



Moreland City Council

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Moreland City Council
90 Bell Street
Coburg Victoria 3058
Telephone 61 3 9240 1111
Facsimile 61 3 9240 1212
info@moreland.vic.gov.au
www.moreland.vic.gov.au
DX 259 Melbourne

Part C - Submission by the Planning Authority Moreland City Council

Right of reply

**Planning Scheme Amendment C164
Brunswick Activity Centre Industrial Land Rezoning**



Moreland City Council

Introduction

1. This Part C submission is Council's right of reply to issues and points of clarification that have been raised during the Panel Hearing.

Responses to the issues raised

Officer Response to La Triestina Food and Manufacturing Presentation

2. As requested by the Panel, Officers have extracted development application information identified in the La Triestina Food and Manufacturing presentation. The information is included in the table below.

Address	What was approved	Date approved	Controls	Council / VCAT
22-30 Lygon Street, Brunswick East Interim height control DDO19 Maximum overall height of 5 storeys (18 metres)	Use and develop the land for a 7 storey building containing multiple dwellings and shops, reduce car parking requirements, waive loading bay requirements and alter access to a Road 1 Zone.	24 June 2013	C1Z & SBO Interim DDO19 - Interim height controls (C105) applied from 23 September 2010	VCAT
1-9 Lygon Street, Brunswick East Preferred Height 25m / 7 - 8 storeys	Use and development of land to construct a 9 storey building (with a part basement, part mezzanine car park) that contains 121 dwellings, 6 shops and a food and drink premises (cafe), including the reduction of the standard car parking requirement and alteration of access to a road	10 May 2011	DDO11 EAO C1Z (formerly B1Z)	VCAT

Address	What was approved	Date approved	Controls	Council / VCAT
	zone - category 1, in accordance with the endorsed plans			
6-20 Lygon Street, 60 & 60A Brunswick Road, Brunswick East Preferred Height 25m /7 - 8 storeys	Development of a 9 storey building above ground with two levels of basement car parking, use of the land for dwellings, reduction of car parking associated with the shops, offices, and dwellings and alteration of access to a Road Zone - Category 1 in accordance with the endorsed plans.	23 July 2013	C1Z (formerly B1) SBO DDO11	VCAT but Council consented via mediation
11-15 Brunswick Road Brunswick East Preferred height 21.6m /6 storey's preferred max height)	Construction of a 10 storey building over 3 basement levels containing 116 dwellings and an office, use of the land for dwellings, a reduction of the car parking requirement and alteration of access to a road in a Road Zone, Category 1	17 February 2016	C1Z DDO22	VCAT
11-13 Lygon Street Brunswick Interim height control DDO19 Maximum overall height of 5 storeys (18 metres)	Use and development of the land for a 7 storey building, that contains two shops and 38 dwellings, a reduction to the car parking rate, a waiver in the loading bay requirements and to alter	4 December 2012	C1Z (formerly B1) Interim DDO19 - Interim height controls (C105) applied from 23 September 2010	VCAT

Address	What was approved	Date approved	Controls	Council / VCAT
	access to a Road Zone			
63-73 Lygon Street Brunswick East Draft DBSP (reference document 2008) recommends a maximum height of 5 storeys	Partial demolition of existing buildings and construction of a new 6 storey building (including shop on ground floor and 32 residential apartments above, conversion and use of an existing heritage building into a restaurant), construction of a basement car park and a reduction in the standard car parking requirement	6 October 2010	C1Z (formerly B1) HO18-DDO1(applied to properties adjacent to significant heritage sites)	VCAT
36-28 Lygon Street Brunswick East Preferred height of 14 metres(4 storey's)	Partial demolition and works to the existing building in a heritage overlay, construction of a 5 storey building, variation to a party wall easement, reduction of the standard car parking and waiver of the loading bay requirements	25 October 2016 Refusal issued	C1Z DDO19	Refused By Council – not appealed

3. We note that the built form controls for Brunswick are relatively new - only being included in the Moreland Planning Scheme from August 2016. A period of time has not yet lapsed to determine the full impacts of the controls and as such a review of these built form controls is not considered necessary for the purposes of this amendment.

4. The DDO11 applies to properties on the southern side of Lygon Street on Brunswick Road and identifies these properties as gateway sites. A deliberate decision has been made not to extend this DDO11 to other sites on the northern side of the Brunswick Road and Lygon Street. We note that DDO19 does not designate the properties on the northern side of Brunswick Road as gateway sites.

Officer Response to 3RRR Presentation

Design Objectives

5. As directed by the Minister for Planning through conditions of authorisation, Council Officers have already gone through an exercise to remove and condense the existing 15 objectives (as exhibited) to 5 objectives in a policy neutral manner as required by the Ministerial Direction.
6. Council Officers have been verbally directed by the DELWP that sub sentences are not permitted for design objectives. The objective must be one point and can be made up of several sentences. Therefore Council does not support the inclusion of any additional objectives to the DDOs as recommended by 3RRR.
7. It is considered that the matters relating to the protection of the Fresnel Zone at 221 Nicholson Street have been addressed in the proposed DDO20 at Clause 2.0 – Building Height.

Decision Guidelines

8. The proposed inclusion of decision guidelines is not supported as suggested by 3RRR. The building height requirement currently in the DDO20 is considered to appropriately address any impacts from development into the Fresnel Zone.
9. The matters raised in the presentation relating to impacts from new development including vibrations from construction are not a matter for consideration within the DDO. These matters should be considered through construction management of future development or through the building process.

Officer Response to Pia Herbert Presentation

10. The Panel has directed that Council investigate the use of the Public Use Zone 6 – Local Government (PUZ6) for the Edward Street car park land.
11. We disagree with Ms Herbert's suggestion that the PUZ6 is an appropriate zone for the land.

Potential use of the Public Use Zone

12. The purpose of the PUZ schedule 6 is for Local Government. If the PUZ6 were to apply, then a permit would be required for the use of this land for the purpose of a public park.
13. The purpose of the PUZ is also to recognise public land for public utility and community services and facilities. As no decision has been made to create or develop the land for the purpose of a public park, recognising this land for a community facility (ie. park) is premature.
14. Furthermore, an additional purpose is to provide for associated uses that are consistent with the intent of the public land reservation or purpose. This is not considered to be relevant as the land is not reserved in the planning scheme for this purpose. This land has been identified for future investigation.
15. The purpose of the zone limits employment generating uses to Local Government purposes only. This is not consistent with the intent of the amendment.
16. Clause 74 – Definitions defines a ‘minor sports and recreation facility’ and in particular the definition that would apply to a public park ‘informal outdoor recreation’ as:

Land open to the public and used by non-paying person for leisure or recreation, such as a cycle track, picnic or bbq area, playground and walking or jogging track.
17. The current application of the PUZ6 within the municipality of Moreland only applies to civic buildings such as: Brunswick library, Brunswick baths, Coburg Town hall, Council administration buildings in Coburg and the Wheatsheaf hub community facility.
18. The fact that an informal recreation facility is not an ‘as of right’ use within the PUZ6 indicates that it is not the most appropriate zone for the land. Council notes that within the Commercial 1 Zone as proposed, an informal outdoor recreation use is an ‘as of right’ use.
19. A planning scheme amendment in accordance with Section 96A of the *Planning and Environment Act 1987* to concurrently rezone and use the land for commercial and public park uses in the future could be pursued.
20. It should be noted that the original intent of this Amendment is to facilitate the implementation of the MILS. The creation of a public park would be pursued through a separate process. Council has made a commitment to investigate and explore options for the future use of the site as a park consistent with Council’s various adopted policies and strategies.

21. Sydney Road VicRoads project potentially looking at the need to relocate public parking offsite and the premature rezoning of this land for PPRZ presupposes a decision that has not yet been made.

Officer Response to Zivkovic, de la Coeur, Plompen and O’Toole Presentation

Existing Use

22. A sensitive use is defined in the MD1 – Potentially Contaminated Land as a residential use, a child care centre, a pre-school centre or a primary school. As the future use of the land is unknown, if a change to the existing use be proposed to any other use defined as sensitive, it is appropriate that an assessment is undertaken. Applying the EAO allows this to occur.
23. Irrespective of the fact that the land is currently used for a sensitive use (ie. dwelling) rezoning this land to the MUZ will legitimise and allow for the use and development of land for sensitive uses. Therefore Council must be satisfied that the land is appropriate for these uses to occur.

Relevance of SKM report

24. Council reiterates that the SKM report is not the basis for the recommendation of the application of the EAO for these properties (6 and 8 Ann Street and 10 Pitt Street). The Golder report is the basis for these recommendations.
25. There was a level of agreement from both experts that the potential for contamination could be described as medium in accordance with the DSE practice note.
26. The MD1 does not differentiate between the level of the likelihood of the potential for contamination (ie. high, medium, low). The DSE practice note provides a guide for the level of assessment based on the level of contamination. I note that in Mr McPhillips expert opinion,
- The “potential” for migrating groundwater contamination from the adjacent mechanics at 150-152 Victoria St, which is “possibly” upgradient of the sites, is at best likely to pose a **medium** potential for contamination at the sites. (emphasis added)*
27. In the DSE Practice Note - Table 2 – Assessment Matrix, for a proposed sensitive land use that has a medium potential for contamination, the practice note requires a site assessment from a suitably qualified environmental professional if insufficient information is available to determine if an audit is appropriate. Council considers the appropriate trigger for this assessment is via application of the EAO.

28. We note that the Golder and SKM methodologies reach the same conclusion that a medium or high potential of contamination should be included in the EAO. This is outlined in the 2011 SKM report on pages 4 - 6.
29. The appropriate tool to defer future assessment of potential contamination of a site is via an EAO as directed in the MD1. In particular MD1 states that is appropriate to defer the audit requirement if a rezoning relates to a large strategic exercise or involves multiple sites in separate ownership. Our view is that in order to satisfy Councils requirements in accordance with the MD1, the application of the EAO is the most appropriate tool to satisfy this requirement. This tool is considered to provide transparency over time to note the potential for contamination of the land.
30. Council has relied upon the expert recommendations from Golder who are suitably qualified environmental professionals. The opinion on whether land intended for a sensitive use (rezoned to allow residential, child care centre, pre-school centre or primary school) has conclusively been confirmed as having the potential for contamination. It would be remiss of Council not to apply the EAO as recommended by this qualified professional. Without further soil / groundwater assessment there is still a likelihood of potential contamination.
31. Mr Umbers referred to the Maribyrnong City Council's use of a local planning policy (Clause 22.03 Potentially contaminated land policy) to address potentially contaminated land as an option to applying an EAO.
32. As part of the State Government's smart planning reforms currently underway the policy framework is due to be reformed. Whilst the full gambit of these reforms is unknown, the restructure of the policy framework which includes:
- Improvements to the State Planning Policy Framework (SPPF) will allow local and state policy to be used together more easily, and provide greater certainty for all users of the system.*
- Extract from Smart Planning brochure September 2017
https://www.planning.vic.gov.au/_data/assets/pdf_file/0025/108556/Smart-Planning-brochure_September2017.pdf
33. Due to this uncertainty in policy framework reform, the investigation of a new policy to address contamination is unwarranted. The appropriate planning tool currently available is the EAO.

New assessment process

34. In response to the Ministerial Advisory Committee (MAC) Independent Inquiry into the EPA, the Victorian Government has committed to strengthening EPA's role and influence in the planning system. On the 7 June 2018 a trial of a more efficient approach for assessing potentially contaminated land was announced. An 18-month

Preliminary Risk Screen pilot will test and refine a faster and more cost-effective approach to assessing sites that have a low to medium potential for contamination. The new approach will be based on a desktop study and site inspection which may include sampling. A Preliminary Risk Screen will determine if a detailed audit is necessary.

35. Council Officers support the proposed pilot program and the stronger role of EPA's role in the planning scheme. However, it should be noted that under the current provisions, Council must satisfy itself that the environmental conditions of that land are or will be suitable for that use. We rely on the evidence of Golder for the proposed application of the EAO.

Officer Response to Erica Plompen Presentation

36. The MILS provides clear guidance on the zone selection for these categories and Amendment C164 is consistent in applying the guidance provided in MILS. It should also be noted that while the MUZ allows for commercial uses it is categorised in the suite of residential zones.
37. It is further noted that the use of the C1Z and MUZ is consistent with Council's current zoning approach to the Brunswick Structure Plan Area, which includes other historic industrial rezoning as part of amendment C134. The continued use of these zones creates consistency across a defined geographic area.
38. The 4 storey preferred maximum height established in the DDO is not proposed to be changed as part of this amendment and is considered to provide an adequate transition to the residential properties outside the BAC.
39. We acknowledge Council's position in the Part C submission for Amendment C134 as highlighted by Ms Plompen, however the Panel report did not support the rezoning of this land at that time and referred it to the MILUS review.

Officer Response to ID Barkly Street Presentation

40. We agree with the Mr McArdle assertion that a decision guideline that refers to the MILS (a reference document to the scheme) and does not include any additional built form guidance or which is already contained elsewhere in the MPS is confusing.
41. However, a useful decision guideline with a similar intention to link built form guidance is suggested as follows:
- How development within Category 2 Employment areas responds to the built form requirements for Category 2 Employment areas?*
42. We agree that these changes should apply to DDO18, 19 20. This includes amending the title in Clause 2.0 that retains only the words 'Category 2 Employment Areas'.

Officer Response to Wexham Holdings

43. We acknowledge the suggestion of Mr Carey to include specific performance objectives where a development proposes to exceed the preferred maximum heights. However, we do not consider that Amendment C164 is the appropriate process for this to occur. We believe changes of this magnitude are transformative because it applies to land which is not part of Amendment C164.
44. A 17m preferred maximum height is established in the DDO and this is considered to provide the flexibility to enable an appropriate site context response. In addition, the urban design presentation (which we note was the only evidence provided) indicates that a 17m height is appropriate for this site. We note that development within this precinct has already developed above this height indicating that discretion has been used appropriately in the context of development in this precinct.
45. We note that properties in this precinct are not key redevelopment sites in DDO19.

Officer Response to Dempton Industrial Presentation

Approach to zoning application

46. The MILS strategy forms part of the MPS and was considered by a Panel as part of Amendment C158. The categorisation of industrial land is not up for debate as part of this process. Council maintains that the consistent application of the C1Z to category 2 areas and MUZ for category 1 areas in the BAC is appropriate. We note that Council has sensibly deviated from this approach where land is included across 2 categories. This is outlined on pages 14 to 21 of the MILS Background report.
47. Mr Cicero questioned why a different approach had been applied to Trafford and Evans Street (category 3) in comparison to Albert Street (category 2). Trafford and Evans Streets are local residential streets whereas Albert Street is identified as a key pedestrian priority street within the Brunswick Structure Plan Reference Document 2018. The application of the C1Z to Albert Street is deliberate as it encourages activity at ground floor compared to residential uses.
48. Objective 5 – Employment Areas (Category 2) currently contained at Clause 21.03 of the MSS specifically supports the transition from traditional industrial uses to a broader range of employment uses and to prioritises employment uses over residential uses. Mr Cicero pointed out that the MUZ is contained within the suite of residential zones and in practice often results in wholly residential development. This is not the outcome sought in category 2 areas.

Potential conflicts between uses

49. Mr Cicero raised concerns about possible conflicts between uses permissible in the C1Z such as entertainment and residential uses. These conflicts are addressed in Clause 21.03 that provides guidance to manage conflict.

Preferred Maximum Heights

50. Whilst Council sees the merit of Mr Cicero's line of thinking in relation to the ambit of discretion provided by the metrics in the design objectives, Council awaits the outcomes of the activity centre pilot program currently underway (managed by DELWP) in relation to the possibility of providing upper maximums. Council would support the inclusion of the words mid-rise specifically in relation to the preferred maximum heights included within the DDOs (for example in the legend to the overall building and streetwall height maps).

Section Diagrams

51. Member Partenio suggested Council Officers provide a response to adding or changing the section diagrams as shown in schedules 19 and 20 of the DDOs to address employment uses.
52. Council does not consider this to be necessary on the basis that these controls are discretionary and an increased ceiling height on the ground and first floor to facilitate employment uses can be addressed through the planning permit process.
53. We note that Council's amended decision guideline in response to Mr McArdle's suggestion would assist decision makers in assessing applications that seek employment generating outcomes in the DDO.

Officer Response to Rod Duncan Presentation

Strategic Justification

54. We say the MILS and the BSP is the strategic work that underpins the justification for this amendment. Extending the BAC boundary to include the rezoned land is a reasonable and necessary change to the strategic framework plan to ensure consistency in the operation of the scheme.
55. We agree with Mr Duncan's original submission that the BAC boundary should be revised to include those properties that are now proposed to be included in DDOs 18, 19 and 20 in the strategic framework plan at Clause 21.02. Council has proposed this change post exhibition.

Further Strategic Work

56. The planning tools for Brunswick (ie. DDO's) were formerly introduced into the planning scheme in August 2016, less than 2 years ago.
57. As part of the strategic work to inform the background report, capacity modelling was undertaken for the land to be rezoned through the Amendment. The likely dwelling numbers generated by the model were consistent with the forecasted need for housing in Brunswick.
58. We disagree with Mr Duncan's suggestion that the amendment be suspended until further work is undertaken. We maintain that the strategic work that underpins the amendment is robust and seeks to implement current policy in the scheme.

Value Capture

59. The Development Contribution Overlay is the current tool in the MPS to collect funds for the provision and maintenance of roads, drainage and community infrastructure.
60. The Brunswick Place Action Plan that is reviewed on an annual basis, communicates Council's 5 year budgeted work program sorted into the themes of community, public spaces, transport and economy to be delivered in the Brunswick Structure Plan Area.

Officer Response to Lido Centre Presentation

61. Council notes Mr Scally's position that they now support the Amendment.
62. Council agrees with Mr Scally that the C1Z rezoning should commence and include the land at Lot 1 on title plan 807632A (formerly known as part of crown portion 93 - as included in Mr Scally's submission).

Officer Response to Peter Hansen Presentation

Review of building heights

63. In response to a Councillor request in December 2017 an analysis was undertaken of planning permits issued over the past 2 years within the Brunswick Activity Centre. In summary the analysis demonstrated that:
 - 40 planning permits have been granted over the past 2 years;
 - There are many examples of proposals which exceeded preferred building heights by a metre or 2, but only 8 of these applications exceed the preferred height by a storey or more;
 - Five of these applications exceeded the preferred height by 1 storey, 2 exceeded the preferred height by 2 storeys and 1 exceeded the preferred height by 3 storeys (for 4 of these 8 applications, the increase in height

was determined to be appropriate in the circumstances and supported by the Urban Planning Committee).

64. In this context, the pressure to exceed height limits in the BAC has generally been found to be limited to a case of 1 to 2 storeys above the preferred building heights nominated. This is considered to be an appropriate response to a discretionary control and considering the context and amenity impacts of proposed development.

Residential land within the BAC

65. The Panel requested further clarification as to how residential areas within the BAC were treated. The DDO was originally specifically prepared to protect residentially zoned land from Commercial Zones within the BAC. This is why the DDOs specifically apply protection to residential land outside the BAC to address interface issues. This is because the C1Z only includes buildings and works decision guidelines for the consideration of overlooking and overshadowing of land within residential zones and Council sought to provide greater protection to adjoining properties.
66. Properties currently or proposed to be zoned MUZ are provided greater protection within the BAC recognising that this is a residential zone and not a commercial zone. For land within or outside the BAC, Clause 32.04-9 of the MUZ relates to buildings on lots that abut another residential zone:

Any buildings or works constructed on a lot that abuts land which is in a General Residential Zone, Residential Growth Zone, Neighbourhood Residential Zone or Township Zone must meet the requirements of Clauses 55.04-1, 55.04-2, 55.04-3, 55.04-5 and 55.04-6 along that boundary.

67. Council confirms its position that the MUZ is an appropriate zone for transition residential areas within the BAC. Further the MUZ includes appropriate setback and amenity guidance to address interfaces within and outside the BAC.

Consideration of an alternate residential zone

68. The MILS background report provided an analysis of the application of the most appropriate zones as directed by the MILS policy. The implementation direction and most appropriate zone choice for sites included in MILS category 3 – transitional residential areas within the BAC is the MUZ. Council maintains that the MUZ is preferred over the RGZ or GRZ as it allows greater flexibility in land uses including allowing some industrial uses within an area identified for increased density. This is important as the MILS seeks to support existing industrial business.
69. However, Council concedes that on sites that are currently and have historically been used for wholly residential purposes, are within the BAC (currently in DDO) that a

RGZ may be an appropriate zone. However, it should be noted that the RGZ does not provide the same flexibility with regards to uses and therefore it is Council's position that the MUZ is the most appropriate zone within an activity centre context.

70. ***Officer Response to David Eddy Presentation***

71. Council notes the community support for a reduction in the heights for MILS areas 47 and 48, however these heights are not proposed to be changed as part of this amendment.

Officer Response to Kathryn Wellings Presentation

72. Council is not proposing to remove on street car parking as part of this process. The column B rates proposed to be applied through the PO does not change the car parking requirements for dwellings only visitor parking (none required).

Officer Response to Christina Bozsán and Nicholas Bourns Presentation

73. Council Officers acknowledge that there are no metrics provided to assess impacts of open spaces in areas nominated for increased density as part of this amendment. The DDOs that have been conformed to meet MD requirements retain a design objective specific to maintaining solar access to existing and proposed public open spaces and key pedestrian streets.

Officer Response to Edward Batrouney Presentation

74. Issues raised by Mr Batrouney are considered to have been addressed in this submission.

Council's final position on the Amendment

75. Council has undertaken a thorough process to prepare the MILS and subsequently Amendment C164 to the Moreland Planning Scheme. The amendment is founded on a strong strategic basis in the MILS, which has been tested through an independent planning panel and ultimately supported and approved by the Minister for Planning.

76. Having considered the issues raised in submissions and the evidence tabled by experts, Council's position on the Amendment remains as it was endorsed by Council at the 11 April 2018 Council Meeting. Council submits that:

- There is strong policy support for the proposal to rezone land identified as Category 2 and Category 3 MILS Areas within the Brunswick Structure Plan Area.

- The extension of the existing DDO's (18, 19 and 20), with the proposed amendments to address flexible employment built form outcomes, is an appropriate response in the context of providing consistency in decision making across the activity centre.
- The application of the EAO is appropriate in the context of risk mitigation and safety for identified potentially contaminated land.
- The application of the PO to properties within the activity centre is a logical and consistent approach to managing vehicle parking in the context of Moreland's existing planning policy and the approach proffered by DELWP to activity centres.

77. This completes the Part C Submission for Council, with the exception of the presentation of our evidence regarding the application of the Environmental Audit Overlay. Council will present this evidence, including its expert witness, on Wednesday subject to any amendments to the hearing timetable.

Richard Tolliday
Senior Strategic Planner
MORELAND CITY COUNCIL

