

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT  
(MAJOR CASE) LIST**

VCAT REFERENCE NO. P1375/2014  
PERMIT APPLICATION NO. TP-2013-630

**CATCHWORDS**

Melbourne Planning Scheme, Section 77 *Planning and Environment Act 1987*, Mixed Use Zone, Heritage Overlay (Schedules 1 and 81), heritage, urban design, World Heritage Environs Area, internal amenity. Conversion of office building into apartments.

**APPLICANT** Forza Capital Pty Ltd ATF Forza Pelham Street Fund

**RESPONSIBLE AUTHORITY** Melbourne City Council

**RESPONDENTS** C Ford, W Fitzgerald, J Weickhardt, Carlton Residents Association Inc., W Green, C Pullem, M Frances, Gough Partners-Owners Corporation Management, H Anderson, A Bawden, M Foo, E Pearce, B Power, F Fleming, L Robin, S, Stead, F and B Davis and GS Andrews Advisory

**SUBJECT LAND** 15 – 31 Pelham Street, Carlton

**WHERE HELD** Melbourne

**BEFORE** Dalia Cook, Presiding Member  
Alison Glynn, Member

**HEARING TYPE** Hearing

**DATE OF HEARING** 24 – 28 November and 1 December 2014

**DATE OF ORDER** 8 December 2014

**CITATION**

**ORDER**

- 1 The decision of the Responsible Authority is affirmed.
- 2 In permit application TP-2013-630 no permit is granted.

Dalia Cook  
**Presiding Member**

Alison Glynn  
**Member**

## APPEARANCES

For Forza Capital Pty Ltd  
ATF Forza Pelham Street  
Fund

Mr Chris Townshend, SC with Mr Barnaby Chessell of  
Counsel instructed by Norton Rose Fulbright.

They called the following witnesses:

- Mr Mark Sheppard, urban designer, David Lock & Associates.
- Mr Andrew Biacsi, town planner, Contour Consultants Australia Pty Ltd.
- Mr Bryce Raworth, heritage architect, Bryce Raworth Pty Ltd.
- Mr Peter Lovell, heritage architect, Lovell Chen Architects & Heritage Consultants.
- Mr Tim De Young, traffic engineer, GTA Consultants.

They also tabled photomontages prepared by Johnny Wilkinson of Scharp Design Pty Ltd but he was not required to give evidence orally at the hearing.

For Melbourne City  
Council

Mr John Glossop, town planner, Glossop Planning.

He called the following witnesses:

- Ms Somer Spiers, urban designer, Melbourne City Council.
- Mr Roger Beeston, heritage architect, RBA Architects and Conservation Consultants.

For Carlton Residents  
Association Inc.

Mr Ewan Ogilvy and Mr Warren Green

For Gough Partners,  
Owners Corporation  
Managers

Mr Frank Perry, town planner, Frank Perry and Associates.

For the other Respondents Ms Wendy Duncan of Counsel by direct brief on behalf of Farida Fleming and Libby Robin

Dr Wayne Fitzgerald, John Weickhardt and Malcolm Foo in person

Mr Brendan Power in person and on behalf of Ms Elizabeth Pearce

No appearance for the other respondents<sup>1</sup>

### **INFORMATION**

Description of Proposal	<p>The proposal comprises the restoration of an existing heritage building facing Pelham Street and its renovation for residential use. It also involves the conversion and extension of a rear (non-heritage valued) four storey office building to create an eight storey apartment building.</p> <p>The proposal includes provision for 113 cars in an existing basement and 35 bicycle parking spaces, fulfilling parking requirements of the planning scheme.</p>
Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act</i> 1987 – to review the refusal to grant a permit.
Zone and Overlays	<p>Mixed Use Zone (MUZ)</p> <p>Heritage Overlay (Schedules HO1 and HO81)</p> <p>Parking Overlay (PO12)</p>
Permit Requirements	<p>Cl. 32.04 – 6, construction of more than one dwelling on a lot.</p> <p>Cl. 43.01 – 2, buildings and works and partial demolition in a Heritage Overlay.</p>
Relevant Scheme, policies and provisions	Clauses 11.04, 15, 16, 21.04, 21.06, 21.07, 21.16-3, 22.05, 22.17, 52.06, 52.34, 52.35, 52.36 in addition to the matters in clause 65 of the Melbourne Planning Scheme.
Land Description	The site is irregular in shape and is located on the south side of Pelham Street, Carlton with a street frontage of 47.56m and a depth on its west side of

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<sup>1</sup> We have considered their statements of grounds as required.

87.8m, creating a site area of 3,772sqm. The land includes a double storey, heritage significant brick building facing Pelham Street that was the administration building of the former St Nicholas Children's Hospital. To the east of this building is a driveway leading to basement car parks, one located on the site and another on the adjoining land to the east. On the same site, behind the former Administration Building is a four storey office building, part of which has a mansard-style roof that can be viewed above the heritage building from Pelham and Drummond Streets.

The heritage building known as the Princess May Pavilion is on the corner of Pelham and Drummond Street and abuts the Administration Building on the subject land to its west. A four storey office building (matching in style to the rear building on the subject land) adjoins the Administration Building to the east on the corner of Rathdowne and Pelham Streets.

To the east of the site is a central circular courtyard which provides communal open space. Many of the windows within the rear office building face this space. East of the courtyard is a six storey apartment building constructed to the rear of the heritage significant Nurses' Building also forming part of the former St Nicolas Hospital, with frontage to Rathdowne Street. To the south of the courtyard is a four storey apartment building constructed in the 1990s with well developed landscaping internal to that site.

Land opposite in Pelham Street has been developed with the historic Sacred Heart Church and newer seminary building known as Corpus Christi College.

#### Tribunal Inspection

We carried out an accompanied inspection on 1 December as part of the last hearing day, including a number of office tenancies on the subject land and various apartments within adjacent buildings. We continued to inspect the broader surrounds unaccompanied.

## REASONS<sup>2</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Forza Capital Pty Ltd ATF Forza Pelham Street Fund (the permit applicant) applied for a planning permit to Melbourne City Council to carry out buildings and works to extend and convert existing office buildings at 15 – 31 Pelham Street Carlton to residential apartments. The existing buildings form part of a broader complex of buildings that underwent redevelopment in the 1990s, subsequent to the closure and sale of what was known as the St Nicholas Hospital for Children.
- 2 The proposal includes remodelling and extending a four storey office building constructed as part of the 1990s development, to form an eight storey building behind a renovated heritage building to be retained facing Pelham Street.
- 3 Council refused to grant a planning permit primarily because it was concerned that the height and form of the building would dominate and overwhelm the heritage streetscape and character of the surrounding area and the World Heritage Environs Area<sup>3</sup> (WHEA). Council also considered the design response inadequately addressed issues of internal and external amenity.
- 4 The Carlton Residents Association and a number of nearby residents also opposed the development, focusing principally on the buildings and works to the rear of the heritage building. Most resident objectors were owners or residents of adjoining apartment buildings constructed as part of the redevelopment of the hospital site. Many share an outlook to the central courtyard to the east of the existing office building on the site, or abut a service easement to the west of the office building. Others reside in the immediate surrounds, including Drummond Place.
- 5 The permit applicant submitted that the adaptive reuse of the buildings was positive, the re-development would be respectful of its context (including heritage buildings and streetscapes) and that the council and objectors' approach to applying relevant policy was overly conservative. It further emphasised an acceptable level of internal amenity for the proposed apartments and limited off-site impacts.
- 6 From the issues raised by Council and residents we have identified a number of matters for our determination:
  - a. Is the proposal respectful of its neighbourhood and heritage context?

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<sup>2</sup> We have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. We do not recite or refer to all of the contents of those documents in these reasons.

<sup>3</sup> The world heritage environs area is a declared heritage area under the *Heritage Act* 1995, forming land around the World Heritage listed Royal Exhibition Buildings and Gardens.

- b. Will the proposal affect the WHEA to an unreasonable extent?
  - c. Would the refurbished and extended buildings provide adequate internal amenity for future residents?
  - d. Would the proposal result in unreasonable off-site amenity impacts to adjoining and nearby residents?
- 7 We have determined we cannot support the permit application, and therefore have affirmed the decision of Council to refuse to grant a permit for the proposal. This is primarily because we consider the combined height, mass and form of the new building is too stark a contrast to its surrounding environs which are dominated by heritage streetscapes of a lower form. As such, we consider the proposal fails to adequately address both the heritage provisions of the planning scheme at clause 43.01 and the urban design policies of the planning scheme at clauses 15.01 and 22.17. We are also not satisfied that the conversion of the office building would provide adequate internal amenity and avoid undue impacts on neighbouring properties, as addressed further in our reasons below.

**Will the proposal be respectful of its neighbourhood and heritage context?**

- 8 The starting point to evaluating any proposal is to identify the site context and then to assess if the design responds appropriately to this context. We therefore agree with Mr Townshend's submission that a key consideration in this proposal is whether the scale of the proposed addition to the existing office building is acceptable or too great for its context. Mr Townshend then went on to state that if we were satisfied the height of the new addition was acceptable from a heritage perspective, we should similarly be satisfied that it was acceptable from an urban design perspective, given there is considerable overlap between these issues.
- 9 We agree there is some overlap in considering the heritage and urban design issues, and consider the determinants of whether the building is acceptable to the heritage and urban design context needs to be considered in both the immediate context of HO81 and the broader context of HO1, combined with policy pertaining to urban design and built form.
- 10 We find that the immediate site context is strongly defined by its heritage values, as part of heritage overlay HO81. In a broader sense, the site is located in the southern part of Carlton where Council has established urban design and heritage directions. These urban design policies stem from the local planning policy framework and the listing of the site as part of the broader HO1 area. As we discuss below, both policy and this broader overlay are predicated on *maintaining* the existing low rise heritage context of the streets in the location of the Royal Exhibition Buildings in the vicinity of Rathdowne Street and its surrounds.

Is the relationship between the proposed and heritage buildings within HO81 acceptable?

- 11 The parties and expert witnesses generally accepted, and we agree, that the works to the Administration Building are positive from a heritage perspective. To an extent, they would improve the heritage integrity of that building by removing more recent additions and reinstating matching building fabric.
- 12 At the same time, we consider that the heritage building currently supports productive and adaptive re-use for a commercial purpose that accords with objectives of the Mixed Use Zone. In addition, the building is in good condition.
- 13 The far more controversial aspect of the proposal was the alteration and extension of the non-contributory building to the rear. In the immediate context, we consider that it is vital that this building, as modified, does not dominate or overwhelm the three key heritage buildings within HO81 which have a distinct streetscape influence. These are the former Nurses' Home that faces Rathdowne Street, the former Administration Building in Pelham Street, and the Princess May Pavilion at the south east corner of Pelham Street and Drummond Street. These buildings have historical, architectural and social significance.
- 14 All three heritage experts identified that the documented heritage citation for HO81 was limited. However, none disputed the 'A' graded listing of these three key buildings on the former hospital site. The heritage citation, as documented in Council's 'I-heritage' data base states under HO81:

This is a significant complex of late nineteenth/early twentieth century hospital buildings, of considerable architectural merit and **forming a crucial streetscape around three sides of an important Carlton block**. Their proximity to the Sacred Heart church and form Residence at 101 Rathdowne Street adds to this streetscape significance<sup>4</sup>.

From the citation it is unclear how important the scale of form within the site is important to maintaining a relationship *between* the key buildings. The description of the notable features of the block however states that "*the street facades of this group are substantially intact.*"

- 15 Mr Lovell and Mr Raworth were both of the view that the higher built form could sit comfortably against the individual buildings of significance. This primarily was because the new form could be distinguished from the old and was physically separate from the old form, sited behind it for the most part.
- 16 Mr Beeston's evidence on behalf of Council was also that "*the proposed form of the additions is not inherently problematic*". Rather, it was the

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<sup>4</sup> Our emphasis added.

scale of the built form relative to the two and three storey surrounding streetscapes that caused him concern. In the immediate HO81 context, he questioned if the prominence of three heritage buildings retained within HO81 would be maintained such that they could be appreciated as a cluster (i.e. a campus setting) if the office building was substantially increased in height and the proportions of the setting between these buildings were altered.

- 17 Putting aside the question of streetscapes, we accept that within HO81 itself, there is no clear acknowledgement that the significance of the site requires the maintenance of form between the key heritage buildings so as to maintain a campus-type setting. The more contemporary buildings are already a significant intervention. Ultimately we find we do not need to fully determine whether this relationship would be unreasonably compromised, or indeed if the relationship needs to be maintained. For reasons we outline below it is scale of the new building in the broader heritage context that we find problematic.
- 18 A relevant objective contained in clause 21.06 of the planning scheme is:

Objective 1 (heritage) To conserve, protect and enhance the fabric of identified heritage places and Precincts.

  - In heritage precincts protect heritage buildings, subdivision patterns, boulevards and public open space (Strategy 1.4).
  - Within heritage precincts and from adjoining areas protect buildings, streetscapes and precincts of cultural heritage significance from the visual intrusion of new built form both (sic.) (Strategy 1.6).
- 19 As we have already identified, HO81 acknowledges that the site forms an important part of the heritage streetscapes to Pelham, Rathdowne and Drummond Streets. HO81 sits within a broader heritage precinct, HO1. There is again no definitive statement of significance for this area. It was agreed by the heritage witnesses that the listing was derived from a 1985 conservation study undertaken on behalf of Council by Nigel Lewis. This study include identification of the three key buildings within HO81 as ‘A’ graded buildings, and identified all three streetscapes as Level 1 streetscapes, as defined at that time.
- 20 Mr Beeston’s evidence included a draft statement of significance prepared by Meredith Gould in 2004 for Council. This identified key attributes of the character of the precinct as including its low scale form and the nineteenth century form of the roads, lanes and streetscapes.
- 21 Mr Townshend submitted it was not necessary to conceal the building as it was not an extension to an existing heritage graded building. We agree it is not, and that concealment is not the relevant measure of assessment. Likewise, we accept that the existing modern building on site is not currently concealed from Pelham and Drummond Streets. Nor did Council



(as distinct from potentially Mr Beeston, its independent witness) expect the new building to be concealed. We understood the essence of the Council's concern was that the modern intrusion should not be made more prominent through an overly dominating form in the context of the relevant streetscapes.

- 22 In a different context, the relationship and separation of new-to-old built form proposed on the site could be acceptable. Mr Lovell referred to other developments of heritage sites, including the redevelopment of the Herald and Weekly Times building in Flinders Street, where higher form sits comfortably behind a heritage building, with the heritage form at street edge still presenting as the dominant heritage view. We agree there are instances where this can proportional relationship can successfully occur.
- 23 We accept that the building would be substantially concealed when viewed from the footpath on the opposite side of Rathdowne Street, effectively 'filling in the gap' between the Nurses' Building and the more contemporary office building on the corner. This is in a context where modern form is already seen.
- 24 Notwithstanding the adoption of a contemporary façade approach, we have concerns about the immediate relationship of the new proposed form sitting behind the key heritage buildings when viewed from Pelham and Drummond Streets in particular. With respect, we do not regard the rear of the site as an "*island site*" or that it sits within a "*highly altered heritage setting*" as suggested by Mr Townshend in opening submissions, although we accept that it does not have a direct streetscape frontage.
- 25 Taking the plans and evidence as a whole as confirmed by our site inspection, we prefer the position adopted by Mr Beeston that the building would be dominant from Drummond and Pelham Streets, visible from Rathdowne Street and visible from the curtilage to the REB.
- 26 From Pelham Street, we find that the existing building sits relatively comfortably behind (and beside) the Administration Building, with only part of its roof being visible behind the heritage building. We consider that the proposal would be a step too far in terms of achieving heritage policies in clause 22.05 that emphasise partial concealment with building height to be respectful of the character and scale of adjoining buildings and the streetscape. From Drummond Street when approaching from either the north west or south west, we consider that the impact on the Princess May Pavilion would be comparatively more significant. From certain vantage points it would be seen immediately beside or partly behind this building. Given its height, breadth, form and massing in combination, we consider that it would detract from the visual prominence of the Pavilion which currently 'holds the corner', sitting proud of the lower building at 116 Drummond Street. It would also interfere with the distinctiveness of its parapet and gabled forms which are currently silhouetted to the sky.

- 27 We are not persuaded by the evidence on behalf of the permit applicant that these impacts would be mitigated by the extent of physical separation between the buildings and their siting at different planes (i.e. foreground versus backdrop buildings). Fundamentally, even at the setbacks provided, the proposal introduces a far more substantial and different built form. In this sensitive context, we consider that this relationship is not adequately ameliorated by distance combined with the building façade design.

#### Addressing the streetscapes in heritage and urban design terms

- 28 Clause 22.05 refers to the heritage significance of streets as comprising level 1, level 2 or level 3 streetscapes. The policy provides different directions for streetscape depending upon their significance.
- 29 In this case, Council’s database identifies all three adjoining streets as Level 1 Streetscapes although none are identified in the incorporated document referred to in the clause. The policy identifies Level 1 Streetscapes as *“collections of buildings outstanding either because they are a particularly well preserved group from a similar period or style, or because they are highly significant buildings in their own right”*.
- 30 We consider this a relatively narrow interpretation of the concept of a streetscape that serves a specific purpose in the policy to determine if a building should be concealed from the street or not, so as to protect the significance of existing heritage facades.
- 31 The key point of dispute about this policy was raised in Mr Raworth’s evidence. He contended that other works within Drummond Street and partly within Pelham Street have so altered the streetscapes that they should now be considered the equivalent to Level 2 or Level 3 streetscapes. In this context, the fact that the proposal would be partly visible and has a degree of visual prominence would become more acceptable when assessed against heritage policy at Clause 22.05 of the planning scheme and the decision guidelines to Clause 43.01.
- 32 We accept that, in heritage terms, there are some particular parts of the surrounding streetscapes which have less integrity than others (say, by the addition of the long 1980’s building at 116 Drummond Street in front of the rear office building on the subject land). Notwithstanding, we tend to the view that these more recent incursions would not of themselves justify downgrading these streets to a lower streetscape grading for the purpose of this proceeding. We accept submissions on behalf of the objectors that this would necessarily call for a distinct process involving holistic assessment and public consultation.<sup>5</sup>
- 33 Ultimately, whether the street is graded level 1, 2 or 3 for heritage purposes, we consider is not determinative in this case, although we note that the lack

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<sup>5</sup> There were also some discrepancies in terms of the varying definitions for levels 1, 2 and 3 streetscapes.

of clarity in the various documents tendered opened the matter for debate. More significantly, we consider that the proposal is not sufficiently respectful of the broader ‘heritage streetscape setting’ that is interlinked with the urban design directions for this part of Carlton. We are comparatively less concerned about the direct impacts on the heritage streetscapes *per se* as considered by the heritage experts.

- 34 That is, we do not limit consideration of heritage streetscapes to heritage policy at Clause 22.05. Instead, we have had regard to them at the broader character level, where streetscapes may be defined and assessed differently and impacts on the public realm as a whole can be considered (rather than from more fixed vantage points such as the footpaths on the opposite side of the street).
- 35 Likewise, irrespective of the grading of the streetscapes in heritage terms, we consider the issues of heritage streetscapes cannot be isolated from current urban design objectives since much of the urban design context is derived by the broader heritage values of the area. The planning scheme establishes clear urban design directions for this area. As outlined in some detail below, these aim to maintain a low rise heritage form as a character and urban design direction. The central issue is whether the extended building would sit comfortably in its setting, in line with policy directions to be respectful of its context.
- 36 We have accepted that the policy test should not be to conceal the new form in this case, and it is inherently challenging to expect a new building to ‘enhance’ a heritage building. However, in respect of the broader outlook, we consider that the objective of heritage policy at Clause 22.05 to ensure that new development “*make(s) a positive contribution to the built form and amenity of the area*” should be met. This is consistent with broader State policy at Clause 15 to ensure new built form “*contributes positively to local urban character*”.
- 37 At Clause 21.04, Council identifies areas of growth. This includes areas such as the former Carlton and United Breweries site, west of Swanston Street. North of Grattan Street is identified as a “Stable Residential Area”. Other areas that include the site appear to expect “*ongoing and incremental growth*” as referred to in this clause and “*will continue to be regulated under the current planning scheme controls*”.
- 38 Clause 21.06 then sets out general built form guidance, with an objective to protect Melbourne’s distinctive physical character and, in particular, to maintain the importance of identified places and precincts of heritage significance. Further this clause directs (as relevant):

Objective 1: To reinforce the City’s overall urban structure.

- Ensure a strong distinction between the built form scale of the Central City with that of development in surrounding areas (Strategy1.2)

Objective 4: To ensure that the height and scale of development is appropriate to the identified preferred built form character of an area.

- In areas where the existing built form is to be retained, ensure development is designed to maintain the generally low scale and character of those areas (Strategy 4.3).

39 Housing strategy at Clause 21.07 then directs that “*in areas outside the Central City and Urban Renewal Areas, increase housing quantity and density **consistent with the existing character of the area***”<sup>6</sup>. The local area framework for Carlton at Clause 21.16 – 3 directs that south of Grattan Street the planning scheme seeks to “*support the ongoing operation and establishment of small scale office and commercial uses (including start-up businesses, consultancies, creative enterprises)*”. It makes no mention of supporting conversion of offices to residential use. We note however, that residential use at higher densities is a legitimate land use in a mixed use zone and indeed forms one of the purpose statements of the zone. The strategies of the local planning policy framework acknowledge this in built form directions, but comment that the aim is to “*support infill residential development in south of Grattan Street where it maintains the predominant low scale nature of these areas and respects the area’s heritage context*”<sup>7</sup>.

40 CI 21.16 – 3- again says:

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.

41 Clause 22.17 of the planning scheme has an urban design objective to ensure the scale, siting, mass and bulk of development complements the scale, siting, mass and bulk of adjoining and nearby forms. It directs that new development should respond to the building and settlement pattern of the surrounding area acknowledging that any development is part of a larger setting. It also directs that building height should respect the existing built form of the immediate surrounds.

42 We find that this layered policy framework leans heavily toward maintaining the existing low rise character of Carlton South, with a strong emphasis on protecting the valued heritage streetscapes that establish the relationship between the public realm and the identified low rise form. In our opinion, the policy framework provides little competing policy to suggest that the retention of the existing low rise character of the area could be eroded in order to meet other broader policy objectives (such as higher density housing). By comparison, the growth framework for the city identifies a number of other locations where growth is supported and encouraged.

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<sup>6</sup> Clause 21.07 –Strategy 1.1. Our emphasis added.

<sup>7</sup> Source 21.06-3. Note the clause number commences, 21.16, but is mislabeled 21.06-3 within the document.

- 43 It is clear from the overall planning scheme policies and from an inspection of the area that much of the existing character and valued heritage streetscapes are derived from the overall low scale form of this area, not simply whether individual or specific sections or heritage facades have been maintained. At the same time, another important feature is that the heritage buildings retain a notable prominence in these streetscapes, including the Administration Building and the Princess May Pavilion.
- 44 In this broader urban design context, we consider all three streetscapes retain a strong low scale perspective, both at street edge and behind. In Drummond Street there remains a strong overall consistent scale (despite underwhelming facade intrusions such as at No. 116 – 140). It is this overall scale that we consider is the dominant feature, not just the street façade height or heritage value of facades. These combine with retained public realm features (e.g. bluestone edging and general streetscape layout) to form the existing character that the planning scheme directs to be retained. The heritage overlays applying to the area only add greater sensitivity to this physical context.<sup>8</sup>
- 45 Where intrusions into the lower form streetscape have occurred, it was agreed between witnesses that they are pronounced and generally problematic. The most notable of these is the tower at the south west corner of Queensberry Street and Rathdowne Street<sup>9</sup>.
- 46 In many other locations, we accept that higher form can sit comfortably behind heritage or other buildings and that it would not necessarily detract from the individual significance of buildings on those sites due to such a backdrop. However, we consider the proposal fails because it fails to sit comfortably in the overall low scale heritage streetscape of Carlton South that is well articulated in Council policy. We observe that:
- in response to questions via cross-examination, Mr Lovell acknowledged that an eight storey building was not consistent with the predominant scale of the area;
  - Mr Raworth also acknowledged that the extended office building conversion would be of a scale that is different to the two storey building in front facing Drummond Street. This would go beyond a small increment to a more appreciable increase in scale; and
  - both Mr Sheppard and Mr Biacsi described the extended building as mid-rise scale, rather than low-rise, but were satisfied that the buildings central location to the street block meant that it would ‘read’ as a suitable adjunct in scale to the low rise form at street edge.

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<sup>8</sup> This was effectively conceded by all witnesses.

<sup>9</sup> Generally referred to as the Panorama building. It is understood this building was formerly owned by the Commonwealth Government and was therefore exempt from State planning regulations. During this time the abnormal building height was established. Mr Lovell’s verbal comment was that this building was an ‘abomination to the area’.

Having said this, Mr Sheppard acknowledged that the building would impact the character of Drummond Street, although he considered it would do so in a manner he considered acceptable due to the proportional setback to height and therefore relatable scale of the new form (in addition to its 'calm' materiality).

- 47 Mr Sheppard's evidence sought to rationalise the scale of built form as being consistent in scale with the street edge buildings by referring to photomontages. He considered that they showed the new form sitting in relative scale and height terms to adjoining street edge buildings on account of its deep setback from the street edge.
- 48 We accept that as a 'rule of thumb' such a rationale may hold, but only to select views. There are many streetscape views, notably in Drummond Street, where in our opinion the new building form will be quite proportionally higher than the adjoining street edge forms. Our inspection also confirmed that from a number of locations outside those of the photomontages (e.g. at the north west corner of Pelham and Rathdowne Street, viewing south west toward the site), it is apparent that the new form will sit well above a notional line drawn between the buildings either side of the Administration Building in Pelham Street.
- 49 Whilst the new form will not sit at the street edge, we consider the form beyond will be out of context with the overall scale of building form in the area, notably north of Queensberry Street. This is contributed to by the significant width of the building, notwithstanding careful attempts to articulate and craft the northern and western façades in particular.
- 50 We also note that there are no specific design controls that apply to this site, in the form of Design and Development Overlays. There are however, such controls over virtually all adjoining land. We consider that this limits not only the existing character but the potential future character of all surrounding land, reinforcing that the existing low scale form of the neighbourhood is to be retained.
- 51 The evidence of Ms Somers was that the proposed new form would establish an uncomfortable relationship between buildings when considered in the local neighbourhood context. She considered this was emphasised by the heritage grading of the street, but her evidence was that she did not rely on the Level 1 grading of the street to make this evaluation. She commented that her consideration of streetscape was a broad view of the street including both sides and the interaction of public and private realm within this view. In this context she considered it was the combined height and mass of the form that would sit uncomfortably and be visually dominant to the broader streetscape.
- 52 We agree with all parts of this analysis. Further, we tend to the view that her approach to maximised development outcomes on this site, representing an overall six storey building, mostly within the envelope of the existing

building with more lightweight and scaled back upper levels, would be reasonable.

### Massing

- 53 We share Council's concerns that the mass of the building adds to the weight of the building in the urban form and adds, rather than detracts, from its dominance.
- 54 There are examples of modern forms working successfully in the street. The seminary to the north of the site is one such example (although adopting a more conservative styling). We likewise noted on our inspection the use of natural, neutral tones in the building at the north west corner of Queensbury Street and Rathdowne Street to allow a streamlined contemporary form to sit comfortably in a heritage context.
- 55 We accept that, broadly speaking, there are two alternative approaches to façade design in a context where heritage buildings have a strong presence. The first is to take cues from nearby buildings and to be interpretive in a modern way. The second is to seek to streamline newer buildings using darker and contrasting materials and finishes. The latter approach was adopted on advice from the permit applicant's professional team.
- 56 The size and scale of the existing office form is already larger, longer and somewhat out of context with the surrounding finer grain nineteenth century character and scale of Carlton, and even the heritage buildings within the former hospital complex themselves. In our view, providing a more contextual response to break up the form and therefore reduce its bulk in relation to the overall scale of form in the area would benefit this proposal. At the same time, caution would need to be exercised to maintain the visual clarity of the heritage buildings as advised by all expert witnesses.
- 57 Ultimately, there is no specific element of the materials and detailing selected we find problematic. We accept the evidence of Ms Spiers that the addition of glass louvres is welcome in principle since it reduces the prominence of building elements behind. It also helps to 'calm' the building as put by Mr Lovell and Mr Sheppard.
- 58 However, we find that the extensive use of the louvring and darker tones<sup>10</sup> especially on the Drummond Street façade potentially adds gravitas to the overall form, emphasises its horizontality and does not assist an integration of the scale of the form proportional to its neighbourhood setting. While its deployment is more successful in the Pelham Street frontage we do not regard it as effective to temper the underlying massing of the building from those viewlines.

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<sup>10</sup> Particularly evident from the materials board tendered at the hearing.

### Conclusions on heritage and built form

- 59 We have concerns about the direct impacts of the proposal in heritage terms from vantage points where the extended building would interfere with the prominence of the rooflines of the Princess May Pavilion and would rise up behind the Administration Building.
- 60 Beyond this and perhaps more fundamentally, we find the existing urban character which is to be retained by policy in this area requires a more modest form to be established on this site. This is not to say that some addition to the existing modern building could not occur, but we concur with Council's assessment that the new form as proposed is too out of scale given the predominance of lower scale forms within the immediate and surrounding area. This lower scale form is the basis of the character and heritage values of the broader Carlton South and HO1 area.

### Adaptive reuse and policy consequences

- 61 Mr Townshend submitted that the proposal would lead to the adaptive reuse of existing buildings, with heritage and (potential) sustainability benefits. He also submitted that it would potentially improve the amenity of adjoining neighbours by converting a commercial use to a comparable residential use.
- 62 Reusing any building most likely brings about some environmental benefits. As we discuss below, we are concerned however that in this instance there are issues created in relation to internal amenity.
- 63 More fundamentally, our review of policy is that this is not a case where the conservation of existing character and heritage values must compete with directions to promote growth of housing in this area. The planning scheme is quite clear that whilst this is an area that may experience some ongoing change, it is in a context where existing low rise built form character is to be retained and a mix of uses provided.
- 64 The heritage buildings in HO81 and on this site in particular have already been restored and are well used. Whilst some more improvements could be undertaken to the Administration Building facing Pelham Street all three heritage experts agreed this building was in generally good condition. This is therefore not a case where there is a substantive heritage benefit to be gained through restoring or adapting a degraded building for re-use.
- 65 Mr Beeston's evidence was that some additional restoration work could be undertaken to the front door to reinstate its original form. This was not disputed by the other experts or the permit applicant. If a new proposal is put forward for this site this is a matter that could be incorporated.



**Will the proposal affect the World Heritage Environs Area (WHEA) to an unreasonable extent?**

- 66 Council refused the permit application in part because the proposed building additions would not satisfy the policy requirements of Clause 22.21 for the World Heritage Environs Area, which aims to maintain the heritage character and setting of the Royal Exhibition Building and Carlton Gardens. This led to some debate at the hearing as to whether:
- a. the proposal needed to satisfy the requirements of Clause 22.21;
  - b. it is necessary for the new form to be concealed (or at least reduced in visual impact) from the gardens in front of the REB, or indeed from the viewing platform of the dome, which we were told is being restored to become a public viewing platform; and
  - c. the extended built form is too out of scale to the setting of the Royal Exhibition Building, given the site is within the WHEA.
- 67 It was agreed between parties that this site sits within an area known as the World Heritage Environs Area (WHEA) that is a declared area of interest under the *Heritage Act 1995*, as the environs to the world heritage site of the Royal Exhibition Buildings (REB). The more controversial issue was whether this then meant the site fell within the policy directions of Clause 22.21 of the Melbourne Planning Scheme. That policy applies to all areas within the WHEA as depicted in shaded areas of Figure 1 to the clause in addition to the areas stated as included in the policy.
- 68 The shaded area in the figure includes the eastern part of HO81, being the land directly east, but not the site under our consideration. Whether the policy applies to this site was complicated by the fact that the policy also directs that “specifically” the policy applies to land within a number of heritage overlays, including HO81. The parties took differing viewpoints as to whether this includes all of HO81, or just the area shaded in the Figure 1 to the policy.
- 69 We agree with Mr Townshend’s reading of the policy that it is only the eastern part of HO81 that is identified in Figure 1, to which the primary reference in the policy applies. This also correlates with the identified area of “greater sensitivity” in the adopted WHEA strategy referred to in the policy and elsewhere in the planning scheme. This strategy is also understood to be adopted by the State Government in accordance with the *Heritage Act 1995*. We comment however, that the description of where the policy applies is confusing, as demonstrated by the lengthy debate and submission required to address this issue in the hearing.
- 70 As Mr Lovell acknowledged in his evidence, and was conceded by Mr Townshend in his submissions, the absence of direct reference to this site in the policy does not mean that a decision maker should not have regard to the REB and its environs when assessing a proposal for the subject land, even though the policy does not apply to the site *directly*.

71 It is also relevant that consideration under the Heritage Overlay provisions at Clause 43.01 of the planning scheme require consideration to be given to:

- Any applicable statement of significance, heritage study and any applicable conservation policy.
- Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.

72 Local Policy at Clause 21.05 and 21.16 – 3 further requires consideration of the WHEA and the REB. This includes direction at Clause 21.05 to protect the scale and visual prominence of important heritage buildings, landmarks and heritage places, including the World Heritage Listed Royal Exhibition Building.

73 The Strategy states:

The sensitivity chiefly derives from proximity to the site, the availability of significant views and vistas to the site, and the potential visual impacts on the site of new development including the visibility of such development from the site<sup>11</sup>.

We find that the WHEA includes all of HO81, with the western part (being the subject site) forming part of the area of ‘lesser sensitivity’ and the land to the direct east, with direct frontage to Rathdowne Street forming part of the area of ‘greater sensitivity’.

74 The WHEA Strategy identifies that the Royal Exhibition Buildings and their perimeter gardens form part of the context of the world heritage setting. The Strategy acknowledges that:

views from around the perimeter (boundary) of the site take in the immediate nineteenth (century) context and heritage character of Fitzroy and Carlton, which is particularly strong on Nicholson Street, and .....part of Rathdowne Street although the latter is generally less intact south of Pelham Street.

75 Despite the acknowledgement that south of Pelham Street is less intact, all properties with frontage to Rathdowne Street are included in the area of greater sensitivity and are clearly part of the policy at Clause 22.21. We therefore do not share Mr Townshend’s proposition that all land south of Pelham Street has less significance in reading the WHEA strategy.

76 The Strategy does not provide specific policy direction to address new form in the area of lesser sensitivity. It simply describes the form within this area as such:

The area of lesser sensitivity within the WHEA (see Map 3, Appendix A of the Heritage Council Report) shares some of the attributes of the more sensitive area including the nineteenth century built form. The area of lesser sensitivity also includes a number of key heritage

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<sup>11</sup> Page 29 of the WHEA Strategy 2009.

buildings (from the nineteenth and twentieth centuries), which while not necessarily having a strong visual relationship with the REB, help demonstrate aspects of historical development within the area of geographical proximity to the REB and **contribute to the character of the setting**. The area includes properties in the vicinity of the REB and Carlton Gardens site, in the southern portion of the WHEA and northern edge of the CBD and East Melbourne, which are not of heritage significance and may be subject to future development<sup>12</sup>.

77 The WHEA strategy identifies that:

the views out of the site help to demonstrate and reinforce an understanding of the original nineteenth century context and contribute to an appreciation of the largely intact nineteenth century setting<sup>13</sup>.

78 Whilst we accept that Clause 22.21 does not directly apply, this policy in any event, does not require that new form must be concealed. It only directs the retention of the predominantly lower scale form of development which provides a “contrast” to the dominant scale and form of the Royal Exhibition Building. The key issue is therefore not whether the building is concealed from the REB or its surrounds, but whether when viewed from this area it would provide a suitable level of contrast and would suitably contribute to the character of the setting.

79 Beyond this, we reinforce that the general policies and objectives of Clauses 21.05, 22.05, 21.16, 22.17 all still apply and warrant consideration as to whether the building is a respectful response to the low rise heritage character of Rathdowne Street and the public domain, which includes Carlton Gardens. The identification of the gardens as part of the REB world heritage listed site only reinforces that from this eastern view the policy directions to ensure form is compatible with the low rise heritage setting have significantly added emphasis. As Mr Beeston commented, the listing of the REB as a World Heritage Site lifts the bar in considering the impacts from these public views.

80 Against this policy background, we are concerned that the building on the subject land would be viewed as a substantial building sitting above the buildings with Rathdowne Street frontages when viewed from the REB and its public surrounds.

81 Mr Sheppard and Mr Biacsi both gave evidence that this view would not be dissimilar to views currently provided of higher form behind the Rathdowne Street buildings. Buildings they referred to in this regard were either in the Hoddle Grid, or along (or proximate to) Swanston Street where significant growth is encouraged by Council.

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<sup>12</sup> Page 30 - WHEA Strategy – our emphasis added.

<sup>13</sup> Page 16 of the WHEA Strategy 2009.

- 82 We consider these taller ‘backdrop’ buildings to be quite different in context to that which is proposed. Whilst proportionally in height they may appear similar, in 3D view, as gained on site inspection, the views of the existing higher forms are clearly appreciated as being well in the distance due to their proportional scale and form.
- 83 In addition, it is apparent that there are no buildings that are prominent above the façade line of Rathdowne Street in the immediate area to the west and north, other than the Panorama Building to the south, which visually aligns more closely to the city backdrop buildings. There are also minor glimpses to the parapet of the 6 level addition to the rear of the Nurses’ building which we regard as inconsequential in these viewlines. We consider that this forms part of the relevant context for views out of the REB and its surrounds.
- 84 The proposed building would present as a broad form sitting notably above the skyline silhouette of its immediate surrounds, which are clearly within the area declared as part of the World Heritage Environs. As with our findings for the general street context we find that a lower, more modest form is required for this building to address this character setting appropriately.

#### **Does the proposal provide adequate internal amenity for future residents?**

- 85 Council also refused the proposal on the basis that the internal amenity of many of the dwellings was considered poor, with inadequate access to natural light and undersized private open space. This is addressed in the *Guidelines for Higher Density Housing* as referred to in Clause 15 and 52.35 of the planning scheme and through local policy at Clause 21.07 (Strategy 1.3).
- 86 Having already determined that this proposal does not warrant a permit on grounds of heritage character, we do not examine this issue in extensive detail. However, there are a number of internal amenity issues that we consider are poorly resolved and add to our view that this proposal should be refused. We discuss the most critical internal amenity issues below.

#### **The number of dwellings with limited access to daylight and outlook**

- 87 Mr Biacsi maintained that the overall number of dwellings with limited light and aspect was limited. His evidence acknowledged that 11, one bedroom dwellings included internal bedrooms that relied on sliding doors to living rooms to provide borrowed light to these bedrooms. He regarded these 11 of the 113 apartments the number of apartments as a small proportion of overall dwellings and an acceptable consequence of converting a former office. In favour of these dwellings was their large size and high ceilings that are consequences of the office floor footprint.

- 88 We accept some of the one bedroom apartments are large, but we consider they do not consistently provide particularly functional layouts in terms of usable space. For example Apartment 012 faces south east with the living area having a 4 metre wide window to the communal courtyard. The bedroom sits 5 metres behind the window line, and approximately 8 metres to the uncovered courtyard area. The kitchen forms a narrow hallway space angled off from the bedroom with bathroom space off this hall. Others such as Apartments 111, 211 and 311 are simply small, with a studio bedroom form and no balcony. These are marked on plan as being 50.4 sqm, but scale from plan with dimensions of 11.5m x 3.9m to the internal wall edges.
- 89 In addition to the apartments identified by Mr Biacsi, Mr Glossop also drew attention to the ground floor apartments facing west and north. He commented that many of the western apartments rely on the second bedrooms having a ‘saddle back’ or ‘saddle bag’ arrangement with the length of the bedroom extension to the window being three metres. This window extension then is to a 2.4 metre wide setback to the adjoining three storey building at 116 – 140 Drummond Street.
- 90 Council and its urban design witness questioned why there was such substantive reliance on saddle back rooms on the new upper levels, given the floor plate was not as constrained by the existing office footprint of the lower levels. This was notably to the deep recess to windows of the second bedrooms to apartments 409, 509 and 603. All of these rooms sit with a wall to their north side and level 7 sits above this recess, limiting light. Mr Biacsi acknowledged that level 7 could be reconfigured to remove the floor over this recess so as to improve access to light. We agree this would improve internal amenity somewhat although we share the responsible authority’s fundamental concerns about the design of the upper levels.
- 91 Mr Townshend submitted that these arrangements for daylight access to a second bedroom were not unreasonable in an inner city context. We agree that such scenarios, whilst not ideal, have on occasion been accepted, by both Council and the Tribunal. But the configuration of these second bedrooms is not our only concern. The sole outlook for five of the west facing dwellings at lower levels will be to the 2.4 metre setback to the adjoining three storey building to the west. At ground level four sit directly under balconies at the next level, or adjacent to a north facing wall, limiting light into the living areas of each dwelling. It is this combination of factors that we find makes the design of the lower levels of the western façade poor, notably the ground floor. We also note Mr Glossop’s concerns about the retention of a substantive building pillar at the centre window line of the living rooms to apartments 001, 101 and 201, compromising the outlook and usability of the small living room spaces in these apartments.
- 92 We questioned Mr Biacsi whether the daylight to apartment 011 at ground floor was acceptable in his opinion. This apartment sits next to the ground floor entry and existing walkway within the common property that forms a

cloister or arcade along the east side of the existing building under upper levels. This leaves the bedroom window to this apartment having only daylight access to the arcade that is nearly three metres in from the edge of the building form. The balcony area for this apartment is also all recessed in from the arcade with a south east orientation. We question the adequacy of natural light to this apartment.

- 93 On the whole, we consider that the number (hence, proportion) of apartments with limited daylight or outlook is more significant than conceded by the permit applicant. We would be concerned about the lack of ample outlook and daylight to many of the ground floor and corresponding levels above<sup>14</sup>, notwithstanding possible changes recommended in evidence such as the introduction of an additional void to the roof.
- 94 In general, it appears to us that the focus of the design brief appears heavily weighted toward achieving apartment yield, compromising many aspects of internal amenity for future residents. An exploration of more lateral ideas to reuse the building for residential use may be required if a new proposal is considered. We make no findings as to what may be an appropriate redesign of this building. We simply comment that it was not clear to us why the design had to fill the entirety of the deep footprint of the office building, given it appears to have led to a number of poor internal amenity outcomes.

#### The number of dwellings with limited or no balconies

- 95 The usable space of a number of balconies is small, both in area and dimension. This is further constrained by proposed planting areas. For example, the balconies of apartments 119, 219 and 319 are particularly limited in use due to their size, dimension and need for screening to prevent direct views into habitable room windows of apartments in the building at 117 – 121 Rathdowne Street.
- 96 On balance, however, we find that this feature (and the absence of balconies for a limited number of apartments) is not a critical issue for the development overall given the inner city location and the nearby location of communal and public open space. In combination, we consider that these would provide a suitable level of amenity and opportunity for recreation for future residents.

#### **Will the proposal result in unreasonable off site amenity impacts to adjoining residents?**

- 97 Council and a number of objectors were opposed the extension to the rear building stating it will lead to visual bulk, overlooking, overshadowing, loss

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<sup>14</sup> We accept that the impact of the layout lessens as the building rises, and therefore access to daylight is better.

of views, increased noise and loss of amenity. They were also concerned about the prospect of additional on street car parking in the area.

- 98 We find that the residential conversion of the buildings would, in principle, accord with the objectives of the Mixed Use Zone to provide housing at increased densities and would align with surrounding land use. Inherently, this would result in a shift in the nature of the activities undertaken on the land, although it would align with other nearby developments in this regard.
- 99 We find that many of the concerns raised above would not be substantive reasons to refuse the application. As with our review of internal amenity, we do not discuss these issues in extensive detail, having already determined that this proposal fails on grounds of heritage character. We address key matters raised.

### Overlooking

- 100 Ms Duncan on behalf of residents of the Princess May Pavilion building at 150 Drummond Street submitted the proposal would lead to excessive overlooking due to the existing balconies located to the east of apartments in this building. We inspected a number of these balconies and acknowledge they form an important part of the amenity of these apartments. However, they sit across a service easement to the existing office building that provides car park access to 150 Drummond Street and rubbish collection to the office. The balconies sit more than 9 metres from any proposed balcony. Despite this, the applicant proposed to screen some of the balconies to minimise impacts to these existing balconies. We consider that the general tests of the planning scheme in relation to preventing unreasonable overlooking to this adjoining building would be met.
- 101 Mr Biacsi acknowledged that the balconies to apartments 119, 219 and 319 could be screened on their southern edge to avoid direct views into adjoining kitchen windows on corresponding levels of the apartment building to the south at 117 – 121 Rathdowne Street. We agree this would be necessary based on the direct views out of these kitchen windows to the proposed balconies<sup>15</sup>. We inspected one of these kitchens and it was evident that it was a habitable, well used window and provides the only source of northern light into the apartment. Whilst small, we accept these three kitchen windows are a critical part of the amenity and usability of these adjoining apartments to the south.
- 102 We are not overly concerned about the relationship between the proposed rear building and 116 Drummond Street. We accept Mr Biasci's evidence in this regard that those windows mainly provide daylight access rather than

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<sup>15</sup> Set back 4 metres from the kitchens. Even though we acknowledge the current overlooking condition from the office building, we consider that the redevelopment should address this issue, especially since built form would be brought closer to this interface.

outlook, most are obscured and this development has chosen to built to its boundary.

### Visual bulk and daylight

- 103 The proposed form above apartment 319 seeks to cantilever over the existing chamfer of the building at its south east interface. This would reduce the available daylight and outlook to the three kitchen windows in apartments at 117 – 121 Rathdowne Street, which are located only approximately 1.4 metres east of the building abutments. These three windows are already impacted by the proximity of the angled office wall to their north. We accept this is an existing situation created when the two existing buildings were constructed in the early 1990s which is somewhat substandard. Any further encroachment into the daylight or visual bulk impacts to these windows should be avoided.
- 104 Ms Duncan and residents of 150 Drummond Street expressed concern at the height and form of the building in relation to their adjoining building. Although the outlook from some of these apartments would alter, especially from those with a more direct vantage point, we consider that this would be within the bounds of reasonable expectations for this particular block, where there is already a close physical relationship between buildings. At the same time, we note that one benefit of any reduction of the overall building form to address character concerns is likely to be a reduction in impacts of visual bulk to these dwellings.

### Overshadowing

- 105 A number of adjoining property owners were concerned about the increase in shadow to both private and communal open space. The proposal would increase the existing shadow over the central landscaped area between the site and land at 117 – 121 Rathdowne Street and 135 Rathdowne Street mainly from 1pm at the equinox.
- 106 Given the orientation of the site and the proximity of nearby buildings, it is almost inevitable that there would be some impact on shadows caused by a taller building. The question is whether this impact is reasonable. Whilst recognising the value of this space to users, when considering the extent of additional shadow at the equinox, we consider that the impact would be generally acceptable. Moreover, there would still be times of the day<sup>16</sup> when various areas within the communal open space would be free from shadow caused by this proposal or otherwise.
- 107 Again, we acknowledge that a more modest design for this site would probably reduce the impacts of shadows on this communal space.

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<sup>16</sup> At the equinox, as established as the relevant point of inquiry by the planning scheme. By comparison, this would improve over summer months and worsen over winter months.



108 We would also not have been persuaded that the additional overshadowing of adjoining apartment windows or balconies would have been unreasonable. As demonstrated in a three dimensional depiction of shadowing, the extent of additional shadow is reasonably confined in respect of 117 – 121 Rathdowne Street and mainly affects the period later in the afternoon. In addition, the balconies in question are more in the nature of decorative open elements since they are extremely compact.

### Other issues

- 109 Whilst some nearby residents questioned the lack of visitor parking on site and the impact of additional parking in the street, the proposal meets the parking requirements of the planning scheme. In this location, the planning scheme sets a *maximum* parking rate, which is met.<sup>17</sup> We note that the figure provided is at the upper end, being two spaces short of the maximum.
- 110 To this extent, there is no requirement for planning permission for this aspect of the proposal and no third party rights accrue. As a general observation, we consider that the permit applicant's election to provide all on-site spaces as permanent resident spaces is appropriate. The broader area has a substantial supply of short term parking that could potentially be accessed by visitors. It is also well serviced by public transport and by foot. To the extent that these spaces may be in high demand on weekends or evenings, this is symptomatic of the area more broadly and its local attractions. We do not consider that the visitor parking demand associated with this proposal would perceptibly alter this position.
- 111 In addition, we have considered the written evidence of Mr de Young as tendered, which confirms that the traffic impacts of the proposal would be acceptable (predicting overall reduced traffic movements compared with existing). We accept that the spread of traffic movements on certain days and at certain times would be different from those associated with the existing office building and would be more consistent with nearby residential use. We would not regard this as problematic.
- 112 We consider that the proposed storage and method of waste collection would be reasonable, with basement collection for the rear building and conventional council collection for the three front townhouses. We would have been prepared to impose a condition requiring the location of these external bins to be shown on the plans and screened.
- 113 Mr Green and Dr Fitzgerald both opposed the development due to the impact on the view they currently have to the Royal Exhibition Building Dome and the general skyline to the east from the upper terraces and windows of their dwellings in Drummond Place. These properties are located some 100 metres west of the proposed building.

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<sup>17</sup> This generally follows the policy intention to seek to reduce reliance on private vehicles in the City of Melbourne and to increase sustainable transport use.

- 114 The Tribunal has previously ruled there is no right to a view unless expressly provided for by the planning scheme policies or controls. Various decisions of the Tribunal including *Harker & Anor v Yarra CC*<sup>18</sup> endorse this position. The Melbourne Planning Scheme has no policy or specific direction that existing views to or from private properties should be protected or shared between properties. The only reference to view protection that is at all relevant to this case is that contained within Clause 22.21 that relates to identified *public* views to and from the REB.
- 115 While we accept that the building would assume far greater prominence in views from residents' balconies in rooftop and balcony views, we do not consider that these views are of the kind specifically protected by relevant policies. In any event, the proposal would not directly obscure views of the REB dome from those properties and we would regard the increased massing and height from these vantage points as acceptable as part of the broad outlook.

## **CONCLUSION**

- 116 We would not have rejected this application because of any specific or direct amenity impact on objectors. Rather, it is the proposal's overall impact on the character of the broader streetscape and neighbourhood as sought to be retained by policies of the planning scheme that undermines it.
- 117 We would also have maintained concerns about the visual impact of the extension to the rear building as viewed from the WHEA towards Rathdowne Street. Further, the deficiencies in terms of internal amenity could not be remedied easily within the existing redevelopment proposal.
- 118 For the reasons above, the decision of the Responsible Authority is affirmed. No permit is to issue.

Dalia Cook  
**Presiding Member**

Alison Glynn  
**Member**

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<sup>18</sup> [2009] VCAT 1358.