

## 9.2 Amendment C95 to the Manningham Planning Scheme - Request to Rezone land at 3-9 & 11 Mitchell Street, Doncaster East - Consideration of Application

Responsible Director: Director Planning & Environment

File No. C95

The ultimate destination for this report is: COUNCIL AGENDA

Neither the responsible Director, Manager nor the Officer authoring this report has a conflict of interest in this matter.

### SUMMARY

*The land affected by the Amendment comprises two lots, known as 3-9 and 11 Mitchell Street, Doncaster East.*

*The proposal is for a combined Planning Permit and Planning Scheme Amendment request under section 96(A) of the Planning and Environment Act 1987 (the Act), which seeks to provide for the use and development of the land at 3-11 Mitchell Street, Doncaster East for the purpose of a five-storey (approximately 19 metres) mixed use development. The Amendment proposes to rezone the subject land from a Residential 1 Zone (R1Z) to a Mixed Use Zone (MUZ). The Amendment also proposes to remove the Design and Development Overlay Schedule 8 (DDO8) – Residential Areas Surrounding Activity Centres and Along Main Roads from the site.*

*The rezoning request has been accompanied by a planning permit application to use and develop the site for a multi-storey mixed-use building for the purpose of a shop (supermarket), restaurant/reception centre, three levels of residential apartments and basement car park. The application also seeks a reduction in the number of car spaces and removal of an easement from the rear of the property.*

*While there is some merit to the proposal, within the context of Manningham's hierarchy of activity centres, and in considering the strategic basis of the proposal there is not a clear policy basis that provides support for the proposal. Furthermore, while recognising that the site is appropriate for development and putting aside the zoning issue, it is considered that the degree of change including the height and scale of the building, is excessive and does not provide a suitable transition to the adjacent residential properties. Further the proposed height of the development does not respect the designated neighbourhood character of the local area, would have a detrimental impact on adjoining residents and set a precedent for consideration of heights above 13.5 metres in and around other Neighbourhood Activity Centres.*

*It is therefore proposed to not support the request for an amendment to the Manningham Planning Scheme and planning permit application on the grounds that the proposed height of the development, at almost 19 metres, is not an acceptable outcome for this site, having regard to the context of its location within a Neighbourhood Activity Centre and the character of the local area.*

*It is recommended that any development of the subject land be set at a discretionary height of 13.5 metres, which is consistent with the heights endorsed by Council for*

*sites on the periphery of other Neighbourhood Activity Centres and allows for a level of flexibility to increase height in response to site context and good design outcomes. It also provides a suitable transition from the subject site to adjacent residentially zoned land, which has a preferred height of 11m (which is proposed to be introduced as a mandatory height under Amendment C96 which is currently with the Minister for Planning awaiting approval).*

## 1. BACKGROUND

- 1.1. The land affected by the Amendment comprises two lots, known as 3-9 and 11 Mitchell Street, Doncaster East (Refer Attachment 1). The land at 3-9 Mitchell Street is currently occupied by a two-storey building comprising the Monte Carlo reception centre, Casivini restaurant and the former YMCA recreation centre (now used by a church organisation). The land located at 11 Mitchell Street, to the south of Casivini's car park, is developed with a single storey detached dwelling. A drainage easement affects a portion of the western (rear) boundary of the site.
- 1.2. The site covers an area of 3,661sqm and has a frontage of approximately 93 metres to Mitchell Street. It is located on the western side of Mitchell Street, approximately 48m south of the intersection of Mitchell Street and Doncaster Road. It is located at the western interface of the Jackson Court Shopping Centre, which is one of ten identified Neighbourhood Activity Centres within the municipality.
- 1.3. The subject land is in a Residential 1 Zone and is also affected by Schedule 8 to the Design and Development Overlay (DDO8) – Residential Areas Surrounding Activity Centres and Along Main Roads. The land is identified as being within sub-precinct A of the DDO8 (Refer Attachment 2 – Site Context).

### Previous Planning Application

- 1.4. On 21 April 2011, Council received a planning application for the use and development of land at 3-9 Mitchell Street, Doncaster East. The proposal was for a five storey (16.5m high) redevelopment comprising the existing ground floor of the café/restaurant, function venue and gymnasium/office, with three levels of residential apartments and two penthouse apartments to a partial fifth floor level and three levels of basement car parking.
- 1.5. On 30 May 2011, Council officers requested further information and also identified preliminary concerns with the proposal, including that the proposal was contrary to the Manningham Planning Scheme, in particular the DDO8. Areas of non-compliance with the DDO8 included insufficient setbacks, excessive site coverage, excessive building height and lack of articulation. It was also noted that all references to 'retail' needed to be deleted from the plans as retail use was prohibited in a Residential 1 Zone (R1Z).

### Combined Planning Scheme Amendment & Planning Permit

- 1.6. Following discussions with Council officers, on 27 October 2011, the applicant lodged a combined planning scheme amendment and planning permit application under section 96(A) of the *Planning and Environment Act 1987*. The proposed amendment to the Manningham Planning Scheme sought to rezone the land at 3-9 Mitchell Street, Doncaster East from a Residential 1 Zone (R1Z) to a Business 1 Zone (B1Z) (now known as the Commercial 1 Zone) and to delete the DDO8. The rezoning is required in order to facilitate

the retail component of the development which proposes to incorporate a supermarket.

- 1.7. The planning permit application sought an amendment to the initial application to allow construction of a five storey building, encompassing four levels of residential, ground level retail (incorporating a supermarket) and two levels of basement car parking (these preliminary plans show an indicative height of approximately 17.6 metres).
- 1.8. On 29 November 2011, Council officers requested further information in relation to the revised proposal, including strategic justification for the rezoning of the land to B1Z (as the amendment is proposing to expand the activity centre boundary), and details on how the proposed development would link to and integrate with the activity centre and respond to the interface of the adjoining residential areas. That correspondence also raised preliminary concerns with the proposal, including the scale and height of the building and concerns in relation to traffic movement.
- 1.9. Council officers also advised the applicant that in principle support for the rezoning request would only be provided where the proposal incorporated provision for the use and development of a supermarket on the subject land (refer to additional discussion in Section 2 of this Report).
- 1.10. In November 2012, a revised proposal was lodged, which included land at 11 Mitchell Street, Doncaster East. The revised application for planning permit proposes to allow use and development of the land for a five storey building (18.9m high), comprising a supermarket at ground level (5 metre height), three storeys of residential and a restaurant on the top level, a reduction in car parking rates, dispensation for the provision of shower/change room pursuant to Clause 52.34 and removal of the easement located along a portion of the western boundary (Refer Attachment 3 – Development Plans).
- 1.11. On 11 December 2012, the application was presented to a Strategic Briefing Session of Council, where a number of concerns were raised by officers including the proposed expansion of the shopping centre, which is inconsistent with current Council policy and various concerns with regard to the development proposal, particularly in respect to the height and scale of the proposed building and impact on residential amenity.
- 1.12. In a letter to the proponent dated 9 January 2013, Council officers raised a number of specific concerns in relation to the proposal, primarily relating to the height of the proposed building, the floor area, design and management of the supermarket, the residential interface and amenity issues. Further information was also requested to address specific matters relating to the planning permit application.
- 1.13. The proponent subsequently presented to a Strategic Briefing Session on 19 February 2013 where Councillors indicated their support for proceeding with the process of considering the proposed amendment to rezone the land from R1Z to B1Z and to remove the DDO8, together with the proposed planning permit application based on the applicant's submitted proposal.
- 1.14. A further letter to the proponent was sent in March 2013, generally reiterating the concerns previously raised by officers and requesting additional information to address specific matters relating to the planning permit application.

- 1.15. On 28 March 2013, the application was presented to the Sustainable Design Taskforce. Some of the issues raised at the taskforce included the need for further information outlining the economic benefits, opportunities for beautification of the public realm and community benefits of the proposal, opportunities to improve pedestrian access across Mitchell Street to better integrate with the existing shopping centre, presentation of western facades to adjoining residences, noise from the commercial activities and ensuring that traffic and traffic management is adequately addressed. Generally positive feedback was provided from the external architect in relation to the architectural design response.
- 1.16. On 14 May 2013, the proponent submitted a written response in relation to Council's March correspondence and provided amended plans to address some of the officers concerns. Whilst the applicant did not provide all of the additional information requested, officers determined to proceed with assessing the application based on the information provided to date.

## 2. PROPOSAL/ISSUE

- 2.1. The current proposal is for a combined Planning Permit and Planning Scheme Amendment request under section 96(A) of the *Planning and Environment Act 1987* (the Act), which seeks to provide for the use and development of the land at 3-11 Mitchell Street, Doncaster East for the purpose of a five-storey (approximately 19 metres) mixed use development.
- 2.2. The Amendment proposes to rezone the subject land from a Residential 1 Zone (R1Z) to a Mixed Use Zone (MUZ). The Amendment also proposes to remove the Design and Development Overlay Schedule 8 (DDO8) – Residential Areas Surrounding Activity Centres and Along Main Roads from the site.
- 2.3. The rezoning request has been accompanied by a planning permit application to use and develop the site for a multi-storey building for the purpose of a shop (supermarket), restaurant/reception centre, three storeys of residential apartments and basement car park. The application also seeks a reduction in the number of car spaces and removal of an easement from the rear of the property.

### **Planning Scheme Amendment - Zoning**

- 2.4. Whilst the proposal seeks to rezone the land from a R1Z to a B1Z (now known as the Commercial 1 Zone – C1Z), following the release of the reformed residential and commercial zones, and subsequent introduction of these zones into the Victoria Planning Provisions (and local planning schemes), it is necessary to consider the request for amendment in the context of the new zones (The three new residential zones were introduced into the VPP on 1 July 2013, the reformed residential zones [including the Mixed Use Zone] and new commercial zones were introduced to the VPP and local planning schemes on 14 July 2013).
- 2.5. The request for amendment has been assessed against the suitability of using the Residential Growth (RGZ), General Residential (GRZ), Commercial 1 (C1Z) and Mixed Use Zones (MUZ). Whilst both the Commercial 1 Zone and Residential Growth Zone could be considered, it is considered that if the scheme was to be amended, that the Mixed Use Zone would be the most appropriate in terms of achieving the desired planning outcomes for the site.

- 2.6. The purpose of the MUZ includes providing for a range of residential, commercial, industrial and other uses which would complement the mixed use function of the area; providing housing at higher densities; and encouraging development that responds to the existing or preferred neighbourhood character of the area.
- 2.7. Further, in the event that development of the site does not proceed as currently proposed, the MUZ would help ensure that any future development of the site incorporates a residential component and that the site is not just developed for commercial activities. The MUZ also provides for greater consideration of the residential component of a development, including its impact on the amenity of adjoining residential areas than the C1Z.
- 2.8. Although building height is discussed separately in this section, the Schedule to the MUZ would also enable a maximum mandatory height to be specified, which would avoid the need to use an alternative planning tool to control/mandate a preferred height for the site e.g. section 173 Agreement or Design and Development Overlay (DDO). The application of a preferred/mandatory height to the site is considered essential to provide greater certainty to the local community and to assist with decision making.
- 2.9. As Council has not yet formally determined its approach to the application of the three new residential zones, it is considered somewhat premature to apply the new residential zones to this site (noting that the proposed shop component of this development could now be considered under the Residential Growth Zone). Further, the purpose of the Residential Growth Zone supports applying it only to those areas where heights up to and including 4 storeys are proposed. Given the current development proposal has a height of approximately 19m, the RGZ would not be appropriate in this regard.
- 2.10. The proponent has been provided advice in this regard and has not offered any particular objection to the application of a MUZ to the site.

#### **Planning Permit Application**

- 2.11. Pursuant to the site being rezoned Mixed Use, the permit triggers for the proposed development under the Manningham Planning Scheme are:

Clause 32.04 (Mixed Use Zone)	The use of land for shop (supermarket), restaurant and reception centre
Clause 32.04 (Mixed Use Zone)	The construction of a multi-storey buildings comprising apartments and the above uses with associated basement car parking
Clause 52.02 (Easements)	The removal of easement E-2 on Lot 2 of PS206485Q
Clause 55.06 (Car Parking)	A reduction in statutory parking requirements

- 2.12. The proposed development complies with the statutory requirements of the following potential permit triggers under the Manningham Planning Scheme:

Clause 55.06-8	The car park design accords with the planning scheme
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(Design Standards for Car Parking)	<p>requirement in relation to space size, aisle width and access arrangements.</p> <p>Council's Engineers have raised no issue with this aspect of the development, other than providing a clearance in the disabled parking space that would appear to have been met.</p>
Clause 55.07 (Loading)	<p>The proposed supermarket and restaurant has a loading area of around 100sqm which far exceeds the statutory minimum of 27.4sqm. The length, width and clearance requirements are also easily exceeded.</p> <p>Turning templates have been submitted with the Traffic and Car Parking Assessment that demonstrates the loading areas capacity to function using single axle 12.5m vehicles.</p> <p>Council's Engineers have raised no issue with this aspect of the development.</p>
Clause 52.34 (Bicycle Facilities)	<p>There is a statutory bicycle parking rate of 41 spaces (24 resident + staff and 14 visitor). There is also a requirement for a shower and change room facilities.</p> <p>The development provides 8 visitor bicycle spaces at the Mitchell Street frontage, 18 visitor and staff bicycle spaces at the upper basement level and 12 dedicated resident bicycle spaces at the lower basement level. The plans also indicate that the residential storage lockers and cages can be used for bicycle storage.</p> <p>The development provides for a shower and change room facility on the basement level.</p> <p>Should a permit be granted a condition will require 3 additional dedicated bicycle parking to ensure 41 dedicated space are provided in the development.</p>

2.13. State Planning Policy requires a building of this scale (5 or more storeys) to be considered using *Design Guidelines for Higher Density Residential Development* (Department of Sustainability and Environment, 2004) pursuant to policy at Clause 15 of the Manningham Planning Scheme.

### 3. MANNINGHAM PLANNING SCHEME

3.1. The following details the relevant sections of the State Planning Policy Framework and Local Planning Policy Framework, including the Municipal Strategic Statement are relevant to the consideration of the proposal.

#### State Planning Policy Framework

##### *Clause 11 – Settlement*

- 3.2. Planning is to anticipate and respond to the needs of existing and future communities through the provision of zoned land for amongst other uses, housing, employment and commercial facilities.
- 3.3. The amendment is generally consistent with Clause 11.01 Activity Centres which aims, to build up activity centres as a focus for high-quality development, activity and living for the whole community by developing a network of activity centres and encourage a range of activities which are highly accessible for the community. The proposed rezoning of the site to a MUZ will take advantage of the site's proximity to the existing neighbourhood Activity Centre and will ensure that the supermarket/retail component of the development application benefits from good access to public transport and makes full advantage of existing service and infrastructure.
- 3.4. Clause 11.02 Urban growth seeks to ensure that a sufficient supply of land is available for a mix of land use activities and located urban growth close to transport corridors and services. The site is well located within a Neighbourhood Activity Centre and the development application proposes to provide a diversity of housing opportunities in addition to a supermarket and restaurant/reception centre contributing to the range of services and facilities offered in the local area.
- 3.5. Clause 11.04-2 explains the hierarchy of activity centres and broadly defines the role and function of activity centres. Neighbourhood Activity Centres should seek to provide a mix of uses that meet local convenience needs and are accessible to a viable user population by walking and cycling. The proposed rezoning will enable the provision of a supermarket which will contribute to the mix of uses in the Jackson Court centre, will provide a community focal point and is accessible by local users walking, cycling and by public transport.
- 3.6. One matter that is important to focus on, relates to the distinction in regard to the provision of residential development in the hierarchy of activity centres. A Principal / Major Activity Centre have the potential to grow and support intensive housing developments without conflicting with surrounding land uses. Higher density housing is encouraged in and around neighbourhood Activity Centres that is designed to fit the context and enhance the character of the area while providing for a variety of housing options.
- 3.7. The degree of change is anticipated to be significant in principal and major activity centres as intensive residential development is encouraged without limitation. Whereas a Neighbourhood Activity Centre encourages higher density housing with a limitation that it 'fit the context' and 'enhance the character' of the area. In this regard consideration should be given to the physical attributes of the site and surrounds and a more strategic context in terms of the activity centre hierarchy at a municipal level. It is considered, that whilst the architectural presentation and internal amenity provided though the design is generally acceptable, that the scale and intensity of development and specifically building height, does not 'fit the context' or 'enhance the character' of the area. These specific requirements in the SPPF are therefore not achieved.

*Clause 13 – Environmental Risks*

- 3.8. Clause 13.04 Noise and air aims to assist the control of noise effects on sensitive land uses. The applicant has submitted an acoustic assessment to

support their application, which incorporated a restaurant/reception centre on the top level of the buildings. Planning permit conditions could be applied to minimise amenity impacts associated with noise from the development.

*Clause 14 – Natural Resource Management*

- 3.9. Clause 14.02 Water aims to assist with the protection of catchments, waterways and ground water. Planning permit conditions could be applied to minimise sediment discharges as part of the construction management plan.

*Clause 15 – Built Environment and Heritage*

- 3.10. Clause 15.01 Urban environment aims to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity. The proposed rezoning will enable a higher and better use on the site that will form the western bookend to the Jackson Court Neighbourhood Activity Centre. The rezoning will enable a mixed use development that will generate good opportunity for passive surveillance over the shopping centre and local street network as well as providing opportunity to enhance the treatment of the public realm via new street paving and landscaping.
- 3.11. Clause 15.02 Sustainable development aims to encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions. The aims to provide 65 new apartments within an established urban area promoting state objectives of urban consolidation. A Sustainable Management Plan has been developed for the application which aims to reduce energy and water use and encourage walking and cycling through the provision of bicycle hooks for residents and a number of vertical bike spaces for other bicycle users.

*Clause 16 – Housing*

- 3.12. Clause 16.01 Residential development seeks to provide for housing diversity and housing affordability and ensure new housing is located in or close to activity centres, public transport and jobs and services. The proposed rezoning will enable the achievement of a mixed use development on the site that includes the provision of a mix of one and two dwellings. The dwelling mix will contribute to a diversity of housing types in the local area and support commercial activities the Jackson Court shopping centre. These dwellings will also be located proximate to public transport services that operate along Doncaster Road and connect to local employment centres.

*Clause 17 – Economic Development*

- 3.13. Clause 17.01 Commercial, seeks to encourage development which meets the communities' needs and manages out of centre development. The amendment supports the re-establishment of a supermarket at the edge of the Jackson Court Neighbourhood Activity Centre that will service the day to day convenience needs of local residents and support the economic viability of the centre.

*Clause 18 – Transport*

- 3.14. Clause 18.01-1 Land use and transport planning and Clause 18.02-1 Sustainable personal transport, promote a safe and sustainable transport



system by integrating land use and transport and sustainable personal transport. The proposed rezoning and reinstatement of a convenience supermarket on the subject site will achieve the objectives of Clause 18 by providing a local retail service adjacent to the existing commercial centre, that satisfies the needs of local residential neighbourhood and can be accessed on foot, bicycle or public transport.

### **Local Planning Policy Framework**

#### *Clause 21.03 Key Influences*

- 3.15. This Clause outlines Manningham's commitment to sustainability and the key issues that are likely to challenge Manningham's future growth and sustainable development.
- 3.16. The provision of residential housing needs to have regard to our ageing population coupled with the trend towards smaller household size, whilst being located in proximity to activity centres, major roads and transport routes. Council's growth strategy seeks to balance the integration of current and future housing needs, neighbourhood character, protection of significant landscapes and environmentally sensitive area. Increasing pressure for infill development, land consolidation, and higher density housing needs to occur in a manner that respects residential character and the amenity values by existing residents. It also discusses Council's intention to consolidate development within existing retail centres to reinforce the existing activity centre hierarchy.

#### *Clause 21.05 Residential*

- 3.17. Clause 21.05 of the MSS relates to residential development including land in the Mixed Use Zone (MUZ). Managing change and growth of these areas by encouraging infill residential development that consolidates the role of established urban areas and reducing development pressure in areas with environmental and landscape values is encouraged.
- 3.18. The subject site and adjoining land to the south and west is identified in Clause 21.05 as being in Residential Character Precinct 2 – Residential areas surrounding activity centres and along main roads. Land within Precinct 2 has been included in a Design and Development Overlay Schedule 8 (DDO8).
- 3.19. Precinct 2 can be broken down further into two sub-precincts; Sub-precinct A and Sub-precinct B. The subject land is located in Sub-precinct A, which encourages three storey, contemporary development on consolidated sites with a minimum area of 1800sqm.
- 3.20. The amendment proposes to remove the DDO8 from the land, in turn removing it from Precinct 2 – Residential Areas Surrounding Activity Centres and Main Roads in this Clause. The planning controls currently applying to the land (DDO8) which include an 11m height limit and the preference for 60% site coverage under Sub-Precinct A will cease to apply to site.
- 3.21. Clause 21.05 will, however continue to apply to the site. Relevant objectives at 21.05 include:
  - Potential impact of new development on the surrounding area.

- To ensure that housing choice, quality and diversity will be increased to better meet the needs of the local community and reflect demographic changes.
- To ensure that higher density housing is located close to activity centres and along main roads in accordance with relevant strategies.
- To encourage residential development that enhances the existing or preferred character of the residential character precincts as shown on Map 1 to this Clause.
- To ensure that business activities do not compromise the residential amenity and character of the neighbourhood.
- To ensure that the range of uses within mixed use developments are compatible.
- To discourage the rezoning of land for commercial uses outside activity centres.

*Clause 21.09 Activity Centres and Commercial Areas*

- 3.22. Clause 21.09 applies to all activity centres and commercial areas and also includes land in a Mixed Use Zone. It sets out Manningham's hierarchy of activity centres and recognises that activity centres are integral to the local economy and are an important focal point for community life and interaction. Key challenges for Council's network of activity centres are to ensure commercial development is contained within the existing activity centres and to ensure that centres remain vibrant, viable and sustainable into the future.
- 3.23. The following objectives of Clause 21.09-4 Neighbourhood Activity Centre are relevant to this proposal including:
- To maintain the role of NACs to meet local convenience needs.
  - To achieve active street frontages in NACs.
  - To discourage the location of new commercial and retail development outside NACs.
  - To minimise the negative impact of NACs on the amenity of adjoining residential areas.
  - To achieve high quality urban design which promotes a sense of place, community identity, social interaction and a safe environment.

*Clause 21.10 Ecologically Sustainable Development*

- 3.24. Manningham is committed to Ecologically Sustainable Development (ESD) and supports and encourages land use planning and development, design, construction using ESD principles. The proponent has submitted a SMP which seeks to reduce overall water and energy use.

*Clause 22.01 Design and Development Policy*

- 3.25. This policy applies to land in a Commercial 1 and Mixed Use Zone (MUZ). The policy directs that the scale, form and appearance of development must respond to site opportunities and constraints and must make a positive contribution to the City's sense of place. The policy comprises seven design

elements relating to context (building form, colours and materials, height, massing, setbacks, roof form and window and door proportions), landscape design, the public realm, landmarks, views and vistas, residential interface, car park and driveway construction and subdivision.

- 3.26. The two elements that are of particular importance to consideration of this proposal relate to context and residential interface.

*Clause 22.06 Eating and Entertainment Premises Policy*

- 3.27. This policy directs that eating and entertainment premises should be located within existing activity centres and commercial areas. The relevant objectives of this policy are:

- To ensure that eating and entertainment premises are appropriately located having regard to:
  - Intensity (no. of seats/patrons) and hours of operation of the proposed activity;
  - Location of access points;
  - Adequate provision of car parking; and
  - Traffic generated being appropriate to the street locality and not adversely affecting traffic flow or road safety.
- To ensure the design, scale and appearance of development is consistent with the residential character and streetscape of the area.
- To ensure that residential amenity is not detrimentally affected by the operation of eating and entertainment premises including the effects of loss of privacy, noise, car parking and traffic, light spillage, odour and waste.

*Clause 22.07 Outdoor Advertising Signs Policy*

- 3.28. If the development were to proceed, it should be noted that any future application for signage would need to have regard to this local planning policy.

*Clause 22.08 Safety through Urban Design Policy*

- 3.29. Appropriate design can improve safety and reduce the level of crime and anti-social behaviour.

#### **4. CONSIDERATION OF AMENDMENT**

##### **Floor Area of the Supermarket**

- 4.1. In October 2008, Council engaged Tim Nott, Economic Analyst, to undertake a review of the demand for a supermarket in Jackson Court, following the announcement of the closure of the Woolworths supermarket and its replacement with a Dan Murphy liquor shop. At the time many of the retailers were concerned that the loss of the only supermarket in the centre would result in a significant loss of trade to the centre and a reduction in the service available to the local community.
- 4.2. That report suggested that the replacement of the supermarket with a liquor store would result in the reduction of overall sales in Jackson Court and that

there could be the potential to support a small supermarket, in addition to the liquor store.

- 4.3. The assessment noted that, *'If a supermarket of between 1,300 sq m and 2,300 sq m were to operate from Jackson Court as well as the proposed Dan Murphy store, the total food and grocery sales in the trade area would be \$2m to \$10m higher than at present.'* It was noted however that the larger supermarket scenario could have some adverse impacts on the food and grocery offering at Doncaster East/Devon Plaza. The assessment determined that, *'in order to prevent any significant adverse impact on surrounding centres, the supermarket at Jackson Court should be between 1,300 sq m and 1,800 sq m...'*
- 4.4. Council subsequently undertook an EOI process, to determine interest in locating a small supermarket on Council-owned land within Jackson Court. In July 2012, Council decided not to defend Supreme Court action against Woolworths in relation to removal of access reservation, in order to enable a supermarket to be developed on a portion of the Council owned car park to the east of the existing Dan Murphy site.
- 4.5. It would appear that the current proposal has in part been prepared in response to Council's inability to resolve the issues relating to the provision of a supermarket on its own land within the Jackson Court Activity Centre. The current application is seeking the development of a supermarket with a total area of 2,378sqm. This appears to include a small retail space in the north-east corner, which could potentially be used for an associated retail activity e.g. liquor store, bakery etc. This area does not appear to have direct pedestrian access from Mitchell Street.
- 4.6. Whilst officers requested further economic analysis from the proponent to support the proposal and to address any potential impact on other centres, the proponent in their response noted that, given the convenience nature of the supermarket and its relatively small size further economic analysis was not considered necessary. In this regard they provided the following response:

*'It is submitted that the proposed supermarket will not adversely impact the surrounding centres because:*

- *The proposed supermarket, even at 2300sqm is not a full line supermarket and will not compete with the major Woolworths or Coles supermarkets at Tunstall Square or Devon Plaza. The proposed supermarket will fulfil local convenience needs and is not expected to replace primary shopping trips to larger supermarkets.*
- *The proposed supermarket's size sits at the upper limit of the range anticipated in the demand analysis prepared by Tim Nott.*
- *It is unrealistic to expect that surrounding supermarkets will not be impacted at all by the proposed development. These centres benefited from increased trade when the former supermarket closed in 2008. It is realistic to expect some loss in market share when a supermarket is re-established in the centre, equating to the restoration of the previous equilibrium of demand.*
- *Sustainable land use and development principles encourage reduced use of private motor vehicles. The reinstatement of a supermarket will encourage local residents to walk to their local shops rather than travel*

*by car to more distant shopping centres to meet every day needs.'*

- 4.7. Although it was hoped that an economic analysis would provide information on the current retail sales of the shopping centre and further justify provision of the larger sized supermarket and its potential impact on the other centres, it is reasonable to expect some loss in market share from the other centres as a result of the re-establishment of a supermarket at Jackson Court. What remains unclear, however is the level of impact a larger sized supermarket will have on other local centres.
- 4.8. The *Manningham Activity Centre Strategy 2005*, did not identify a shortage of land for new development within the Centre. Furthermore the Strategy does not support out of centre development and Clause 21.09-4 (Neighbourhood Activity Centres) of the MSS specifically discourages the location of new commercial and retail development outside Neighbourhood Activity Centres. Given the centre is already quite large and extends to the east along Doncaster Road and Jackson Court, further expansion of the centre needs to be considered carefully.
- 4.9. It should be noted, however, that the reformed zones allow a broader range of activities to be considered, particularly within the new suite of residential zones, albeit, no formal decisions have yet been made on the application of these new zones. While this may be appropriate in some instances, officers are somewhat concerned that the new residential zones are contrary to current planning policy.

#### **Management of the Supermarket**

- 4.10. Officers have previously advised the applicant that in-principle support for the proposed rezoning would only be provided where the proposal incorporates provision for the use and development of a supermarket on the subject land, which would need to be tied to the site via a section 173 agreement or other suitable mechanism. The proponent has generally consented to the development of such an agreement and justification provided for the proposal, it restricted to the use of this land for a supermarket.
- 4.11. It is noted, however that there may be difficulty in restricting the retail space to a supermarket use in the long term and that the applicant could appeal such mechanisms, such as provision of a section 173 Agreement, to Planning Panels Victoria and/or VCAT.
- 4.12. Even so, it is considered that the unchecked use of this space for other retail activities could have unintended implications for other retail uses within the Jackson Court Shopping Centre and potentially other Neighbourhood Activity Centres.
- 4.13. It would be preferable that the application include a commitment for the supermarket in order to provide greater assurance that the supermarket will be tenanted and will not remain vacant and unused. This would also provide a greater level of certainty to Council and the broader community and would ensure that the supermarket space is appropriately designed to meet their needs.
- 4.14. If the development proceeds, it is recommended that Council enter into a section 173 agreement with the landowner to require provision of a

supermarket on the subject land. The section 173 agreement should then be placed on the title.

#### **Height & Scale of Building**

- 4.15. The proposed development is for a five storey building with a maximum height of approximately 19 metres (noting the ground floor incorporating the supermarket is approximately 5 metres in height). In order to determine the appropriateness of the height and scale of the proposed development, it is important to consider the development, firstly in the context of its location within a Neighbourhood Activity Centre and secondly in context to the activity centre hierarchy within Manningham.

#### *Local Context*

- 4.16. The subject land is currently zoned R1Z in conjunction with a DDO8 (sub-precinct A). Land to the west and south of the site is also included in R1Z in conjunction with a DDO8, whilst land immediately to the north and east of the site is included in a B1Z.
- 4.17. Surrounding residential zoned land is developed with a mix of single detached dwellings and single and double storey infill residential housing. A number of larger apartment buildings of 3-4 storeys (which are generally in the vicinity of 11 metres in height) have been developed in the local area, although these are largely restricted to Doncaster Road.
- 4.18. Pursuant to Table 1 to Schedule 8 of the Design and Development Overlay, within sub-precinct A the maximum building height is 11 metres provided the lot is 1,800sqm or greater. If the condition regarding lot size is not met, the maximum building height is 9 metres. It is important to note, that the height controls contained in the current DDO8 are discretionary in nature.
- 4.19. In May 2013, Council adopted Amendment C96 to the Planning Scheme to effectively tighten the DDO8 provisions, including, among other things, introducing limited mandatory maximum building height and minimum lot size controls and introducing a new 'Main Road' sub-precinct where the preferred height and minimum lot size would continue to remain discretionary.
- 4.20. The subject land and adjoining residential land to the south and west are proposed to be retained within sub-precinct A of DDO8 as part of Amendment C96. As part of Amendment C96 the provisions relating to sub-precinct A are proposed to be amended to provide for a mandatory requirement for height limits and minimum lot size as follows:
- 11 metres for development on lots of 1,800m<sup>2</sup> or more; and
  - 9 metres for development on lots less than 1,800m<sup>2</sup> and 10 metres on a sloping site.
- 4.21. Amendment C96 is awaiting approval by the Minister for Planning.
- 4.22. In considering the local context and the character of the area it is important to acknowledge that a significant number of residential lots to the south and west of the subject land have already been developed with a mix of single and double storey townhouses. The opportunity to develop the remaining patchwork of larger lots, some of which are isolated between multi-unit development, will therefore limit opportunities for future apartment style

development. In effect, future development of these lots will largely be restricted to town house developments of up to 9 metres in height.

- 4.23. As noted above, land to the north and east of the site is included in a Commercial 1 Zone (C1Z). The Jackson Court Shopping Centre located to the east of Mitchell Street is identified as a Neighbourhood Activity Centre. Development within the centre is of a low scale, being predominantly single-storey and double-storey in form.
- 4.24. Whilst it is acknowledged that no height limits are specified in the C1Z (nor the former B1Z) and that there are no overlay controls that provide any specific guidance about form or height of buildings within this centre, the SPPF guides development and effectively puts a cap on height and scale by requiring that development must 'fit the context' and 'enhance the character'.
- 4.25. In this regard an independent urban design analysis has been undertaken of the proposed development to assist with consideration of the application. In particular the relationship/impact of the proposal with the residential interface and public realm areas. Preliminary recommendations have been provided to Council by the consultant in the form of preferred maximum building height and setbacks. The preliminary assessment recommends a maximum overall height of 14.5 metres (4 storeys), with a maximum street wall height of 11 metres (3 storeys). It also recommends a maximum height of 7.2 metres (2 storeys) on a boundary adjoining a residential property.
- 4.26. Having regard to the local context, and putting aside the issue of zoning, it is considered that the proposed height of approximately 19 metres is excessive and is out of context with the local area, particularly given the interface to residential properties to the south and west of the site, which pursuant to Amendment C96 are proposed to have a maximum mandatory height of up to 11m. In this regard it is clear that a more appropriate transition in height between the adjacent DDO8 areas and subject land is required.

#### *Activity Centre Hierarchy*

- 4.27. Manningham's network of activity centres currently comprises one Principal Activities Area (Doncaster Hill), one Major Activity Centre (The Pines, East Doncaster) and ten neighbourhood Activity Centres (Donburn, Tunstall Square, Jackson Court, Templestowe Village, Macedon Square, Bulleen Plaza, Doncaster East / Devon Plaza, Park Orchards, Warrandyte Township and Warrandyte Goldfields). There are also a number of local activity centres and commercial areas throughout the municipality.
- 4.28. Clause 21.09 Activity Centres and Commercial Areas of the Planning Scheme notes that, '*The Principal, Major and identified Neighbourhood Activity Centres will be the focus of increased residential development and growth.*' In considering the appropriateness of the scale and height of the development, it is also important to examine the broader municipal context and whether the proposal will set a precedent for development within and adjacent to other Neighbourhood Activity Centres.
- 4.29. Although Doncaster Hill is included in the Activity Centre Zone, The Major, Neighbourhood and some local activity centres are all included within the Commercial 1 Zone. It is important to acknowledge that this zone applies equally to these activity centres within the municipality. Therefore the intensity of development within these centres for the most part will be influenced by the

hierarchy of activity centres and the extent of change proposed within these centres as part of planning policy developed for these centres (e.g. through Structure Plans).

- 4.30. The Doncaster Hill Principal Activity Centre has been identified as a focus for high density residential development. Doncaster Hill is included within an Activity Centre Zone (ACZ1), which sets out the design and built form objectives to be achieved. The heights for Doncaster Hill are mandatory and range in height from 11 metres up to 40 metres. Whilst the building heights vary throughout the Activity Centre, a mandatory maximum height of 14.5 metres generally applies where the land interfaces with residential land, although this varies between each sub-precinct (with some interfaces e.g. Precinct 6 – 11m and Precinct 3 – 12.5m being lower than this).
- 4.31. Although located on the urban fringe of the Melbourne metropolitan area, mixed use development, higher density housing and community, cultural and entertainment facilities are encouraged within The Pines Major Activity Centre. A Structure Plan for the Pines Activity Centre was endorsed by Council in 2011. Schedule 9 to the Design and Development Overlay (DDO9) – Residential areas within The Pines Activity Centre, implements key aspects of the Structure Plan and sets out the design and built form objectives to be achieved. The preferred maximum building heights within the DDO9 vary from 11 metres to 16 metres, with all land directly abutting a Residential 1 Zone of 11 metres.
- 4.32. Whilst identified Neighbourhood Activity Centres are also a focus for increased residential densities, the MSS states that, '*Development in the activity centres should improve functionality, accessibility, safety, social interaction, promote sustainability, and address scale and identity through site responsive design.*'
- 4.33. As noted above, the built form of the Jackson Court Neighbourhood Activity Centre and surrounding residential area is of a low scale, generally ranging from one to two storeys. Mandatory controls are proposed for the surrounding residential areas as part of Amendment C96, in order to provide greater policy direction on the desired planning outcomes for residential development in these areas, largely in response to concerns raised by the local community.
- 4.34. It is however, recognised that there may be further opportunities beyond Doncaster Hill and The Pines Activity Centres to consider increased heights. Action 1.4 of the Manningham Residential Strategy is to identify areas where building heights could be increased from 3 to 4 storeys as part of Structure Planning. The criteria used to assess suitability for increasing heights was endorsed by Council at its July 2012 meeting and includes the site characteristics, prominent intersections, surrounding land use, zoning and overlays, community benefit and relationship to the Activity Centre.
- 4.35. To date, Council has not supported increasing heights for any sites on the periphery of activity centres beyond 13.5 metres (Doncaster East Village and Templestowe Village Structure Plans). Furthermore, the Templestowe Village Structure Plan also recommended a review of heights in the Business 1 Zone to ensure that the neighbourhood scale / village feel was respected. Whilst the applicant has sought to motivate for consideration of a height well in excess of 13.5 metres, there are two areas where the assessment does not fully comply with the criteria being prominent intersections and, surrounding land use, zoning and overlays.



- 4.36. Prominent intersections include those located at the junction of major arterial roads or which form an entry into a particular area such as activity centre. These sites tend to be visually prominent and/or provide opportunity to undertake 'gateway' treatments to signalise entry into any area.
- 4.37. The subject land is clearly not located at the junction of a major arterial road, nor would the site be considered to form a visually prominent site as an entrance to the activity centre. Whilst the site may be seeking to form the western boundary of the centre, its recessed location from Doncaster Road does not form an entry point, albeit there is opportunity to improve the Mitchell Street streetscape and provide some integration with the Activity Centre. It will, however remain separated from the eastern part of the centre by a local road.
- 4.38. With regard to the criteria relating to surrounding land use, zoning and overlays, sites that have an interface to commercial areas and/or which are located adjacent to non-residential uses may be suitable for further increase in density by allowing increased heights beyond 11 metres.
- 4.39. Further, whilst there may be opportunity to support additional height within this and other Neighbourhood Activity Centre, it is questionable whether a site which has an immediate interface to residential zoned land is the most appropriate site for such a degree of change. Those sites that might be more suitable for consideration of increased heights include those located within the centre of a Neighbourhood Activity Centre, adjacent to parkland, those which are separated from nearby residentially zoned land by a roadway, laneway or which have a sufficient depth to step the building to provide a suitable transition to adjacent residential properties. The height of any development within a Neighbourhood Activity Centre, however, still needs to have regard to its context and enhance neighbourhood character.
- 4.40. It is acknowledged that there is an opportunity to reinvigorate the centre by increasing the local population and encouraging more sustainable transport use within the centre. However, it is reiterated, that mandatory heights of 11m apply to land to the south and west of the site and that a more appropriate transition in height is required.
- 4.41. The proposed building in its current form has a maximum height of almost 19 metres, which is significantly higher than those previously considered by Council and does not provide a suitable transition to adjoining residential areas. This is hampered by having an insufficient site depth and/or a roadway/laneway to provide adequate separation to the adjoining residential properties. It is also excessive when considered in the context of the heights supported for Doncaster Hill and The Pines as part of the activity centre hierarchy.
- 4.42. The concept of hierarchy of activity centres is included in the State Planning Policy Framework which makes the following distinction in regard to residential development in activity centres:
- A principal/major activity centre encourages intensive residential development.
  - A Neighbourhood Activity Centre encourages higher density housing that fits the context and enhances the character of an area.

- 4.43. This suggests that the scale of development should be less in a lower order centre where the scale and intensity of development would be more moderate than that envisaged for the Major and Principal Activity Centres.
- 4.44. Whilst it is acknowledged that the supermarket could have a significant community benefit and stimulate activity and prosperity in the centre, the issue is the form of development that should take place and more specifically the height of such development.
- 4.45. Regardless of the zoning applying to the site, be it commercial, mixed use or residential, the height of any building proposed for this site is required to have regard to its context and enhance neighbourhood character. It is considered that an appropriate height for the site would be 13.5 metres, having regard to the local and municipal context and character of the local area. This height is also consistent with the approach taken for other residential sites on the periphery of a Neighbourhood Activity Centre.
- 4.46. Should the applicant choose to revise the proposal it is suggested that a new schedule to the MUZ be introduced to introduce a height that is more appropriate for the site.
- 4.47. Alternatively, as part of the implementation of the new residential zones, consideration could be given to the rezoning the site to a Residential Growth Zone which allows consideration of some commercial activities including a shop and has a default height of 13.5 metres. As this height is discretionary, some limited increase in height could be considered to allow for site context opportunities.

## **5. CONSIDERATION OF PLANNING PERMIT**

- 5.1. To provide context for the application to proceed with the amendment, officers have undertaken a preliminary assessment of the proposed development against the statutory planning controls.
- 5.2. Subject to permit conditions, the uses proposed in the building appear reasonable. The conditions will primarily relate to managing the loading operations of the supermarket and the outdoor areas of the restaurant on the top level.
- 5.3. The height and length of the supermarket walls at ground level along the residential interface to the side and rear will have ongoing amenity impacts that are concerning. Such impacts include the visual bulk of the walls (some over 6m in height) that feature no articulation or design interest and at a minimal setback. The walls also cause overshadowing impacts greater than permitted under the assessment code. The area of the supermarket and its loading area appear to be too large and should be pulled back slightly from the residential interface.
- 5.4. The transition from the surrounding residential land to the maximum building height is also concerning. There are no roads or laneway that separate this site from the adjacent land. The surrounding residential area (which is in Sub-precinct A of DDO8) includes a mix of modest single-storey units and detached dwellings. Pursuant to Amendment C96, the area is only ever likely to accommodate new two-storey town house development.
- 5.5. The current planning controls accommodate height differences between single-storey and three-storey 11m high development. A transition between

single storey and a 19m high development is considered excessive. As such, the proposed building height does not 'fit the context' or 'enhances the character of the area' as required by planning policy.

- 5.6. The transition from the surrounding commercial land to the maximum building height is also concerning given the predominately single-storey shop fronts in Jackson Court. The building's podium is more than twice as high as any other building fronting Jackson Court. The minimal setback of 4m to the two upper levels will not diminish the bulk associated with the upper levels either. The height and scale of the building is excessive in the context of what is a 'neighbourhood activity centre' and will overwhelm the activity centre.
- 5.7. The amenity provided to future residents and the architectural quality of the building, other than in relation to its scale, height and context, are high quality.
- 5.8. The proposal seeks a significant reduction in the statutory car parking requirement (a maximum reduction of 166 car spaces between 6pm and 10pm when both the supermarket and restaurant are in operation). The applicant's Traffic and Car Parking Assessment has generated a demand assessment based on comparable development and undertaken surveys of parking in Jackson Court. The surveys indicate the parking in Jackson Court can accommodate the overflow from the expected demand of the proposal. It is noted the existing uses on site (the Restaurant, Function Centre and Place of Worship) already operates with a significant reduction to the statutory parking requirement (132 car spaces between 12noon and 7pm Sunday and 96 space between 6pm and 9pm Monday to Saturday)
- 5.9. Whilst the proposed height and scale of the development is considered excessive and is of major concern, the proposal with modifications generally meets the requirements of the Planning Scheme in terms of the development approval application.
- 5.10. If Council proceeds with the request for an amendment and planning permit application, a full detail assessment including development of relevant amendment documentation and a draft planning permit will be presented to Council at a future meeting.

## 6. PRIORITY/TIMING

- 6.1. Whilst this report is recommending refusal of the request for amendment, should Council resolve to seek authorisation to prepare and exhibit a planning scheme amendment, the Amendment would need to be submitted to the Minister for Planning by and authorised September/October to enable public consultation to be undertaken prior to Christmas.

## 7. POLICY/PRECEDENT IMPLICATIONS

### **Manningham Activity Centre Strategy**

- 7.1. The Manningham Activity Centres Strategy (2005) aims to provide for the future planning needs for nine of the municipality's identified Neighbourhood Activity Centres, including Jackson Court.
- 7.2. The Centre is identified as integrating shopping, recreation, commercial and community services to provide an accessible meeting place for the neighbourhood. A key strength of the centre is the range of its retail mix and

depth of independent retailers and accessibility. The central car park gives shoppers the perception of easy access to all parts of the centre.

- 7.3. The previous Woolworths supermarket, located in the current footprint of the Dan Murphy Liquor Store, was considered a key attractor for the centre albeit did not provide a full range of services. A survey of residents found that 70% of users visit the centre once a week or more with supermarket/groceries and local services being the key reasons. The strategy estimated that the Jackson Court shopping centre accounted for 42% of spending by neighbourhood catchment area.
- 7.4. The strategy identified several opportunities for the centre including:
- an urban design strategy to improve the public realm;
  - extend pedestrian access including between the centrally located public car park and Mitchell Street;
  - enhanced lighting (e.g. from covered walkway to Monte Carlo/Casavini reception centre/restaurant, spot/bud lighting on the oak tree);
  - Reinvestment in shop fronts, a centre marketing strategy, landscaping and signage;
  - Expansion of the supermarket and/or improving the fresh food offering.

#### **Precedent**

- 7.5. There is the potential that supporting a development of almost 19 metres in height would set a precedent for development both within and on the periphery of other Neighbourhood Activity Centres in this instance with the opportunity to motivate for increased heights along Doncaster Road.

### **8. CUSTOMER/COMMUNITY IMPACT**

- 8.1. Whilst the development is likely to have a community benefit (including the provision of additional housing opportunities, the re-establishment of a supermarket into the local area and retention of the restaurant and reception centre facilities), the built form of the development, particularly the height and scale may have a detrimental impact on the adjacent residents.

### **9. FINANCIAL RESOURCE IMPLICATIONS**

- 9.1. Planning scheme amendments are prepared and administered by the Economic and Environmental Planning Unit. The applicant has provided an initial statutory fee for Council to assess and consider the application. The applicant would be required to pay the fees associated with the amendment request as stipulated in the *Planning and Environment Act 1987* and *Planning and Environment (Fees) Interim Regulations 2012*. The applicant would also be required to cover fees associated with giving notice of the Amendment and any fees associated with a panel hearing.

### **10. SUSTAINABILITY**

- 10.1. In-principle the mixed-use development is expected to have positive environmental, social and economic benefits.
- 10.2. The redevelopment will provide for the retention of the existing restaurant/function centre in addition to providing for the new supermarket use

which will provide additional local employment opportunities and encourage new investment in the Centre and contribute to the ongoing viability of the centre and consolidate its capacity as a community hub which provides a range of services and facilities and meets local convenience needs.

- 10.3. Reinstatement of a supermarket within the Activity Centre provides the opportunity for local residents to shop more sustainably by walking to the centre thereby improving traffic conditions, congestion and pollution as residents must now travel to other centres for weekly shopping needs.
- 10.4. The architecturally designed proposal incorporates expert consultant traffic, waste, landscaping and acoustic advice. A Sustainability Management Plan (SMP) has been prepared to assist the design, construction and operation of the proposed development to meet sustainable development objectives. The SMP discusses how various elements including the management of the building, lighting, appliances, provision of garden areas and materials etc will minimise energy and water consumption in the development and contribute to the sustainable performance of the building.
- 10.5. Extensive use of glazing and east facing upper level terraces will provide opportunity for passive surveillance of and perceived safety in the public realm.
- 10.6. Whilst some vegetation will need to be removed to allow the development, it is not considered significant and further landscaping is proposed along the south and south west boundaries and within the proposed development.
- 10.7. As part of the development improvements to the existing infrastructure that interfaces with the site are proposed, including public realm enhancements and connectivity with the balance of the shopping centre.

## **11. REGIONAL/STRATEGIC IMPLICATIONS**

### **Precedent**

- 11.1. There is the potential that supporting a development of almost 19 metres in height would set a precedent for development both within and on the periphery of Council's other Neighbourhood Activity Centres with the opportunity in this instance to motivate for even greater heights along Doncaster Road.

## **12. COMMUNICATIONS STRATEGY**

- 12.1. A communications strategy would be developed if Council were to determine to request the Minister's authorisation to prepare and exhibit the combined amendment and planning permit.
- 12.2. Pursuant to section 19 of the Act, an amendment must be placed on exhibition not less than one month after the date that notice is given in the Government Gazette.

## **13. CONCLUSION**

- 13.1. The proposal is for a five storey building with a maximum height of almost 19 metres. Whilst it is appropriate for the site to be developed and a rezoning is supported in principle, it is considered that the proposal does not comply with current State and local planning policy frameworks. In particular the height and scale of the building is excessive having regard to the context of the local area and Manningham's Activity Centre hierarchy. The proposal may also set

a precedent for building heights sought in and on the periphery of other Neighbourhood Activity Centres.

- 13.2. Putting aside the zoning, it is considered that the proposal is out of context with the local area and does not provide a suitable transition to the adjacent residentially zoned land, which pursuant to Amendment C96 are proposed to have a maximum mandatory height of up to 11m.
- 13.3. The local area, including the commercial centre is generally of a low scale, with construction being predominantly single and double storey in nature. Further, it is noted that a significant number of lots to the south and west of the site have been developed with a mix of single and double storey townhouses which will limit the opportunity for apartment style development on the remaining patchwork of lots. The area surrounding the proposal development will in effect largely be restricted to townhouse developments of up to 9 metres resulting in a significant variation in built form.
- 13.4. The degree of change is anticipated to be more significant in Principal and Major Activity Centres than that in Neighbourhood Activity Centres and this should be reflected in the scale and intensity of development, including the height of buildings. The level of development within Manningham's Neighbourhood Activity Centres therefore needs to have consideration to the heights supported for Doncaster Hill and The Pines and be of a scale and intensity more reflective of that for a neighbourhood centre.
- 13.5. Whilst Council has investigated opportunities beyond Doncaster Hill and The Pines for increased heights, to date Council has not supported increasing the heights for any sites on the periphery of Neighbourhood Activity Centres beyond 13.5 metres.
- 13.6. In this regard the site has been assessed against the criteria approved by Council to motivate for increased heights. There are two areas where the assessment does not fully comply with the criteria. Firstly the site is not located at the junction of a major intersection or form a visually prominent site. Secondly, having regard to surrounding uses, zone and overlays, it is questionable whether a site which has an immediate interface to residentially zoned land, is the most appropriate site for such a significant degree of change.
- 13.7. There is potential that supporting a height of 19 metres would set a precedent both within and on the periphery of other neighbourhood centres with the opportunity in this instance to motivate for even greater heights along Doncaster Road.
- 13.8. The proposal is not an acceptable outcome for the site, therefore, this report recommends that the amendment request and therefore the planning permit application should not be supported.

#### OFFICER'S RECOMMENDATION

That Council:

- (A) Resolve to abandon Amendment C95 to the Manningham Planning Scheme to rezone land at 3-11 Mitchell Street, Doncaster East, together with Planning Permit PL11/021966.

- (B) Notify the proponent of Council's decision in relation to Amendment C95.
- (C) Encourage the applicant to work with officers to find a resolution to address the issues arising from this assessment.

MOVED: HAYNES  
SECONDED: McLEISH

**That the Recommendation be adopted.**

**MOTION LOST**

MOVED: O'BRIEN  
SECONDED: DOWNIE

**That Council:**

- (A) **Endorse the preparation of the combined Planning Scheme Amendment and Planning Permit application subject to:**
- **Rezoning of the land at 3-9 & 11 Mitchell Street, Doncaster East from a Residential 1 Zone to a Mixed Use Zone.**
  - **Inclusion of a schedule to the Mixed Use Zone to specify a mandatory maximum height of 19 metres and appropriate front side and rear setbacks. The schedule should include words to the effect that the Maximum Building Height does not include building services, lift over-runs and roof mounted equipment, including screening devices.**
  - **Preparation of a section 173 Agreement to require the provision of a supermarket on the ground floor.**
- (B) **Note that a further report detailing the amendment documentation, including a draft Planning Permit, will be provided at the next Council meeting in order to seek authorisation from the Minister for Planning. A condition controlling the location and design aspects of building services will be included with the draft planning permit.**

**CARRIED**

## **DIVISION**

A Division having been demanded the Council divided as follows:

FOR (7): Councillors Gough, Kleinert, Grivokostopoulos, O'Brien, Downie, Galbally and Yang  
AGAINST (2): Councillors Haynes and McLeish

**THE MOTION WAS DECLARED CARRIED**

"Refer Attachments"

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