

Report Prepared for Marriott Pty
Ltd

February 2020

ADVERTISED COPY

Multi-Dwelling Development

15-17 Marriott Parade, Glen
Waverley

planningreport

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Prepared for: Marriot Pty Ltd

Our reference: 16609P_app_R001

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1 Introduction:

1.1 Instruction

Ratio Consultants has been engaged by Marriott Pty Ltd, the permit applicant, to prepare a town planning report with respect to an application to construct a multi-unit development at No. 15-17 Marriott Parade, Glen Waverley.

1.2 Investigation and Research

In the course of this report, we have:

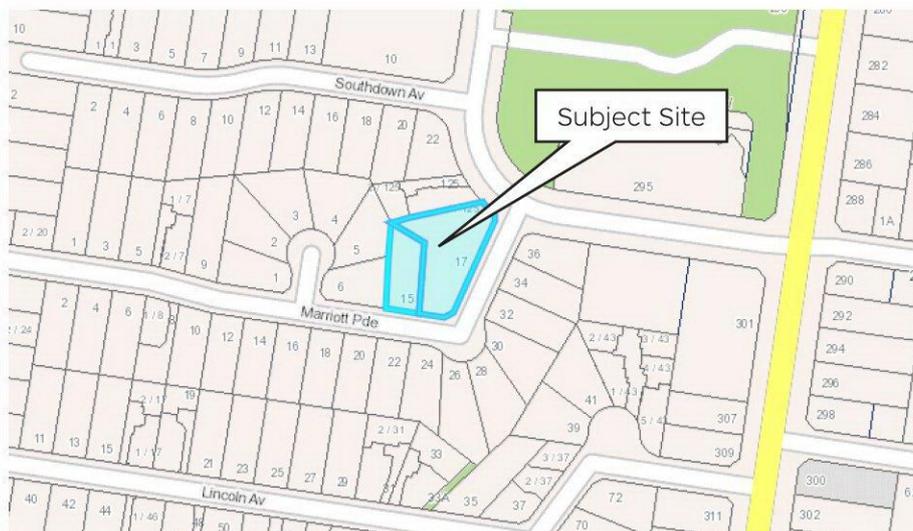
- Assessed the proposal against the relevant planning controls and policies contained within the Monash Planning Scheme;
- Inspected the site and surrounds;
- Reviewed the application plans prepared by Architeria Architects;
- Reviewed the traffic impact assessment letter prepared by Ratio Consultants;
- Reviewed the Waste Management Plan prepared by Frater Consulting Services;
- Reviewed the Sustainability Management Plan prepared by Frater Consulting Services;
- Reviewed the Landscape Plan prepared by John Patrick Landscape Architects.

2 Existing Conditions:

2.1 Subject Site

The subject site is located on a bend of Marriott Parade, and is commonly known as No. 15-17 Marriott Parade, Glen Waverley. The site is more formally known as Lots 1 and 2 on TP582567G.

Figure 2.1: Cadastral Plan



Source: Map Share www.mapshare.vic.gov.au

The key features of the site are summarised as follows:

- The subject site comprises two separate parcels of land, which collectively form an irregularly shaped site. The site includes a northern boundary distance of 47.08 metres (and a curved splay to the east), an eastern (front) boundary distance of 48.72 metres (with a 4.87 metre splay at the southern corner), a southern boundary distance of 29.2 metres, a western boundary distance of 42.98 metres, and an overall area of approximately 2,302.6sq.m.
- The site is currently occupied by two x single-storey brick dwellings (one with a pitched, tiled roof, and the other with a flat, tin roof). No. 17 Marriott Parade includes an expansive front yard to the east, with an area of secluded private open space to the rear of the dwelling. No. 15 Marriott Parade includes an area of SPOS to the rear of the dwelling.
- A single-width crossover is located to the east of the site, connecting to Marriott Parade for No. 17, and to the south of the site for No. 15.
- The site contains a moderate fall from the north-west to the south-east of approximately 2.5 metres.
- A moderate level of existing vegetation was scattered throughout the site, located mainly within the front and rear setbacks (the site has since been cleared). The arborist assessment identified several 'moderate' trees on site, but none with a 'high' retention value.
- A low-scale brick fence bounds the site's frontage to the east and south of No. 17 Marriott Parade, while a 1.8 metre high timber paling fence bound's No. 15's frontage.
- Several established street trees are located within the nature strip adjacent to the site.
- The subject land is located within the Glen Waverley Major Activity Centre.
- There are no easements registered on the Certificate of Title. However, covenant (Instrument: B924316), which restricts the

erection of any building not built of brick or brick veneer, is registered on Title. A copy of the Certificate of Title is provided at Appendix A.

Photo 1: Subject site



2.2 Surrounding Land

North

- Two x dwellings are located on the abutting site to the north at Nos. 125 / 125A Kingsway (one x single and one x double storey). Both dwellings are constructed of brick with hipped and tiled roofs.
- The secluded private open space for No. 125A Kingsway appears to be to the dwelling's north, while the SPOS for No. 125 Kingsway is located to its western boundary. The areas abutting the common boundary with the subject site are for utility purposes.
- Beyond this, is a residential subdivision pattern. The prevailing pattern is generally large single dwellings set within expansive rear yards with limited evidence of canopy trees scattered throughout.
- A mixture of non-residential uses are located further to the north, including Glen Waverley Church, Glen Waverley Library and Monash City Council.

Photo 2: Nos. 125 / 125A Kingsway



East

- To the immediate east of the subject site is Marriott Parade, which connects to Kingsway in the north.
- Across Marriott Parade are several single storey dwellings with manicured gardens located to the dwellings' rear.
- The Waverley International Hotel is located beyond this at No. 301 Springvale Road.
- Ibis Glen Waverley, a residential hotel, is located at No. 207 Springvale Road.
- Springvale Road, a major road, is located approximately 140 metres to the east.
- There is an emergence of multi-unit developments to the east, and particularly along Springvale Road.

Photo 3: 36 Marriott Parade

South

- To the immediate south of the subject site is Marriott Parade, which includes a semi-court bowl serving several properties to the south.
- The dwelling typology and subdivision pattern to the south includes predominantly single dwellings set within rear yards. There is evidence of multi-dwelling developments within the surrounding area (particularly along Beacon Street).
- Waverley Road, a major road, is located approximately 550 metres to the south.

Photo 4: 24 Marriott Parade



West

- To the immediate west are two properties abutting the common boundary with the subject site. No. 5 Berkley Court is developed with a double storey brick dwelling with a hipped and tiled roof. Its area of secluded private open space is generally located to the north of the dwelling, with a secondary area abutting the subject site.
- No. 6 Berkley Court is developed with a single storey rendered brick dwelling with a hipped and tiled roof. The site includes two areas of private open space, firstly abutting the site, and also to the west, bounded by a high fence to the Berkley Court frontage.
- The wider area further to the west includes the presence of multi-unit developments (Nos. 7 and 8 Marriott Parade, and 10 and 12 Myrtle Street), including a mixture of single and double storey dwellings.

Photo 5: No. 6 Berkley Court



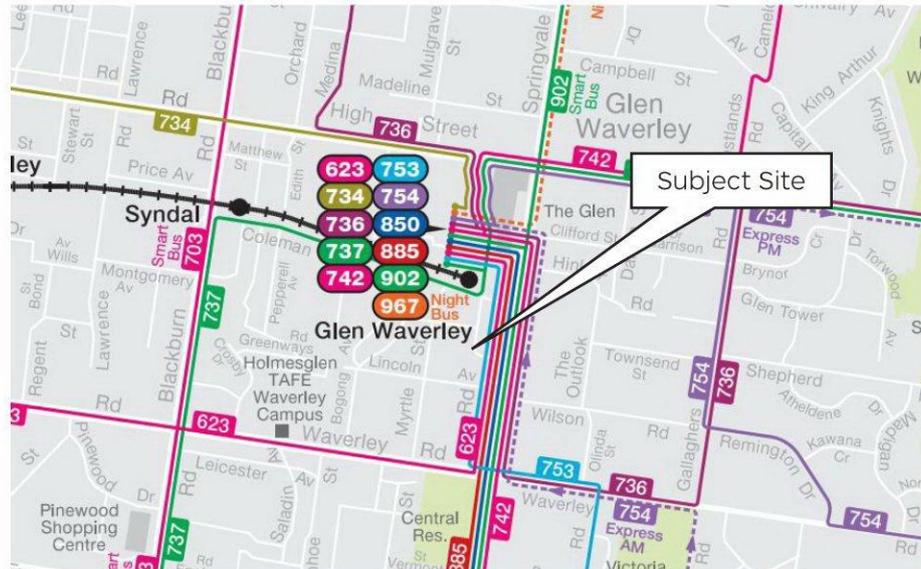
2.3 Locational Attributes

The subject site is well located in terms of its proximity to a range of commercial, community, transport and recreational services, including (measured 'as the crow flies'):

- The Glen Shopping Centre is located approximately 400 metres to the north which includes numerous shopping and retail destinations;
- Several educational institutes / schools are located within a 1.5km radius from the site, including: Wesley College; Glen Waverley Secondary College; Holmesglen Tafe; Glenallen School; and Mount View Primary School.
- Several reserves / recreational facilities within a similar vicinity include: Hinkler Reserve; Bogong Reserve; Monash Aquatic & Recreation Centre; Glen Waverley Tennis Club; Glen Waverley Skate Park; and Jordan Grove Reserve.
- Numerous bus routes which arrive at The Glen Shopping Centre, including (among others):

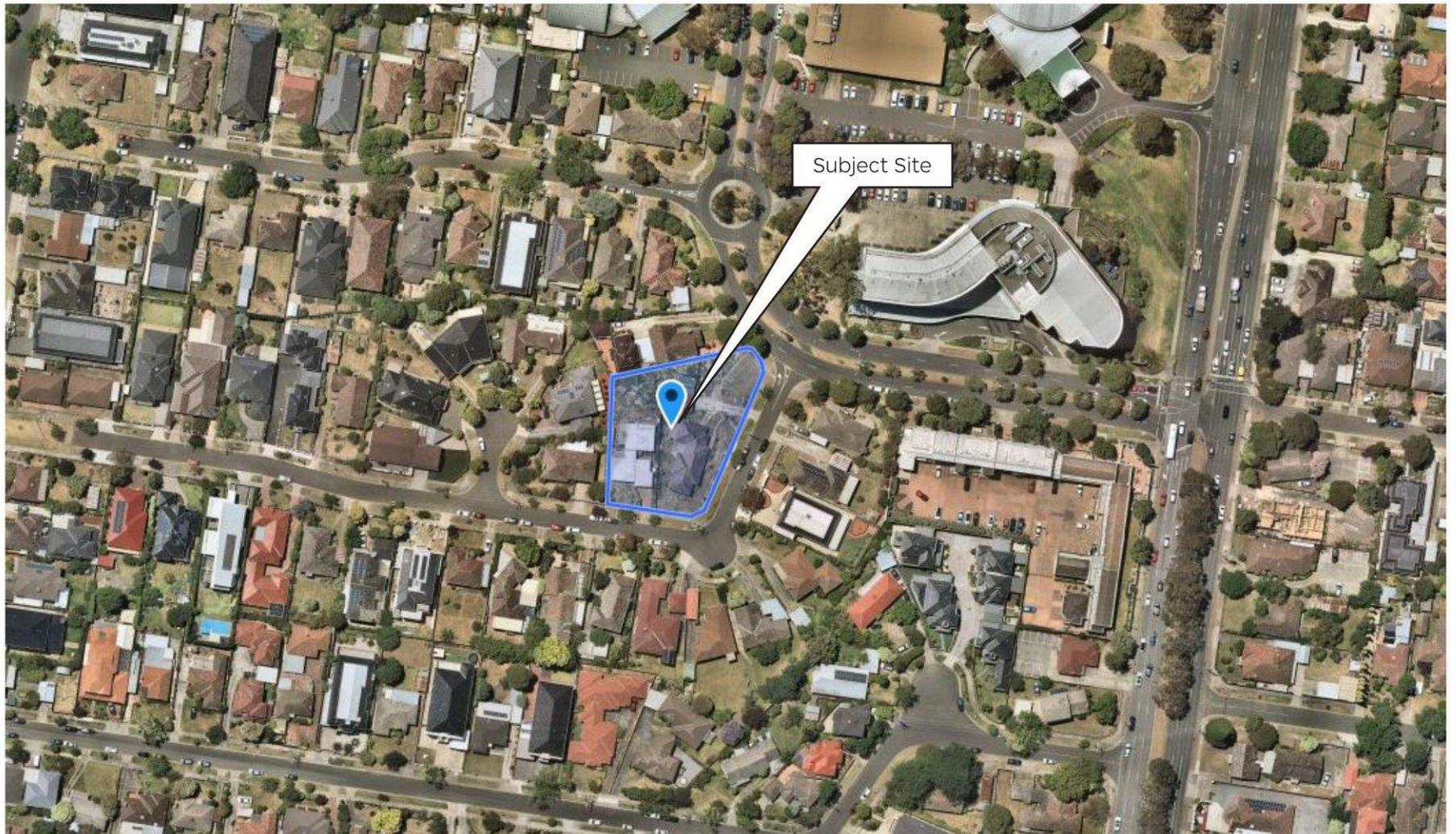
- Bus Route No. 736 (Mitcham – Blackburn via Vermont South and Glen Waverley), is located along High Street to the north and Springvale Road to the east.
 - Bus Route No. 623 (Glen Waverley – St. Kilda via Mt. Waverley), is located along Springvale Road to the east.
- Several train stations are located to the north, including Glen Waverley, Syndal, and Mt. Waverley. Notably, the Glen Waverley train station is approximately 400m walking distance from the site.

Figure 2.2 PTV Services within the surrounding area.



Source: www.ptv.vic.gov.au

Figure 2.3: Aerial Image



Source: Nearmap.com (December 2019)



3 The Proposal:

It is proposed to develop the land for a two to four-storey apartment and townhouse development containing 16 dwellings (11 apartments / 5 townhouses), over basement. The two components are connected by a second floor communal space above the driveway entrance and Townhouse 1.

The proposal can be summarised as follows:

- Demolition of the existing buildings (no permit required).
- Two, 4-bedroom dwellings and one, 3-bedroom dwelling, and a main pedestrian entrance (Marriott Parade to the east) are located on the ground floor of the apartment building.
- Three, 4-bedroom dwellings, are located on the first floor of the apartment building. Remaining bedrooms and bathrooms are located on the first floor of the townhouses.
- Three, 4-bedroom dwellings, are located on the second floor of the apartment building.
- Two, 4-bedroom dwellings are located on the third floor.
- Each apartment contains living/dining areas, balconies, laundry, kitchen, and bathrooms.
- The main entrance is located via a pedestrian walkway (which is constructed with feature steps and patterned paving to add visual interest and highlight separation) to Marriott Parade, which connects to an entrance lobby.
- Five townhouses are located to the rear of the apartment building, which shares pedestrian access via the lobby and separately to Marriott Parade. Townhouse 1 contains an open-plan living layout. Townhouses 2 – 5 each contain a bedroom and open-plan living layout at ground floor.
- The basement, accessed from a proposed double-width crossover to Marriott Parade in the south, includes five double width garages, storage and staircases for the townhouses; and 22 individual spaces, a central lift / staircase, bin room, services, and storage areas for the apartments. Two x 6,000L rainwater tanks are also located at basement.
- An indoor communal space is located above Townhouse 1 which can be used by residents of both the apartment complex and townhouses.
- A minimum front setback of 5.0 metres is provided at ground, first and second floors, with the third floor being set back beyond this.
- Site coverage of 51.64%, garden area of 37% (No. 15 Marriott Parade) and permeability at 28.56%.
- A maximum overall building height of 10.0 metres above natural ground level (ngl) (No. 15 Marriott Parade) and 13.5 metres above ngl for No. 17 Marriott Parade.
- The development is a contemporary design, utilising building materials such as off-white brickwork, concrete rendered finish (a mixture of greys), bronze metal cladding, reflective and clear glazing.
- All site services are provided on-site, including letter boxes, water meters, clotheslines (for townhouses) and storage facilities.
- A substantial amount of new vegetation is proposed for the site as part of the landscape scheme prepared by John Patrick Landscape Architects.

Figure 3.1: Street perspective



Please refer to the plans prepared by Architeria Architects for full details of the proposed development.

4 Planning Controls:

Statutory Planning Controls	
General Residential Zone – Schedule 7 (15 Marriott Parade)	<p>Clause 32.08-6 - permit required to 'construct two or more dwellings on a lot'.</p> <p>Clause 32.08-4 - minimum of 35% 'garden area' required at ground level for lots larger than 650sqm. COMPLIES – 37% achieved.</p> <p>Clause 32.08-10 - maximum height of a building used for the purpose of a dwelling or residential building <u>must not</u> exceed the mandatory 11 metre and three-storey height provision (12m if the relevant slope test is met¹). COMPLIES – 10.0 metre maximum height.</p>
Residential Growth Zone – Schedule 4 (17 Marriott Parade)	<p>Clause 32.07-5 - permit required to 'construct two or more dwellings on a lot'.</p> <p>Clause 32.07-09 - maximum height of a building used for the purpose of a dwelling or residential building <u>should not</u> exceed 13.5 metres. COMPLIES – 13.5 metre maximum height (south elevation).</p> <p>Clause 32.07-10 - Any buildings or works constructed on a lot that abuts land which is in a General Residential Zone, Neighbourhood Residential Zone, or Township Zone must meet the requirements of Clauses 55.03-5, 55.04-1, 55.04-2, 55.04-3, 55.04-5 and 55.04-6 along that boundary.</p>
No Overlays	There are no overlays affecting either parcel.
Particular Provisions	
Clause 52.06 – Car Parking	<ul style="list-style-type: none"> – 1 x space to each one or two-bedroom dwelling; and – 2 x spaces to each three or more-bedroom dwelling. <p>The site is located within the boundaries of the defined PPTN² area and as such there is <u>no requirement</u> to provide visitor parking onsite.</p>
Clause 52.34 – Bicycle Facilities	<ul style="list-style-type: none"> – (resident) In developments of four or more storeys, 1 to each 5 dwellings; and – (visitors) In developments of four or more storeys, 1 to each 10 dwellings. <p>22 bicycle spaces are provided which complies with the requirements.</p>
Clause 53.18 – Stormwater Management in Urban Development	An SMP / WSUD assessment prepared by Frater Consulting Services is enclosed.
Clause 55 – ResCode	<p>Applicable for any application to construct two or more dwellings on a lot in both zones.</p> <p>An assessment against the provisions of Clause 55 (including Clause 55.07 – apartment developments) is contained at Appendix C.</p>
General Provisions	
Clause 65 – Decision Guidelines	'Decision Guidelines' states that, before deciding on an application, considerations should be given to a series of matters including the purpose of the zone, overlay or other provision, the orderly planning of the area and the effect on the amenity of the area.

¹ A building used as a dwelling or a residential building must not exceed a height of 11 metres unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, in which case it must not exceed a height of 12 metres.

² As shown on the Principal Public Transport Network Area Maps (State Government of Victoria, 2018), as part of VC148).

5.1 Planning Policy Framework (PPF)

The following PPF provisions (some identified as 'S' state and 'R' regional) most relevant to this proposal are:

- Clause 11.01-1S – Settlement
- Clause 11.01-1R1 -Settlement – Metropolitan Melbourne
- Clause 11.02-1s – Supply of Urban Land
- Clause 15.01-1R – Urban design – Metropolitan Melbourne
- Clause 15.01-2S – Building Design
- Clause 15.01-4R – Healthy Neighbourhoods – Metropolitan Melbourne
- Clause 15.01-5S – Neighbourhood Character
- Clause 15.02-1S – Energy and Resource Efficiency
- Clause 16.01-1S/R – Integrated Housing – Metropolitan Melbourne
- Clause 16.01-2S – Location of Residential Development
- Clause 16.01-2R – Housing Opportunity Areas – Metropolitan Melbourne
- Clause 16.01-3R – Housing Diversity -Metropolitan Melbourne
- Clause 18.02-1S – Sustainable Personal Transport
- Clause 18.02-2R – Principal Public Transport Network
- Clause 18.02-4S – Car Parking

5.2 Local Planning Policy Framework (LPPF)

Within the LPPF, the following parts of the MSS and local policies are most relevant:

- **Clause 21.01-1** – Municipal Profile
- **Clause 21.01-3** – Vision and Strategic Framework Plan
- **Clause 21.04** – Residential Development
- **Clause 21.06** – Major Activity and Neighbourhood Centres
- **Clause 21.13** – Sustainability and Environment
- **Clause 22.01** – Residential Development and Character Policy
Pursuant to Council's 'Preferred Future Character Statements', at Clause 22.01-4, the subject site is located within "Monash Residual Residential Areas"
- **Clause 22.04** – Stormwater Management Policy
- **Clause 22.05** – Tree Conservation Policy
- **Clause 22.13** – Environmentally Sustainable Development Policy
- **Clause 22.14** – Glen Waverley Major Activity Centre Structure Plan³.
The subject site is located within Precinct 7 (Surrounding Residential).

³ Reference Document: Glen Waverley Activity Centre Structure Plan (Prepared by Tract Consultants for the City of Monash, September 2014), updated 2016.

The key considerations in the assessment of this application are:

1. Is there general strategic support for the proposal?
2. Is the built form outcome appropriate to its context?
3. With the proposal have appropriate amenity outcomes?
4. Is the proposal appropriate having regard to traffic and parking considerations?

6.1 Is There General Strategic Support for the Proposal?

In our opinion, the proposal is consistent with the strategic direction of the Monash Planning Scheme.

The state provisions under the PPF seek to anticipate and respond to the needs of existing and future communities, through the provision of zoned and serviced land for a range of uses, including housing, employment, recreation and open space, commercial and community facilities, and infrastructure. Ensuring that a sufficient supply of land is available for residential purposes in order to meet forecast demand remains at the forefront of the policy agenda. Specifically:

- **Clause 11.02-1S** seeks to ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.
- **Clause 16.01-1S** seeks to promote a housing market that meets the needs of the community.
- **Clause 16.01-2S** seeks to locate new housing in or close to activity centres and in urban renewal precincts and sites that offer good access to jobs, services and transport.
- **Clause 16.01-3S** seeks to provide for a range of housing types to meet increasingly diverse needs
- **Clause 16.01-4S** seeks to deliver more affordable housing closer to jobs, transport and services.

In addition to the above, there remains general recognition that by focusing a substantial proportion of new development in and around activity centres that have good access to the principal transport network, this will help to reduce car trips; maximise the efficient use of infrastructure; and reduce the pressure for land at the fringes of the metropolitan area. It will also assist in:

- Providing for the forecast increases in population and households;
- Ensuring the available housing stock better matches changing demand by widening housing choice, particularly in middle and outer suburbs;
- Supporting opportunities for a wide range of income groups to choose housing in well serviced locations;
- Increasing the local population base that supports activity centres, local businesses, schools, community centres and the like; and
- Encouraging walking, cycling and public transport as viable transport alternatives.

By providing 16 new dwellings on a site that is earmarked for 'residential intensification', and is proximate to multiple transport and services, the proposal will assist in achieving the above policy objectives. From a local planning policy context, compliance with relevant provisions is demonstrated given:

- The subject site is located within the PPTN and is further located within the Glen Waverley Major Activity Centre.
- It will contribute to the mix and range of housing types and forms in the area.
- It will maintain and increase housing choice and diversity within existing residential areas.
- It will increase residential development opportunities proximate to commercial centres and other strategic locations.

Whilst detailed considerations must be given to matters such as urban design / character, car parking / access and amenity, the site represents an appropriate candidate for urban consolidation of the order proposed.

6.2 Is the Built Form Outcome Appropriate to its Context?

There are various policies in the Monash Planning Scheme that seek to ensure new development is compatible with the existing and preferred future character of an area. Specific matters that are relevant in this regard include **Clause 21.04**, **Clause 22.01**, **Clause 22.14** and **Clause 55**.

Prior to looking at the details of the proposed design, we make the following broad observations about “character” in the context of the aforementioned policy considerations:

- Whilst the role of the planning system is to manage the process of change and to ensure development “respects” neighborhood character, this does not mean there should be an endless repetition of what already exists or has transitionally existed in the past. Indeed, endless repetition of existing conditions will not enable the achievement of the various urban consolidation objectives espoused by the Planning Scheme.
- That said, there is considered to be a clear emergence of a number of contemporary style double-storey dwellings/multi-unit developments within the surrounding area which can be highlighted to further support the design and scale of the proposed development.
- Invariably in areas like this – i.e. **General Residential Zone / Residential Growth Zone**, and land close to an activity centre; the existing residual housing stock in the area; and new built forms, will exist side by side until such time as ongoing development reaches a stage whereby a new prevailing character emerges in line with the preferred character espoused by planning policy.

Existing / Preferred Character

Clause 22.01 – ‘Residential Development and Character Policy’ requires that regard be given to Council’s Neighbourhood Character Statements. Pursuant to the ‘Map 1’ of Clause 22.01-4, the subject site is located within “**Monash Residual Residential Areas**”.

However, there is no preferred character statement for these areas within Clause 22.01. None-the-less, Clause 22.01-1 recognises that residential growth should be directed to activity and neighbourhood centres that are well serviced by public transport, commercial, community and educational facilities.

The subject site is located within ‘The Glen Waverley Activity Centre’, and is identified within Area 7 (residential intensification) per Map 1 and Precinct 7 (surrounding residential) per ‘Map 2’ under Clause 22.14. The purpose of this policy is to implement the Vision, Objectives, Strategies

and Actions of the Glen Waverley Activity Centre (GWAC) Structure Plan 2014.

The subject land identified as Area K (i.e. Area 7) under the Structure Plan relevantly notes the following (p. 32):

- *Opportunity for 3-4 storeys.*
- *Front setbacks of at least 5m and side and rear setbacks in accordance with ResCode.*

Precinct 7 notes:

The surrounding residential precinct provides a key role in supporting the growth of the centre by delivering a diverse range of housing that is located in close proximity to shops and services, public transport and open space. A number of streets will be enhanced as key walking and cycling routes connecting into the town centre.

It is policy to:

- *Encourage the intensification of housing in identified areas on High Street Road, Snedden Drive, Coleman Parade, Myrtle Street, Bogong Avenue and Springvale Road.*
- *Improve pedestrian and cycle links between the precinct and GWAC commercial area.*

Built form design objectives are contained at Clause 22.14-3 of the policy, and include the following, as relevant:

- Encourage excellence in building design within both commercial and residential areas so that development responds to the characteristics of the site and its context.
- Ensure new development is designed to minimise overshadowing to footpaths and public spaces.
- Ensure buildings integrate with and contribute positively to street life, and provide surveillance of the public realm, including laneways.
- Ensure new development creates human scaled places that promote visual and pedestrian amenity to enable informal interaction including between neighbours.
- Ensure that all development with sensitive interfaces to residential areas and open space is designed to respect valuable qualities of those adjacent places.
- Avoid large high massing buildings that dominate streetscapes and open spaces.
- Design buildings to address the future amenity of the occupants, visitors and those using public streets by maximising accessibility, passive surveillance and internal amenity.
- Landscape front setbacks adjacent to the future ring road to contribute to visual and pedestrian amenity, and the environmental sustainability of buildings,
- Ensure that developments contribute to the 'buildings-in-landscape' character of the existing residential areas surrounding the GWAC commercial centre.
- Encourage development that incorporates high Environmentally Sustainable Design (ESD) standards, including energy efficiency, indoor environment quality, water management, urban ecology and use of low embodied energy materials.
- Ensure car parking areas, loading bays and utilities/service areas are concealed from the street and minimise paved surfaces and vehicle

crossovers to maximise visual amenity and opportunities for landscaping.

In review, we note the design response includes:

- The design will be of a high contemporary modern design, interpretive and complementary of emerging development in the surrounding area, noting that there are numerous buildings within close proximity to the north / north-east exhibiting a similar or greater scale (e.g. Ibis). The architectural merit is of high quality and will offer a valuable contribution to this strategic corner site.
- Minimal overshadowing of the public realm will occur throughout the year.
- The proposal integrates well with the streetscape with passive surveillance opportunities and pedestrian connection. The staggered frontage and landscaped front setback offer a pedestrian scale and integration with the public realm.
- A design response which is significantly compliant with both the Standards and Objectives of Clause 55 of the Monash Planning Scheme (discussed below). Specifically, the apartments offer a high-level of compliance in relation to internal amenity for future residents.
- Car parking structures are hidden from the street as these are beneath ground within the basement.

As demonstrated as part of the site analysis and inspection of the streetscape, the character of the surrounding area includes a mixed, but intense character of built form, often demonstrating high site coverage, minimal landscaping, and sheer walls.

The proposed design response is considered to be an appropriate response to (and enhancement of) the neighbourhood character, having regard to the physical and policy context for the following reasons:

- The proposal complies with the front setback variation (Standard B6) with 5 metres to the Marriott Parade frontage.
- The proposal retains a high level of permeability (28.5%) and exceeds the requirement for garden area with 37% achieved (Lot 1).
- The site coverage of 51.6% represents a generous balance between built form and open space and allows a good proportion of the site to be landscaped (well below the 60% permitted pursuant to Standard B8 of ResCode).
- The proposal includes a 1.5-metre-high metal infill front fence that will ensure clear views to the development and front setback landscaping is achieved from Marriott Parade.
- The development seeks to activate the street by orientating the main pedestrian entrance to the apartment building to Marriott Parade; and further, by orienting townhouse 1 to the same. A secondary pedestrian path to Marriott Parade (to the south) will also offer activation of the site in terms of interacting with the public realm.
- The development is designed to present as a 2-storey form to the west, adjacent the surrounding residential area, which tiers up towards the corner of Marriott Parade and Kingsway as encouraged by the Structure Plan and Clause 22.14.

Figure 6.1 Streetscape Elevation (Corner of Marriott Parade)

- The design gives priority to the provision of appropriate landscaped areas (with emphasis to the development's front setback) and maintaining the garden suburban aesthetic of the area.
- As detailed on elevation plans at A2.01, the development complies with the setback requirements of B17 to both side / rear boundaries. We note the western elevation shows an eave incursion of 300mm into this setback, which is permissible under Standard B17. Again, proposed setbacks will ensure appropriate separation of building forms between the subject site and abutting land, and sufficient space for landscaping around the development.
- The proposal intentionally attaches the building forms with the second storey extending across the southern frontage, to provide continuity of form and integrate the two masses from a streetscape perspective. However, the form is also 'broken' down the middle of the site, behind this, to separate the two masses (townhouses and apartment building), which offers a meaningful break when viewed obliquely from the rear yards of adjoining properties to the north.

For the reasons outlined above and at Appendix C, it is submitted the proposal will be respectful of those elements that contribute to the character of the area. The proposal will achieve a comfortable degree of "fit" with the site's context, and the desired future/emerging character of the area.

Restrictive Covenant

The Certificate of Title affecting the subject land (Lot 1 / 15 Marriott Parade) is restricted by a covenant (Instrument number: B924316). The restriction states:

...that they will not erect or cause to be erected on the said land hereby transferred or any part thereof any dwelling or dwellings constructed of other than brick or brick veneer.

In relation to the restrictions, we note that the proposed townhouses include a substantial portion of brick at ground floor, and specifically vertical brick elements.

A previous VCAT determination⁴ highlighted several key determinations:

⁴ De Sousa v Monash CC [2014] VCAT 1201

- The decision, at paragraph 10 referred to a Supreme Court’s decision in *Jacobs v Greig*, ‘which similarly concerned a restrictive covenant that required a dwelling to be built from brick or stone. Justice Sholl held that the covenant would be satisfied if the main vertical structure of a dwelling was substantially constructed out of brick or stone. His Honour said’:

“In my judgement, the covenant should be read according to the construction contended for by the plaintiffs. It is not satisfied, I consider, unless the vertical construction of a building – and this applies to internal as well as to external walls - is substantially wholly of brick or stone, in the sense above stated. Of course, all such covenants, including this covenant, must be read as they would be understood by an ordinary person, accustomed to the ordinary current use of the English language in the relevant locality, and acquainted with current social habits and usages. No one would read this covenant as requiring that floors, stairs, rafters, or doors should be of brick or stone, or as essaying to interdict on the estate the otherwise common practice of using glass windows, metal or porcelain plumbing materials, or concrete or terrazzo flooring, or cement or plaster rendering over brick walls.”

- My interpretation is supported by the Tribunal’s decision in *Beman Pty Ltd v Boroondara CC*. In that case the Tribunal found that a building that included external zinc and aluminium cladding, render and metal screens complied with a ‘brick or stone’ covenant because the underlying building was to be constructed from solid brick. Senior Member Rickards said:

*“The use of zinc or aluminium cladding does not in any way detract from the underlying compliance with the covenant that the building is constructed of solid brick. There is nothing within the covenant that indicates the building must be read as being constructed of brick. As stated in *Jacobs* ‘decorative additions such as are frequently superimposed on the main vertical structure’ can be used.”*

Consequent to the presiding legal interpretations, we consider that the proposed townhouses comply with the restrictive covenant insofar as the ground floors are substantially constructed of brick.

Previous VCAT determination

In addition to the above observations, we wish to reference a previous VCAT determination in *Marriott Pty Ltd v Monash CC* [2017] VCAT 1169.

Application for Review No. P620/2017, at Nos. 15 and 17 Marriott Parade (review site), saw the Responsible Authority’s refusal to grant a permit upheld. Planning permit TPA46187 sought approval of a residential apartment building containing 57 apartments.

Importantly, the policy framework under the previous appeal has significantly changed since 2017, which we note below:

- The zoning of the land has changed from General Residential Zone, Schedule 2 (at No. 17 Marriott Parade) to the Residential Growth Zone under Planning Scheme Amendment C120; and
- Introduction of Clause 22.14 (The Glen Waverley Major Activity Centre).

While C120, at the time, had been forwarded to the Minister for approval, it was not given a significant amount of 'weight' in the Member's decision, although it was determined as 'seriously entertained' (see para 32).

The following key issues for determination were considered in the decision, as relevant:

- Internal amenity.
- Is the proposal an overdevelopment?
- General comments – traffic, parking and the like.

We provide a brief summary of the main findings of the Tribunal's determination, which share applicable justification in relation to supporting the proposed development (where positive departures are made):

INTERNAL AMENITY

- *I am not persuaded that the fundamentals of the proposed site layout are unsuitable per se. Rather, in this case, there are elements of its execution that have not been successful in this proposal. [17]*
- *...there are a series of significant flaws in the site layout and design that I consider would result in providing sub-standard amenity for many apartments at the lower ground and ground floors. These features include [20]:*
 - *the location of six apartments some 1-2 metres below natural ground level, facing generally south and east.*
 - *Apartments LG.02 and LG.03 provide their sole bedroom to the common atrium which is a large space created within the core of the building, with four levels above it including walkways at each level.*

In response, we note there are no apartments located below natural ground, with all apartments now receiving adequate daylight access above natural ground level. The internal amenity of these large apartments is significantly enhanced from the previous design. Importantly, no bedrooms rely on borrowed light or contain 'saddleback' windows and the spacious nature allows dual-aspect light access to kitchen, dining and living areas.

IS THE PROPOSAL AN OVERDEVELOPMENT?

- *I find that the current and future planning controls contemplate a significant uplift in built form on the subject land. Even the GRZ as it stands would permit a residential apartment building of three storeys, for which this site is a prime candidate. [24]*
- *On balance, I consider that the design response presents a building that relies too heavily on the anticipated uplift of No. 17 to the RGZ, rather than being of a suitable scale for the GRZ as it stands. [25]*
- *On this basis, I consider that the proposal should present as a two storey development to its western interface. [27]*
- *The other main concern I have about the interface with the western properties is that it does not pay sufficient regard to the Garden City character objectives that permeate throughout the scheme. This seeks to ensure suitable spacing around properties for canopy trees and other vegetation, to maintain and enhance the vegetated character of the area. [28]*
- *I consider that there is policy justification for built form towards the corner of Marriott Parade and Kingsway to step up to a three to four storey development, generally in the form proposed. [31]*

In response, we note that the third storey element has been removed from the GRZ allotment, with only two-storey townhouses now proposed. This provides an acceptable transition to those residential properties further to the west and responds to the Member's previous comments. Further, the basement setback has been considerably increased in response to providing increased landscaping opportunities along this boundary to soften the scale of the bulk and enhance the garden character of the area.

GENERAL COMMENTS – TRAFFIC, PARKING AND THE LIKE

- *The responsible authority (having taken advice from its traffic engineers) considered that the proposed location of the vehicular entrance was acceptable. I adopt this position. In principle, I consider that it is not unreasonable for access to be taken for a residential development within a residential street. [38]*

We consider the proposal traffic and parking scenario improved, and do not anticipate any associated impacts with the proposed development.

6.3 Will the Proposal have Appropriate Amenity Outcomes?

Internal amenity

The proposal has excellent internal amenity, evidenced by the compliance with ResCode as detailed in Appendix C. In particular, we note the following:

- The secluded private open space areas for all townhouses are located at ground floor. **Standard B28** requires a total 40sqm of private open space and with part being 25sqm of secluded private open space with a minimum dimension of 3 metres and convenient access from a living room. All dwellings satisfy the requirements of Standard B28 and will ensure the reasonable utility and recreational needs of future residents.
- The secluded private open space areas for all apartments comply with **Standard B43**. We note that considerable terraces / balconies are provided to all apartments due to the high-end typology associated with the generous apartment sizes / layouts.
- The proposal offers greater housing choice for the community given the different housing typology and the low-maintenance lifestyle associated with this form of accommodation.
- All habitable rooms have been appropriately dimensioned, and all dwellings will achieve sufficient levels of daylight access to bedrooms and living/dining spaces.
- The proposal provides for secure pedestrian entries to each dwelling.
- Appropriate screening provision has been provided in order to ensure that no unreasonable internal overlooking between the dwellings will occur.
- Adequate storage is provided in the basement.
- All site services are provided on-site, with mailboxes located at the frontage.

External Amenity

The site has two potentially sensitive interfaces, being the residential properties abutting the site's northern and western boundaries.

VISUAL BULK

It is considered that the application appropriately responds to the various ResCode Standards that are typically used to assess the somewhat amorphous concept of “building bulk”.

Visual bulk to adjoining properties falls within reasonable limits in an area where intensification is encouraged.

The development is designed such that it does not unreasonably impact upon the amenity of adjoining properties, whilst having appropriate regard to the development potential of the site and the internal amenity of the new dwellings. This is evidenced by:

- The use of a strong mix of building materials and finishes which provides articulation between levels.
- Cut-outs / articulation and varying setbacks to the west and north elevations.
- A modern, yet respectful front façade which includes curved features to assist in softening the form from the streetscape realm.
- With respect to **Standard B17**, the development complies with the numerical requirements with respect to the northern and western boundaries, ensuring that there are no unreasonable visual bulk impacts.
- No walls are provided on boundaries at ground level (with only a minor portion of basement along boundary), ensuring **Standard B18** is met and the building height of 10 metres complies with **Standard B7** for the GRZ lot.

OVERLOOKING

The proposed development includes appropriate obscure glazing to all upper level west facing windows and balconies with an outlook (i.e. within a 9.0m horizontal distance) to SPOS areas or habitable room windows of abutting properties in accordance with **Standard B22** of ResCode.

OVERSHADOWING

As detailed on the shadow diagrams (A0.04/A0.05), the development will not result in any significant overshadowing of the secluded private open space of the adjoining properties due to the orientation of the lot.

Whilst the development results in a minor increase in the level of overshadowing of adjoining residential properties to the west (particularly the 9am shadow), this increase is minor, and the extent of shadow complies with the numerical requirements of **Standard B21** of ResCode.

The obligation for new residential developments is to demonstrate that the proposal will not generate unreasonable amenity impacts having regard to the standards set out under ResCode.

In our submission, the proposal will facilitate excellent amenity for future occupants, and will not unreasonably impact upon the amenity of neighbouring properties. This is demonstrated by the high degree of compliance with the relevant ResCode Standards, and in our opinion, absolute compliance with the relevant objectives.

7 Conclusion:

The site represents an ideal candidate for a medium density, multi-dwelling development that seeks to further the urban consolidation objectives set out in both State and Local sections of the Monash Planning Scheme and provides opportunity for increased housing diversity and the more efficient use of existing services, facilities and infrastructure in an appropriate location.

The proposed development presents a site responsive design that has appropriate regard to the site's specific interfaces, complements the emerging character of the area, and has no substantial impact on neighbouring properties by way of overshadowing, overlooking or visual bulk.

For all the reasons contained in this report it is respectfully requested that Council support this application.

Ratio Consultants Pty Ltd

Appendix A Certificate of Title:



Appendix B Photographic Analysis:

Photo 6

Subject site taken from Kingsway (No. 17 Marriott Parade)



Photo 7

Subject site taken from Marriott Parade



Photo 8

Subject site (No. 15 Marriott Parade)



Photo 9

No. 3 Berkley Court



Photo 10

No. 2 Berkley Court



Photo 11

No. 5 Berkley Court



Photo 12

Nos. 14 and 16 Marriott Parade



Photo 13

No. 20 Marriott Parade



Photo 14

Ibis Hotel



Photo 15

Oblique view of Nos. 125 / 125A Kingsway



Appendix C Clause 55 Assessment:



PROVISION	STANDARD	OBJECTIVE	EXPLANATION
Standard B1 of Clause 55.02-1 'Neighbourhood character objectives'	✓	✓	Please see report for details.
Standard B2 of Clause 55.05-2 'Residential policy objectives'	✓	✓	Please see report for details.
Standard B3 of Clause 55.02-3 'Dwelling diversity objective'	N/A	N/A	The development contains a mixture of 3 and 4 bed dwellings.
Standard B4 of Clause 55.02-4 'Infrastructure objectives'	✓	✓	The proposal will not have an unreasonable impact on existing services.
Standard B5 of Clause 55.02-5 'Integration with the street objective'	✓	✓	Dwelling 1 is oriented to Marriott Parade, with a low scale, visually permeable front fence proposed. The main pedestrian entrance for the apartment building is also located to front Marriott Parade. The proposal integrates well with the streetscape.
Standard B6 of Clause 55.03-1 'Street setback objective'	✓	✓	Please see report for details.
Standard B7 of Clause 55.03-2 'Building height objective'	✓	✓	Please see report for details.
Standard B8 of Clause 55.03-8 'Site coverage objective'	✓	✓	The proposal has a site coverage of 51.64%.
Standard B9 of Clause 55.03-4 'Permeability objectives'	✓	✓	The proposal has a permeable area of 28.56%

Standard B10 of Clause 55.03-5 'Energy efficiency objectives.'	✓	✓	Energy efficiency measures include north-facing living areas and private open spaces.
Standard B11 of Clause 55.03-6 'Open space objective.'	✓	✓	There is an indoor communal space with an associated external terrace at second floor, which is integrated with the development and will offer reasonable recreational opportunities for future residents.
Standard B12 of Clause 55.03-7 'Safety Objective'	✓	✓	Safety features of the site includes visible entries, and passive surveillance of the frontage and pedestrian walkways.
Standard B13 of Clause 55.03-8 'Landscaping objectives'	✓	✓	A landscape plan has been incorporated into the proposal and includes canopy trees throughout (refer plan prepared by John Patrick Landscape Architects).
Standard B14 of Clause 55.03-9 'Access objectives'	✓	✓	Access to and from the site will be achieved with a double-width crossover on the souther side of the site (existing cross-over to be removed). The crossover occupies approximately 20.9% of the site's frontage, which meets the 40% permitted.
Standard B15 of Clause 55.03-10 'Parking location objectives'	✓	✓	Double garages have been provided for all five dwellings at basement. The proposal provides for convenient access with internal pedestrian access proposed to each respective dwelling. As the spaces are located within the basement, there are no windows proximate to the garages or accessway.
Standard B17 of Clause 55.04-1 'Side and rear setbacks objective'	✓	✓	Please see report for details.
Standard B18 of Clause 55.04-2 'Walls on boundaries objective'	N/A	N/A	There are no walls on boundaries above basement level proposed. The wall on boundary for the basement is limited to a small portion adjacent the northern boundary and is considered appropriate.
Standard B19 of Clause 55.04-3 'Daylight to existing windows objective'	✓	✓	All walls meet the setback requirements.
Standard B20 of Clause 55.04-4 'North-facing windows objective'	✓	✓	There are no north-facing habitable windows within 3 metres of the southern boundary.
Standard B21 of Clause 55.04-5 'Overshadowing open space objective'	✓	✓	Please see report for details.

Standard B22 of Clause 55.04-6 'Overlooking objective'	✓	✓	Where required, opaque glazed windows have been applied.
Standard B23 of Clause 55.04-7 'Internal views objective'	✓	✓	The proposal has been designed to minimise internal views. Where necessary, screening and opaque glass have been utilised.
Standard B24 of Clause 55.04-8 'Noise impacts objectives'	✓	✓	There are no significant sources of noise surrounding the proposal. This standard does not apply to the apartment development. Refer to Standard B40.
Standard B25 of Clause 55.05-1 'Accessibility objective'	✓	✓	Ground floor areas are easily accessible. This standard does not apply to the apartment development. Refer to Standard B41.
Standard B26 of Clause 55.05-2 'Dwelling Entry objective'	✓	✓	A sense of entry has been achieved for all dwellings. This standard does not apply to the apartment development. Refer to Standard B42.
Standard B27 of Clause 55.05-3 'Daylight to new windows objective'	✓	✓	New windows have been appropriately located to make use of daylight.
Standard B28 of Clause 55.05-4 'Private open space objective'	✓	✓	Secluded private open space at ground level has been provided to all dwellings in accordance with the requirements of this provision (i.e. 25sqm and 40sqm for townhouses). The balcony requirements in Clause 55.05-4 do not apply to an apartment development. Refer to Standard B43.
Standard B29 of Clause 55.05-5 'Solar access to open space objective'	✓	✓	There is no solely south-facing private open space proposed. All SPOS areas have a northern aspect.
Standard B30 of Clause 55.05-6 'Storage objective'	✓	✓	Each dwelling provides a storage capacity of 6 cubic metres which is externally accessible (within garages / basement).
Standard B31 of Clause 55.06-1 'Design detail objective'	✓	✓	Building articulation, a range of colours and materials and roof forms have been utilised to ensure the proposal responds to the existing and preferred neighbourhood character. In respect of the preferred character, we refer to the design guidelines under Clause 22.14 in lieu of a specific character statement under Clause 22.01.

Standard B32 of Clause 55.06-2 'Front fences objective'	x	✓	A 1.5m high masonry pier & metal, infill front fence is proposed, which will allow for views into the frontage. The Schedules to both the GRZ and RGZ vary the maximum front fence height to 1.2m and no front fence respectively. We consider the inclusion of a well-designed, permeable, and moderately sized front fence an appropriate outcome for this prominent corner site. The front fence will integrate landscaping and site-services to offer better amenity outcomes for the streetscape.
Standard B33 of Clause 55.06-3 'Common property objectives'	✓	✓	The basement accessway, pedestrian pathways, lobby, and communal space above townhouse 1 will be the communal areas. These areas are delineated from private space and are functional and efficient.
Standard B34 of Clause 55.06-4 'Site services objectives'	✓	✓	Letterboxes for all townhouses will be located proximate to the site frontage, near the pedestrian pathway. Mailboxes are located adjacent the entrance to the main lobby for the apartment building.
Clause 55.07 (below) relates to the apartments only			
Standard B35 of Clause 55.07-1 'Energy efficiency'	✓	✓	Northern orientation is achieved where practicable. A SMP report is submitted with this application.
Standard B36 of Clause 55.07-2 'Communal open space'	N/A	N/A	While communal open space is provided, it is not a requirement given less than 40 dwellings are proposed.
Standard B37 of Clause 55.07-3 'Solar access to communal outdoor open space'	✓	✓	As detailed above, no communal open space is required. Nevertheless, the communal space (indoor and external terrace) receives adequate solar access as it is fronting the street with no obstruction.
Standard B38 of Clause 55.07-4 'Deep soil areas and canopy trees'	x	✓	The site is between 1501-2,500sqm (2,186.14sqm) in size and therefore 10% of the site area (minimum dimension of 6 metres) is required to satisfy this standard, with 1 large tree (12 metres) per 90 square metres of deep soil or 2 medium trees per 90sqm of deep soil. The landscape plan provided by John Patrick Landscape Architects demonstrates that the 25% (approximately 554.1sqm*) of the site can achieve deep soil planting thereby exceeding the minimum requirement. The proposal provides an appropriate balance between a responsive landscape design and maximising the site's development potential. *While we note that a minimum dimension of 6 metres is not provide in every

			instance, the spaces allocated for landscaping provide sufficient opportunity for canopy tree growth.
Standard B39 of Clause 55.07-5 'Integrated water and stormwater management'	✓	✓	An SMP report, including a WSUD report has been submitted with the application. The site will be drained to the satisfaction of the RA.
Standard B40 of Clause 55.07-6 'Noise impacts'	✓	✓	There are three bedrooms adjacent to the lift core. These bedrooms only partially abut the life core. The potential for noise impacts have been mitigated through the design and siting of habitable rooms within the development; however, if Council consider acoustic attenuation measures appropriate we would accept a condition of permit. The plant / services area is located within the basement and therefore the proposal is considered compliant with Standard B40. There are no external noise sources, e.g. railway lines which would subject future residents to adverse amenity impacts. While we acknowledge the presence of Glen Waverley railway station, this is approximately 400m to the north (which is outside the noise influence area per Table B6 under Clause 55.07-6). Notwithstanding, we note that Springvale Road is a Road Zone, Category 1 road (located approximately 120 metres to the east), and if the Responsible Authority considers acoustic attenuation measures appropriate we would accept a condition of permit.
Standard B41 of Clause 55.07-7 'Accessibility'	✓	✓	Greater than 50% of dwellings comply with this provision (16 apartments / 100%)
Standard B42 of Clause 55.07-8 'Building entry and circulation'	✓	✓	The residential lobby is clearly visible and identifiable from the street.
Standard B43 of Clause 55.07-9 'Private open space above ground floor'	✓	✓	All balconies above ground floor are provided with a minimum width of 2 metres and satisfy the relevant area requirements in accordance with Table B8. Refer to the 'BADS' plans submitted with the application.
Standard B44 of Clause 55.07-10 'Storage'	✓	✓	Storage is provided within each dwelling and at basement level in accordance with the requirements. Refer to the 'BADS' plans (A1.05) submitted with the application for the allocation between internal and external.
Standard B45 of Clause 55.07-11 'Waste and recycling'	✓	✓	A Waste Management Plan has been prepared by Frater Consulting Services. A Council collection is proposed for the townhouses, which will be a kerb-side collection to Marriott Parade.

			Waste collection will occur on site from the basement car park for the apartments, by a private operator.
Standard B46 of Clause 55.07-12 'Functional layout'	✓	✓	All dwellings include a main bedroom of minimum 3.4m x 3m as depicted on the plans. Secondary bedrooms achieve a minimum of 3m x 3m. All apartments achieve the minimum living room area requirement. The layouts are all considered spacious, functional and will provide appropriate living and bedroom areas to meet the needs of future residents.
Standard B47 of Clause 55.07-12 'Room depth'	✓	✓	All apartments comply by providing a depth of 9 metres or less to a single aspect, open plan apartment where the room combined the kitchen, living area and dining area. These apartments all have the kitchen at the back, furthest from the window and floor to ceiling heights of 2.7 metres. Further, a majority of the apartments' layouts offer a dual-aspect kitchen, living and dining area, with multiple light access points.
Standard B48 of Clause 55.07-14 'Windows'	✓	✓	All habitable rooms have windows in external walls of the building.
Standard B48 of Clause 55.07-15 'Natural ventilation'			All apartments achieve cross ventilation in accordance with the Standard.