



City of
Moonee Valley

Special Meeting of Council

Tuesday, 8 March 2016 at 7.00pm

Agenda

Special Meeting of Council

Tuesday, 8 March 2016 at 7.00pm
to be held at the Moonee Valley Civic Centre

TO :

Members: Cr Andrea Surace Mayor
Cr Paul Giuliano
Cr Jan Chantry
Cr Shirley Cornish
Cr Jim Cusack
Cr Nicole Marshall
Cr Cam Nation
Cr Narelle Sharpe
Cr John Sipek

Officers: Mr Bryan Lancaster Chief Executive Officer
Mr Anthony Smith Director Corporate & Community Services
Mr Henry Bezuidenhout Acting Director Planning & Development
Mr Gil Richardson Acting Director City Services
Ms Yvonne Hansen Manager Legislative Services & Support

Business:

1. **Opening**
2. **Apologies**
3. **Declarations of Conflict of Interest**
4. **Reports**
 - 4.1 40 Hall Street & 34-36 Margaret Street, Moonee Ponds -
Consideration of VCAT Amended Plans3
5. **Close of Meeting**

BRYAN LANCASTER
Chief Executive Officer

REPORTS

4.1 40 Hall Street & 34-36 Margaret Street, Moonee Ponds - Consideration of VCAT Amended Plans

File No: FOL/16/130

Author: Principal Planner/Appeals Advocate

Directorate: Planning & Development

Purpose

This report relates to Planning Application MV/434/2015 which seeks planning approval for the construction of multi-storey buildings and associated works, use of the land for dwellings, reduction in the car parking requirements and waiver of the loading bay requirements at 40 Hall Street and 34-36 Margaret Street, Moonee Ponds.

The purpose of this report is to consider the formal amended plans that have been circulated by the permit applicant in order to inform Council's position at the upcoming VCAT Compulsory Conference hearing.

Executive Summary

- This report should be read in conjunction with the report presented to Council at the Ordinary Council Meeting held on 15 December 2015 and the subsequent Minutes of that meeting. Refer to **Appendix A** – Council Report (separately circulated) and **Appendix B** – Minute (separately circulated).
- At the Ordinary Council Meeting on 15 December 2015, Council resolved to refuse the granting of a permit for the construction of multi-storey buildings and associated works, use of the land for dwellings, reduction in the car parking requirements and waiver of the loading bay requirements at 40 Hall Street and 34-36 Margaret Street, Moonee Ponds. Refer to **Appendix C** – Original Plans (separately circulated).
- The development was refused on a number of grounds including building height, lack of housing diversity, internal amenity deficiencies, off-site amenity impacts and insufficient on-site car parking.
- In response, the permit applicant lodged a VCAT application for review against Council's refusal of the application on 4 January 2016.
- Upon receipt of the application, VCAT scheduled the matter for a Compulsory Conference on 10 March 2016 with a full hearing set for 18 April 2016 (for 5 days) if required.
- On 24 February 2016, the permit applicant submitted amended plans to VCAT, Council, and parties to the proceeding as well as to the original objectors to the application (**Appendix D** – VCAT Amended Plans – separately circulated). The amended plans incorporate a number of changes including inclusion of retail along Aspen Street West, revised internal layouts to the apartments located

within the podium levels of the Hall Street buildings, inclusion of a loading bay and additional on-site parking. In addition, a subsequent without prejudice offer for more parking and a cash-in-lieu contribution has been offered by the permit applicant.

Recommendation

That Council, with respect to an Application for Review against a refusal to grant a permit, resolves to advise the Victorian Civil and Administrative Tribunal (VCAT) and other parties to the application that it accepts the amended plans with a revised position of support at the upcoming Compulsory Conference.

Background

At its Ordinary Meeting held 15 December 2015, Council resolved to refuse Planning Application MV/434/2015 for Stage 1 of the redevelopment of the former Moonee Ponds Market Site on the following grounds;

1. The proposal fails to meet the strategies contained at Clause 15.01-2 (Urban Design principles) and Clause 21.06-4 (Urban Design) of the Moonee Valley Planning Scheme as the building height does not appropriately respond to the location and surrounding context;
2. The proposal exceeds the preferred heights nominated within Precinct 2 under Schedule 1 to the Activity Centre Zone;
3. The proposal fails to provide a sufficient degree of housing diversity contrary to the objective and strategies contained within Clause 21.05-2 (Housing Diversity) of the Moonee Valley Planning Scheme;
4. The proposal fails to achieve an appropriate level of internal amenity for apartments;
5. The proposal fails to minimise off-site amenity impacts and would lead to unreasonable wind and overshadowing impacts on surrounding areas
6. The proposal fails to provide sufficient car parking as required under Clause 52.06 (Car Parking) of the Moonee Valley Planning Scheme and is expected to lead to increased pressure for on-street parking in the surrounding area to an unacceptable degree.

Amended Plans

As noted within the Executive Summary, Council's decision to refuse the proposal was subsequently appealed to VCAT by the applicant. On 24 February 2016 the applicant amended the application to include the following key changes;

- Inclusion of five new retail tenancies along Aspen Street (West) along with external material changes to the building;
- Revised internal layouts to the apartments within the podium levels of the Hall Street buildings;
- A revised apartment mix;
- Inclusion of a loading bay;

- Provision for an additional (fourth) basement level along with the inclusion of the Stage 2 car parking within the Stage 1 application.

In addition to the above, the amended plans incorporate the modifications that seek to satisfy the Condition 1 requirements contained within the officer's recommendation report to Council on 15 December 2015.

In addition to the above, the applicant has indicated a without prejudice offer to provide an additional 124 car spaces across Stages 1 and 2 along with a cash in lieu contribution associated with the reduction of parking.

Compulsory Conference

As part of the VCAT process the application is scheduled for a Compulsory Conference on 10 March 2016.

The purpose of the Compulsory Conference is as follows;

- To identify and clarify the nature of the issues in dispute in the proceeding;
- To promote a settlement of the proceeding;
- To identify the questions of fact and law to be decided by VCAT; and
- To allow the VCAT Member to give directions concerning the conduct of the proceeding.

Everything disclosed at the Compulsory Conference is confidential and not able to be used outside these proceedings. When negotiating at the Compulsory Conference it must be realised that all issues of dispute may not be completely satisfied and in circumstances a compromise must be offered by all parties to assist in achieving a settlement.

Pursuant to Section 5.2.1 of the Statutory Planning Protocols the Strategic and Statutory Planning Manager, Planning Coordinator, Team Leaders and Principal Planners may decide on Council's position regarding amended plans tabled at VCAT.

However, given that the initial application was refused at the Ordinary Council Meeting on 15 December 2015, it is considered suitable that the matter be considered at a Special Council Meeting to decide on whether Council seeks to pursue its opposition to the proposal within the context of the latest amendments to the application.

Discussion

The Amended Plans

The amended plans have been initiated by the permit applicant as a means of addressing both the recommended Condition 1 requirements contained within the original officer's assessment report as well as responding to Council's subsequent grounds of refusal. From the outset, it is submitted that the amended plans satisfactorily address all the Condition 1 requirements.

The following discussion provides a further explanation of the key modifications to the proposal;

- ***Inclusion of 5 new retail tenancies along Aspen Street (West) along with external material changes to the building.***

In essence, this modification was introduced as a means of both addressing Conditions 1a) and 1e) as they relate to improving the residential ground floor layout and the lower level external appearance of the Margaret Street building respectively.

The retail tenancies individually range in size from 76 to 102 square metres and when combined add a further 468 square metres of retail space to the overall development. As a consequence of these retail tenancies, nine apartments have been deleted along Aspen Street West.

Externally, the façade has been modified to provide additional brickwork across the first floor level of the Margaret Street building. This modification has been introduced as a means of providing a more elemental and human scale to the street as initially suggested by the Office of the Victorian Government Architect.

- ***Revised internal layouts to the apartments within the podium levels of the Hall Street buildings.***

These modifications have been introduced as means of addressing Condition 1n) which requires the elimination of the bedroom saddleback arrangements to the south facing apartments within Levels 1-3 of the Hall Street buildings. Initial concerns were raised with respect to the low levels of natural daylight to these apartments in light of the balcony depths which measured in the order of 5.5 metres for bedrooms in saddleback arrangements and 3.53 metres to living room windows.

The amended plans reveal a reconfiguration of the internal layouts within Levels 1-3 to improve the overall amenity of the apartments. More specifically, the corridor has been relocated further south by 1.8 metres thereby shifting the south facing apartments closer to the natural light source. Details have been submitted which depict how additional light will improve the internal amenity of the saddleback bedrooms with the reduction of solid walls and increased provision for glazing to the living and study nook areas to enable natural light to fill the bedroom from multiple sources. Whilst these modifications result in a reduction of the balcony depths to these apartments, these outdoor spaces continue to exceed the minimum 8 square metre requirements with balcony sizes ranging from 11-23 square metres. As such, the spaces have not been unreasonably compromised as a consequence of these modifications.

In addition to the above, the shifting of the south facing apartments has resulted in the enlargement of the apartments to the north of the common corridor. Accordingly, these one bedroom apartments have now increased in size to between 62-68 square metres in lieu of the previous 49-55 square metre arrangements. Furthermore, the reconfigurations have enabled the inclusion of an additional 3 x 3 bedroom apartments within the podium.

- ***Revised apartment mix***

As a consequence of the revised internal arrangements to the buildings the apartment mix has been adjusted as follows;

Apartment	Original Proposal	Current Amended Proposal
One bedroom	396	387 (-9)

Apartment	Original Proposal	Current Amended Proposal
Two bedroom	199	195 (-4)
Three bedroom	22	25 (+3)
Total	617	607 (-10)

- ***Inclusion of a loading bay***

This has been included as a means of addressing Condition 1j). The loading bay has been introduced at the western end of the retail strip along Hall Street via an indented bay adjacent to the northerly orientated accessway. Council's Traffic Engineers have reviewed the proposed arrangements and have raised no objection.

Furthermore, given the inclusion of this provision a waiver of the loading bay requirements is no longer required under the ambit of any future permit issued.

- ***Provision for an additional (fourth) basement level along with the inclusion of the Stage 2 car parking within the Stage 1 application.***

The approach to car parking has been modified under the amended plans with the provision of an additional (fourth) basement level along with the inclusion of the Stage 2 basements within the Stage 1 application. As such, this would enable a complete basement level construction up to the ground level slab for the entirety of the site along with the delivery of the two linkages through the site earlier than the original proposal.

Accordingly, the amended plans reveal the following parking provisions;

Car Parking	
Stage 1	542
Stage 2	626
Total	1168

This aspect will be further discussed within section pertaining to refusal ground 6 later within this report.

Response to Council's Refusal Grounds

Having regard to the above modifications, the following discussion provides a response to Council's refusal grounds;

1. ***The proposal fails to meet the strategies contained at Clause 15.01-2 (Urban Design principles) and Clause 21.06-4 (Urban Design) of the Moonee Valley Planning Scheme as the building height does not appropriately respond to the location and surrounding context &***
2. ***The proposal exceeds the preferred heights nominated within Precinct 2 under Schedule 1 to the Activity Centre Zone;***

From the outset, it must be highlighted that the guiding assessment tool for the consideration of this application relates to the Schedule 1 to the Activity Centre Zone. As the adopted Development Plan has not been incorporated into the Planning Scheme this holds limited statutory weight.

The above refusal grounds relate to the inappropriateness of the building height. More specifically, at 76.45 metres (26 storeys) the Hall Street West building was of most contention.

The amended plans do not reveal any modifications to the building height.

For the purposes of completeness and having regard to this historical consideration of this site, the following table provides a comparative analysis of the building heights having regard to both Council’s adopted Development Plan for the site and the preferred heights nominated under Schedule 1 to the Activity Centre Zone;

Comparative Analysis					
Locality	ACZ	Adopted Development Plan (DP)	Planning Application	ACZ Compliance	DP Compliance
Precinct 2D (Hall Street frontage)	50m	47m-53m (Hall St East)	48.4m (Hall St East)	Yes – 1.6m under	Yes – 4.6m under max.
		50m – 65m (Hall St West)	76.45 (Hall St West)	No – 26.45m above	No – 11.45m above max.
Precinct 2E (Aspen St/Market Lane)	26m	26m-38m (Aspen St West)	38.6m (Aspen St West)	No – 12.6m above	No – 0.6m above max.
Precinct 2F	20m	20m (Margaret St)	18.7m (Margaret St)	Yes – 1.3m under	Yes – 1.3m under max.

As highlighted above, the Hall Street West building is proposed at 26.45 metres above the preferred height under the Schedule 1 to the Activity Centre Zone or 11.45 metres above that adopted by Council in the Development Plan.

Whilst preferred building heights are nominated within the various precincts of the Activity Centre, current relevant local policy includes provision for the consideration of height variances above that preferred under the Schedule.

The original officer’s assessment report provided a detailed justification as to the acceptability of the building height having regard to the strategic and physical context of the site, the appropriateness of the building design and the overall net community benefit of the proposal. Accordingly, it is not intended to repeat these arguments within this report.

In considering the acceptance of increased height, Council must be cognisant of the broader overall design of the proposal along with the significant public realm and

open space elements that provide substantial contributions to the wider Moonee Ponds Activity Centre. These development contributions include the following;

- The provision of a new north-south link at both the western and eastern end of the Hall Street site providing improved north-south connectivity for public use within the activity centre accounting for 1,663 square metres of area (12.42 % of the overall site area) as well as establishing a new public space for the community;
- Active frontages and a widening of the footpath and upgraded frontage along Hall Street as well as the upgrading of Aspen Street East;
- Upgrades to both Aspen St West and Market Lane to provide new shared pedestrian and vehicle zones;
- A without prejudice financial contribution of \$802,500 in line with the draft Cash-in-Lieu car parking strategy for Moonee Ponds.

In addition to the above, it is highlighted that the proposal has sought to align with Council's adopted Development Plan which incorporates public spaces and linkages that were not specifically contemplated within the Moonee Ponds Activity Centre Structure Plan and associated Schedule 1 to the Activity Centre Zone. Keeping this in mind, an alternative proposal, featuring less public space provision and overall contribution could be entertained under the guiding Schedule 1. As such, it is submitted that the building height variance should not be considered in isolation having regard to the broader net community benefits and design offered by the current proposal.

It is submitted that the current composition of the towers is sound and when viewed in combination the height variances will contribute to the establishment of a new dynamic skyline.

In light of the arguments presented above and with the adoption of a more holistic and balanced approach when considering matters pertaining to building height, it is recommended that these grounds no longer be pursued in these VCAT proceedings.

3. *The proposal fails to provide a sufficient degree of housing diversity contrary to the objective and strategies contained within Clause 21.05-2 (Housing Diversity) of the Moonee Valley Planning Scheme;*

It is submitted that the amended plans represent an overall improvement to the housing diversity offered within this development. The proposal provides for a mix of one, two and three bedroom dwellings of various sizes and configurations. More specifically, the amended plans offer the following improvements;

- An increased number of three bedroom apartments with the overall total provision increased to 25 dwellings and
- An improved new one bedroom product at an increased size of between 62-68 square metres, in lieu of the previous 49-55 square metre arrangements. Accordingly, a total of 24 one bedroom apartments have now been enlarged under the current scheme.

In addition to the above, the applicant has provided supplementary information which demonstrates the capability of the current design to accommodate additional three bedroom apartments, if required, to meet any future market demands. These

amalgamated arrangements could offer up to 90 combined apartment configurations without compromising the current set-out grids and structural column locations.

Having regard to the above, it is submitted that the amended design has satisfactorily addressed this refusal ground. As such, it is recommended that this item no longer be pursued in these VCAT proceedings.

4. *The proposal fails to achieve an appropriate level of internal amenity for apartments;*

This refusal ground was imposed as a consequence of the internal amenity deficiencies identified within the original officer's assessment report. More specifically, internal amenity concerns were raised to the ground floor apartment layout within the Margaret Street building and the south facing apartments located within Levels 1-3 of the Hall Street buildings.

As highlighted, the ground level of the Margaret Street building has been adjusted to incorporate retail tenancies along Aspen St West. As such, 50% of the apartments originally proposed have now been removed.

It is submitted that the balance of the ground level apartments are acceptable for the following reasons;

- The apartments, including the terrace areas, are northerly orientated;
- As a consequence of the recommended Condition 1 requirements (Condition 1c) Market Lane will be downgraded to a shared vehicle and pedestrian zone that must incorporate various treatments including street tree planting. As such, the direct interface to these apartments will be improved;
- As a consequence of the commercial space inclusion the overall floor to ceiling heights for the ground level have increased to 4 metres. This will enable additional light to penetrate into the ground level apartments and will offer an added sense of space.

With respect to the south facing apartments within the Hall Street building, these have been adjusted to move the dwellings closer to the natural light source. The saddleback arrangements to bedrooms have been modified with increased provision for glazing enabling additional light to penetrate into the apartments. The arrangements are considered acceptable and represent an improved outcome.

Having regard to the above, it is submitted that the amended design has satisfactorily addressed this refusal ground. As such, it is recommended that this item no longer be pursued in these VCAT proceedings.

5. *The proposal fails to minimise off-site amenity impacts and would lead to unreasonable wind and overshadowing impacts on surrounding areas*

With respect to wind impacts, it is highlighted that Condition 1r) within the original officer's recommendation calls for the incorporation of design modifications as detailed within the relevant assessment prepared by Vicpac Engineers & Scientists. The permit applicant is not contesting this condition and accordingly relevant notations have been included on the amended plans.

In a broader sense, it is submitted that a full appreciation of the wind impacts cannot be fully realised until the site layout and building arrangements have been resolved

for the abutting Stage 2 redevelopment. As such, there will be further opportunities to review wind impacts as part of the future assessment.

With respect to overshadowing, this aspect essentially remains unaltered given there are no reductions to the building heights. Notwithstanding, the original officer's assessment report provided a sufficient justification for the acceptability of overshadowing based on the context of the site and having regard to the increased height and densities envisaged for this location.

To shed further light on this aspect, the permit applicant has submitted supplementary shadow diagrams which provide a comparative analysis between the shadows cast by the present development (**Appendix E** - separately circulated) vs a proposed development (**Appendix F** - separately circulated) which would accord with the preferred 50 metre height limitation as dictated under Precinct 2D. The diagrams depict overshadowing at 6am, 6:15am, 6:30am, 9am, 11am, 1pm, and 3pm on 22nd September

The diagrams reveal that under both the present and reduced building height scenarios the extent of overshadowing is not overly dissimilar. Both shadow diagrams reveal that there will be additional shadowing cast over Hall Street throughout the day at the Equinox. The level of shadows is what would be expected of buildings of this scale, which is generally supported by Council's vision for the area.

Having regard to the above, it is submitted that this refusal ground cannot be adequately sustained. Wind impacts have been addressed via conditions and overshadowing would result even in the event of a reduced building height in compliance with the Schedule 1. As such, it is recommended that this item no longer be pursued in these VCAT proceedings.

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

As highlighted above, the applicant has sought to incorporate the Stage 2 parking within the Stage 1 application along with the inclusion of an additional (fourth) level. The plans reveal a total of 1168 car spaces, with 542 spaces allocated to Stage 1 over three levels.

In the lead up to the Compulsory Conference, the permit applicant has indicated a willingness to provide an additional 124 car spaces, of which a further 38 spaces would be allocated to Stage 1. The table below details the current amended plans vs the without prejudice offer by the permit applicant;

Component/No.	Current Amended Proposal	Without Prejudice Offer
One Bedroom (387)	271	290 (75% allocated)
Two Bedroom (195)	166	185 (95% allocated)
Three Bedroom (25)	50	50 (100% allocated)

Residential Visitor (607)	0	0
Retail (1586m ²)	55	55
Total Car Spaces	542	580

In addition to the without prejudice additional parking, the applicant has advised that a financial contribution associated with the residential parking shortfall is on offer. As such, a contribution of \$802,500 (based on the above shortfall of 107 residential spaces calculated at \$7500 per space) would be provided.

In essence, the above without prejudice offer seeks to align with the current draft Moonee Ponds Activity Centre Car Parking Plan and Strategic Justification for Cash-in-Lieu of On-Site Parking Provision as adopted for community consultation at Council's Ordinary Meeting held on 24 November 2015.

The without prejudice offer has been reviewed by Council's Traffic and Transportation Unit who have raised no objection to the revised arrangements subject to the following;

- The incorporation of a car share space within Stage 1. This can either be in the form of an additional car space in the proposed car park or alternatively a reallocation of one of the retail car parking spaces along with a contribution of \$15,000 as recommended for waivers associated with commercial car spaces under the Draft Moonee Ponds Activity Centre Car Parking Plan.
- The 55 retail car spaces must be publically available.

It is submitted that these matters can be negotiated at the Compulsory Conference.

Having regard to the above, it is recommended that Council accept the without prejudice offer at the upcoming Compulsory Conference and no longer pursue grounds against car parking in these VCAT proceedings.

Consultation

In accordance with relevant VCAT protocol, the amended plans have been served on parties to the appeal and original objectors. To date, no further statements of grounds have been lodged. The closing date for the serving of submissions is 18 March 2016.

Implications

1. Legislative

Pursuant to Section 85 of the Victorian Civil and Administrative Act 1998, everything said at the compulsory conference is confidential and is not able to be used outside the compulsory conference.

The application process and decision making is in line with the Victorian Charter of Human Rights and Responsibilities 2006 (Section 18 – Taking part in public life).

2. Council Plan / Policy

In presenting this report to council, council is achieving its Strategic Objective to Ensure there is clear direction for growth and proactive management of

development in the city in accordance with Council Plan 2013-2017 Theme 1: Sustainable living - Clear direction for growth and development of the city.

3. Financial

There are no financial implications as a result of presenting this report.

4. Environmental

There are no environmental implications as a result of presenting this report.

Conclusion

It is submitted that the amended plans are acceptable for the reasons highlighted throughout this assessment. Accordingly, it is recommended that Council offer a position of support at the upcoming Compulsory Conference hearing.

Appendices

Appendix A: Council Report - 15 December 2015 (separately circulated)

Appendix B: Minute - 15 December 2015 (separately circulated)

Appendix C: Original Plans (separately circulated)

Appendix D: VCAT Amended Plans (separately circulated)

Appendix E: Current Overshadowing (separately circulated)

Appendix F: 50m Building Height Overshadowing (separately circulated)