

Planning and Environment Act 1987

Panel Report

Manningham Planning Scheme

Amendment C95 and Planning Permit Application PL11/021966

Proposed five storey commercial and residential development

25 June 2014



Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Amendment C95 to the Manningham Planning Scheme

Permit Application PL11/021966

Proposed five storey commercial and residential development

A handwritten signature in black ink that reads "Jenny Moles". The signature is written in a cursive style with a large initial 'J'.

Jenny Moles, Chair

A handwritten signature in black ink that reads "Andrew Natoli". The signature is written in a cursive style with a large initial 'A'.

Andrew Natoli, Member

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Amendment Summary

The Amendment and Permit Application	Manningham Planning Scheme Amendment C95 and Planning Permit Application PL11/021966.
Subject site	3-9 and 11 Mitchell Street, Doncaster East.
Purpose of Amendment and Permit	To allow the use and development of the land for the purpose of a five storey (approximately 19 metres) mixed use development.
The proponent	Buffrey Nominees Pty Ltd.
Planning Authority	Manningham City Council.
Exhibition	7 November to 13 December 2013.

Panel Process

The Panel	Ms Jenny Moles (Chair) and Mr Andrew Natoli (Member).
Directions Hearing	24 March 2014.
Panel Hearing	28 and 29 April and 1 May 2014.
Site inspections	24 March 2014 (unaccompanied) and 1 May 2014 (accompanied).
Appearances	A list of those parties that appeared at the Hearing are included in Table 1.
Submissions	In response to exhibition, the Council received 109 submissions including 54 late submissions.
Recommendation	The Amendment be adopted as exhibited, with changes and the permit be granted with changes.
Date of this report	25 June 2014.

1 Introduction

1.1 The Amendment and Permit Application

Amendment C95 (the Amendment) to the Manningham Planning Scheme (the Planning Scheme) was prepared by the Manningham City Council as Planning Authority in response to a request by Buffrey Nominees Pty Ltd (the proponent).

As exhibited, the Amendment proposes to rezone and alter the design controls applying to the land at 3-9 and 11 Mitchell Street, Doncaster East (the subject land). The exhibited zoning change is from the Residential 1 Zone (R1Z) to Mixed Use Zone (MUZ). It also proposes to remove the current Design and Development Overlay Schedule 8 (DDO8) and replace it with a new Schedule 13 to the overlay (DDO13) to introduce new design objectives and controls. The new provisions are described in more detail in Chapters 3 and 5 of this report.

Application was made concurrently for a planning permit (Application No PL11/021966) to use and develop the land for a multi-storey mixed use development comprising a supermarket, restaurant/reception centre, three levels of residential apartments and two levels of basement car parking. A drainage easement affecting the land at 3-9 Mitchell Street was also proposed to be modified as part of the application (the Permit Application).

A draft planning permit was exhibited together with the Planning Scheme changes as is required for combined processing under Division 5 and section 96C of the *Planning and Environment Act 1987* (the Act).

A draft section 173 agreement addressing the future use of the proposed building was exhibited with the Amendment.

1.2 The Council process

At its meeting of 27 August 2013, Council considered the Amendment and Permit Application and resolved to support the Amendment and Permit Application.

At its meeting of 24 September 2013, Council resolved to request authorisation from the Minister to prepare and exhibit the Amendment and draft planning permit generally in accordance with the attachments to the minutes which also included a draft section 173 agreement.

The Amendment was authorised by the Minister on 10 October 2013 and was subject to conditions that sought to overcome deficiencies in the proposed Mixed Use Zone schedule and required Council to submit a new schedule to the Design and Development Overlay. A condition also required changes to draft permit condition 1.1 to identify the required setbacks rather than just refer to a requirement under the Manningham Planning Scheme.

In response Council prepared a draft DDO13 and submitted it to the Department of Transport, Planning and Local Infrastructure (DTPLI) prior to exhibition of the Amendment.

The Amendment was placed on public exhibition from 7 November to 13 December 2013 and notice was provided in accordance with the Act which included direct notice to 220 landowners.

A total of 109 written submissions were received in response¹. Fifty four of the submissions offered no objection or supported the proposal and principally comprised proforma submissions. One supporting submission was in the form of a petition with 264 signatures in support of the supermarket component, another with 52 signatures also expressed support for the supermarket. Most of the objecting submissions were also proforma. The issues raised by objecting submitters related to the scale and bulk of the development, car parking and traffic issues and other amenity concerns. A list of all submitters is included as Appendix B to this report.

The proponent made a written submission which generally supported the Amendment and the Permit Application plans as lodged. The proponent supported the proposed 19 metre height limit but did not support any additional setbacks in DDO13 and requested that they be deleted. It expressed a preference to apply the Commercial 1 Zone (C1Z) rather than the exhibited MUZ and sought a number of changes to the draft permit conditions and section 173 agreement which were both exhibited with the Amendment.

At its meeting on 25 February 2014 Council considered the submissions and adopted the officer's response to each submission set out in Attachments 2 and 3 to the minutes. Council also resolved to request the Minister for Planning to appoint a Panel to consider the submissions.

1.3 Panel process

The Panel to consider the Amendment was appointed under delegation by the Minister for Planning on 4 March 2014 and comprises Jenny Moles (Chair) and Andrew Natoli (Member).

The Panel conducted a Directions Hearing on 24 March 2014 at Doncaster. The Panel gave directions preparatory to the Hearing and an accompanied site inspection. Those directions were complied with.

The Panel made an unaccompanied site inspection immediately following the Directions Hearing.

The Panel Hearing took place at the Council offices on 28 and 29 April and 1 May 2014. The Panel heard submissions and evidence about the Amendment/Application on behalf of the Council and proponent and the submitters as listed in Table 1 below.

The Panel also undertook an accompanied inspection immediately following the closure of the Hearing on 1 May 2014.

Some time was spent at the final day of the Panel Hearing discussing the proposed permit conditions on a without prejudice basis. The issues around the permit conditions, to the extent that they are not addressed in earlier Chapters of the report, are discussed in the penultimate Chapter. Our recommended permit conditions are included in Appendix D.

¹ One of these was late submission received by the Council after the Panel was appointed.

Submitter	Represented by
Manningham City Council	Mr Terry Montebello, solicitor, Maddocks Lawyers, who called the following expert witness: <ul style="list-style-type: none"> - Mr Craig Czarny, urban designer of Hansen Partnership Pty Ltd.
Buffrey Nominees Pty Ltd	Mr Ian Pitt SC, solicitor, Best Hooper, who called the following expert witnesses: <ul style="list-style-type: none"> - Mr Stephen Hunt, Traffic Engineer of Cardno Victoria Pty Ltd - Mr Sean Stephens, economist of Essential Economics Pty Ltd - Mr Mark Sheppard, Urban Designer of David Lock Associates (Australia) Pty Ltd - Mr Hugh Smyth, Town Planner of SJB Planning Pty Ltd.
Marion Reid	Meg Anderson and John Tait
Margaret Walton	In person
June Webster and Graeme Maddaford	In person
Warren Welsh	In person
Bob Fisher	In person
Rosa Miot	In person
Vincent Walsh	In person

* Anastasia Papalexatou failed to attend at the time she was scheduled to appear.

Table 1 Parties to the Panel Hearing

In reaching its conclusions and recommendations, the Panel has read and considered the submissions and evidence from the Hearing as well as other material to which it was referred. This includes the written submissions and the reports and other documents which supported the request by the proponent to the Council.

1.4 The Panel report

The following two Chapters of this report describe the site, surrounds and the Amendment/Permit Application. Chapter 4 sets out the strategic and statutory framework for consideration of the proposal. Chapter 5 considers the basis for the Amendment and the key issues for the assessment of the Amendment and Permit Application against the planning framework. The subsequent chapters discuss and where appropriate make recommendations responding to the substantive issues. The penultimate chapter discusses the implementation mechanisms associated with the Amendment, including the permit conditions and the particular VPP provisions. The Panel's overall conclusion and recommendations are included in the final chapter.

2 Subject site and surrounds

2.1 The subject site

The subject land comprises two abutting lots, a larger commercial property and a residential dwelling to the south, situated at 3-9 and 11 Mitchell Street, Doncaster East (respectively) at the western end of the Jackson Court Neighbourhood Activity Centre (JCNAC). Together the lots comprise a site with a total area of 3,661sqm.

The land at 3-9 Mitchell Street (Lot 2 of LP 206485Q) is currently occupied by a two storey building (former squash courts) which is currently occupied by the Monte Carlo reception centre, Casavini restaurant and a church organisation known as Freedom Revolution Church. The southernmost section of the land is used as a car park associated with the restaurant and reception centre. This lot is affected by a drainage easement along the southern half of the western boundary denoted as 'E-1', which is proposed to be varied as part of the Permit Application.

The land at 11 Mitchell Street (Lot 3 of LP 52595) to the south of the Casavini car park is developed with a single storey detached dwelling and used for residential purposes. This lot has an area of approximately 780 sqm.

The land is rectangular in shape with a total frontage to Mitchell Street of approximately 95 metres and a maximum depth from Mitchell Street of approximately 40 metres. Both lots have a relatively flat gradient but occupy an elevated ridge position in relation to all surrounding land, in particular the JCNAC and abutting residential properties to the west situated on Elizabeth Street. The surrounding land falls approximately 7 metres to the east at the eastern end of the JCNAC and approximately 3 metres from the western boundary to Elizabeth Street.

The subject land has two vehicular crossovers from Mitchell Street towards the middle and southern end of the frontage. Mitchell Street is a local road of two lane construction with parking on both sides. Mitchell Street intersects with Doncaster Road approximately 46 metres to the north of the subject land.

The site is included in the Residential 1 Zone (R1Z)². It is also subject to Design and Development Overlay (Schedule 8) (DDO8) applying to 'Residential Areas Surrounding Activity Centres and Along Main Roads'. The site is included in Sub-precinct A of DDO8 which imposes a mandatory 9.0-11.0 metres maximum building height³ for lots of less or greater than 1800 sqm respectively⁴. The DDO8 Sub-precinct A also contains discretionary street setback provisions applying to dwellings. The DDO includes a general discretionary maximum site coverage of 60 percent. The part of the site at 3-9 Mitchell Street is also

² There is an imminent change from R1Z to one of the new Residential Zones. At the time of writing, the change had been approved but had not been gazetted.

³ Exception is made for building services and the like.

⁴ There is also a sloping land provision that allows the 9 metres to be increased to 10 metres where *'the slope of the natural ground level at any cross section wider than eight metres of the site of the building is 2.5 degrees or more'*.

affected by Parking Overlay Schedule 2 (PO2) which sets a specific parking requirement for shop use of 2.7 spaces per 100 sqm of leasable floorspace.



Figure 1 Subject land and surrounds
(Source: Planning Maps Online).

2.2 The surrounds

(i) Jackson Court Neighbourhood Activity Centre

The land generally to the east across Mitchell Street is occupied by the JCNAC. This centre is principally arranged with rows of one and two storey shop buildings facing north and west onto a central at grade car park. At the northern end of the car park on a site with frontage to Doncaster Road is a large Dan Murphy's liquor outlet formerly occupied by a Woolworths supermarket. There are a number of smaller traders' parking areas located to the rear or side of shops throughout the centre.

The JCNAC is situated approximately 1.2 km west of the Westfield Shoppingtown and approximately 1.2 km from the Eastern Freeway travelling via Doncaster Road.

The JCNAC is served by a number of public bus routes operating along Doncaster Road and additional services are available from Westfield Shoppingtown.

Two neighbourhood activity centres are also located in close proximity to the east of the JCNAC along Doncaster Road, being Devon Plaza, situated at Devon Drive approximately 900 metres to the east, and Tunstall Square situated at Tunstall Road approximately 2 km to the east. Both of these centres include large supermarkets and a range of speciality shops and restaurants.

The JCNAC and the office development to the immediate north of the subject site are zoned Commercial 1. They are also included in DDO1 which applies to the 'Doncaster Road Strategy Area'. DDO1 applies a series of design objectives and discretionary setback and other controls relating to improvement to the presentation of development along Doncaster Road. No preferred or mandatory building heights are specified.

(ii) Residential interfaces - Elizabeth Street and Mitchell Street

Five residential properties with addresses in Elizabeth Street have direct interfaces with the subject land. They are:

- 2/4 Elizabeth Street, a single storey unit in a development of three units, which abuts the northern end of the subject land. This unit has a small area of private open space adjacent to the boundary.
- 2/6 Elizabeth Street, a single storey unit in two unit development, occupied by June Webster and Graeme Maddaford. This unit abuts the middle section of the subject land and its rear courtyard area (partly covered with transparent roofing) is situated directly opposite the kitchen and back of house area of the restaurant and reception centre. These facilities were extended and enclosed by a building constructed to the boundary. The wall is approximately 4.5 - 5 metres in height from the ground level of the courtyard. The height of this building is accentuated by the difference in levels between the subject land and the rear open space of the unit.
- 8 Elizabeth Street, a large double storey brick dwelling with a large backyard area and garage abutting the middle section of the subject land where the restaurant and reception centre building is constructed to the boundary for its entire length.
- 10 Elizabeth Street, a double storey brick dwelling with a generous backyard which currently abuts the car park to the restaurant and reception centre. This dwelling is occupied by one of the operators of the restaurant and reception centre.
- 2/12 Elizabeth Street, a rear single storey unit of a two unit development, occupied by Ms Marion Reid, who was represented at the Hearing by Ms Meg Anderson. This unit abuts the southern end of the subject land (directly adjacent to 11 Mitchell Street) and also has a rear courtyard abutting a small section of the south-east corner of the subject land.

Land immediately to the south of the subject land, situated at 13 Mitchell Street, is developed with a single storey dwelling. The car port of the dwelling is built to the boundary of the subject land, and the dwelling has a generous front setback and a large private open space area to its rear.

Diagonally to the south-west of the subject land at 14 Elizabeth Street, behind 13 Mitchell Street, is the rear unit of a single storey two unit development. This is situated close to the northern and eastern boundaries of its site with a private open space area located to the north-east of the unit.

Land diagonally to the north-west of the subject site (and west of the commercial property to its north) is developed with three single storey multi-dwellings with an address at 886 Doncaster Road.

With one exception, the residential properties abutting and near the subject site are zoned R1Z and included in DDO8 Sub-precinct A. The controls for that sub-precinct are set out above. The exception is the residential property at 886 Doncaster Road to the north-west (and its residential neighbour to the west). This land is included in DDO8 Main Road Sub-precinct where slightly different setbacks apply from those in Sub-precinct A.

(iii) The broader area

Properties beyond the JCNAC to the south, including along Lord Street, Bullen Street and Mitchell Street, have generally been developed for single dwellings interspersed with unit development and are zoned R1Z. A more intensive seven unit two level apartment development has recently been completed on land at 10 Lord Street. Properties south of Ross Street are similarly developed but zoned Residential 3.

Properties to the west along Elizabeth Street have generally been developed for single dwellings and units and are zoned R1Z. Beyond these properties to the west is the Ventura Bus depot, which occupies a very large site of approximately 2.7 hectares situated at 868-870 Doncaster Road. This property is currently zoned Public Use (Schedule 4).

To the east of the JCNAC lie the Doncaster Reserve and Doncaster Leeds Street Sports Centre.

3 The proposed Amendment and Permit Application

3.1 The proposed Amendment

As noted earlier, the exhibited Amendment proposes to rezone the subject site from R1Z to Mixed Use Zone and apply a new DDO13.

Under the new zoning, the use of land for all of the proposed purposes requires planning permission with the exception of the apartments – dwellings being as of right. All buildings and works require planning permission under the new zoning.

The proposed DDO13 would impose:

- A mandatory height limit of 19 metres (exclusive of building services and the like).
- A discretionary requirement that the first three levels of any building (above ground) are to be built to the front boundary.
- A discretionary setback of at least three metres from the ground floor footprint applied to levels above this.
- Variable side and rear setbacks to residential properties:
 - three metres for the first two storeys
 - five metres for the third storey
 - eight metres for the fourth storey
 - 13 metres for any additional storeys.

The DDO also contains discretionary provisions relating to achieving visual interest in building design; a gradual transition in scale to abutting land in a residential zone; creation of a pedestrian link to the JCNAC across Mitchell Street; and the setting of basement car parks a sufficient distance from side and rear boundaries to enable effective screen planting.

3.2 The Permit Application

The Permit Application has been subject to a number of amendments and submission of further information since its initial lodgement on 2 November 2012. It had been preceded by a similar application confined to the 3-9 Mitchell Street land and of a lesser height.

As lodged in November 2012, the Permit Application form describes the proposed use and development in the following terms:

Proposed use of the site for dwellings and a restaurant, construction of building and works, reduction in statutory car parking rates and dispensation for the provision of shower/change room facilities pursuant to Clause 52.34.

The Permit Application proposed a five storey building (18.9 metres high). It also proposed the removal of the easement located along part of the western boundary. The Application was supported by the following reports:

- Planning Report, prepared by SJB Planning.
- Landscape Concept Plan prepared by MEMLA.

- Traffic and Transport Assessment prepared by Cardno.
- Waste Management Plan prepared by Leigh Design.
- Acoustic Assessment Report prepared by Acoustic Advisory and Consulting Services.
- Environmentally Sustainable Development (ESD) Assessment prepared by Sustainable Design Consultants.

In response to a letter in March 2013 setting out a number Council officer concerns about the proposed height of the building, the floor area, design and management of the supermarket, the residential interface and amenity issues, and requesting further information, the permit applicant submitted additional information and amended plans in May 2013 which included the following minor changes:

- Changes to the layout of restaurant/function centre to relocate the kitchen, bar area and toilet facilities and to delete the north-western terrace in response to amenity concerns.
- The inclusion of a shower/change room in the basement.
- Increase in the width of the internal corridor opposite the light/court roof garden.
- Inclusions of planter boxes in the level 4 south facing terraces.
- Increase in screening of roof plant area.

Further plans were circulated and tabled at the Panel Hearing by the proponent that adopted a number of additional design changes as recommended by its experts, including the following:

- Removal of the nature strip and widening of footpath along the frontage of the supermarket on Mitchell Street (section 3.4 of Mr Sheppard's statement).
- Extension of the canopy over the Mitchell Street footpath to the northern boundary (section 3.4 of Mr Sheppard's statement).
- Deletion of the balcony of Apartment 1.03 and screening of west facing windows (page 29 of Mr Smyth's statement)
- Changes in materials of ground floor adjacent to 13 Mitchell Street (page 29 of Mr Smyth's statement).

These plans also show the extent of the proposed modification to the easement (see TP-09B to TP-11B, inclusive).

These plans are identified as Revision B and dated 10 April 2014 and are the plans which the proponent seeks to rely upon. These are the plans which form the basis of the Panel's assessment and are described in more detail below.

3.3 The proposed use and development

The proposed use and development comprises a five storey (approximately 19 metres in height) mixed use building, with two levels of basement car parking. The proponent tabled 'Revision B' plans at the Panel Hearing which incorporated changes from the exhibited Permit Application plans recommended by the proponent's witnesses. While there is no ability for the Panel to formally substitute the amended plans, we have considered those plans as the changes in all cases have been intended to make improvements to the way the development and uses affect the surrounding area. The changes from the exhibited Permit Application plans are listed in a document prepared by the architects, Ascui Edwards, dated

24 April 2014 (being Panel Document P2). The proposed uses and built form for each level as shown on the revision B plans are described below.

(i) Basement 1 and 2

Basement 2 comprises basement parking of 91 spaces, with 76 spaces at the southern end dedicated to the residential units and separated from the northern end by a security fence and grille. Fifteen spaces are dedicated to the retail component. Residential lifts are located at each end of the car park, with a separate restaurant/retail lift located at the northern end.

Basement 1 comprises basement parking of 83 car spaces, all dedicated to the retail uses. With the exception of the northern residential lifts, all other lifts provide access to this floor with the addition two additional supermarket lifts.

These levels have the following setbacks:

- Along the western boundary: a setback of 2.44 metres for the southernmost 35 metres; then no setback for the next 37 metres (adjacent to 6 and 8 Elizabeth Street); then 1.74 metres for the last 20 metres.
- 3.19 metres from the southern boundary.
- No setback from the eastern (Mitchell Street) and northern boundaries.

(ii) Ground floor

This level comprises the supermarket and loading areas, residential lobby and restaurant lobby.

The supermarket area is shown as occupying an area of 2,386 sqm which extends to the eastern and western building edges. The loading dock is located in the north-western corner of the building with an adjoining waste area. The loading bay provides for vehicles up to 12.5 metres in length. Residential and restaurant waste area are also provided in this area, though the northern residential lift does not provide access to this level. The loading bay is accessed at the northern end of the frontage. Supermarket lifts are provided to Basement 1 parking areas. The restaurant lobby and lifts are also located to the north of the supermarket.

To the south of the supermarket is a residential lobby. A residential lift at this southern end of the building provides access to the ground floor, all residential levels and the basements. A residential lift is also provided at the northern end of the building but provides access only to Basement 2 and the residential floors. It does not provide access to the Basement 1 or the ground level.

A continuous canopy is proposed over the length of the frontage to Mitchell Street and it is proposed to remove the nature strip and provide for a paved footpath area with street tree planting and street furniture.

The front, east, elevation facing the public realm is glazed for most of its length, with white metal cladding fascia defining the vertical extent of this level. The facades to all other elevations generally comprise pre-cast concrete panels.

This level has the following setbacks:

- Along the western boundary it is setback (commencing at the southern end) 2.44 metres for the first 35 metres, then no setback for the next 37 metres (adjacent to 6 and 8 Elizabeth Street), then 2.15 metres for the last 20 metres, with landscaping proposed within both setback areas.
- 3.66 metres from the southern boundary, with landscaping proposed within this setback.
- No setback from the eastern (Mitchell Street) and northern boundaries.

(iii) Level 1

This level comprises residential apartments and a roof garden area, including a single one bedroom unit and 23 two bedroom units. The apartments are generally laid out around a central north-south hallway with 11 apartments fronting Mitchell Street and 13 behind these and oriented generally to the west, south and north around a central roof garden area. The hallway provides direct access onto the roof garden, which is situated approximately 30 metres from the southern boundary and serves to divide the rear units into a north and south building mass.

This level has the following setbacks:

- Along the western boundary the setbacks range between a minimum of 4.2 metres (at the southern end – APT 1-03) and between 8.44 metres and 10.94 metres (APT 1-19 to APT1-24).
- 3.66 metres from the southern boundary.
- No setback from the eastern (Mitchell Street) and northern boundaries.

(iv) Level 2

This level comprises residential apartments, including a single one bedroom unit and 22 two bedroom units.

This level has the following setbacks:

- Along the western boundary the setbacks range between 6.40 metres (at the south, APT 2-03; and the balcony of APT 2-24 extends into this setback), 15.0 metres (in the middle, part of APT 2-22 and 2-23) and 8.45 metres (part of APT 2-18 to APT 2-21).
- 6.15 metres from the southern boundary with balconies extending to 4.95 metres.
- A setback from the eastern (Mitchell Street) boundary of between 0 and 2.5 metres, with balconies extending into the setback.
- No setback to the northern boundary except for a lightwell.

(v) Level 3

This level comprises 18 two bedroom residential apartments.

This level has the following setbacks:

- Along the western boundary the setbacks range between 9.4 (at the south end, APT 3-03 with a terrace extending to 6.8 metres of the boundary); 17.5 metres (in the middle, APT 3-17 with terraces extending to 15.5 metres) and around 10.95 metres at the northern end with a terrace extending to 8.45 metres (APTs 3-13 – 3-16).

- 9.15 – 9.65 metres from the southern boundary.
- Between 3.5 and 5.5 metres along the eastern boundary (Mitchell Street) with most terraces extending to the boundary.
- Generally 4.5 metres from the northern boundary with terraces extending to most of the length of this boundary except for a light well.

(vi) Level 4

This level comprises the restaurant and function centre, with the restaurant including private rooms occupying around two thirds of the floor towards the southern end of the building and the kitchen, bar, storage, amenities and reception area located at the northern end.

Two terraces are located at the southern end of this level:

- A larger terrace of 67 sqm extending southwards from the southern elevation to 10.15 metres from the southern boundary with planters boxes along the southern edge.
- A smaller terrace of 18 sqm at the south-west corner adjacent to the private rooms, set back 13.05 metres from the western boundary and 17 metres from the southern boundary, with planter boxes along the southern edge.

The built form (exclusive of the terraces) is set back in the following manner:

- Between 13.05 and 14.1 metres from the western boundary.
- 16-17 metres from the southern boundary.
- 4-4.5 metres from eastern boundary (Mitchell Street).
- 7 metres from the northern boundary.

The visible sections of the façade are proposed to be clad in a feature screen of copper metallic finish (generally at the southern end) and vertical multi-colour battens (generally at the northern end).

The roof plant area rises above this level a further 1.8 metres and is screened to all elevations.

4 Planning context

The Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report to the Amendment and reiterated this response at the Panel Hearing, which was attached at Appendix 1 to Mr Montebello's written submission. Mr Pitt for the proponent adopted Council's strategic justification and response to the Strategic Assessment Guidelines. The Panel reviews the policy context of the Amendment in Sections 4.1 to 4.4 below.

In Section 4.5 and following, the Panel has also set out the relevant zone, overlay and other Planning Scheme provisions which also form part of the context for decision-making in relation to the Permit Application.

4.1 Strategic planning context

(i) State Planning Policy Framework

The Council submitted that the Amendment is supported by the following clauses in the SPPF (as paraphrased in Council's submission):

Clause 11.01-2 (Activity Centre Planning), which includes the following objective and relevant strategies:

Objective

To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses and are highly accessible to the community.

Strategies

- *Undertake strategic planning for the use and development of land in and around the activity centres.*
- *Give clear direction in relation to preferred locations for investment.*
- *Encourage a diversity of housing types at higher densities in and around activity centres.*

The Council referred to the strategies and directions of Melbourne 2030, which is a reference document to this clause, however since Amendment VC106 these references are now to be disregarded (discussed further below).

The revised clause 11 *Settlement* contains a number of relevant objectives and strategies, including those at clause 11.01-2 (Activity centre planning):

11.01-2 Activity centre planning

Objective

To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses and are highly accessible to the community.

Strategies

Undertake strategic planning for the use and development of land in and around the activity centres.

Give clear direction in relation to preferred locations for investment.

Encourage a diversity of housing types at higher densities in and around activity centres.

Reduce the number of private motorised trips by concentrating activities that generate high numbers of (non-freight) trips in highly accessible activity centres.

Improve access by walking, cycling and public transport to services and facilities for local and regional populations.

Broaden the mix of uses in activity centres to include a range of services over longer hours appropriate to the type of centre and needs of the population served.

Provide a focus for business, shopping, working, leisure and community facilities.

Encourage economic activity and business synergies.

Locate significant new education, justice, community, administrative and health facilities that attract users from large geographic areas in or on the edge of Central Activities Districts, Principal or Major Activity Centres with good public transport.

Locate new small scale education, health and community facilities that meet local needs in or next to Neighbourhood Activity Centres.

Ensure Neighbourhood Activity Centres are located within convenient walking distance in the design of new subdivisions.

Improve the social, economic and environmental performance and amenity of the centre.

Clause 11.04, *Metropolitan Melbourne*, sets out objectives and strategies specific to the metropolitan area, including for housing and liveability:

11.04-2 Housing choice and affordability

Objective

To provide a diversity of housing in defined locations that cater for different households and are close to jobs and services.

Strategies

Understand and plan for expected housing needs.

Reduce the cost of living by increasing housing supply near services and public transport.

Facilitate the supply of social housing.

Facilitate the supply of affordable housing.

Policy guidelines

Planning must consider as relevant:

- *Plan Melbourne: Metropolitan Planning Strategy (Department of Transport, Planning and Local Infrastructure, 2014).*

Clause 11.04-4 Liveable communities and neighbourhoods, contains the following relevant objectives and strategies:

11.04-4 Liveable communities and neighbourhoods

Objective

To create healthy and active neighbourhoods and maintain Melbourne's identity as one of the world's most liveable cities.

Strategies

Create a city of 20-minute neighbourhoods.

Protect Melbourne and its suburbs from inappropriate development.

Create neighbourhoods that support safe communities and healthy lifestyles.

Plan for future social infrastructure.

Make the city greener.

Create more great public places throughout Melbourne.

Respect heritage while building for the future.

Achieve and promote design excellence.

Mr Pitt for the proponent indicated that he agreed with the Council summation of relevant policy.

It is noted that since the Hearing, Amendment VC106 has been approved and gives effect to the strategies and directions contained in the Government's new metropolitan strategy, *Plan Melbourne: Metropolitan Planning Strategy*, Department of Transport, Planning and Local Infrastructure, 2014 (Plan Melbourne). A new clause 9 of the SPPF requires planning authorities to disregard references to *Melbourne 2030* and its update, *Melbourne @ 5 Million*, and where relevant apply Plan Melbourne:

9.01 Plan Melbourne interpretation

Any references in this scheme to Melbourne 2030 (Department of Sustainability and Environment, 2002) and Melbourne 2030: A planning update Melbourne @ 5 million (Department of Planning and Community Development, 2008) are to be disregarded. Where relevant, planning and responsible authorities must consider and apply the strategy Plan

Melbourne: Metropolitan Planning Strategy (Department of Transport, Planning and Local Infrastructure, 2014).

The Amendment gave effect to new clauses 11 (Settlement), 16 (Housing), 17 (Economic Development), 18 (Transport) and 19 (Infrastructure). In the main these changes were to replace references to Melbourne 2030 with Plan Melbourne and to replace strategies specific to Melbourne 2030 with equivalent or similar strategies in Plan Melbourne.

Ministerial Direction No 9 – Metropolitan Planning Strategy has been updated to require planning authorities to address Plan Melbourne and to address it in their explanatory reports for planning scheme amendments.

The Council submitted that the Amendment supports and is consistent with key directions of Plan Melbourne (in that stage in draft form) including:

- *Direction 1.1 – Strengthen Competitiveness of Melbourne’s Employment Land*
- *Direction 1.5 – Plan for Jobs Closer to Where People Live*
- *Direction 2.2 – Reduce the Cost of Living by Increasing Housing Supply near Services and Public Transport.*

The Panel notes the following Plan Melbourne directions and initiatives which are of particular relevance to planning for the JCNAC and the Amendment:

- *Direction 4.1 - Create a city of 20 minute neighbourhoods.*

Relevant initiatives under this direction include:

- *Initiative 4.1.1 – Support a network of vibrant neighbourhood centres.*
- *Planning neighbourhood centres that maintain their ‘village’ character and feel, while enabling a mix of goods and services, is a key role for local governments working with their communities. However, more can be done through the planning system to encourage local governments and their communities to develop and energise these centres.*
- *Vibrancy can also be enhanced by supporting and improving access to cafés, dining and shopping, and by creating village shopping strips that promote small business. This can include accommodating more community-based services, and shoptop housing, and by creating more open space. Enhancing the quality of public spaces by making places safer, and improving pedestrian and cycle access, also boosts the investment appeal and economic success of smaller centres.*
- *Many newer innovations that add to the 20-minute neighbourhood include the trend toward local ‘food truck’ businesses that allow small and unique outdoor food vendors to trade. Melbourne has led Australia in this movement, and successful food trucks include Mexican cuisine, gourmet burgers and Asian-inspired street food.*
- ...
- *Initiative 4.2.2 - Protect Melbourne’s Neighbourhood Centres, Including Provision for Mandatory Controls.*

- *The attributes of, and opportunities for, neighbourhood centres at the small scale vary considerably across the metropolitan area, which is one reason why local communities should lead the planning of their own centres. In some instances, where centres are already well-developed or communities are seeking to protect the unique character of their centres (such as by protecting heritage buildings or access to open space), they should be assisted in determining the desired built form outcomes. Under Plan Melbourne, local governments, after preparing a local housing strategy and consulting with the community, will be able to prepare and exhibit a planning scheme amendment to introduce mandatory height controls for neighbourhood centres.*
- ...
- *In the short term:*
 - *Update the practice note and prepare and implement planning tools to support local governments to introduce mandatory building height and local-character controls in neighbourhood centres.*
 - *Investigate options for a fund to support local governments to plan and manage neighbourhood centres, including assessing building height and local character to inform the application of local mandatory controls.*

(ii) Local Planning Policy Framework

The Council submitted that the Amendment supports the following local planning objectives (as paraphrased in Council's submission):

Clause 21.03 (Key Influences) – which encourages residential development that consolidates the role of established urban areas and reduces pressure for development in more sensitive locations. It also recognises the importance of supporting the viability of activity centres, including through the development of higher density housing.

Clause 21.05 (Residential) – this clause identifies the subject land within Precinct 2 (Residential Areas Surrounding Activity Centres and along Main Roads) in which it is expected there will be a substantial level of change. This clause further identifies the subject land in sub-precinct A which provides the basis for the DDO8-2 control:

Sub-precinct A (shown on Manningham Planning Scheme maps as DDO8-2) is an area where two storey units (9 metres) and three storey (11 metres) 'apartment style' developments are encouraged. Three storey, contemporary developments should only occur on land with a minimum area of 1,800m². Where the land comprises more than one lot, the lots must be consecutive lots which are side by side and have a shared frontage. The area of 1,800m² must be all in the same sub-precinct. In this sub-precinct, if a lot has an area less than 1,800m², a townhouse style development proposal only will be considered, but development should be a maximum of two storeys. All development in sub-precinct A should have a maximum site coverage of 60 percent.

...

Development in Precinct 2 should:

- *Provide for contemporary architecture*
- *Achieve high design standards*
- *Provide visual interest and make a positive contribution to the streetscape*
- *Provide a graduated building line from side and rear boundaries*
- *Minimise adverse amenity impacts on adjoining properties*
- *Use varied and durable building materials*
- *Incorporate a landscape treatment that enhances the overall appearance of the development*
- *Integrate car parking requirements into the design of buildings and landform.*

Clause 21.09 (Activity Centres and Commercial Areas) – which sets out the activity centres within the City of Manningham and recognises the importance of supporting their viability through enhanced public transport and focussed residential development. This clause emphasises the role of neighbourhood activity centres in meeting the needs of local communities (at page 10):

Manningham’s Neighbourhood Activity Centres provide a limited mix of uses to meet local convenience needs. A key issue is to ensure that these centres remain viable and can evolve to meet the future needs of the community.

These centres will continue to be community hubs and meeting places for local residents, and opportunities for locating a range of social, community and recreational services within these centres will be encouraged. The activity centres located west of the Mullum Mullum Creek will be a focus for increased medium density development.

Development in the activity centres should improve functionality, accessibility, safety, social interaction, promote sustainability, and address scale and identity through site responsive design.

(iii) Ministerial Direction on the Form and Content of Planning Schemes

The Council submitted that the Amendment has been prepared in accordance and is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.

(iv) Ministerial Direction No 9: Metropolitan Strategy (Plan Melbourne)

As noted above, since the Hearing this direction has been amended to require planning authorities to address the Government’s new Metropolitan Planning Strategy, Plan Melbourne.

Nevertheless, in its response to the previous version of this direction, Council stated that the Amendment was consistent with following directions and policies of Melbourne 2030:

- *Policy 1.1 – Build up activity centres as a focus for high-quality development, activity and living for the whole community.*
- *Policy 1.2 – Broaden the base of activity centres that are currently dominated by shopping to include a wider range of services over longer hours, and restrict out-of centre development.*
- *Policy 1.3 – Locate a substantial proportion of new housing in or close to activity centres and other strategic redevelopment sites that offer good access to services and transport.*
- *Direction No 4 – A More Prosperous City*
- *Policy 5.1 – Promote good urban design to make the environment more liveable and attractive.*
- *Policy 5.3 - Improve community safety and encourage neighbourhood design that makes people feel safe.*
- *Direction 7 – A Greener City.*

(v) Ministerial Direction No 11: Strategic Assessment of Amendments

The Council submission indicated that it is considered that the Amendment is consistent with Ministerial Direction No 11: Strategic Assessment of Amendments.

4.2 Panel comment on strategic policy context

There was no disagreement in presentations to the Panel (or indeed in written submissions) that there is general strategic policy support for this proposal.

The Panel concurs that generally a redevelopment of this site on the edge of an activity centre for a more intensive form of residential and commercial development is supported by, and implements, the relevant sections of the State and Local Planning Policy Frameworks and the various strategic documents to which the policies refer. The issues of the scale and form of the proposed development and the permissible parameters in the supporting DDO13 are, however, matters requiring assessment.

4.3 Planning Scheme controls

(i) Zoning

As earlier noted, the subject land is currently zoned R1Z. Under that zoning it would not be possible to grant a permit for the proposed supermarket use as it is not one of the limited number of permissible retail premises types in the zone.

The R1Z includes the following objectives:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households.*
- *To encourage residential development that respects the neighbourhood character.*

- *In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.*

The following table summarises the existing R1Z controls as they relate to the Permit Application:

Proposed	Use	Buildings and Works
Shop (supermarket)	32.01-1 – prohibited	N/A
Food and drink premises (Restaurant)	32.01-1 – permit required	32.01-6 – permit required.
Reception Centre (Function Centre)	32.01-1 – permit required	32.01-6 – permit required.
Dwellings	32.01-1 as of right	32.01-4 - Construction and extension of two or more dwellings on a lot – permit required.

Table 2 Residential 1 Zone controls relating to the Permit Application

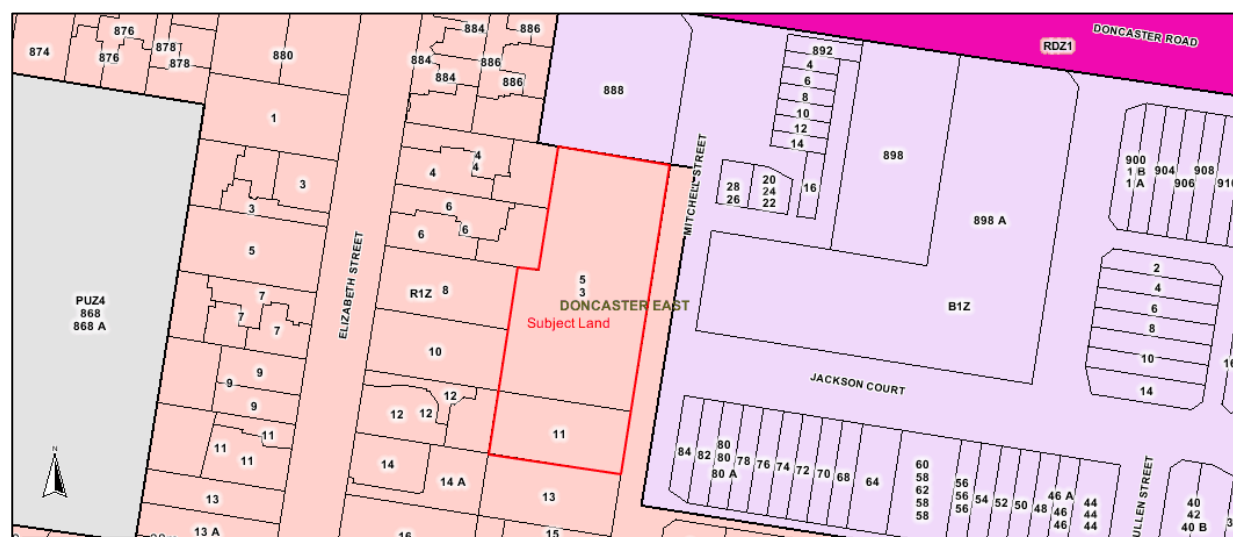


Figure 2 Zoning Map (Source: Planning Maps Online).

As noted, the Amendment proposes to rezone the subject land to MUZ. The proponent had initially requested that the Commercial 1 Zone (C1Z) be applied and made a submission in response to exhibition that this should be the zoning applied. This was supported by Mr Pitt at the Panel Hearing.

The Panel notes that it would be possible to grant a permit for the proposed development under both the MUZ and C1Z, although the types of permissions required would differ. The following table summarises the differences between the two zones as they relate to the Permit Application before the Panel.

	Mixed Use Zone	Commercial 1 Zone
Objectives		
	<p>To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.</p> <p>To provide for housing at higher densities.</p> <p>To encourage development that responds to the existing or preferred neighbourhood character of the area.</p> <p>To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.</p>	<p>To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.</p> <p>To provide for residential uses at densities complementary to the role and scale of the commercial centre.</p>
Uses		
Dwelling	32.04-2 - as of right	34.01-1 - as of right where ground floor frontage does not exceed 2 metres.
Supermarket (Shop)	32.04-2 - permit required if Leasable Floor Area (LFA) exceeds 150 sqm.	34.01-1 - as of right if it doesn't exceed any scheduled maximum.
Reception Centre (function centre)	32.04-2 - permit required	34.01-1 - permit required
Restaurant (food and drink premises)	32.04-2 - permit required if LFA exceeds 150 sqm.	34.01-1 - as of right
Buildings and Works		
Triggers	34.01-4 - permit required for all proposed buildings and works.	32.04-6 & 32.04-8 - permit required for all proposed buildings and works.
Requirements	<p>Clause 54 and 55 apply, with any variations included in the schedule.</p> <p>Non-residential development abutting a residential zone must meet the setback requirements of Clause 55.</p> <p>Maximum Height – if specified in schedule.</p>	Neighbourhood site description and design response required for multi-unit applications.

	Mixed Use Zone	Commercial 1 Zone
Notice		
Exemptions	32.04-12 - Subdivision applications exempt. Schedule can specify other classes of applications.	34.01-7 - all buildings and works applications exempt unless the land is within 30 metres of a residential zone.
Advertising		
	32.04-14 - Category 3 – High Amenity Areas	34.01-9 - Category 1 – Commercial Areas
Schedules		
Vary clause 54 and 55 standards	Yes	No
Maximum Building Height	Yes	No
Maximum LFA for shop and office	No	Yes

Table 3 Differences between the Mixed Use and Commercial 1 Zones as they relate to the Permit Application

(ii) Design and Development Overlay

The subject land is currently affected DDO8 and is situated within sub-precinct A of the overlay. Under the DDO8 a permit could not be granted as the height of the proposed building exceeds the mandatory height specified in the schedule for the precinct. The following building height and setback controls apply to the subject land under DDO8:

- 11 metres mandatory height limit (as the subject land exceeds 1,800 sqm).
- Discretionary minimum front street setback consistent with Clause 55.03-1 or 6 metres, whichever is the lesser.
- Discretionary minimum side setback specified in Clause 55.03-1.
- Balconies, terraces, and verandahs may encroach within the street setback by a maximum of 2.0 metres, but must not extend along the (full) width of the building.

The basis of the DDO8 is discussed in the following Chapter.

(iii) Particular provisions

Easements, restrictions and reserves

Pursuant to clause 52.02 of the Planning Scheme, a permit is required before a person proceeds under the *Subdivision Act 1988* to vary an easement.

The Permit Application seeks to vary drainage easement E-2 as it affects 3-9 Mitchell Street (that is Lot 2 on PS 206485Q) and reduce it to an area of 2m x 2m at the north-west corner of the lot.

Clause 52.02 provides that before deciding on an application, in addition to the decision guidelines in clause 65, a responsible authority must consider the interests of affected people.

The Panel has been provided a copy of a letter and email correspondence from Yarra Valley Water to Council dated 9 April 2014 and 24 April 2014 respectively which indicate that Yarra Valley Water have consented to a partial variation, but the correspondence does not refer to any plans. The email correspondence refers to the creation of a box easement in the south-west corner which appears to be at odds with the varied easement as shown in the north-west corner of the basement plans.

Advertising signs

Clause 52.05 regulates advertising signs to meet a range of amenity and safety objectives.

The Permit Application does not include any proposals for signage and Mr Pitt for the proponent confirmed that any signage would be the subject of subsequent permit applications (if they are required).

Car parking

Pursuant to clause 52.06-3 a permit is required to reduce (including reduce to zero) the number of car parking spaces required under clause 52.06-5.

As the proposed level of parking provision does not meet the statutory requirements of clause 52.06-5, the Permit Application is seeking permission to reduce this requirement. The following table summarises the statutory parking requirements for the proposed development and identifies the reduction sought:

Use	No / Area	52.06-5 Rate	Car Spaces
Dwelling	65 Units	1 to each one or two bedroom, plus	65
		1 for visitors to every 5 dwellings	13
Restaurant	360 patrons	0.4 to each patron	144
Supermarket	2,378 sqm	5 to each 100 sqm	118
	Total		340
	Proposed Provision	76 (Residential) 98 (Non-Residential)	174
	Proposed Reduction		- 166 spaces

Table 4 Statutory parking requirements and the reduction sought

Before granting a permit to reduce the number of spaces, a responsible authority must consider the following decision guidelines, as appropriate (at clause 52.06-6):

- *The Car Parking Demand Assessment.*
- *Any relevant local planning policy or incorporated plan.*

- *The availability of alternative car parking in the locality of the land, including:*
 - *Efficiencies gained from the consolidation of shared car parking spaces.*
 - *Public car parks intended to serve the land.*
 - *On street parking in non residential zones.*
 - *Streets in residential zones specifically managed for non-residential parking.*
- *On street parking in residential zones in the locality of the land that is intended to be for residential use.*
- *The practicality of providing car parking on the site, particularly for lots of less than 300 square metres.*
- *Any adverse economic impact a shortfall of parking may have on the economic viability of any nearby activity centre.*
- *The future growth and development of any nearby activity centre.*
- *Any car parking deficiency associated with the existing use of the land.*
- *Any credit that should be allowed for car parking spaces provided on common land or by a Special Charge Scheme or cash-in-lieu payment.*
- *Local traffic management in the locality of the land.*
- *The impact of fewer car parking spaces on local amenity, including pedestrian amenity and the amenity of nearby residential areas.*
- *The need to create safe, functional and attractive parking areas.*
- *Access to or provision of alternative transport modes to and from the land.*
- *The equity of reducing the car parking requirement having regard to any historic contributions by existing businesses.*
- *The character of the surrounding area and whether reducing the car parking provision would result in a quality/positive urban design outcome.*
- *Any other matter specified in a schedule to the Parking Overlay.*
- *Any other relevant consideration.*

Car parking matters are addressed further in Chapter 8.

Loading and unloading of vehicles

Pursuant to clause 52.07 no buildings and works may be constructed for the manufacture, servicing, storage or sale of goods or materials unless satisfactory provision is made for loading and unloading of vehicles in accordance with the specific requirements set out in the clause. A permit can be granted to waive the requirements of this clause.

As the proposed loading facility exceeds the requirements of this clause no permit is required under this clause.

Bicycle facilities

Pursuant to clause 52.34 a new use must not commence until the required bicycle spaces and shower facilities and associated signage has been provided on the land. A permit may be granted under clause 52.34 to vary or reduce these requirements.

Under the provisions of this clause the proposed development generates a requirement for 43 bicycle spaces and 2 shower rooms.

The proposed development includes the provision of 30 shared resident and staff spaces with an additional 47 spaces provided above bonnet spaces in the car park.

It is noted that the Permit Application originally sought a waiver of the requirement to provide change rooms / showers under this clause, however the plans were subsequently amended to include a change room / shower in the Basement 1 level.

(iv) General provisions

The following general provisions of the Planning Scheme are also of potential relevance to the Permit Application:

- Clause 62 – Uses, buildings, works, subdivisions and demolition not requiring a permit.
- Clause 65 – Decision guidelines.
- Clause 66 – Referral and notice provisions.

5 Basis for the Amendment

This Chapter considers the history and drivers of the Amendment and the key issues which they raise for the Panel's assessment.

5.1 The issue

Given the nature of the proposed Amendment and its departure from recently introduced local planning controls, it is important to consider the circumstances which gave rise to the proposed Amendment and the issues raised by the planning framework for its assessment.

(i) Design and Development Overlay – Schedule 8

Amendment C50 - 2007

Amendment C50 to the Planning Scheme introduced a 'non-mandatory' version of DDO8 in 2007. This version also included only one table with two precincts, A and B.

That amendment implemented the recommendations of the *Manningham Residential Character Guidelines* of March 2005 through a variety of planning tools, including changes to the MSS, introduction of clause 22.15 (Dwellings in a Residential 3 Zone) and application of the Residential 3 Zone to areas removed from activity centres and along main roads. The main elements of the Guidelines were translated into the DDO8.

The Guidelines seek to increase housing densities around activity centres and along main roads with greater access to transport and services through the application of the DDO8. In the areas removed from activity centres, a lower residential density form is encouraged principally through the application of the R3Z.

The Guidelines apply to four identified residential precincts:

- Residential areas removed from activity centres and main roads (Precinct 1).
- Residential areas surrounding activity centres and along main roads (Precinct 2).
- Residential areas with predominant landscape features (Precinct 3).
- Residential areas post 1975 (Precinct 4).

The Guidelines identify the JCNAC in Precinct 2 where '*...it is considered appropriate for applicants to have the opportunity to introduce a new style or, contemporary form of development, whilst ensuring that the design is of a high standard*' (at page 8).

One of the key recommendations made by the panel considering DDO8 was that it be amended to include areas along main roads near activity centres and to delete the proposed mandatory nature of provisions in the DDO schedule. The panel did not consider that the relatively broad approach taken, compare to the detailed analysis undertaken for Amendment C33 (Doncaster Hill), was sufficient to justify the introduction of mandatory controls.

Amendment C96 - 2014

Amendment C96 gave effect to DDO8 in its current form and was approved on 13 February 2014.

Amendment C96 implemented actions from the *Manningham Residential Strategy* of 2012 which replaced the previous Manningham Residential Strategy (2002). The Amendment sought to strengthen the DDO8 controls in light of decisions by the Victorian Civil and Administrative Tribunal which were seen as inimical to the intent of the controls and to provide clearer guidance for higher density dwellings around activity centres and along main roads. In particular, amendments to DDO8 sought to further distinguish and strengthen controls in relation to residential areas removed from main roads and those at the interface with Precinct 2 (that is areas removed from main roads and activity centres). Relevantly, Amendment C96:

- Updated Clause 21.05 (Residential) to introduce the Main Road Sub-precinct and strengthen the distinction between the Main Road Sub-precinct and Sub-precincts A and B, to provide clearer guidance regarding the form and scale of development encouraged in each sub-precinct.
- Introduced a new Main Road Sub-precinct for DDO8 where the preferred height limit (11 metres) and lot sizes (1,800 sqm) were maintained.
- Amended the provisions of sub-precinct A of DDO8 to provide mandatory height limits applying to various minimum lot sizes:
 - 11 metres for development on lots of 1800 sqm or more; and
 - 9 metres for development on lots of less than 1800 sqm with an allowance of an additional 1 metre for a sloping site.
- Amended the provisions of Sub-precinct B of DDO8 by introducing a mandatory height of 9 metres, or 10 metres on a sloping site.

The Amendment C96 Panel found that the imposition of mandatory controls was justified on the basis of the work that the Council had undertaken and because it would encourage consolidation of sites rather than limit the intensity of developments. At section 6.4 of its report, the Panel said:

Council may not be experiencing a signification (sic) number of applications exceeding the maximum height limit, but the intent of the Amendment is to provide greater incentive for developers to consolidate sites in order to achieve increased yield per development.

As is obvious from the evidence and submissions Council has thoroughly addressed the issue of whether a mandatory control is warranted, whereas other submitters have not progressed beyond bald statements. There is no doubt that mandatory provisions are the exception rather than the rule in the Victorian planning system, but this does not mean there is no place for them. Practice Note 59 sets out the grounds for when they are appropriate, and a submitter who opposed such controls really ought to address the Practice Note and demonstrate how the tests are not met.

The Panel has carefully considered Council's response to the Practice Note, and broadly supports its conclusions.

The use of mandatory controls on the lot consolidation is likely to drive consolidation rather than limit the intensity of development. We know this from the experience of development in Thiele Street. Consolidation under the current controls can treble yield while reducing impacts on neighbours. This is a powerful driver of consolidation.

(ii) Loss of the supermarket - 2008

The JCNAC was previously anchored by a small Woolworths supermarket of 1630 sqm until 2008 when Woolworths Limited replaced it with a Dan Murphy's liquor store. The Dan Murphy premises are located at the northern end of the JCNAC with direct frontage to Doncaster Road at 898 Doncaster Road.

The loss of the supermarket caused considerable concern amongst traders in the JCNAC and the Council engaged Tim Nott, an economist, to undertake a review of the demand for a supermarket in the centre. Mr Nott's report concluded that sales at the centre may decline by up to \$11 million annually or 21 percent (at pages 7 to 8 of his report):

The closure of the existing supermarket and its replacement with a Dan Murphy liquor outlet will reduce overall sales at the Jackson Court since:

- *the liquor outlet is likely to have a lower level of sales per sqm than the supermarket.*
- *the closure of the supermarket will reduce the level of patronage at the centre.*

The level of impact cannot be known with certainty since much of it will depend on how the remaining retailers and their customers respond to the changes at the centre...

If a supermarket of between 1,300 sqm and 2,300 sqm 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. This additional spending from visitors and residents would be drawn largely from surrounding centres, particularly Devon Plaza/Doncaster East. The larger supermarket scenario could have some adverse impacts on the food and grocery offering at Devon Plaza/Doncaster East (where total food and grocery sales are of the order of \$33m).

In order to prevent any significant adverse impact on surrounding centres, the supermarket at Jackson Court should be between 1,300 sqm and 1,800 sqm. This sized supermarket is likely to be operated by one of the smaller supermarket chains such as IGA, Aldi or Foodworks.

The future trade for a supermarket at Jackson Court is likely to improve given the forecast for a slowly growing resident population in the trade area and the likelihood of growth in the retail spending per person as standards of living rise.

Following this study, in March 2009, the Council undertook an Expression of Interest process (EOI) to determine interest in establishing a small supermarket on Council owned land within the JCNAC. That land comprised part of the existing car park to the east of the Dan Murphy's premises adjacent to Doncaster Road. The Council received a number of responses to the EOI and resolved to appoint Aldi as the preferred developer of the site.

It is understood that steps were subsequently taken to formally remove the reservation from the car park land and to create a new disposable lot. This resulted in proceedings being commenced by Woolworths Limited and landowners in the Supreme Court against the Council. The appellants sought (*inter alia*) injunctions to prevent the subdivision from proceeding.

In July 2012, the Council decided not to defend the proceedings and came to an agreement with the other parties to settle the matter.

It is understood that the Amendment and Permit Application evolved in response to the Council's inability to facilitate a new site for a supermarket in the JCNAC.

(iii) The Proposal

The original permit application – April 2011

The original permit application was lodged on 21 April 2011, however this proposal did not incorporate a supermarket component nor did it include land at 11 Mitchell Street. This application sought approval for a four storey development comprising three levels of residential units and a café/restaurant, function centre and gymnasium on ground floor, with three levels of basement car parking. It included two penthouse apartments on a partial fifth level.

The permit applicant was advised at this time that the proposal was contrary to the Planning Scheme, in particular the R1Z and the DDO8, although it is noted that a permit might have been granted for the proposal under the provisions of the DDO8 as it stood at the time.

Combined amendment and permit application – October 2011

On 27 October 2011, the proponent lodged a combined permit application and amendment proposal under section 96A of the Act. The proposal sought to rezone the land (not including 11 Mitchell Street) from R1Z to Business 1 Zone (B1Z) and delete the DDO8 control. The rezoning was required to accommodate a ground level supermarket in an amended permit application which also included an additional level of apartments.

In response to the proposal, the Council wrote to the proponent seeking further information and advising of its in-principle support for the rezoning provided it incorporated a supermarket in the order of 1,300 to 1,800 sqm having regard to the retail analysis undertaken by Tim Nott in 2008. The Council nevertheless advised of its concerns in relation to the height and scale of the proposed building.

Amended proposal – November 2012

On 2 November 2012 the proponent lodged a new permit application and amendment including the rezoning of land at 11 Mitchell Street to B1Z and removal of the proposed DDO8. This proposal now forms the basis of the current plans and Amendment before the Tribunal. The Permit Application is described in more detail in Chapter 3.

The Council responded to this proposal by requesting further information and expressing concerns in relation to the proposed 18.5 metre height and the setbacks from the western boundary as well as amenity issues associated with the restaurant terraces. The proponent responded with a submission of amended plans in May which are described in Chapter 3 and Council proceeded to process the Permit Application and the Amendment.

Council resolution – 27 August 2013

At its meeting of 27 August 2013, the Council considered the Amendment and Permit Application and resolved to support the exhibition of the proposal despite officers recommending that they be abandoned. Whilst they supported the rezoning in principle, officers found the height and scale to be excessive, providing a lack of transition to surrounding areas which will be subject to mandatory maximum heights of 11 metres. The Council report noted (at paragraph 13.5) that the maximum building height supported previously on the periphery of Neighbourhood Activity Centres had been 13.5 metres.

Council resolution – 24 September 2013

At its meeting of 24 September 2013, the Council resolved to request authorisation from the Minister to prepare and exhibit the Amendment and a draft planning permit generally in accordance with the attachments to the agenda of that meeting which also included a draft section 173 agreement.

Council resolution – 25 February 2014

At its meeting of 25 February 2014, the Council considered the then 106 submissions to the Amendment and Permit Application and adopted the officer's response to each submission as set out in Attachments 2 and 3 to the minutes. The Council also resolved to request the Minister for Planning to appoint a panel to consider the submissions,

5.2 Evidence and submissions

The planning and urban design witnesses for the proponent and Council acknowledged that the Amendment and Permit Application have been developed in a context where recently introduced clear guidance exists for preferred built form outcomes for the subject land, namely DDO8.

Mr Sheppard called by the proponent and Mr Czarny called by the Council both acknowledged that the Amendment has been largely '*permit driven*', that the proposed new controls have been built around the proposed building.

In particular, it was submitted by Mr Montebello for the Council that the Permit Application's built form represents an exception or special case that the Council was

prepared to support in the context of the ‘*substantial benefit*’ that a new supermarket in the JCNAC would bring to the community.

In submissions in reply, he indicated the Council’s desire that, if the permit was not acted upon, the controls applying to the subject land should default to the DDO8 provisions – which would then guide any future proposal not incorporating a supermarket. In other words, but for the supermarket, the Council would otherwise stand by the existing built form controls contained in the DDO8.

The proponent and its evidence supported the Amendment in its own right, although discussions of the merits of the Amendment inevitably came back to the merits of the Permit Application, as the latter was used to illustrate the merits of the former.

Some resident submitters expressed a preference for the retention of the DDO8 over the subject land and highlighted the degree of non-compliance that the Permit Application exhibits with DDO8. The DDO8 and the 11 metre height limit clearly provide residents with a degree of comfort. They felt that these controls are being removed for an individual development which has been given preferential treatment and this might set a precedent for future proposals adjacent to the JCNAC. Precedent for other Neighbourhood Activity Centres had also been a concern of Council officers.

5.3 Discussion of decision making context

The preamble to Clause 11 (Settlement) of the Planning Scheme includes that:

Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure (Panel emphasis).

Planning schemes are by their nature inflexible legal documents. They are, however, not fixed for all time, indeed reviews of schemes are required by the Act, and the statutory system established under the Act allows amendments to schemes in response to changing community needs. Amendments usually occur, however, only after considerable strategic investigation of the changed circumstances and the best means of responding to them. Sometimes, however, opportunities and changes in needs occur which might not have been anticipated or capable of being anticipated when relevant scheme provisions were earlier investigated and introduced. Division 5 of the Act, enabling the combined processing of amendments and permits, can perhaps be seen as one mechanism facilitating a more responsive planning system, by enabling planning authorities to respond efficiently to unexpected changed circumstances and opportunities, perhaps like the present one, where an opportunity has emerged to enhance the offer and viability of the JCNAC on a strategically located site.

While the Act provides for planning scheme amendments and permit applications to be considered concurrently, it necessarily involves a decision to adopt the amendment first (section 96G(2)).

The Panel is inclined to agree with the comments that the Amendment appears to be ‘*permit driven*’ or, as submitted for Ms Reid, ‘*the development proposal came first and the rezoning*

application second'. Whether the Amendment otherwise has a legitimate planning basis needs to be tested.

It that respect, it appears that the development proposal for this site was eventually, but only just, overtaken by the process of introduction of Amendment C96 (DDO8 in mandatory form). The development of the site now is required to be considered in the context that a new mandatory height control of 11 metres applies to the site and its removal is required if the project as exhibited is to proceed, as well as the rezoning of the land.

The Permit Application which has emerged, the Council and proponent submit, can deliver a particular land use and development outcome which is needed by the community, but is precluded by the present zoning and DDO8 control. Significantly, the Council submits that exceptional circumstances apply here - the benefits of the Permit Application outweigh the exceedance and displacement of the current DDO8 on the subject land. That control, the Council nevertheless says, is otherwise a well-founded and strategically-based built form control.

Such a weighing and balancing of competing planning objectives is recognised in the Act and Planning Scheme. The Act and its schemes establish a framework within which planning authorities are to endeavour to balance and integrate competing policy objectives in favour of 'net community benefit' (at clause 10.04):

Society has various needs and expectations such as land for settlement, protection of the environment, economic well-being, various social needs, proper management of resources and infrastructure. Planning aims to meet these by addressing aspects of economic, environmental and social well-being affected by land use and development.

Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

The Panel, in the context of responding to the issues raised in submissions, has revisited the factors which were weighed by the Council in reaching its conclusion that there would be a net community benefit. The issue of the need for the supermarket is considered in the following chapter of this report and the competing disbenefits of the proposal as well as its other benefits are discussed subsequently, leading to our recommendations.

It needs also to be said that, in this case, unusually the Panel is being asked to not only assess an amendment, the merits of which have been driven by a particular application, but also the Council seeks to ensure the delivery of a particular land use and built form outcome, without which it seems there would have been no Council support for the amendment. The latter aspect of the Amendment poses particular challenges in that when a planning permit is granted it does not compel the permit holder to act on the permitted development or to maintain a particular composition of land uses. To address this issue the Council and the proponent have agreed in principle to a section 173 agreement to require the supermarket to proceed, although they remain in dispute over the degree of control or compulsion that the agreement should exert over the future use of the subject land and for how long.

Regardless of the mechanism, there remains a clear risk that the benefits on which the changes to the Planning Scheme are predicated will not be realised. This issue is discussed further in Chapter 11 of this report.

5.4 Report structure

In light of the above discussion and the issues raised in submissions, the Panel considers that the Amendment and Permit Application raise the following key issues for the Panel's assessment:

- Is there a need for the supermarket at the JCNAC?
- What is the nature and extent of the potential impacts of the Permit Application in relation to built form character, amenity and traffic?
- Does the objective of establishing a supermarket in the JCNAC outweigh other planning considerations, such as preservation of amenity or neighbourhood character? In other words, does the Amendment and Permit Application achieve a net community benefit?
- Do the Amendment, draft planning permit and section 173 agreement provide effective mechanisms to secure the delivery of the supermarket and other outcomes sought, or is another approach required?

The following chapters of this report address these issues.

6 Need for the supermarket and economic impacts

6.1 The issue

The issue to be addressed is the nature and extent of the need for the supermarket.

6.2 Evidence and submissions

In Section 5.1(ii) we have set out the key elements of the economic impact advice received by the Council from Mr Nott in October 2008 concerning the effects of the imminent closure of the Woolworths supermarket and its replacement with a Dan Murphy's liquor outlet.

Mr Nott's report was introduced by the comment that many of the retailers and other traders in the centre 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 service to the local community. It also records that the Council had been requested to encourage investment by a new supermarket operator in order to maintain a local service. Mr Montebello's submission at the Panel Hearing referred to '*much community angst and frustration*' at the time of the supermarket closure.

It is clear that the Council was concerned about the economic impacts for the JCNAC and its shoppers at the time and embarked on a process to try to secure a new supermarket for the centre – a process which has ultimately (albeit circuitously) led to the present Amendment/Permit Application.

With respect to the matter of need for the supermarket, it is noted that Mr Nott said that generally the level of service to those persons living in the Jackson Court trade area would be reduced by the supermarket closure, but for persons who have been used to walking to the JCNAC supermarket, including many older persons for whom transport can present a difficulty, their service would not just be reduced but would be lost. He suggested that the role of the centre would be reduced to providing top-up goods for a much smaller catchment than at present.

It is to be noted that there was no evidence presented which contradicted Mr Nott's view of an expected trade loss in 2008 of 21 per cent and the actual trading behaviour of shops remaining in the centre has not been quantitatively reassessed since that time. Also, the loss in 2008 was expected to be principally as a result of the lesser returns from liquor floorspace compared to supermarket floorspace, rather than the loss of sales at the other smaller shops in the centre.

Relevantly, Mr Nott's report said:

The level of impact cannot be known with certainty since much of it will depend on how the remaining retailers and their customers respond to the changes at the centre ...

With respect to this issue, there was some anecdotal evidence from the submitters at the Panel Hearing that suggested that the JCNAC may today be trading more satisfactorily than might be expected. Ms Walton, while she acknowledged that there was perhaps a need for a mini-market offering canned goods, cooking supplies and non-food groceries, referred to

the availability in the centre of two butchers, two bakeries, a 'very good' green grocery, two wine outlets and a delicatessen.

Mr Sean Stephens, an economist from Essential Economics, was called by the proponent to give expert evidence to the Panel concerning economic demand.

He said that a tenancy survey by his office in April 2014 had indicated that the centre included 72 shops and commercial tenancies which included:

- *Two bakeries*
- *One delicatessen*
- *One butcher*
- *Two fresh fruit and vegetable outlets*
- *Five cafes*
- *Nine hairdressers /beauty salons*
- *One newsagent.*

His evidence included that only three shops, being 4 per cent of the total premises, were vacant – which is '*a very low vacancy rate*'.

Mr Nott's report also included that the sales lost by Jackson Court as a result of the 2008 supermarket closure would be picked up by other nearby centres with a supermarket service, such as Doncaster Hill and Devon Plaza/Doncaster East. The Panel notes the proximity of those centres to the JCNAC. It was Mr Stephens' evidence that the supermarkets at the other nearby centres such as Tunstall Square, Westfield Doncaster and Devon Plaza are strongly trading at present.

Mr Nott's report went on to examine the demand for supermarket floorspace in the JCNAC, concluding that there was economic support for a supermarket of 1,300-1,800 sqm. A supermarket with this limited floorspace would avoid unreasonable impacts on other nearby small centres, he said. He suggested that likely operators would be Aldi, IGA or Foodworks.

This was generally consistent with the evidence given by Mr Stephens who expected that, if the development proceeded with an Aldi supermarket, there would be a growth in trading at the JCNAC from \$40m to \$60m by 2016. He said that the loss of trade effects for other centres would largely be distributed evenly across other nearby supermarket centres with only Devon Plaza suffering an absolute but minor reduction in expected sales in 2016.

It was noted at the Panel Hearing that the exhibited plans and the Revision B plans tabled by the proponent included supermarket floor space of 2386 sqm. Mr Pitt indicated, however, that not all of the retail space would be taken up by the proposed supermarket which was likely to be a 1,600 sqm Aldi, and some 600 sqm of floorspace would be given over to specialty shops. Mr Stephens indicated his view that there would be economic demand for these additional small outlets in the JCNAC.

6.3 Discussion and conclusions

The Panel considers that the evidence and submissions suggest that JCNAC would be immediately benefitted in terms of its retail offer by a new supermarket and this would have flow-on benefits to persons living within the centre's trade area. It appears also that if a supermarket of limited size were to be developed, other nearby centres with supermarket facilities would not be significantly adversely affected by the redirection of expenditure.

While there would be a benefit to the centre and nearby shoppers, it would have to be said that the current level of service provided by the JCNAC small shops does not appear to be poor and supermarket outlets are available less than a kilometre away. Whether the current level of service at JCNAC would remain in the longer term without the reinsertion of a supermarket, however, is not clear. Mr Nott's view was that the centre would become one for top-up shopping only for residents of a reduced catchment. Taking this longer term view, it would seem that a supermarket could well arrest a decline in usage of the centre and hence a reduced level of service it might offer to the community.

7 Land use consequences

This chapter addresses the land use proposals which are facilitated by the Amendment and for which permission is sought under the Permit Application.

7.1 The issue

The key driver of the Amendment and Permit Application is a land use outcome, that is the supermarket, the need for and benefits of which were discussed in the previous chapter. The Amendment would facilitate this use as it is currently prohibited under the R1Z. The Panel has been advised that the proponent is committed to securing a supermarket of at least 1,300 sqm and proposes to incorporate speciality shops in any residual floor space not used by the supermarket, although the details and layout of these shops are yet to be determined.

The Permit Application proposes to continue the restaurant and reception centre use on the subject land but within new premises occupying Level 4 of the proposed building, including two terraces. It is proposed to operate seven days a week, until 1.00am Monday to Saturday and until 12.00am on Sundays, with a maximum capacity of 360 patrons in total. The restaurant and reception centre are provided with a separate entrance lobby and lift at the northern end of the building onto Mitchell Street.

The supermarket and restaurant and reception centre uses would each use the loading bay on the ground level at the north-western corner of the building.

The upper level commercial uses have direct interfaces with residential properties to the west and south. The 65 new apartments will be situated on the three levels between the upper commercial uses and the supermarket on the ground level. Many of the apartments too have direct interface with the residential properties to the west and south.

7.2 Evidence and submissions

The written submissions indicate that the proposed supermarket use enjoys a level of support from many in the community, particularly from traders in the JCNAC. The Council and the proponent are in agreement in relation to its appropriateness for the subject land and its relationship to surrounding uses within the JCNAC and residential areas to the west and south.

As discussed in the previous chapter, some resident submitters who appeared at the Hearing, such as Ms Walton, questioned the level of need for the supermarket, especially given the proximity of other supermarkets at nearby centres along Doncaster Road. In particular it was questioned why the delivery of the supermarket was contingent upon the height and scale of the proposed building. Some alternative sites were also suggested within the JCNAC itself.

The principal areas of concern raised by resident submitters arising from the supermarket use were associated with the potential effects of increased traffic, in particular truck deliveries, and parking spilling into surrounding residential streets.

Some concerns were also raised by resident submitters regarding the potential for noise from the restaurant and reception centre use, in particular when patrons including smokers would use the outside terraces. This issue was raised in the submission by Mr Tait for Ms Reid. Ms Webster and Mr Maddaford indicated their concern that conditions should address noise from the restaurant/reception centre. Noise from the loading and unloading activities was also raised in submissions.

It was the evidence of Mr Smyth, called to give planning evidence by the proponent, that the proposed restaurant and reception centre would complement the existing land uses within the JCNAC, providing a high amenity space with City skyline views and outdoor terraces. Mr Smyth was satisfied that these uses could be properly controlled through the proposed permit conditions despite their proximity to existing dwellings.

7.3 Discussion

(i) Supermarket

In terms of its location the Panel accepts that the subject land is an appropriate location for a new supermarket within the JCNAC and is compatible with surrounding uses. The Panel accepts the evidence of Mr Smyth that the building is a genuine mixed use building which will contribute to the vitality and viability of the JCNAC. We also accept that the supermarket will provide a benefit by supplementing and securing the retail offer at JCNAC, thereby assisting in meeting the retail convenience needs of the surrounding community.

In terms of the proposed layout, the vehicle and pedestrian access and loading bay are all oriented to the east towards the JCNAC and the at grade car park. This orientation is away from the sensitive interfaces to the south and west. The Panel is satisfied that this layout will mean that the supermarket will not unreasonably impact on surrounding sensitive uses. Acoustic measures can ensure the loading bay activities will not cause nuisance to neighbours.

The traffic and parking aspects of the proposed supermarket are discussed in Chapter 8.

(ii) Restaurant and reception centre

The Panel accepts that the restaurant and reception centre will complement the existing uses within the JCNAC and ensure that the site continues to fulfil an entertainment role within the JCNAC in new premises offering spectacular views towards the city.

However given the significantly elevated location, the proposed provision of outdoor terraces, the long operating hours and reasonably large patron capacity, the Panel is concerned that there is potential for unacceptable off site noise impacts. The level of information which has been provided has been insufficient to provide assurance that the operation will not cause unreasonable impacts and will be capable of complying with relevant noise regulation.

The Panel finds that the acoustic report provided in support of the Permit Application is inadequate and does not provide a meaningful assessment of the potential for noise impacts. The report simply addresses suitable recommendations to '*limit noise impacts*' and only states that a '*reasonable acoustic environment*' will be provided for the residents of the

new building and existing residents on surrounding properties to the west. No analysis, modelling or quantified predictions are provided to confirm whether the building will be capable of complying with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No N-1 and State Environment Protection Policy (Control of Music Noise from Public Premises) No N-2 (SEPP N1 and SEPP N2) following construction.

Given the potential for noise impacts from the restaurant, reception centre and the loading bay, the Panel recommends that more comprehensive permit conditions be imposed to require a noise assessment prior to the endorsement of plans to ensure that the final design incorporates any necessary acoustic or other design measures enabling compliance with the relevant noise regulations. It is also recommended that the operator of the restaurant and reception centre be required to provide a further assessment six months following commencement of these entertainment uses to confirm that compliance is achieved.

(iii) The apartments

There can be little argument that the use of the land for dwellings, which is as-of-right both in the existing R1Z and the proposed MUZ, should not be supported. The policy context of the Planning Scheme clearly supports housing intensification in and around activity centres. The additional residents introduced in the environs of the JCNAC will add to its economic and social vitality.

The issues associated with the dwellings include whether there would be unreasonable overlooking to adjoining residential properties. This is discussed in Chapter 9. The residents of the proposed development will also contribute to additional traffic on the nearby road system. This is discussed in Chapter 8. The 65 dwellings will also make the principal contribution to the scale of the development – they occupy three of the five above ground floors. Built form impacts, including overshadowing and visual presentation to the neighbouring properties are also discussed in Chapter 9.

7.4 Conclusions

Having regard to the objectives and decision guidelines of the MUZ the Panel considers that the combination and layout of the proposed uses are generally appropriate to the subject land and its context within the JCNAC.

The Panel finds that the information provided with the Permit Application regarding acoustic issues is inadequate and additional assessment is required to incorporate any necessary measures into the final endorsed plans and into the Noise and Amenity Action Plan and the Parking and Traffic Management Plan. The Panel recommends additional permit conditions below.

7.5 Recommendations

The Panel recommends:

- **That additional conditions be included on the permit which require an acoustic assessment of the design prior to the endorsement of plans to ensure that the restaurant and reception centre use and the loading bay will be capable of complying with SEPP N1 and N2. The report should also recommend measures for the management of the use to be incorporated into the Noise and Amenity Action Plan and the Parking and Traffic Management Plan. These conditions should also require an assessment be conducted following commencement of these uses to confirm compliance.**

8 Traffic and parking impacts

8.1 The issue

The issue is whether the proposal to supply some 166 fewer spaces for on-site parking than the Planning Scheme contemplates is acceptable and whether traffic accessing the site, especially regular delivery trucks servicing the supermarket and restaurant, would cause unreasonable congestion and amenity problems in nearby residential streets.

8.2 Evidence and submissions

A number of the written submissions raised concerns about increased traffic arising from the development.

One submission referred to increased traffic congestion on Mitchell Street resulting from the development which includes parking for 76 residents' cars, 98 spaces for vehicles servicing the retail use and trucks servicing the supermarket. It was noted that the site does not have direct access to Doncaster Road precluding the provision of another direct accessway onto that road.

Another submission referred to the narrowness of Mitchell Street and suggested it would be made dangerous by the parking and traffic pressures. The submitter considered it unsafe for pedestrians to cross the road at present and more traffic would aggravate the problem.

Other submissions referred to cars having to back along parts of Mitchell Street because parked cars precluded two way traffic movement.

One submission raised the issue of the extent of the parking waiver, suggesting that cars would be 'forced' into the Jackson Court parking area and which in turn would lead to cars parking in surrounding residential streets.

At the Panel Hearing, Mr Maddaford and Mr Fisher both referred to the constrained road width to the south of the JCNAC and expressed concern about additional traffic pressures on this part of the network. Mr Fisher advised that the development of flats at the Lord Street intersection and a consequent increase in on-street parking on both sides of the street had resulted in traffic in Mitchell Street being reduced to a single lane in places. He was particularly concerned that trucks should not seek to access the site from the south. He was also concerned about further parking pressures adjacent to residential properties.

Ms Walton and Mr Walsh also referred to traffic congestion issues.

VicRoads' written submission raised no concerns about the proposal.

The Council officer response to submissions noted that the applicant's traffic and car parking analysis had been assessed by the Council's Traffic Engineers who considered that the proposed development would introduce no unreasonable traffic congestion or safety hazards. It noted that further parking restrictions could be introduced to free through movement and restrict parking in residential streets if required.

Mr Hunt's view was that there was no real likelihood of increased demand on this part of the road system by the proposed development and in any case any problems might be managed

by the Council. He said that the traffic volumes on Mitchell Street were at the lower end of acceptable volumes for a street of this type.

Nevertheless, when questioned, Mr Hunt did not oppose a condition which might seek to ensure that trucks would access the site from Doncaster Road rather than from the south – as he assumed this would be the preferred route in any case. Mr Pitt indicated for his client that he was opposed to such a condition as an unreasonable fetter on road usage.

Mr Hunt also addressed the matter of parking availability for the development. His evidence included a description of the proposed arrangements for the development. He advised:

- Parking for 174 vehicles is to be provided on-site in two basements (91 spaces in Basement 2 and 83 spaces in Basement 1).
- 76 parking spaces in Basement 2 are to be allocated to the 65 apartments with internal roller doors/access controls restricting access.
- The remaining 98 spaces, including one disabled space, are to be available for the restaurant/reception centre, supermarket and residential visitors.
- 91 bicycle spaces are also proposed to be provided on site including 30 within shared resident/staff parking areas in the basement, 47 above bonnet spaces for residents and 8 spaces at double-sided rails at ground level for visitors.

He also advised that some 314 vehicle spaces are available in JCNAC car parks and on street including 185 spaces in the central car park.

Mr Hunt said that PO2 applies to the JCNAC, setting a required parking rate for small shops in the centre of 2.7 spaces per 100 sqm of leasable floorspace. The remainder of the parking requirements are those set by Clause 52.06 of the Planning Scheme. He calculated the following Planning Scheme standard requirements for the development:

- 78 spaces for the dwellings
- 144 spaces for the restaurant/reception centre
- 118 spaces for the supermarket.

This provides a total of 340 spaces. The proposed provision of 174 on-site spaces gives a shortfall of 166 spaces from the scheme requirement. The residential component of the development would be two spaces short of the requirement for dwellings and residential visitors; with the remaining parking shortfall attributed to the restaurant and supermarket (98 spaces are proposed to be provided for these uses rather than the required 275 spaces).

Mr Hunt then undertook an empirical demand analysis of car parking for each of the uses as is allowed by the Planning Scheme. He calculated that the real day and evening peak demand for the supermarket (assuming all 2,378 sqm of the retail space is used for this purpose) would be 76-95 spaces and 61-76 spaces respectively. The restaurant demand would be 83 spaces in the daytime and 108 in the evening. The total demands would range from 105-124 spaces during weekdays to 176-191 spaces in the evenings.

This analysis again indicated no real shortfall for the residential units but a real shortfall of up to 93 spaces on Friday and Saturday evenings and up to 25-30 spaces during the day for the commercial uses.

It was Mr Hunt's evidence that the parking shortfall could be met by off-site spaces in JCNAC. He based this in part on surveys taken of parking usage at the JCNAC in recent months. He noted peak parking demand occurred on Friday lunchtimes when 39 spare spaces were available in the centre and up to 166 spaces were available on Friday evenings. On Saturday, at lunchtime, a minimum of 52 spaces were available and, in the evening, 138 spaces.

Mr Montebello submitted for the Council that the surveys by Mr Hunt indicated that parking in JCNAC can accommodate the overflow from the expected demand of the proposed uses.

Mr Hunt addressed the proposed on-site provision of bicycle parking and associated facilities which, as shown on the Revision B plans, meet the Planning Scheme requirements. He advised that the loading bay provision similarly exceeds the Planning Scheme specifications.

Mr Hunt acknowledged the Council condition requiring improved sight lines at the car park entry but said that it should apply only to the northern sightline as the visibility to the south was already adequate. Mr Pitt added with respect to lines of sight that there should be a requirement that landscaping in planter boxes near the vehicle entries should be not permitted to grow to more than 0.9 metres in height.

8.3 Discussion

The Panel has considered the evidence and submissions concerning the traffic and parking effects of the proposed development.

The Panel is of the view that:

- The evidence of Mr Hunt and the written views of the Council's engineers and VicRoads suggest that no untoward traffic effects would arise. The road capacity in the opinion of these professionals is adequate to cater for the increased activity.
- While the pavement width of Mitchell Street south of the subject site is sufficient only to allow a single through lane between cars parked on both sides of the street, the subject development will not place exceptional demands on this part of the street. The need for vehicles to give way to others on relatively narrow sections of urban roadway from time to time is not in any case uncommon nor is it a major impost on amenity.
- It is nevertheless appropriate to reinforce by a permit condition what will be a natural tendency for delivery vehicles and other trucks to access the site from the north so as to avoid any congestion issues in the southern part of Mitchell Street.
- Permit conditions are required to address the matter of sight lines for vehicles exiting the subject building.
- The parking evidence is clear that there is adequate off-site capacity within the centre to accommodate those parking demands not met on-site.
- There is perhaps a tendency for persons seeking available parking when attending commercial premises to choose visible ground level spaces even if somewhat further away from the premises rather than enter a basement when the availability of free spaces there cannot be ascertained. To this end it is appropriate that measures to encourage use of the basement spaces should be required given the reliance placed on on-site parking.

- Commercial parking in surrounding residential streets could be discouraged if necessary by parking restrictions imposed by the Council.

It is relevant here to record that it was suggested at the Panel Hearing by the Council that, if the Amendment proceeded, it may be appropriate to extend PO2 which, so far as the subject site is concerned, currently applies only to 3-9 Mitchell Street, to 11 Mitchell Street as well.

The Panel supports this extended application of the parking provision and suggests that it should occur under this or a subsequent Amendment.

8.4 Conclusion

The Panel considers that the traffic and parking issues raised in submissions have been answered by the professional evidence and they will not impose any disamenity upon the surrounding area.

8.5 Recommendations

The Panel recommends:

- **That Parking Overlay Schedule 2, which currently applies, so far as the subject site is concerned, to 3-9 Mitchell Street only, should be extended to 11 Mitchell Street under this or a subsequent Amendment.**
- **That a condition should be included on the permit which would encourage trucks to access the site from Doncaster Road rather than from the south.**
- **That the condition on the exhibited draft permit requiring improved sight lines at the car park entry should apply only to visibility to the north.**
- **That a condition be added to the permit to the effect that landscaping in the restaurant lobby planter adjacent to the vehicle exit should be not permitted to grow to more than 0.9 metres in height to prevent interference with lines of sight to and from vehicles entering and exiting the property.**

9 Built Form and Design Impacts

9.1 The issue

The issue is whether the scale and bulk of the proposed development is excessive especially given its siting along an elevated ridge line which accentuates its height relative to existing residential properties to the west and as seen across the JCNAC central car park. The overlooking and shadowing effects for adjoining properties to the west also require consideration.

9.2 Evidence and submissions

A large number of written submissions objected to the proposed height of the building, arguing that this was inconsistent with the recently introduced Amendment C96 provisions; it would set an unacceptable precedent; the building was 'overbearing'; the building has an excessive footprint and height; it would cause overshadowing of the adjoining residential properties (including 2/6 and 2/14 Elizabeth Street) and the public realm; properties such as that at 1/12 Elizabeth Street would be overlooked by the balconies of multiple units; there would be a loss of neighbourhood character.

Mr Maddaford and Ms Webster, and Mr Tait for Ms Marion Reid, made submissions as nearby residents concerning the visual impacts of the proposed building.

Ms Reid lives at 2/12 (or 12A) Elizabeth Street and works at home with her living/working areas abutting the common boundary. It was her submission that the proposed ground level setback at the western boundary would have adverse amenity effects for the neighbours. It was said that a 0 to 2.4 metre setback did not provide an adequate building separation nor sufficient space to accommodate appropriate screening vegetation. It was submitted that the proposed building would dwarf the adjoining residential properties and cause overshadowing and lack of privacy. The submission for Ms Reid nevertheless supported DDO13 with a mandatory height provision and a minimum three metre western boundary setback.

Ms Webster and Mr Maddaford live at 2/6 Elizabeth Street. Their submission addressed the history of the wall on the common boundary between their land and the subject site. They advised that it had been constructed to suppress noise from the restaurant kitchen on the subject land. They sought to have the new wall set back more than 5.5 metres. They argued that the proposed building was excessively high and did not make an appropriate transition to the adjoining residential area. They expressed concerns about overshadowing precluding future solar panel installation and affecting an external area with a perspex roof.

Mr Welsh's submission to the Panel addressed built form issues as well as other matters. He similarly said the development failed to provide a transitional step down to the low scale residential area, which he, like others, believed would be highly unlikely to be redeveloped because of multiple ownerships and the need for lot consolidation. He referred to overwhelming scale and domination of views. Mr Welsh supported a new centre-wide DDO applying a 14.5 metre height limit.

Mr Walsh's submission also addressed issues around the scale of development and loss of neighbourhood character. He referred to the development as a '*gigantic structure.*'

Ms Miot made submissions at the Panel Hearing about the uncertainty caused by the change of planning controls and submitted that a '*development of this magnitude would have a devastating impact on adjacent properties/households...*'

In relation to the scale and design elements of the proposed building, the Council had sought independent urban design advice from Planisphere consultants in August 2013. Planisphere recommended that a maximum overall height of 14.5 metres (four storeys) should apply with a maximum street wall height of 11 metres (three storeys). They also recommended a maximum height of 7.2 metres (two storeys) for walls on a boundary adjoining a residential property. Their report also included:

The location at a high point presents an opportunity to provide a high quality built form landmark for the local area, as well as a greater sense of enclosure and definition for the centre.

Planisphere was not called to give evidence at the Hearing.

Mr Czarny gave independent urban design evidence for the Council. His view was that the proposed height and scale of the building was acceptable. In particular he was supportive of the street wall height but also of the overall height. He described JCNAC as 'not a little place' with quite extensive facilities and believed the centre would benefit by the addition of this development which he said had a good form and finish. He identified as positive design elements: the active ground level of the building, the good horizontal and vertical division of the 93 metre frontage and the visual merging together of Levels 4 and 5.

He noted that the surrounding residential areas are designated for substantial change and are encouraged to be developed to three storeys under DDO8. In his view it would not be inappropriate for the subject building to be developed to a height of a further two storeys above this. The 14.5 metre height supported by Planisphere, he said, was too modest in the context of the site's proximity to Doncaster Road where there were already three and four storey developments.

Mr Czarny identified Elizabeth Street as the place of sensitivity in terms of visual effects of the development. He acknowledged that the villa units to the west of the subject site would be difficult to redevelop but this would likely happen eventually given the presence of the Doncaster Bus Depot further to the west which is a major potential development site. He noted also that the full height of the new development would be visible from the Elizabeth Street public realm in the gaps between the dwellings.

Mr Czarny supported mandatory requirements in the proposed DDO13 for street wall height and overall height and initially supported a mandatory rear setback. He said that a requirement for a three metre rear setback for the first two levels of development on the site was appropriate to allow substantial staggered landscaping to screen the development, given the housing in Elizabeth Street will remain as it is at present for some time, and that it is sited lower than the subject land accentuating the perceived height of the near boundary elements. He supported a requirement for layered landscaping in that location. He later said that the rear setback requirement in the DDO should remain discretionary.

This view that the ground and first floor level should be set off the western boundary by three metres was contrary to Mr Smyth's and Mr Sheppard's views who considered it was not inappropriate to continue with the current zero setback to that boundary.

Mr Pitt indicated that the neighbours at 6 and 8 Elizabeth Street had requested the existing on-boundary wall be constructed. He also submitted that whether the setback was 2.4 or three metres would not materially affect the landscaping outcome. Mr Pitt further said that, if the western setback of three metres was applied, it would likely create problems for the layout the basement parking areas and access ways.

In this respect, Mr Hunt of Cardno, who was called to give evidence by the proponent, indicated that the ramp grade to the retail Basement 1 parking is at the maximum grade and would be pushed to beyond the permissible grade if shortened because of the greater western boundary setback; and perhaps seven central car spaces would be lost from the car park if the setback to the west was increased. He conceded under cross examination, however, that wider spaces might be provided to compensate for reduced width of reversing aisles, and the six metre length of the flat section at the entrance to the ramp at street level which exceeded the relevant design standard might be reduced allowing the proposed ramp grade to remain unchanged or only altered minimally. He noted that the basement changes might mean that more off site parking spaces may have to be used.

Mr Czarny supported Mr Smyth's view about the need to reduce the visual impact on the property to the south. This had resulted in Unit 103 being set back further from the southern boundary and the deletion of a white rendered section of the southern wall, thereby improving the outlook from 10 and 8 Elizabeth Street.

It was Mr Pitt's submission that additional overshadowing would be of limited duration and would not affect core private open space areas or any potential roof top structure. Mr Smyth acknowledged the potentially most affected properties are 2/4, 2/6, 2/12 (12A) and 14A Elizabeth Street but was of the view that the extent of additional morning shadow, especially given some properties had some external areas roofed, was not unreasonable. Mr Sheppard's evidence included that the small amount of additional shadow to 6, 8 and 10 Elizabeth Street would be gone by 10.00am. Some small areas of shadow would remain, he said, on the properties at 12 Elizabeth Street and 13 Mitchell Street but at least 75 per cent of their open space would receive direct sunlight. Given this is a locality where three storey development is encouraged, he said, the overshadowing is within acceptable limits.

Mr Montebello's submissions were that the building graduated down in height as it approached residential properties, and he said the outcome would be a sympathetic and variable development. Mr Montebello also argued that the existing on-boundary development presented to the neighbours to the west should not be continued as the existing building was to be demolished and a far more intensive built form would replace it. He said that overlooking and overshadowing issues of concern had been adequately dealt with in the design of the proposal or by conditions requiring improvements.

Messrs Smyth and Sheppard both suggested that the 19 metre building height limit in the proposed DDO13 should not be a mandatory provision. Mr Montebello opposed this for the Council, arguing that while the Council was supportive of the proposal and wished to see the

permit issue, this could not be interpreted as support for an amendment that would put aside DDO8 and replace it with a liberal control.

While Mr Sheppard was of the view that the northern elevation presented to Doncaster Road above the abutting commercial building was satisfactory, Mr Czarny supported articulation of the sheer blank walls there so as to improve the building's presentation to the main road (until the two storey office with Doncaster Road frontage would be redeveloped).

Mr Sheppard gave evidence concerning the extent of compliance of the building with ResCode Standard B17. He indicated that at the top of Level 3 on the proposed building at the north-west corner, some building elements (a frame and eave) sat closer to the boundary than the standard would recommend and the on-boundary walls were higher than recommended. It was his view that the southern elevation was well articulated, however, and the landscaping and roof garden inset, together with fine grained building elements, successfully broke up the height and length of the western elevation.

Mr Sheppard said he believed that screens or translucent glass had been provided to all windows from which there was potential overlooking. Mr Smyth also addressed this matter and advised that it should be clarified on Drawing TP20 that the windows at Levels 2 and 3 are fitted with translucent glazing or screens.

9.3 Discussion

It would have to be said that the subject building is of an appreciably different scale to other developments in the area. Jackson Court is a centre dominated by fine grained commercial properties and the surrounding residential areas largely comprise modest one and two storey dwellings. The exceptions are the commercial building to the north of the subject site and the former supermarket building both of which have Doncaster Road addresses. This proposed building would have a substantial 93 metres length and would be three storeys higher than most other buildings in the area.

The Panel has considered the evidence and has been informed on the issue of visual effects by its inspections of the subject site, the JCNAC generally, Elizabeth Street and the residential properties directly abutting the site.

While we advise that we consider that a building of lesser scale would sit more comfortably amongst existing development in the area, we are of the view that the planning intents for more intensive development in the surrounding streets have to be considered in assessing the acceptability of the Amendment/Permit Application. We accept Mr Czarny's view that a building which would be two storeys higher than the intended three storey development in the centre's residential hinterland would not be inappropriate. We also agree with his view that the JCNAC is a place of not insignificant scale. Notwithstanding the fine grained nature of most of the building elements, they nevertheless form quite extensive continuous building rows around the substantial central parking area. We also agree with all of the planning and design witnesses that the Application building is well resolved architecturally, satisfactorily 'broken up' both vertically and horizontally, and we consider it will make a positive contribution to the JCNAC urban place.

We further agree that certain minor changes such as the full-length street awning, which has already been included in the Revision B plans, and the articulation of the northern walls are or would be beneficial in terms of the proposed building's presentation to the public realm.

Clearly a key issue to be addressed in terms of scale is the presentation at the present time of the development to the immediate residential neighbours.

With respect to the southern elevation, we consider the changes made in the Revision B plans to reduce the prominence of certain building elements by muted coloration result in an acceptable visual outcome.

With respect to the western elevation, we are satisfied that if a three metre setback to the boundary was applied to the ground and first floors of the building and layered and staggered landscaping provided in that setback, that the resultant improvement over the existing on-boundary condition would compensate for and/or help screen the further levels of development above. We consider it not acceptable to continue on-boundary development in the context of the much taller development on the subject land. We were advised that the on-boundary walls were only introduced to overcome unacceptable noise and fume emissions associated with the kitchen area of the existing restaurant.

Setting the ground and Level 1 western walls a further distance off the western boundary would likely necessitate also setting the basement floors off that boundary in the same manner. This is appropriate to allow for unfettered root development.

While we were presented with no sight line diagrams, only 3D images in Mr Smyth's report, we anticipate that under that revised western elevation arrangement, at least the two uppermost levels would be screened by the lower levels from some viewing places on Elizabeth Street properties, especially close to the common boundary. In this respect too, we accept that situating the first floor common open space area opposite the two Elizabeth Street properties which have larger rear yards is the correct design response, given the building will be more generally visible from those properties.

We recognise that this additional setback to the western boundary may present some difficulty for the basement parking layouts. This was a matter which received some considerable attention at the Panel Hearing. However, if a few parking spaces are lost as a result of the necessary basement redesign, it appears that additional off site spaces would be available for use (see the discussion in Chapter 8).

We recommend in Chapter 10 that improvements should be made to internal amenity of the residential floors by introducing a second common open space terrace area at Level 1 extending westwards from the western wall of the internal corridor. This is recommended to be northward of the existing open space inset perhaps midway between it and the northern wall of the building in the location of APT 1-20. We see this second inset as improving the public space on each residential level by allowing more natural light into the internal corridors. As discussed, this would have the added benefit of further interrupting or breaking down the long north-south extent of the western elevation as seen from the west. This would be to the benefit of the immediate neighbours and the view from the Elizabeth Street public realm. We also are satisfied that such a change could be accommodated by redesign of Level 4.

The Panel considers that overshadowing issues are not major: while there would be reduced sunlight to the adjoining properties to the west in the morning, the afternoon sunlight would be unimpeded. The Council has suggested a condition requiring building adjustments to help reduce overshadowing. The additional terrace area recommended above would assist in this regard together with the general three metre setback.

We believe that overlooking issues can be addressed as suggested by Mr Smyth and the Council by a general condition requiring screening to the satisfaction of the Responsible Authority. We would comment, however, that given the siting of the subject building along a ridgeline and the spectacular city views from upper levels which would potentially be available, it would be appropriate in terms of optimising the amenity of the proposed apartments to design window and balcony screening throughout in such a way that immediate down looking is precluded but distant views to the west would be available. We note that living areas and balconies for the most part have been designed and sited to avoid the need for screening. Where windows or balconies do require screening to protect the privacy of neighbouring properties, fixed privacy screens to 1.7 metres above floor level, highlight windows or translucent glazing should only be adopted if more limited or directional screening is ineffective.

9.4 Conclusions

The Panel is not surprised that the proposed Amendment/Permit Application has generated considerable response in the form of a large number of submissions from users of the JCNAC and other nearby residents. What is proposed here is a development, with a facilitating Amendment, of a scale that is out of step with the design parameters for the site only recently added to the Planning Scheme (or indeed only recently confirmed as appropriate by Amendment C96). As we have discussed, the Council has acknowledged that if it was not for the inclusion of the supermarket component they would not be supporting a development which departed from the current DDO8 built form parameters.

This being said, the evidence and submissions which have been presented to the Panel suggest to us that the compromise decision by the Council has not been unreasonable. As we have discussed in Chapter 5, planning decisions necessarily involve assessment of whether net community benefits would result, and it must be understood that the concept of 'net benefit' necessarily assumes that there will generally be some disbenefits to be weighed against the positive features.

We do consider that the scale and bulk of this building is less acceptable than it might be, even with the ameliorating changes of the greater rear setback and landscaping and the additional first level open space insert. Indeed we gave consideration to whether the building should be reduced in height by one storey to assist in mitigating its visual impacts. We rejected this, however, noting the suggestions for the proponent that the extent of the residential component was needed to offset the low rental return from a supermarket alone occupying the retail floorspace, rather than it being accompanied by the usual more lucrative small tenancies. We also noted Mr Czarny's view in response to questioning, that there would be adverse consequences of reducing the building by one level for its architectural presentation.

Against this concern about somewhat over-scaled development, we consider the proposal has a number of positive features besides simply the reintroduction of a supermarket - which we acknowledge is an important element albeit less important in the balance than considered by the Council. Those other positive features include the well-resolved architectural design; positive aspects of on-site amenity; a contemporary architectural addition to the centre; the contribution of public works to the street including a widened footpath, seating and landscaping; presentation of an active and transparent ground level frontage; continuation of the entertainment offer; the addition of new residents to further support the local centre; no unreasonable traffic and parking consequences.

On balance, we think it is an acceptable outcome provided that a supermarket is included in the mix of uses.

9.5 Recommendations

The Panel recommends:

- **That the changes to be incorporated in amended plans required by Condition 1 should include:**
 - a) **A three metre setback for the ground and first floor levels of the building for full length of the western boundary unless in the opinion of the responsible authority this is precluded by the workability of the basement car parking area.**
 - b) **The provision of staggered and layered landscaping in the setback to the western boundary.**
 - c) **The articulation of the northern walls of the building to the satisfaction of the responsible authority.**

10 Other issues

The following are some remaining matters arising from the submissions and the Hearing.

10.1 Internal amenity

(i) The issue

The issue to be considered is whether the proposed residential component of the development offers an acceptable standard of on site amenity.

(ii) Evidence and submissions

Mr Czarny who gave evidence for the Council was critical of some aspects of the proposed residential elements of the development and the level of on site amenity that they would offer. In particular he was of the view that the corridor length on each level was excessively long. He said that the residential lift at the northern end of the building, proposed to connect the basement parking and the dwellings, should also provide access to and from the ground floor to avoid a long trek on the residential floors to the southern residential lift for ground floor access. He also said that the additional residential lobby at ground floor should be separate from the lobby servicing the restaurant/reception centre lift. Such an arrangement would also give more direct access to the resident bin corral.

(iii) Discussion

Subject to some further improvements recommended below, the Panel considers that the proposed development would offer a satisfactory level on-site amenity for its residents. There are only a few units with southern orientation only and the Level 1 communal open space/terrace area would provide a considerable supplement the private balcony space available to each apartment. We have some concerns about the need to ensure that the noise from the commercial activities on the site does not cause undue disturbance to the residents (as well as to the neighbours) but believe these acoustic difficulties can be adequately managed.

The Panel agrees with Mr Czarny's criticism concerning the corridor length on each residential floor, however, and the inconvenience it presents when accessing dwellings at the northern end of the building from the ground floor.

We consider that the residential lift at the northern end of the building should have ground floor access to avoid persons entering from or exiting to the ground level having to trek along more than 70 metres of residential corridors from the southern lift.

We are also of the view that the corridor length affords the residential floors a somewhat hotel-like character and note that it would be necessary to keep the corridors constantly lit.

We consider that it would be appropriate to add an additional open space break or inset to the west of the residential corridor on all levels to allow more natural light into the corridors midway between the proposed inset communal roof garden/terrace and the northern end of the corridor. This should be located to the western side of the building so as to further relieve the perceived length and overall scale of the building when seen from the west. This

may result in loss of a small number of units on Levels 2 and 3 (perhaps two in total) but note that on Level 1 the building administration centre occupies space which could be used for a relocated unit. It would seem that the administration centre might be relocated to some of the excess retail space at ground level or to Level 4.

(iv) Recommendation

The Panel recommends:

- **That the changes to be incorporated in amended plans required by Condition 1 should include:**
 - a) **Provide access to a separate lobby at ground level for the residential lift at the northern end of the building.**
 - b) **A second common open space/terrace area at the first residential level to the west of the north-south corridor must be provided, extending through to the levels above, designed to further break down the perceived length of the western elevation and to provide additional natural light to the residential corridors at all three levels.**
 - c) **Consequential changes to the layout, and if necessary the number, of the residential units, as well as alterations to other building elements to accommodate the changes in a) and b) above.**

10.2 Proposed modification of easement

As noted in Chapter 3, the Panel was provided with a copy of a letter and email correspondence from Yarra Valley Water to the Council which indicated that it had consented to a partial variation. The Council's own engineers had earlier given consent to the removal or variation of the easement. The Yarra Valley Water email correspondence, however, did not refer to any plans. The correspondence referred instead to the creation of a box easement in the south-west corner of the site, which appears to be at odds with the varied easement as shown in the north-west corner of the basement plans.

The Panel notes that conditions have been imposed requiring a plan of variation to be referred and certified under the *Subdivision Act 1988*. Given the uncertainty regarding what Yarra Valley Water has actually consented to, the Panel recommends that an additional permit condition be added to the permit requiring the plans to be endorsed to show the final extent of variation to the satisfaction of the Yarra Valley Water.

(i) Recommendation

The Panel recommends:

- **That an additional condition be included on the permit requiring a plan of variation of the easement, to the satisfaction of Yarra Valley Water, to be submitted and endorsed by Council.**

10.3 Amendment drafting matters

As part of his evidence, Mr Smyth noted that the maps at Clause 21.05 would require alteration if the Amendment proceeded as exhibited to remove DDO8 from the subject land.

He also suggested that to avoid confusion about whether a requirement in DDO13 was discretionary or not, the discretionary provision should be worded as 'should' rather than 'must'.

While the Panel supports these changes, they would only be necessary if the Council were, contrary to our recommendations in the following chapter, to proceed with the Amendment in the exhibited form.

11 Implementation

This chapter considers the various mechanisms proposed to implement the planning outcome sought against the planning framework and in light of the submissions.

Given the nature of this proposal, in particular the relationship between the Amendment and Permit Application, the Panel believes it is appropriate to consider the combined effect of the implementation mechanisms and whether these are effective in delivering the outcomes sought or whether a different approach is warranted.

11.1 The issue

(i) The Mixed Use Zone

The Amendment proposes to apply the MUZ. It is noted that the Amendment originally proposed to apply the Business 1 Zone which was supported by the Council. With the release of the new residential and commercial zones in 2013, the Council reviewed the C1Z and determined that the MUZ was a better fit for the desired outcomes on the subject land, in particular because:

- The purposes of the MUZ were a more appropriate fit for the preferred development of the subject land.
- If the development did not proceed, the objectives of the MUZ place more weight on residential development rather than the site being solely developed for commercial purposes.
- The MUZ provides greater consideration for residential component, including its impacts on adjoining residential properties.

A comparison of the C1Z and MUZ is provided in Chapter 4 and it is noted that a permit could be granted for the proposed development under the provisions of either zone, although the precise nature of the permissions required would differ. In particular it is noted that the both Shop and Food and Drink Premises are discretionary uses (if over 150 sqm) in the MUZ whereas they are as of right under the C1Z.

(ii) The DDO13

The DDO13 has been created as a site-specific response to this proposal and has essentially crafted a building envelope which encompasses the built form proposed under the Permit Application. It is proposed to replace the DDO8 which would be removed from the subject land.

As exhibited the DDO13 proposes a mandatory 19 metre height and discretionary side and rear setbacks.

With the exception of the proposed ground level, which is setback between 0 and 2.4 metres along the western boundary, the Permit Application otherwise complies with the quantitative elements of DDO13.

The built form controls are as follows:

Height

The maximum height of a building and any works must not exceed 19 metres.

A permit cannot be granted to vary this requirement.

For the purpose of this schedule, the Maximum Building Height does not include building services, lift over-runs and roof mounted equipment, including screening devices.

Street setback

- *The first three levels of a building must be built to the front boundary (0m setback).*
- *Any additional storeys above three levels, must be set back a minimum of 3 metres from the ground floor building footprint.*

Side and rear setbacks

- *Where the side or rear of the land abuts a residential property:*
- *The first two storeys of a building must be set back a minimum of 3 metres from that boundary.*
- *The third storey of a building must be a set back of a minimum of 5 metres from that boundary.*
- *The fourth storey of a building must be set back a minimum of 8 metres from that boundary.*
- *Any additional storeys must be set back a minimum of 13 metres from the boundary.*

Form

Development must:

- *Provide visual interest through articulation, glazing and variation in materials and textures;*
- *Ensure that any building is stepped down to the side rear of the site that abuts land in a residential zone, to provide a gradual transition to the scale of the adjoining residential development.*

Pedestrian Access

Development must provide a suitable pedestrian access point from the site, across Mitchell Street, to the shared car park to the satisfaction of the Responsible Authority.

Car parking

Development must ensure basement car parks are sited a sufficient distance from side and rear site boundaries to enable the planting of effective screen planting.

(iii) The draft permit

A draft permit was exhibited with the Amendment in accordance with section 96C of the Act.

Towards the end of the Hearing there was a discussion of permit conditions which resulted in agreement between the Council and the proponent on a number of 'house-keeping' matters and submissions were made on other conditions which remained in dispute.

The Panel has prepared a recommended version of the permit taking into account that correspondence, the written submissions and matters discussed at the Hearing. The rationale for changes to conditions concerning substantive land use and built form matters have been set out in the preceding chapters and where required further explanation is also provided below.

(iv) The section 173 agreement

The Council exhibited a draft section 173 agreement with the Amendment and draft permit. This agreement is required to be prepared by Condition 48 of the draft permit. The purpose of the agreement is to ensure that the ground floor of any permitted building is set aside and only used for the purposes of a supermarket.

Clause 3 of the agreement sets out the operative provisions which require that the owner agrees that:

the ground floor of any building on the Subject Land must incorporate a supermarket comprising a minimum leasable floor area of at least 1300 square metres; and

that part of the ground floor of any building on the Subject Land comprising an area of at least 1300 square metres of leasable floor area be set aside for a supermarket must not be used for any other purpose.

One of the written submissions raised the issue of uncertainty associated with the agreement given it might be changed with the agreement of the parties in future and the inconsistency between the requirement for a supermarket of 1,300 sqm and the application plans which show a supermarket floor area of 2,378 sqm.

The Panel also notes that the agreement does not contain any specific ending provision and therefore the agreement ends in accordance with section 177 of the Act, which either by agreement of the parties or through the process recently introduced into the Act (sections 178A-178I).

11.2 Evidence and submissions

Mr Montebello restated Council's rationale for the use of the MUZ over the C1Z (cited above). In support of these arguments he also relied on the evidence of Mr Czarny, who concluded that the MUZ was consistent with the nature of the proposal and was the more appropriate zone.

It was submitted by Mr Pitt for the proponent that it would be anomalous for the subject land to remain in a residential zone (being the MUZ) given that the proposal was to establish a core retail and entertainment component for the JCNAC. Mr Pitt relied on the evidence of

Mr Smyth who considered that the C1Z was a logical and appropriate zone to facilitate the planning of the JCNAC and the proponent's vision for the site.

Mr Pitt also opposed the imposition of a mandatory height control in DDO13 arguing that the 19 metres should be discretionary. Mr Montebello resisted this for the Council. He opposed the requirement in the DDO for provision of a pedestrian access point from the site, across Mitchell Street, to the shared car park, arguing that the requirement related to land beyond the DDO boundary.

Mr Pitt submitted and called evidence from Mr Smyth and Mr Sheppard that application of DDO1 would be more consistent with the approach to the remainder of the centre.

During the Hearing, the Panel commented on the site specific nature of the Amendment and asked whether the option of a site specific control implemented through the schedule to clause 52.03 (Specific sites and exclusions) had been considered. The Panel was advised that it had not been considered.

In submissions in reply, Mr Montebello acknowledged that there were different mechanisms which might be used to achieve the intended outcome and that might make the additional height conditional upon the incorporation of a supermarket. Specifically, he submitted that in the event that the permit was not acted upon any subsequent proposal which did not incorporate a supermarket should be subject to a lesser height and that the control should default to the existing DDO8 control.

Mr Czarny supported the removal of the DDO8 from the subject land on the basis that the subject land would form part of the JCNAC. It was also his evidence that the DDO13 was the right planning tool but that it would benefit from further clarification that the side and rear setbacks were discretionary and suggested inclusion of an envelope diagram in the event that a different development were pursued for the site.

Mr Pitt acknowledged that it would be possible to provide the additional height by providing an exception to DDO8 in the schedule to clause 52.03, although he submitted that this was an unnecessary approach as the built form was appropriate on its design merits. Mr Pitt submitted that, based on the evidence of Mr Smyth and Mr Sheppard, the DDO1 should be applied to the subject land.

Concerning the section 173 agreement, Mr Pitt confirmed that the proponent intends to provide a supermarket of a minimum 1,300 sqm (gross floor space) but that the longest period which the supermarket premises is likely to be let is 15 years, based on negotiations undertaken by the proponent. On this basis he submitted that the proponent should be provided with the opportunity to seek permission for an alternate use after this time. Mr Pitt submitted that the proponent would accept a permit condition that the use of the site must include a supermarket of 1,300 sqm, but that a section 173 agreement was unnecessary. He said that if instead the agreement was imposed, it should include a proviso that a change of use could be sought if a supermarket could not trade viably. These changes were in addition to those requested in the proponent's written submission, namely:

- Qualifications to the obligations to use the premises as a supermarket, including *'provided a suitable operator is interested'* and that terms are *'mutually beneficial'*.
- Clarification that the 1,300 sqm includes ancillary and back of house areas.

- Ending of the agreement in 10 years.
- An obligation imposed on the Council that it not permit another supermarket to establish within 1 kilometre of the subject land, and ending of the proponent's obligations if any supermarket were to establish within a one kilometre radius.

Resident submitters at the Hearing sought clarifications in relation to some permit conditions and generally supported the Council's submission in relation to the appropriateness of the MUZ over the C1Z. There was also general support for the continuation of the application of DDO8 or alternatively mandatory height controls through the application of DDO13 modified in line with the Planisphere recommendations (that is a maximum of 14.5 metres).

11.3 Discussion

The Panel generally agrees with submissions provided in support of the MUZ by the Council and resident submitters and finds that would be a more appropriate fit than the C1Z, particularly given the land use outcomes that have driven the Amendment and in light of the amenity issues raised by Permit Application and in submissions.

If a shift to a commercial zone is to be contemplated it should occur in the context of a strategic planning exercise for the JCNAC, perhaps following completion of the development of the subject land and the clarification of its role within the centre. In the absence of this work the Panel considers that the MUZ represents a more prudent approach to the future management of land use and development outcomes on the subject land, with particular regard to its residential interfaces.

The issue that has perhaps posed the greatest difficulty for the Panel is how the built form outcomes would be best implemented given their exceptional nature and the inherent risks associated with the implementation of planning permits. The Panel's finding and recommendations in relation to the preferred built form outcomes are set out in Chapter 9. Whilst it is concluded that an acceptable balance can be achieved in relation to built form outcomes in the context of the present Permit Application (subject to some changes), the Panel is not convinced that the proposed DDO13 properly reflects the nature of the balance or compromise achieved in this instance, or accounts for the risks associated with the potential for different proposals emerging in the future.

In particular, the Panel makes this finding against the background of recently approved mandatory built form controls for the subject land, which provide for a maximum height of 11 metres. The existence of that control, and the strategic work which underpinned it, leaves the Panel uncomfortable with introducing a site specific built form control such as DDO13 which is capable of accommodating other unknown built form outcomes of comparable scale to that proposed under the Permit Application.

The DDO13 can perhaps be seen as an attempt to write the built form aspects of the Permit Application into the Planning Scheme and the section 173 agreement as a means to prevent the proponent from resiling from the land use outcomes - but for which, the built form would not have been entertained by Council. This was reflected in the general approach of the parties and witnesses in justifying the DDO13, which occurred principally by reference to

the Permit Application and not to any broader or more general urban design analysis of the JCNAC or the possible range of built form outcomes.

In light of the above, the Panel prefers a more limited approach to the amendment of built form controls applying to the subject land. More specifically we consider that an approach that does not permanently displace DDO8 and is specific to the Permit Application is the most suitable change to the Planning Scheme.

The VPP mechanism that is typically used for writing exemptions or permits into planning schemes has been the schedule to clause 52.03 and the incorporation of a control document pursuant to section 6(2)(j) of the Act. Relevantly the objectives of clause 52.03 are (emphasis added):

To recognise specific controls designed to achieve a particular land use and development outcome existing on the approval date.

To provide in extraordinary circumstances specific controls designed to achieve a particular land use and development outcome which is consistent with a major issue of policy and is necessary to achieve or develop the planning objectives of Victoria.

Whether the circumstances giving rise to the Permit Application can be described as 'extraordinary' perhaps relates to the 'particular land use and development outcome' and the degree to which it is anticipated by or sits outside the parameters of the existing statutory planning context. For the reasons set out in preceding chapters, the Panel considers that the circumstances giving rise to aspects of the Amendment and Permit Application are unusual and raise significant issues of planning policy for the planning of the JCNAC. These policy issues relate both to the promotion of the economic viability of the JCNAC, and to the need for a strategic approach to management of built form outcomes in the JCNAC. The need to resolve such competing objectives is an issue brought into sharper focus by the directions set out in *Plan Melbourne* for NACs.

In terms of the scope of the exclusion that should be made, would seem preferable that the scheduled clause 52.03 provision simply would provide an exemption for the proposal from inconsistent built form controls (that is DDO8), thereby enabling a permit to be granted and otherwise administered by Council under Part 4 of the Act in accordance with the Permit Application. Alternatively, depending on the views of DTPLI, it may necessary to encompass the whole permission into the exemption document. Either way, it should be done in a manner which ensures that no future proposals are exempted from the controls.

Alternatively, if the circumstances or policy issues were not considered sufficiently 'extraordinary' or 'major' to justify use of an incorporated document and clause 52.03, then an exception might be included directly in DDO8 itself, providing the ability to grant a permit for buildings and works that do not comply with the maximum building height in Table 2 in accordance with the Permit Application. Similar exemptions have been provided for in other DDO controls applying mandatory height controls, for example, see Bayside DDO1. An exemption could be inserted in the 'Permit Requirements' section in the following terms:

A permit may be granted for buildings and works which do not comply with the Maximum Building Height in Table 2 to this Schedule on land at 3-9 and

11 Mitchell Street, Doncaster East. The buildings and works must be generally in accordance with the plans endorsed as part of Planning Permit PL11/021966.

The final form of the control is essentially a matter for Council and DTPLI to resolve following consideration of this report. It is the Panel's view, however, that any exemption should only be provided in respect of the Permit Application before us and not generally facilitate unknown alternate proposals which may emerge in the future.

Whether a site specific and permit specific exemption is provided in the clause 52.03 schedule or in DDO8, the Panel considers that it would still be appropriate, as it is if the proposed DDO13 were instead approved, to require a section 173 agreement to ensure that a minimum area of the ground floor of the permitted building (if constructed) would be set aside and only used for the purposes of a supermarket. The Panel accepts the submissions from Council and the proponent that the minimum area provided for should be 1,300 sqm. While we have also noted that the economic evidence suggests that it might be appropriate to also impose a floorspace maximum of some 1,800 sqm to avoid unacceptable levels of diverted trade from nearby centres, we believe that to do so would likely be viewed as inconsistent with current practice in relation to retail planning (see for example general Amendment GC06).

The Panel accepts, in part, the submissions by the proponent that there should be an opportunity to seek an alternative use of the premises should circumstances change in the future, such as if another supermarket were to re-establish in the JCNAC on other land. In light of the benefits conferred by the permit and the basis on which these have been granted, the Panel believes that an appropriate balance between the risk borne by the proponent and the need to secure the supermarket use, is to require the obligation to persist for a 15 year period. This Panel was advised by Mr Pitt that this is the maximum commitment which has been offered in the context of negotiations with potential supermarket operators.

Concerning the other debated aspects of the section 173 agreement, it is our view that the floorspace definitional issue clearly requires resolution but we oppose the other changes sought by the proponent as substantially eroding its obligations and unreasonably fettering future Council actions.

The Panel records that at the Panel Hearing the matter was raised as to the adequacy (if the Amendment as exhibited was to proceed) of the section 173 agreement for the supermarket being required simply as a condition of the planning permit. It was agreed by Mr Montebello that it would be preferable that it should precede the approval of the Amendment for the reason that the new height controls should not take effect until the supermarket is committed. The timing of the section 173 agreement would perhaps not be so critical if either of the exceptions approaches recommended by the Panel were adopted.

The Panel advises that, assuming the DDO13 approach was to proceed, it agrees with the Council's submissions and evidence that the 19 metre height limit should be mandatory. The height set in the DDO, as we have said, has been driven by the Permit Application. It should directly reflect that Application; no other comprehensive strategic justification has

yet been advanced for any other approach to height. We also support the mandatory imposition of street wall height.

(i) Other permit conditions

The following provides a brief discussion of other more substantial changes recommended to various permit conditions in response to submissions by Council, the Proponent and residents.

The permit preamble

This has been modified to correctly refer to the permissions granted.

Condition 1.1

This condition has been modified to refer to the Revision B plans.

In Chapter 9 the Panel has recommended that the setbacks be increased along the side and rear boundaries, in particular adjacent to Nos 6 and 8 Elizabeth Street. It is recognised that these changes will have flow on consequences for the car park layout and structural implications will need to be examined wholistically to determine what setbacks are achievable. The Panel has therefore recommended that this condition be worded in a manner which provides flexibility with reference to outcomes which the setbacks should seek to achieve.

A condition requiring details to be provided of colours and finishes to the satisfaction of the responsible authority has been added (as Condition 1A). This suggestion by the Council was agreed to by the proponent.

Conditions 1.5 and 1.6

The Panel accepts Mr Pitt's submission that clause 55 of the Planning Scheme does not technically apply to the assessment of five storey proposals however this does not prevent Council from adopting these provisions as performance standards for the changes requested. The Panel is satisfied that these conditions are a reasonable response given the interface of the proposed building with these residential properties.

Condition 3

There was a suggestion by the proponent that the requirements for the Public Works Plan should be made more discretionary than currently worded. This was resisted by the Council. The Panel agrees with the Council that the qualification that the plan is to be to the satisfaction of the Council enables negotiation over its content. In any case the public realm improvements adjacent to the building have now been largely resolved.

Condition 3.1

Mr Pitt opposed this condition on the basis that it required works off site. The Panel considers it should be retained as part of the Public Works Plan but acknowledges the need for the requirement to be qualified as subject to the consent of the City of Manningham.

Condition 7.1

The Panel notes Mr Pitt's concerns regarding the practicality of the 50 per cent recycling target which is sought under this condition and has recommended replacing this specific target with a requirement that it be achieved 'as far as practicable'.

Condition 8

Slightly longer construction hours are permitted than recommended by EPA guidelines.

Condition 12

This requires a landscaping bond to be provided. The proponent objects to the condition on the basis that it is onerous and unnecessary.

The Panel believes the condition should be retained: landscaping on commercial properties is often under greater threat in terms of adequate maintenance, especially 'back of house' landscaping which is for the benefit of adjacent properties rather than enhancement of the commercial property itself.

Condition 21

In light of concerns expressed by residents in relation to the potential for parking and deliveries to spill over and affect residential streets the Panel has recommended that this condition be broadened to cover traffic (including loading) issues and require the commercial operators to put in place measures to minimise the potential for these impacts.

Condition 31

The Panel considers that any measures with respect to loading, if they are to be mandated, should be based on the results and recommendations of the acoustic report endorsed under Condition 47A which are considered necessary to achieve compliance with relevant noise regulations. This is reinforced through the Parking and Traffic Management Plan which will be required to incorporate any recommended management measures.

Condition 37

The Panel recognises the importance of ensuring that shopfronts remain fully active and visually connected to the public realm, however it believes that a level of 65 per cent transparency perhaps represents a more appropriate balance between these objectives and the operational needs of a supermarket.

Condition 42

The Panel accepts Mr Pitt's submissions on this condition, and finds that it inappropriately reverses the onus of proof in respect of complying with noise regulation. The Panel also considers that it is unnecessary in light of other additional noise conditions which are recommended.

Conditions 47A and 47B

The Panel's recommendations for these conditions flow from its discussion in Chapter 7.

Condition 48

The section 173 agreement is discussed above.

Condition 49

Following the Panel's discussion of the restaurant and reception centre use in Chapter 7, the Panel has recommended that the Noise and Amenity Action Plan be broadened and modified to incorporate any recommendations arising from the acoustic report endorsed under Condition 47A, in particular for the terraces. The Panel also has recommended that this plan set out additional measures to manage patron behaviour which are typically included in such management plans.

The Panel agrees with the Council that this condition need not be bundled with Conditions 40 and 41.

11.4 Conclusions

For the reasons set out above the Panel considers that the MUZ represents a more prudent approach to the management of land use outcomes on the subject land.

Given the existing DDO8 provisions and the site specific nature of the Amendment, the Panel is not convinced that the existing built form controls should be permanently displaced. The Panel favours a more limited approach to the Amendment which provides an exemption to the DDO8 control that is specific to the Permit Application and where the built form controls will otherwise default to the existing DDO8 provisions.

The Panel does not provide comment the specific drafting of the proposed section 173 agreement but does find that it is an appropriate mechanism to ensure that any building under the permit sets aside an area of the ground floor for a supermarket for a period of 15 years.

11.5 Recommendation

The Panel recommends:

- **That the MUZ be applied to the subject land as exhibited.**
- **That the DDO13 not be pursued.**
- **That a site specific exemption be provided in respect of the Permit Application and any inconsistent built form controls in the Planning Scheme by either:**
 - a) **Amending the Schedule to clause 52.03 to incorporate a site specific control document pursuant to section 6(2)(j) of the Act, which provides that, despite any provision to the contrary or any inconsistent provision in the Planning Scheme, a permit may be granted to develop the land at 3-9 and 11 Mitchell Street, Doncaster East for a building in accordance with the plans forming part of Planning Permit Application No PL11/021966.**

or

- b) Amending the DDO8 to provide that a permit may be granted for buildings and works which do not comply with the Maximum Building Height in Table 2 to the Schedule on land at 3-9 and 11 Mitchell Street, Doncaster East. It should provide that the buildings and works must be generally in accordance with the plans endorsed as part of Planning Permit PL11/021966.**
- **That a planning permit be issued subject to the conditions and in the form set out in Appendix D.**
- **That prior to approval of the Amendment, a section 173 agreement be required which provides:**
 - a) That at least 1,300 sqm of the leasable area of the ground floor of the permitted building must be set aside on the endorsed plan and only used for the purposes of a supermarket.**
 - b) For ending of the agreement after a period of 15 years from the date of the commencement of the supermarket use.**

12 Overall conclusion and recommendations

Therefore, for the reasons outlined in this report, the Panel recommends that Amendment C95 to the Manningham Planning Scheme should be adopted as exhibited, and Permit Application PL11/021966 should be granted subject to the following recommendations:

The Amendment

1. The MUZ should be applied to the subject land as exhibited.
2. The DDO13 should not be pursued.
3. A site specific exemption be provided in respect of the Permit Application and any inconsistent built form controls in the Planning Scheme by either:

Amending the Schedule to Clause 52.03 to incorporate a site specific control document pursuant to section 6(2)(j) of the Act, which provides that, despite any provision to the contrary or any inconsistent provision in the Planning Scheme, a permit may be granted to develop the land at 3-9 and 11 Mitchell Street, Doncaster East for a building in accordance with the plans forming part of Planning Permit Application No PL11/021966.

or

Amending the DDO8 to provide that a permit may be granted for buildings and works which do not comply with the Maximum Building Height in Table 2 to the Schedule on land at 3-9 and 11 Mitchell Street, Doncaster East. It should provide that the buildings and works must be generally in accordance with the plans endorsed as part of Planning Permit PL11/021966.

Changes to the Permit

4. That the planning permit be issued subject to the conditions and in the form set out in Appendix D.

Specifically:

- a) Additional conditions should be included on the exhibited draft permit which require an acoustic assessment of the design prior to the endorsement of plans to ensure that the restaurant and reception centre use and the loading bay will be capable of complying with SEPP N1 and N2. The report should also recommend measures for the management of the use to be incorporated into the Noise and Amenity Action Plan and the Parking and Traffic Management Plan. These conditions should also require an assessment be conducted following commencement of these uses to confirm compliance.
- b) A condition should be included on the permit which would encourage trucks to access the site from Doncaster Road rather than from the south.
- c) The condition requiring improved sight lines at the car park entry should apply only to visibility to the north.

- d) A condition be added to the permit to the effect that landscaping in the restaurant lobby planter adjacent to the vehicle exit should be not permitted to grow to more than 0.9 metres in height to prevent interference with lines of sight to and from vehicles entering and exiting the property.
- e) The changes to be incorporated in amended plans required by Condition 1 should include:
 - i. a three metre setback for the ground and first floor levels of the building for full length of the western boundary unless in the opinion of the responsible authority this is precluded by the workability of the basement car parking area.
 - ii. The provision of staggered and layered landscaping in the setback to the western boundary.
 - iii. The articulation of the northern walls of the building to the satisfaction of the responsible authority.
 - iv. Provision of access to a separate lobby at ground level for the residential lift at the northern end of the building.
 - v. Provision of a second common open space/terrace area at the first residential level to the west of the north-south corridor must be provided, extending through to the levels above, designed to further break down the perceived length of the western elevation and to provide additional natural light to the residential corridors at all three residential levels.
 - vi. Consequential changes to the layout, and if necessary the number, of the residential units, as well as alterations to other building elements to accommodate the changes above.
 - vii. A notation on the Level 2 and 3 windows on TP20 that they are to be screened to prevent overlooking to adjacent residential properties.
 - viii. Relocation of the 8 bike racks positioned near the loading bay onto the street.
- f) That an additional condition be included on the permit requiring a plan of variation of the easement, to the satisfaction of Yarra Valley Water, to be submitted and endorsed by Council.

The section 173 agreement

- 5. Prior to approval of the Amendment, a section 173 agreement should be required to be entered into that provides:
 - a) That at least 1,300 sqm of the leasable area of the ground floor of the permitted building must be set aside on the endorsed plan and only used for the purposes of a supermarket.
 - b) For ending of the agreement after a period of 15 years from the date of the commencement of the supermarket use.

Other recommendations

- 6. That Parking Overlay Schedule 2, which currently applies, so far as the subject site is concerned, to 3-9 Mitchell Street only, should be extended to 11 Mitchell Street under this or a subsequent Amendment.**

Appendix A Exhibited draft permit

DRAFT

**PLANNING
PERMIT**

**GRANTED UNDER DIVISION 5 OF
PART 4 OF THE PLANNING AND
ENVIRONMENT ACT 1987**

Permit No.: PL11/021966

Planning Scheme: Manningham

**Responsible Authority: Manningham City
Council**

ADDRESS OF THE LAND:

**3-9 MITCHELL STREET, DONCASTER
(LOT 2 LP206485Q)**

**11 MITCHELL STREET, DONCASTER
(LOT 3 LP52595)**

THE PERMIT ALLOWS:

- The use of land for shop (supermarket), restaurant and reception centre
- The construction of a multi-storey buildings comprising apartments and the above uses with associated basement car parking
- A reduction in statutory parking requirements
- The removal of easement E-2 on Lot 2 of PS206485Q.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Amended Plans

- 1 Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application (prepared by Ascui Edwards Architects Pty Ltd, Ref 1427, Oct 2012) but modified to show:
 - 1.1 The building setback from the side and rear boundaries to the satisfaction of the responsible authority.
 - 1.2 A notation that public works upgrades to Mitchell Street are to occur in accordance with the approved Public Works Plan under Condition 3 of the Permit.

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operation:**

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Authority**

- 1.3 Noise attenuation treatment on the western side of the loading area consistent with the recommendations of the Acoustic Report (Acoustic Advisory and Consulting Service 22 October 2012).
- 1.4 Noise attenuation treatment on the balconies of the restaurant/reception centre consistent with the recommendations of the Acoustic Report (Acoustic Advisory and Consulting Service 22 October 2012).
- 1.5 All opportunities for direct overlooking, including from west-facing windows in Apt 2-03 and the balcony of Apt 2-17, are to be screened in accordance with Clause 55.04-6 of the Manningham Planning Scheme.
- 1.6 Design modifications that reduce the extent of overshadowing over the rear secluded private open space of the units at No. 4 and No. 12 Elizabeth Street to the level required under Clause 55.04-5 of the Manningham Planning Scheme.
- 1.7 A headroom clearance of 2.5m maintained in the disable parking areas.
- 1.8 A vehicle turning area provided in the retail car park in Basement 2 that allows vehicle to exit in a forward manner should all spaces be occupied.
- 1.9 Specifications of the typical storage cupboards in the basement including their internal capacity.
- 1.10 Details of basement ventilation, including the location and design treatment of any mechanical intake or outlet required.
- 1.11 A plan notation that clear sight distance of pedestrians for exiting vehicles as per Clause 3.2.4 of AS 2890.1 will be provided.
- 1.12 Minimum sustainability features applicable to the development from the approved Sustainability Management Plan including the location and capacity of rainwater tanks, the uses for captured rainwater, and the solar hot water systems on the roof plans including notes for the solar fraction of the system and boosting types.
- 1.13 Plan notation to indicate how fire service, gas and electrical cabinets (including substations) will be integrated into the architectural design, so as not to present as visually dominating elements.
- 1.14 A plan notation that a communal notice board will be erected within or nearby the lobby for use by residents of the building.

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Endorsed Plan

2. The layout of the site, the size of buildings and works, and the description of the uses on the approved plans must not be modified for any reason without the written consent of the Responsible Authority.

Public Works Plan

3. Prior to the commencement of development, a Public Works Plan must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must detail works in front of the approved building along Mitchell Street and include:
 - 3.1 The provision of a pedestrian facility to provide improved access between the site and existing at grade car parking in Jackson Court.
 - 3.2 Consequent upgrades to the footpath along Mitchell Street adjacent to the site, including a wider footpath immediately in front of the supermarket entry and at the location of the pedestrian crossing over Mitchell Street.
 - 3.3 A detailed level and feature survey of the footpaths and roads adjoining the site.
 - 3.4 The existing crossovers at the site removed and the kerb and channel ,footpath and nature- strip reinstated to Council's satisfaction.
 - 3.5 The location, type and number of bicycle hoops to be accommodated within the road reserve.
 - 3.6 Street tree planting.
 - 3.7 Any low retaining walls or fencing required along Mitchell Street to provide pedestrian safety.
 - 3.8 Other works to the public land adjacent to the development including nature strips and other associated street furniture/infrastructure.
4. The approved Public Works Plan will form part of the endorsed plans under the permit and must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, prior to the occupation of the development unless otherwise agreed with prior written consent of the Responsible Authority.

Sustainability Management Plan

5. Before the development commences an amended SMP that outlines proposed sustainable design initiatives for the modified proposal must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the endorsed SMP to the satisfaction of the Responsible Authority. The amended SMP must be generally in accordance with SMP prepared by Sustainable Development Consultants dated October.
6. Prior to the occupation of any building approved under this permit, a report from the author of the SMP report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the satisfaction of the Responsible Authority. The report must confirm that all measures specified in the SMP have been implemented in accordance with the approved Plan.

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Construction Management Plan

7. Before each stage of the development starts, two copies of a Construction Management Plan must be submitted to and approved by the Responsible Authority. When approved the plan will form part of the permit. The plan must address, but not be limited to, the following:
 - 7.1 A liaison officer for contact by residents and the responsible authority in the event of relevant queries or problems experienced;
 - 7.2 Hours of construction;
 - 7.3 Delivery and unloading points and expected frequency;
 - 7.4 On-site facilities for vehicle washing;
 - 7.5 Parking facilities/locations for construction workers;
 - 7.6 Other measures to minimise the impact of construction vehicles arriving at and departing from the land;
 - 7.7 Methods to contain dust, dirt and mud within the site, and the method and frequency of clean up procedures;
 - 7.8 The measures for prevention of the unintended movement of building waste and other hazardous materials and pollutants on or off the site, whether by air, water or other means;
 - 7.9 An outline of requests to occupy public footpaths or roads, and anticipated disruptions to local services;
 - 7.10 The measures to minimise the amount of waste construction materials, including details how the commitment to reduce or reuse 50% of construction waste going to landfill outlined in the SMP is achieved;
 - 7.11 The measures to minimise noise and other amenity impacts from mechanical equipment/construction activities, especially outside of daytime hours; and
 - 7.12 Adequate environmental awareness training for all on-site contractors and sub-contractors.

8. All works including earthworks, demolition and construction activity associated with the approved development is to be limited to the following hours, unless with the prior written consent of the Responsible Authority:
 - 8.1 Monday to Friday: 7:00am to 7:00pm
 - 8.2 Saturday: 9:00am to 5:00pm
 - 8.3 Sunday and Public Holidays: No construction

Waste Management Plan

9. Before the development starts, two copies of an amended Waste Management Plan (WMP) must be submitted and approved to the satisfaction of the Responsible Authority. When approved the plan will form part of the permit. The plan must detail how best practice standards are achieved based on the Manningham City Council – Waste Collection for Residential Developments in Manningham – Guidelines for Developers, and be consistent with the submitted plan but amended to detail:
 - 9.1 Specific waste management practices pertaining to each separate collection area in the development;

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- 9.2 Chutes, carousels, drop-off areas and compaction facilities;
- 9.3 Access to bin rooms, chutes and drop-off areas;
- 9.4 Hard waste collection;
- 9.5 Collection locations and routines including times and frequency;
- 9.6 The methods used to educate residents of waste collection system including the recycling component and hard waste; and,
- 9.7 Sweep path diagrams illustrating the collection vehicles to be used as well as height clearance requirements need to be addressed and submitted for approval by the Responsible Authority.

Management Plans

- 10. The Management Plans approved under Conditions 5, 7 and 9 of this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority

Landscaping

- 11. Before the development starts, a landscaping plan must be prepared by a landscape architect showing species, locations, approximate height and spread of proposed planting, and must be submitted to the Responsible Authority for approval. The plan must be generally in accordance with the landscape plan by MEMLA received 2 Nov 2012.
- 12. Before the release of the approved plans for the development, a \$10,000 cash bond or bank guarantee must be lodged with the Responsible Authority to ensure the completion and maintenance of landscaped areas and such bond or bank guarantee will only be refunded or discharged after a period of 13 weeks from the completion of all landscaping works, provided the landscaped areas are being maintained to the satisfaction of the Responsible Authority.
- 13. Before the occupation of the building landscaping works as shown on the approved plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.

Drainage

- 14. The owner must provide on site stormwater detention storage or other suitable system (which may include but is not limited to the re-use of stormwater using rainwater tanks), to limit the Permissible Site Discharge (PSD) to that applicable to the site coverage of 35 percent of hard surface or the pre existing hard surface if it is greater than 35 percent. The PSD must meet the following requirements:
 - 14.1 Be designed for a 1 in 5 year storm; and
 - 14.2 Storage must be designed for 1 in 10 year storm.
- 15. Before the development starts, a construction plan for the system required by Condition No. 12 of this permit must be submitted to and approved by the Responsible Authority. The system must be maintained by the Owner thereafter in

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accordance with the approved construction plan to the satisfaction of the Responsible Authority.

16. Stormwater must not be discharged from the subject land other than by means of drainage to the legal point of discharge. The drainage system within the development must be designed and constructed to the requirements and satisfaction of the relevant Building Surveyor.

Vehicle Crossovers

17. Any new crossover or modifications to an existing vehicle crossover must be constructed in accordance with Council's standard details. No such works are permitted to commence unless a 'Vehicle Crossing Permit' is first obtained from the Responsible Authority.
18. Before the completion of the development, the developer must remove all disused or redundant vehicle crossovers in Mitchell Street and re-instate kerb, channel and naturestrip in the affected areas to the satisfaction of the Responsible Authority.

Car Parking

19. Before the occupation of the buildings, all basement parking spaces must be properly formed, line-marked, numbered and signposted to provide allocation to the commercial uses and/or each dwelling and visitors to the satisfaction of the Responsible Authority.
20. Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose.
21. Prior to the occupation of the development, a Parking Management Plan is to be prepared and endorsed that insure appropriate management and parking for the various uses in the building.

Completion

22. All privacy screens and obscure glazing as required in accordance with the approved plans must be installed prior to occupation of each stage of the development to the satisfaction of the Responsible Authority and maintained thereafter to the satisfaction of the Responsible Authority.
23. All plant and equipment that is not installed within the building must otherwise be installed in the area of plant and equipment on the roof of the building, unless otherwise agreed in writing with the Responsible Authority.
24. No air-conditioning units are to be installed on any balcony or façade so that they are visible from outside the site.

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25. Any clothes-drying rack or line system located on a balcony must be lower than the balustrade of the balcony and must not be visible from off the site to the satisfaction of the Responsible Authority.
26. An intercom and an automatic basement door opening system (connected to each dwelling) must be installed, so as to facilitate convenient 24 hour access to the basement car park by visitors, to the satisfaction of the Responsible Authority.
27. A centralised TV antenna system must be installed and connections made to each dwelling to the satisfaction of the Responsible Authority. No individual dish antennas may be installed on balconies, terraces or walls to the satisfaction of the Responsible Authority.
28. All services, including water, electricity, gas, sewerage and telephone, must be installed underground and located to the satisfaction of the Responsible Authority.
29. Buildings, paved areas, drainage and landscaping must be maintained to the satisfaction of the Responsible Authority.
30. The development must be provided with external lighting capable of illuminating access to car parking spaces, storage, rubbish bins, recycling bins, pedestrian walkways, stairwells, lifts, dwelling entrances and entry foyer. Lighting must be located, directed, shielded and of limited intensity so that no nuisance or loss of amenity is caused to any person within and beyond the site, to the satisfaction of the Responsible Authority.

Loading and Unloading Operations

31. All loading and unloading for the supermarket (including all commercial garbage and recycling collection) must at all times be carried out within the onsite loading dock and behind a closed loading dock roller shutter door to the satisfaction of the Responsible Authority.
32. All truck/vehicles using the loading dock must enter and exit the site in a forward motion.
33. Unless otherwise approved by the Responsible Authority. delivery vehicles shall have a maximum length of 12.5 metres and must unload from the on-site loading bay.
34. Deliveries for the supermarket shall be undertaken at the following times unless otherwise approved by the Responsible Authority.
 - 34.1 Monday to Friday -7.00am to 8.00pm.
 - 34.2 Saturday -7.00am to 1.00pm
35. Other commercial loading / unloading may only occur between 6.00 am and 10.00 pm, seven days, unless with the prior written consent of the Responsible Authority.

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36. Waste collection may only occur between 7.00 am and 6.00 pm Monday to Saturday, unless with the prior written consent of the Responsible Authority

Mitchell Street Presentation

37. The shop front and glass facades of the supermarket facing Mitchell Street is not to be covered by posters, film or signage that reduces the transparency of the interface below 85% to the satisfaction of the responsible authority.

Amenity of Area

38. The use and development be managed so that the amenity of the area is not detrimentally affected, to the satisfaction of the Responsible Authority, through the:
- 38.1 Transport of materials, goods or commodities to or from the land;
 - 38.2 Storage of goods and wastes;
 - 38.3 Appearance of any building, works or materials;
 - 38.4 Emission of noise, light, vibration, odour & dust.
39. No external sound amplification equipment or loudspeakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose to the satisfaction of the Responsible Authority.
40. Noise emanating from the development, including plant and other equipment, must comply with the State Environment Protection Policy N-1 to the satisfaction of the Responsible Authority.
41. Noise emanating from the commercial uses within the development must comply with the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N2.
42. In the event of the Responsible Authority receiving justifiable complaints regarding noise from such sources, the onus will be on the owner of the development site to prove compliance with the relevant policy to the satisfaction of the Responsible Authority.
43. External lighting must be designed so to limit loss of amenity to residents of adjoining properties to the satisfaction of the Responsible Authority.
44. All security alarms or similar devices installed on the land must be of a silent type and be connected to a registered security service.
45. Service, waste and storage areas shall be kept in a tidy, rubbish-free condition to the satisfaction of the Responsible Authority.

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46. Any exhaust system, including from the cooking area of the restaurant / reception centre, shall be provided with filter devices capable of minimizing the external emission of odours and airborne fat particles to the satisfaction of the Responsible Authority and such system shall at all times be maintained to ensure its efficiency.
47. Rubbish, including bottles and packaging material, must at all times be stored within the building and screened from external view and be managed to the satisfaction of the Responsible Authority in accordance with the approved Waste Management Plan.

Section 173 Agreement

48. Prior to the commencement of development, the owner of the land must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority to provide for the following:
 - 48.1 The provision of a supermarket tenancy on the site.
 - 48.2 A mechanism to ensure that a supermarket remains on the site.

It is further required that this agreement must be registered at the Office of Titles pursuant to Section 181 of the Planning and Environment Act 1987. This agreement must be prepared and executed at the owner's expense.

Conditions relating specifically to the Restaurant / Reception Centre

49. Before the commencement of the use, a Noise and Amenity Action Plan must be submitted to the Responsible Authority for endorsement. This plan must not be amended without the further written consent of the Responsible Authority. The premises must be managed in accordance with the Noise and Amenity Action Plan to the satisfaction of the Responsible Authority.
50. The reception centre must only accommodate the following maximum number of patrons and operate between the hours of:
 - 50.1 Monday - Saturday 6.00pm – 1am (maximum 260 patrons);
 - 50.2 Sunday 12pm – 6pm (maximum 200 patrons);
 - 50.3 Sunday 6pm – 12am (maximum 260 patrons);unless with the prior consent of the Responsible Authority.
51. The restaurant must only accommodate the following maximum number of patrons and operate between the hours of:
 - 51.1 Monday – Saturday 9.00am – 6pm (maximum 83 patrons);
 - 51.2 Monday – Saturday 6pm – 1am (maximum 100 patrons);
 - 51.3 Sunday 12pm – 6pm (maximum 160 patrons);
 - 51.4 Sunday 6pm – 12am (maximum 100 patrons);unless with the prior written consent of the Responsible Authority.
52. Notwithstanding the provisions of Condition 51, the Restaurant is permitted to accommodate a maximum of 160 patrons during the hours outlined in Condition 51.2 and 51.4, provided the maximum number of patrons in the Reception Centre does not exceed 200 patrons.

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53. The operator of the use must ensure that all on-site activities are conducted in an orderly manner and must endeavour to ensure that patrons who depart the premises, do so in a manner not likely to cause noise disturbance to nearby residents.
54. The operator shall ensure that no commercial rubbish pick-ups occur prior to 7.30am on any day and that bottles stored outside of the building are handled in such a manner as to cause no disturbance to nearby residents at night.

Variation of Easement

55. A Plan of Removal of Easement must be submitted for certification by the Responsible Authority and referred to the relevant authority in accordance with Section 8 of that Act.
56. The certified plan must be lodged with the Land Titles Office for registration.
57. Unless the plan for variation of restriction approved by this permit is certified within 2 years of the date of this permit, then the permit will lapse.

Expiry

58. This permit will expire if any one of the following circumstances apply:
 - 58.1 The development is not started within four (4) years of the date of the issue of this permit;
 - 58.2 The development is not completed within six (6) years of the date of this permit;
 - 58.3 The use is not commenced within six (6) years of the date of this permit;The Responsible Authority may extend these times if a request is made in writing before the permit expires or within three months afterwards.

Date Issued:

Date Permit comes into operation:

Signature for the Responsible Authority

IMPORTANT INFORMATION ABOUT THIS PERMIT

WHAT HAS BEEN DECIDED?

The Responsible Authority has issued a permit. The permit was granted by the Minister administering the **Planning and Environment Act 1987** under section 96I of that Act.

WHEN DOES THE PERMIT BEGIN?

The permit operates from a day specified in the permit being a day on or after the day on which the amendment to which the permit applies comes into operation.

WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if -
 - * the development or any stage of it does not start within the time specified in the permit; or
 - * the development requires the certification of a plan of subdivision or consolidation under the **Subdivision Act 1988** and the plan is not certified within two years of the issue of a permit, unless the permit contains a different provision; or
 - * the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.
2. A permit for the use of land expires if -
 - * the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
 - * the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if -
 - * the development or any stage of it does not start within the time specified in the permit; or
 - * the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
 - the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development: or
 - the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision-
 - * the use or development of any stage is to be taken to have started when the plan is certified; and
 - * the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

WHAT ABOUT APPEALS?

- * Any person affected may apply for a review of -
 - a decision of the responsible authority refusing to extend the time within which any development or use is to be started or any development completed; or.
 - a decision of the responsible authority refusing to extend the time within which a plan under the **Subdivision Act 1988** is to be certified, in the case of a permit relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**; or.
 - the failure of the responsible authority to extend the time within one month after the request for extension is made.
 - * An application for review is lodged with the Victorian Civil and Administrative Tribunal.
 - * An application for review must be made on an Application for Review form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
 - * An application for review must state the grounds upon which it is based.
 - * An application for review must also be served on the Responsible Authority.
 - * Details about applications for review and the fees payable can be obtained from Victorian Civil and Administrative Tribunal.
-

Appendix B List of submitters

Submission No	Submitter
1	Ms Anastasia Papalexatou
2	Ms Barbara Saunders
3	Mr William So
4	Mr Kevin Andrews on behalf of June Webster & Graeme Maddaford
5	Mr Kevin & Mrs Noreen Connell
6	Ms Marjorie Crawford
7	Ms Maria Zannis
8	G J & E L Middleton
9	Ms Rosa Miot
10	G Miot
11	Mr John G Stewart
12	Ms Jean Cox
13	Mrs Dawn Wright
14	Mr Michael & Mrs Irene Salahoras
15	Mr Noel Wright
16	Ms Dilys M Collins
17	Mrs Helen Thomas
18	Mr Charles & Mrs Cheryl Mizzi
19	Mrs B Hunt
20	Ms Ilse Planinsek
21	Mrs B Murray
22	Mr Warren Welsh
23	Mr Gary Harris
24	Mr F E Gale
25	Mr Colin Barnes
26	Mr Spiros Stavropoulos
27	Ms Dimitra Kanellos
28	Ms June Webster & Mr Graeme Maddaford
29	Ms Helen Ambrose
30	Ms Margaret R Walton

31	Mr Mario Costa
32	Mr Leo & Ms Mary Nadalin
33	Mrs T McGlinchey
34	Ms Elizabeth Gill
35	Mr Jack & Mrs Kay de Bruijne
36	Mr David & Mrs Margaret O'Connor
37	C Shapino
38	Mr Andrew Keller
39	Mr Peter Mudge
40	Mrs Norma Gedye
41	Mr Glidden
42	Ms Kathleen McKenzie
43	Ms Shirley Holt
44	Y Y Chau & K K Chan
45	Mr S R & Mrs M P Marshall
46	Mr Ross Rehe
47	Mrs Elizabeth Madden
48	Mr Bruce Murray
49	Mrs Sylvia D Pratley
50	Mr Bob & Mrs Margaret Fisher
51	Ms Carol Farnworth
52	SJB Planning for Buffrey Nominees Pty Ltd
53	Mr George Earney
54	VicRoads
55	Mr Vincent J Walsh
56	Mr Anthony Pagent, Plaza Legal
57	Mr Anthony Pagent, Plaza Legal (as above)
58	Ms Cheryl Slocombe
59	Ms Heather Gardner
60	Ms Mary Joannides
61	Ms W Indrisie
62	Ms Joanne Kelly
63	Ms N Watts

64	Ms Anne Kelso
65	Ms Nola Hawkes
66	Ms Leona Schwartz
67	Ms Pauline Erwin
68	Ms Maureen Bakes
69	Ms Carol Edmeades
70	Ms Catherine Dole
71	Ms Olivia Italiano
72	Ms Vikas Puri
73	Ms Lisa Jones
74	Ms Tina O'Shea
75	Ms Emily McKaskill
76	Ms Jen James
77	Kynk Hair
78	Casavini Restaurant
79	Casavini Restaurant
80	Mr S Moghaddam, Barbers Down Under
81	Mr G Kyrizopoulos, Care4eyes
82	Mr J Hung, Jackson Court Pharmacy
83	Mr Hwa Meng, Meng Restaurant
84	Mr T Linmeiers, Parkes Property
85	Mr J McIntyre, Doncaster Furnishers
86	Mr D McIntyre, Doncaster Furnishers
87	Ms F Wang, Jackson Court Dry Cleaning
88	Mr S Ashworth, Terence Stevens Hair Salon
89	Mr A Megbel, International Accessories
90	Mr M Le, JC's Bakery
91	Mr F Lofti-Jam, Cafe Jam
92	Mr Xiaoshan, New Picture Framing
93	Mr J Yu, Jackson Court News & Lotto
94	Mr Michael Villani, Pompeo's Pizza
95	Ms J Wathen
96	Mr L Lau, Malaysian Kitchen

97	Ms N Cheng, Doncaster Sporting Gear
98	Mr G King, Jackson Court Mowers
99	Ms L McDonald, Cafe Mania
100	Mr A Di Carlo, Olympus Delicatessen
101	Ms S Yu, Filli's Cafe
102	Ms J Xu, Gifts Plus
103	Mr S Zhao, Australia Post
104	Mr P Thompson, Bendigo Bank
105	Mr D Lynch
106	Mr Geoff Roberts, Bendigo Bank
107	Ms Maria Monterosso
108	Ms A Tang
109	Ms M Reid

Appendix C Panel Hearing documents

Document Number	Date	Description	Presented by
P1	28 April 2014	Revision B Version of Application Plans	Ian Pitt SC for proponent
P2	28 April 2014	Schedule of changes from exhibited plans	Ian Pitt
PA3	28 April 2014	Submissions for Council	Terry Montebello for Planning Authority
PA4	28 April 2014	Two air photos of area	Terry Montebello
PA5	28 April 2014	Map of submitter properties	Terry Montebello
PA6	28 April 2014	Map of DDO1 and DDO8 as at present	Terry Montebello
PA7	28 April 2014	Craig Czarny, Hansen Partnership, witness report	Terry Montebello
PA8	28 April 2014	Table of responses to submissions by Council officer	Terry Montebello
PA9	28 April 2014	Clause 21.04 Framework Plan	Terry Montebello
PA10	28 April 2014	Yarra Valley Water referral response	Terry Montebello
P11	28 April 2014	Stephen Hunt, Cardno, witness report	Ian Pitt
F12	28 April 2014	Photos on limited road width problems in local area	Bob Fisher
P13	29 April 2014	Sean Stephens, Essential Economics, witness report	Ian Pitt
P14	29 April 2014	Mark Sheppard, David Lock and Associates, witness report	Ian Pitt
P15	29 April 2014	Hugh Smyth, SJB Planning, witness report	Ian Pitt
R16	30 April 2014	Submission by Marion Reid	John Tait
W17	30 April 2014	Submission by Margaret Walton	Margaret Walton
M18	30 April 2014	Submission by Graeme Maddaford and June Webster	Graeme Maddaford and June Webster
W19	30 April 2014	Submission by Warren Welsh	Warren Welsh
F20	30 April 2014	Submission by Bob Fisher	Bob Fisher
W21	30 April 2014	Submission by Vincent Walsh	Vincent Walsh
P22	30 April 2014	Reply by proponent	Ian Pitt
P23	30 April 2014	Practice Note 58	Ian Pitt
P24	30 April 2014	VCAT permit for 3-9 Mitchell Street	Ian Pitt

P25	30 April 2014	Potts v Glen Eira CC, VCAT	Ian Pitt
P26	30 April 2014	Peter Brown Architects v Moreland CC VCAT	Ian Pitt
PA27	30 April 2014	Council reply	Terry Montebello
PA28	30 April 2014	Doncaster East Village Structure Plan	Terry Montebello
PA29	30 April 2014	Templestowe Village Structure Plan	Terry Montebello

Appendix D Recommended permit

DRAFT

**PLANNING
PERMIT**

**GRANTED UNDER DIVISION 5 OF
PART 4 OF THE PLANNING AND
ENVIRONMENT ACT 1987**

Permit No.: PL11/021966

Planning Scheme: Manningham

Responsible Authority: Manningham City Council

ADDRESS OF THE LAND:

**3-9 MITCHELL STREET, DONCASTER
(LOT 2 LP206485Q)**

**11 MITCHELL STREET, DONCASTER
(LOT 3 LP52595)**

THE PERMIT ALLOWS:

- The use of land for shop including supermarket; restaurant and reception centre
- The construction of a multi-storey building accommodating apartments and the above uses with associated basement car parking
- A reduction in statutory parking requirements
- The removal of part of easement E-2 on Lot 2 of PS206485Q.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Amended Plans

1. Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit.

The plans must be generally in accordance with the plans prepared by Ascui Edwards Architects Pty Ltd, Ref 1427, Issue B, 8 April 2014 but modified (to the extent not already shown) to show:

- 2.1 The ground and first residential level of the building set back from the western boundary as far as practicable up to 3.0 metres in order to reduce overshadowing and visual bulk to adjoining residential properties and to provide sufficient screening landscaping along these boundaries, to the satisfaction of the responsible authority.
- 1.2 The northern residential lift providing access to and from ground floor in separate lobby.
- 1.3 A second common open area at the first residential level to the west of the north-south corridor designed to further break down the perceived length of the

western elevation and to provide additional natural light to the residential corridors at all three levels.

- 1.4 Consequential changes to the layout, and if necessary the number, of the residential units as well as alterations to other building elements to accommodate the changes in 1.2 and 1.3 above.
- 1.5 The articulation of the northern walls of the building to the satisfaction of the responsible authority.
- 1.6 A notation on the Levels 2 and 3 windows on TP20 that they are to be fitted with translucent glazing or screens to prevent overlooking to adjacent residential properties to the satisfaction of the Responsible Authority.
- 1.7 Relocation of the 8 bike racks positioned near the loading bay onto the street.
- 1.8 A notation that public works upgrades to Mitchell Street are to occur in accordance with the approved Public Works Plan under Condition 3 of the Permit.
- 1.9 Noise attenuation treatment on the western side of the loading area consistent with the recommendations of the Acoustic Report endorsed under Condition 47A.
- 1.10 Noise attenuation treatment for the balconies of the restaurant/reception centre consistent with the recommendations of the Acoustic Report endorsed under Condition 47A.
- 1.11 All opportunities for direct overlooking, including from west-facing windows in Apt 2-03 and the balcony of Apt 2-17, screened in accordance with Clause 55.04-6 of the Manningham Planning Scheme.
- 1.12 Design modifications that reduce the extent of overshadowing over the rear secluded private open space of the units at No. 4 and No. 12 Elizabeth Street to the level required under Clause 55.04-5 of the Manningham Planning Scheme.
- 1.13 A headroom clearance of 2.5m maintained in the disabled parking areas.
- 1.14 A vehicle turning area provided in the retail car park in Basement 2 that allows vehicle to exit in a forward manner should all spaces be occupied.
- 1.15 Specifications of the typical storage cupboards in the basement including their internal capacity.
- 1.16 Details of basement ventilation, including the location and design treatment of any mechanical intake or outlet required.
- 1.17 A notation that clear sight distance of pedestrians to the north for exiting vehicles as per Clause 3.2.4 of AS 2890.1 will be provided and that the landscaping within the restaurant lobby planter box will be limited to below 0.9 metres so as to retain sight lines.
- 1.18 Minimum sustainability features applicable to the development from the approved Sustainability Management Plan including the location and capacity of rainwater tanks, the uses for captured rainwater, and the solar hot water

systems on the roof plans including notes for the solar fraction of the system and boosting types.

- 1.19 A notation to indicate how fire service, gas and electrical cabinets (including substations) will be integrated into the architectural design, so as not to present as visually dominating elements.
 - 1.20 A notation that a communal notice board will be erected within or nearby the lobby for use by residents of the building.
 - 1.21 The layout of the proposed supermarket use, occupying a minimum of 1,300 sqm of leasable floor area, and other shops on the ground floor.
 - 1.22 The provision of shower facilities in accordance with clause 52.34 of the Manningham Planning Scheme.
 - 1.23 Bicycle parking storage as recommended in the expert witness report by Mr Hunt.
 - 1.24 The proposed variation to E-2 on Lot 2 of PS206485Q to the satisfaction of Yarra Valley Water.
- 1A. Before the development starts, a schedule of construction materials, external finishes and colours to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the schedule will be endorsed and will then form part of the permit.

Endorsed Plan

2. The layout of the site, the size of buildings and works, and the description of the uses on the approved plans and the colours and finishes of the building on the approved schedule under condition 1A must not be modified for any reason without the written consent of the Responsible Authority.

Public Works Plan

3. Prior to the commencement of development, a Public Works Plan must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must detail works in front of the approved building along Mitchell Street and include:
 - 3.1 Subject to the consent of the City of Manningham, the provision of a pedestrian facility to provide improved access between the site and existing at grade car parking in Jackson Court.
 - 3.2 Consequent upgrades to the footpath along Mitchell Street adjacent to the site at the location of the pedestrian crossing over Mitchell Street.
 - 3.3 A detailed level and feature survey of the footpaths and roads adjoining the site.
 - 3.4 The existing crossovers at the site removed and the kerb and channel, and footpath reinstated to Council's satisfaction.
 - 3.5 The location, type and number of bicycle hoops to be accommodated within the road reserve.
 - 3.6 Street tree planting.

- 3.7 Any low retaining walls or fencing required along Mitchell Street to provide pedestrian safety.
- 3.8 Other works to the public land adjacent to the development including other associated street furniture/infrastructure.
4. The approved Public Works Plan will form part of the endorsed plans under the permit and must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, before the building is occupied unless otherwise agreed with prior written consent of the Responsible Authority.

Sustainability Management Plan

5. Before the development commences, an amended SMP that outlines proposed sustainable design initiatives for the modified proposal must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the endorsed SMP to the satisfaction of the Responsible Authority. The amended SMP must be generally in accordance with SMP prepared by Sustainable Development Consultants.
6. Before the building is occupied, a report from the author of the SMP report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the satisfaction of the Responsible Authority. The report must confirm that all measures specified in the SMP have been implemented in accordance with the approved plan.

Construction Management Plan

7. Before the development starts, two copies of a Construction Management Plan must be submitted to and approved by the Responsible Authority. When approved the plan will form part of the permit. The plan must address, but not be limited to, the following:
 - 7.1 A liaison officer for contact by residents and the responsible authority in the event of relevant queries or problems experienced;
 - 7.2 Hours of construction;
 - 7.3 Delivery and unloading points and expected frequency;
 - 7.4 On-site facilities for vehicle washing;
 - 7.5 Parking facilities/locations for construction workers;
 - 7.6 Other measures to minimise the impact of construction vehicles arriving at and departing from the land;
 - 7.7 Methods to contain dust, dirt and mud within the site, and the method and frequency of clean up procedures;

- 7.8 The measures for prevention of the unintended movement of building waste and other hazardous materials and pollutants on or off the site, whether by air, water or other means;
 - 7.9 An outline of requests to occupy public footpaths or roads, and anticipated disruptions to local services;
 - 7.10 The measures to minimise the amount of waste construction materials, including details how the commitment to reduce or reuse construction waste going to landfill outlined in the SMP is achieved as far as practicable;
 - 7.11 The measures to minimise noise and other amenity impacts from mechanical equipment/construction activities, especially outside of daytime hours; and
 - 7.12 Adequate environmental awareness training for all on-site contractors and sub-contractors.
8. All works including earthworks, demolition and construction activity associated with the approved development is to be limited to the following hours, unless with the prior written consent of the Responsible Authority:
- 8.1 Monday to Friday: 7:00am to 7:00pm
 - 8.2 Saturday: 9:00am to 5:00pm
 - 8.3 Sunday and Public Holidays: No construction

Waste Management Plan

9. Before the development starts, two copies of an amended Waste Management Plan (WMP) must be submitted to and approved by the Responsible Authority. When approved the plan will form part of the permit. The plan must detail how best practice standards are achieved based on the Manningham City Council – Waste Collection for Residential Developments in Manningham – Guidelines for Developers, and be consistent with the submitted waste plan but amended to detail the following to the satisfaction of the Responsible Authority:
- 9.1 Specific waste management practices pertaining to each separate collection area in the development;
 - 9.2 Chutes, carousels, drop-off areas and compaction facilities;
 - 9.3 Access to bin rooms, chutes and drop-off areas;
 - 9.4 Hard waste collection;
 - 9.5 Collection locations and routines including times and frequency;
 - 9.6 The methods used to educate residents of waste collection system including the recycling component and hard waste; and
 - 9.7 Sweep path diagrams illustrating the collection vehicles to be used as well as height clearance requirements.

Management Plans

10. The Management Plans approved under Conditions 5, 7 and 9 of this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written consent of the Responsible Authority.

Landscaping

11. Before the development starts, a landscaping plan must be prepared by a landscape architect showing species, locations, approximate height and spread of proposed planting, and must be submitted to the Responsible Authority for approval. The plan must be generally in accordance with the landscape plan by MEMLA (Revision C, 8 April 2014).
12. Before the release of the approved plans for the development, a \$10,000 cash bond or bank guarantee must be lodged with the Responsible Authority to ensure the completion and maintenance of landscaped areas, and such bond or bank guarantee will only be refunded or discharged after a period of 13 weeks from the completion of all landscaping works, provided the landscaped areas are being maintained to the satisfaction of the Responsible Authority.
13. Before the building is occupied, landscaping works as shown on the approved plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.

Drainage

14. The owner must provide on-site stormwater detention storage or other suitable system (which may include but is not limited to the re-use of stormwater using rainwater tanks), to limit the Permissible Site Discharge (PSD) to that applicable to the site coverage of 35 percent of hard surface or the pre existing hard surface if it is greater than 35 percent. The PSD must meet the following requirements:
 - 14.1 Be designed for a 1 in 5 year storm; and
 - 14.2 Storage must be designed for 1 in 10 year storm.
15. Before the development starts, a construction plan for the system required by Condition No. 14 of this permit must be submitted to and approved by the Responsible Authority. The system must be maintained by the Owner thereafter in accordance with the approved construction plan to the satisfaction of the Responsible Authority.
16. Stormwater must not be discharged from the subject land other than by means of drainage to the legal point of discharge. The drainage system within the development must be designed and constructed to the requirements and satisfaction of the relevant Building Surveyor.

Vehicle Crossovers

17. Any new crossover or modifications to an existing vehicle crossover must be constructed to the satisfaction of the responsible authority. No such works are

permitted to commence unless a 'Vehicle Crossing Permit' is first obtained from the Responsible Authority.

18. Before the completion of the development, the developer must remove all disused or redundant vehicle crossovers in Mitchell Street and re-instate kerb and channel in the affected areas to the satisfaction of the Responsible Authority.

Car Parking and Traffic

19. Before the building is occupied, all basement parking spaces must be properly formed, line-marked, numbered and signposted to provide allocation to the commercial uses and/or each dwelling and visitors to the satisfaction of the Responsible Authority.
20. Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose.
21. Before the development is occupied, a Parking and Traffic Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Three copies of the plan must be submitted. When approved, the plan will be endorsed and will then form part of the permit. Traffic and parking operations on and adjacent to the site must conform to this endorsed plan. The plan must include:
 - 21.1 Measures to encourage visitors, customers and patrons of the permitted uses to park in the basement of the permitted building and to discourage parking in surrounding residential streets.
 - 21.2 Measures to discourage delivery vehicles in connection with the permitted restaurant, reception centre, supermarket and shop uses using residential streets to the south of the subject land for access to and from the subject land.
 - 21.3 Measures for the management and operation of the loading area to minimise the potential for amenity impacts on the surrounding area, including (but not limited to) any relevant recommendations of the acoustic report endorsed under Condition 47A.
 - 21.4 Appropriate management of the parking for the various uses in the building.

Completion

22. All privacy screens and obscure glazing as required in accordance with the endorsed plans must be installed before occupation of the development to the satisfaction of the Responsible Authority and maintained thereafter to the satisfaction of the Responsible Authority.
23. All plant and equipment that is not installed within the building must otherwise be installed in the area of plant and equipment on the roof of the building, unless otherwise agreed in writing with the Responsible Authority.
24. No air-conditioning units are to be installed on any balcony or façade so that they are visible from outside the site.

25. Any clothes-drying rack or line system located on a balcony must be lower than the balustrade of the balcony and must not be visible from off the site to the satisfaction of the Responsible Authority.
26. An intercom and an automatic basement door opening system (connected to each dwelling) must be installed, so as to facilitate convenient 24 hour access to the basement car park by visitors, to the satisfaction of the Responsible Authority.
27. A centralised TV antenna system must be installed and connections made to each dwelling to the satisfaction of the Responsible Authority. No individual dish antennas may be installed on balconies, terraces or walls to the satisfaction of the Responsible Authority.
28. All services, including water, electricity, gas, sewerage and telephone, must be installed underground and located to the satisfaction of the Responsible Authority.
29. Buildings, paved areas, drainage and landscaping must be maintained to the satisfaction of the Responsible Authority.
30. The development must be provided with external lighting capable of illuminating access to car parking spaces, storage, rubbish bins, recycling bins, pedestrian walkways, stairwells, lifts, dwelling entrances and entry foyer. Lighting must be located, directed, shielded and of limited intensity so that no nuisance or loss of amenity is caused to any person within and beyond the site, to the satisfaction of the Responsible Authority.

Loading and Unloading Operations

31. All loading and unloading for the supermarket (including all commercial garbage and recycling collection) must at all times be carried out within the onsite loading dock and in accordance with any relevant recommendations of the acoustic report endorsed under Condition 47A and the Parking and Traffic Management Plan endorsed under Condition 21 to the satisfaction of the Responsible Authority.
32. All trucks and other vehicles using the loading dock must enter and exit the site in a forward motion.
33. Unless otherwise approved by the Responsible Authority, delivery vehicles shall have a maximum length of 12.5 metres and must unload from the on-site loading bay.
34. Deliveries for the supermarket may only be undertaken at the following times unless otherwise approved by the Responsible Authority:
 - 34.1 Monday to Friday - 7.00am to 8.00pm.
 - 34.2 Saturday - 7.00am to 1.00pm.
35. Other commercial loading / unloading may only occur between 6.00am and 10.00pm on any day, unless with the prior written consent of the Responsible Authority.
36. Waste collection may only occur between 7.00am and 6.00pm Monday to Saturday, unless with the prior written consent of the Responsible Authority.

Mitchell Street Presentation

37. The shop front and glass facades of the supermarket facing Mitchell Street are not to be covered by posters, film or signage that reduces the transparency of the interface to below 65 percent to the satisfaction of the Responsible Authority.

Amenity of Area

38. The use and development must be managed so that the amenity of the area is not detrimentally affected, to the satisfaction of the Responsible Authority, by the:
- 38.1 Transport of materials, goods or commodities to or from the land;
 - 38.2 Storage of goods and wastes;
 - 38.3 Appearance of any building, works or materials;
 - 38.4 Emission of noise, light, vibration, odour and dust.
39. No external sound amplification equipment or loudspeakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose unless with the written consent of the Responsible Authority.
40. Noise emanating from the development, including plant and other equipment, must comply with the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 to the satisfaction of the Responsible Authority.
41. Noise emanating from the restaurant and reception centre uses within the development must comply with the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.
- 42.
43. External lighting must be designed so to limit loss of amenity to residents of adjoining properties to the satisfaction of the Responsible Authority.
44. All security alarms or similar devices installed on the land must be of a silent type and be connected to a registered security service.
45. Service, waste and storage areas shall be kept in a tidy, rubbish-free condition to the satisfaction of the Responsible Authority.
46. Any exhaust system, including from the cooking area of the restaurant / reception centre, shall be provided with filter devices capable of minimizing the external emission of odours and airborne fat particles to the satisfaction of the Responsible Authority and such system shall at all times be maintained to ensure its efficiency.
47. Rubbish, including bottles and packaging material, must at all times be stored within the building and screened from external view and be managed to the satisfaction of the Responsible Authority in accordance with the approved Waste Management Plan.
- 47A. Before the endorsement of plans, a report to the satisfaction of the Responsible Authority, prepared by a suitably qualified and experienced acoustic consultant, must be submitted to and approved by the Responsible Authority. The report must include

(but is not limited to) works and management measures for the restaurant and reception centre premises, including the use and treatment of the balconies and loading bay, to ensure that all commercial operations can comply with the State Environment Protection Policy N-1 (Control of Noise from Industrial Commercial and Trade Premises within the Melbourne Metropolitan Area) and State Environment Protection Policy N-2 (Control of Music from Public Premises). The report must address the potential for impacts on both surrounding residential properties and the new apartments in the permitted building.

- 47B. Within six months of the commencement of the permitted restaurant and reception centre use, the applicant must provide the Responsible Authority with a noise report from an independent, suitably qualified and experienced acoustic consultant, to demonstrate that SEPP N-1 and N-2 standards are being met to the satisfaction of the Responsible Authority. Noise measurements must be carried out during a function of at least 80 patrons.

Section 173 Agreement

48. Before the development begins, the owner of the land must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority to provide for the following:

- 48.1 That at least 1,300 sqm of the leasable area of the ground floor of the permitted building must be set aside on the endorsed plan and only used for the purposes of a supermarket.
- 48.2 The ending of the agreement after a period of 15 years from the date of the commencement of the supermarket use.

This agreement must be registered at the Office of Titles pursuant to Section 181 of the Planning and Environment Act 1987. This agreement must be prepared and executed at the owner's expense.

Conditions relating specifically to the Restaurant / Reception Centre

49. Before the permitted restaurant and reception centre uses start, a Noise and Amenity Action Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the authority. When approved, the plan will be endorsed and will then form part of the permit. All activities forming part of the use must comply with the endorsed plan. The plan must include:

- 49.1 Any recommendations of the Acoustic Report endorsed under Condition 47A for the management of the premises, including the outdoor terraces;
- 49.2 Staffing and other measures which are designed to ensure the orderly arrival and departure of patrons;
- 49.3 Signage to be used to encourage responsible off-site patron behaviour;
- 49.4 The training of staff in the management of patron behaviour;
- 49.5 Staff communication arrangements;
- 49.6 Measures to minimise and control noise emissions from the premises.

The premises must be managed in accordance with the Noise and Amenity Action Plan to the satisfaction of the Responsible Authority.

50. The reception centre must only accommodate the following maximum number of patrons and operate between the hours of:
 - 50.1 Monday - Saturday 6.00pm – 1.00am (maximum 260 patrons);
 - 50.2 Sunday 12.00pm – 6.00pm (maximum 200 patrons);
 - 50.3 Sunday 6.00pm – 12.00am (maximum 260 patrons);unless with the prior consent of the Responsible Authority.
51. The restaurant must only accommodate the following maximum number of patrons and operate between the hours of:
 - 51.1 Monday – Saturday 9.00am – 6.00pm (maximum 83 patrons);
 - 51.2 Monday – Saturday 6.00pm – 1.00am (maximum 100 patrons);
 - 51.3 Sunday 12.00pm – 6.00pm (maximum 160 patrons);
 - 51.4 Sunday 6.00pm – 12.00am (maximum 100 patrons);unless with the prior written consent of the Responsible Authority.
52. Notwithstanding the provisions of Condition 51, the restaurant is permitted to accommodate a maximum of 160 patrons during the hours outlined in Condition 51.2 and 51.4, provided the maximum number of patrons in the reception centre does not exceed 200 patrons.
53. The operator of the use must ensure that all on-site activities are conducted in an orderly manner and must endeavour to ensure that patrons who depart the premises, do so in a manner not likely to cause noise disturbance to nearby residents.
54. The operator shall ensure that no commercial rubbish pick-ups occur prior to 7.00am on any day and that bottles stored outside of the building are handled in such a manner as to cause no disturbance to nearby residents at night.

Variation of Easement

55. A Plan of Removal of Easement must be submitted for certification by the Responsible Authority and referred to the relevant authority in accordance with Section 8 of the Act.
56. The certified plan must be lodged with the Land Titles Office for registration.
57. Unless the plan for variation of restriction approved by this permit is certified within 2 years of the date of this permit, then the permit will lapse.

Expiry

58. This permit will expire if any one of the following circumstances apply:
 - 58.1 The development is not started within four (4) years of the date of the issue of this permit;
 - 58.2 The development is not completed within six (6) years of the date of this permit;

58.3 The use is not commenced within six (6) years of the date of this permit.

The Responsible Authority may extend these times if a request is made in writing before the permit expires or within six months afterwards.

IMPORTANT INFORMATION ABOUT THIS PERMIT

WHAT HAS BEEN DECIDED?

The Responsible Authority has issued a permit. The permit was granted by the Minister administering the **Planning and Environment Act 1987** under section 96I of that Act.

WHEN DOES THE PERMIT BEGIN?

The permit operates from a day specified in the permit being a day on or after the day on which the amendment to which the permit applies comes into operation.

WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if -
 - * the development or any stage of it does not start within the time specified in the permit; or
 - * the development requires the certification of a plan of subdivision or consolidation under the **Subdivision Act 1988** and the plan is not certified within two years of the issue of a permit, unless the permit contains a different provision; or
 - * the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.
2. A permit for the use of land expires if -
 - * the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
 - * the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if -
 - * the development or any stage of it does not start within the time specified in the permit; or
 - * the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
 - the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development: or
 - the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision-
 - * the use or development of any stage is to be taken to have started when the plan is certified; and
 - * the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

WHAT ABOUT APPEALS?

- * Any person affected may apply for a review of -
 - a decision of the responsible authority refusing to extend the time within which any development or use is to be started or any development completed; or.
 - a decision of the responsible authority refusing to extend the time within which a plan under the **Subdivision Act 1988** is to be certified, in the case of a permit relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**; or.
 - the failure of the responsible authority to extend the time within one month after the request for extension is made.
 - * An application for review is lodged with the Victorian Civil and Administrative Tribunal.
 - * An application for review must be made on an Application for Review form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
 - * An application for review must state the grounds upon which it is based.
 - * An application for review must also be served on the Responsible Authority.
 - * Details about applications for review and the fees payable can be obtained from Victorian Civil and Administrative Tribunal.
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