



City of
Moonee Valley

Special Meeting of Council

Monday, 27 February 2017 at 6.00pm

Agenda

Special Meeting of Council

Monday, 27 February 2017 at 6.00pm
to be held at the Moonee Valley Civic Centre

TO :

Members: Cr Andrea Surace Mayor
Cr Cam Nation
Cr Samantha Byrne
Cr Jim Cusack
Cr Rebecca Gauci Maurici
Cr Richard Lawrence
Cr Nicole Marshall
Cr Narelle Sharpe
Cr John Sipek

Officers: Mr Bryan Lancaster Chief Executive Officer
Ms Natalie Reiter Director Planning & Development
Mr Petrus Barry Manager Statutory Planning
Mr Troy Delia Senior Coordinator Legislative Services & Support
Mr Matt Spozio Principal Planner / Appeals Advocate

Business:

1. **Opening**
2. **Apologies**
3. **Declarations of Conflict of Interest**
4. **Reports**
 - 4.1 40 Hall Street, Moonee Ponds - Council consideration of the amended plans in relation to Stage 2 of the former Moonee Ponds Market Site to be presented to the Advisory Committee4
5. **Close of Meeting**

BRYAN LANCASTER
Chief Executive Officer

REPORTS

4.1 40 Hall Street, Moonee Ponds - Council consideration of the amended plans in relation to Stage 2 of the former Moonee Ponds Market Site to be presented to the Advisory Committee

File No: FOL/17/11

Author: Principal Planner/Appeals Advocate

Directorate: Planning & Development

Purpose

This report relates to Planning Application MV/491/2015, 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 for Stage 2 of the redevelopment 40 Hall Street, Moonee Ponds (the Former Moonee Ponds Market site).

In determining this application, the Minister for Planning has appointed the Former Moonee Ponds Market Site Advisory Committee (the Committee), which will hear the application over the course of up to four days being 2, 3, 9 and 10 March 2017.

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 proceedings.

Executive Summary

- This report should be read in conjunction with the report presented to Council at the Ordinary Council Meeting held on 26 July 2016 and the subsequent Minutes of that meeting. Refer to **Appendix A** – Council Report (separately circulated) and **Appendix B** – Minutes.
- At the Ordinary Council Meeting on 26 July 2016, Council resolved to refuse the granting of a permit for Stage 2 of the redevelopment of 40 Hall Street, Moonee Ponds. Refer to **Appendix C** – Original Plans (separately circulated).
- In response, the permit applicant lodged a VCAT application for review against Council's refusal of the application on 11 August 2016.
- At its Ordinary Meeting held on 19 September 2016, Council requested the Minister for Planning to call in the matter, primarily on the basis the application was deemed inconsistent with the preferred heights nominated under Schedule 1 of the Activity Centre Zone.
- On 29 November 2016, the permit applicant submitted amended plans to VCAT and Council. The amended plans incorporate a number of changes including building height reduction, reduced and revised apartment mix, increased provision for retailing and revised internal layouts. The plans were circulated to original objectors and no statements of grounds were received.

Consequently, the only parties to the review are Council and the applicant (Caydon Property Group).

- On 9 December 2016 the Minister for Planning advised Council of his decision to call in the application from VCAT with the intention of appointing an Advisory Committee to provide advice on whether a planning permit should be issued.
- On 9 February 2017 notification was received from Planning Panels Victoria that the Minister for Planning had appointed the 'Former Moonee Ponds Market Site Advisory Committee' with the proceedings to be held on 2 and 3 March 2017 along with reserve days scheduled 9 and 10 March 2017.
- In the lead up to these proceedings Council is required to formulate its position on the application by 27 February 2017.
- This report provides a summary of the amended plans with an analysis of the modifications in the context of Council's initial refusal grounds.
- Overall, it is submitted the changes represent an improvement on the initial scheme. On this basis, the report recommends Council modify its position as a means of limiting the matters in dispute to building height and separation as articulated within refusal points 1 and 2.

Recommendation

That Council, with respect to the application for review, resolves to advise the Former Moonee Ponds Market Site Advisory Committee and permit applicant that the application should be refused 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 building separation and heights do not appropriately respond to the location and surrounding context;
2. The proposal exceeds the preferred heights nominated within Precinct 2D under Schedule 1 to the Activity Centre Zone;
3. The proposal fails to achieve an appropriate level of internal amenity for apartments;
4. The proposal would lead to unreasonable wind impacts; and
5. 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.

Background (Council's Position)

At its Ordinary Meeting held 26 July 2016, Council resolved to refuse Planning Application MV/491/2015 for Stage 2 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 building separation and heights do not appropriately respond to the location and surrounding context;

2. The proposal exceeds the preferred heights nominated within Precinct 2D 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; and
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.

Subsequent to the above, Council resolved at its Ordinary Meeting on 19 September 2016 to request that the Minister for Planning call in the application on the basis of the above refusal grounds. More importantly, it was highlighted that the application was inconsistent with Planning Scheme Amendment C100 in so far as the proposed 34 storey building was well in excess of the preferred 50 metre height limit nominated under Schedule 1 of the Activity Centre Zone.

Amended Plans

In the lead up to these initial VCAT proceedings, amended plans were submitted by the permit applicant in an effort to address Council's refusal of the application. The plans are included in **Appendix D** – Amended Plans (separately circulated). The full list of changes is included within **Appendix E** – List of Changes (separately circulated).

These plans will be the subject of review at the upcoming Advisory Committee proceedings.

The following is a summary of the key changes:

- **Building envelope and height amendments to the Everage Street building**

The height of the Everage Street building has been reduced from 34 to 30 storeys (from 107 to 97 metres). At 97 metres, the revised tower height would stand 47 metres taller than the preferred 50 metre height dictated under Schedule 1 of the Activity Centre Zone or 4 storeys above the preferred maximum 26 storeys nominated in the adopted Development Plan. As a consequence of the height reduction, the building has been moved and elongated further north thereby reducing the ground floor setback from 10 to 5.6 metres to Homer Street. Further, the podium levels have been pushed forward with setbacks ranging from 1-2 metres from Homer Street.

Further to the above, it is noted that the office provision contained within the podium levels of the building has increased from 2,550 to 3,197 square metres (647 square metre increase).

- **Activation of Homer Street**

Retailing has been introduced along the full length of Homer Street in place of the previous ground floor apartments.

As such, a total of 7 new tenancies are provided, increasing the overall provision for retailing from 648 to 1,534 square metres. Included in the design change is the provision for a canopy for weather protection along the full frontage to Homer Street.

- Internal apartment layout amendments

Apartment layouts have been amended to provide greater daylight access primarily via the increased provision for glazing for all outlooks.

In addition, ventilation and daylight access have been provided to common area corridors within all buildings.

- Shape of the Homer Street East Building re-designed

The ground floor of the Homer Street East building has been retracted to provide a 19.6 metre separation from the Everage Street tower and improved visual connectivity through the north/south pedestrian link between Hall and Homer Streets.

- Inclusion of a loading bay

Provision for a new loading bay has been made within the south-western corner of the Everage Street tower with access via Aspen Street.

- Revised apartment mix

As a consequence of the reduced building height and internal modifications the overall apartment, yield for Stage 2 has been reduced from 663 to 595 apartments (68 apartments removed). Primarily, the losses account for fewer one bedroom apartments with a slight rise in three bedroom apartments and provision for new two level townhouse products within the Homer Street West building.

The amended plans incorporate modifications seeking to satisfy, in part, the Condition 1 requirements contained within the officer's recommendation report to Council on 26 July 2016.

The Former Moonee Ponds Market Site Advisory Committee

On 9 February 2017, Council received confirmation from Planning Panels Victoria that the Minister for Planning appointed an Advisory Committee to provide advice at Council's cost on whether a planning permit should be issued for Stage 2. The Advisory Committee comprises two members, Nick Wimbush (Chair) and Ray Tonkin.

The Terms of Reference have been circulated with the primary aim to:

- Provide advice to the Minister on whether a permit should be issued and if so, the appropriate conditions for the permit; and
- Examine whether the proposed heights have proper regard to the preferred building height provisions within Precinct 2D in Schedule 1 of the Activity Centre Zone (ACZ) to the Moonee Valley Planning Scheme.

The Committee is proposing to run the proceeding as a roundtable with a minimum of formality. This is scheduled to occur on;

- Thursday 2 and Friday 3 March 2017 at the Clocktower Centre, Balcony Tower Room, 750 Mt Alexander Road, Moonee Ponds from 9:30am – 4:30pm.

Reserve days have been scheduled for:

- Thursday 9 and Friday 10 March 2017 at the Clocktower Centre, Pascoe Room South, 750 Mt Alexander Road, Moonee Ponds from 9:30am – 4:30pm.

Within the purposes of the Terms of Reference, the Committee will be seeking, if possible, to provide an agreed position on the application to recommend to the Minister for Planning.

The Planning Panel has indicated the opening submissions of the parties should be circulated by close of business on Monday 27 February 2017.

Louise Hicks, barrister, has been engaged to represent Council's case at the upcoming proceedings. Further, Rob McGauran has been called to provide urban design expert evidence.

Discussion

Having regard to the design modifications, the following discussion provides a response to Council's previous 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 building separation and heights do not appropriately respond to the location and surrounding context;*** and
2. ***The proposal exceeds the preferred heights nominated within Precinct 2D under Schedule 1 to the Activity Centre Zone.***

The amended plans indicate a reduction to the Everage Street building from 34 to 30 storeys, thereby reducing the overall maximum height from 107.9 to 97 metres. The balance of the buildings generally remain unaltered in terms of their heights (although it is noted that the lift overrun associated with the Homer Street West building has been reduced in height by 1.3 metres).

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

Comparative Analysis					
Locality	ACZ	Adopted Development Plan (DP)	Current Amended Proposal	ACZ Compliance	DP Compliance
Precinct 2D	50m	59-80m (Everage St)	97m (Everage St)	No 47m above	No 17m above
		20-29m (Homer St East)	28.7m (Homer St East)	Yes 21.3m under	Yes 0.3m under

		26-50m (Homer St West)	58.3m (Homer St West)	No 8.3m above	No 8.3m above
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As highlighted above, the Everage Street building is proposed at 47 metres above the preferred height under the Schedule 1 to the Activity Centre Zone or 17 metres above that adopted by Council in the Development Plan.

It is noted the original officer assessment report recommended the Everage Street tower ought to be reduced to 28 storeys (two storeys less than currently proposed). In light of Council’s refusal of the officer recommendation, it is submitted that the revised building height fails to satisfactorily address Council’s position and as such, further reductions to below 28 storeys would be anticipated in order to satisfy this item of dispute.

With respect to tower separation, it is noted the Everage Street building has been shifted and elongated towards the north, thereby providing a setback of 3 metres to Aspen Street and increasing the spacing from the existing buildings to the south. The remainder of the tower separation distances within the development remain unaltered. Accordingly, it is considered this aspect of Council’s refusal remains in dispute.

In light of the above, it is recommended Council retain its position with respect to refusal grounds 1 and 2.

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 the amended plans represent an overall, though modest, improvement to the housing diversity offered within this development. The modifications to the apartment mix are highlighted as follows:

Apartment	Original Proposal	Current Amended Proposal
One bedroom	374	302 (-72)
Two bedroom	244	243 (-1)
Three bedroom	45	49 (+4)
Four bedroom	0	1 (+1)
Total	663	595 (-68)

As indicated above, the revised proposal reveals a substantial reduction in the number of one bedroom apartments, with the overall apartment yield reduced by 68 apartments. More specifically, the amended plans offer the following improvements:

- increased provision for 3 bedroom apartments;

- a slight increase in the number of 3 bedroom apartments within the Everage Street building equating to more than the minimum 10% required by the Section 173 Agreement (currently proposed at 12%);
- the provision for two level townhouses within the Homer Street West building which has increased the dwelling diversity, offering expanded living areas as well as the introduction of a four bedroom product;
- variances in the apartment layouts with over 30% of apartments afforded with small study areas; and
- reduction of 72 one bedroom apartments, thereby altering the overall proportional mix of apartments.

In addition to the above, the applicant maintains the capability of the current design to accommodate additional three bedroom apartments, if required, to meet future market demands. These amalgamated arrangements could offer larger apartment configurations without compromising the current set-out grids and structural column locations.

Having regard to the above, it is submitted the amended design has satisfactorily addressed this refusal ground. As such, it is recommended this item no longer be pursued at the upcoming 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 in relation to the ground floor apartments along Homer Street, south facing apartments and lack of daylight access to common corridors.

It is submitted the revised plans generally address internal amenity by way of the following:

- The previous ground floor level apartments along Homer Street have been removed and replaced with retailing in order to provide a more active frontage;
- The common corridors associated with the Homer Street East and West buildings are provided with openable windows to enable both light and ventilation to these spaces; and
- The floor layout of the Everage Street building has been reconfigured to enable north facing daylight and ventilation access to the common corridors.

Whilst it is noted there has been an increased provision for glazing along the frontages to the apartments so as to enable further opportunity for daylight access, it is submitted that supplementary information (i.e. daylight analysis) would be required in order satisfactorily demonstrate an appropriate level of amenity for the apartments. This aspect will be the subject of review at the upcoming proceedings as the permit applicant has indicated that expert evidence will be provided on this item.

Having regard to the above, it is submitted that this ground be retained in the interim.

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 1q) within the original officer's recommendation requires the incorporation of design modifications as detailed within the relevant assessment prepared by Vicpac Engineers & Scientists. More specifically, the condition requires wind control measures for the following areas of the development:

- The Homer Street East building designed to fulfil the 'sitting criteria' for the south and eastern areas adjacent to the proposed ground floor restaurant in order to ensure acceptable comfort levels for outdoor dining;
- The level 18 rooftop terrace of the Homer Street West building to be resolved; and
- Modifications to the Everage Street building to eliminate the requirement for a 1.8 metre high porous windscreen.

Limited information has been provided with the amended plans to demonstrate further wind testing of these areas. Accordingly, it is submitted that wind concerns be retained.

With respect to overshadowing, the impacts have been reduced as a consequence of the height reduction associated with the Everage Street tower. Accordingly, revised shadow diagrams have been produced, which depict the reduced extent. Shadows will continue to fall over Hall Street and over the rooftops of surrounding commercial properties (areas not deemed to be sensitive).

It must be acknowledged the site is afforded with strategic controls that enable a taller built form to evolve. 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. It also highlighted the net community benefit offered by the proposal as means of varying the preferred heights.

It is submitted that the reduced extent of overshadowing is acceptable on the basis of the impacts on largely non-sensitive commercial buildings, and having regard to the public realm improvements included as part of the proposal.

Having regard to the above, it is submitted this refusal ground be altered to reflect only the wind concerns and no longer to pursue overshadowing.

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.*

From the outset it is highlighted that the four levels of basement car parking have been approved as part of Stage 1. Whilst the amended plans do not seek to increase the onsite parking provision, it is highlighted that the apartment yield has been reduced by 68, thereby reducing on-site parking demands.

As part of the initial Stage 2 consideration, the proposal fell short 128 resident car spaces. Accordingly, a cash contribution in lieu of parking, consistent with the rates applied in the proposed Moonee Ponds Parking Overlay, was imposed via a condition. The current proposal falls short 65 resident car spaces, which will attract a contribution figure of \$487,500.

This requirement was included as a condition within the officer's assessment. Given that the applicant has not indicated an acceptance of these arrangements, it is submitted that this refusal ground be retained in the interim.

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. Accordingly, the only parties to the review by the Advisory Committee are Council and the applicant.

Implications

1. Legislative

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

The fee for the Advisory Committee is to be met by Moonee Valley City Council. The cost to Council associated with the proceedings is estimated at \$70,000.

4. Environmental

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

Conclusion

It is submitted that the amended plans represent a general improvement on the previous scheme. Notwithstanding, matters relating to building height and separation remain in dispute. Accordingly, it is recommended that Council confine its refusal grounds to these matters as reflected within the Recommendation.

Appendices

Appendix A: Council Report - July 2016 (separately circulated)

Appendix B: Minute Item - Ordinary Meeting of Council held 26 July 2016

Appendix C: Original Plans (separately circulated)

Appendix D: Amended Plans (separately circulated)

Appendix E: Amended Plans (List of Changes) (separately circulated)

Cr Sipek left the meeting at 7:38pm and returned at 7:40pm.

1.1 **40 Hall Street, Moonee Ponds (PC354406) Stage 2 - 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**

File No: FOL/16/130
Author: Principal Planner/Appeals Advocate
Directorate: Planning & Development
Ward: Myrnong
Minute No. 2016/98

Council Resolution

Moved by Cr Marshall, seconded by Cr Nation that Council issue a Notice of Decision to Refuse to Grant a Permit in relation to Planning Permit Application No. MV/491/2015 for (Stage 2) construction of multi-storey buildings and associated works, use of the land for dwellings and reduction in the car parking requirements at 40 Hall Street, Moonee Ponds (PC354406) 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 building separation and heights do not appropriately respond to the location and surrounding context.
2. The proposal exceeds the preferred heights nominated within Precinct 2D under Schedule 1 to the Activity Centre Zone.
3. The proposal fails to provide sufficient degree of housing diversity contrary to the objectives and strategies contained within Clause 21.05-2 (Housing Diversity) of the Moonee Valley Planning Scheme.
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 an increased pressure for on-street parking in the surrounding area to an unacceptable degree.

Division Called

A division was called and voting was as follows:

For: Crs Marshall, Cusack, Cornish, Chantry, Surace and Nation.

Against: Crs Giuliano, Sharpe and Sipek.

CARRIED