygon Street

- 93 The existing apartments at 195-197 Lygon Street are contained in a 4 to 5 storey building. There are a number of apartments at the rear of the development over three levels that have a rear frontage and outlook towards 6 Pitt Street and the rear 3.66 metre wide section of 145 Glenlyon Road.

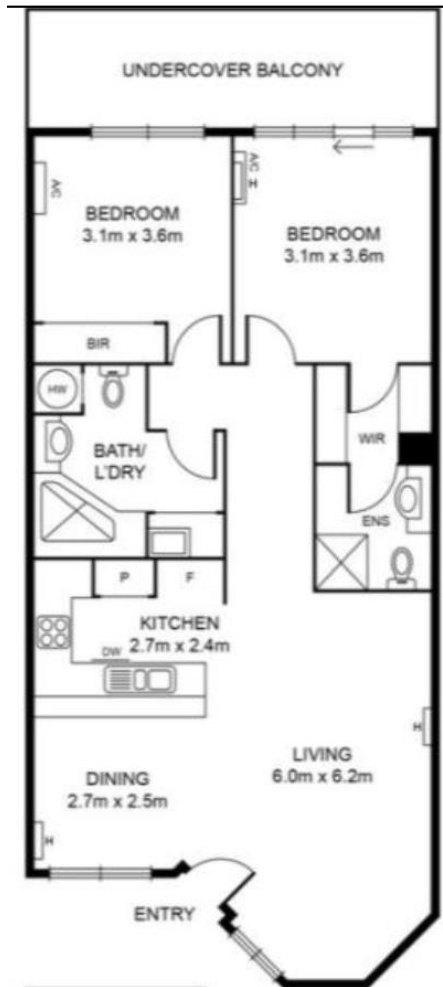


Extract from photomontage V2 existing condition



Extract of Dr Bunting's photographs

- 94 The ground level balconies are built to the boundary and the upper two levels have balconies set back 0.55 of a metre from the boundary. All balconies are accessible from habitable rooms being either a bedroom or second living area depending upon the particular owner/tenant's internal layout preferences. One of the residents provided a floor plan that illustrates the general layout of these apartments:



Example of upper level rear apartment layout

- 95 As with 191-193 Lygon Street, the interface created by the design of 195-197 Lygon Street is an unfortunate situation as the rear apartments are effectively relying upon this site for access to daylight and ventilation. Furthermore, their rear private open space is either on or immediately adjacent to the boundary with this site. This strip of land adjacent to the apartments has been used for rear access to the industrial activities on this site for many years. We have inspected a number of the apartments on each of the floor levels of 191-193 Lygon Street, including at least one from each of the three floor levels. We were also provided with many photographs and videos showing examples of this existing interface and the recent usage of the rear access from this site, including:



96 Some residents thought that the 3.66 metre wide section of 145 Glenlyon Road was a laneway, meaning that it would not be built upon. That is clearly not the case having regard to the Title information contained in the Tribunal book. This proposal does not intend to change this existing situation. Rather, what is proposed, is to create a carriageway easement over the first 2.84 metre width of 6 Pitt Street that is adjacent to 3.66 metre wide section of 145 Glenlyon Road. This will effectively create a 6.5 metre wide exit driveway for vehicles using the loading bay and for vehicles exiting from the trade supplies area.

- 97 During the hearing, the potential future development of the remainder of 6 Pitt Street was discussed. This is a relevant consideration, particularly in an activity centre that encourages new intensive development. It is relevant to have regard to whether a proposed development will impact upon the potential future development of adjoining land. In this case, the applicant acknowledges that any future development of 6 Pitt Street would be likely to utilise the proposed carriageway easement, hence it is possible that the utilisation of this proposed new driveway could increase in the future.
- 98 The key concern for the residents at 195-197 Lygon Street is the number and size of vehicles that may use this driveway, and the potential impacts upon their amenity. It would certainly appear from the material before us that this proposal will increase the vehicle movements and activity above the existing utilisation of this rear access to this site. The traffic engineering witnesses estimate the vehicles exiting this site into Peel Street will be as follows:

Traffic engineering witness	Friday PM peak hour	Saturday midday peak hour
Mr Kiriakidis ²⁶	12 vehicles	12 vehicles
Mr Sellars ²⁷	9 vehicles	15 vehicles
Mr Walsh ²⁸	7 vehicles	15 vehicles
Mr Young ²⁹	N/A	20 vehicles

- 99 The residents are concerned about heavy articulated vehicles using the driveway as they have experienced issues with vehicles of this type recently whilst the existing tenant on this site has begun to move out. We were able to see one such movement during our site inspection, including that the vehicle did need to make multiple correcting manoeuvres bringing it close to the balconies. However, we accept that this is not the usual situation.
- 100 The applicant advises the largest delivery vehicle will be less than 12.5 metres in length, which is considerably less than recent vehicles witnessed by the residents. The applicant submits the more recent activity of the existing tenant is not a usual situation and does not represent the expected future use. The applicant also advises that the driveway and the Pitt Street gates will be wider to provide increased space for the trucks to manoeuvre.
- 101 During the hearing, the applicant submitted that there is sufficient space to provide a narrow strip of screen planting on the site, alongside the balconies of 195-197 Lygon Street. This would not have any beneficial effect in regard to noise impacts, but could provide some sense of privacy or

²⁶ Corrected addendum to witness statement in Tribunal book part 2

²⁷ Addendum to witness statement in Tribunal book part 2

²⁸ Original witness statement in Tribunal book part 1

²⁹ Addendum to witness statement in Tribunal book part 2



separation, particularly for the lower level apartments that abut the site. Mr Moreton, who appeared for a number of these affected apartments, advises that the ground floor apartments do not wish to lose their sunlight/daylight as a result of vegetation extending above their opaque glazed screens.

- 102 The proposal appears to be based on an expectation that the 3.66 metre wide section of 145 Glenlyon Road can be used for access. However, it is not a formal road. The existing conditions show it to be an unmade, largely loose stone surface, which in this present state would have limitations for long term sustained use for access. Indeed, the submissions presented by the applicant and the residents suggest this rear access usage has been limited and/or sporadic and is not a regular occurrence. This illustration below extracted from one of Mr Moreton's videos illustrates the existing condition of the ground surface and it is noted it include a warning sign on the left hand side of the opening for forklifts operating at the rear entrance to the existing building.



- 103 The apartments at 195-197 Lygon Street are a legitimate residential use (based on their planning permit) and a recognised land use in C1Z. As such, any amenity impacts must be responded to in an acceptable manner. The applicant cannot be expected to 'fix' this interface, but nevertheless the proposal must respond to it as it is a legitimate part of the existing context. The IN3Z purpose includes ensuring that land uses do not affect the safety and amenity of adjacent, more sensitive land uses. We are not persuaded this proposal does that for this interface. All four traffic engineering witnesses agree that the use of Pitt Street for some form of loading access is appropriate, but the design of this vehicular accessway must also be acceptable. Limiting the extent of proposed development and land use to the eastern-most 6.5 metres provides no buffering or attenuation to the visual and noise impacts associated with traffic exiting this site. This proposal includes the land at 145 Glenlyon Road and 6 Pitt Street. If rear

access to Pitt Street is to be maintained in the future in any new proposal for a development and land use of this nature, the applicant may need to consider increasing the amount of 6 Pitt Street that forms part of the design in order to create an acceptable interface to the apartments at 195-197 Lygon Street. We cannot say what would be an acceptable design outcome. A rethink of this aspect of the proposal is necessary.

Northern interface with Pitt Street, including 10 Pitt Street

- 104 To the north, the site interfaces with 6, 8, 10 and 12 Pitt Street, which are zoned MUZ and form part of the activity centre. As mentioned earlier, it is appropriate to consider the future development potential of these properties given they are in the activity centre and contained within DDO19. The applicant submits equitable development opportunities are achieved by providing a solid wall to the northern boundary of 145 Glenlyon Road, comprising of a 6.4 metre high concrete panel base with a grey metal cladding above to approximately 14 metres in height. We accept this proposed interface provides for the future development of the Pitt Street properties in general terms.
- 105 Mrs Plompen’s property at 10 Pitt Street contains a single storey house with an attic bedroom facing this site, as well as a large single storey outbuilding constructed along the rear boundary including part of 10’s eastern side boundary.
- 106 Mrs Plompen’s key concerns are the height and appearance of the development, and the potential loss of privacy and light spillage in the rear of her property, particularly the back garden and the rear of her house. Our inspection of this property reveals that it has undergone some renovations and sought to maximise opportunities for natural light, which includes a number of rear windows of varying sizes.



Extracts of Mrs Plompen’s photographs of a first floor rear window (left) and ground floor rear glazed doors that are open (right). The wall in the background is the existing boundary wall of the building on the subject site.

107 Adjacent to 10 Pitt Street, the proposal includes the garden centre above a 6.3 metre high concrete panel base, with the garden centre enclosure formed by a one metre high solid panel and then a further 3 metre high cyclone mesh screen. This extract of photomontage V1 provides an illustration of what this interface will look like at the righthand end of the proposed development:



108 Mrs Plompen was concerned the concrete panel base would be considerably taller than the existing brick wall. However, during the hearing it was clarified that the proposed wall is less than 200mm taller than the existing wall and the confusion has been caused by an inaccurate depiction of their outbuilding on the plans. This proposed base wall is acceptable.

109 Mrs Plompen has a concern about noise generated by the saw in the cut shop area of the timber trade sales area as this is proposed to be located near her large shed and back garden. The acoustic report submitted with the permit application analyses that the noise generated will comply with the necessary noise regulations and will therefore be acceptable. During our inspection of other Bunnings stores, we noted it is common for these saws to be internal to the building, used only when a customer needs something cut, and what we heard when cutting occurred was a very low level of noise. It is obviously intermittent as the use of the saw is dependent on customer trade. The combination of the examples we observed in other Bunnings stores and the acoustic report submitted satisfy us that any noise from this machinery will be acceptable.

- 110 Mrs Plompen is concerned that evening trade could involve lighting that would spill into their property, and that there will be noise from the retail activity in the garden centre. She is also concerned that the view of the garden centre could be unsightly if storage or shelving is stacked around the periphery.
- 111 Mr Czarny explains the mesh screen to the garden centre is to be set back from the boundary by approximately 750mm, which he says will significantly reduce the visual impact. We are not persuaded of this given the clear visibility in the extracted photomontage image provided earlier. This visibility would also exist in Mrs Plompen's property.
- 112 The applicant tabled a few images showing differing ways in which garden centres have been enclosed:



- 113 Mr Milner suggests a privacy concern could be simply addressed by ensuring there is screening with no more than 25% transparency to a height of 1.7 metres above the floor level of the garden centre. Mr Czarny said there are various treatments that could be applied to the mesh screen to provide an attractive outlook from the north and minimise the potential for light spill. He recommends a patterned screening applied to the mesh could emulate a green wall, providing long term protection and ensuring light spill will not occur. Some limited visibility of light filtering through the screen could be an acceptable amenity impact in a MUZ that interfaces with IN3Z. The treatment to the garden centre is an important matter of design detail that needs to be resolved to ensure that the privacy and amenity impact upon 10 Pitt Street is acceptable.
- 114 Having inspected various Bunnings stores with their garden centres, the noise emanating is likely to be low. However, permit conditions limiting the hours of use (and thereby the noise) of machinery operating in the

garden centre and prohibiting background music would assist to limit any noise impacts to an acceptable level.

Western interface to 14 Pitt Street townhouses

- 115 To the northwest is 14 Pitt Street, a three storey reverse-living attached townhouse development. About five of the southernmost townhouses have a rear interface with this site.
- 116 Adjacent to these townhouses, the garden centre is set back 7 metres from the common boundary. We have had the opportunity to inspect one of these townhouses. This illustrated that the layout is oriented mainly towards the west with only small secondary windows at the upper level with an outlook to the garden centre. These windows are mostly screened. Given these conditions, the proposal is acceptable.

Western interface to 2A & 2B Loyola Avenue and 133 Glenlyon Road apartment buildings

- 117 The balance of the western interface is with three older style three storey brick apartment buildings that have communal space between the buildings and the common boundary with this site.
- 118 Having inspected some of these apartments, they appear to be generally oriented to the north and south, so there are limited habitable room windows facing this site. Their shared spaces near the common property boundary are used to varying degrees as communal outdoor space. Some trees exist on both sides of Title boundary, so some vegetation will likely be lost as a result of the development in proximity to Mr Holmes' building at 2A Loyola Avenue and the building on the corner at 133 Glenlyon Road.
- 119 Mr Czarny's evidence was that this interface to the NRZ is acceptable because the existing landscaping is retained. When it became clear during the hearing that vegetation on the site is likely to be lost, he said this interface requires consideration.
- 120 At the end of first set of hearing days, the applicant suggested providing additional landscaping to this interface. As the space available appears to be quite tight, we asked for some details about how this could work while meeting the operational requirements of the vehicle entry/exit driveways. During the second set of hearing days, a landscape concept was provided that suggests a screen/trellis could be added to the entrance structure with appropriate climbing plants. We were advised that there is insufficient room to grow any landscaping of significance adjacent to the boundary.
- 121 This suggestion was clearly made on the run during the hearing. Given that we have already found that the streetscape presentation and activation require further design consideration, this interface to the west also presents an opportunity to reconsider the design details. The interface could benefit from either space for significant landscaping or an urban design solution such as a wall on the boundary, decorative screening, or some combination.



of these. Remembering that DDO19 allows for some built form to the boundary, it is possible that vehicle access at the western end of the site's frontage could be further enclosed rather than exposed.

Car parking and traffic impacts

- 122 The access arrangements, the car parking provision and the traffic generation of this proposal are matters that were the subject of extensive submissions and expert evidence. Indeed, four expert traffic engineering witnesses were called by three parties in support of, and in opposition to, this proposal.
- 123 At the start of the hearing, we arranged for the four witnesses to have a conclave to establish what can be agreed and what is disagreed. As a result, we have before us the original evidence statements, the minutes of the conclave of the expert witnesses, addendums to the evidence statements and various other documents and replies provided by the expert witnesses as the hearing unfolded. We also have initial submissions from the parties on parking and traffic issues as well as subsequent submissions from parties responding to the Transport for Victoria response, the conclave minutes and the addendums to the evidence statements. Suffice to say, there is a lot of material before the Tribunal, so these reasons do not refer in detail to all of it.
- 124 A reason why these matters garnered so much focus in this hearing is because of Moreland and its community's engagement in pursuing and encouraging alternative sustainable modes of transport as opposed to private vehicle usage. The immediate locality of this site is serviced by tram and bus public transport, with a train service a little further away to the west. Various submitters including Moreland Bicycle User Group Inc (Moreland BUG) provided details of their individual preferences in modes of transport. Mr Ramsay's videos include him riding his bicycle locally, such as along Glenlyon Road and Lygon Street. Moreland BUG points out 21% of residents of Brunswick postcode 3056 do not own a car based on the 2016 ABS Census data. Moreland BUG also referred to the Bicycle Network Super Tuesday Bicycle Count survey undertaken in March 2020 just before Covid-19 restrictions and lockdowns began to be enforced. It recorded 356 cyclists travelling through the Lygon Street/Glenlyon Road intersection between the hours of 7am and 9am, including 130 people travelling passed this site.

Car parking provision

- 125 Mr Kiriakidis and Mr Walsh agree that the planning scheme requires the provision of 155 car spaces for the restricted retail floor area and 7 or 6-7 car spaces (respectively) for the timber trade supplies floor area. This creates a total requirement of 162 car spaces. Mr Young and Mr Sellars agreed with this calculation of the required car parking during the hearing.



- 126 This proposal provides 236 car spaces over two basement levels. The plans do not show any specific allocated car parking within the timber trade sales area, but there will be further car parking provided in this area. It was evident during the hearing, including having regard to our inspection of other Bunnings' timber trade sales areas at Coburg and Preston, that there will be parking provided within the timber trade sales area, albeit the plans do not specify where or how many. Based on our inspections of other Bunnings stores with timber trade sales, it appears common to have rows of products with vehicle accessways in between that have line marking to delineate where customers can park. Mr Kiriakidis considers the 7 required car spaces by the planning scheme seems high and the conclave minutes identify all four witnesses agreed the statutory parking rate for trade supplies 'was not necessarily appropriate for a Bunnings store'.³⁰ During this hearing, the analysis of traffic and other associated impacts was undertaken by all of the engineers based on the proposed nomination of 236 car spaces.
- 127 Also, during the hearing, a question of law arose about the relevant considerations and what decisions can be made when there is an oversupply of car parking. On 12 October 2021, President Quigley concluded that it is not open to the Tribunal to refuse a permit on grounds related to oversupply of car parking or impose a condition requiring a reduction of car parking. The President also found that, as there is no discretion to be exercised in respect of the provision of car parking, no policies relevant to that type of planning permission are engaged.³¹ The Tribunal must only consider the policies at State and local level that are relevant to the exercise of the discretion it has to determine. In this case, no question of the exercise of discretion arises in respect of the provision of the quantum of car parking.

The nature of the proposal

- 128 The Council is concerned the oversupply of car parking could result in non-Bunnings car parking occurring within the basement levels as has occurred at the Hawthorn Bunnings in the past. Mr Kiriakidis and Mr Walsh point out that parking restrictions now operate at Hawthorn Bunnings and, if need be, this proposal can do the same.
- 129 We have not entertained this concern in our decision making. We have proceeded to consider this proposal on the basis that all of the car parking is for this Bunnings proposal and not for a broader area, i.e., that this car park is effectively a private car park and is not providing for publicly available car parking. That is consistent with the way in which the applicant has

³⁰ For example, Mr Young acknowledges the planning scheme car parking rate for trade supplies relates to the whole of the site but given the nature of this proposal and the differing land uses, it is appropriate to apply a car parking provision to the 1,859sqm of proposed timber trade supplies floor area. Mr Walsh and Mr Kiriakidis' evidence statements calculate that to be 6-7 spaces. However, the conclave minutes record all witnesses agree that an empiric analysis is more appropriate.

³¹ *Brunswick Investment Project Pty Ltd v Moreland CC* [2021] VCAT 1191



presented its proposal during this hearing. The applicant is not saying that it intends to provide additional car parking for other users of the activity centre or allow its empirical demand for car parking to be used by others visiting the activity centre. This proposal is to provide a car parking layout for the envisaged Bunnings customers and staff.

The discretion to be exercised in this case

130 In this case, the car parking layout, access arrangements, loading arrangements and the effect of traffic generation are all matters that require consideration. This proposal involves considering whether to grant a permit for the development on the site and for each of the land uses that collectively comprise a Bunnings store on this site. In other words, this proposed development and the proposed land uses are not ‘as-of-right’.³² Also, a decision needs to be made about whether the plans of the car parking, access lanes, driveways and associated works are satisfactory.

131 In IN3Z, a relevant consideration in deciding whether to grant permission for the proposed land uses is:

- The effect of traffic to be generated on roads.³³

132 In IN3Z, relevant considerations in deciding whether to grant permission for the proposed development include (amongst others):

- Parking and site access.
- Loading and service areas.³⁴

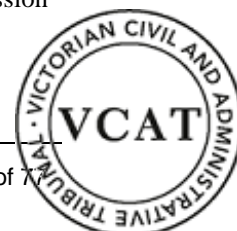
133 Before a new use commences, clause 52.06-8 requires plans to be prepared to the satisfaction of the Council (and, upon review, the Tribunal) showing (amongst other matters) all car parking spaces, access lanes, driveways and associated works. This requirement in clause 52.06-8 applies whether or not a permit application is being made to reduce car parking requirements. The decision guidelines at clause 52.06-10 to be considered before deciding whether the plan(s) prepared under clause 52.06-8 are satisfactory include:

- The role and function of nearby roads and the ease and safety with which vehicles gain access to the site.
- The provision for pedestrian movement within and around the parking area.
- The protection and enhancement of the streetscape.
- The amenity of the locality and any increased noise or disturbance to dwellings and the amenity of pedestrians.
- The type and size of vehicle likely to use the parking area.

³² We say this acknowledging that the provision of car parking does not require planning permission under the planning scheme.

³³ Clause 33.03-2

³⁴ Clause 33.03-4



134 Also, before deciding on a permit application or approving a plan, the Council (and, upon review, the Tribunal) must consider general decision guidelines at clause 65, as appropriate, including (amongst others):

- The orderly planning of the area.
- The effect on the amenity of the area.
- The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.
- The impact the use or development will have on the current and future development and operation of the transport system.

135 State and local level planning policies in the planning scheme are guidelines that can assist and be considered in exercising the discretion about whether to grant a permit. This is an exercise of discretion in regard to the proposed development and land uses including the layout of car parking, access arrangements, loading arrangements and the effect of traffic generation. Policies relating to transport and the transport system form part of this exercise of discretion.

136 The planning scheme contains various policies relating to transport, much of which was updated recently as part of Amendment VC204 that came into effect in the planning scheme on 10 December 2021. All parties were invited to make comment on the changes to the planning scheme contained in this Amendment and their relevance to our considerations. The Council points out, this Amendment added the last dot point quoted in paragraph 134 above. The Council submits this new general decision guideline brings into play an added layer of consideration about ‘the heart of [the] issue raised by Council with this proposal in that it does not promote the modal shift towards sustainable transport’.³⁵

Car parking layout

Urban design

137 The car parking layout plan must meet the design standards of clause 52.06-9 unless the Council (and, upon review, the Tribunal) agrees otherwise. Urban design standard 5 includes the following:

Ground level car parking, garage doors and accessways must not visually dominate public space.

Car parking within buildings (including visible portions of partly submerged basements) must be screened or obscured where possible, including through the use of occupied tenancies, landscaping, architectural treatments and artworks.

Design of car parks must take into account their use as entry points to the site.

³⁵ Extract from the Council’s submission in response to Amendment VC204.



138 For the reasons already explained, we are not satisfied that this urban design standard has been met.

139 For reasons that we will explain shortly, these decision guidelines about the car parking layout plan have assisted us in reaching the decision that the proposed plan is not satisfactory.

The streetscape

140 One of the decision guidelines to consider in clause 52.06 is ‘the protection and enhancement of the streetscape’. Amongst other infrastructure, Glenlyon Road currently includes on-street car parking and dedicated bicycle lanes. Figure 6.1 in Mr Kiriakidis’ evidence statement assesses the sight lines for drivers entering and existing the development from the driveways and crossovers servicing the customer basement car parking. To adhere to the vehicle-to vehicle and other in-carriageway user requirements, Mr Kiriakidis identifies the required removal of a minimum of 5 on-street parking spaces as shown below:

Figure 6.1: Sight Line Assessment (Proposed Vehicle Access Point) – Minimum Parking Removal



141 Mr Kiriakidis’ evidence statement goes on to explain that all traffic accessways have been designed as driveway access rather than intersections. He says this design means ‘pedestrians and cyclists will continue to be afforded priority over turning vehicles associated with the proposed use’. He also suggests that removing all on-street parking adjacent to the site’s frontage and 133 Glenlyon Road to widen the footpath to the edge of the existing marked bicycle lane would enhance the access, elevate operational safety and give rise to reinforcing the street as a community space. This would involve the removal of a total of 12 on-street car spaces as shown on the following page.

Figure 6.2: Recommended Removal of On-street Car Parking along Glenlyon Road



142 The widening of the footpath was not a benefit particularly identified and supported by either Ms Roberts or Mr Czarny. There is nothing in DDO19 that envisages such an outcome. Rather, the activation sought is within the development and land uses themselves. This suggestion may enhance the pedestrian amenity, but it does come with the cost of the lost on-street ‘public’ car parking. Given this proposal involves an oversupply of car parking, none of the traffic engineering witnesses undertook surveys of the utilisation of surrounding on-street car parking. This means we have no material before us to assist in balancing the benefits and dis-benefits of an improved pedestrian environment or available public on-street parking in an activity centre. This is a suggested change that would need to be considered afresh as part of any new planning application.

Trailer bay parking

143 One of the decision guidelines to consider is ‘the type and size of vehicle likely to use the parking area’. Trailer bays are nominated in the car parking layout. Mr Young’s evidence statement recommends the trailer bays be widened to facilitate swept paths that do not encroach into the adjacent parking areas. He considers this will mean the loss of 4 car spaces. All of the witnesses agreed in the conclave minutes to this recommendation.

Timber trade sales area

144 All of the witnesses agreed in the conclave minutes to the design and configuration of the internal vehicle access deviation to the timber trade sales area. Mr Kiriakidis estimates a queue length of 5-7 vehicles can be accommodated at the entry to timber trade sales area. During our inspection of the other timber trade sales areas at Coburg and Preston, we observed some boom gate usage at the entries. We have been advised that

the only boom gate in this proposal will be at the exit from this area. This detail together with details of where car parking will be provided within this area should be included in a car parking layout plan.

Bicycle parking

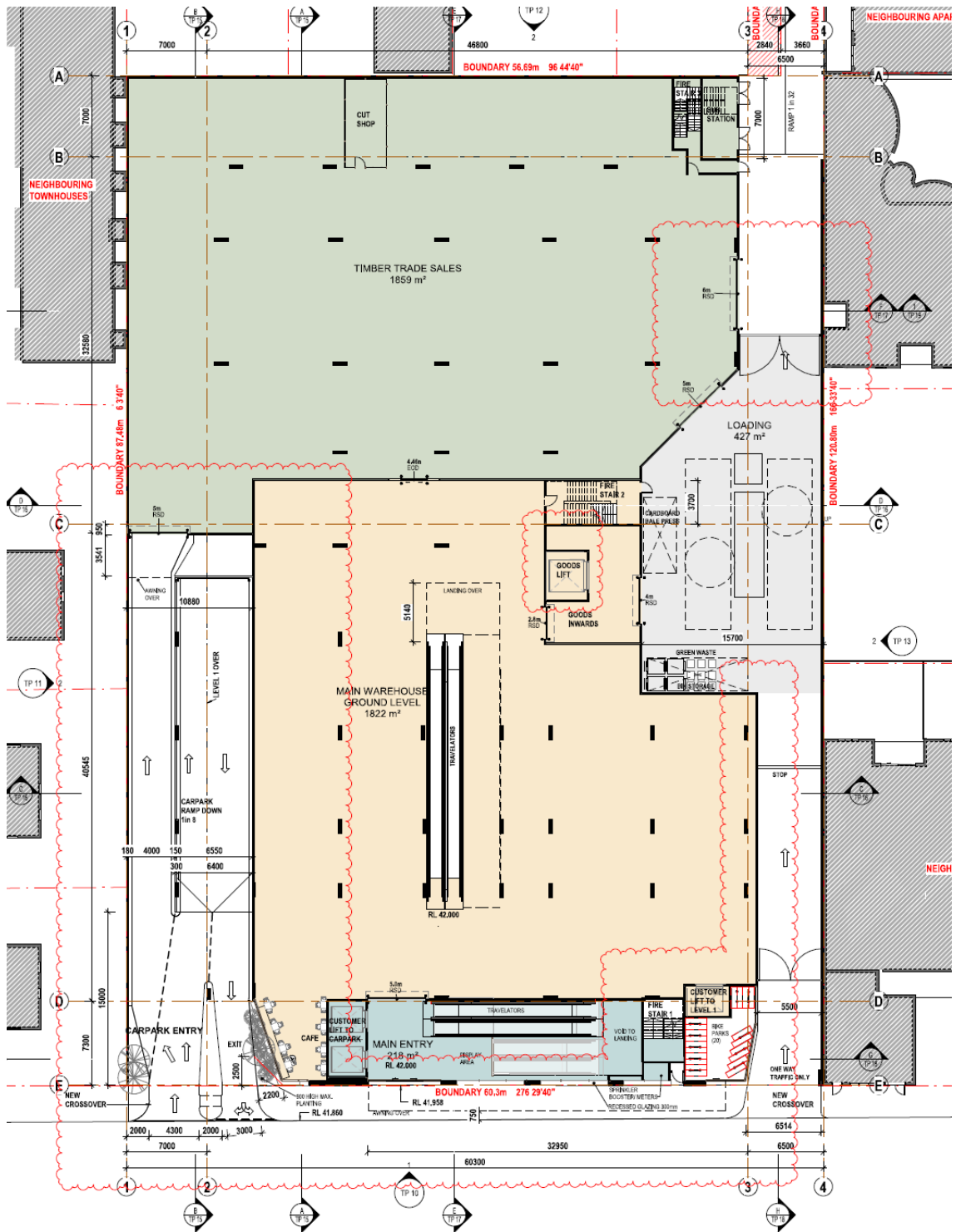
- 145 The planning scheme requires the provision of 27 employee and 17 visitor/shopper spaces (a total of 44 bicycle spaces) for this proposal. Mr Kiriakidis' evidence statement says 52 spaces are provided including 20 in basement level 1. The substituted amended plans actually show 30 spaces in basement level 1 and 20 spaces in the ground level bike parking area along the site's frontage. This distribution remains the same in the amended plans provided during the hearing illustrating how the frontage design could be altered.³⁶ This distribution enables the required 17 visitor/shopper spaces to be accessed easily in the ground level 20 space bike parking area. During the hearing, it was suggested that provision be made for larger bicycles that, for example, have attached bike trailers or are electronic bikes. Whilst this is not a requirement in the planning scheme, it is a design feature that is of some benefit, particularly in an area that has an established bicycle network and users.
- 146 Three shower/changeroom facilities are required by the planning scheme based on the employee spaces required. During the hearing, the applicant provided an updated mezzanine level floor plan illustrating how this requirement can be incorporated into the development.

Loading/unloading facilities

- 147 As previously mentioned, the loading facility is located on the eastern side of the site, involving a one way entry from Glenlyon Road and an exit via Pitt Street.
- 148 The witnesses all agree that the use of Pitt Street for some form of loading access is appropriate. Mr Young suggests all loading in and out of the site be via Pitt Street. Mr Kiriakidis and Mr Walsh acknowledge this is possible but not necessary. We have already identified that the amenity impact to 195-197 Lygon Street needs to be acceptably addressed, hence any increase in traffic movements at this interface because of any increase in Pitt Street loading/unloading would also need to address these amenity impacts.
- 149 The extract of the ground floor plan on the next page illustrates the loading facility and, in particular, the location of gates across the loading access that are set back from Glenlyon Road, generally behind the bike parking area.

³⁶ Refer to Tribunal book 2, item 115 – Further plans prepared by Stokes Architects, Revision P dated 17 May 2021.





150 The witnesses agreed in the conclave minutes that the site could be serviced by loading vehicles up to and including 12.5 metre long heavy rigid vehicles. The gates across the loading access are not set back 12.5 metres or greater. Concern was expressed about heavy vehicles waiting to enter through the gate blocking the footpath and potentially the bike lane. The witnesses agreed in the conclave minutes to relocate the gates further back into the site to enable one 12.5 metre long vehicle to be contained on the site. This change is supported subject to the setback being sufficient to



enable the truck to be recessed behind the front façade so as not to detract from any streetscape activation.

Traffic generation and impacts

151 All the witnesses agree in the conclave minutes that (amongst others):

- The preferred location for customer vehicle access is adjacent to the western boundary on Glenlyon Road;
- That ‘Keep Clear’ marking should be provided at this entrance with consideration for this to extend further west to the access to 133 Glenlyon Road in order to improve visibility;
- That a functional layout plan for Glenlyon Road generally adjacent to this site should be prepared to consider and address the mobility requirements of all road users, including cyclists, pedestrians, public transport and general traffic; and
- The general distribution of traffic estimated as it exits the site was similar and the small differential between the witnesses would not significantly impact the findings.

152 The applicant acknowledges that there is a link between car parking and traffic generation. There were suggestions during the hearing that retail sales data or competition factors can be of assistance in understanding customer demand that in turn influences car parking demand and traffic generation, but the material provided does not demonstrate this to our satisfaction. Customers can buy one item or many. Customers can buy large and/or small items. The extent to which this may then influence whether a customer chooses to drive to this proposed Bunnings is unclear. Mr Kiriakidis also points out that floor area does not equate to customers. For example, as floor area increases the parking rate, if applied to floor area, decreases because more floor area does not necessarily mean more customers. We agree with Dr Bunting’s submission that in considering the impacts of traffic generation, planning decision making focuses on the proposed building form/land use and its locational characteristics; and that a planning permit is an indefinite approval so it needs to be assessed with an expectation that a store will operate to capacity rather than focusing on market conditions that can change over time.

153 Mr Kiriakidis does not consider that the car parking rates in the planning scheme are representative of a Bunnings type of land use. All the witnesses agreed in the conclave minutes that an empirical analysis is more appropriate to predict likely car parking demand. Mr Walsh’s view is that the traffic generation is influenced by the car parking demand rather than the car parking supply. He explains that if car parking provision is suppressed on the site, it would not have an impact on the critical demand and traffic generation during the afternoon peak period. This is because, he says, customers will use available on-street parking in the surrounding area.



so reduced parking on the site may not reduce the demand and consequential generated traffic. Mr Walsh did acknowledge that there is no analysis of the actual availability of on-street parking by any of the witnesses in this case. Hence, we cannot determine whether or not there is available on-street car parking in the surrounding area that could service a customer demand. Having said that, we also do not need to determine this. The fact is this proposal is providing car parking additional to the statutory requirements in the planning scheme. This additional parking is in the order of 74 car spaces in the basement levels plus the timber trade sales car parking (that is not delineated on the plans in terms of the number of car spaces).

154 The witnesses have all approached the anticipated traffic generation of this proposal differently, hence no agreement was reached at the conclave. Dr Bunting’s addendum submission endeavoured to summarise each witness’ traffic generation rates as follows:

Expert	Weekday Peak (Trips per m ² GFA)	Weekend Peak (Trips per m ² GFA)	Basis (After supplementary statement)
Mr Young	? (Not calculated). ²	5.4	Mr Walsh’s surveys of Collingwood store, factored up by 28% based on sales data. (Paragraphs 2.1.8 to 2.1.12 of supplementary statement; original evidence adopted surveyed rates from Hawthorn of 2.9 and 8.7 – see paragraph 11.4.7.)
Mr Kiriakidis	2.55	4.79	Average of surveys of Sunshine, Altona and Box Hill stores. (Section 7.1.1 of original statement.)
Mr Walsh	2.9	4.2	Surveys of Collingwood store (without the adjustments applied by Mr Young). Paragraph 28 of the supplementary statement and paragraph 96 of original evidence – evidence is unaltered on this point.)
Mr Sellars	3.5	7	Survey data from Hawthorn, cross-checked against averages of nine known traffic generation rates for Bunnings stores. (Paragraphs 9.1.4 to 9.1.5 of original statement.)

Table 1 – Summary of adopted traffic rates (post-conclave)

² In our understanding Mr Walsh’s methodology will produce a different adjustment for each time period so the 28% adjustment cannot be directly transferred to weekdays. No calculation is included in the statement and we have not attempted to reproduce the calculation. Our difficulties with this methodology are discussed further at paragraph 80 of this submission.



155 Dr Bunting observes that all of the witnesses other than Mr Sellars have arrived at rates that are well below those:

...commonly reported in previous appeals and panels relating to Bunnings which, as noted at paragraph 184 of our original submission, have been in the order of 3.6 and 7.1 spaces for weekday and weekend peaks, respectively. They are also below the survey data for the Hawthorn store, which showed rates of 2.9 and 8.7 in Mr Young's evidence and 3.5 and 7 in Mr Sellars' evidence.

156 Dr Bunting's addendum submission also provides a summary of various Bunnings stores that have been referred to by the four witnesses and the data that has been provided about them including traffic generation rates for Friday PM and Saturday Mid peaks.

Location	Floor Area m ²	Year	Friday PM trip rate (trips per m ²)	Saturday Mid peak trip rate (trips per m ²)	Car parking spaces	Parking rate (spaces per 100m ²)
Box Hill	13762	2007	1.68	3.59	355	2.58
Altona	9109	2004	2.14	5.38	332	3.64
Sunshine	12228	2010	3.82	5.4	348	2.85
Hoppers Crossing	11169	2000	3.21	6.46	560	5.01
Mornington	10599	2000	4.45	6.66	453	4.27
Rosebud	8253	2008	3.45	7	198	2.4
Sunbury	5960	2008	3.42	7.15	318	5.34

Collingwood	7017	2020 ¹	2.9 ¹	4.21 ¹	139	1.98
Hawthorn	7699	2021 ²	3.5 ²	7 ²	253	3.28
Proposed Brunswick	8592 ³				236	2.74

1 - Collingwood trip rate data is from Mr Walsh's initial evidence (page 21).

2 - Mr Sellars' survey. As noted, Mr Young's figures are higher again.

3 - This is gross floor area and does not account for the retail / trade area difference. It was not clear how to present this consistently with the other data.

157 These two tables illustrate variation across the stores as well as across the witnesses in terms of the traffic generation rates. In this case, each witness has taken a different approach in regard to how they have determined the

traffic generation. Given this, we are not in a position to say which evidence is preferred as they are not prepared in a similar manner.

158 We have taken a “best case scenario” that is derived from considering the evidence of Mr Walsh and Mr Kiriakidis as, overall, their traffic generation rates are lower than the other witnesses. Having done this, we have determined that the traffic impacts (to use a generalised term) are unacceptable. As such, applying the higher traffic generation rates of the other witnesses would result in a worsened outcome and would therefore also be unacceptable.

159 The reasons why we have reached this decision follow.

Existing conditions

160 Glenlyon Road is an east-west connector road that extends effectively from Nicholson Street in the east³⁷ to Lygon Street in the west when it becomes Dawson Street and continues across City Link into Moonee Ponds.

Glenlyon Road is thus a major road carrying about 15,000 vehicles per day. It has one lane of traffic in each direction, a designated bicycle lane in each direction and parking along both sides. It is a major east-west cycling route with painted on-road cycle lanes. There is also a 10min interval in peak period bus service (route 506) along Glenlyon Road in both directions.

161 Mr Walsh explains traffic along the Glenlyon Road western approach (east-bound) to the Lygon Street intersection is ‘lumpy’ due to the railway crossing on Dawson Street to the west. When the railway crossing is activated, there are relatively few vehicles that travel east past the site and less traffic arriving at the Lygon Street intersection. This is consistent with Mr Kiriakidis’ video footage for the peak periods that reveal variability in queue lengths between the intersection cycle phases.

162 Lygon Street is a major north-south road that connects to the CBD approximately 3.8km to the south, and to Coburg to the north. It carries about 15,000 vehicles per day and has a 7 min peak period light rail service. In the vicinity of the intersection with Glenlyon Road, it generally has one lane of traffic in each direction that is shared with the central tram tracks, and parking along both sides.

163 Transport for Victoria (TfV) concludes, based on the four traffic engineering evidence statements, that the intersection of Glenlyon Road and Lygon Street is close to capacity at certain times and in certain directions, but generally provides satisfactory performance. TfV advises the signal phasing of this intersection is already up to standard along Lygon Street and there is little opportunity for any impacts this proposal may have to be mitigated. We were advised during the hearing that the traffic signal phase cycle is 110 seconds.

³⁷ Although a narrow section extends further east into a residential pocket.



Figure 2.3: MITS Extract of Moreland Road Hierarchy Plan



Extract from Mr Kiriakidis' evidence statement

- 164 Both Lygon Street and Glenlyon Road are major Council managed roads. The Moreland Integrated Transport Strategy (MITS) describes a ‘major road’ as a non-arterial road that supports local through-travel and access to key centres, and:

These streets should provide regular crossing points and comfortable facilities for pedestrians and/or cyclist movements, with separation preferred. Priority should also be given to the on road public transport network.

- 165 As already alluded to by referencing TfV a couple of paragraphs ago, the Council notified TfV of this planning application and its response in December 2020 includes the following:

... Typically a use of this nature is heavily reliant on private motor vehicles for access and the traffic report has not articulated the impacts to bus operations along Glenlyon Street or the “knock on” effects of tram operations in Lygon Street, particularly if traffic queues extend over Lygon Street in peak times. Glenlyon Road is also a popular east / west cycle corridor with road cycle lanes in both directions. The impact to the cycle lanes and safety have also not been articulated in the report by TTM.

The access from Glenlyon Road, if approved, should consider a right turn bay to assist in traffic flows and reduce queue lengths banking over Lygon Street and blocking tram flow. This however will impact on street parking, landscaping and the cycle lanes which may be unacceptable to Council.

In relation to tram operations along Lygon Street, we have reviewed the traffic signal phasing for any improvements that could assist in tram priority. The signal phasing is already up to standard along Lygon Street and there is little opportunity for any impacts the use and development may have to be mitigated. The permit applicant may be able to investigate tram improvement works along the tram route to

mitigate any impacts however this has not been explored in the material submitted with the application.

It is therefore respectfully submitted that the application before Council and ultimately VCAT needs to better explore any impacts to the public transport network as a result of the use & development proposed and make some effort to mitigate those impacts if there are any.

166 Mr Kiriakidis' evidence statement contains extracted data from the Victorian Integrated Survey of Travel 2012-2018 (VISTA) that includes a comparison of mode of transport for different local government areas across metropolitan Melbourne. For Moreland, VISTA reveals all trips comprise 68.56% private vehicles, 10.17% public transport, 5.38% cycling, 14.61% walking and 1.29% other. Mr Kiriakidis acknowledges at section 2.4 of his evidence statement:

By way of comparison the Moreland LGA typically has a lower reliance on private vehicles with higher public transport and active travel trips compared with other LGA's.

167 The VISTA material illustrates a preparedness of Moreland to use alternative transport modes. Mr Kiriakidis acknowledges this and orally described how it struck him that there is a material difference in the data in comparison with other LGAs, with Moreland standing out in terms of its usage of alternative transport modes. However, the witnesses evidence statements including Mr Kiriakidis' statement does not appear to have made any adjustment for this. The approach appears to be as was put by Mr Walsh, that this proposal has a car parking demand, meaning vehicles will come to this site regardless of whether the car parking is available on the site or not.

168 The VISTA data also reflects the submissions made by the various community members, particularly that pedestrian and cycle activity in this area is high. It is also reflected in TfV's response to the expert evidence statements as it points out:

- The west-bound bus stop near the Lygon Street intersection has a 44.9 touch on and 10.3 touch off per day, which is considered a high patronage number; and
- The east-bound bus stop at Loyola Avenue has a 3.3 touch on and 5.5 touch off per day, which is a low number.

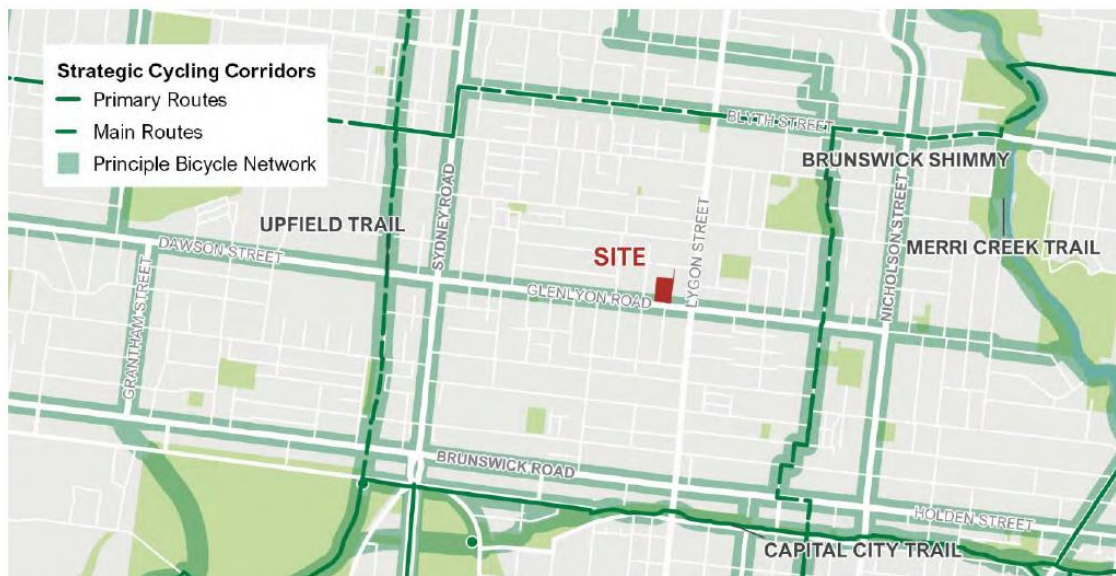
169 The low number at Loyola Avenue would appear to be associated with it serving the immediate surrounds. We note on Google maps that there is another stop near the Lygon Street intersection that presumably has a higher patronage number (based on TfV advice about the west-bound stop above). We anticipate that the touch on and off at Loyola Avenue may increase as a result of this proposal.



Extract of Google maps showing bus stop locations in red at Loyola Avenue and near the Lygon Street intersection

170 Moreland BUG highlights Glenlyon Road’s role as part of the Principal Bicycle Network.

Figure 2.4: Cycling Corridors Proximate the Subject Site



Extract from Mr Kiriakidis’ evidence statement

171 Moreland BUG also points out the results of Bicycle Count 2020 survey (mentioned earlier in these reasons) that recorded 356 cyclists travelling through the Lygon Street/Glenlyon Road intersection between the hours of 7am and 9am, including 130 people travelling past this site. Mr Kiriakidis’ evidence statement includes pedestrian and cycle volumes on both sides of Glenlyon Road on Friday 12 and Saturday 13 March 2021 at the peak hours anticipated for this proposal. This identifies 23 cyclists west-bound and 25 cyclists east-bound in the Friday PM peak and 27 and 22 cyclists respectively in the west-bound and east-bound directions during the

Saturday Mid peak. The two way pedestrian movement on the footpath outside this site was recorded at 36 and 33 during the Friday and Saturday peak hours.

- 172 Mr Walsh's evidence statement includes crash statistics illustrating that there have been a number of crashes in the area including two serious crashes, three crashes involving a bicycle, and two crashes involving pedestrians. He describes this as representative of typical conditions on an arterial road in an activity centre where there are competing modes of transport and levels of congestion during peak hours.
- 173 The evidence of both Mr Walsh and Mr Kiriakidis includes an analysis of the existing Lygon Street/Glenlyon Road intersection. The DoS information would describe it as operating under 'poor' conditions in the weekday afternoon peak, mainly associated with the northern approach, and 'good' conditions in the Saturday peak. The existing 95th percentile queue on the Glenlyon Road west approach (the east-bound traffic) can already extend past this site. TfV notes that the modelling undertaken in the four evidence statements relates to the performance of traffic movements and are not mode specific. TfV explains this is of particular importance in regard to the public transport, as the impact to bus and tram travel times reliability cannot accurately be determined from the data provided.

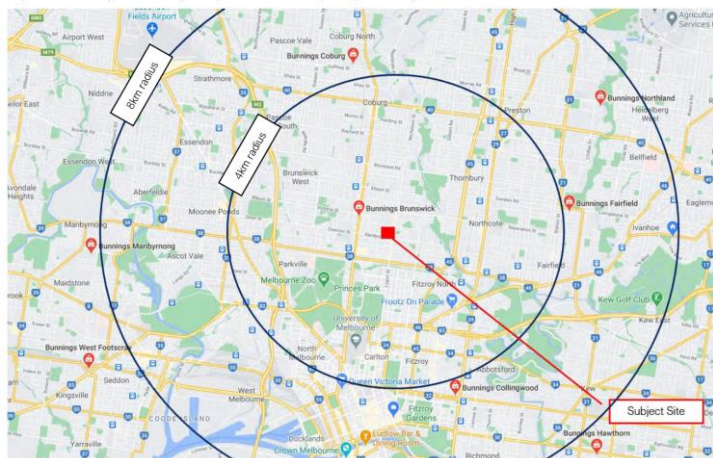
Post development impacts, including at Glenlyon Road/Lygon Street intersection

- 174 As alluded to in previous paragraphs referencing the TfV, during the hearing TfV comments were sought on the four traffic engineering evidence statements and the amended plans. TfV provided a response, which does not formally object to the proposal. This response was known to the parties and the witnesses when the addendums to the traffic engineering expert evidence and addendum submissions were submitted. We have extracted the pertinent sections and quoted the majority of the TfV response in Appendix B given its length. TfV's response highlights some of the difficulties associated with the analysis undertaken in the evidence statements, and the potential impacts upon the surrounding transport network comprising of cyclists, public transport and vehicles.
- 175 In Mr Kiriakidis' evidence, the Glenlyon Road west through traffic post development (which includes adjacent to this site's frontage) retains a DoS of 0.97 with an intersection queue length increasing from 142 to 204 metres in the Weekday PM, and the DoS increasing from 0.88 to 0.95 with an intersection queue increasing from 129 to 141 metres in the Saturday Mid peak. In Mr Walsh's evidence, the Glenlyon Road west through traffic increases post development from a DoS of 0.99 to 1.03 with a queue length increasing from 209 to 256 metres in the Weekday PM and from a DoS of 0.82 to 0.95 with a queue length increasing from 107 to 157 metres in the Saturday Mid peak.

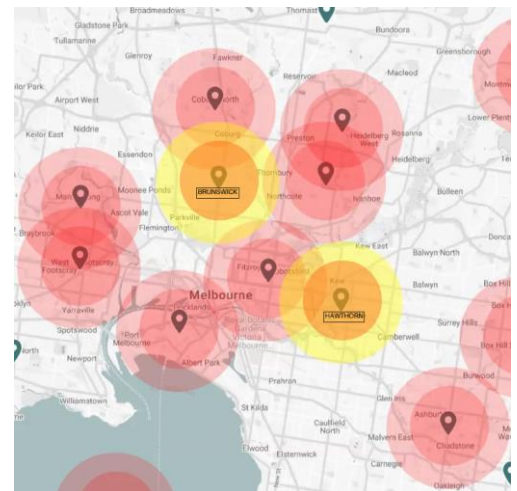


176 Mr Walsh’s evidence is more conservative, and he points out his analysis assumes all development trips are new and has not allowed for any discount of passing trade or replacement trips for those customers transferring from an existing Bunnings store. The conclave minutes record all witnesses agreed that there is likely to be a level of passer-by traffic for the proposed development, which are movements already on the road network passing the site that would visit the proposed development before continuing with their journey. Mr Sellars says, from available material, it is unclear what would be an appropriate passer-by trip discount to adopt with this proposal. He refers to one New South Wales study that looked at four Mitre 10 stores, but we are not persuaded this one study is sufficient to conclude what proportion would be passer-by traffic in this case. We are also not persuaded any customer transfer would be influential on the analysis having regard to Mr Kiriakidis’ figure of Bunnings stores in his evidence statement and Mr Walsh’s tabled catchment diagram. These illustrations suggest limited overlap between this proposed Bunnings and existing Bunnings stores. As we understand it, this situation is one of the reasons why this development and land uses are being proposed in this location, to capture a gap in the market.

Figure 7.1: Map of Existing, Proposed and Competing Bunnings Stores in the Local Area



Mr Kiriakidis’ figure



Mr Walsh’s diagram

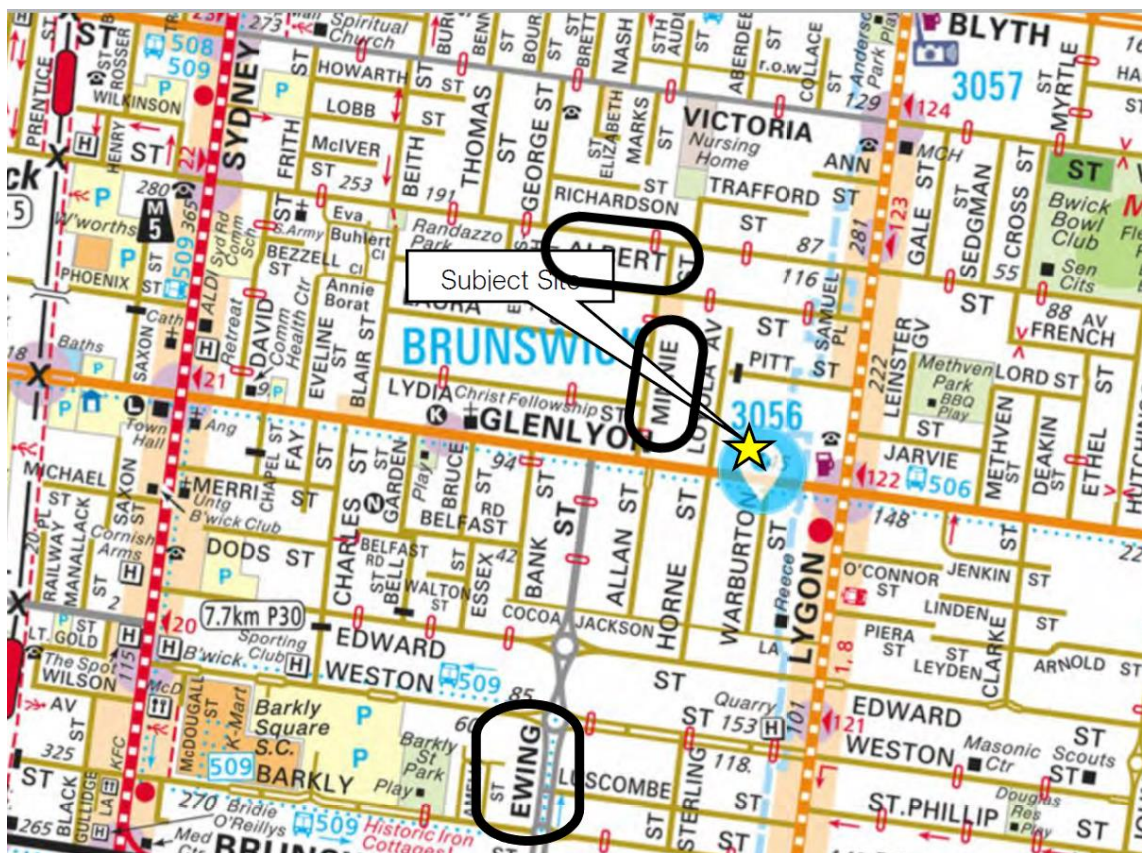
177 Mr Maclellan notes the witnesses all accept there will be a degradation of the Lygon Street/Glenlyon Road intersection, including of the western leg of Glenlyon Road during peak hours as a result of this proposal. Mr Kiriakidis describes the post development scenario as ‘modest increases in delay and queues’. As Mr Walsh’s addendum DoS exceeds 1.0, it means the intersection moves from a ‘poor’ to ‘very poor’ level of service. Mr Walsh says this is not a ‘fail’ but indicates drivers will experience longer delays and queues. He explains it is not unusual for intersections in urban areas of metropolitan Melbourne to be congested and experience DoS’s around or greater than 1.0. TfV acknowledges that, post development, there

is likely to be some delays to public transport, which it says is not uncommon with large developments of this type within a historical street network. Mr Walsh points out the peak period analysis is a representation of the busiest hour in the day, so across the rest of the day the traffic is less, and the intersection operates with a better level of performance. Mr Kiriakidis considers the proposed traffic can be accommodated without imposing significant adverse effects on the network. Mr Kiriakidis said during Dr Bunting's cross examination that 'there will be an impact by this proposal on the network' and 'it's a manageable impact'. Mr Walsh also consider this impact is 'manageable', but the evidence is not clear about what this management means in detail. Presumably that is a reason why all the witnesses are supportive of a functional layout plan being prepared for this Glenlyon Road western approach to the intersection. Their support for this suggests further consideration and analysis of the various modes of transport using Glenlyon Road is warranted. Certainly, this would appear necessary as the views of the witnesses and TfV are not wholly in agreement about the extent of works and changes in the western leg of Glenlyon Road.

- 178 Again, as stated earlier, TfV says the signal phasing at the intersection is up to standard and there is little opportunity for any impacts that the proposed land uses and development may have to be mitigated. Mr Walsh considers generally half the time a queue in Glenlyon Road heading east could get through the intersection in one cycle of the intersection phasing and the other half of the time it will take longer. Mr Kiriakidis and Mr Sellars agree that the peak hour queues have cleared in existing cycles by taking between 1 and 3 cycles of the intersection phasing.
- 179 TfV suggest mitigating the delays to public transport is difficult to achieve without significant changes to the street profile of Glenlyon Road, including removal of on-street parking. It also suggests the cycle lanes extending past this site should have 'emerald green' pavement treatment for safety and priority.
- 180 TfV notes the suggestions in the evidence statements to have all loading occurring via Pitt Street and a keep clear treatment to facilitate right turn movements into the site during queued conditions. TfV supports either of these measures to improve bus movements along Glenlyon Road, as well as a dedicated right turn lane on Glenlyon Road to access the site and assist with bus priority. What is before us is the keep clear treatment. We presume this will assist west-bound buses but introducing keep clear areas may further increase the additional queue length for east-bound traffic and contribute to delay for this part of the bus service.
- 181 As proposed, and without a dedicated right turn lane to access the site, Mr Walsh considers the site access will operate under 'excellent' conditions in all peak hours with queues and delays for exiting vehicles being minimal.



182 There has been limited to no analysis of the anticipated traffic impacts upon local streets. Ms Stanley submits traffic in small streets such as Ewing Street in the three years from 2016 to 2019 has increased by 10% or approximately 3% per annum according to the Council. Mr Maclellan and Moreland BUG point out Minnie, Ewing and Albert Streets are ‘low traffic roads’, and a busy commuter route for cyclists accessing the Capital City Trail. Hence, the amount of current road pavement treatments and the refuge located around the intersections of Minnie and Ewing Streets with Glenlyon Road are to enable cyclists to navigate their way across Glenlyon Road.



Extract of Mr Kiriakidis' Melways map with black circles added by us highlighting the location of Minnie, Ewing and Albert Streets.

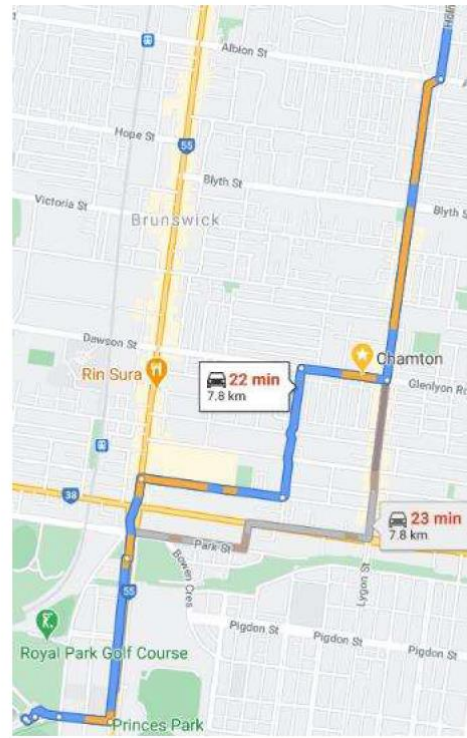
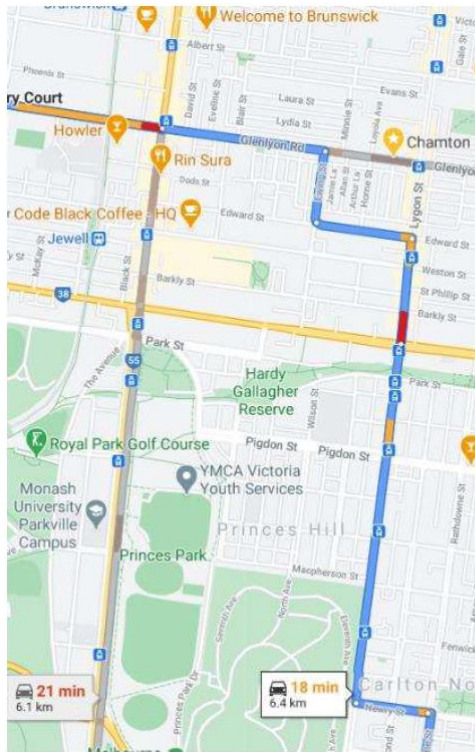
183 Mr Kiriakidis' evidence statement includes traffic volumes in Ewing Street. During the hearing, it was pointed out that this volume is higher than the volume of this proposal, and this Ewing Street traffic is able to get into the intersection with Glenlyon Road. The residents submit this is because of the refuge generally located at the intersections of Minnie and Ewing Street that is intended to assist cyclists and pedestrians safely crossing Glenlyon Road at this point. We have extracted an image from one of Mr Ramsay's videos showing a car turning right from Ewing Street into the queue of traffic east-bound along Glenlyon Road. This image assists to demonstrate submissions that were put to us that the refuge is being utilised by vehicular

traffic as well as cyclists. Hence, it would suggest the access points to this site will require careful consideration in order to ensure traffic can flow acceptably as well as enabling access in to and out of the development.



Extract from one of Mr Ramsay's videos of Ewing/Glenlyon intersection

184 Mr Kiriakidis accepts that some vehicles will choose to use side streets and avoid signalised intersections such as Sydney and Glenlyon Roads, but the use of side streets is not at a level that causes him concern. He did not look at side streets to the north of Glenlyon Road, such as Minnie Street. Mr Walsh agreed with Mr Maclellan's question that other residential streets will be used particularly for local trips and by those using satellite navigation (refer to Mr Maclellan's examples on the next page). Mr Walsh also has not considered what proportion of traffic will use Ewing and Minnie Streets.



Mr Maclellan's examples of Google travel routes that 'rat-run' through local streets such as Ewing Street. (The site is indicated with a star in a yellow circle.)

- 185 Mr Walsh accepts that vehicles turning left out of the site may utilise a keep clear area and 'prop' across the footpath and/or bicycle lane in order to enter the east-bound traffic. Moreland BUG submits that the Saturday peak period for Bunnings will coincide with a busy period when locals are travelling around by bicycle or walking. The majority of the witnesses adopted a 50/50 split in regard to vehicles exiting the Bunnings car park and turning left or right. Moreland BUG submits this is creating a substantial risk, particularly to cyclists due to the volume of vehicles needing to turn left, as well as the other 50% seeking to get across the Keep Clear and turn right.
- 186 We agree with the submissions that the location of an additional crossover serving the separate loading entrance may add to the difficulties for vehicle movements into and out of the apartments at 149-151 Glenlyon Road. The existing situation already has constraints associated with the proximity to the intersection and the existing crossovers to both these apartments and the service station located on the corner of the intersection. During the hearing, it was suggested this arrangement of 149's crossover and the loading bay crossover near each other and close to the intersection could be acceptable with appropriate "keep clear" markings. However, to impose a further keep clear areas would no doubt add to the Glenlyon Road queue lengths and delays for east-bound traffic. Also, the preferable outcome is unclear given the existing complexity of left, through and right turn lanes approaching the Lygon Street intersection combined with the existing crossovers. This is



also a matter that the Council as road manager and TfV as the authority responsible for public transport would need to consider in some detail. Hence, an acceptable solution is not clear at the present time.

- 187 We are persuaded by all of the material before us including the summation we have just provided that this location is sensitive to the impacts of traffic congestion. Whilst this intersection may have similarities to other inner-city intersections, we are not persuaded this site's interface with Glenlyon Road is 'typical'. It accommodates pedestrian traffic on the footpath, bicycle traffic, a public transport bus route, and private vehicle traffic that regularly has queues in peak hours extending past this site, albeit in a 'lumpy' manner.
- 188 This proposal is envisaging three new crossovers including one for heavy rigid vehicles. Mr Kiriakidis is suggesting the loss of between 5 and 12 on-street car spaces on the north side of Glenlyon Road. TfV is envisaging the loss of on-street car spaces on the south side if there is a dedicated right turn lane into the customer car park. All of the witnesses agree Keep Clear marking is necessary at the customer crossovers at least. They also all consider a functional layout plan is necessary for Glenlyon Road as part of any approval of this proposal to address the mobility requirements of all road users including cyclists, pedestrians, public transport and general traffic. Delays at the intersection with Lygon Street will increase, as will the east-bound queue along Glenlyon Road past this site. Mr Sellars acknowledged during the applicant's cross-examination that any development on this site will need to deal with the queues along Glenlyon Road that already can extend past this site. Whilst this is an existing condition, there remains a discretion to be exercised about the acceptability of the extent of additional queuing and this impact on the intersection. The evidence of Mr Kiriakidis and Mr Walsh suggest around 30% increases in queue lengths will occur at different peak periods post development.³⁸ Considering the implications for public transport service times, this extent of impact at particular peak times of a day is a matter of concern.
- 189 In combination, all of the individual transport related impacts do not create an ideal or preferable outcome, the question is then are they acceptable? The applicant acknowledges the traffic impacts need to be acceptable and reasonable.

Policy considerations

- 190 To assist in making a decision, policies in the planning scheme are of assistance. This is because planning decision making involves looking into the future and deciding what a development and/or land use should provide and how it should be designed in order to achieve an acceptable outcome for the benefit of both current and future generations.

³⁸ Mr Kiriakidis' longer queue increase is estimated at the weekday PM peak and Mr Walsh's longer queue length increase is estimated at the Saturday Mid peak.



191 The future growth in metropolitan Melbourne is recognised in planning policy at a State and local level in Victoria’s planning schemes, with strategic policy directions for the metropolitan area also articulated in documents such as Plan Melbourne. Activity centre growth and the creation of 20 minute neighbourhoods are important aspects of the future growth aspirations. The Tribunal has, in previous decisions, commented on the implications of metropolitan growth for sustainable transport, such as in *Ronge v Moreland CC*:

We have already referred to what can only be described as the massive increase in Melbourne’s population projected through until 2050. Our roads are already congested and will be unimaginably so if a ‘business-as-usual’ approach is accepted through until 2050. The stark reality is that the way people move around Melbourne will have to radically change, particularly in suburbs so well served by different modes of public transport and where cycling and walking are practical alternatives to car based travel.³⁹

192 The planning scheme policies require consideration of the integration of land uses and transport, including sustainable transport options.⁴⁰ The planning scheme policies place particular emphasis on the opportunities for a variety of land uses and the use of sustainable transport options in activity centres, including this activity centre. For example:

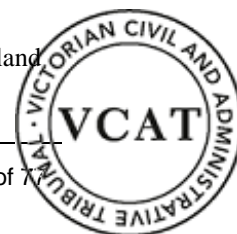
- Reduce the number of private motorised trips by concentrating activities that generate high numbers of trips in highly accessible activity centres (clause 11.03-1S);
- Support urban development that makes jobs and services more accessible by taking advantage of all available modes of transport (clause 18.01-1S); and
- Improve local travel options for walking and cycling to support 20 minute neighbourhoods (clause 18.01-3R).

193 The planning scheme policies also provide particular aspirations to move away from car dependency and maximise alternative sustainable transport modes, including protecting and prioritising these sustainable transport modes. A range of relevant transport policies are summarised and contained in Appendix A to these reasons. They include, for example:

- i Improve access by walking, cycling and public transport to services and facilities;
- ii Prioritising the use of sustainable personal transport;
- iii Planning the transport system to be safe by separating pedestrians, bicycles and motor vehicles, where practicable;
- iv Reducing the need for cyclists to mix with other road users;

³⁹ *Ronge v Moreland CC* (Red Dot) [2017] VCAT 550 at [64]

⁴⁰ Clause 11 - Planning is to recognise the need for and as far as practicable contribute towards land use and transport integration.



- v Designing development to promote walking, cycling and the use of public transport, in that order, and minimise car dependency; and
- vi For metropolitan Melbourne, to improve local transport options for walking and cycling to support 20 minute neighbourhoods.

194 In regard to designing development to promote walking, cycling, public transport and minimise car dependency, this policy is consistent with the transport network user hierarchy priorities contained in the Moreland Integrated Transport Strategy (MITS). The applicant put to Mr Sellars that this approach in the MITS acknowledges congestion, so these priorities are about managing rather than stopping development, and he agrees. This aligns with the views of Mr Kiriakidis and Mr Walsh that the impact of a proposal such as this one needs to be managed rather than stopped. The fact that it needs to be managed returns to the question of whether the impacts are acceptable, even if in a managed way. During the hearing, the question was posed in differing ways through various submissions as to whether the scale and intensity of this proposed development and land uses is getting more than its fair share of the available transport and road network given how ‘saturated’ the traffic situation already is.

195 As mentioned earlier, these transport policies in the planning scheme were updated and changed by Amendment VC204 in December 2021. The applicant submits a close examination of the changes in the amendment show ‘their effect is not significant insofar as transport planning considerations are concerned’. We are not persuaded of this and prefer the submissions of the Council and community members. They emphasise the description in the Amendment’s Explanatory Report that the amendment updates the policies ‘to focus on integrated decision making that considers the transport system rather than a specific mode’ of transport. The planning scheme general decision guidelines now requires consideration of the current and future operation of the transport system. The strategy about designing development to promote walking, cycling, public transport and to minimise car dependency is clear and unambiguous about where development priorities regarding transport (including traffic) should focus.

196 These transport policies are part of the mix of relevant policies in this case. As mentioned earlier in these reasons, activity centre policies, including specific policies for Moreland and about the Brunswick activity centre, all provide support to varying degrees for a restricted retail and timber trade sales proposal on this site. This policy support needs to be balanced with the transport policies and particularly the focus upon integrating development and transport policies and protecting and encouraging sustainable transport options. Mr Walsh agrees oversupplying car parking can undermine encouragement for alternative modes of transport, but only for particular uses that are not car dependent. He considers this proposal is car dependent and generates a car parking demand. Mr Kiriakidis acknowledges that behavioural change in transport is a relevant consideration. He accepts that there are some non-tangibles in this case

including the policies about managing and reducing car based traffic. It is a fact of this proposal that it includes a large amount of car parking as well as access for small rigid vehicles, vehicles with trailers and heavy rigid vehicles. This is the extent of the traffic that needs to be managed acceptably in this case. The TfV response is not fulsome support for this proposal. It acknowledges that mitigation is difficult and a variety of measures including keep clear areas, removal of on street parking and possible dedicated turning lanes need to be considered to address the impact. In circumstances where there are other policies seeking street activation and prioritising street space for public transport, cycling and pedestrian use, we are not persuaded this proposal strikes the right balance. It is an acceptable outcome in terms of its traffic impacts.

Unacceptable traffic impacts

- 197 The applicant submits refusing a single planning application because of traffic issues is not appropriate, particularly as an inevitable consequence of consolidation is traffic. The applicant's position is that traffic ought to be the servant and not the master of land use planning, and that outright refusal on traffic grounds is a very rare case, and not this case. We agree in general terms, however that does not mean that refusal on such grounds will never be appropriate. Rather, it depends upon the merits of the particular proposal in light of the relevant facts and circumstances of the site and its surrounds and the relevant planning policies and controls. Having regard to the factors that we are required to consider in the planning scheme including the discretion to be exercised in considering impacts associated with traffic generation, we are unable to conclude on balance that this proposal has acceptable impacts.
- 198 Accepting that a poor intersection (in some circumstances) still enables movement through it albeit delayed, the issue is the acceptability of the relative changes resulting from a development to that intersection. The impacts upon the saturation of the intersection, increased queue lengths, delays in public transport service times, and the need for changes to existing road conditions including keep clear space, loss of on-street parking, potential impacts on the design and safety of cycle lanes, the type of additional traffic ranging from private cars to heavy rigid vehicles, the access points for all of these vehicles all in combination fail to contribute to the advancement of the transport policies, particular the sustainable transport policies. Some of the consequences of this proposal are functional and built form implications for Glenlyon Road as well as consequences for enhancing public transport and cycling as alternative transport modes. This proposal does not advance the policy objectives that encourage modal shift. The balancing of the various competing policies in favour of sustainable development and net community benefit is not right in this case because the impacts are diminishing the quality of, and the opportunity for those alternative transport modes and is prejudicing a contribution to modal shift.

Conclusion

199 For these reasons, the decision of the Responsible Authority is affirmed.
No permit is to issue.

Rachel Naylor
Senior Member

Stephen Axford
Member

APPENDIX A

- 1 Relevant transport policies at clause 18 are summarised as including:
 - a. The land use and transport integration objective is to facilitate access to social, cultural and economic opportunities by effectively integrating land use and transport. The associated relevant strategies include:
 - i. Planning land use and development to protect existing transport infrastructure from detriment that would impact on the construction or future function of the asset;
 - ii. Planning improvements to public transport, walking and cycling networks to coordinate with the ongoing redevelopment of urban areas;
 - iii. Supporting urban development that makes jobs and services more accessible by taking advantage of all available modes of transport; and
 - iv. Protecting existing walking and cycling access to public transport.⁴¹
 - b. The transport system objective is to facilitate the efficient, coordinated and reliable movement of people and goods by developing an integrated and efficient transport system. The associated relevant objectives include planning and developing the State Transport System, which includes the Principal Bicycle Network and the Principal Public Transport Network.⁴²
 - c. The sustainable and safe transport objective is to facilitate an environmentally sustainable transport system that is safe and supports health and wellbeing. The associated relevant strategies include:
 - i. Prioritising the use of sustainable personal transport;
 - ii. Planning the transport system to be safe by separating pedestrians, bicycles and motor vehicles, where practicable;
 - iii. Reducing the need for cyclists to mix with other road users; and
 - iv. Designing development to promote walking, cycling and the use of public transport, in that order, and minimise car dependency⁴³; and

⁴¹ Clause 18.01-1S

⁴² Clause 18.01-2S

⁴³ Clause 18.01-3S



- v. For metropolitan Melbourne, there is an additional strategy to improve local transport options for walking and cycling to support 20 minute neighbourhoods.⁴⁴
- d. The walking objective is to facilitate an efficient and safe walking network and increase the proportion of trips made by walking.⁴⁵
- e. The cycling objective is to facilitate an efficient and safe bicycle network and increase the proportion of trips made by cycling. The associated strategies include:
 - i. Planning and developing cycling networks to enable cycling as part of everyday life, and enable people to meet more of their demands locally and to rely less on their cars; and
 - ii. Protecting the Principal Bicycle Network to provide high-quality cycling routes that are direct and connected to and between key destinations including activity centres, public transport interchanges, and employment areas.⁴⁶
- f. The public transport objective to facilitate an efficient and safe public transport network and increase the proportion of trips made by public transport. The associated strategies include locating increased development on or close to the Principal Public Transport Network in a way that does not compromise the efficiency of the Principal Public Transport Network.⁴⁷
- g. The roads objective to facilitate an efficient and safe road network that integrates all movement networks and makes best use of efficient infrastructure. The associated strategies include:
 - i. Planning and developing the road network to ensure people are safe on and around roads, and facilitate the use of public transport, cycling and walking;
 - ii. Designing road space to complement land use and meet business and community needs through wider footpaths and bicycle lanes (amongst others);
 - iii. Designing roads to facilitate the safe movement of people and goods while provide places for people to interact and gather in high pedestrian areas like activity centres (amongst others); and
 - iv. Planning car parking that is designed and located to protect the role and function of nearby roads, facilitate the use of public transport, maintain journey times and the reliability of the on-road public transport network, and protect the

⁴⁴ Clause 18.01-3R

⁴⁵ Clause 18.02-1S

⁴⁶ Clause 18.02-2S

⁴⁷ Clause 18.02-3S



amenity of the locality, including the amenity of pedestrians and other road users; and

- v. Allocating land for car parking considering the existing and potential modes of access including public transport, the demand for off-street car parking, road capacity, and the potential for demand-management of car parking.⁴⁸
- h. The freight strategy to manage negative impacts of freight generating activities on urban amenity, the development of urban areas, and on the efficient operation of movement networks.⁴⁹

⁴⁸ Clause 18.02-4S on the basis that it is relevant to the design and layout of the car parking rather than the car parking quantum.

⁴⁹ Clause 18.02-5S on the basis that 'freight' includes deliveries to loading areas of Bunnings.



APPENDIX B

TRANSPORT FOR VICTORIA RESPONSE TO FOUR TRAFFIC ENGINEERING EXPERT EVIDENCE STATEMENTS AND THE AMENDED PLANS

The four statements of evidence have explored the impacts to the public transport network with varying results. Primarily we have drawn the following conclusions:

- the intersection of Glenlyon Road and Lygon Street is close to capacity at certain times (and in certain directions) however generally provides satisfactory performance
- the modelling undertaken by various parties has slight variations in both predicted traffic volumes and starting assumptions, which results in highly variable outputs across all four evidence statements
- the modelling undertaken by the four experts provide outputs that relate to the performance of traffic movements and are not mode specific. This is particularly important as trams are unable to change lane and are more prone to impact from right turning vehicles than through traffic. The impact to bus and tram travel times reliability cannot accurately be determined from the data provided
- as the intersection is close to capacity, those variations are causing variable results, from limited impact (5-10s) to longer queues and delay
- traffic is likely to queue past the site access on Glenlyon Road at various times

Broadly the results show that post development there is likely to be some delays to public transport which is not uncommon with large developments of this type within a historical street network. Mitigation of those delays is therefore difficult to achieve without significant changes to the street profile including removal of on street parking.

As DOT have previously stated Glenlyon and Lygon Street are local managed roads and the Department reviewed the traffic signal phasing to assess if any improvements could assist with tram priority. We have advised that the signal phasing is already up to standard along Lygon Street and there is little opportunity for any impacts the use and development may have to be mitigated.

The Ratio evidence has recommended that the loading entrance from Glenlyon Road be considered for removal by using Pitt Street for both entry and exit movements and recommended a 'keep clear' treatment be installed to facilitate right turn movements into the site during queued conditions. The Department would support either of these measures to improve bus movements along Glenlyon Road. Also, the Department would not object to a dedicated right turn lane on Glenlyon Road to access the site to assist with bus priority.



Further to this Glenlyon Road is a key east / west cycle network with on road cycle lanes which should be protected and retained. The GTA evidence has suggested removal of on street parking along the frontage of the development site with public realm improvements including the retention of cycle lanes which is supported. The Tribunal might consider the cycle lanes past this site east & west bound for “emerald green” cycle pavement treatment between Lygon Street intersection and Loyola Avenue for cycle safety and priority.

The Tribunal should also note that bus route 506 Moonee Ponds - Westgarth Station operates along the frontage of the site. The west bound bus stop located near the Lygon Street intersection (ID9579) currently has 44.9 touch on and 10.3 touch off's per day which is considered a high patronage number.

The east bound bus stop at the Loyola Street (ID9298) has no shelter and currently has 3.3 touch on and 5.5 touch off's per day which is a low number. Both these stops should be reviewed for appropriate upgrades to comply with the Disability Discrimination Act 1992 (DDA) and the Disability Standards for Accessible Public Transport 2002 including a shelter at Loyola Street should a permit is granted.