

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION**

PLANNING AND ENVIRONMENT LIST (MAJOR CASES LIST)

VCAT REFERENCE NO. P1375/2014

PERMIT APPLICATION NO. TP-2013-630

15 – 31 Pelham Street, Carlton

APPLICANT Forza Capital Pty Ltd ATF Forza Pelham Street fund

RESPONSIBLE AUTHORITY Melbourne City Council

Joint Submission from

Carlton Residents' Association and

Mr Warren Green, Convener of Planning Committee, Carlton Residents' Association



15- 31 Pelham Street, Carlton [from file provided by the Applicant]

This joint submission from the Carlton Residents' Association and Mr Warren Green is presented in two parts:

- **Part 1 addresses the Planning and Heritage Context of the development, while**
- **Part 2 addresses the particular concerns of Mr Green, a resident of Drummond Place Carlton.**

Part 1

1 Overview of Submission

1.1 In this Part, no attempt has been made to elaborate upon the detailed amenity impacts of this development. We have assumed that other respondents [the residents of adjacent properties in particular] are better placed to address these matters.

1.2 In Part 1 we emphasise that

- this development proposal has a unique heritage context. Falling within the buffer zone of a World Heritage Area is significant. The Royal Exhibition Building and Carlton Gardens became the first built heritage site in Australia to be declared World Heritage.
- The delineation of the Area of Greater Sensitivity in the text of CI 22.21 of the Melbourne Planning Scheme [Heritage Places within the World Heritage Environs Area] to include all of Heritage Overlay 81 [HO81] without qualification, results in the application of this policy to this development.
- Since the construction of the buildings (which currently occupy the St Nicholas site) [circa 1991] the heritage policy context has been strengthened through the inclusion within the new Melbourne Planning Scheme of three important policies
- Although the site is not covered by a Design and Development Overlay, this approach is consistent with the planning thinking that had currency at the time ... The DOI “... *considered that Design and Development Overlays should not be used to regulate height where heritage is the primary objective. This is seen to be the role of the Heritage Overlay and associated policies.*” [DOI submission to MPS Am C20 Panel Hearing]
- the net community benefit argument should not be relied upon to justify a more intense residential development. The Carlton area is already making a massive contribution to the stock of new housing in the municipality, and there are more appropriately zoned sites to achieve the housing purposes of the municipality.

2 The Site of this Development has a Unique Heritage Context

2.1 On 1 July 2004 the Royal Exhibition Building and Carlton Gardens was inscribed on the [UNESCO World Heritage List](#), becoming the first built heritage site in Australia to be declared World Heritage.

2.2 The Royal Exhibition Building and Carlton Gardens are included in the World Heritage List because:

- they are the last remnant Palace of Industry from a nineteenth-century world fair on its original site.
- Its significance is increased, in its uniqueness through still being used as an exhibition venue.

2.3 The Royal Exhibition Building and Carlton Gardens site is also included in the [National Heritage List](#) and the [Victorian Heritage Register](#).

3 The Development Site does fall within the Area of Greater Sensitivity of the World Heritage Environs Area

3.1 Under the [Heritage Act 1995](#), a World Heritage Environs Area Strategy Plan ('Strategy Plan') is required for the area surrounding the Royal Exhibition Building and Carlton Gardens.

The World Heritage Environs Area acts as a "buffer zone" for the Royal Exhibition Building and Carlton Gardens and assists in protecting and transmitting the World Heritage values of the site.

The Strategy Plan details the strategies to be employed to achieve the protection and transmission of the World Heritage values. This Plan was gazetted in the Government Gazette on **5 November 2009** and came in to operation on that date.

3.2 Amendments to the Melbourne Planning Scheme

Planning Scheme Amendments to implement the recommendations of the Strategy Plan in the Melbourne and Yarra Planning Schemes were gazetted on **18 November 2009**.

Amendment C154 to the Melbourne Planning Scheme (in summary):

- introduces a new Local Heritage Policy into the planning scheme, which contains specific guidance for the development of land immediately surrounding the World Heritage Site;
- includes the 'World Heritage Environs Area Precinct' in the Heritage Overlay;
- amends the Design and Development Overlays applying to properties on the north side of Queensberry Street and the Royal Australasian College of Surgeons site on Spring Street; and
- makes consequential changes to the Municipal Strategic Statement and other Local Policies within the planning scheme.

3.3 Amendment C169 to the MPS [17 January 2013]

This Amendment is intended to "Re-align the boundary of HO992 to match map in Clause 22.21 - World Heritage Environs Area (Royal Exhibition Building and Carlton Gardens) and correct the reference of the World Heritage Environs Area (Royal Exhibition Building and Carlton Gardens) to "HO992" in Clause 22.21." [from Explanatory Report]

3.4 However, even following this Amendment there is a serious disconnect between Figure 1 of Cl 22.21 of the Melbourne Planning Scheme [Heritage Places within the World Heritage Environs Area] and the text of this clause

Specifically, this policy applies to land within HO992 (World Heritage Environs Area Precinct), HO81, HO87, HO103, HO104 and HO809.

3.5 If this text is meant to provide a more precise delineation of the extent of the Area of Greater Sensitivity, there is a serious problem; at least seven Heritage Overlays are missing. The following heritage sites have all been omitted from the list:

- HO106 – Carlton Gardens Primary School
- HO107 – Sacred Heart Church and Corpus Christi College
- HO105 – Presbytery of Former St Andrews Church
- HO 88 & 89
- HO494 – Royal Society of Victoria
- HO476 – Royal Australasian College of Surgeons

3.6 While HO81 [which includes the site of this appeal] is included without qualification, Mr Lovell [for the Applicant] argues that Figure 1 of Cl 22.21 should be taken as the more accurate description of the area of Greater Sensitivity.

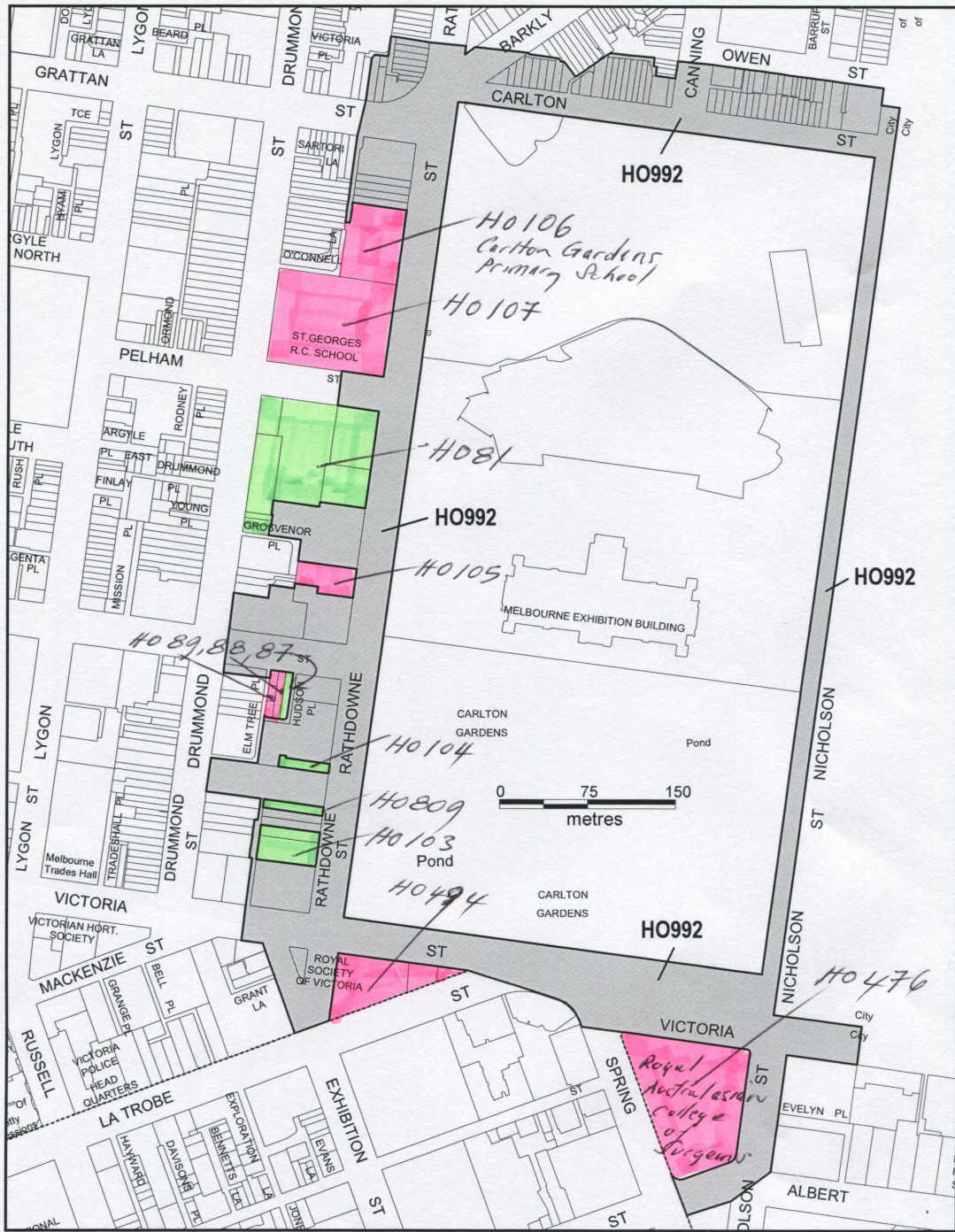
In this regard it is noted that Clause 22.21 states that 'this policy applies to land within HO992 (World Heritage Environs Area Precinct), HO81, HO87, HO103, HO104 and HO809'. Given that the accompanying map clearly covers only the eastern portion of HO81 and that this is consistent with the strategy endorsed by the Minister my response is formulated on the basis that the World Heritage Environs Area Precinct does not apply to the section of the site that is the subject of this proposal. [Lovell evidence #14]

3.7 However, Planning Scheme Amendment C169 [which corrected some mapping inconsistencies] did not correct the list of Heritage Places.

- As a consequence, several key heritage places, including the Primary School, the Sacred Heart Church, and the Presbytery of the former St Andrews Church are not included in the Area of Greater Sensitivity.
- HO992 does not cover these sites. [All those areas marked red on the Am C169 map (reproduced below) have been excluded from the list of Heritage sites].
- Further, if only part “coverage” of HO81 [by Cl.22.21 the Planning Scheme] was intended, the applicable part could have been specified by reference to street numbers or to the Lodged Plan/Plan of Subdivision Particulars.
- The Planning Scheme includes many clauses and schedules where areas are described by reference to either street numbers or title particulars or precise measurements. [eg SCHEDULE 1 TO THE INCORPORATED PLAN OVERLAY ... 236-254 ST KILDA ROAD, SOUTHBANK ... Crown Allotment 44F For Crown Allotment 44F, being the land comprised in Certificate of Title Volume 10341 Folio 002 as at 23 January 1998 (as shown on Plan No. TP 800001 B), (Lot 44F), buildings and works may be carried out on that land in accordance with the height and setback controls in Clause 4.2 ...]

3.8 To repeat, if the Planning Authority had only intended part of HO81 to be “covered” by the Area of Greater Sensitivity, that part would have been described precisely. Accordingly, we conclude that Local Planning Policy 22.21 [Heritage Places within the World Heritage Environs Area] must apply to the subject site.

MELBOURNE PLANNING SCHEME LOCAL PROVISION




Part of Planning Scheme Maps 5HO & 9HO

LEGEND

HO992 HERITAGE OVERLAY (HO992)

AMENDMENT C169

PREPARED BY: INFORMATION SERVICES
Statutory Systems
Planning, Heritage and Urban Design
Department of Planning and Community Development

 Department of Planning
and Community Development

4 Since the construction of the new buildings which currently occupy the site, the heritage policy context has been strengthened, not weakened.

4.1 On the 21st July 1987 Am 472 to the Melbourne Metropolitan Planning Scheme was Gazetted.

- This amendment included an ordinance amendment to vary the provisions applying to the Comprehensive Development Zone No 6, including the Concept Plan and Building Envelope Plan, regarding the St. Nicholas site, Rathdowne Street, Carlton
- The Building Envelope Plan established a maximum height for buildings on the subject site of 18 m [RL 59.5].
- If this Comprehensive Development Zone had been incorporated in the new Melbourne Planning Scheme [4 March 1999], the development the subject of this appeal would have been prohibited. The Ordinance provision at Cl 323-5 was quite prescriptive in relation to the height question:

“A building or works must not exceed the height above the Australian Height Datum for any particular part of the site as shown on the Building Envelope Plan – Comprehensive Development Zone No 6 – Replacement Plan No 1”

4.2 Although the new Melbourne Planning Scheme did not retain the Comprehensive Development Zone, or include a Design or Development Overlay over the subject site, **the new Scheme did include detailed policy guidance at Cl 22.05 [Heritage Policies Outside Capital City Zone]. More particularly, in relation to the height question, this policy included the following section**

Concealment Of Higher Rear Parts (Including Additions)

Higher rear parts of a new building, and of an addition to an existing graded building, should be concealed in a Level 1 streetscape, and partly concealed in a Level 2 and 3 streetscape. Also, additions to outstanding buildings ('A' and 'B' graded buildings anywhere in the municipality) should always be concealed. In most instances, setting back a second-storey addition to a single-storey building, at least 8 metres behind the front facade will achieve concealment.

4.3 **From a site examination, and from images provided by Mr Wilkinson [for the applicant]**

- **it is clear that the existing 1991 building on the subject site does not satisfy this “concealment test”.**
- **As the higher rear parts of the proposed new building will be even more visible, the new development will be even less acceptable.**
- **We do not accept that either the proposed set back of the upper floors or the facade treatment will lessen this visibility in a meaningful way.**

4.4 **Cl 22.05 also includes the following provision**

Form

The external shape of a new building, and of an addition to an existing building, should be respectful in a Level 1 or 2 streetscape, or interpretative in a Level 3 streetscape. [‘Respectful’ means a design approach in which historic building size, form, proportions, colours and materials are adopted, but modern interpretations are used instead of copies of historic detailing and decorative work.]

4.5 **Again, from a site examination, and from images provided by Mr Wilkinson, we conclude that both the existing 1991 building and the proposed new development fail this ‘Form’ test.**

- **On the size criterion alone, the new development cannot be considered respectful.**
- **From Drawing TP102 [provided by the architect] the new development is THREE levels higher than every other building in the block [both heritage and new buildings].**

4.6 The omission of a detailed Design and Development over a significant heritage site must be seen in context.

- When the new Melbourne Planning Scheme was being prepared [and subsequently] many planning officers were strongly of the view that controls that established non-negotiable benchmarks should be replaced [as a general rule] by “performance based controls”.
- This thinking was articulated most clearly by Department of Infrastructure [DOI] officers in their submission to the Planning Panel that considered MPS Am C20 [December 2001]

*In terms of drafting and content, DOI submitted that the exhibited policies and Design and Development Overlays in general are poorly drafted and not in accordance with the Planning Practice Note on Writing Schedules or Writing a Local Planning Policy. **It considered that Design and Development Overlays should not be used to regulate height where heritage is the primary objective. This is seen to be the role of the Heritage Overlay and associated policies. More significantly, DOI considered that the proposed Design and Development Overlays seek to control existing built form without explanation, justification or rationale as to why that is desirable.** [p 10 of Panel Report]*

4.7 Accordingly, the absence of a Design and Development Overlay over the subject site does not mean that the site is without any guidance on the important height question.

4.8 Indeed, since the introduction of the new Melbourne Planning Scheme, the policy guidance in relation to both the Carlton area and the World Heritage Environs Area has been strengthened.

4.9 The Municipal Strategic Statement at 21.16 – 3 Other Local Areas – Carlton [[introduced 12 September 2013] includes extensive guidance on Built Environment and Heritage matters. This advice includes ...

- ***Maintain the predominantly low scale and ensure sympathetic infill redevelopment and extensions that complement the architecture, scale and character of the areas around Carlton Gardens, Lygon Street and residential areas included in the heritage overlay area.***
- ***Ensure that the height and mass of new development in proximity to Carlton Gardens and the World Heritage Listed Royal Exhibition Building maintains views of this World Heritage Listed site and does not adversely impact on this significance.***

4.10 And again, the important Local Policy Cl 22.21 Heritage Places within the World Heritage Environs Area [introduced on 19 November 2009] also includes unambiguous guidance on heritage and built form matters at 22.21-3 ...

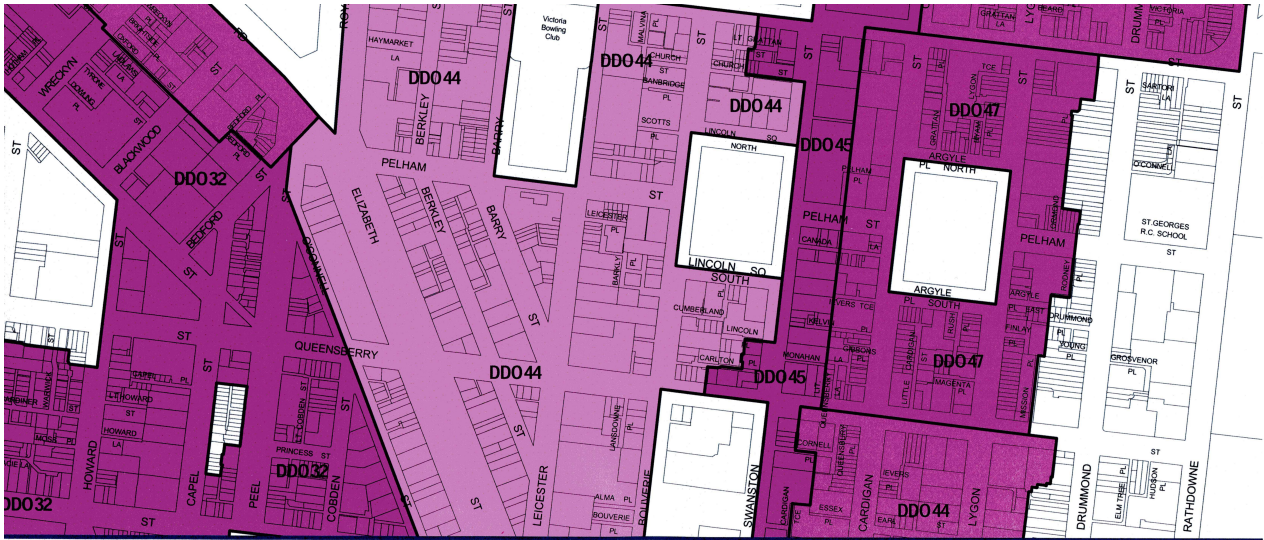
- ***retain and conserve the valued heritage character of streetscapes to assist with maintaining the heritage character of the setting and context of the Royal Exhibition Building and Carlton Gardens.***
- ***retain the predominantly lower scale form of development which provides a contrast to the dominant scale and form of the Royal Exhibition Building.***

4.11 However, even without this guidance,

- **it is evident from an examination of the existing DDO's that the subject site is, for the most part surrounded by a DDO with a recommended maximum height of 10 metres [about 3 residential storeys].**
- **Further west of the buffer zone, DDO47 has a preferred maximum building height of 4 storeys.**
- **If one of the central purposes of the WHEA Policy is to prevent developments that would compete with the prominence of the REB, an eight level development at this location is quite inappropriate.**

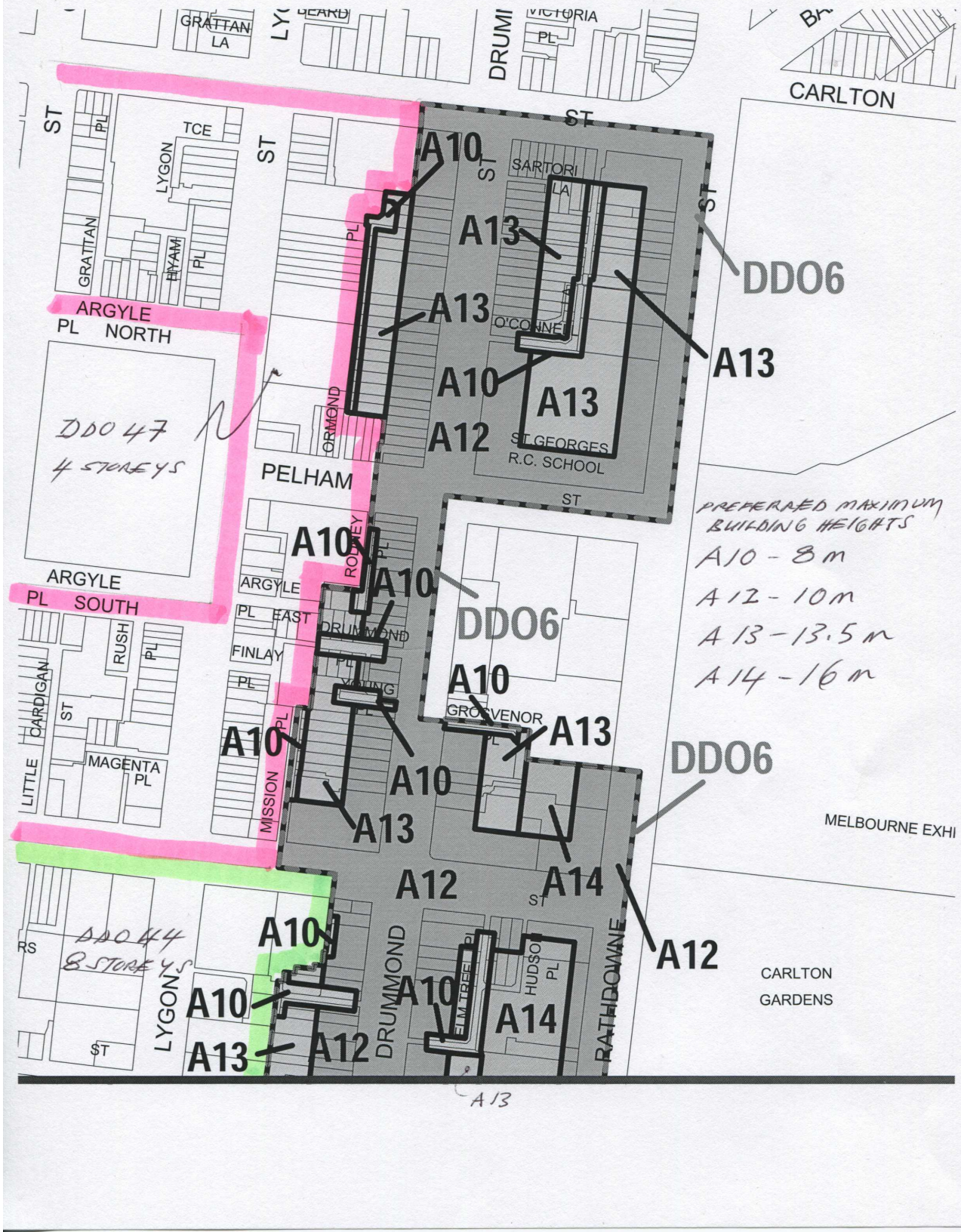
4.12 Further, from an examination of the Design and Development Overlays in South Carlton, it is clear that 8 level developments are MORE appropriately located

- South of Queensberry Street [West of Drummond Street] and
- along the Swanston Street spine where the preferred maximum building heights are 8 and 9 storeys respectively.



Preferred Maximum Building Heights: DDO44 – 8 storeys; DDO45 – 9 storeys; DDO47 – 4 storeys

EXTRACT FROM
Melbourne 05 ddo pt 1



5 The net community benefit argument

- 5.1 The Mixed Use Zoning of the subject site includes the following purpose: *to provide for housing at higher densities.*
- Since both the State and Local Governments wish to increase the housing supply in the municipality, it is argued that the additional housing provided on the St Nicholas site may compensate for any negative heritage assessment.
 - The Carlton Residents' Association does not agree with this proposition.
- 5.2 As the Carlton area is already making a massive contribution to the stock of new housing in the municipality, it would be quite inappropriate to argue that the heritage attributes of this site must be downplayed to satisfy this housing purpose. **Quite simply, there are other less sensitive sites that can, and are being redeveloped to satisfy the housing need. For example**
- The Council recently endorsed a vast expansion of the Capital City Zone into South Carlton. All that area south of Grattan Street, between Elizabeth and Swanston Street has now been set aside for significant re-development, and
 - In the Carlton Housing Precincts, 100's of units are coming on stream in 4 to 8 level developments. Even larger housing developments are either under construction or being proposed for the old Carlton Brewery site [Swanston, Victoria and Bouverie St block] and at the top of Elizabeth Street [the Royal Elizabeth]
- 5.3 The significant contribution being made by Carlton is supported by ABS figures quoted in a recent Fairfax article "Building frenzy in urban hot spots" [September 2014] Apartments Guide.
- The ABS figures show that in the two years to June, a staggering 21,939 planning approvals were given to apartment buildings of four storeys or taller across Melbourne's metropolitan area.*
- Many bigger projects approved early in that 24-month period will still be under construction and the most recent won't yet have laid a brick, but overall, South Yarra is the most popular target with 1950 projects approved ranging from four to 20-storeys.*
- Southbank is next, with the green light given to 1448 apartment projects, many of them presumably high-rise towers. The Carlton area is another hotspot with 1198 approvals, followed by 1159 in the stretch north from Brunswick to Coburg.***



Example of proposed and new residential developments in Queensberry Street, Carlton

5.4 The Transport Argument

In outline, it is suggested that areas which have good supporting transport infrastructure should be candidates for higher density residential developments.

- While most parts of the inner city have good access to a tram or bus service, there is an extraordinary variability in the capacity [and frequency] of these services.
- An examination of the transport infrastructure for the South Carlton area reveals that the Swanston Street Spine [and Elizabeth Street] provide a much better choice of public transport options. Rathdowne Street is quite poorly served by comparison.

Accordingly, the Carlton Residents' Association concludes that other areas of Carlton [eg City North] are much better suited than 15 Pelham Street for more intense residential developments.



5.5 The Adaptive Re-use Argument

Mr Biaci [for the applicant] argues that the “proposed development includes the retention of a heritage building and the adaptive reuse of buildings on the land”. But, it must be emphasised, that when 15 – 31 Pelham Street was acquired [for \$20.6 million in 2012] the building had

- a strong tenancy profile,
- a weighted average lease expiry of 6 years and
- a net income of about \$1.7 million per annum [a yield of 8.4%].

In the words of the selling agent [Bayley Stuart Commercial] the property included many positive features ...

An impressive list of State Government, Public and Private Companies are long term tenants. They include Victorian Health Promotion Foundation, Breast Screening Victoria, Medical Indemnity Protection Society, Warner Bros. Entertainment, Essential Media Communications, Gschwenter Holdings, Curriculum Corporation, Vodaphone and Pelham Street Car Parking.

This property has all the property and income fundamentals of a successful investment. These combined with a strong leasing market make this asset an unbeatable opportunity worthy of your consideration.

From this information, it must be concluded the future of the heritage building [in particular] did not depend upon its refurbishment for residential purposes.

5.6 The identification of growth opportunities in the City of Melbourne.

- The City of Melbourne is currently considering a new Housing Strategy *Homes for People* for the city.
- The map at page 19 [reproduced below] clearly indicates that the designated growth areas are expected to absorb 86% of the new housing in the municipality.
- **The Carlton site the subject of this appeal is NOT within one of these growth areas.**

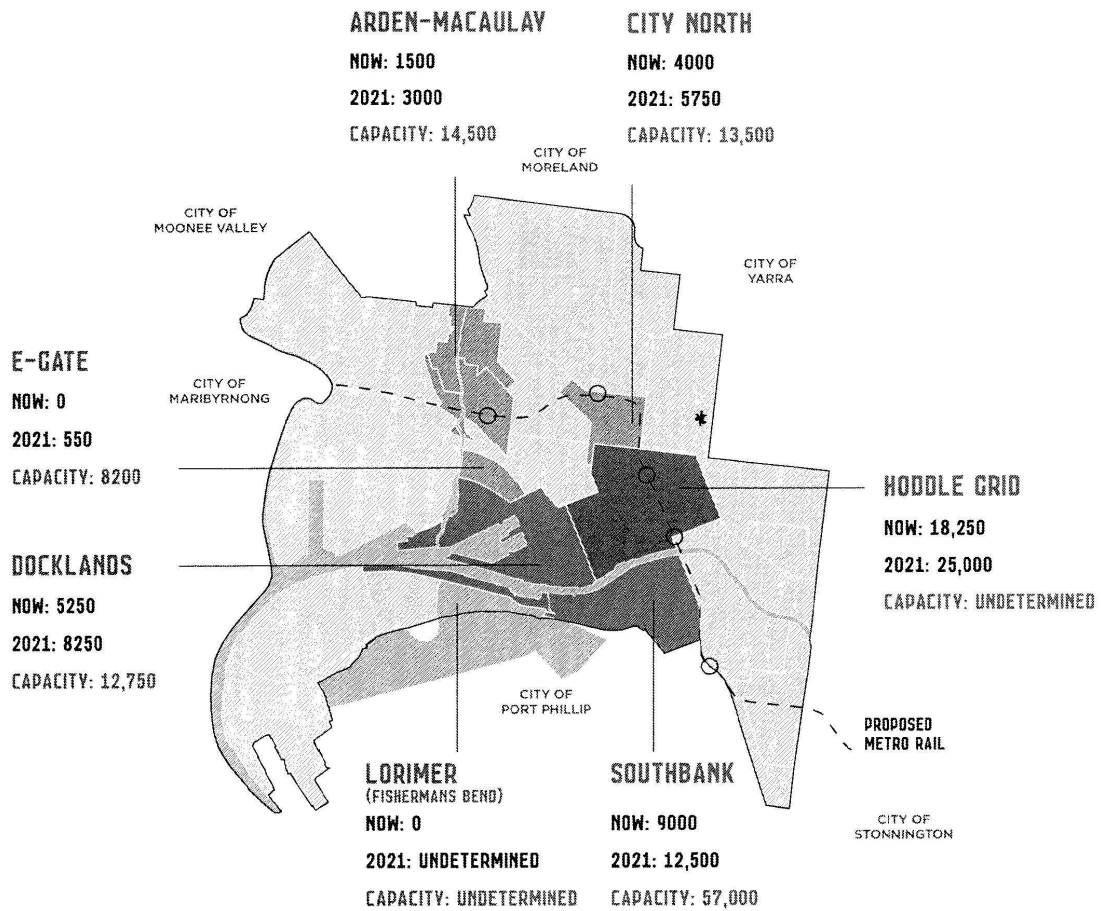


Figure 2.2 (top): Our growth areas including our urban renewal areas and the Hoddle Grid and the current number of dwellings now, the expected number of dwellings by 2021 and the total capacity of each area where known. (capacities derived from structure plans and the Victorian Government's discussion paper Melbourne, lets talk about the future)

Figure 2.3 (left): The percentage of new housing expected to be within our growth areas (urban renewal areas and the Hoddle Grid) compared to in the proposed residential zones.

6 Key Conclusions on Planning Merits

- 6.1 The heritage attributes of this site are significant and demand a sensitive response. Although an eight level building at this location will not significantly affect the sightlines to the REB Dome at ground level, it will compete with the prominence of the REB and fail to satisfy the heritage policies that apply to this site.
- 6.2 The existing [new] buildings on the old hospital site were constructed around 1991. They were originally part of the St Nicholas Place development; the five allotments were designed around a central courtyard.
- This was well before the REB and Carlton Gardens became the first built heritage site in Australia to be declared World Heritage.
 - **Since this declaration in 2004, the heritage policy context has been strengthened, not weakened.**
- 6.3 While the facade treatment of the new structure may reduce the impact of the increased height [in a small way],
- **there is no way that an eight level building could perform better on the “concealment test” [CI 22.05 of the MPS] than the existing structure, and**
 - **it is not credible to argue that an eight storey development will “*retain the predominantly lower scale form of development which provides a contrast to the dominant scale and form of the Royal Exhibition Building.*” [CI 22.21-3 of MPS]**
- 6.4 **In conclusion, we argue that on heritage and planning grounds, this development application must be refused.**