

## 7.13 AMENDMENT C180 - REZONING OF 430-436 VICTORIA STREET & 7 GARDINER STREET, BRUNSWICK - DECISION GATEWAY 2 & 3 - CONSIDERATION OF SUBMISSIONS AND ADOPTION OF AMENDMENT

Director City Futures Kirsten Coster

City Strategy and Design

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### Officer Recommendation

That Council:

1. Using its powers as a planning authority under s 29 of the *Planning and Environment 1987*, adopt Moreland Planning Scheme Amendment C180 as shown in **Attachment 1** to this report.
2. Submit the adopted Amendment to the Minister for Planning.

<b>REPORT</b>
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### Executive Summary

Amendment C180 to the Moreland Planning Scheme affects 430-436 Victoria Street and 7 Gardiner Street Brunswick ('Site'). The Site is located within Brunswick's Core Industry and Employment Precinct and is categorised within the Moreland Industrial Land Strategy 2015-2030 (MILS) as a Category 1: Core Industrial and Employment Area.

Consistent with the MILS, Amendment C180 seeks to facilitate a broader range of employment generating uses whilst prohibiting residential uses by:

- Rezoning 430-436 Victoria Street and 7 Gardiner Street Brunswick, from Industrial 1 Zone to a Commercial 2 Zone;
- Applying a Design and Development Overlay 29 to restrict the height of any future buildings on the site and protect the amenity of Clifton Park;
- Applying an Environmental Audit Overlay to require a contamination assessment of the land (environmental audit) to ensure that the environmental conditions of land are appropriate if a sensitive use is proposed to operate on the site.

The Amendment will provide an attractive avenue for investment at this location through providing greater flexibility on the type of commercial uses that are permitted on the land, including new and emerging industries identified for the Brunswick Design District, whilst supporting the continued operation of existing industry and prohibiting residential uses.

Amendment C180 was exhibited from 15 March 2021 to 23 April 2021. Two submissions were received that were both supportive of the Amendment. Matters raised in the submissions relate to the scale of future buildings and amenity impacts to existing dwellings. **Attachment 2** provides a summary of all the submissions, including details of the Council Officer response.

This report recommends submitting the Amendment to the Minister for Planning with no changes to the exhibited Amendment C180 documentation as detailed in **Attachment 1**.

## **Previous Council Decisions**

### **DCF18/20 Amendment C180 – proposed rezoning of 430-436 Victoria Street and 7 Gardiner Street, Brunswick – Decision Gateway 1: Authorisation and Exhibition - 13 May 2020**

*That Council:*

- 1. Using its powers as a Planning Authority under sections 8A and 8B of the Planning and Environment Act 1987, seeks authorisation from the Minister for Planning to prepare Moreland Planning Scheme Amendment C180 as shown in Attachment 1 and Attachment 2 to this report.*
- 2. Following receipt of the Minister's authorisation, exhibits Amendment C180 in accordance with Section 19 of the Planning and Environment Act 1987 and as outlined in the Consultation section of this report.*
- 3. Authorises the Director City Futures to make changes to the Amendment C180 based on conditions imposed in any authorisation granted by the Minister for Planning and to make any grammatical changes and correct any errors in the relevant documents.*

## **1. Policy Context**

The Council Plan 2017-2021, contains strategic initiatives to:

- Enhance liveability, affordability and sustainability by guiding growth, and excellence in urban design and development.
- Support the local economy and trading environments to enhance economic activity and promote local jobs.

Council Action Plan item 24 seeks to facilitate these initiatives by implementing the Moreland Industrial Land Strategy 2015-2030 (MILS) through landowner initiated amendments.

### **Municipal Planning Strategy (MPS)**

The Municipal Planning Strategy in the Moreland Planning Scheme identifies three large concentrations of industrial zoned land in Brunswick, North Coburg and Newlands within the Economic Development Framework Plan at Clause 02.4. These areas align with Category 1 - Core Industry and Employment Areas detailed within the MILS.

These industrial precincts have been identified for long term retention in zones that facilitate industry and employment uses and prohibit new residential uses. They are relatively unconstrained by residential or other sensitive uses and are intended to remain as priority areas for long term investment in industrial and other compatible businesses.

### **Planning Policy Framework (PPF)**

The Planning Policy Framework outlines planning's role in supporting the Economic Development of the State at Clause 17 (Economic Development):

- Planning is to provide for a strong and innovative economy, where all sectors are critical to economic prosperity.
- Planning is to contribute to the economic wellbeing of the state and foster economic growth by providing land, facilitating decisions and resolving land use conflicts, so that each region may build on its strengths and achieve its economic potential.

These policy directions are supported by the following relevant objectives and strategies in the Moreland Planning Scheme.

### *Clause 17.01-1S – Diversified economy*

#### Objective

- To strengthen and diversify the economy

#### Strategies

- Protect and strengthen existing and planned employment areas and plan for new employment areas.
- Improve access to jobs closer to where people live.

The Commercial 2 Zone proposed by Amendment C180 aligns with this objective and strategies policies by offering a broad range of commercial opportunities in a key employment area of Moreland, on a site that is well accessed by public transport and in proximity to where a substantial part of Moreland's population live.

### *Clause 17.01-1L - Core Industry and Employment Areas*

In support of the above State policies, local policy at Clause 17.01-1L (Core Industry and Employment Areas) contains the following objective to maintain and strengthen Moreland's Core Industry and Employment Areas:

- To support the continued operation of existing industry and encourage new industry and complementary employment uses to locate within Core Industry and Employment Areas.

Amendment C180 seeks to broaden the commercial opportunity in Brunswick's core industrial area and is further supported by the following strategy at Clause 17.01-1L:

- Support the transition to a broader range of employment generating uses in *Core Industry and Employment Areas*, including a mix of industry and office-based uses and other compatible employment uses, as permitted within the relevant zone.

### *Clause 17.01-2S – Innovation and Research*

State policy within the PPF at Clause 17.01-2S (Innovation and Research) is also relevant to Amendment C180 through the following objectives and strategies that support Moreland expanding and strengthening of the Brunswick Design District:

#### Objective

- To create opportunities for innovation and the knowledge economy within existing and emerging industries, research and education.

#### Strategies

- Support the development of business clusters.
- Support the development of enterprise precincts that build the critical mass of employment in an area, leverage the area's public and private sector economic competitive strengths and assets, and cater to a diversity of employment types and scales.
- Promote an accessible, well-connected, high-amenity and collaborative physical environment that is conducive to innovation and to creative activities.

### **Moreland Industrial Land Strategy 2015-2030**

The MILS guides planning decisions about the future of Moreland's Industrial land and informs Council's Moreland Economic Development Strategy 2016-2020 to provide long term investment certainty for the business community. The MILS categorises all industrial land into one of three strategic categories as follows:

- Category 1: Core Industrial and Employment Areas - maintain land for industry and other employment uses;

- Category 2: support a transition to a broader range of employment uses and seek to prioritise employment uses over residential uses; or
- Category 3: support change in some areas to facilitate quality residential development that contributes to housing supply

The MILS provides a clear framework for land rezoning and identifies when rezoning should occur. *Section 6 - Planning Scheme Recommendations* of the MILS states that:

*Such amendment requests will be assessed against the relevant MILS category, any other relevant strategic directions for the site or precinct expressed in the MSS, and the site or precinct context.*

This proposed amendment is consistent with the strategic intent of MILS and the framework plan that identifies the site within Category 1: Core Industry and Employment Area. The framework plan outlines that the Commercial 2 Zone is an applicable zone within Category 1 MILS areas and is appropriate to achieve the following key strategy for these areas:

*Support the transition to a broader range of employment generating uses in Core Industry and Employment Areas, including a mix of industry and office based uses and other compatible employment uses, as permitted within the relevant zone.*

### **Creative State Strategy 2016-2020**

The State Government's Creative State Strategy 2016-2020 aims to address major challenges to the sustainability and growth of creative industries in Victoria through growing Victoria's creative and cultural economy, boosting local creative enterprises, create new jobs and employment opportunities, and bring social and cultural benefits to Victorians. This strategy and its actions are supported by Plan Melbourne policy 4.2.2:

- Support the growth and development of Melbourne's cultural precincts and creative industries.

(Note: Creative State Strategy 2021-2025 is currently under development)

The Brunswick Design District, a collaborative project between Moreland Council, RMIT University and government body Creative Victoria, aims to realise a number of key objectives and strategies within Creative State Strategy 2016-2020, including:

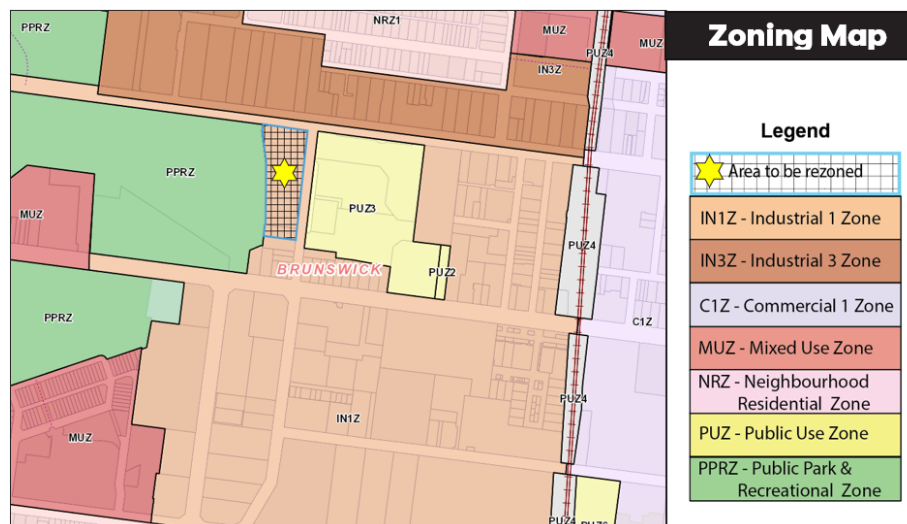
- strengthening the creative industries ecosystem;
- supporting design businesses;
- broadening the impact of design;
- supporting the establishment of spaces for creative enterprises and collaboration

A Memorandum of Understanding (MoU) between Moreland Council, RMIT University and Creative Victoria sets out the intent and purpose between these parties to develop a shared vision and collaboration over the long term to achieve an integrated approach to the development of the Brunswick Design District.

## **2. Background**

### **The Brunswick Core Industrial Area**

The Site is located within Brunswick's Core Industrial Area (MILS Area 64), and abuts industrial land to the north and south, Clifton Park directly to the west (Public Park and Recreational Zone) and BRUDI (Brunswick Design & Innovation – formerly the Brunswick Business Incubator) and Foundation House to the east (Public Use Zone).



*Map 1: Existing zoning of subject site and surrounds showing the site within Brunswick's core industrial precinct (MILS Area 64)*

The MILS outlines that Moreland's core industrial areas are an important employment resource that support a broad range of different economic sectors, not limited to traditional industrial uses. The MILS framework plan specifies that a Commercial 2 Zone is an applicable zone to facilitate a broad range of employment generating uses for the long-term sustainability of Moreland's core industrial areas.

### **The Brunswick Design District**

The Brunswick Design District (BDD) has no defined boundary but is centralised around a number of core sites in the heart of Brunswick. The Site is located adjacent to BRUDI, a key focus and resource of the BDD.



*Map 2: Key sites of the Brunswick Design District in context of the Site*

BRUDI is intended to create long term value for the local community, Melbourne's north and Melbourne's economy by linking together land and buildings, shared infrastructure and local institutional strengths to encourage the growth of enterprise networks.

### *Supporting the Brunswick Design District*

The Commercial 2 Zone permits a broader range of commercial uses 'as of right' including office, restricted retail, trade supplies, and some limited retail activity otherwise difficult to achieve in an Industrial 1 Zone. As such, the Commercial 2 Zone is expected to provide investment opportunities to support the BDD through its proximity to BRUDI and a zoning that facilitates a broader range of commercial uses.

In the Commercial 2 Zone existing industry can also continue, with Industry or Warehouse outlined as a Section 1 'As of Right' Use, subject to conditions being met.

The Commercial 2 Zone also allows a permit to be sought for a primary school use, and other sensitive uses such as a childcare centre and pre-school centre currently prohibited within an Industrial 1 Zone, as shown in **Attachment 3**.

### **Built form outcomes**

A Design and Development Overlay Schedule 29 (DDO29) is proposed to apply to the site as shown in **Attachment 1**. A DDO was considered necessary as there are no restrictions on height under the Commercial 2 Zone. The DDO29 also provides built form guidance for the scale and interface treatment to the adjoining parkland setting.

DDO29 strikes a balance between allowing flexibility that will encourage a suitable commercial development whilst providing design principles to guide an appropriate built form on the site through directing:

- A high quality interface to Clifton Park and improved park surveillance;
- New buildings (including height, setbacks, mass and bulk) to limit overshadowing and visual impacts to Clifton Park;
- A high quality landscape design that visually integrates the development into the parkland context;
- A building design that will not undermine the ongoing operation of uses in the Industrial 1 Zone.

DDO29 seeks to maintain a consistent scale presenting to the park by directing a four-storey form at the park and street interfaces. It also allows an additional storey up to five where the design response demonstrates that upper levels do not generate any unreasonable shadow impacts to the park and are visually recessive when viewed from within the park. DDO29 also directs landscaping within side setbacks and along the Victoria Street frontage to help integrate new buildings within the parkland setting and improve greening outcomes along the streetscape.

### **Potentially contaminated land**

Potentially contaminated land is defined in *Ministerial Direction No. 1 – Potentially Contaminated Land* as land used or known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel (if not ancillary to another use of land). This also includes land that may have been contaminated by other means such as by ancillary activities, including contamination from surrounding land, fill using contaminated soil or agricultural uses.

A desktop assessment of existing and historical uses at 430-436 Victoria Street and 7 Gardiner Street, Brunswick indicates that the site has high potential for contamination as defined in the Ministerial Direction and *Planning Practice Note 30 – Potentially Contaminated Land*.

The proposed zone will allow a permit application for a new sensitive use, a primary school, and other sensitive uses such as a childcare centre and pre-school centre. To ensure that the environmental conditions of the land are appropriate for any sensitive use to operate on the site, an Environmental Audit Overlay (EAO) is proposed to be applied to the site. The EAO will require an environmental audit to be conducted where a sensitive use or the construction of a building associated with a sensitive use is proposed on the land. Conversely, commercial and industrial development that is intended for the site would not trigger any contamination assessment with an EAO applied to the land as these are not defined as sensitive uses.

### **3. Issues**

#### **Authorisation with conditions**

Officers were directed by the Department of Environment, Land, Water and Planning (DELWP) to revise the proposed DDO29 submitted for Authorisation to align with the Smart Planning drafting rules. The subsequent changes made to DDO29 to achieve support from DELWP did not change the intent of the DDO or any specific design requirements but related to the way a design requirement was described. Following these changes on 5 February 2021, DELWP authorised Council to prepare Amendment C180 subject to the following condition:

*The Schedule 29 to the Design and Development Overlay must be drafted consistent with the revised version provided by council officers on 17 December 2020, but with the setback requirement relating to tree protection zones removed.*

The policy in the proposed DDO29 referenced in this condition read:

*Buildings should be setback from Clifton Park boundary to accommodate the Tree Protection Zone and deep soil volumes of existing mature trees and provide space for new planting to support the developments integration with the parkland setting.*

Understanding that DELWP had concerns with using a Tree Protection Zone as a point of measure, the policy was modified to comply with the condition of Authorisation:

*Buildings should be setback from Clifton Park boundary to accommodate deep soil volumes of existing mature trees and provide space for new planting to support the developments integration with the parkland setting.*

This change was deemed to meet the condition of authorisation by DELWP officers on 11 February and was subsequently included in the exhibited version of DDO29.

#### **Matters raised in Submissions**

Two supportive submissions were received to the Amendment during the exhibition period. Matters raised in the submissions related to the scale of the future buildings and amenity impacts to existing dwellings in the precinct. A general response to each of the matters raised is outlined below. A more detailed response is provided in **Attachment 2**.

#### **Scale of building**

One submitter detailed that keeping a low building height with setbacks is important.

##### *Council Officer Response*

As detailed above, the proposed DDO29 guides a building scale that includes building heights and setbacks, landscaping and interface treatments to protect the park environment and improve the street interface and public safety. Additionally, the scale directed by DDO29 is a moderate form consistent with existing buildings fronting Clifton Park and sympathetic to the existing larger building at 420 Victoria Street.

## **Amenity Impacts to existing dwellings**

One submitter detailed that an 'agent of change' approach should be considered to protect the amenity of existing housing at the corner of Gardner and Albert Streets (traffic, noise, public safety & vandalism), especially as afterhours activity could be permitted on the site.

### ***Council Officer Response***

The existing residential housing at the corner of Gardner and Albert Streets are included within an Industrial 1 Zone and the Core Industrial Area - Brunswick Industrial Precinct (MILS Area 64). Whilst these dwellings benefit from existing use rights, this area is categorised in the MILS as a Category 1 – Core Industry and Employment Areas where residential uses are encouraged to transition to an Industrial use, as detailed in Clause 17.01-1L – Core Industry and Employment Areas of the Moreland Planning Scheme.

The Commercial 2 Zone is more considerate to surrounding sensitive uses than the existing Industrial 1 Zone. It is commonly used as a buffer type zone between intensive industrial areas and residential areas, it encourages a broader range of commercial uses that are less intense in activity than uses encouraged in the existing Industrial 1 Zone and includes greater consideration of the amenity of surrounding sensitive uses with the following purpose:

*'To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses'*

In response to the 'agent of change' consideration, where new uses propose after-hours activity such as entertainment venues and license premises, existing State and local policy at Clauses 13.05 (Noise) and 13.07 (Amenity, Human Health and Safety) include objectives and strategies to manage potential negative amenity impacts.

## **Human Rights and Gender Equity Consideration**

The implications of this report have been assessed in accordance with the requirements of the Charter of Human Rights and Responsibilities. The notification carried out as part of the Amendment and the proposed rezoning does not limit or interfere with any Human Rights, in particular 'Section 13: The right to privacy and reputation', 'Section 18: The right to take part in public life', and 'Section 20: Property rights'. The following is noted:

- Council utilises existing personal information held by Council to ensure owners of affected and adjoining properties are notified. This is required by the *Planning and Environment Act 1987*.
- Any person may elect to take part in the process by providing a submission to the Responsible Authority.
- No parties are deprived of any legal or proprietary interest in land, or the ability to use and develop that land in accordance with the planning regulatory framework.
- A person is considered to be deprived of their property rights if a regulation has the effect of substantially depriving a property owner of the ability to use his or her property or part of that property. Amendment C180 implements existing planning scheme policy.

It is considered that the proposed rezoning of land at 430-436 Victoria Street and 7 Gardiner Street Brunswick as set out in this Report will not have a direct or significant impact on gender equality.

## **4. Community consultation and engagement**

The Amendment was publicly exhibited from 21 November 2019 to 20 December 2019.



Exhibition was supported by direct notification to:

- Relevant state government departments and Ministers
- Owner and occupiers of the affected site
- Owner and occupiers of properties located adjacent to and within proximity of the site

To reach the wider community and ensure the community had an opportunity to learn about the Amendment, the following notification was also undertaken:

- Public notice in the Herald Sun and The Age newspapers on 15 March 2021 and in the Government Gazette on 18 March 2021.
- A Conversations Moreland C180 project page describing the Amendment and providing access to the Amendment documentation and online form to lodge a submission.
- Links to information available on Council's corporate website.
- Officers were available for teleconference meetings and phone calls to discuss the Amendment with members of the community.

The *COVID-19 Omnibus (Emergency Measures) Bill 2020* made temporary changes to Victoria's planning system and operation of local government to enable the planning scheme amendment process to continue.

Planning documents previously required to be physically available to view at a State or local government office are now only required to be available for online inspection, this includes copies of planning scheme amendments and submissions. In the written notification, an offer to print hard copies of any of the amendment documentation or supporting documents was made if a person was unable to access the information on the internet.

All submitters have been notified of the timing of this report.

## **5. Officer Declaration of Conflict of Interest**

Council officers involved in the preparation of this report have no conflict of interest in this matter.

## **6. Financial and Resources Implications**

The proponent will meet statutory fees and costs associated with the amendment. This includes all costs to exhibit and administer the amendment.

Administrative costs associated with facilitating the amendment and Officer resourcing will be met by the Strategic Planning Unit, Planning Scheme Amendments operating budget.

## **7. Implementation**

The following anticipated timeline for the Amendment is broken down into the key 'decision gateways'. The timeframe is subject to Ministerial approval timelines.

### ***Decision Gateway 1: Authorisation and Exhibition (Completed)***

### ***Decision Gateway 2 & 3: Submission review and Final decision***

- June 2021: Consider submissions and adoption of final version of the Amendment
- June 2021: Submit the Amendment to the Minister of Planning for approval
- November 2021: Decision by the Minister of Planning

**Attachment/s**

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|----------|---|------------|
| <b>1</b> | Attachment 1 - C180 Amendment documentation - Instruction Sheet, DDO29, Zoning and Overlay Maps | D21/159344 |
| <b>2</b> | Attachment 2 - C180 Summary of Submissions, Council Officer Response and Recommendations        | D21/163609 |
| <b>3</b> | Attachment 3 - Commercial 2 Zone Ordinance  | D21/159445 |