VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT DIVISION

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| planning and environment LIST | vcat reference No. P237/2019  Permit Application no. TP-2018-892 |
| CATCHWORDS | |
| Section 79 of the *Planning and Environment Act 1987*; Melbourne Planning Scheme; Mixed Use Zone; Heritage Overlay; Design and Development Overlay; Demolition; Multi-level building; Policy; Heritage; Traffic. | |

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| Applicant | Grow P1 Pty Ltd |
| responsible authority | Melbourne City Council |
| RESPONDENTs | P Harrison, D Piekusis, E Choo, N Broun,  M & C Foundling, R Gregory, M Furlong,  E Quinn, D & B Rathbone, L Cracknell,  D Toth, N Quinn, S Ricketts, Optometry Victoria Inc., M Healy, I Bird, J Lefevre,  R & R Arceri, G Robbins, W Healy,  P & J Harrison, Carlton Residents Association Inc., L Alifraco, K Agis, R Lal, C Hayes,  J Benke, H Dickson, M McCombe, E Hunt,  G Fuscaldo, D Fuscaldo, B Pesel, S Ayer,  P Sanders |
| SUBJECT LAND | 16, 18, 20 and 22 Drummond Street, Carlton |
| WHERE HELD | Melbourne |
| BEFORE | Bill Sibonis, Senior Member  Stephen Axford, Member |
| HEARING TYPE | Hearing |
| DATEs OF HEARING | 12, 13, 14, 15 and 16 August, 2019 |
| DATE OF ORDER | 30 September, 2019 |
| CITATION | Grow P1 Pty Ltd v Melbourne CC [2019] VCAT 1502 |

# Order

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| * Prepared by: | CHT Architects Pty Ltd |
| * Drawing numbers: | TP0.000 Rev G, TP0.001 Rev G, TP1.000 Rev G, TP1.001 Rev G, TP1.002 Rev G, TP1.003 Rev G, TP1.004 Rev G, TP1.010 Rev G, TP1.011 Rev G, TP1.015 Rev G, TP1,016 Rev G, TP1.017 Rev G, TP1.020 Rev G, TP1.021 Rev G, TP2.002 Rev G, TP2.003 Rev G, TP2.004 Rev G, TP3.00 Rev G, TP3.00a Rev G, TP3.001 Rev G, TP3.002 Rev G, TP3.003 Rev G, TP3.004 Rev G, TP4.001 Rev G, TP4.002 Rev G, TP4.005 Rev G, TP4.006 Rev G, TP5.001 Rev G, TP5.002 Rev G, TP5,003 Rev G, TP5.004 Rev G, TP6.001 Rev G, TP7.001 Rev G, TP7.002 Rev G, TP7.003 Rev G, TP7.004 Rev G, TP7.005 Rev G, TP7.006 Rev G, TP7.008 Rev G, TP7.009, TP7.010 Rev G, TP7.011, TP7.012 Rev G, TP10.001 Rev G |
|  | 01/07/2019 (with the exception of TP7.009 and TP7.011 which have no date) |

1. In application P237/2019 the decision of the responsible authority is affirmed.
2. In planning permit application TP-2018-892, no permit is granted.

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| Bill Sibonis  **Senior Member** |  | Stephen Axford  **Member** |

# Appearances

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| For Grow P1 Pty Ltd | Mr J Cicero, Solicitor of Best Hooper Lawyers. Evidence was called from:   * Ms C Heggen, Town Planner of Message Consultants (Australia) Pty Ltd * Mr B Raworth, Conservation Consultant and Architectural Historian of Bryce Raworth Pty Ltd * Ms C Dunstan, Traffic Engineer of Traffix Group Pty Ltd * Mr J Talacko, Sustainable Design Consultant of ARK Resources Pty Ltd * Mr C Goss, Architect of Orbit Solutions Pty Ltd |
| For Melbourne City Council | Mr D Song, Town Planner of SongBowden Planning Pty Ltd. Evidence was called from:   * Ms M Gould, Architect and Heritage/ Conservation Consultant of Meredith Gould Architects Pty Ltd |
| Mr G Fuscaldo, Mr D Toth, Ms L Cracknell | In person |
| For P & J Harrison,  M & C Foundling, M Healy,  I Bird, W Healy | Mr P Harrison[[1]](#footnote-1) |
| For Carlton Residents Association Inc. | Mr W Green |
| For E Hunt & M McCombe | Ms E Hunt |
| For P Sanders | Mr W Green |

# Information

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| Description of proposal | Partial demolition of the existing buildings, the construction of alterations and the construction of a five-storey building (plus basements) accommodating dwellings and car parking. |
| Nature of proceeding | Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time.[[2]](#footnote-2) |
| Planning scheme | Melbourne Planning Scheme (**Planning Scheme**) |
| Zone and overlays | Mixed Use Zone (**MUZ**)  Heritage Overlay – Schedule 1, Carlton Precinct (**HO1**)  Design and Development Overlay – Schedule 6, Carlton Area (**DDO6**)  Parking Overlay – Schedule 12, Residential Development in Specific Inner City Areas (**PO12**) |
| Permit requirements | Cl. 32.04-6 (the construction of two or more dwellings on a lot in MUZ)  Cl. 43.01-1 (demolition; the construction of a building; and the construction and carrying out of works on land in HO1)  Cl. 43.02-2 (the construction of a building and the construction and carrying out of works on land in DDO6) |
| Key scheme policies and provisions | Cl. 11, 15, 16, 21, 22.05, 22.17, 22.19, 22.23, 32.04, 43.01, 43.02, 45.09, 52.06, 58 and 65 |
| Land description | The review site is located on the east side of Drummond Street in Carlton, between Victoria Street and Queensberry Street. It has a frontage of 26.8 metres, a depth of 44.2 metres and yields a total site area of approximately 1185 square metres. The land is occupied by four, two-storey Victorian terraces, collectively described as ‘Zabulon Terrace’. The three southern buildings are vacant and were formerly used as offices. The northernmost building is currently used as an office. To the north, the property abuts a two-storey Victorian Terrace, also used as an office. To the south is a dwelling development comprising a two-storey former Victorian mansion building, which has been extended, and a four-storey building which appears to date from the 1930s which has been converted to dwellings. The latter was originally a three-storey structure, with the fourth level approved in 2002. Also to the south is a two-storey contemporary building used as a gym and office. To the east, beyond Elliot Place are non-residential buildings fronting Rathdowne Street. These range in height between one and two storeys. Also to the east is a residential site occupied by a three-storey dwelling. |
| Tribunal inspection | Two accompanied inspections were undertaken during the course of the hearing. |

# Reasons[[3]](#footnote-3)

## What is this proceeding about?

1. In October 2018, an application was made to the Melbourne City Council (**Council**) for a planning permit to partially demolish the existing buildings and construct a six-storey apartment development (plus basement car park) on the land. Notice of the application was given and objections were received.
2. The Council did not determine the planning application within the prescribed period and this application to the Tribunal is for a review of the Council’s failure to grant a permit.
3. Subsequently, the Council assessed the proposal and determined that, had this application to the Tribunal not been lodged, it would have refused a permit on a number of grounds. The grounds refer to matters of heritage, height, design, internal amenity, car parking and environmentally sustainable design.
4. Prior to the hearing, the applicant prepared and circulated amended plans of the proposal. Amongst others, the changes included a reduction in the height of the development to five storeys, a reduction in the number of basement levels from three to two and a reduction in the number of dwellings from 21 to 20. The planning permit application was amended at the commencement of the hearing by substituting these plans for the application plans. A further ‘corrected’ set of plans was also provided on the first day of the hearing, correcting errors identified by Ms Gould in her evidence. The project architect explained the corrections to the Tribunal and the parties. As it transpired, the correcting set of plans (identified as ‘Revision H’) contained further errors that were identified during the course of the hearing.
5. The hearing proceeded on the basis of the substituted plans, with reference to the corrected Revision H plans, and note being taken of the further corrections which would need to be made, in the event that a permit is granted.
6. It was a time-consuming and, at times, confusing process to have to reference different sets of plans. Further confusion arose from the additional errors identified in the Revision H plans. Many of the errors related to existing conditions but were important given the heritage considerations, and the proposed extent of demolition and restoration. The fact that the errors were in the depiction of existing conditions makes it even more surprising, as those plans only need to document what is present on the land. This should be able to be readily established by inspections, survey information and the like.
7. We consider this to be an unsatisfactory set of circumstances which was, at best, unhelpful. Not only should plans submitted to the responsible authority in the first instance be correct, by the time the matter comes before the Tribunal it is expected that the plans are accurate and properly document the details of the proposal. We say this in the hope that greater care is taken in the preparation of plans as part of any future proposal for this site.
8. On the basis of the submissions, the key issues for determination in this proceeding may be summarised as follows:
   * Is the extent of demolition proposed acceptable?
   * Is the proposed built form acceptable within the site’s physical and planning context?
   * Is adequate car parking provided and will there be any unacceptable traffic impacts?
9. The Tribunal must decide whether a planning permit should be granted and, if so, what conditions should be applied. Having considered the submissions and evidence with regard to the relevant policies and provisions of the Planning Scheme, assisted by our inspections, we have determined to affirm the Council’s decision. Our reasons follow.

## what is the site’s planning context?

1. The land is within the MUZ. In addition to implementing the Planning Scheme’s policy frameworks, the purpose of the zone includes providing for housing at higher densities and encouraging development that responds to the existing or preferred neighbourhood character of the area.
2. There is no dispute between the parties that the proposed redevelopment of the site in the form of an apartment building is consistent with policies such as those found at clauses 11,[[4]](#footnote-4) 16[[5]](#footnote-5) and 21.07[[6]](#footnote-6) which encourage increased residential densities in well-serviced locations. These policies seek to achieve better and more efficient use of existing infrastructure and services.
3. At the heart of the dispute is the proposed built form, in particular, its response to the site’s heritage context.
4. The ‘local area plan’ for Carlton is at clause 21.06 of the Municipal Strategic Statement (**MSS**). Relevantly, it states that in established residential areas, it is important that new development maintains the neighbourhood’s amenity and complements the highly valued heritage buildings and streetscapes. Infill residential development in areas to the south of Grattan Street, where it maintains the predominant low-scale nature of these areas and respects the area’s heritage context, is supported. The clause goes on to state:

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 heritage overlay area.

Ensure that development is sympathetic to the heritage values of adjacent heritage areas and places.

### Urban design

1. Policy for building design is detailed at clause 15.01-2S of the Planning Policy Framework (**PPF**). The objective of that clause is to achieve design outcomes that contribute positively to the local context and enhance the public realm.
2. At the local level, objectives and strategies for the built environment are at clause 21.06. Objective 4 is to ensure that the height and scale of development is appropriate to the identified preferred built form character of the area. A related strategy is, in areas where the existing built form is to be retained, to ensure development is designed to maintain the generally low scale and character of those areas.
3. Clause 22.17 ‘Urban Design outside the Capital City Zone’ provides local policy in respect of urban design. According to the policy basis, where the built form character of an area is established and valued, new development must respect this character and add to the overall quality of the urban environment. In summary and amongst others, objectives refer to the scale, siting, massing and bulk of development complementing that of adjoining and nearby built form; ensuring the building height relates to the prevailing patterns of height and scale of existing development in the surrounding area; and reducing unacceptable bulk in new development. Relevantly, it is policy that:

* The relative size, of buildings and their parts be considered in terms of human scale, building scale, subdivision pattern, and building location and alignment.
* The scale of new development is encouraged to respond to the scale of surrounding development both in terms of its overall dimension and the size of its individual architectural elements.
* The height of new development should respect the existing built form scale of the immediate surroundings.
* The massing and design of large new buildings is discouraged from overwhelming the built scale of any important pattern and character of existing built form.

1. The land is within DDO6 (Carlton Area). The design objectives are:

* To protect and conserve buildings and streetscapes of significance and to reinforce the built form character of the area as being essentially of low-rise buildings.
* To maintain the human scale of the area and to ensure compatibility with the scale and character of the existing built form.
* To ensure that any redevelopment or new development is compatible with the scale and character of adjoining buildings and the area.
* To protect and manage the values of and views to the Royal Exhibition Building.

1. The requirements of DDO6 address building height. Pursuant to clause 2.1, buildings or works should not exceed the Maximum Building Height (**MBH**) specified in the table to the schedule, which is as follows:

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| **Area** | **Maximum Building Height** | **Outcomes** |
| 10 | 8 metres | The predominantly 1-2 storey built form character of the area is maintained to ensure a pedestrian scale of development abutting the streets and laneways. |
| 12 | 10 metres | The low-rise built form of the area, which is predominantly 2-3 storey, is maintained to ensure that the existing Victorian character of the area is conserved. |
| 13 | 13.5 metres | The existing historic character of the area remains. |
| 14 | 16 metres | Development of an appropriate scale to Cardigan Street is achieved, but in doing so maintains a comfortable relationship with the surrounding low-scale area. Views to the drum, dome, lantern and flagpole of the Royal Exhibition Building from the footpath on the south side of Queensberry Street between Lygon Street (west side) and Rathdowne Street are protected. |

1. According to Ms Heggen’s evidence, the front 25.5 metres of the site is within Area 12, which has an MBH of 10 metres. The middle 16.2 metres of the site is within Area 13, with a specified MBH of 13.5 metres. The remaining easternmost 2.5 metres of the site is in Area 10 and has an MBH of 8 metres.
2. Pursuant to clause 2.1, an application to exceed the MBH must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements.
3. The decision guidelines at clause 4.0 do not apply to the review site and are not relevant.

### Heritage

1. The purpose of clause 43.01 includes:

To conserve and enhance heritage places of natural or cultural significance.

To conserve and enhance those elements which contribute to the significance of heritage places.

To ensure that development does not adversely affect the significance of heritage places.

1. Relevant decision guidelines are:

* The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.
* Any applicable statement of significance (whether or not specified in the schedule to this overlay), heritage study and any applicable conservation policy.
* Any applicable heritage design guideline specified in the schedule to this overlay.
* Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.
* 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.
* Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.
* Whether the proposed works will adversely affect the significance of the heritage place.

1. Clause 15.03 of the PPF sets out policy in respect of heritage. Its objective is to ensure the conservation of heritage places. The related strategies are:

* Provide for the conservation and enhancement of those places which are of aesthetic, archaeological, architectural, cultural, scientific or social significance, or otherwise of special cultural value.
* Encourage appropriate development that respects heritage places and creates a worthy legacy for future generations.
* Retain those elements that contribute to the importance of the heritage place.
* Encourage the conservation and restoration of contributory elements of a heritage place.
* Ensure an appropriate setting and context for heritage places is maintained or enhanced.

1. The MSS provides the objectives and strategies in relation to heritage at clause 21.06. The relevant objective is to conserve and enhance places and precincts of identified cultural heritage significance. The related strategies include:

* Conserve, protect and enhance the fabric of identified heritage places and precincts.
* Support the restoration of heritage buildings and places.
* Maintain the visual prominence of heritage buildings and landmarks.
* In heritage precincts protect heritage buildings, subdivision patterns, boulevards and public open space.
* Within heritage precincts and from adjoining areas protect buildings, streetscapes and precincts of cultural heritage intrusion of new built form both. [sic]

1. A specific local policy for heritage places outside the Capital City Zone is detailed at clause 22.05 and applies to all places within the Heritage Overlay excluding the Capital City Zone Schedules 1, 2, 3 and 4 and the Docklands Zone. The objectives of this policy include:

* To conserve all parts of buildings of historic, social or architectural interest which contribute to the significance, character and appearance of the building, streetscape or area.
* To ensure that new development, and the construction or external alteration of buildings, make a positive contribution to the built form and amenity of the area and are respectful to the architectural, social or historic character and appearance of the streetscape and the area.

1. The policy sets out the matters which will be taken into account when considering planning applications for heritage places within the Heritage Overlay. These comprise what are referred to in the policy as ‘performance standards’, and are explained as follows:

The performance standards outline the criteria by which the heritage aspects of planning applications will be assessed. Definitions of words used in these performance standards and an explanation of building and streetscape grading’s are included at the end of this policy. [sic]

In considering applications under the Heritage Overlay, regard should be given to the heritage places listed in the individual conservation studies and their significance as described by their individual Building Identification Sheets and the Individual Statements of Significane which are incorporated documents in this Scheme. [sic] The Building Identification Sheets and Statements of Significane include information on the age, style, notable features, integrity and condition of theheritage place. [sic]

1. We will refer to the relevant performance standards in later sections of these reasons.

## what is the site’s heritage significance?

1. In his evidence, Mr Raworth provided the following description of the existing buildings on the review site, which we adopt:

18. The site contains a row of four imposing double storey rendered masonry Victorian terraces. Each features a verandah and upper level balcony, with decorative cast iron columns, balustrading and frieze work. The upper level balconies to 16-20 Drummond Street have been enclosed with glazing, with the original fabric behind removed. The street elevation is otherwise intact, each terrace featuring a pair of double hung sash windows and a main entry with an arched toplight, and the first floor elevation to 22 Drummond Street featuring three identical double hung sash windows. The parapet is relatively simple in character reflecting the mid-Victorian origins of the buildings. The roof form is not visible from the street, although an intact original chimney remains along the parapet of the west end of the north elevation, and another chimney south of this located within the front roof form of 22 Drummond Street. All other chimneys to the front portion of the terraces have been removed, including the corresponding chimney on the west side of the south elevation. As noted, the raised central parapet contains rendered lettering reading ‘Zabulon Terrace 1872’.

1. According to the ‘Carlton Conservation Study Building Identification Form’, which we were advised is the relevant ‘Building Identification Sheet’ referred to in the policy at clause 22.05, the buildings on the land have been attributed a ‘C’ grading and are identified as being within a Level 1 streetscape. Pursuant to clause 22.05, Grade ‘C’ Buildings are defined as follows:

‘C’ buildings. Demonstrate the historical or social development of the local area and/or make an important aesthetic or scientific contribution. These buildings comprise a variety of styles and building types. Architecturally they are substantially intact, but where altered, it is reversible. In some instances, buildings of high individual historic, scientific or social significance may have a greater degree of alteration.

1. A Level 1 streetscape is defined as being a collection 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.
2. There is no existing Statement of Significance for the Carlton heritage precinct. Mr Raworth’s evidence described the immediate context of the review site in the following way:

22. Drummond Street is highly intact Victorian environment of predominantly double storey terraces, with the row of four terraces at 16-22 Drummond Street graded C in a Level 1 streetscape. The adjacent Victorian residential building to the south at 2 Drummond Street (on the corner with Victoria Street, and turning its back to the subject site) is graded B, while the terraces to the north are graded C. The opposite, west side of Drummond Street contains a combination of A and C graded buildings, and is also a Level 1 streetscape. Elliot Place is not directly addressed by graded building stock. The principal heritage interface for the subject site is thus to Drummond Street to the west.[[7]](#footnote-7)

1. The Council submitted that Amendment C258 to the Planning Scheme (**Amendment**) seeks to implement the recommendations of the *Heritage Policies Review 2016* and the *West Melbourne Heritage Review 2016*. The Amendment proposes to revise the local heritage policies, incorporate new heritage statements of significance, identify 20 new heritage places, and replace the existing A to D grading system with the significant/ contributory/non-contributory grading system. The Amendment has been through a public exhibition and Panel process, and a Panel Report has been released. We were advised that the Council will consider the Panel Report within the ‘next few months’. The Amendment proposes to classify the buildings on the review site as ‘contributory’, defined as:

A ‘contributory’ heritage place is important for its contribution to a precinct.

It is of historic, aesthetic, scientific, social or spiritual significance to the precinct. A ‘contributory’ heritage place may be valued by the community; a representative example of a place type, period or style; and/or combines with other visually or stylistically related places to demonstrate the historic development of a precinct. ‘Contributory’ places are typically externally intact, but may have visible changes which do not detract from the contribution to the precinct.

1. As part of her evidence, Ms Gould provided the Statement of Significance for Carlton that forms part of the Amendment. It identifies the Carlton Precinct as being of historical, aesthetic/architectural and social significance. The following extracts relevantly summarise this significance:

Carlton Precinct is of **historical significance** as a predominantly Victorian-era precinct which reflects the early establishment and development of Carlton, on the northern fringe of the city. It was planned on the basis of early 1850s surveys undertaken during Robert Hoddle’s tenure as Surveyor General, with the first residential allotments located to the north of Victoria Street. The precinct retains a comparatively high level of intactness, and a very high proportion of pre-1900 buildings, including terrace (row) housing, complemented by historic shops, institutions and public buildings. Surviving 1850s and 1860s buildings in particular attest to the precinct’s early development.

…

The **aesthetic/architectural significance** of the Carlton Precinct largely rests in its Victorian-era development, including terrace and row housing, complemented by more limited Edwardian and interwar development. The pattern of nineteenth century subdivisions and land uses is reflected in the dense residential streetscapes, with commercial buildings in principal streets and sections of streets, and historic shops and hotels to residential street corners. … Residential development in the precinct is also significant for its diversity, with a variety of building and allotment sizes, and dwelling heights, styles, materials and setbacks. Streetscapes can have consistent heritage character, or more diverse character, reflecting stop-start bursts of building activity, changing styles and dwelling preferences, and later re-subdivision. Aesthetically, the principal streets are distinguished by central medians and tree plantings, with a sense of openness due to their width, and vistas available along their length. The parks and smaller squares, influenced by London-style development, also enhance the aesthetic significance.

1. The Council submitted that the Amendment is a seriously entertained planning proposal and should be given weight in our assessment and determination of the proposal.
2. The applicant does not agree. This is on the basis of the extent of the Panel’s recommendations, the effect of these and the lack of certainty that they will be accepted by the Council.
3. We agree with the applicant. Having regard to the principles set out in relevant case law,[[8]](#footnote-8) we are not persuaded that the Amendment is a seriously entertained planning proposal, as the Council has not yet adopted the Amendment. Nor, for that matter, has the Council determined a position in respect of the Panel’s recommendations. Nonetheless, we consider the Amendment is a useful indication of the Council’s latest thinking in respect of heritage value of this precinct and of the subject buildings.

## Is the extent of demolition proposed acceptable?

1. The proposed demolition can only reasonably be described as extensive. It comprises the removal of the balcony infill of Nos. 16-20; and the complete demolition of all existing building fabric across the review site (including the front two rooms) with the exception of the façade to Drummond Street, the northern boundary wall, part of the southern boundary wall and the two chimneys at No. 22. The proposed demolition is opposed by the Council and the respondents, and is a principal issue in contention in this matter.
2. Before considering the respective cases advanced by the parties in relation to the proposed demolition, we will set out the relevant planning policies and provisions which inform and guide our exercise of discretion.
3. Commencing with clause 43.01-1, a permit is able to be granted for demolition within HO1. The Heritage Overlay does not prohibit the demolition of buildings. Demolition can be undertaken provided planning permission is obtained. Pursuant to clause 65, before deciding on an application, a decision-maker must consider (amongst others) the following:
   * The matters set out in section 60 of the Act.[[9]](#footnote-9)
   * The Municipal Planning Strategy[[10]](#footnote-10) and the Planning Policy Framework.[[11]](#footnote-11)
   * The purpose of the zone, overlay or other provision.
4. One of the matters listed in section 60 of the Act is the objectives of planning in Victoria. Relevantly, these include to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historic interest or otherwise of special cultural value.[[12]](#footnote-12)
5. The purpose of HO1 includes “to conserve and enhance those elements which contribute to the significance of heritage places” and “to ensure that development[[13]](#footnote-13) does not adversely affect the significance of heritage places”. The decision guidelines at clause 43.01 include whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.
6. The policy at clause 22.05 addresses demolition as follows:

Demolishing or removing original parts of buildings, as well as complete buildings, will not normally be permitted in the case of ‘A’ and ‘B’, the front part of ‘C’ and many ‘D’ graded buildings. The front part is generally considered to be the front two rooms in depth.

Before deciding on an application for demolition of a graded building, the responsible authority will consider as appropriate:

* The degree of its significance.
* The character and appearance of the building or works and its contribution to the architectural, social or historic character and appearance of the streetscape and the area.
* Whether the demolition or removal of any part of the building contributes to the conservation of the significant fabric of that building.
* Whether the demolition or removal is justified for the development of land or the alteration of, or addition to, a building.

A demolition permit should not be granted until the proposed replacement building or works have been approved.

1. The two heritage experts who gave evidence in this proceeding hold differing opinions in respect to the proposed demolition.
2. Ms Gould described the proposal as being for ‘facadism’ encompassing extensive demolition. She considers the outcome to be inconsistent with “the high level of intactness which forms the existing character of this section of Drummond Street within HO1; the guidance in the Heritage Overlay at clause 43.01; the local heritage policy at clause 22.05; and with the DDO6 Design objectives and Built Form outcomes”.
3. In summary, Ms Gould considers that an approach consistent with the Planning Scheme provisions would include the retention of the following building fabric:
   * all front wings, including the party, boundary and external walls, the pitched roof forms and the two chimneys at No. 22
   * on the west elevation, the ground-floor windows and front doors, and the first-floor windows of No. 22; the verandah roofs and associated structures, verandah floors and associated floor structures, ground floor panelled timber ceilings, fascia beams, timber trims and all cast iron elements
   * on the west elevation, the Tessellated tile verandah and path surfaces, bluestone steps and edges, retaining walls, party and boundary wall fences and slate flag stones
   * the iron palisade front fences and bluestone plinths
   * at the east elevation of the front wings, the paired arch-head staircase windows to Nos.16, 18 and 20, and also to No. 22 as these are in place but currently concealed by accretions.
4. In Ms Gould’s opinion, the policy of retaining the front two rooms of ‘C’ grade buildings has been consistently applied over three decades and is important in achieving a scale and form of development which is determined by reference to the cultural heritage significance and built form character of the locality.[[14]](#footnote-14) In her opinion, the extent of demolition is not consistent with the character of this block of Drummond Street, and the demolition would adversely affect the significance of ‘Zabulon Terrace’ diminishing its significance within HO1. While observing that the retention of the rear wings would be desirable, Ms Gould noted that their demolition is contemplated by policy.
5. Mr Raworth does not oppose the extent of demolition. He considers the demolition of the interiors to be acceptable, as they are not intact given the internal room layout and detailing has been heavily compromised. Mr Raworth’s opinion is that the proposed retention of the corner and side return walls on the north and south sides will allow the three-dimensional form of the building to be legible.
6. In respect of the roof forms, Mr Raworth acknowledged that they are original, but observed that they do not form part of the terrace’s streetscape presentation. They are concealed from public view by the parapet, being an outcome intended by the design. He considers that their removal and replacement with interpretive roof and pergola forms is a change that will not be discernible from the public realm. His evidence states:

49. The proposed demolition will occur in the context of a redevelopment proposal that will enable the restoration and partial reconstruction of highly altered frontages to three of the terraces, contributing to the long term conservation of the place. The extent of demolition will not result in any diminution of the contribution the terraces make to the adjacent Level 1 Drummond Street streetscape. The scheme will also facilitate the long term future use of the buildings as a residential address, in keeping with their original function. …

1. In addressing the rear wings, Mr Raworth considers that they make a negligible contribution to the character of Elliot Place, having regard to their setback and their partial concealment by later additions. He further noted that they have been altered to varying degrees, and that their visibility would be concealed by a visually impermeable rear boundary fence.
2. He concludes by stating that the “extent of demolition has been determined with careful regard for the key remaining original fabric that underlies the significance of the terraces and the contribution they make to the Drummond Street streetscape and wider Heritage Overlay place, and is considered acceptable”.
3. Mr Raworth did not dispute that this part of Carlton is of particular interest because it is relatively intact. The experts agreed it represents the early expansion of Melbourne to the north, with the terrace forms representing the second phase of development of this area when timber dwellings were replaced by substantial masonry buildings, thus reflecting the rapid growth in wealth and confidence of Victorian Melbourne. They agreed that this is the basis for the heritage significance of the area and streetscape.
4. The Council pointed to the proposed use of the term “facadism” in the Amendment which the Panel report has recommended be included into a revised clause 22.05-6 with the dot point: “Retention of the three dimensional form is encouraged; facadism is discouraged”. Facadism is defined as “The retention of the exterior face/faces of a building without the three-dimensional built form providing for its/their structural support and understanding of its function.” [[15]](#footnote-15) The Council submitted this is further evidence of Council’s long-held policy position opposing the demolition of the front rooms of C graded buildings and is relevant because the proposal clearly meets this definition of “facadism”.
5. The applicant does not agree. It submitted that the use of the term “facadism” has become pejorative and does not assist the Tribunal beyond the existing clause 22.05. The applicant pointed to previous decisions of the Tribunal that have found the term to be unhelpful. *In Zig Inge Station Street Pty Ltd v Boroondara CC*[[16]](#footnote-16)(***Zig Inge Station Street***) the Tribunal said:

30 So to describe the proposal as facadism may condemn it in the eyes of architectural or conservation afficionados. [sic] However, it does nothing to convey to the average person the impact of the demolition. The impact is plain enough for him or her to see and it is not assisted by a label. To describe the proposal as “facadism” begs the question of what impact it has on the heritage significance of the heritage place.

1. In any case, the applicant maintains that by retaining a substantial proportion of the end walls, the three-dimensional form of the building is retained, so it does not meet the definition.
2. While we accept that the term “facadism” is a label that is not found in the Planning Scheme as it presently exists, we acknowledge that its inclusion within the Amendment is an indication of the Council’s long-held policy to discourage demolition of the front part of ‘C’ graded buildings.
3. We agree with the Tribunal in *Zig Inge Station Street* that facadism may be a label mainly of meaning to ‘experts and aficionados’. However, we consider that the opinion of experts is, in all likelihood, important to lay people. In this case, there is a policy discouragement of the proposed extent of demolition. We expect the policy would have been informed by expert heritage considerations.
4. Ms Gould’s opinion is that once the original fabric has been removed, the authenticity of the building has been diminished even if the material were to be later replaced or re-built in the same form but with new material. On the other hand, Mr Raworth was of the opinion that any changes behind the façade were of no consequence since they would not be perceived from the public realm.
5. In our opinion, the issue of authenticity is, arguably, important to our assessment. We consider that the intent of policy in discouraging the demolition of the front of ‘C’ graded buildings, whether this be called façadism or not, is in part to protect the authenticity of the streetscape. In our view, if most of the buildings in Drummond Street were authentic only to the depth of their facades, it would likely diminish at least to some extent the heritage value of the street.
6. We accept that the policy discouraging demolition in clause 22.05 is discretionary, and we do not say our analysis means that demolition is never to be permitted to the front two rooms of a ‘C’ graded building. However, we find we should give significant weight to the policy when we consider the decision guidelines in the policy.
7. Clause 22.05 provides four decision guidelines that the responsible authority “will consider as appropriate” before deciding on an application for the demolition of a graded building. We will discuss these in turn.

#### Degree of Significance

1. The applicant argued that the building has a relatively low level of significance, being rated as “contributory” because of the amount of change that has occurred to the façade. It noted there are no interior controls applying and, in any case, there has been substantial change to the interior.
2. The Council and respondents note that while the building is rated as contributory, the streetscape is identified as the highest level of significance. They noted that the experts agreed that this part of Drummond Street is of particular value because of its relative intactness and its role in the early development of Melbourne.
3. The applicant says this decision guideline refers only to the significance of the building and not to the streetscape. As the building is graded “C” (contributory) it say this should allow the Tribunal to exercise the discretion allowed for in clause 22.05.
4. While we agree that this guideline most likely refers to the building and not the streetscape, we observe that the following decision guideline specifically addresses streetscape considerations.

#### The character and appearance of the building or works and its contribution to the architectural, social or historic character and appearance of the streetscape and the area

1. There was agreement between the experts that ‘Zabulon Terrace’ is located within a Level 1 streetscape. There was also general agreement that this part of Drummond Street is significant because it represents the early expansion of Melbourne beyond the CBD, and that it is largely intact with many highly graded heritage buildings and with its original urban structure still clearly visible.
2. The Council and respondents say that ‘Zabulon Terrace’ is an important part of this streetscape because its external structure is still visible and the inappropriate additions are easily identified as later additions that could be removed.
3. In the hearing Mr Raworth was asked if we should consider the potential for the building to be viewed from the tall buildings of the CBD. His opinion was that this would be an unreasonable test since many buildings could be observed from above. We consider that this site is unusual in that it is directly proximate to the edge of the high-rise CBD. It will be particularly visible from above. In saying this, however, it is not a matter which is determinative in our decision.
4. In Ms Gould’s opinion, the upper dividing wall parapets and their curved rear portions are important to the understanding of the structure of the terraces and that the curved returns are relatively unusual. Mr Raworth did not agree that the parapets have any significance as they are not visible from the street and the curved return, while interesting, is not in his view particularly significant. His opinion was that the proposed roof forms that re-interpret the terrace roof structure would allow the original structure of the subdivision to continue to be read from any distant view or from above.
5. While we agree that the parapets do clearly illustrate the terrace form of the historic subdivision, there may be some scope to re-interpret the original roof forms, although this would be highly dependent on the design response.
6. Regarding views within the streetscape, we find that we must give weight to the fact that the streetscape has been graded as Level 1, and the experts agree that it is particularly significant because of its overall level of intactness and its proximity to the Melbourne CBD.

#### Whether the demolition or removal of any part of the building contributes to the conservation of the significant fabric of that building

1. Part of the applicant’s case, supported by Mr Raworth’s evidence, is that as the roof form is not visible from the public realm and the front and side walls of the front wings (ie the front two rooms) are being retained, the proposed demolition will not have an adverse impact on the significance of the heritage place. Emphasis was also placed in the proposed restoration of the front elevation, including the removal of the balcony enclosures. The evidence is that the proposed restoration and partial reconstruction of the ‘highly altered frontages’ will contribute to the long-term conservation of the heritage place.
2. The Council agreed that the removal and restoration works to the façade are positive, but says this does not justify the removal of the front part of the building.
3. We do not disagree that the restoration and reconstruction of the front elevations will make a positive contribution to the site and the wider precinct. It is an outcome supported by policy.
4. However, we find that there is not a direct nexus between the removal/restoration works and the demolition of the front part of the building, as the two are not essentially linked. We are not persuaded that such restoration and reconstruction justifies the proposed demolition, as it can still be undertaken with the retention of the front two rooms and achieve an outcome that is consistent with policy. As a result, we are not persuaded that the restoration works justify the extent of demolition proposed.

#### Whether the demolition or removal is justified for the development of land or the alteration of, or addition to, a building

1. The applicant argued that the demolition is required in order to achieve an efficient design that can meet contemporary housing needs close to the city.
2. The Council and respondents submitted that the extent of demolition is mainly driven by the extent of the two levels of basement car park, and the use of access ramps instead of a mechanical solution such as a car lift system. In their submission, if the ramps were eliminated, a similar number of vehicles could be housed within a smaller basement that would not need to extend under the front part of the building.
3. Ms Dunstan addressed this possibility in her oral evidence. She agreed it could be possible to provide access to the basement with a car lift system but noted this would amount to a different design. This is because the ramp system allows waste collection to occur on site; these vehicles cannot use a car lift system so separate arrangements would need to be made for rubbish collection. She was unable to say if this would be possible within the framework of the present design.
4. We accept that the present design could not be easily modified to reduce the extent of basement that presently extends under almost all of the front part of the building. However, we agree with the Council and respondents that it is the extent of the basement and the space required for car ramps that appears to be the basis for the almost complete removal of the front part of the building.
5. We are not persuaded we should give significant weight to the achievement of the residential development with a ramp-based basement as justification for the demolition of the front two rooms.

#### Summary and conclusion on demolition

1. We do not support the extent of the proposed demolition. It is contrary to a well-articulated and long-standing policy that addresses heritage outside of the Capital City Zone. The review site is located in a streetscape which is attributed the highest level of heritage significance. Its significance is based on the existence of a collection of buildings that are a particularly well-preserved group from a similar period or style, being the Victorian period. Mr Raworth described it as a ‘highly intact Victorian environment’.
2. Within this context, the buildings on the review site have a relatively high heritage significance. Although not individually significant in their own right (such as would be the case for buildings attributed an ‘A’ or ‘B’ grading) their ‘C’ grading confirms that they demonstrate the historical or social development of the local area. Their Victorian origin is clearly legible, notwithstanding the unsympathetic enclosure of the upper level verandahs of three buildings. Their overall form, appearance and detailing make an evident contribution to the heritage character and significance of Drummond Street and the broader precinct.
3. The purpose of HO1 includes to conserve and enhance heritage places of natural and cultural significance, and to conserve and enhance those elements which contribute to the significance of heritage places. An objective of clause 22.05 is to conserve all parts of buildings of historical, social or architectural interest which contribute to the significance, character and appearance of the building, streetscape or area. The retention of the front two rooms, as sought by policy, is consistent with the purposes/ objective.
4. The proposal to demolish all but the front and side walls of the front wings does not achieve or represent the conservation of the buildings which make a contribution to the significance of the heritage place.
5. The three-dimensional form of the front wings provides a meaningful expression and understanding of the buildings’ heritage character. The loss of these elements will remove this, and will remove forever the opportunity to restore the historic structure. As a consequence of the development, all that will remain are three walls and two chimneys. Within a Level 1 streetscape and in the context of a substantial terrace row which contributes to the heritage significance of the streetscape, this will not represent an acceptable outcome.
6. Policy is clear in seeking the retention of a greater proportion of heritage fabric. If all that is to be assessed is whether the fabric to be removed is visible from the public realm, then in a circumstance such as Drummond Street where there is a prevalence of terraces, arguably a potential outcome could be the retention of only the façades of buildings. We do not consider this to be consistent with the policies and provisions of the Planning Scheme as they apply to heritage within the municipality.
7. The unsympathetic balcony enclosures are unfortunate and substantially detract from the heritage character of the front elevation. While, of course, we endorse their removal and the consequent restoration of the previously existing form and detailing, we are not persuaded that such an outcome, (desirable as it may be) should be used in support of, or as justification for, the proposed demolition. The balcony enclosures are reversible; the demolition of original heritage fabric is not so. In our opinion, the benefit of restoring the façade does not in itself outweigh the loss of the original heritage fabric, which is an intrinsic part of the buildings’ heritage character and significance. This is because the loss of that fabric will compromise the buildings’ contribution to the heritage precinct, and the restoration of the front elevation can still occur while retaining the front wings.
8. We give considerable weight to the policy that discourages demolition of the front two rooms of ‘Zabulon Terrace’. We are not persuaded that this can be ignored because the removal may not be visible from the street, finding that the further removal of original fabric will undermine the authenticity of the remaining historic fabric. For the reasons outlined above, we find there is not sufficient justification to allow us to exercise discretion and allow the extent of demolition within the present proposal.

## Is the proposed built form acceptable within the site’s physical and planning context?

1. The assessment of the proposed built form is guided (or determined) by the provisions of DDO6 and HO1, the objectives and strategies of the MSS, the policies within the PPF and the decision guidelines at clause 65.
2. We have set out the purpose of HO1, the decision guidelines under that overlay, the design objective and requirements of DDO6, and the State PPF policies in earlier sections of these reasons. All these inform our assessment and decision.
3. A policy of particular relevance is clause 22.05. We were taken to several sections of this policy in submissions and evidence. The section on ‘Renovating Graded Buildings’ states that intact significant external fabric on any visible part of a contributory building should be preserved. A contributory building is defined in the policy as “a ‘C’ grade building anywhere in the municipality, or a ‘D’ grade building in a Level 1 or Level 2 streetscape”. According to the policy, in considering a planning application to remove or alter any fabric, consideration will be given to:

* The degree of its significance.
* Its contribution to the significance, character and appearance of a building or a streetscape.
* Its structural condition.
* The character and appearance of proposed replacement materials.
* The contribution of the features of the building to its historic or social significance.

1. In respect of designing new buildings and works or additions to existing buildings, the performance standard for ‘form’ is that 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 interpretive in a Level 3 streetscape. The policy goes on to state the following performance standard:

**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 façade will achieve concealment.

These provisions do not apply to land within Schedule 5 to the Capital City Zone (City North).

1. The policy provides definitions of words use in the performance standards. The relevant definitions in this instance are:

*Concealed* means not visible from any part of the street serving the front of the building, as defined under ‘visible’. ‘Partly concealed’ means that a limited amount of the addition or higher rear part may be visible, provided it does not dominate the appearance of the building’s façade and the streetscape.

*Respectful and interpretive* refer to design that honestly admits its modernity while relating to the historic or architecturally significant character of its context. ‘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. ‘Interpretive’ means a looser reference to historic size, form, proportions, colours, detailing and decorations, but still requires use of historic or closely equivalent materials.

*Visible* means anything that can be seen from any part of the street serving the front of the building including:

* Side elevations that are readily visible from the front street.
* Anything that can be seen from a side or rear laneway, if the laneway itself is classified as a Level 1 or 2 streetscape.

1. The proposed development is not consistent with the heritage policy. It will not be concealed from view from Drummond Street. This visibility principally arises from the existence of an open car park associated with the adjoining residential property to the south, at No. 2 Drummond Street.
2. Ms Gould opposes this outcome on the basis of its inconsistency with the policy.
3. Mr Raworth’s evidence acknowledged that the new building envelope proposed at the rear of the property will be visible in oblique views from Drummond Street. However, he considered that “its impact has been managed by upper level setbacks from the south and west sides of the site and its visually neutral character”. He further noted that the new envelope will not obscure any “key significant heritage fabric”.
4. The applicant submitted that the additions are mostly concealed from Drummond Street; there is a narrow aperture within the street and the ability to see the additions is very limited; and the visibility of the additions does not diminish the significance of the heritage building. While acknowledging that the proposed development does not meet the preferred outcomes, it was submitted that there is capacity in the policy to allow this.
5. The applicant further noted that the outcome proposed here would be compliant with the policy if it were in a Level 2 or 3 streetscape. In respect of this submission, clause 22.05 states that higher rear parts of a new building, and of an addition to an existing graded building, should be partly concealed in a Level 2 and 3 streetscape. According to the policy, ‘partly concealed’ means that a limited amount of the addition or higher part may be visible, provided that it does not dominate the appearance of the building’s façade and streetscape.
6. The qualification in policy regarding the consideration of whether the addition or higher part would dominate the appearance of the building’s façade and streetscape does not apply in the context of a Level 1 streetscape. The policy seeks concealment from Drummond Street. It is common ground that the proposal does not achieve this. Rather, it will be visible principally from the south-west and to a notably lesser degree, from the north-west.
7. The extent of the development’s visibility in the Drummond Street streetscape is not acceptable. It does not comply with policy, and the extent of visibility is, in our opinion, substantial. The scale and massing of the development will detract from the heritage buildings. Although the ‘gap’ provided by the neighbouring car park may arguably be a constraint on the nature of development which can occur on the review site, this is a contextual consideration which needs to be responded to, and will influence the siting, height and form of any building.
8. The unacceptability of the proposed built form is compounded by its failure to comply with the parameters of DDO6. As demonstrated in Ms Heggen’s evidence, the proposal exceeds the nominated building height in respect of all ‘areas’ of DDO6 that affect the review site. The extent to which the height is exceeded ranges between 1.0 and 5.0 metres. Again, the visibility of these parts of the building is greatest from the south-west, across the neighbouring car park.
9. In concluding that an acceptable outcome is achieved, Ms Heggen referred to views being ‘glimpses’ of a simple horizontal form and the two-storey wing wall extension that is set back 16 metres from the frontage. Ms Heggen considers these additions to be recessive and will not compete with the retained decorative parapet and retained heritage wing wall.
10. Acknowledging the exceedance of the maximum building heights specified in DDO6, Ms Heggen considers that the consequences are limited and only arise from the glimpses obtained through the narrow view corridor to the south. She further considers that the effect of perspective will be to reduce the actual perceived heights to less than what is scaled off the plans.
11. The applicant also submitted that the existing historic façade of the buildings itself exceeds the maximum building height set out in DDO6, and that the new built form is in proportion to this facade and will not visually dominate it.
12. Amongst others, the objectives of DDO6 seek to reinforce the built form character of the area as being essentially of low-rise buildings, and to ensure that any redevelopment or new development is compatible with the scale and character of adjoining buildings and the area. The proposal does not meet these objectives. The exposure of the addition in views from Drummond Street from the south-west accentuates the effect of the building’s non-compliance with the MBH. Consequently, it will detract from the low-rise built form character of the area.
13. In considering the degree of visibility of the new built form, a comparison was made to the new extensions behind Medley Hall, at No. 48 Drummond Street and now part of the University of Melbourne. This elaborate former mansion is on the Victorian Heritage Register and also within the same Level 1 streetscape. It has an extension to the rear that appears to be slightly taller than the historic building and is clearly visible from the street through a gap between buildings.
14. The applicant submitted that this illustrated, in practice, that discretion has been applied when dealing with gaps between buildings, and that a similar discretion should be applied in the present case.
15. The Council and respondents submitted that while it is an example of discretion, the level of visibility is less, and the design of that extension is more visually recessive than the proposed built form which has open balconies facing Drummond Street.
16. The Tribunal agrees that there should be a level of discretion applied in the present case, because we read the control requiring concealment as a general control applying to buildings in a typical streetscape. We do not regard the view afforded though the opening to a car park as a typical feature in a streetscape.
17. However we also find that the proposed built form with its open balconies and relatively tall form will not be visually recessive, and will not provide a neutral backdrop similar to the extensions behind Medley Hall.
18. As a result, we find the visibility of the rear additions from the south-west in Drummond Street is excessive and inconsistent with policy. It is not an acceptable outcome and will detract from the heritage significance of both the Drummond Street streetscape and the broader heritage place.
19. With respect to the visibility of the rear extensions from the north-west, we find that the degree of visibility is not significant and that it would be difficult to perceive from the street.

## Is adequate car parking provided and will there be any unacceptable traffic impacts?

1. The land is within PO12, with the parking objective to be achieved being to identify appropriate car parking rates for residential development in specific inner city areas of Melbourne. Pursuant to clause 2.0 of the schedule to PO12, a permit is required to provide car parking spaces in excess of the maximum number specified in the Table which forms part of the schedule. According to the table, a maximum of one car space per dwelling is required.
2. At the commencement of her oral evidence, Ms Dunstan clarified that the second car space shown on the plans as being allocated to Apartment 16 should be assigned as a service vehicle space. Subject to this change, the proposal would meet the relevant car parking requirement, being a maximum of one car space per dwelling and no permit in respect of the car parking provision would be required.
3. The Council’s traffic engineers have not raised any concerns regarding the proposal’s traffic impacts. The referral comments summarised in the officer’s report refer to the following:
   * on the basis of the site’s proximity to the CBD, each dwelling in the development is expected to generate up to three vehicle movements per day, although rates of one to two vehicle movements per day have been used in such locations
   * based on three vehicle movements per dwelling per day, a daily generation of 63 movements is predicted.[[17]](#footnote-17) As peak hour generation rates are usually 10% of the daily total, six movements can be expected in the peak hour. This is similar to the existing offices.
   * the traffic generation is considered low and is not expected to pose any further issues for the surrounding road network.
4. Ms Dunstan’s evidence is, similarly, that six vehicle movements can be expected in the peak hour, adopting a rate of 0.3 vehicle trips per dwelling per hour. Her assessment is that the development is conservatively expected to generate in the order of 60 traffic movements per day. Ms Dunstan stated that Elliot Place has an environmental capacity of 300 vehicles per day (or 30 movements in the peak hour). This is on the basis that it narrows to a single-width section adjacent to Victoria Street.[[18]](#footnote-18) Ms Dunstan’s evidence is that, post-development, Elliot Place is expected to carry 14 vehicles in the AM peak and 17 vehicles in the PM peak, and that this level of traffic can be readily accommodated within the single lane section. Based on her analysis, Ms Dunstan is satisfied that the proposed traffic impacts to Elliot Place will ensure its environmental capacity is not exceeded and that the additional traffic will not have a detrimental impact on the safety or operation of this street.
5. We have no evidence to the contrary. On the basis of the analysis undertaken by the Council’s traffic engineers and by Ms Dunstan, we conclude there will not be any unacceptable traffic impacts that would justify an amendment to the proposal or the refusal of a permit. Further, as was noted in the evidence, the intersection of Elliot Place and Victoria Street benefits from ‘Keep Clear’ linemarking to facilitate vehicle movements out of Elliot Place.[[19]](#footnote-19)

## amenity

1. The submissions and evidence addressed both off-site amenity impacts and the level of amenity the development will provide for occupants. We will not make any findings in respect of these as, having regard to our conclusions regarding the proposed demolition and built form, a different design response is required. Fundamental to this is retention of the front two rooms of the buildings, and the adoption of a building envelope for the rear which more closely aligns with the policy in respect of concealment, and the MBH of DDO6. This will have implications for the resultant design, the internal layout of proposed dwellings and building envelope. An assessment of the amenity impacts and on-site amenity will need to be undertaken at that time and within that context.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

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| Bill Sibonis  **Senior Member** |  | Stephen Axford  **Member** |

1. Mr Harrison also read out submissions of Ms B Pesel and Mr S Ayer [↑](#footnote-ref-1)
2. Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision. [↑](#footnote-ref-2)
3. The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons. [↑](#footnote-ref-3)
4. Settlement [↑](#footnote-ref-4)
5. Housing [↑](#footnote-ref-5)
6. Housing [↑](#footnote-ref-6)
7. According to clause 22.05, grade ‘A’ buildings *are of national or state importance, and are irreplaceable parts of Australia’s built form heritage. Many will be either already included on, or recommended for inclusion on the Victorian Heritage Register or in the Register of the National Estate.* Grade ‘B’ buildings *are of regional or metropolitan significance, and stand as important milestones in the architectural development of the metropolis. Many will be either already included on, or recommended for inclusion on the Register of the National Estate.* (Tribunal’s footnote) [↑](#footnote-ref-7)
8. For example, *Double LZ Development Pty Ltd v Moreland CC* (Includes Summary) (Red Dot) [2015] VCAT 1558 [↑](#footnote-ref-8)
9. *Planning and Environment Act 1987* [↑](#footnote-ref-9)
10. The Planning Scheme does not currently include a Municipal Planning Strategy. Transitional provisions are detailed at clause 71.03. Pursuant to this clause, where an MSS is included at clause 21 of the Planning Scheme, the provisions of clause 23.02 apply. These provisions require responsible authorities (and, upon review, this Tribunal) to take the MSS into account before making decisions about planning applications. [↑](#footnote-ref-10)
11. Pursuant to clause 23.01, clauses 21 and 22 of the Planning Scheme form part of the PPF. Where a provision of the Planning Scheme requires consideration of the PPF, that consideration must include Clauses 21 and 22. A reference in the Planning Scheme, including any incorporated document, to the State Planning Policy Framework or the Local Planning Policy Framework is to be taken to be a reference to the Planning Policy Framework. Planning Policy Framework is to be taken to include the Local Planning Policy Framework. [↑](#footnote-ref-11)
12. Section 4(d) of the *Planning and Environment Act 1987.* [↑](#footnote-ref-12)
13. Pursuant to section 3 of the *Planning and Environment Act 1987*, the definition of the term ‘development’ includes “the demolition or removal of a building or works”. [↑](#footnote-ref-13)
14. The evidence includes a reference to clause 21.06-3 of the MSS. [↑](#footnote-ref-14)
15. Melbourne Planning Scheme Amendment C258 – Panel Report, 21 May 2019, pp 178-179 [↑](#footnote-ref-15)
16. [2016] VCAT 2062 [↑](#footnote-ref-16)
17. This assessment was based on the planning application plans. The substituted plans reduce the number of dwellings to 20. This would result in a consequential reduction in the number of vehicle movements to 60. [↑](#footnote-ref-17)
18. The evidence refers to clause 3.2.2 of AS2890.1-2004 *Parking Facilities, Part 1: Off-street parking* which states “As a guide, 30 or more movements in a peak hour (in and out combined) would usually require provision for two vehicles to pass on the driveway, ie a minimum width of 5.5 metres. On long driveways, passing opportunities should be provided at least every 30 metres. Reversing movements to public roads shall be prohibited wherever possible. When two-way traffic volumes exceed 30 vehicles per hour, passing areas should be provided to accommodate simultaneous two-way traffic flow. [↑](#footnote-ref-18)
19. According to Ms Dunstan, the introduction of ‘Keep Clear’ linemarking requires at least 40 vehicle movements per hour, and this would necessitate exceeding the capacity of Elliot Place. The existence of this linemarking in a circumstance where there would be 17 vehicle movements in the peak hour is a benefit and will facilitate traffic movements out of Elliot Place. [↑](#footnote-ref-19)