

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1498/2022
PERMIT APPLICATION NO.TP-2022-245

CATCHWORDS

Section 77 *Planning and Environment Act 1987*(Vic) Melbourne Planning Scheme, Heritage Overlay – Schedule 992, Design and Development Overlay – Schedule 6, Mixed Use Zone, building height, World Heritage Environs Area, low rise, medium rise, overshadowing, heritage streetscape, urban design.

APPLICANT

Royal Garden Manor Pty Ltd

RESPONSIBLE AUTHORITY

Melbourne City Council

RESPONDENTS

Andrew Richards

Australian Destination Managers Pty Ltd

Carlton Residents Association Inc

David Fuscaldo

Elena Arduca

Elizabeth Mary Hunt

Elizabeth Pearce

Elizabeth Quinn

Giovanni Fuscaldo

Ian Bird

Jeffrey Watson

Joo Kiah Chong

Karen Hodgson

Mark Furlong

Mary Healy

Phillip George

Robyn Gregory

Royal Historical Society of Victoria

Lynette Cracknell & Warren Green

REFERRAL AUTHORITY

Head, Transport for Victoria

SUBJECT LAND

1-23 Rathdowne Street
CARLTON VIC 3053

HEARING TYPE

Hearing

DATE OF HEARING

16 - 20 and 23 - 27 October 2023

DATE OF ORDER

22 November 2023



CITATION

Royal Garden Manor Pty Ltd v Melbourne
CC [2023] VCAT 1271

ORDER

Amend permit application

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Bates Smart
 - Drawing numbers: TP00.000 Revision C, TP01.00 Revision B, TP01.01 Revision B, TP03.00 – TP03.07, TP03.09, TP03.B1, TP03.B2 TP09.01, TP09.02, TP10.00, TP10.01, TP11.01 – TP11.03 and TP23.01; all Revision C.
 - Dated: 21 August 2023

No permit granted

- 2 In application P1498/2022 the decision of the responsible authority is affirmed.
- 3 In planning permit application TP-2022-245 no permit is granted.

Alison Glynn
Presiding Member

Lorina Nervegna
Member



APPEARANCES

For applicant: Royal Garden Manor Pty Ltd

Paul Conner KC, with Jason Kane barrister on instruction from Hunt and Hunt Lawyers.

They called the following witnesses:

- John Kiriakidis, traffic engineer
- Bryce Raworth, heritage consultant
- Carolynne Baker, heritage consultant
- David Crowder, town planner
- Julia Bell, urban designer.
- Johnny Wilkinson, 3D visualisation expert.
- Claudia Fleuter, project architect¹.

For responsible authority: Melbourne City Council

David Song, town planner. He called the following witnesses:

- Jim Gard'ner, heritage consultant
- Meredith Gould, heritage consultant

For referral authority: Head, Transport for Victoria

No appearance

For respondents:

- | | |
|-------------------------------------|---------------------------------------|
| • Carlton Residents Association Inc | Peter Sanders and William Blair Healy |
| • Elena Arduca | Elena Arduca, in person |
| • Elizabeth Mary Hunt | Elizabeth Hunt, in person |
| • Elizabeth Pearce | Elizabeth Pearce, in person |
| • Elizabeth Quinn | Jim Quinn |
| • Ian Bird | Ian Bird, in person |
| • Jeffrey Watson | Jeffrey Watson, in person |
| • Mark Furlong | Mark Furlong, in person |
| • Mary Healy | Mary Healy, in person |

¹ Ms Fleuter provided a description of the architectural drawings forming the proposal at the commencement of the hearing only.



- Phillip George and Andrew Richards James Livingston, town planner of JLP Melbourne
- Robyn Gregory Robyn Gregory, in person
- Royal Historical Society of Victoria Ian David Wight
- Lynette Cracknell & Warren Green Lynette Cracknell and Warren Green, in person
- Australian Destination Managers Pty Ltd. Beau O'Brien
- Karen Hodgson, Joo Kiah Chong, Giovanni Fuscaldo and David Fuscaldo. No appearance



INFORMATION

Description of proposal	<p>The proposal includes the construction of a part three, five and eight storey building to include a café and offices at the south-east portion of the building, three storey townhouses across the north of the site and apartments above both the commercial uses and townhouses. The building forms a U shape around a forecourt to face Rathdowne Street in the centre of the site. Further details are set out in the reasons.</p> <p>Two levels of basement car parking are proposed with access to Elliott Place to the west. The basement includes car parking for 91 car spaces for the 67 proposed dwellings. 23 car parking spaces are proposed for the commercial uses.</p>
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987 (Vic)</i> – to review the refusal to grant a permit.
Planning scheme	Melbourne Planning Scheme
Zone and overlays	<p>Mixed Use Zone (MUZ)</p> <p>Design and Development Overlay – Schedule 6 (DDO6)</p> <p>Heritage Overlay – Schedule 992 (HO992)</p> <p>Heritage Overlay – Schedule 103 (HO103)</p> <p>Parking Overlay – Schedule 12 (PO12)</p> <p>The site abuts Victoria Street which is a road in a Transport Zone – Schedule 2 (TRZ2).</p>
Permit requirements	<p>Use of office and café in MUZ.</p> <p>Construction of two or more dwellings, as well as the café and offices in MUZ.</p> <p>Buildings and works in DDO6.</p> <p>Buildings and works, including demolition in HO992 and HO103.</p> <p>Car parking provision above the maximum parking rate set out in PO12.</p> <p>Alteration of access to a road in TRZ2.</p>



Key relevant scheme policies and provisions	Clauses 02.01-02.04, 11, 15.01, 15.02, 15.03, 16.01, 17.01, 17.02, 18, 32.04, 43.01, 43.02, 45.09, 58, 65 and 71.02-3.
Land description	The site is located at the north-west corner of Rathdowne and Victoria Streets, Carlton. It has a 60 metre frontage to Rathdowne Street and a 51 metre frontage to Victoria Street. The site contains two double storey commercial buildings. Further details are set out in reasons.
Tribunal inspection	We undertook an accompanied inspection of the site, 21 Victoria Street and 9/2 Drummond Street before the commencement of day 2 of the hearing. We also undertook a number of unaccompanied inspections of the surrounding streets and Carlton Gardens before and after the hearing.



REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 Royal Garden Manor Pty Ltd ('the applicant') is seeking a planning permit to construct a part three, five and eight storey building at the north-west corner of Rathdowne and Victoria Streets, Carlton³ ('the review site'). The proposed building is for the use of a café, offices and 67 dwellings, in a mix of townhouse and apartment form. The proposal also includes two levels of basement car parking that provides car parking for the proposed uses.
- 2 Melbourne City Council ('the council') has refused to grant a planning permit for the proposal primarily because it considers the proposed building does not provide an acceptable response to the heritage and urban design provisions of the Melbourne Planning Scheme ('the planning scheme') that apply to the site. The council also opposes the provision of parking associated with the proposed dwellings as it exceeds the maximum standard requirement for car parking associated with dwellings at this location.
- 3 A number of local residents and community groups oppose the proposed use and development. They share the council's position that the proposed building is not an acceptable response to the planning scheme provisions that apply to the review site. This is particularly in context of what they say is the low rise character sought for Carlton, north of Victoria Street and the proximity of the site to the Royal Exhibition Buildings and Carlton Gardens ('REB' and 'CG').
- 4 The review site sits in an area defined by Heritage Victoria as part of the World Heritage Environs Area ('WHEA') being land surrounding the REB and CG, which are inscribed together on the World Heritage List by the United Nations Educational, Scientific and Cultural Organization (UNESCO). The REB and CG are also listed on the National Heritage List and the Victorian Heritage Register.
- 5 The applicant submits that the proposal is respectful to its heritage and urban design context and offers benefits to the development of Melbourne through the provision of additional housing and commercial use in a highly accessible location. The applicant submits that on balance of competing heritage, urban design and housing policies the proposal achieves net community benefit.
- 6 We set out reasons below that we find demolition of the existing building can be supported but that the proposed building does not acceptably

² 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.

³ The review site has a street address of 1-23 Rathdowne Street but includes empty buildings facing both Rathdowne and Victoria Streets.



respond to its surrounding heritage and built form character. In summary our findings are:

- The heritage and urban design policy weighs heavily against the review site's potential derived from its proximity to the centre of Melbourne and the services of the area.
- We find the exposure of the 8 storey form, and the forecourt facing Rathdowne Street, to be discordant elements that are contrary to the design objective in DDO6 and in policy at clause 11.03-6L-02 to reinforce and respond to the built form character of the area as being essentially of low-rise buildings around the CG.
- We find the height, combined with the breadth of the building at its corner of Rathdowne and Victoria Streets too dominating for its location. This is particularly when viewed from Rathdowne Street, where the view will include the exposed 8 storey form to the north side of the 'corner' form, facing the forecourt.
- With a reduced corner building height we find there is the need to better recess the upper levels behind this corner when viewed from both Rathdowne and Victoria Streets to accord with the objectives of DDO6 and associated design and heritage policy. The streets require different responses according to their sensitivity.
- We find that the extent of higher building exposed to Rathdowne Street, while less in the northern section of the building, remains too abrupt for the lower rise surrounding built form and the low rise urban character sought for this area.
- In Victoria Street we find a 4 storey street wall at the western end of Victoria Street with a 5 metre setback to upper form could be a reasonable outcome to an overall lower building form, more in keeping with the design objectives of DDO6, acknowledging that policy of the planning scheme provides for medium rise development in Victoria Street.
- We are satisfied that the loss of glimpses and partial views of the REB flagpole, dome and drum from McKenzie Street are acceptable in context of the DDO6 provisions and the existing adopted WHEA management plan.
- We do not make a definitive finding on what a maximum height for a future proposal might be. It will depend on the design response proposed.
- We are not satisfied that the provision of resident car parking above the maximum provision set out in the Parking Overlay is sufficiently justified.



- The proposed internal amenity for future occupants has some limitations in use of limited balconies and potentially excessive room depths to some dwellings.

WHAT ARE THE KEY ISSUES?

7 From the submissions, evidence and material tabled we find it firstly necessary to set out what is proposed and then our analysis of the planning scheme framework in which we need to assess the proposal. After examining this, we then find there are several questions we need to determine:

- Is the demolition of the existing building acceptable?
- Does the proposed new building respond acceptably to the planning scheme framework, having regard to the physical context:
- Is the provision of car parking for the proposal acceptable?
- Does the proposal result in unreasonable off-site amenity impacts?
- Does the proposal provide acceptable on-site amenity for future occupants?
- Does the proposal result in net community benefit?

WHAT IS THE EXISTING PHYSICAL SETTING OF THE PROPOSAL?

8 As set out in figure 1 below, the site is located at the north-west corner of Rathdowne Street and Victoria Street.



Figure 1 - Aerial image of the site (annotated in red hatch) and immediate surrounds.
Source: Nearmap image date 3 September 2023.

9 The site includes three existing, vacant office and warehouse buildings. This includes the former Cancer Council Victoria building at corner of the two streets and a two storey office building facing Victoria Street, abutting

the eastern side of Elliott Place. North of the former Cancer Council Victoria building is a 3.6 metre wide space referred to as Rental Terrace. In the 1870s and 1880s this was a laneway with terrace houses to its north and south⁴, but it is not listed as a road by the council. The space is therefore not a road and forms part of the private land of the review site. North of this is a brick warehouse building that abuts Rathdowne Street as well as the southern boundary of 25 – 27 Rathdowne Street. This warehouse building includes various extensions that interface to Elliott Place to its rear.

- 10 Much of the existing Rathdowne Street frontage, south of Queensberry Street comprises a 2, 3 and 4 storey street wall that varies in height depending upon the height of storeys. For example, north of the site are two Edwardian era buildings of roughly a three storey height and designated as having heritage significance⁵. The immediately abutting site has garden setting with a generally 3 storey façade that is 13.4 metres high from street level to its parapet wall abutting review site. In modern building terms, a 4 storey building may fit within the same building height. North of these is a modern five storey apartment building at 33 Rathdowne Street, with its lower levels recessing back from street level, and a recessed sixth rooftop terrace and communal space⁶. There are then a series of lower 2 – 3 storey buildings at 35 – 47 Rathdowne Street.
- 11 Further north, parties agree the Exhibition Mews building at 51 – 67 Rathdowne Street is about 15 metres high at the southern end of its street wall, reducing in height as the land rises to the north. This building therefore reads as a partly elevated 4 storey building that in the planning scheme context is 5 storeys at its southern end noting that here the lower level protrudes more than 1.2 metres above ground level. There is then a tall tower building at the corner of Queensberry Street, but all experts agree that this is an anomaly. It exists in the streetscape but has derived from a former Commonwealth office building and is not a building that was established in context of its setting or should be used as a precedent for new building.⁷
- 12 West of Elliott Place is a two storey modern office building used as a fitness centre and then a heritage building at the north-east corner of Drummond Street and Victoria Street. This comprises a two storey Victorian terrace building connected to an effective four/five storey height⁸ Moderne building to its east, that we understand was constructed for the

⁴ As explained in the heritage evidence statement of Ms Gould – Paragraphs 50 – 51.

⁵ At 25-27 Rathdowne Street and 29-31 Rathdowne Street.

⁶ At 33 Rathdowne Street.

⁷ We do not know the precise history of this building but are aware that Commonwealth owned sites are not bound by State planning laws.

⁸ We understand the BoM building has 3 habitable levels to the street, but is elevated to appear as an effective 4 storey street wall. There is an upper, recessed level above, forming part of 9/2 Drummond Street.



Bureau of Meteorology ('BoM') in the 1930s and was referred to by parties as the former BoM building. This building contains a number of apartments, some of which are owned by objector parties. North, in Drummond Street, is then a series of two storey, Victorian terraces with designated heritage significance.

- 13 South of Victoria Street is a mix of commercial and residential buildings, some of which are distinctly taller than buildings north of Victoria Street. The buildings here occupy sites that transition from the north/south orthogonal placement of buildings north of Victoria Street, to an angled alignment, following the original Hoddle Grid that commenced at La Trobe Street further south. The land directly south of Victoria Street sits in what is now designated by policy of the Melbourne Planning Scheme as being part of the Hoddle Grid. The ordering of the lots to align with the Hoddle Grid also results in a small pocket park / landscape space at the south-west corner of Victoria Street and Exhibition Street referred to as the Exhibition Street Reserve.
- 14 East of Rathdowne Street is the CG, with land to the south-east of the intersection forming a triangular site occupied by a two storey heritage building and gardens of the Royal Society of Victoria. The site sits to the south-west of the CG and REB complex that is more broadly depicted in figure 2 below.

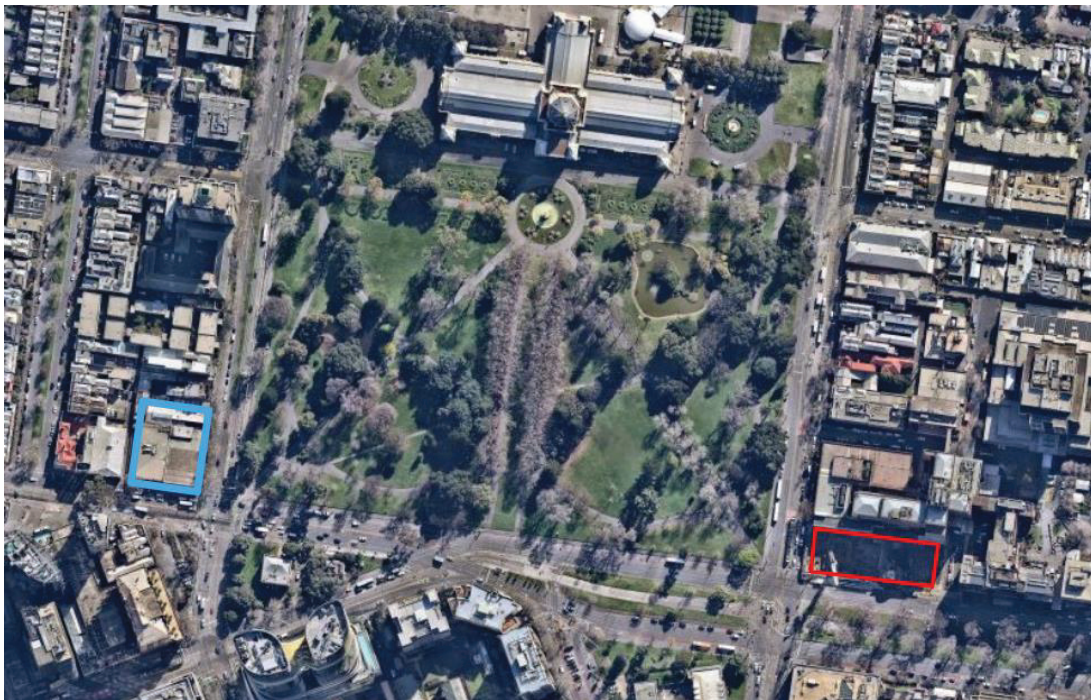


Figure 2 -extract from Ms Baker's evidence showing the review site (outline blue) relative to the REB and CG. We have added an annotation of the Aikenhead building location.

- 15 In this broader context the north corner of the original Hoddle Grid is visible, being the corner of La Trobe Street and Spring Street. This generally aligns with the widening of Victoria Street into Victoria Parade and the main pedestrian avenue to the REB tower, to its direct north.

WHAT IS PROPOSED?

- 16 The proposed building is 8 storeys and has overall building height of 29.7 metres (excluding the rooftop plant and lift overrun). The building forms a U shape at ground level facing Rathdowne Street with a ground level entry space that is 14 metres wide and nearly 24 metres deep. The building footprint also creates a new 4.5 metre wide setback to its northern boundary with 27 Rathdowne Street and a 2.7 metre setback to much of its western boundary to Elliott Place, so as to provide wider access from this rear laneway. This lane is then used to access a proposed 2 level basement for car parking and services. It also provides a loading dock for rubbish collection and the commercial uses.
- 17 Figure 1 below sets out the ground floor footprint. Along Victoria Street is proposed office space with a café at the corner of Rathdowne Street. A second level of office space is proposed above the ground level offices. The north-east sector of the building comprises 7 x 3 level townhouses, three facing Rathdowne Street and four facing a proposed 4.5 metre wide walkway and landscape space to the north. Each of these townhouses has a small front yard and pedestrian entry. At ground level each of the townhouses comprises bedroom or study space. A living space to each townhouse is provided at a mid-level with further bedroom space at their top level.
- 18 The remaining 60 dwellings form apartments accessed from the central forecourt and sitting above the development set out. By example, this means there are apartments directly above the café and second level office, and also above the four terrace dwellings facing north.
- 19 All of the dwellings, including the townhouses, have access from the central lobby and lifts. At first floor there are also communal facilities including a gymnasium, yoga room and 15 metre long swimming pool that abut the interface to Elliott Place to the west.



Figure 3 - Ground floor layout of the proposed building.

- 20 The building includes the following street wall heights:
- Rathdowne Street, south of the forecourt: 19.4 – rising to 19.8 metres at the corner with Victoria Street (5 habitable storeys, rising to an effective 6th storey at the corner).
 - Rathdowne Street, north of the forecourt: 11 – 12 metres (3 storeys), set in behind small front yards.
 - Victoria Street: 16.55 metres at the western edge, rising to 19.8 metres at the corner with Rathdowne Street (4 habitable storeys, rising to 5, with an effective 6th storey at the corner).
 - Elliott Place: 9.6 metres at its northern end, rising to 16.55 metres at the corner with Victoria Street
- 21 The upper three levels of the building are set back 5 metres behind the street wall to Victoria Street and 11.5 metres behind the street wall to Rathdowne Street, south of the forecourt. West of the forecourt the building rises to the full 8 storeys, with this extending over the north arm of the building but with a 17.45 metre setback to Rathdowne Street for 3 levels above the 3 storey townhouses and then the top two levels being set back 23.9 metres from Rathdowne Street, so as to be in line with the western edge of the forecourt. At the upper levels the building is set back 7.5 metres from its northern boundary and 3.0 metres from Elliott Place to the west.

WHAT IS THE PLANNING SCHEME FRAMEWORK IN WHICH WE NEED TO ASSESS THE PROPOSAL?

Zoning

- 22 The review site, and most of the immediate surrounds, is in the MUZ. This zone sits within the suite of residential zones of the planning scheme and has purposes that include:
- To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.
 - To provide for housing at higher densities.
 - To encourage development that responds to the existing or preferred neighbourhood character of the area.
- 23 The use of a dwelling does not require a planning permit in this zone but the development does. The café and office require a permit for both use and development. As an apartment building of five or more storeys the building must also meet the requirements of clause 58, as directed by the MUZ at clause 32.04-6. CG, to the east of Rathdowne Street is in the Public Park and Recreation Zone ('PPRZ'). Victoria Street is in a Transport Zone – Schedule 2 ('TRZ2') and land to the immediate south is also in MUZ, including the small Exhibition Reserve and the Royal Historic Society building. The Capital City Zone – Schedule 1 ('CCZ1') commences south of La Trobe Street.

Overlays

Design and Development Overlay

- 24 Design and Development Overlay – Schedule 6 ('DDO6') provisions that apply to the site and surrounds as set out in figure 4 below.

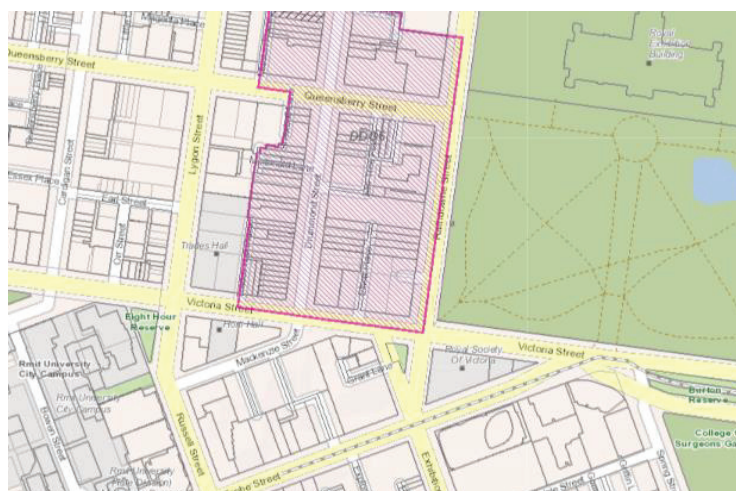


Figure 4 - Location of DDO6, sourced from VicPlan website.

- 25 DDO6 sits as a schedule to clause 43.02 – Design and Development Overlay, that has two purposes:
- To implement the Municipal Planning Strategy and the Planning Policy Framework.
 - To identify areas which are affected by specific requirements relating to the design and built form of new development.
- 26 The second of the clause 43.02 purposes to address the design and built form of new development is consistent with the comments in Mr Gard’ner’s oral evidence that heritage overlay provisions guide the conservation and enhancement of heritage places, while the DDO more specifically sets a framework for what future form of development is sought in an area. We concur with this comment although in this instance the future direction, as set out in the design objectives and provisions of DDO6, is intertwined with the heritage character of the area. We also note that all four heritage experts who presented at the hearing commented on the response of the proposed building to DDO6 as well as the heritage provisions.
- 27 DDO6 – Carlton Area has four design objectives:
- 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.
- 28 Clause 43.02 – 2 sets out that a permit is required to construct a building or carry out works and that the buildings and works must be constructed in accordance with any requirement in the schedule. The clause then sets out that ‘a permit may be granted to construct a building or construct or carry out works which are not in accordance with any requirement in a schedule to this overlay, unless the schedule specifies otherwise’.
- 29 Clause 43.02-6 has decision guidelines that must be considered ‘as appropriate’ when deciding on an application in accordance with the clause. Of particular relevance these include:
- The Municipal Planning Strategy and the Planning Policy Framework.
 - The design objectives of the relevant schedule to this overlay.
 - The provisions of any relevant policies and urban design guidelines.



- Whether the bulk, location and appearance of any proposed buildings and works will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
 - Whether the design, form, layout, proportion and scale of any proposed buildings and works is compatible with the period, style, form, proportion, and scale of any identified heritage places surrounding the site.
 - Whether any proposed landscaping or removal of vegetation will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
 - The layout and appearance of areas set aside for car parking, access and egress, loading and unloading and the location of any proposed off street car parking.
- 30 The decision guidelines also refer to addressing ‘any other matters specified in a schedule to this overlay’. In this instance there are no specific decision guidelines relevant to the review site, but there is a policy reference under the Decision Guidelines heading to the World Heritage Environs Area Strategy Plan: Royal Exhibition Building and Carlton Gardens (Department of Planning and Community Development, 2009) (‘the 2009 WHEA Strategy’). This emphasises the interconnection between DDO6 and heritage considerations.
- 31 Only one ‘requirement’ is set out in DDO6, being ‘Building height’ at sub-clause 2.1. This requirement sets out material that must be provided in an application, including that material must be provided to demonstrate how the proposed building achieves each of the design objectives and built form outcomes of the schedule. The requirement then states:
- Buildings or works should not exceed the *Maximum Building Height* specified in the table to this schedule.
- and, that
- An application to exceed the *Maximum Building Height* 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.
- 32 The requirement then establishes a definition of building height, specific to the schedule which is that ‘building height is the vertical distance between the footpath or natural surface level at the centre of the site frontage and the highest point of the building, with the exception of architectural features and building services.’
- 33 The table in the schedule sets out the maximum building heights that correlate with sub-precincts of DDO6 set out in the planning scheme maps. A graphic approximation of the DDO6 sub-areas application is set out in Ms Bell’s evidence that we have extracted below in figure 5.





Figure 5 - location of DDO6 height areas.

- 34 At the hearing the council tabled a definition plan of the Melbourne Planning Scheme maps to confirm the precise areas of A10, A12 and A14 that apply to the site. Based on the planning scheme definition plans:
- Area A10 applies a maximum building height of 8 metres where the building abuts Elliott Place for a depth of 3.4 at the northern boundary of the site, expanding to 3.6 metres at a point 10.7 metres north of Victoria Street. The built form outcome for this area states: ‘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.’
 - Area 12 applies a maximum building height of 10 metres to the front 10.7 metres of land facing Victoria Street and the front 9.7 metres of land facing Rathdowne Street. The built form outcome for this area states: ‘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’.
 - Area 14 then applies a maximum building height of 16 metres to the remaining, central section of the site. The built form outcome for this area states: ‘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.’
- 35 We agree with submissions and evidence presented that the built form outcomes for Area 14 are confusing and do not appear to be relevant to the site of our review. The review site is not in or close to Cardigan Street and

not in Queensberry Street. We agree that as they are not relevant the specific outcomes can be deemed to be met. In determining if a building in Area 14, above 16 metres is acceptable, there remains a need to determine that the design objectives of DDO6 and clause 43.02 are met, having regard to the decision guidelines of clause 43.02.

- 36 The applicant also submits that DDO6 is a somewhat old provision, emphasised by elements that appear to be out of date with the overlay's application, such as the built form outcomes for Area 14. The applicant submits that the DDO6 applies to a broad area and is somewhat blunt in its application, using only building height.
- 37 We must apply the planning scheme as we find it, not to give lesser weight because a provision has been in the planning scheme for a long time. There are no strategic planning policy documents referred to by any party that indicate that the heights of DDO6 are no longer relevant, or require review other than expert evidence put to us that the built form outcome of Area 14 is illogical. Mr Gard'ner commented that he has made submissions in other forums that this element of DDO6 requires deletion or correction.
- 38 The Melbourne Planning Scheme has been the subject of reviews and DDO6 itself was amended after the introduction of the 2009 WHEA strategy. A current review of the WHEA area that we discuss further below, proposes some changes to the DDO6 area by including an area that is currently not covered by DDO6, but the draft document does not otherwise propose to change the DDO6 provisions. As commented by Mr Livingston in his submissions, the more recent work in reviewing the WHEA strategy has not undermined the current DDO6. We address this review further below in discussion of relevant heritage provisions and policy.
- 39 There is nothing before us to indicate that DDO6 is out of date with current the municipal planning strategy ('MPS') or the planning policy framework ('PPF') set out in the planning scheme. We say this having regard to our review of the MPS and PPF below.
- 40 Some conjecture was also raised in submissions as to whether the need to be compatible with adjoining buildings in 'the area' and to reinforce the built form character of 'the area' that 'the area' would include the REB and CG, as well as land south of Victoria Street. Given the objectives are for the DDO6 provision we consider it relevant and logical that 'the area' is the area of the DDO6. Broader urban design policy and clause 43.02 still requires us to have regard to all of the site's surrounding area that would sit both in and out of the DDO6 area.

Heritage overlays

- 41 The site is located in two heritage overlays HO992 and HO103. It is common ground that HO103 is a mapping error, with this overlay seeking



to identify land to the direct north of the review site. Current Amendment C405 to the planning scheme implements findings of the Carlton Heritage Review 2021 and proposes to correct this error. Parties agree that HO103 is not specifically relevant to the considerations before us, other than to note that the site to the direct north is the subject of a site specific heritage overlay. The WHEA also applies to HO103 as well as HO992.

- 42 HO992 is a planning scheme tool to manage the WHEA. The WHEA derives from the 2009 WHEA Strategy Plan that was prepared by Lovell Chen in 2009 for the Heritage Council of Victoria. The 2009 WHEA Strategy Plan and other management plans for the REB and CG form part of obligations by government to manage the REB and CG after their inscription into the UNESCO world heritage listing. As set out in the 2009 WHEA Strategy plan:

The declaration of the WHEA arises out of an amendment made in 2004 to the *Heritage Act 1995 (Vic)*, to protect the World Heritage values of the place. The amendment provided for the declaration of a 'World Heritage Environs Area' in the vicinity of the Royal Exhibition Building; the amendment also provided for the development of a Strategy Plan for the WHEA.

The WHEA additionally derives from the requirement of the 'Operational Guidelines for the Implementation of the World Heritage Convention' (2005), to which Australia is a State Party, and which provides for the identification of a 'buffer zone' for World Heritage properties.

...

The WHEA acts as a 'buffer zone' to the Royal Exhibition Building (sometimes referred to below as the REB) and Carlton Gardens, and assists in conserving and protecting the World Heritage values of the REB and Carlton Gardens, through managing and controlling development outside the site but within the WHEA.⁹

- 43 The 2009 WHEA Strategy Plan is adopted by Heritage Victoria and sets out established areas of greater and lesser sensitivity within the WHEA. The 2009 WHEA Strategy plan recommended the areas of greater sensitivity be included in a heritage overlay. HO992, as depicted in figure 6, was then applied to sites within the Melbourne Planning Scheme, not already affected by a heritage overlay in the area of greater sensitivity. This included the review site, other than for the area already covered by HO103.

⁹ Extracted from pages 2 and 3 of the 2009 WHEA Strategy Plan.



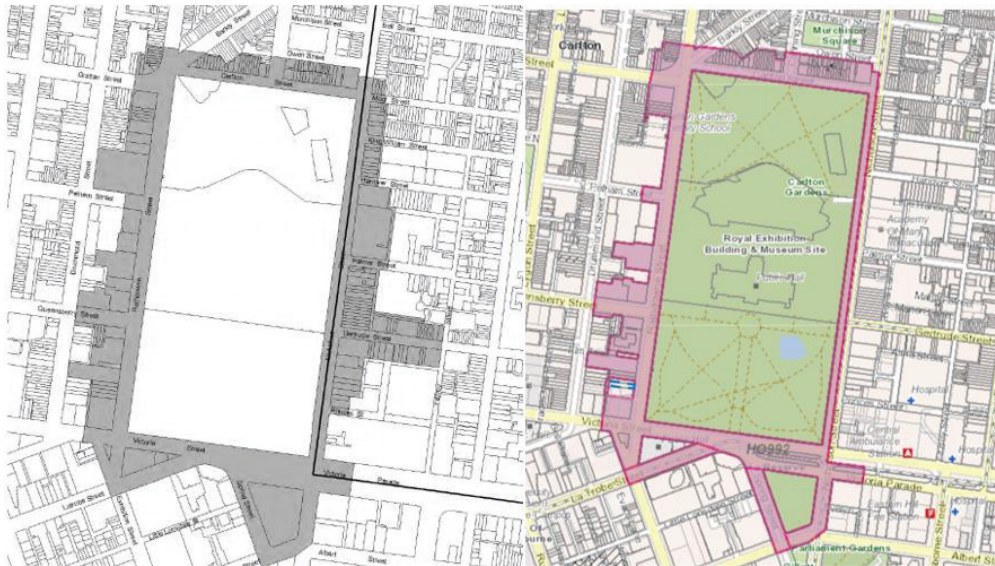


Figure 6 - Area of Greater sensitivity nominated in the 2009 WHEA strategy (left) and HO992 boundary (right)

- 44 In 2022 the WHEA area was amended through an order of the Governor of Victoria in accordance with the *Heritage Act 1995 (Vic)*. The change widened the area of the WHEA to include more land west of Exhibition Street and west of Drummond Street. The changes are set out in figure 7 below which is an extract of the 2009 and 2022 WHEAs, from Ms Gould's evidence statement. The WHEA in this 2009 diagram is the whole WHEA area, not just the area of greater sensitivity. The broadened WHEA has not yet been updated in the planning scheme so the area of greater sensitivity, as identified in the left of figure 6, remains the figure in policy of the Melbourne Planning Scheme along with HO992.

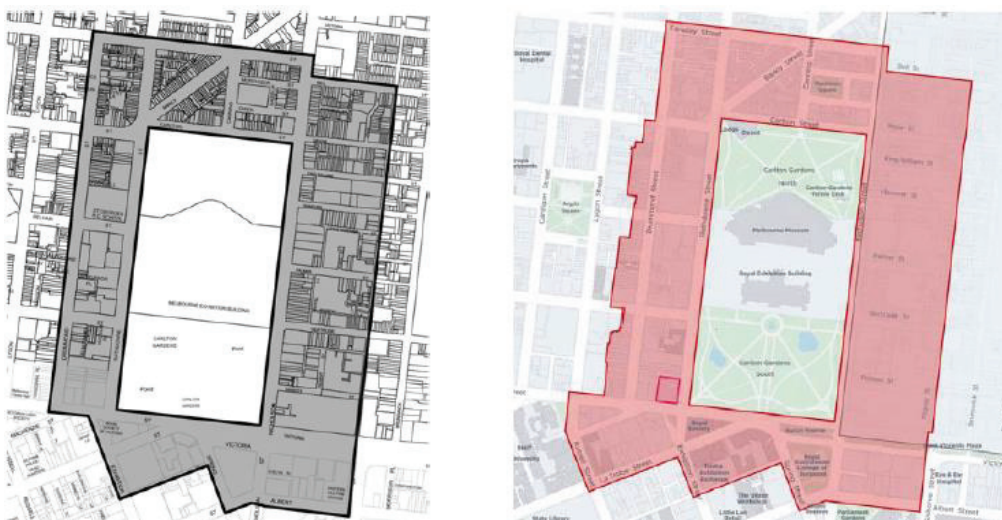


Figure 7 - extract of WHEA 2009 area (left) and WHEA 2022 area, with the review site marked, from Ms Gould's evidence statement.

- 45 The change to the WHEA area has enabled a revised draft WHEA strategy prepared by Hansen Partnership Pty Ltd with HLCD Pty Ltd to be formally

reviewed by the Heritage Council of Victoria. In September 2022 the draft updated WHEA Strategy Plan ('the 2022 Draft Strategy') and draft planning scheme controls to manage land in the WHEA were placed on public notice in accordance with the *Heritage Act 1995 (Vic)*. Public hearings about submissions were held in May 2023.

- 46 No formal statement as to the current status of this report exists. We were advised by some parties that they understood the Heritage Council had completed its review and prepared a report for the Minister for Planning to consider adopting the report and making relevant changes to the Melbourne Planning Scheme. Until the Minister approves the new strategy, with or without changes, and the approval is published in the Government Gazette, the 2022 Draft Strategy has no formal status. Nor do any recommended planning scheme changes in the draft document have any formal status. All of the heritage witnesses referred to elements within the 2022 Draft Strategy, although commented that their evidence statements were prepared on the adopted 2009 WHEA Strategy plan that underpins the current planning controls affecting the WHEA. We note that there is nothing in the 2022 Draft Strategy that lessens or weakens the potential controls or policies currently applying to the review site.
- 47 A statement of significance for the area is set out in the 2009 WHEA Strategy and relevantly includes comments in the area's history that 'in Rathdowne Street, infill development began encroaching at the southern end in the 1970s'. It also comments that 'Rathdowne Street today is a mix of institutional, residential and commercial development, and is comparatively less intact than Nicholson Street in terms of nineteenth century form and character, particularly south of Pelham Street'.
- 48 The HO992 area is identified as having historical and social significance for its association with the REB and CG. The area is also identified as having historical and social significance for intact areas of early Melbourne suburbs including Carlton. The citation goes on to comment that 'the areas provide an immediate setting and context of significant heritage character' of the REB and CG. The citation also comments that the HO992 precinct 'provides for significant views to' the REB and CG including 'direct views to the building, dome and garden setting from bordering/abutting streets, depending on where the view is standing'. 'Views out of the REB site into the precinct also reinforce the understanding and appreciation of the regional nineteenth century context and significance setting of the REB'¹⁰.
- 49 Parties agree that that the existing buildings on the land are not contributory to the heritage significance of the WHEA. It is what the impact of future buildings on the land may have on the REB and CG, as it is located in the WHEA that is in contention. As commented by Mr Raworth this also includes making sure that changes on the review site are not harmful or

¹⁰ Page 39 of the citation in the 2009 WHEA Strategy.



detract from other heritage assets, such as at 27-29 Rathdowne Street, as well as areas in HO1, that are located in Drummond Street. This is consistent with the objectives of the heritage overlay provisions set out at clause 43.01 that include:

- 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.

Municipal Planning Statement ('MPS') and Planning Policy Framework ('PPF')

MPS

50 The MPS, at clause 02.03-4 – Built environment and heritage, includes separate text and strategies under sub-headings of 'Built environment' and 'Heritage'.

51 The heritage strategies set out that the WHEA provides a buffer to the UNESCO listed REB and CG. It then states that:

In protecting heritage values, the Council will:

- Conserve and enhance places of identified cultural heritage significance, including views to heritage places.
- Maintain the visual prominence of heritage buildings and landmarks including the Shrine of Remembrance, Parliament House and the World Heritage Listed Royal Exhibition Building and Carlton Gardens.
- Protect the significant landscape and cultural heritage features of parks, gardens, waterways and other open spaces.

52 The built environment strategies acknowledge the interlinking of urban design and heritage commenting that:

Melbourne's character is defined by its distinctive urban structure, historic street pattern, boulevards and parks, heritage precincts, laneways and individually significant heritage buildings. The City's buildings, streets, open spaces and landscape features combine to give the municipality its unique appearance and feeling.

Where the built form character of an area is valued, new development must respect this character and add to the overall quality of the urban environment.

53 The built environment strategies go on to direct that in managing the built environment the council will 'protect and enhance the City's distinctive

physical character and heritage’. This includes identified places of heritage significance and specifically refers to the REB and CG.

54 Relevant housing, economic and built form directions include that:

- At clause 02.03-5 the MPS set out that most of the increased population of the municipality is planned to be accommodated in identified areas of urban renewal, and the Hoddle Grid. The review site is located outside of these areas, where the strategy states ‘population growth will be modest’.
- A Growth Area Strategic Framework Plan in clause 02.04 identifies Victoria Street, connecting to Victoria Parade as a boulevard. Strategy at clause 02.03-4 includes enhancing the role of boulevards and principal streets ‘as entrances to the Central City through development that maintains landscape character’. Rathdowne Street is not identified as a principal street.
- Clause 02.03-6 recognises the research institutes in Parkville. The site is not identified in part of the ‘knowledge precinct’ at clause 02.04-4 – Economic Development Plan.

PPF – settlement and urban design policies

55 The applicant submits that ‘one of the only policies which actually addresses built form expectations on the north side of Victoria Street itself calls for development on Victoria Street in this location to “reinforce the contrast between medium rise development in Carlton, and higher rise development in the Hoddle Grid.” The proposal reinforces this contrast.’

56 The council and objector parties disagree with this position. They set out that the policy referred to by the applicant at clause 11.03-6L-02 referred to by the applicant above is one of several strategic policy statements that apply to Carlton.

57 Relevant built environment and heritage strategies for Carlton, set out in clause 11.03-6L-02, including the one referred to by the applicant above are:

- 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.
- Maintain a strong contrast in scale between the built form of the Hoddle Grid and Carlton at the Victoria Street interface.
- Ensure the scale of development in Victoria Street, west of Carlton Gardens, to reinforce the contrast between medium rise development in Carlton, and higher rise development in the Hoddle Grid.

...



- Maintain the predominantly low scale character of the areas around Carlton Gardens, Lygon Street and residential areas included in a heritage overlay; and ensure sympathetic development that complements the architecture of the area.
- 58 While policy at clause 11.03-6L-02 also refers to ensuring ‘the scale of development in Victoria Street, west of Carlton Gardens, to reinforce the contrast between medium rise development in Carlton, and higher rise development in the Hoddle Grid¹¹’ this needs to be read in combination with the following policy line that is ‘to maintain the predominantly low scale character of the areas around Carlton Gardens’.
- 59 Urban design policy, applying to all of Victoria, is set out at clause 15.01-1S and requires development to respond to its context in terms of character, cultural identity and the surrounding landscape. This is reinforced in local policy we discuss below and in building design policy at clause 15.01-2S that seeks to achieve building design that contributes positively to the local context. Both clauses require consideration as relevant, to the Urban Design Guidelines for Victoria, 2017. Clause 15.01-2S also directs consideration to the Apartment Design Guidelines for Victoria, 2021.
- 60 Local policy at clause 15.01-1L-03 – Sunlight to public spaces applies to public places including parks and gardens and discourages development that casts additional shadow on public spaces between 11:00am and 2:00pm on 22 September. We were also referred to planning scheme Amendment C415 that proposes to protect winter sunlight access to all parks in the municipality. This amendment seeks to apply controls that would allow no additional shadow onto CG between 10am and 3pm on 21 June. We understand from submissions that the amendment is with the Minister for Planning awaiting approval. As such it is a seriously entertained planning scheme amendment. It is common ground between parties that if approved in its current format, the proposal would meet the requirements of this amendment.
- 61 Local policy at clause 15.01-1L-05 – Urban Design outside of the Capital City Zone is also relevant. It includes an objective, consistent with broader state policy to ‘ensure that the scale, siting, massing and bulk of development complements the adjoining and nearby built form, and relates to the prevailing patterns of height and scale of existing development in the surrounding area.’ The policy then sets a number of detailed design strategies for designing specific elements of buildings, such as weather protection, pedestrian connections and safety.
- 62 The applicant also referred us to policy that identifies the site as sitting in the periphery of the Parkville National Employment and Innovation Cluster (‘Parkville NEIC’) that centres around the medical and education facilities of Parkville. Metropolitan policy at clause 17.01-1R directs supporting the

¹¹ Our underlining added.



employment and servicing role of health and education precincts. This includes supporting and facilitating growth of associated businesses and industries. The review site has long been used for offices and commercial uses, but the surrounding sites are predominantly use for dwellings and the proposal is predominantly for residential use. The proposal includes 241 square metres of office space.

- 63 We also note that the site is located in other overlay and use policies relating to car parking that we address later in our review of the proposed parking provision.

PPF - Heritage policy

- 64 Clause 15.03-1L-01 provides heritage policy applying to land in the area of greater sensitivity, depicted in figure 6 above. This includes areas in HO992 and HO103. The policy objectives reinforce the roles of the WHEA that we summarise as being to:

- Provide a buffer zone for the World Heritage inscribed REB and CG.
- Provide a setting and context of significant historic character for the World Heritage property.
- Protect significant views and vistas of the REB and CG.
- Maintain and conserve the significant historic character, including built form and landscapes of the area.
- To ensure development in the area responds to the prominence and visibility of the REB and CG.

- 65 Strategies of the policy, that we find of particular relevance include:

- Retain the predominantly lower scale form of development which provides a contrast to the dominant scale and form of the Royal Exhibition Building.
- Avoid consolidation of allotments in residential areas that will result in the loss of evidence of typical nineteenth century subdivision and allotment patterns.
- Protect direct views and vistas to the Royal Exhibition Building and Carlton Gardens from bordering streets and other views and vistas to the dome available from streets within the precinct including Queensberry Street, the north ends of Spring and Exhibition Streets, and the east end of La Trobe Street.

- 66 Broader heritage policy applying to all heritage overlay areas is then set out in clause 15.03-1L-02 – Heritage. This includes strategies for new buildings. These include strategies to ensure new buildings:

- Are in keeping with ‘key attributes’ of the heritage precinct as identified in the precinct Statement of Significance.

- Do not visually dominate or visually disrupt the appreciation of the heritage place.
- Maintain a façade height that is consistent with that of adjoining significant or contributory buildings, whichever is the lesser.
- Set back higher building components so as not to dominate or reduce the prominence of an adjoining significant or contributory place or building.

67 The broader heritage policy, combined with the incorporated heritage inventory to the planning scheme identifies streetscapes having heritage significance. Rathdowne Street is not identified as a significant street, but Drummond Street is. The policy has specific strategy for the concealment of higher rear parts of a new building located outside of the Capital City Zone. The first is that in significant streetscapes, including Drummond Street, higher rear parts of new buildings should be concealed. In other streetscapes, including Rathdowne Street, the policy seeks to ensure that 'higher rear parts of a new building should be partly concealed. Some of the higher rear part may be visible, provided it does not dominate or reduce the prominence of the building's façade(s) and the streetscape'.

Weight to give to former Queens Coffee Palace building

68 In understanding the historical context of the site, the applicant and a number of its expert witnesses made reference to the Queens Coffee Palace that was constructed on part of the review site around 1889/90s and demolished around 1970/1. An image of the building, circa 1910 is set out in figure 8 below, as extracted from Mr Gard'ner's evidence statement.



Figure 7. Looking west towards the Queen's Coffee Palace, c1910 (storeyofmelbourne.org)

Figure 8 - Image of the Coffee Palace Building, viewed from the east, toward Rathdowne Street, along Victoria Street, circa 1910 (from Mr Gard'ners evidence)

69 The applicant referred to this former building commenting that this site historically included a taller building form for much of the life of the REB and CG. Witnesses commented it is of historic interest, but acknowledged

that as it no longer exists it has no heritage status or should be relied on as a precedent for new building. As put by Mr Raworth, 'it is recognised that the scale of the former Queen's Coffee Palace does not provide a direct point of reference or precedent for development on the site'. Although he also comments that 'it is nonetheless of note that the scale at this end of Rathdowne Street and on the subject site has been low scale only since the 1970s'¹².

- 70 The coffee palace building is not referred to in the statement of significance for HO992, the 2009 WHEA Strategy, or the 2022 Draft Strategy, either as a building of note of the era or of historical context. It was common ground between the heritage witnesses that the building was not commenced until after the first 1880 exhibition in the REB. It was constructed with an intent to provide accommodation to visitors to the 1888 exhibition but was not completed in time, being completed sometime in the 1890s, and never being used for its original purpose. The building was used as a hostel from 1930 and then demolished around 1971 after a fire in 1963 destroyed the top two floors.
- 71 The building appears to have been six storeys, that would have had high floor to floor heights, typical of its era. MMBW plans tabled in Ms Gould's evidence set out that it occupied about one third of the site, with its northern façade facing Rental Terrace and its southern façade comprising just less than half of the review site's Victoria Street frontage. For the past 52 years the site has been occupied by lower buildings. The world heritage inscription, the application of HO992, and the WHEA strategy have all included this lower building form in their description of the area rather than referring to the former coffee palace as providing a precedent or context for future building.
- 72 None of the DDO6, 2009 WHEA strategy elements, the 2022 Draft Strategy or the HO992 citation seek to replicate, or reinstate building heights that existed for each site at the time of the 1880 to 1888 exhibitions. This is noting that the DDO6 provisions have established height maximums that are higher than many of the building that existed between 1880 and 1890, as is identifiable in photos tabled by experts. These include single storey buildings in Victoria Street that were part of the Owens and Dixon bakery and the 2 storey cottages north of Rental Terrace.
- 73 The DDO6 and 2009 WHEA strategy establish the primary context in which we must consider the proposal. These acknowledge the non-heritage buildings in the area but set guidance for new buildings that can achieve design objectives set out in DDO6 and relevant design and heritage policy. We therefore find the existence of the coffee palace building from about 1890 to about 1970 to be of interest but not a matter that underpins the planning provisions that apply to the land.

¹² Mr Raworth evidence statement - Paragraph 77.



Conclusions about policy and planning scheme context

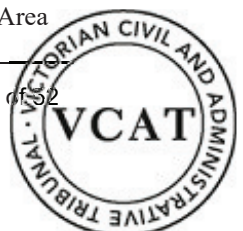
74 From the planning scheme provisions and policies set out we conclude that:

- a The weight of heritage policy in the HO992 precinct is strong, as it seeks to manage and conserve the REB and CG assets that are listed as of World Heritage value for their contribution to the world expo movement, their listing on the National Heritage List under a number of criteria, and their listing on the Victoria Heritage Register.
- b The weight of urban growth policy, specific to this area of Carlton is somewhat limited. While the site is in MUZ that includes an objective to provide for housing a higher densities, this part of the Melbourne municipality is identified in an area where population growth is expected to be modest and there is specific direction to maintain a strong contrast in scale between the Hoddle Grid south of Victoria Street and Carlton¹³. This part of Carlton is described as both 'medium rise' being 'development in Victoria Street, west of Carlton Gardens' and an area of 'low scale character' as an area around Carlton Gardens, included in a heritage overlay¹⁴.
- c The MPS and local policy to address future built form and character is translated into DDO6 that sets design objectives for the area to which it applies. DDO6 reinforces the objective that the built form character of the area is to be essentially of low-rise buildings that complement the heritage buildings in HO992. Low or medium rise building is also sought as a contrast to the higher buildings south of Victoria Street. This is noting that the provisions of DDO6 are recognised in the 2009 WHEA Strategy.
- d As a balancing exercise we find the weight of policy and provisions for this site weigh more heavily toward maintaining a low to medium rise character, consistent with the heritage significance of sites in the WHEA area. While all sites should be used to their full potential, the planning scheme directs that in this location this potential is constrained. The planning scheme places greater emphasis on employment and accommodating housing growth in other parts of the municipality¹⁵.
- e What might form low to medium rise building must be read in context of the DDO6 provisions that apply to the land. Relevantly these seek:
 - i. 10 metres maximum building height, or a 2 – 3 storey form to the street edges of Rathdowne Street and Victoria Street, reflecting the existing Victorian character of the DDO6 area.

¹³ Clauses 02.03-5 and 11.03-6L-02.

¹⁴ Clause 11.03-6L-02.

¹⁵ Such as at City North and other existing and proposed renewal areas identified in the Growth Area Framework Plan at clause 02.04-1.



- ii. 16 metres maximum building height the central section of the site, extending to the northern boundary. Using common floor heights this equates to a roughly 5 storey building¹⁶.
 - iii. 8 metres maximum building height to Elliott Place, as a 1 – 2 storey interface to other heritage buildings to the north and west.
- f Building above these heights needs to ensure the design objectives of DDO6 are still met having regard to the provisions of clause 43.02. This includes consideration of the immediately abutting building heights that also sit in this DDO6 context. The DDO6 objectives need to be read in context that some of the existing buildings in the area are over 16 metres in height or have a street wall height exceeding 2 – 3 storeys.
- g There is no direction in DDO6 or relevant heritage or urban design policy to create breaks in building form along Rathdowne Street. On the contrary the DDO6 and heritage policy seeks to reinforce the built form character of the area. Historical context provided by the heritage experts indicates that since the mid-1850s this has been buildings generally to the street edge with gaps only where there are laneway entries.

IS THE DEMOLITION OF THE EXISTING BUILDING ACCEPTABLE?

- 75 The applicant submits that the demolition of the existing buildings on the site should be uncontroversial. All four heritage experts agree that the existing buildings on the site are not significant or contributory to the significance of HO992 or HO103 that apply to the land. We concur that the permit triggered under the heritage overlay for a planning permit for demolition is acceptable.
- 76 A number of neighbours to the property also support the demolition of the existing buildings noting that they are currently vacant and have been the subject of vandalism. They comment that in light of the existing poor state of the site they support some form of new development on the land, just not what is proposed. The applicant likewise made some submissions that facilitating a new development on the site would remove what is currently an eye sore in the area.
- 77 The proposal before is not for demolition alone. Conventionally the approval of demolition in a heritage overlay is dependent on a suitable replacement building being approved. We assess this replacement building below. We do not regard the matters of vandalism associated with the existing buildings alter our findings about what is a suitable replacement

¹⁶ Utilising common floor heights of 4.5 metres for ground floor commercial and then 3 metres for residential levels above.



building. It only reinforces that demolition of the existing buildings is acceptable.

DOES THE PROPOSED NEW BUILDING RESPOND ACCEPTABLY TO THE PLANNING SCHEME FRAMEWORK, HAVING REGARD TO THE PHYSICAL CONTEXT?

General comments about the response to site context

- 78 As acknowledged by witnesses, such as set out in Ms Bell's urban design evidence:
- ... the Melbourne Planning Scheme seeks redevelopment that complements the existing scale and character of the area, while responding to the prominence and visibility of the Royal Exhibition Building and Carlton Gardens.
- 79 The difference in expert opinion and submissions is then whether the proposal complements the existing scale and character of the area. Our assessment below of the proposed building demolition and the proposed new building sits in context of this policy review and the physical attributes of the site.
- 80 As a starting point we agree with submissions and evidence that, as a relatively large site for its location, there is a need for the building to be broken down into modules that respect the scale of the different street interfaces. It is this respect to the scale sought in DDO6 and HO992 that is key, when reading the relevant planning scheme context as we have already set out.
- 81 Ms Bell's evidence is that this is achieved through the use of the forecourt with building massing around it and the vertical and horizontal grid formation of walls. It is through this arrangement of the building that both Ms Bell and Mr Crowder say the building responds to its corner location while then addressing its different Victoria Street and Rathdowne Street contexts.
- 82 We concur that the use of the red brick base of the building is an appropriate response to the area and provides a solid base to which lighter rendered finishes of the upper level provide a sense of recession. Our concerns with the proposal are not specifically with the materials, or the use of the grid components to create articulation. We note the concern of Ms Gould that the horizontal lintel between lower levels of the apartment forms is not marked as brick. This is an issue of design detail that could have been resolved through permit condition, if needed.
- 83 Mr Crowder's evidence is that based on his review of the existing built form context in Rathdowne Street, that includes many newer forms in the street south of Queensberry Street, that 'the traditional Victorian low-scale development found in the broader Carlton precinct is less apparent



proximate to the subject site'¹⁷. We agree this section of Rathdowne Street does not have a dominance of Victorian era buildings. It includes one Victorian terrace, two Edwardian era buildings and several more modern buildings. All of these, however, retain a street wall of between 10 – 15 metres, with some, such as at 33 Rathdowne Street having a staggered façade rising to 14 metres at its southern edge, with a 5th level set back about 6 metres from the street. A further 6th, rooftop structure exists but is generally not well seen from Rathdowne Street due to its setback of over 20 metres.

- 84 In context of the non-heritage buildings of the area, we do not concur with Ms Gould's evidence, or the submissions of some of the objector parties, that a new building on the review site should not exceed the DDO6 maximum 16 metres building height. The DDO6 allows for a consideration of additional height. We concur with the evidence of other experts, and the submission of the council, that some higher form could be established on the review site provided it appropriately responds to the low scale heritage character of the DDO6 area. Below we examine the key elements of the proposed building.

The use of the forecourt

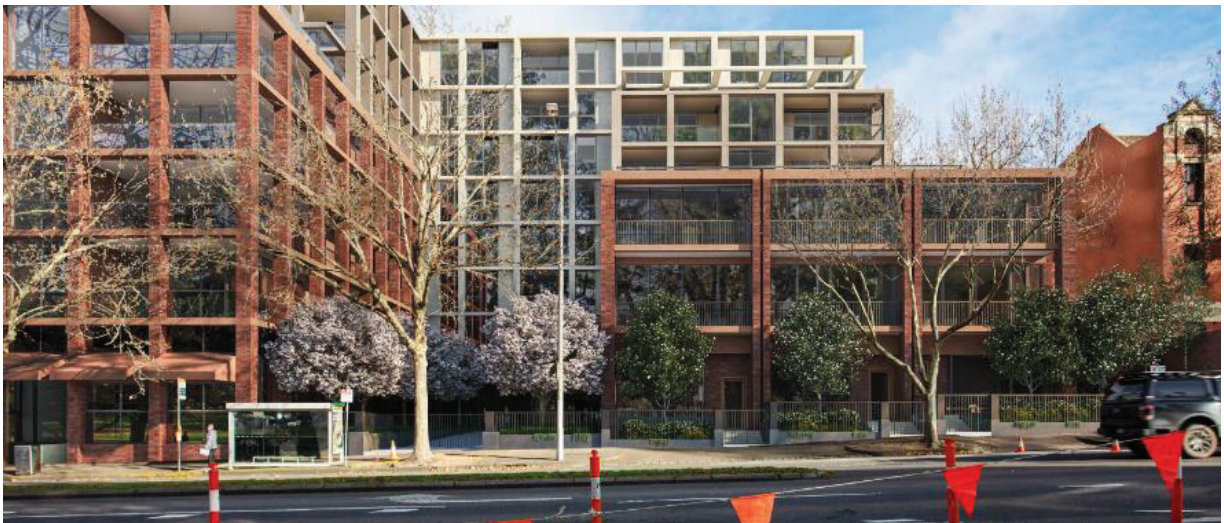


Figure 9 - photomontage of the proposed building from opposite the proposed forecourt to Rathdowne Street

- 85 Ms Bell describes the break between the buildings as creating a 'breathing space and a green break between the built form that responds to the landscape setting of Carlton Gardens'¹⁸. Mr Crowder similarly refers to the forecourt as offering visual relief to the mass and scale of the development and provides green link or reference to the CG.

¹⁷ Paragraph 186 of Mr Crowder's evidence statement.

¹⁸ Page 11 – Bell evidence statement.

- 86 The evidence of Mr Gard'ner and Ms Gould is that the proposed 8 storey building and the introduction of the large forecourt to the Rathdowne Street frontage, that further exposes this 8 storey form, is not in keeping with the character and appearance of adjacent buildings and heritage place. The evidence of Mr Gard'ner is that the spacing of building 'disrupts the legibility of the consistent streetscape character of Rathdowne Street and the broader WHEA Precinct'¹⁹.
- 87 Ms Baker acknowledges in her written evidence that 'the forecourt is not necessarily an approach Council's heritage policy contemplates' but noted that 'there has been a laneway running on an east west axis through the site, being Rental Terrace since the 1850s'²⁰.
- 88 The objectives of DDO6 and the WHEA seek to reinforce the existing streetscape character. This has historically been, and retains, a generally consistent street wall, with only minor interludes. Rental Terrace remains in some form and is a narrow small laneway entry to Rathdowne Street. It is not a prominent forecourt. We therefore do not see that the existence of Rental Terrace provides a rationale to the proposed forecourt and its surrounding building.
- 89 Our review of the plans and documentation leads us to prefer the evidence of Mr Gard'ner and Ms Gould that the forecourt overly exposes the taller rear elements, as well as the 8 storey wall along much of the south side of the forecourt. While Ms Bell, Mr Crowder and Ms Baker's evidence was that the material changes to this wall provide a sense of recession we are not satisfied that this provides sufficient recession or concealment of what we find will clearly be read as an 8 storey building in the Rathdowne Street context.
- 90 Ms Baker acknowledged in questions to her from Mr Song that the forecourt is not a condition seen elsewhere in Rathdowne Street and that in the photomontage views looking to the south-west or west the exposure of taller form the building is not retaining the predominantly lower scale form existing in the area. Ms Baker commented in oral response to questions that in this view the building will sit with the taller modern city buildings in the backdrop so therefore the heritage impact is acceptable.
- 91 While the view of taller buildings exists in this view the heritage policy for the WHEA area seeks to retain the low scale character of the area. There is policy that refers to medium scale at Victoria Street, but in context of the 16 metre maximum height in DDO6, we do not see this translates to exposed 8 storey building facing Rathdowne Street, directly opposite the CG.
- 92 We find the exposure of the 8 storey form, and the forecourt itself, discordant elements that are contrary to the design objective in DDO6 and

¹⁹ Paragraph 125 – Gard'ner evidence statement.

²⁰ Paragraph 100 – Baker evidence statement.



in policy at clause 11.03-6L-02 to reinforce the built form character of the area as being essentially of low-rise buildings around the CG.

- 93 The exposure of the 8 storey component to Rathdowne Street we find is also contrary to the policies of clause 15.03-1L-02 that 'higher rear parts of a new building should be partly concealed' with some of the higher rear part visible, provided, in the context of this site, it does not dominate or reduce the prominence of the streetscape²¹.

The corner form



Figure 10 - Photomontage of the building viewed from the south-east corner of Rathdowne and Victoria St

- 94 Some submissions and the evidence of Mr Crowder and Ms Bell was that we should give weight to the 'gateway' location of the site being on a designated boulevard of the Melbourne Planning Scheme. Ms Bell's evidence refers to the building celebrating its corner location and Mr Crowder's refers to what he described as 'the five-storey podium to the intersection of Rathdowne and Victoria Street appropriately 'bookends' the corner'.
- 95 There is nothing in the DDO6 provisions or policy referred to us that requires this site to form a bookend, or a significant feature in the street. Policy of the planning scheme at clause 11.03-6L-02 seeks a strong contrast in scale between the built form of the Hoddle Grid and Carlton at the Victoria Street interface. General urban design policy at clause 15.01-1S directs the need to consider the Urban Design Guidelines for Victoria ('UGV'). The UGV include directions for buildings in activity centres. This building is not in an activity centre, although we accept the direction to

²¹ Noting the policy also refers to not dominating a heritage façade, which in this instance is not relevant.

‘shape the building form and detail to reinforce important street corners’ is a generally good design principle. As the UGV then notes as a ‘tip’, not all corners are important and ‘a strategic planning process can identify important corners’. No party put to us that such a strategic planning exercise has identified this corner as particularly important.

- 96 The corner of Rathdowne and Victoria Street is a busy intersection, but relative to its location it is one of many such intersections. The gateway, if there is one, is most prominently viewed on approach from the south to north, where Exhibition transitions to Rathdowne Street. It is here that vehicles approaching the review site are closest.
- 97 Here, the review site marks the start, and visual entry heading north, to the low scale area of Carlton that has design directed by the DDO6 and HO992 provisions in contrast to the tall form of the Hoddle Grid, south of Victoria Street. If any corner marker is needed it is to announce the transition into the low rise character of Carlton and its heritage setting. As a land marker we find the scale of the corner form too prominent for this context.
- 98 Heading west the building sits opposite the flow of traffic and is not flanked with a marker site to the south that may establish a gateway needing marking on both sides of Victoria Street when heading west. Nor does the planning scheme define the western approach as a gateway.
- 99 While we agree with Ms Bell and Mr Crowder that a higher street wall than 10 metres is a useful design technique that could be used to ‘hold the corner’ it is not the only way to define a corner. We find the need to define the corner does not rationalise the almost 20 metre building height at this corner. This is noting that it is more or less double the 10 metre maximum of DDO6 or its built form outcome that seeks to retain a 2 – 3 storey character.
- 100 The proposed ‘corner’ marker also extends for about one third of the Rathdowne Street frontage and about one half of the Victoria Street frontage. This scale of the corner feature to ‘hold’ the corner is well beyond what we consider is needed or directed by the planning scheme. This is particularly emphasised along Rathdowne Street that sits directly opposite the CG.
- 101 We find the corner form’s height, combined with its breadth, too dominating for its DDO6 and HO992 location. This is particularly when viewed from Rathdowne Street, where the view will include the exposed 8 storey form to the north side of the ‘corner’ form, facing the forecourt. This combination of elements further emphasises to us that a more modest corner marker, commensurate with its location within DDO6 is required.
- 102 A lower street wall to the corner in turn will expose more of the upper levels, reinforcing a need to recess upper level building in a way that retains the low scale character of the DDO6 area, as is also sought by heritage



policy for the WHEA. We acknowledge that the centre of the site, away from Rathdowne Street may achieve some height over 16 metres, particularly where policy directs a medium scale of building in Victoria Street.

Comparisons to development at the corner of Victoria Parade and Nicholson Street

103 In addressing the corner location, some evidence and submission sought to compare the corner setting of the proposed development on the review site with the recently approved, and currently under construction Aikenhead building at the north-east corner of Nicholson Street and Victoria Parade. We have marked the location of the Aikenhead building in red, in Figure 2, earlier in our reasons. Reference was made by parties to a Standing Advisory Committee report that recommended approval of the Aikenhead building²². In particular the applicant sought to indicate that the review site has some similarities to this other site due to its proximity to the REB. The Aikenhead site and our review site have a similar geographic proximity to the REB and CG but we find there are no other comparable similarities between the sites and proposed developments. We say this as:

- The zoning of the two sites is different and the use and development proposals are different.
- At the time of decision making, the Aikenhead building was not covered by WHEA area heritage overlay, being not located in the area of greater sensitivity, as set out in the 2009 WHEA strategy.
- The policy settings are different, reflecting their different locations and municipal locations.
- The topography of the sites is different, with St Vincent's on a higher site that has greater frontage to Victoria Parade, than toward the gardens. This is evident in the aerial image in Figure 2.
- The street contexts are different. The Aikenhead building abuts the 65 metre wide Victoria Parade with tall office buildings to the south, whereas our site abuts the 30 metre wide Victoria Street with lower form to the direct south, notably the Exhibition Street Reserve and the Royal Historic Society building.
- The orientation and immediate building context is different. The Aikenhead building has directly abutting and ongoing use of taller buildings, whereas our site directly abuts lower form heritage buildings its north and lower form non-heritage to its direct west.

²² A copy of the Yarra Planning Scheme – Referral No. 15: Aikenhead Centre for Medical Discovery – Priority Projects Standing Advisory Committee Report – 10 September 2021 was tabled and referred to by some parties.



- The potential ‘gateway’ corner location and approach along the Victoria Street boulevard is also different. The Aikenhead building sits at the closest view when heading east and entering the building avenue along Victoria Parade.

104 Each proposal requires consideration of the facts and circumstances applying to its site. We find the comparison between the building height and form achieved at the Aikenhead building does not alter our findings about the proposal before us.

Street wall north of the forecourt

105 North of the forecourt is a 20 metre wide set of three townhouses. North of this is a 4.5 metre side setback that extends the depth of the review site and provides pedestrian access to the northern townhouses.

106 All of the heritage, urban design and planning witnesses were comfortable with the proposed three storey townhouse buildings proposed to face Rathdowne Street in the northern part of the review site. This is also noting that the three, 7 metre wide x 3 storey high townhouses provide a vertical rhythm consistent with the street. We agree that a three storey street wall in this location is a comfortable fit in Rathdowne Street and reflects the DDO6 objectives to retain a 2 – 3 storey streetscape that in turn reflects the values of the WHEA sought to be protected through HO992 and both the existing 2009 WHEA Strategy and the 2022 Draft Strategy.

107 We do, however, note that we remain unclear as to why the building has been setback from the northern boundary in a context where this has not formed part of the Victorian streetscape onward. Ms Baker’s evidence is that ‘this 4.5m setback from the northern title boundary, combined with the 3m setback from the eastern boundary, will help establish an appropriate visual separation between the new building and the Federation building to the north at 25-27 Rathdowne Street. It will also improve views to this building from the south-east’.

108 We are not clear as to why improved views of the blank wall façade of 25-27 Rathdowne Street is a benefit to the proposal. It does not respond to the heritage streetscape or is something called for in policy or the DDO6 provisions. As we address later in our review of internal amenity we are not clear what benefit this space to the northern boundary provides. In a streetscape presentation we do not specifically oppose the use of the 4.5 metre setback to the north given there is a history of some small breaks, such as Rental Terrace in the streetscape. However, we do not see it adds any particular value to the streetscape character.

Presentation of the taller form

109 The northern section of the building forms a staggered 6 and 8 storey form sitting behind the 3 storey townhouses. Here the 6 storey form is set back



approximately 17.5 metres from the street, with the upper two levels setback just over 21 metres to Rathdowne Street. Here the various experts have differing views of the 6 – 8 storey form rising above the 3 storey wall:

- Ms Bell’s opinion is that the significant recesses, that leave most of the exposed view above 3 storey, being the 6 storey mid-section, combined with the lighter mid-tone finish ensures the upper form is highly recessive in views from the eastern side of Rathdowne Street and that the recession of the levels ensures they do not unreasonably overshadow the CG.
- Mr Raworth likewise considers the setbacks at this point ensure that the height is supported as acceptable due to the mixed and disparate streetscapes in which the site is located (including four storeys along much of neighbouring Rathdowne Street to the north), and the high quality of the design. Mr Raworth’s opinion about the overall building height gave ‘considerable emphasis’²³ on the management of views from Drummond Street that sits in within the HO1 area.
- Ms Baker’s evidence is that the 16 metre maximum building height set in DDO6 has little relevance to the review site due to its corresponding built form outcomes. Her written evidence is that ‘the proposal will fit comfortably within the range of height and built form typologies already present. Both this section of Rathdowne Street and Victoria Street can readily absorb the degree of change proposed without adverse impact upon the significance of either the streetscapes themselves or the broader’ WHEA. This is noting that ‘the streetscapes and laneways that the proposed scheme addresses are either not cohesive, intact heritage streetscapes.
- Mr Crowder’s evidence is that where the building sits behind the lower street edge form it is sufficiently recessed to ensure that the DDO6 objectives are met with ‘the significant recession of the six and eight-storey components from the Rathdowne Street interface ensures the development will not overwhelm the Carlton Gardens and REB precinct’²⁴. Combined with the articulation, materials and finishes of the modular form of the building he is satisfied that it is what can be described as a mid-rise building that sits comfortably in its context.
- Mr Gard’ner’s concerns with the proposed building relate more to its presentation with the forecourt and building south of it, but is also of the view that the 8 storey element should be reduced to 6 storeys so as to be a more comfortable fit to the heritage character of the area, and in context of the DDO6 objectives.

²³ Paragraph 89 of Mr Raworth’s evidence statement.

²⁴ Paragraph 203 of Mr Crowder’s evidence statement.



- Ms Gould's evidence is that the setbacks from Rathdowne Street are not sufficient to ensure the development responds to the low rise context. Her opinion is that the taller and wider tower elements will not be similar in scale to the adjoining and narrow 3 storey building of heritage significance at 25-27 Rathdowne Street.

- 110 We agree that for the 16 metre building height maximum set out for area A14 in DDO6, the built form outcomes are not obviously relevant to this site, for reasons we have already set out. However the DDO6 design objectives and the considerations of HO992 remain relevant and must be met. In this context, we agree with Ms Bell and Mr Gard'ner to the extent that a mid-rise form that is well recessed behind a generally three storey street wall, or in this case small, landscaped front setback of the proposed townhouses could form an acceptable outcome.
- 111 We find that the extent of higher building exposed to Rathdowne Street, while less in the northern section of the building, remains too abrupt for the lower rise surrounding built form and the low rise urban character sought for this area. We do not make a definitive finding on what a maximum height for a future proposal might be. It will depend on the design response proposed.

Is the Victoria Street presentation acceptable?



Figure 11 - Photomontage of the building on view from the corner of Mackenzie Street and Victoria Street.

- 112 Along Victoria Street the building has the 5 storey street wall for the eastern half of the site to the street, and this drops to 4 storey for the western part of the site, closer to the former BoM building as is visible in figure 11 above when read in conjunction with figure 10. The 8 storey component is set back 5 metres from Victoria Street, 12 metres from Rathdowne Street and

3.3 metres from Elliott Place²⁵. The higher component of the building, sitting 5 metres from Victoria Street is about 36 metres wide.

- 113 Ms Bell's assessment is that the 5 metre setback to Victoria Street is appropriate as it 'will ensure that the upper levels are visually distinguished from the podium form, while acknowledging the more robust built form character and lack of sensitivities along Victoria Street'. Her opinion on this is assisted by her comment that the upper levels are finished in a lighter palette and finer vertical grid to further differentiate them from the podium. Mr Crowder, Mr Raworth and Ms Baker are also satisfied that in a reading from the more robust and mixed environs of Victoria Street the building is an appropriate response.
- 114 We agree with Mr Crowder that it is reasonable to assume that the two storey building west of Elliott Place is likely to be redeveloped and its current two storey street wall to Victoria Street is not a character that is necessary to retain.
- 115 Victoria Street is a relatively hostile pedestrian environment and in this streetscape taller forms are more easily read, including recessed the effective 4 storey street wall of the former BoM building that also has a 5 metre setback to an upper levels from Victoria Street. In this context we are satisfied that the DDO6 maximum building height to the street built outcome to have a 10 metre street wall with a 10 metre setback to upper level is not necessary or contextual of other building in the DDO6 area or the general streetscape in the immediate environs of the review site.
- 116 We agree, as did Mr Gard'ner in his evidence opposing the development, that a 4 storey street wall at the western end of Victoria Street with a 5 metre setback to upper form could be a reasonable outcome to an overall lower building form, more in keeping with the design objectives of DDO6. We say this noting that Mr Gard'ner's evidence is that with this setback only a 6 level building should be permitted based on the current design, so that the upper levels behind the 4 storey street wall are well recessed. We do not seek to identify what the ultimate height of a new proposal should be as it will depend on the overall design proposed. It is the need to better recess the upper levels to accord with the objectives of DDO6 and associated design and heritage policy that is required.
- 117 We also agree with Mr Gard'ner that the street wall should then lower as it approaches Rathdowne Street so as to acknowledge the slope of the land and to respond to the objective of DDO6 to maintain a human scale. In the hostile environs of the south side of Victoria Street we find the 5 storey street wall in this location unacceptable. This is in addition to our reasons why we find the corner form unacceptable.

²⁵ The setback of the 8 storey form to Elliott Place varies from 3 metres at its northern end to 3.3 metres at its southern end due to the slight angle of the Elliott Place boundary.



Will the proposal lead to an unreasonable loss of views to the REB or CG

- 118 The council submits, relying on evidence of Ms Gould, that the building presentation to Victoria Street will lead to an unreasonable loss of views to the dome and flagpole of the REB, contrary to the design objectives of DDO6. Specifically, Ms Gould's evidence is that from McKenzie Street, south of Victoria Street, an existing view to the dome, lantern, flagpole and part of the drum of the REB will be lost.
- 119 The 2009 WHEA Strategy identifies to four sets of views to the REB that may be worthy of protection in order of significance. These include firstly direct views, then proximate views, thirdly partial or restricted views (glimpses) and finally 'more distant views'. Partial or restricted views (glimpses) include areas of south Carlton and northern areas of the CBD²⁶.
- 120 Ms Gould acknowledged that the partial views, or glimpses that will be lost, are not referred to in the planning scheme as views to be protected, unlike other locations such as views along Queensberry Street. She also acknowledged that the view of concern from McKenzie Street is not addressed in the 2022 Draft Strategy that has a more comprehensive review of viewlines than the 2009 WHEA strategy.
- 121 Mr Gard'ner, Mr Raworth and Ms Baker are not concerned with the loss of the view from McKenzie Street on the basis that:
- The view is currently not identified as an area within HO992, although the area of McKenzie Street is now located within the gazetted WHEA.
 - The views are glimpses that are obtained when standing in specific locations in McKenzie Street, not a general vista or a prominent viewline.
 - Even a modest building on the review site, or at 24 Victoria Street, within the maximum building heights sought in DDO6 would block the views.
- 122 The comments of the other three heritage witnesses is consistent with the 2009 WHEA Strategy that comments that:

It is also important to distinguish between the more significant views and vistas of the REB and dome, as occur along the planned axial views within Carlton Gardens proper (such as the view to the grand south entrance to the building from the south on Victoria Street, which is framed by the treed avenue of the 'Grand Allée') and the direct views into the site as are available from the immediate bordering and abutting streets; proximate views of the REB dome from Gertrude, Queensberry and Spring streets and Marion Lane; and other incidental or opportunistic views which are not considered significant, such as

²⁶ Page 15 and 16 of the 2009 WHEA strategy.



‘glimpses’ of the dome available from adjoining streets and more distant views to the dome available from the east, west and south.²⁷

- 123 Ms Gould’s evidence is that ‘perhaps nearby building construction temporarily concealed this view during preparation of the Draft WHEA Strategy Plan 2022, in which only the lantern and flagpole are mapped. Careful view line mapping could set the height and setback parameters for a development which is required to retain this view’. The analysis of views in the 2022 Draft Strategy was prepared by qualified landscape architects, urban designers with heritage advisor input. There is nothing in the work to suggest that errors were made or that the view referred to by Ms Gould was ‘missed’. The 2022 Draft Strategy refers to not all views being worthy of protection, including another view further west along McKenzie Street that has since been lost with the construction of a building at 29 Victoria Street.
- 124 We agree with the other heritage experts that the views of the dome, flagpole and drum, referred to by Ms Gould and the council are opportunistic glimpses that would be lost even with a more modest building, consistent with the DDO6 maximum building heights. In balancing the need for some development on the review site and protecting the significant views to the REB dome, drum and flagpole we find that the loss of views to the REB from McKenzie Street are not a basis to refuse this proposal.
- 125 Some submissions and evidence of the council also focussed on a potential impact of views to the gardens from one of the viewpoint 4A positions identified in the 2022 Draft Strategy. These are locations where there is a broad vista into the gardens. Mr Gard’ner’s evidence acknowledges that views marked ‘4a’ are not a singular view but rather include various ‘open views of the gardens from perimeter streets’ including Victoria and Rathdowne streets. His evidence is that:
- the development of the subject site at the scale proposed will adversely impact on the setting of such views and legibility of the Carlton Gardens generally low-scale context such identifiable when standing at the corner of Victoria Street and the top end of Exhibition Street.²⁸
- 126 Ms Gould’s evidence is likewise critical that from the Exhibition Street Reserve the proposed development will remove the part of the vista which provides the low scale that exists from the south at the north end of Exhibition Street, taking in the World Heritage place and the low-scale context to the west, including the subject site. In commenting on this Ms Gould referred to comments of the Heritage Council Committee Report about the 2009 WHEA Strategy. This report sets out that ‘the adjoining

²⁷ Page 15, 2009 WHEA Strategy.

²⁸ Paragraph 137 of Mr Gard’ner’s evidence statement.



triangular pocket of island open space also contributes to an appreciation and understanding of the REB and Carlton Gardens.’²⁹

- 127 Ms Baker ‘s evidence is that the proposal will not impede a general view into the CG from a view at 4A being either at the south-west corner of Victoria Street and Exhibition Street, or further south along Exhibition Street, where the 2022 Draft Strategy places a marker. Mr Raworth’s evidence is that the building, at its lower 8 storeys than the originally proposed 13 storeys, means that there is not an adverse impact on the views to the REB or CG, as set out in the visual analysis that forms part of the 2022 Draft Strategy, or the views identified in the 2009 WHEA strategy.
- 128 Our concerns with the building at the corner location relate more to the dominance of the building itself at this corner, in relation to its adjoining sites and the design objectives of DDO6. The proposed building will not block direct views into the gardens that would not otherwise result from a more modest building. The failings of the proposed building we find relate to the overall scale in context of its setting. This may have some impact on the vista setting of the gardens but a ‘loss of view’ to the gardens is not a specific basis of our decision.

Is the response to Elliott Place and Drummond street acceptable?

Elliott Place

- 129 The response to Elliott Place has been to widen the ground level pavement to provide better and safer access for pedestrians and vehicles in this service lane with a cantilevered first floor, and then partly cantilevered 2 and 3 levels above.
- 130 As a traffic safety and circulation consideration we are satisfied that the proposal here is acceptable. The widening will improve sightlines and we acknowledge that the Head, Transport for Victoria finds the proposal acceptable. We therefore do not agree with submissions from some of the objector parties that the proposed basement entry and access to car parking from Elliott Place will increase traffic safety concerns.
- 131 As a ‘back of house’ service location we also agree with commentary of Ms Baker’s heritage evidence that Elliott Place is largely characterised by later development and is not a heritage environment. Therefore there does not appear to be a strong heritage driver to the DDO6, 8 metre maximum height required for this lane.
- 132 Here we accept the proposed design intent as it faces Elliott Place and also note that its built form response at lower levels was not greatly contested, other than as a question of equitable development by the owner of 24 Victoria Street to the direct west. The impact of the proposed upper levels

²⁹ Page 18 of the Advisory Committee Report – Tribunal Book page 2342.



will not be well read in the confines of Elliott Place and the recession of the upper levels above.

- 133 As a question of equitable development the owner of the building to the west is concerned that the first floor that is proposed to the west boundary should be recessed in the same way that the following two levels above include a 3 metre inset in the central section of the building.
- 134 Mr Crowder's evidence includes an equitable development scenario testing undertaken by his office for this interface. From this we are satisfied that building to the boundary at first floor and the podium levels in the form proposed could be accepted. We do not see a specific need to set back the building from Elliott Place as sought by the adjoining property to the west for equitable development reasons.

Drummond Street

- 135 Mr Raworth's evidence is that the proposed building has been designed with appropriate regard to Drummond Street streetscape and its location in HO1. This is noting the policy tests that seek concealment of upper levels from this street. Mr Gard'ner is also similarly satisfied that the concealment test of HO1 is met. Mr Raworth noted he placed considerable emphasis on the management of views from Drummond Street³⁰.
- 136 Ms Bell's evidence is that the proposal has been designed in consideration of views from Drummond Street in the context of appreciating the heritage place. In particular, various view points from the western footpath were tested via the preparation of wireframe photomontages.
- 137 Ms Gould opposes the building due to the glimpse of views to it that may be seen from angled view in Drummond Street. A number of resident objectors also oppose the potential views of the building from Drummond Street. The Carlton Residents Association prepared its own cross section of analysis across 16-22 Drummond Street, using visual queues on-site for reference and also prepared a form of photomontage. From this, they questioned the accuracy of the photomontages from Drummond Street and the wireframe diagrams provided to test the concealment policy in HO1.
- 138 None of the four heritage architect witnesses, nor Ms Bell or Mr Crowder, experts in urban design and planning, question the accuracy of Scharp photomontages or wire frame diagrams. As an expert tribunal ourselves, we too are satisfied that the photomontages and wireframe diagrams provided by Mr Wilkinson are of sufficient accuracy to be used as a visual aid in our assessment. As with any such visual aids we are conscious that some care needs to be taken in their use.
- 139 For the purposes of assessment we have primarily relied on the architectural drawings and their elevations. Our own review of the architectural

³⁰ Page 30 of Mr Raworth's evidence statement.



drawings and elevations, including an assessment of a cross section that can be derived using the plans, the plans provided to us by the council for 16-22 Drummond Street and street measurements provided by the Carlton Residents Association is that the concealment test, when viewed directly to the site over 16-22 Drummond Street is met.

- 140 We also give considerable weight to the heritage evidence where all, bar that of Ms Gould is that the proposal is acceptable from Drummond Street. Ms Gould also acknowledged that the concealment test as directed for the HO1 area by policy of the planning scheme is met.
- 141 A minor oblique view is shown in a photomontage from Drummond Street. It is similar to that which occurs for other small extensions, such as has occurred at the upper level extension to the BoM building at 2 Drummond Street. The proposed small protrusion that may be visible in angle view will be some further distance away, with an ability to read the proposed form as separate to the HO1 streetscape. As such we are satisfied the proposed building will not unreasonably impact the heritage character of Drummond Street or the heritage objectives of the HO1 area.

Overall assessment and conclusion about the new building response to the planning scheme and physical context and associated policy

- 142 While we agree there is a need for development on this site to be broken down into smaller elements due to its size, the elements need to better respond to the character of the DDO6 area. This includes the need to have a more consistent street wall to Rathdowne Street, commensurate with the character of this area, and also as a tool to better recess taller building, if proposed, behind. A more robust street wall may be appropriate at the western end of Victoria Street acknowledging the attributes of this street.
- 143 We acknowledge that some definition of the corner of Victoria Street and Rathdowne Street may be appropriate but the breadth and scale of what is proposed at the corner is not what we consider appropriate to the policy and DDO6 design objectives, or the HO992 context. Definition of the corner may also be achieved through other design tools such as changes in texture and detailing.
- 144 We do not form a conclusion as to what the ultimate building height for the site should be if a future proposal is sought as this will be directed by the form and overall massing of a future building proposal. Our finding is that the exposed 8 storey form of the building is too out of context with the objectives of DDO6 to reinforce the built form character of the area as being essentially of low-rise buildings, and the heritage policy directing recessed and partly concealed built form of upper levels in this area.



IS THE PROVISION OF ON-SITE CAR PARKING ACCEPTABLE?

- 145 Parking Overlay Schedule 12 ('PO12') applies to the land. This sets a maximum parking rate for car parking for dwellings in the area at a rate of 1 car parking space per dwelling which for the 67 dwellings proposed. This means a maximum of 67 car spaces for the dwellings in the proposed building should be provided. The proposal includes 91 spaces for dwellings, or a rate of 1.35 car parking spaces per dwelling.
- 146 Clause 52.06 sets out parking requirements for the proposed office and café uses. For the 557 square metres of proposed office floor area a minimum of 16 car spaces is required and this is provided in the basement. For the 211 square metres of café space 7 spaces are required and these are also provided for in the basement. Of the office and café parking the traffic evidence expects that 7 of the combined commercial spaces will be used by visitors, while the remainder will be used by staff.
- 147 There is no permit trigger before us to assess the office and café parking as the minimum required spaces is met. The permit requirement we need to assess is if providing more than the maximum number of residential spaces is acceptable. In doing so it is relevant for us to consider the sustainable transport policies of the council, as set out in the planning scheme, along with the objectives of the PO12 which is to 'identify appropriate car parking rates for residential development in specific inner city areas of Melbourne'.
- 148 In the context of sustainable transport it is common ground that the site is highly accessible as a walkers and cyclist 'paradise' as referred to in different indicators set out in Mr Kiriakidis' evidence. Clause 52.34 also sets out bicycle parking requirements that direct at least 13 bicycle spaces are provided for the dwellings, one is provided to the food and drink premises for staff and 7 spaces are provided for visitors to the dwellings.
- 149 The proposal includes 28 resident bicycle spaces for the 67 dwellings, exceeding the minimum of 13 spaces. It includes 4 visitor spaces at ground level for the dwellings, but Mr Kiriakidis' traffic evidence is that this should be increased to 7 spaces to meet the requirements of clause 52.34. No shower or change room facilities are required for the office floor area proposed and none is provided.
- 150 The council remains of the view that the over-supply of car parking for the dwellings is excessive. Mr Watson, an objector party that lives south of Victoria Street is concerned that the proposal does not provide sufficient parking, noting that there is very limited parking for visitors in the immediate area.
- 151 The decision guidelines of PO12 set out that before deciding on an application which seeks to increase the maximum number of car parking spaces, the responsible authority must consider as appropriate:



- Any relevant Local Planning Policies.
- Any empirical analysis which supports a variation in the number of car parking spaces that should be provided.
- The particular characteristics of the proposed use with regard to the likely car parking demands generated.
- The availability of car parking in the locality.
- The likely contribution of public transport in mitigating car parking demands.
- Whether the development includes bicycle and motorcycle parking.

152 The applicant relies on evidence from Mr Kiriakidis that the additional parking provided to dwellings is acceptable based on a number of factors. In particular, an empirical analysis he has undertaken for the site and the availability of parking in the area. His evidence is that as the dwelling configurations are large and spacious for their location he expects that a meaningful proportion of dwellings are likely to attract an occupant demographic comprising higher income earning households. His analysis of relevant statistical data is that in both the postal codes of Melbourne and Carlton there is a correlation between higher car ownership and higher incomes.

153 Mr Kiriakidis' written evidence is also that there are no relevant local planning policies to be addressed, although his evidence statement more broadly refers to state policy at clause 18 and the City of Melbourne Transport Strategy 2030. In response to questions about policy from the council he acknowledged that there is relevant policy at clause 18.01-1L that supports development that encourages other transport modes and discourages the use of private motor vehicles, as well as supporting a reduction or waiving of car parking requirements for new use and development that has good access to public transport.

154 We also asked the council if the Transport Strategy was a document that we should be considering. A copy of this was then tabled and identified as an adopted policy of the council. This strategy sets out that:

Despite current policies to reduce the construction of unnecessary off-street parking, there is an oversupply of off-street parking in the municipality. This oversupply impacts the number of vehicles in the municipality, building heights, streetscapes, housing affordability and mode choice.³¹

155 While there may be an existing empirical demand for parking spaces, the policies of the council and the planning scheme do not encourage an

³¹ Section 4.5 – Page 56.



ongoing provision of supply simply on a basis that there is a demand. Rather the planning scheme seeks to manage demand by restricting supply.

- 156 In response to questions on this issue, Mr Kiriakidis commented that he was aware of suppression strategies, but that they were better aimed at suppressing destination parking associated with commercial uses, rather than origin parking associated with dwellings. He referred to such studies in areas such as Cremorne. The applicant then tabled a copy of the Parking Controls Review – Cremorne Enterprise Precinct July 2020 as reference to Mr Kiriakidis' comments.
- 157 We are familiar with strategies, such as the provided Cremorne study. This was the basis of questions we put to him as to why, in the scope of demand management and the overall sustainable transport policies of the planning scheme the proposal as a whole did not balance out the additional residential supply with a reduced office and café parking supply. Mr Kiriakidis advised that he understood the applicant had sought to minimise permit requirements for the proposal by providing the full provision of parking for the office and café.
- 158 As the car parking provision for the office and café meets the minimum number required in clause 52.06 it must be deemed that this provision is acceptable. The design of the car parking still leads us to question how visitors for these uses will access the spaces provided that are in the basement.
- 159 We also note that Mr Kiriakidis' evidence is that there is limited availability of parking in the area. This is based on on-street parking as he had not surveyed if there is existing long term parking currently available for lease in multi-storey private parking locations nearby. We consider this could have been a relevant consideration for the site's location.
- 160 As a whole, we are not satisfied that the proposal has sufficiently addressed the decision guidelines of PO12. In particular we are not satisfied the provision of residential parking is an acceptable response to policy at clause 18.01-1L and has not sufficiently addressed the decision criteria to factor the availability of public transport to mitigate demand or the overall provision of car parking in the locality.
- 161 On the basis of the transport policies of the council there is no basis to support additional car parking for the proposal as sought by Mr Watson.

DOES THE PROPOSAL RESULT IN UNREASONABLE OFF-SITE AMENITY IMPACTS?

- 162 Nearby residents to the west and south of the site submit that the proposal may lead to a loss of views they currently enjoy across the site toward the REB and CG. The submission by Mr Livingston on behalf of landowners at 21 Victoria Street acknowledges that there is no specific policy in the planning scheme for this area that seeks to protect views and that, as a



principle, there is no right to a view. However, he submits that providing a building within the DDO6 maximum building heights ‘would preserve’ such views and that the HO992 and DDO6 controls ‘in part, seek an outcome where those who live around the Gardens can enjoy an equitable sharing of those views’. The owners of 9/2 Drummond Street also submit that their amenity will be diminished through a loss of views they enjoy to the east from their dwelling.

- 163 There is nothing in the MUZ, DDO6 or HO992 provisions, or the WHEA strategies (either adopted or proposed) that indicates that views from private properties to the REB and CG are to be protected. Our findings about the proposed building relate to the heritage character and urban design outcomes sought for the area, not because the proposed building may limit existing views that are fortuitously afforded across the review site.
- 164 The owners of 9/2 Drummond Street to the west, also submit that the proposal will result in unreasonable overshadowing and overlooking to their dwelling. This dwelling is located over 24 metres west of the review site, across Elliott Place and the existing two storey building at 24-30 Victoria Street. At this distance we are satisfied that any impost through potential overlooking or loss of privacy from the proposed dwellings is acceptable. This is considering other provisions of the planning scheme that set 9 metres³² as an acceptable distance to avoid unreasonable overlooking.
- 165 The proposal includes some screening of windows to the townhouses facing north, to the directly abutting site at 25-27 Rathdowne Street. This addresses the issue of potential overlooking to this dwelling and it is on this basis that this neighbour has agreed to no longer object to the proposal³³. We accept that the screening addresses issues of overlooking, but it results in some issues of on-site amenity that we address below.
- 166 The owners of 9/2 Drummond Street also question if the proposal will result in unreasonable noise, including noise from residents on balconies and mechanical noise, including noise from rubbish collection in Elliott Place. We concur with comments of Mr Crowder in his response to questions about this that general residential noise is addressed through local laws and *Environment Protection Act 2017(Vic)* provisions. General noise from residents using their balconies is not a reason on which we refuse this proposal.
- 167 There is a need to manage noise associated with the rear loading bay in Elliott Place. A proposed draft permit condition of the council required the loading bay to only be used during the hours of 7am and 9pm. The applicant was not opposed to this draft condition. Had we determined to

³² Notably that set out at clause 55.04-6, that is commonly used as a benchmark in assessing overlooking in circumstances where the clause does not specifically apply.

³³ This includes a permit condition that the applicant proposes to include some additional screening to that shown on the substituted application plans.



otherwise grant a planning permit we are satisfied that such a condition would have addressed the issues of potential late night noise associated with loading and rubbish collection.

- 168 A number of nearby residents submit the additional car parking in the proposal will lead to additional traffic in Elliott Place and the general area, where traffic is already congested. We accept the evidence of Mr Kiriakidis that the additional traffic in Elliott Place is relatively small. In the existing congested road network its access can be managed with the proposed widening of this lane. This will improve the sight line distance for traffic both entering and exiting the lane, where it is currently limited. We also note that the Head, Transport for Victoria is the road manager for Victoria Street and does not object to the access changes to Elliott Place, or the proposal in general, subject to some conventional permit conditions.

DOES THE PROPOSAL PROVIDE ACCEPTABLE ON-SITE AMENITY FOR FUTURE OCCUPANTS?

- 169 Our review of the proposal identifies some issues relating to the on-site amenity for future occupants. These include the room depths of some dwellings, and the subsequent access to natural daylight in these dwellings, provision of balcony spaces and the provision of communal open space. Given our overall findings about the external interfaces of the building we do not address these issues in detail but make the following observations about the on-site amenity that should be considered if a new proposal for this site.

Communal open space

- 170 Clause 58.03-2 – Communal open space objective, seeks the provision of communal open space that meets the recreation and amenity needs of residents. The proposal includes internal recreation facilities in the form of a lounge/lobby at ground floor and internal recreation facilities to the west at first floor. The proposed forecourt area that is not identified as communal open space as it is not private and does not meet the solar orientation requirements for such a space, as set out in clause 58.03-3 – Solar access to communal outdoor open space objective. We are satisfied that with the proximity of CG that an outdoor communal open space area for the proposal before us is not essential.

Balcony sizes and screening

- 171 The three townhouses at the north-east of the site, facing Rathdowne Street have balconies at their mid and upper levels. The mid-level balconies, adjacent to the living areas are each 9 square metres in area with an approximate depth to the balustrade of 1.15 / 1.2 metres³⁴. Clause 58.05-3

³⁴ Relying on measurements taken from TP11.02 Revision C – Façade details.



sets a standard of providing an area of at least 12 square metres with a depth of 2.4 metres for a 3+ bedroom dwelling in this orientation.

- 172 The applicant relies on the planning evidence of Mr Crowder that the limited balcony spaces can be balanced by the nearby access to CG for recreational use. We accept that communal open space may not be required given this proximity, but question the lack of usable private open space in a context where the dwellings are relatively large, three bedroom apartments and townhouses.
- 173 The four townhouses, east of the pool and communal area, that face north have limited secluded private open space and no balconies adjacent to their living spaces. These dwellings each include a small front garden that is accessed from the dwelling entry and associated bedroom. For three of these dwellings, the living area at the next level is then screened to avoid overlooking to the adjoining dwelling to the north and includes no usable balcony. These are 3 bedroom dwellings and we are not comfortable providing no directly adjacent balcony presents an acceptable internal amenity outcome, particularly when the screening will reduce outlook and may impact daylight.
- 174 The plans do not indicate the height of the boundary wall along the north of the site that forms the side wall of 25-27 Rathdowne Street. We note that in part this is a 12 metre high wall that may limit the daylight, sunlight and general amenity of the entry to the north facing terrace dwellings and the lower levels of these dwellings. We were advised that the 4.5 metre setback to this north interface was to address drainage. If a new proposal is sought we consider this interface requires review.

Room depths

- 175 A number of dwellings, notably some apartment dwellings with west orientation at upper levels have room depths that do not meet the 9 metre maximum room depth, Standard D27, in clause 58.07-2, particularly accounting for roof overhang above. No specific daylight modelling was provided but Mr Crowder's evidence is that the overall amenity of these dwellings is acceptable as the non-compliant areas are kitchens where he says lights are commonly used.
- 176 The room depth objective is to enable adequate natural daylight. The Apartment Design Guidelines 2021 that underpin this provision, are a relevant consideration in addressing building design strategies of clause 15.01-2S. These guidelines set out that room depth, and its consequent, impact on daylight, is important for occupant health and energy efficiency. A review of room depths, having regard to the objective of clause 58.07-2 and the Apartment Design Guidelines is required.

Conclusions

- 177 The internal arrangement of the proposal is generally acceptable, although there are elements of internal amenity as set out above that we consider need review. These elements add to the weight of concerns we have with the proposal as a whole.

DOES THE PROPOSAL RESULT IN NET COMMUNITY BENEFIT?

- 178 The applicant submits that in considering both the heritage and urban design provisions applying to the site, positive responses of the proposal to other policy must also be considered. We agree that consistent with clause 71.02-3 an integrated decision must be made. The findings in *Boroondara City Council v 1045 Burke Road Pty Ltd*,³⁵ have again been recently affirmed by the Supreme Court in *Viva Energy Australia Pty Ltd v City of Greater Geelong*³⁶ where the concept of integrated decision making is to consider relevant policy and provisions relevant to the particular discretion to be exercised. In this case this includes both use and development in the MUZ, development in HO992 and development in DDO6, along with the provision of parking in PO12.
- 179 Having regard to failures we find in relation to the heritage and built form character as sought by both HO992 and DDO6, we agree with the applicant that there are some positive attributes of the proposal that need to be balanced against these failings. These include that:
- The site, at over 3000 square metres, combined with its location at a major corner presents an urban design opportunity.
 - The proposal can improve the provision of housing in a well serviced location.
 - The site is located within the Parkville NEIC, although, we note that it is not at the core of this cluster.
 - The proposal meets relevant tests to address shadow to the CG, both in the current policy setting and proposed changes to the planning scheme to manage shadow.
 - The proposal improves the access provision in Elliott Place through a functional widening of this space. This is a benefit to the safety access of this rear lane, however, one we anticipate would need to occur in any intensification of the review site, rather than design element proposed specifically to benefit the broader area.
- 180 The proposal includes additional housing in a well serviced area, although we note that the empirical analysis of expected car parking ownership by Mr Kiriadikis aligns with commentary from Mr Livingston that the

³⁵ (2015) VSCA 27.

³⁶ [2023] VSC 586, paragraph 121.



development itself is not likely to improve the provision of affordable housing. However, we also accept Mr Crowder's commentary that the dwellings may be occupied by people currently living in larger homes that may 'downsize' leaving the larger homes in other locations to be redeveloped for additional housing. Whether this results in affordable housing through redevelopment of other sites is not known.

181 There are other attributes of the site that we consider common for its inner city location and apply to all sites in the general area. These include that:

- The site is within the PPTN with excellent access to transport. It also sits at the 'doorstop' of the central business district where the site's opportunities to the services offered in this location should be maximised.
- The site is close to a number of educational institutions.
- The site is close to major open space, notably the Carlton Gardens.
- The site is close to entertainment and tourist attractions of the Central area and Lygon Street.

182 The proximity of this site to services means it should be developed to its full potential. However, as set out earlier in our review of relevant policy, the heritage and urban design policy elements weigh heavily against the review site's potential derived from its proximity to the centre of Melbourne and the services of the area. Policy leans heavily toward managing character in this location over accommodating urban growth. In this context we are not satisfied that the failings of the proposal are outweighed by the ability of the site to increase housing supply, along with its proposed office and café space.

CONCLUSION

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

Alison Glynn
Presiding Member

Lorina Nervegna
Member

