Section 72 Amendment and Condition Compliance Officer Report

Planning Permit PA2403363-2

342-348 Victoria Street, 368- 370 Victoria Street, 13 Rosser Street,15 Rosser Street, and; 32 Wilkinson Street, Brunswick VIC 3056



Section 72 Amendment Officer Assessment Report
Development Assessment

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VICTORIA State Government | Department of Transport and Planning

Executive Summary

Key Information	Details	
Permit No:	PA2403363-2	
Permit Allows:	Construction of a multi-storey buildings.	
Land Address:	342-348 Victoria Street, BRUNSWICK VIC 3056, 368- 370 Victoria Street, BRUNSWICK VIC 3056, 13 Rosser Street, BRUNSWICK VIC 3056, 15 Rosser Street, BRUNSWICK VIC 3056, and; 32 Wilkinson Street, BRUNSWICK VIC 3056.	
Amendment Received:	30 June 2026	
Statutory Days:	20 days	
Applicant:	Tract Consultants	
Planning Scheme:	Merri-bek	
s72 Proposal Summary:	The permit holder seeks to expand the scope of the current application to additionally include: · Amendment to Condition 37 (Affordable Housing Management Plan) · Amendment to Condition 38 (Section 173 Agreement – Affordable Housing) · Deletion of Condition 57 (Cancellation of Permit)	
Development Value:	Unchanged as a result of this amendment	
Why is the Minister responsible?	**S. 72 Application for amendment of a permit** *(1) A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.*	
Planning Controls: **Zone:**	**Clause**	**Control**
	Clause 34.01- Commercial 1 Zone	Pursuant to Clause 34.01-1, a permit is required to use the land for 'Accommodation' as the frontage at ground floor level exceeds 2 metres. Pursuant to Clause 34.01-4, a permit is required to construct a building or carry out works. An apartment development must meet the requirements of Clause 58.
Overlays:	Heritage Overlay (HO183 and HO239)	Pursuant to Clause 43.01-1, a permit is required to demolish a building and to construct a building or construct or carry out works.
	Design and Development Overlay (DDO18)	Pursuant to Clause 43.02-2, a permit is required to construct a building or construct or carry out works.
Particular Provisions:	Clause 52.06	Pursuant to Clause 52.06 - Car Parking, a permit is required to reduce the car parking requirement.
Background Information:	A planning permit was issued on 20 March 2025 for the construction the development. Concurrent with the issue of the planning permit, plans were endorsed on 20 March 2025. Endorsement also included supporting plans and reports in relation to landscape, tree protection, arboriculture, sustainability management, conservation, wind impact, acoustic, waste, DDA, parking and construction permit conditions. Construction on site has commenced.	
Planning History:	<u>Section 71 Amendment</u> Section 71 correction to the planning permit was issued on 1 April 2025. Details as follows:	

THIS PERMIT HAS BEEN AMENDED AS FOLLOWS:

Date of amendment	Brief description of amendment	Name of responsible authority that approved the amendment	Section of the Act under which the permit has been amended
1 April 2025	To give back the responsibility of enforcement of conditions to Merri-Bek City Council for the following items: • Condition 4 - landscaping • Condition 5 - tree protection • Condition 5b - Tree Protection Zone • Condition 9 - Heritage Conservation Plan • Condition 11 - Public Works Plan • Condition 14 and 15 - Acoustic measures • Condition 17 - Waste Management Plan • Condition 18 - Accessibility • Condition 20 - Section 173 Agreement - public access • Condition 21 - Section 173 Agreement - Daylight Access • Conditions 31, 32, 33, 34, 35 - Engineering Matters • Condition 37 and 38 - Affordable Housing	Department of Transport and Planning	Section 71 Amendments as a result of clerical errors excluding the words Merri-Bek City Council.

Secondary Consent Amendment

A secondary consent amendment to the endorsed plans was approved on 19 June 2025. The following plans were endorsed:

- Updated Level 01 – Level 10 Plans (TP2-103 - TP2-112 Revision R) dated 10 June 2025 prepared by DRC Architecture
- Updated Elevations (Revision R) dated 6 June 2025 prepared by Fieldwork Architects:
  - Proposed North & South Elevations (TP3-100)
  - Proposed North & South Sectional Elevations (TP3-102)
  - Proposed East & West Sectional Elevations (TP3-103)
  - Building 1 Proposed North & South Elevations (TP3-104).

The changes approved include:

- More efficient use of circulation space and excess of space for risers throughout the building reduces the overall building services needs.
- Increased internal storage to 86 apartments (30% of total yield), resulting in a net reduction of 42 basement cages.
- Extended kitchen bench space to 43 apartments (15% of total yield).
- Conversion of six studios to one-bedroom apartments
- Addition of laundry cupboards to 18 one-bedroom apartments
- Additional bathroom added to nine two-bedroom and 14 three-bedroom apartments
- Consequential minor wall shifts to eight units to maintain BADS compliance.

Section 72 Amendment

A Section 72 Amendment was made to the permit on 22 April 2026. This amended allowed for changes to the wording of Conditions 37 and 38 to revise the affordable housing contribution from Build to Rent to Own (BTRTO) model to Build to Rent (BTR) model.

Condition Compliance

Conditions 10(a) and (d) were discharged on 6 May 2026.

Conditions 10 (b) and (c) were discharged on 9 June 2026.

Referral Authorities:	Merri-Bek Council – Section 52(1)(b) – notice
Public Notice:	Notice of the application under section 52 of the Act was not required for the following reasons: • The amendment did not include any new planning permit triggers.

	• The changes proposed are limited to changes to condition wording to allow for additional time to complete the AHMP, the section 173 agreement, and the deletion of a condition that is no longer required.
Section 50 Amendment	A section 50 amendment was submitted on 2 September 2026. This amendment sort for the following: <u>Removal of Previously Proposed Amendments</u> The permit holder no longer seeks amendments or extensions of time associated with: • Condition 11 (Public Works Plan/Public Works) • Condition 21 (Daylight Access Section 173 Agreement) <u>Additional Amendments Requested</u> The permit holder seeks to expand the scope of the current application to additionally include: • Amendment to Condition 37 (Affordable Housing Management Plan) . • Deletion of Condition 35 (Undergrounding of Telecommunications and Power Lines). • Deletion of Condition 57 (Cancellation of Permit). On 18 September the applicant confirmed the following amendment was also no longer required / sort: • Condition 35 (underground Undergrounding of Telecommunications and Power Lines) Accordingly, this section 72 amendment to the planning permit consideres changes to only Conditions 37, 38 and 57.
Recommendation:	The amendments to the permit are recommended for approval.
Documents submitted for consideration:	Original application letter, prepared by Tract dated 17 June 2026. Section 50 Amendment letter, prepared by Tract dated 27 August 2026.

Proposal

1. The permit holder seeks to amend the following planning permit conditions.

    - Amendment to Condition 37 (Affordable Housing Management Plan) the add the following words in red:

        "Prior to occupation of the development (or as otherwise agreed by the responsible authority), an Affordable Housing Management Plan must be submitted to and approved by the responsible authority, in consultation with Merri-bek City Council…"

    - Amendment to Condition 38 (Section 173 Agreement – Affordable Housing)

        "Prior to the occupation of the development (or as otherwise agreed by the responsible authority), the owner of the land must enter into an agreement with the responsible authority under section 173 of the Planning and Environment Act 1987, in a form to the satisfaction of the responsible authority, that provides for a contribution towards affordable housing (affordable housing contribution).

    - Deletion of Condition 57 (Cancellation of Permit)

        'Within six months of the issuing of this permit, an application must be lodged with the Victorian Civil and Administrative Tribunal to cancel Planning Permit MPS/2017/745/E associated with the subject site. Copies of all relevant application documents and decisions associated with the cancellation must be provided to the Merri-bek City Council within 7 days of receipt.'

Subject Site and Surrounds

Site Description

2. Construction has commenced on site.

Site Surrounds

3. Development surrounding the site has not changed since the planning permit was issued.

Referrals and Notice

Referrals

4. The application was referred to the following groups:

Provision / Clause	Organisation	Date Response Received
Section 55 Referral – Determining	Head Transport for Victoria	**8 August 2026** No objection subject to no changes to the existing HTfV conditions. This amendment does not replate to HTfV conditions.

Municipal Council Comments

5. The Merri-bek City Council was given notice of the application under Section 52(1)(b) of the Planning and Environment Act 1983.

6. Merri-bek City Council (officer level) provided the following comments on 18 September 2026.

Council comment	DTP comment
Condition 35 deletion. I believe Tract is seeking to withdraw this request given they already comply with the requirements of the condition, which is no above power to the actual site (as opposed to powerlines within the road reserve).	The applicant is no longer seeking to have condition 35 deleted.
Condition 57 deletion. Would it be possible just to alter the timing of the condition to 'within 3 months of the issuing of the occupancy permit'. This would ensure that the old permit is cancelled and wouldn't impede on the issuing of the OC permit.	As the development has been substantially carried out pursuant to Planning Permit PA2403363, and the permit holder does not seek to rely on any approvals previously issued by Merri-bek City Council. Given the endorsed plans and as-built form of development have materially departed from the earlier permit approval, Condition 57 is no longer considered necessary to achieve any ongoing planning objective. Its deletion is therefore supported, as it would not result in prejudice to the responsible authority or any third party and would remove a condition that has become redundant.
Condition 37 & 38. Council maintains their objection to the proposed amendment. Public benefits should be provided concurrently with the completion of the development and the requirement to provide affordable housing has been known for an extended period of time. Effectively allowing the development be completed without first locking in the affordable housing contribution will allow the development to benefit from the DFP pathway, and any associated uplift given on the basis of the affordable housing contribution without having first locked in the affordable housing. As previously mentioned in other emails, this would also significantly weaken the enforceability of the permit condition. The requirement for the affordable housing contribution to be secured prior to the issue of an Occupancy Permit is intended to ensure that the responsible authority retains an effective mechanism to	The proposed amendment does not remove, reduce or otherwise alter the affordable housing obligation. Rather, it seeks to provide a practical and reasonable timeframe for compliance, recognising the legal, administrative and operational processes required to finalise the Affordable Housing Management Plan (AHMP) and Section 173 Agreement. The finalisation of the associated agreement may not be achievable before occupation due to legal and administrative requirements that are outside the Applicant's direct control. The proposed amendment acknowledges these practical constraints and ensures that compliance can still be achieved in an orderly manner.

secure delivery of the public benefit before the development is occupied.	In addition to the amendments to conditions 37 and 38 the permit holder seeks to extend the timeframe for compliance with Conditions 37 and 38 to within six (6) months of occupation of the development. The requested extension acknowledges the time required to complete the necessary works and processes associated with these conditions following occupation. Having regard to the nature of the requirements and the anticipated delivery timeframes, the proposed extension is considered reasonable and will provide sufficient opportunity for the permit holder to satisfy the conditions in an orderly and practical manner. The amendment does not alter the intent or outcome of the conditions, nor is it expected to result in any adverse planning impacts. Accordingly, the proposed amendment to Conditions 37 and 38, combined with the letter requiring compliance within six (6) months of occupation of the development, is supported.

Notice

7. The application was not advertised other than to the municipal authority under section 52(1)b as it was considered not to cause material detriment to any person because:
   - The amendment did not include any new planning permit triggers.
   - The changes proposed are limited to changes to condition wording to allow for additional time to complete the AHMP, the section 173 agreement, and the deletion of a condition that is no longer required.

Assessment

Planning Policy

8. None of the applicable policies under the Planning Policy Framework or statutory planning controls within the scheme have changed since the decision on the application and given the natura of the amendments these policies do not need to be re-examined.

Statutory Planning Controls

9. The zoning and overlay controls remain the same since the decision for the application was made.

Amended Permit Conditions

10. Changes are proposed to the conditions of the permit as follows:

Condition 37 (Affordable Housing Management Plan)	
Proposed Change	Amendment to Condition 37 (Affordable Housing Management Plan) the add the following words in red: *"Prior to occupation of the development (or as otherwise agreed by the responsible authority), an Affordable Housing Management Plan must be submitted to and approved by the responsible authority, in consultation with Merri-bek City Council…"*
DTP Assessment	Condition 37 requires the submission and approval of an Affordable Housing Management Plan (AHMP) prior to occupation. While the applicant is actively progressing the AHMP, the finalisation of the associated agreement may not be achievable before occupation due to legal and administrative requirements. The inclusion of the words *"or as otherwise agreed by the Responsible Authority"* introduces a reasonable level of flexibility to address such circumstances without undermining the purpose or intent of the condition. Accordingly, the proposed amendment to Condition 37 is considered acceptable and is supported.

Amendment to Condition 38 (Section 173 Agreement – Affordable Housing)	
Proposed Change	Amendment to Condition 38 (Section 173 Agreement – Affordable Housing) *"Prior to the occupation of the development (or as otherwise agreed by the responsible authority), the owner of the land must enter into an agreement with the responsible authority under section 173 of the Planning and Environment Act 1987, in a form to the satisfaction of the responsible authority, that provides for a contribution towards affordable housing (affordable housing contribution).*
DTP Assessment	Condition 38 requires the submission and approval of a Section 173 Agreement – Affordable Housing) prior to occupation. While the applicant is actively progressing the AHMP, the finalisation of the associated agreement may not be achievable before occupation due to legal and administrative requirements. The inclusion of the words *"or as otherwise agreed by the Responsible Authority"* introduces a reasonable level of flexibility to address such circumstances without undermining the purpose or intent of the condition. Accordingly, the proposed amendment to Condition 37 is considered acceptable and is supported.

Deleted Permit Condition

11. Deletion proposed to the condition of the permit as follows:

Deletion of Condition 57 (Cancellation of Permit)	
Proposed Change	Deletion of Condition 57 (Cancellation of Permit) *'Within six months of the issuing of this permit, an application must be lodged with the Victorian Civil and Administrative Tribunal to cancel Planning Permit MPS/2017/745/E associated with the subject site. Copies of all relevant application documents and decisions associated with the cancellation must be provided to the Merri-bek City Council within 7 days of receipt.'*
DTP Assessment	The development has been substantially carried out pursuant to Planning Permit PA2403363, and the permit holder does not seek to rely on any approvals previously issued by Merri-bek City Council. Given the endorsed plans and as-built form of development have materially departed from the earlier permit approval, Condition 57 is no longer considered necessary to achieve any ongoing planning objective. Its deletion is therefore supported, as it would not result in prejudice to the responsible authority or any third party and would remove a condition that has become redundant.

Extension of Time Request

12. The applicant seeks the following extension of time request:

Extension of time request	
Proposal	The permit holder seeks the Responsible Authority's consent to extend the timeframe for compliance with Conditions 37 and 38 by six (6) months ('within 6 months of occupation of the development') to account for the expected timeframes for the works as required under each condition.
DTP Assessment	The permit holder seeks to extend the timeframe for compliance with Conditions 37 and 38 to within six (6) months of occupation of the development. The requested extension acknowledges the time required to complete the necessary works and processes associated with these conditions following occupation. The applicant has advised that apartments will continue to be rented out as affordable dwellings and the contribution made during this time to be retrospectively counted towards their Affordable Housing contribution should it sufficiently satisfy and meet the affordable housing criteria. Having regard to the nature of the requirements and the anticipated delivery timeframes, the proposed extension is considered reasonable and will provide sufficient opportunity for the permit holder to satisfy the conditions in an orderly and practical manner. The amendment does not alter the intent or outcome of the conditions, nor is it expected to result in any adverse planning impacts. Accordingly, the proposed amendment to Conditions 37 and 38, requiring compliance within six (6) months of occupation of the development, is supported.

Recommendation

13. The proposed amendment is supported as the changes to the planning permit conditions are minor and do not change intent of the approval.
14. It is recommended that the amended Planning Permit No. PA2403363-1 for the development at 342-348 Victoria Street, 368- 370 Victoria Street, 13 Rosser Street, 15 Rosser Street, and; 32 Wilkinson Street, Brunswick VIC, subject to conditions.
15. It is recommended that the accompanying cover letter provide for consent to extend the timeframe for compliance with Conditions 37 and 38 by six (6) months (within 6 months of occupation of the development) to account for the expected timeframes for the works as required under each condition.
16. It is recommended that the applicant and council be notified of the above in writing.

Prepared by:

I have considered whether there is a conflict of interest in assessing this application and I have determined that I have:

☒ **X No Conflict**

☐ Conflict and have therefore undertaken the following actions:

☐ Completed the **Statutory Planning Services declaration of Conflict/Interest form**.

☐ Attached the Statutory Planning Services declaration of Conflict/Interest form on to the hardcopy file.

☐ Attached the Statutory Planning Services declaration of Conflict/Interest form into the relevant electronic

[redacted]

Reviewed / Approved by:

[redacted]