

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NOS. P791/2017  
PERMIT APPLICATION NO. TP-2016-739

**CATCHWORDS**

Section 77 of the Planning & Environment Act 1987; Melbourne Planning Scheme; Mixed Use Zone; Design & Development Overlay Schedule 29; Heritage Overlay Schedules 3 & 471; Part six-storey and part seven-storey mixed use building; Demolition of interwar industrial building; Built form

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|------------------------------|---|
| <b>APPLICANT</b>             | Stanley Street Holdings Pty Ltd   |
| <b>RESPONSIBLE AUTHORITY</b> | Melbourne City Council  |
| <b>RESPONDENTS</b>           | Ian Woodruff<br>Robyn Harris<br>Justin Vella<br>Rak Investments Pty Ltd<br>Susan Brazzale |
| <b>SUBJECT LAND</b>          | 210-228 Stanley Street & 205-211 Roden Street, West Melbourne                             |
| <b>WHERE HELD</b>            | Melbourne   |
| <b>BEFORE</b>                | Geoffrey Code, Senior Member<br>Ann Keddie, Member  |
| <b>HEARING TYPE</b>          | Hearing   |
| <b>DATE OF HEARING</b>       | 21, 22 & 23 August 2017; 4 December 2017  |
| <b>DATE OF ORDER</b>         | 8 January 2018  |
| <b>CITATION</b>              | Stanley Street Holdings Pty Ltd v Melbourne CC [2018] VCAT 30                             |

**ORDER**

**Decision affirmed**

- 1 The deemed decision of the Responsible Authority to refuse a permit is affirmed.

**No permit granted**

- 2 In permit application no. TP-2016-739 no permit is granted.

Geoffrey Code  
**Senior Member**

Ann Keddie  
**Member**

### APPEARANCES

For Stanley Street Holdings Pty  
Ltd

Mr Dominic Scally, Best Hooper Lawyers

He called the following witnesses:

- Mr Stuart McGurn, town planner, Urbis Pty Ltd
- Dr Phillip Greenup, lighting designer, Arup Pty Ltd
- Mr Bryce Raworth, conservation consultant, Bryce Raworth Pty Ltd
- Mr Tim Biles, urban designer, Message Consultants Pty Ltd

He also tendered statements of evidence prepared by Ms Charmain Dunstan, traffic engineer, Traffix Group Pty Ltd and Mr Chris Goss, visualisation, Orbit Solutions Pty Ltd, but neither was required to attend the hearing to adopt their statements or be examined

For Melbourne City Council

Mr David Song, town planner, Song Bowden Pty Ltd

He called the following witness:

- Ms Meredith Gould, heritage architect, Meredith Gould Architects Pty Ltd

For Robyn Harris & Susan  
Brazzale

Ms Nicola Collingwood of Counsel, by direct access

She called the following witness:

- Ms Amanda Roberts, urban designer, SJB Urban Pty Ltd

For Ian Woodruff

No appearance

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| For Justin Vella            | No appearance  |
| For Rak Investments Pty Ltd | Mr Michael Dunn, town planner, Metropol Planning Solutions Pty Ltd |

### INFORMATION

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| Brief description of proposal           | Construction of a part six-storey and part seven-storey mixed-use building   |
| Nature of proceeding                    | Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. <sup>1</sup>  |
| Planning scheme                         | Melbourne Planning Scheme  |
| Zone and overlays                       | Mixed Use Zone ( <b>MUZ</b> )<br>Heritage Overlay Schedules 3 ( <i>North &amp; West Melbourne Precinct</i> ) ( <b>HO3</b> ) & 471 ( <i>138 Stanley Street</i> ) ( <b>HO471</b> )<br>Design & Development Overlay Schedule 29 ( <i>West Melbourne</i> ) ( <b>DDO29</b> )                        |
| Permit requirements                     | Clause 32.04-6 (construction of two or more dwellings on a lot in MUZ)<br>Clause 43.01-2 (demolition of a building in HO3 & HO471)<br>Clause 43.01-2 (buildings and works in HO3 & HO471)<br>Clause 43.02-2 (buildings and works in DDO29)<br>Clause 52.06 (reduction in parking requirements) |
| Relevant scheme policies and provisions | Clauses 9, 10, 11, 15, 16, 21.04, 21.06, 21.07, 21.16, 22.05, 22.17, 22.19, 22.23, 43.01, 43.02, 52.06, 52.34, 52.35, 52.36, 65 & 66   |

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<sup>1</sup> Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.

Land description

The land is in West Melbourne, about 150 metres north of Dudley Street and about 550 metres from the Melbourne central activities district. It is in a mid-block position on the north-west side of Stanley Street, about 50 metres south-west of the intersection of Adderley Street. The land is 'L-shaped' with a frontage of about 50 metres to Stanley Street and a frontage of about 20 metres to Roden Street. It has an area of about 1,668 square metres. It is a consolidated site comprising a number of lots. It has a fall of about 3.5 metres from the north-east to the south-west. It is currently occupied by an industrial building (now used for a dwelling) constructed in 1935 at 210-212 Stanley Street; a modern two-storey office at 218-228 Stanley Street; an at-grade car park between these two buildings, extending to Roden Street; and a warehouse constructed around the 1950s at 205-211 Roden Street.

Tribunal inspection

On 22 September 2017, the Tribunal carried out an unaccompanied inspection of the former industrial building at 210-212 Stanley Street, the adjacent car park, the land from Stanley Street and Roden Street (including from adjoining land at 1/212 Roden Street) and the West Melbourne environs of the land

## REASONS<sup>2</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Stanley Street Holdings Pty Ltd (in these reasons, **Stanley Street Holdings**) applied to the Melbourne City Council for a permit under the *Melbourne Planning Scheme* (the **scheme**) to construct an eight-storey, mixed use building comprising 90 apartments on the subject land. About 70 nearby owners and occupiers of land objected to the Council against the grant of a permit. The Council failed to grant a permit in the prescribed time. Stanley Street Holdings applied to the Tribunal to review that failure. The Council subsequently resolved to oppose the grant of a permit.
- 2 Stanley Street Holdings has moderated the proposal in an effort to address the Council's and the objectors' concerns. It now wants to build a part six-storey and part seven-storey, mixed use building comprising 73 apartments and a small office (the **proposal**). At the start of the hearing, we allowed its application to amend the permit application.<sup>3</sup> The Council and the objectors who are respondents remain opposed to the grant of a permit for the proposal on various grounds.

### PROPOSAL

- 3 The main features of the proposal may be summarised as follows.
- 4 Although there are only six floors above the two basement levels, the fall in the land to the south-west means that the upper basement projects about 2.8 metres above the footpath at the south-western end of the Stanley Street frontage. We characterise the upper basement as a storey at this part of the land and the proposal as therefore being a part-six storey and part seven-storey building.<sup>4</sup>
- 5 In Mr Biles' and Mr McGurn's opinions, the maximum building height of the proposal is 24.2 metres and 23.6 metres, respectively. Ms Roberts did not include a figure in her statement. The parties did not oppose Mr Biles' opinion. We will adopt Mr Biles' figure.<sup>5</sup> In this proceeding, the number of storeys rather than maximum building height is the relevant figure.

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<sup>2</sup> 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.

<sup>3</sup> The amendment of the permit application was made in our order dated 25 August 2017.

<sup>4</sup> We are mindful of the definition of storey at clause 72 of the *Melbourne Planning Scheme*, which provides that a storey may include a basement. We do not include the lower basement as a storey, having regard to the purpose of schedule 29 to clause 43.02 of the scheme (being provisions known as DDO29 for West Melbourne) which includes a provision relating to a preferred maximum number of storeys.

<sup>5</sup> The scheme states that building height is the vertical height measured from the central point of the footpath along Stanley Street to the highest point of the building excluding 'architectural features and building services'. The top floor parapet is at RL 31.75. Above this parapet is a 2 metres high

- 6 There are 73 apartments ranging in size between 53 square metres and 123 square metres. There are 25 one-bedroom, 40 two-bedroom and 8 three-bedroom apartments. The ground floor contains one 76 square metre floor area office.
- 7 The building has a street wall at a consistent level along Stanley Street. It sits at RL 25.25. Mr Biles states its height therefore ranges between 13.5 metres (at the north-eastern end) and 15.9 metres (at the south-western end). The street wall to Roden Street varies in height. It sits at RL 19.25 (on the north-eastern side of the recessed entry) and at RL 25.25 (on the south-western side of the entry). Mr Biles states its height therefore ranges between 6 metres (at the north-eastern end) and 14.2 metres (at the south-western end). In terms of storeys, the Stanley Street street wall is between four and five storeys high. The Roden Street street wall is two storeys (in part) and four storeys (in part).
- 8 Vehicle access is from the south-western end of the Stanley Street frontage. There are two basement levels. The basements contain 85 car spaces (no tandem space and no mechanical parking), storage for 77 bicycles and 96 residential storage cages (71 of which are above bonnet).
- 9 At the four levels comprising the ground floor to level 3, the proposal is built to all boundaries except for a nine metre setback along part of the northern side boundary shared with 203 Roden Street and a 4.5 metres setback along the rear boundary shared with 215-223 Roden Street. The two top levels (levels 5 & 6) are set back from all boundaries except for an eleven metres long section on the north-eastern side boundary shared with 215-223 Roden Street.
- 10 The roof includes a 190 square metres outdoor living area, partially covered by a pergola.
- 11 External building materials are precast concrete, wood stamped concrete, metal cladding, clear glazing and obscure glass.

## KEY ISSUES

- 12 The three main permissions needed under the scheme relate to demolition of all buildings on the land under clause 43.01-2 of the scheme and construction of the new building under clauses 43.01 & 43.02 of the scheme. In considering whether to grant a permit, we must be satisfied that:
  - (a) permission should be granted to demolish the buildings, having regard to the relevant considerations under clause 43.01 for the *Heritage Overlay*,

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rooftop services screen (at RL 33.75) and a 4 metres high staircase/lift enclosure (at RL 35.75). The central point on the Stanley Street footpath is not dimensioned on the drawings, but would be close to the midpoint of the two boundaries, given the level fall in the land. The central point is therefore RL 10.72, given the boundary levels of RL 11.72 and RL 9.73. Based on these figures, the maximum height appears to be 22.62 metres, measured to the top of the services screen.

- (b) permission should be granted to construct the new building, having regard to the relevant considerations under both clauses 43.01 & 43.02 for the *Heritage Overlay* and the *Design & Development Overlay*, and
  - (c) the proposal is an acceptable planning outcome having regard to the task (under clause 10 of scheme) of integrating and balancing conflicting relevant objectives.
- 13 The range of relevant considerations under clause 43.01 for the *Heritage Overlay* are not confined to a narrow view of what constitutes heritage significance, but may include all the matters in the decision guidelines under the *Heritage Overlay* including relevant State and local planning policies.<sup>6</sup>
- 14 In the interests of brevity, we will not set out our findings and give reasons for those aspects of the proposal that have not attracted objection.
- 15 We distil the grounds relied upon by the parties to three key issues:
- (a) Whether the overall maximum height and massing of the building is acceptable.
  - (b) Whether the building's interface with the two existing buildings to the south-west at 230-250 Stanley Street is acceptable.
  - (c) Whether the demolition of the former industrial building on the land at 210-212 Stanley Street is acceptable.
- 16 Our ultimate finding is that the proposal does not positively respond to these issues. After balancing all the relevant considerations, we find the proposal is not an acceptable planning outcome and a permit should not be granted.
- 17 The second and third of the three key issues relate mainly to heritage considerations and the first issue relates mainly to built form considerations. We will address the second and third issues first. Before we do that we need to set out the heritage context.

## HERITAGE CONTEXT

- 18 We accept Ms Gould's general description of Stanley Street and Roden Street (both west of Adderley Street) as containing Victorian era row housing (both single and double storey) and manufacturing buildings, mostly small scale, from the early to middle decades of the twentieth century.

### The relevant heritage places

- 19 According to the scheme maps, the land is partly in HO3 and partly in HO471. HO3 is a precinct-wide heritage overlay that applies to an area described as 'North & West Melbourne'. HO3 applies to that part of the

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<sup>6</sup> *Boroondara City Council v 1045 Burke Road Pty Ltd* [2015] VSCA 27; *Bowman v Boroondara CC* [2016] VCAT 301 [10].

land fronting Roden Street and the western part of Stanley Street and contains the office and warehouse and car park referred to in the information section at the start of these reasons. HO471 applies to the eastern part of the land at 210-212 Stanley Street and contains the single-storey industrial building (now used for a dwelling) constructed in 1935 also referred to in the information section.

- 20 We agree with the parties that HO471 appears to be a mapping error. We find that for two reasons.
- 21 First, the schedule to the heritage overlay states that HO471 relates to land at 138-140 Stanley Street, West Melbourne. The land at 138-140 Stanley Street is on the opposite side (ie north-east side) of Adderley Street.
- 22 Second, the Council's 1985 Conservation Study is a reference document in the scheme under clause 22.05 and the study's data sheet for 138-140 Stanley Street individually grades the building at that address and contains images and details that do not relate to the former industrial building at 210-212 Stanley Street. The images and details correctly relate to 138-140 Stanley Street. The data sheet grades the building as 'D3'.
- 23 In *Alphington Grammar School*,<sup>7</sup> the Tribunal considered land that was not in a heritage overlay on a scheme map but the relevant details of that land were included in the schedule to the overlay as an individually listed heritage place as HO78. HO78 applied to other land on the map. The Tribunal found the other land had no heritage values and hence there was a mapping error. The Tribunal nonetheless held the map prevails over the schedule.
- 24 We agree with the Tribunal in that case that the map must prevail over the schedule. Hence, 210-212 Stanley Street is in a heritage overlay being heritage place HO471. As HO3 is a precinct-wide heritage overlay applying to all abutting land, and as the relevant reference documents include 210-212 Stanley Street in the precinct known as 'North & West Melbourne' and identified as HO3, the parties invited us to find that 210-212 Stanley Street is properly mapped as being in HO3 and not HO471.
- 25 In accordance with *Alphington Grammar School*, we decline to make that finding. We find both heritage places known as HO3 & HO471 apply to the land, with HO471 applying to 210-212 Stanley Street and HO3 applying to the balance of the land. Under the heritage overlay, a relevant matter in deciding whether to grant a permit to demolish or to construct buildings and works is any applicable heritage study. The applicable heritage study for both heritage places is the study relating to North & West Melbourne.
- 26 It is disappointing that the subject land is infected with this mapping error, particularly as the Council has carried out a detailed heritage review of West Melbourne in recent years.

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<sup>7</sup> *Alphington Grammar School v Yarra* CC [2008] VCAT 995 [15] of the legal ruling.

## Statements of significance

- 27 The North & West Melbourne heritage precinct was introduced into the scheme many years ago.<sup>8</sup> There is therefore no statement of significance for heritage place HO3. There is also no statement for heritage place HO471.
- 28 According to the Council's *Heritage Places Inventory 2016* (the **inventory**), an incorporated document in the scheme, all of the buildings on the subject land are ungraded. According to Mr Raworth, most of the land in Stanley Street and Roden Street between Adderley Street and Railway Parade is within a level 3 streetscape under the inventory.
- 29 In the Council's recent *West Melbourne Heritage Review* (the **heritage review**), the former industrial building at 210-212 Stanley Street is recommended to be upgraded to D grade in a level 3 streetscape and as contributory to precinct HO3. The relevant data sheet states the building has 'aesthetic' heritage value and is of a 'simple Moderne design [and] well preserved'.
- 30 The heritage review is being implemented under proposed Amendment C258 to the scheme. The A to D grade system is to be replaced with the three grades of significant, contributory and non-contributory under an updating of the inventory. The current heritage policy is also updated. The former industrial building at 210-212 Stanley Street is included as a contributory building in the updated inventory.<sup>9</sup> Public exhibition of Amendment C258 has closed and the Council anticipates submissions will be considered by a panel in coming months.

## Heritage policy

- 31 The relevant heritage policy is set out in clause 22.05 of the scheme. We do not intend to refer to that policy in detail. It suffices to refer to the following matters in that policy:
- If a building of heritage interest contributes to the significance, character and appearance of the area, conservation is preferred.
  - Demolishing the front part of 'many' D graded buildings is not preferred.
  - Before granting a permit to demolish a building, consideration should be given to the degree of the building's significance, the character and appearance of the building and its contribution to the character of the streetscape and area, and whether demolition is justified for the development of the land.

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<sup>8</sup> *Waters v Melbourne CC* [2017] VCAT 1350 [8].

<sup>9</sup> We were informed that the mapping error to which we have referred is not proposed to be corrected by amendments to the relevant HO map and, if this is true, this is an additional disappointment. We encourage the Council to ensure the correction is included in the Amendment.

- (d) The façade height of a new building should not 'dominate' an adjoining contributory building in a level 1 or 2 streetscape.

## THE SOUTH-WESTERN INTERFACE

- 32 We now turn to whether the construction of the new building would adversely affect the significance of the relevant heritage places ie HO3 & HO471.
- 33 The south-western interface of the proposed building abuts former two-storey industrial buildings that extend about 45 metres southwest along Stanley Street to the corner of Railway Parade. Of all the land's interfaces, the south-western interface is problematic.
- 34 Unfortunately, the heritage data and context of these industrial buildings is confusing and unclear. Ms Gould and Mr Raworth refer to these buildings as being located at 230-250 Stanley Street. The two former industrial buildings occupy separate parcels of land and have both been converted into apartments. We will identify the abutting industrial building as 230 Stanley Street. The land on which it sits extends to the north-west to Roden Street. We will identify the building at the corner of Railway Place (that abuts the building at 230 Stanley Street) as 250 Stanley Street.
- 35 Both 230 & 250 Stanley Street are currently ungraded under the inventory.
- 36 Under the heritage review, the land at '240-250 Stanley Street' is assessed as both contributory and individually significant. The data sheet includes a map that identifies the land as the corner site ie 250 Stanley Street. However, the confusion arises because the statement of significance under the heritage review refers to the 'first stage' of a two-storey industrial building being constructed in 1920 on the corner land (ie 250 Stanley Street) and to the 'second stage' being constructed in 1928 on adjoining land to the north-east (ie 230 Stanley Street). The second stage is described as a 'five-bay matching addition on two-levels'.
- 37 We therefore find we should take a cautious approach in response to the lack of clarity and consider the two buildings at 230-250 Stanley Street as proposed to be contributory or individually significant and, hence, a heritage place in their own right.
- 38 The two buildings now both include a recessed third upper floor behind the existing industrial facades. The third floor apartments at 250 Stanley Street all appear to have small open roof terraces and three centrally-located apartments along the frontage at 230 Stanley Street have roof terraces, two of which are covered.
- 39 As we have already stated, it is current heritage policy that a new building should not dominate an adjoining contributory building in a level 1 or 2 streetscape. The buildings at 230-250 Stanley Street are not currently contributory. Under the heritage review and Amendment C258, the buildings are proposed to be contributory. The changes to heritage policy

are to the effect that new buildings should be respectful in relation to matters including height, massing, style, architectural expression and materials, should maintain a façade height that is consistent with that of an adjoining contributory building.

- 40 We find the style, architectural expression and materials in the façade are respectful of the buildings at 230-250 Stanley Street. We agree with Mr Biles whose opinion was that the division of the street wall into distinct parts by the use of recessed elements responds well to the 'grain' of Stanley Street, emphasised by the use of the vertical corten steel blade elements. Mr Raworth's opinion was that the façade treatment interprets the gridlike facades found in some older industrial buildings. Whilst Ms Gould found the size of the vehicular entrance and the elevated ground floor level at the western interface with 230-250 Stanley Street problematic, she agreed that the overall design treatment and materials of the façade were acceptable.
- 41 Mr Biles' evidence was that the contrast between the steel elements that define the street wall and the concrete upper level finishes results in a clear distinction between the lower and upper levels. When coupled with the upper level setbacks, this provides an appropriate transition.
- 42 The street façade height of the building at 230 Stanley Street is about 7.5 metres at the boundary with the subject land. The street façade height of the proposed building is about 16 metres (or five storeys, having regard to the extent of basement protrusion at the interface) at the same point. Above the proposed façade sit two upper levels. These two levels are setback 4.55 metres from the shared boundary and three metres from Stanley Street at the south-western end. The upper levels are about 14.7 metres deep.
- 43 We are not persuaded by Mr Biles' evidence. Mr Goss' view 1 photomontage to the north-west from the southern corner of Stanley Street and Railway Parade illustrates the oblique appearance of the building at this interface. It confirms our finding that the interface is unacceptable and not respectful of the heritage values of 230-250 Stanley Street and of the streetscape. The interface has a dominating effect, particularly as the upper two levels present as unrelieved wall on a single plane.

## DEMOLITION

- 44 The demolition of two of three buildings on the subject land (ie those at 218-228 Stanley Street and 205-211 Roden Street) is not in dispute.
- 45 The total demolition of the third building on the subject land, being the former industrial building at 210-212 Stanley Street, is in dispute. It occupies 11 metres of the subject land's frontage of about 50 metres to Stanley Street and occupies a depth of about 24 metres. It therefore occupies about 15.8% of the area of the subject land.
- 46 Ms Gould's opinion is that the scheme does not support the complete demolition of the former industrial building at 210-212 Stanley Street

because it has significance as a contributory building under the heritage review and demolition would diminish the significance of HO3.

- 47 Ms Gould stated that before the former industrial building at 210-212 Stanley Street was constructed in 1935, it was developed for Victorian era dwellings, like much of West Melbourne. Her evidence goes on to include:

[The building] was constructed in late 1935 for J S Cordon & Co Pty Ltd at a cost of 1,432 pounds. The 1935 structure comprises one large rectangular internal space, with only the toilet partitioned from the single space at the back corner. Three saw-tooth roof forms span the width of the single space without columns, achieved with steel lattice girders, within the glazed highlights. Natural south light is provided by the three saw-tooth highlights running the full width of the building. The first saw-tooth structure is visible from oblique angles within Stanley Street. The three saw-tooth elements are evidence on the west elevation.

The perimeter walls are face brickwork, the roof corrugated iron and the windows steel framed. In Stanley Street, the brown clinker brickwork is corbelled and recessed to achieve horizontal banding in the moderne manner. The recessed courses are aligned with the steel framed window transoms, head and sill, and the font for the parapet signage 'J S CORDEN and CO Pty Ltd VICTORIA' completes a neatly detailed and functional form. The building permit drawings show a high level of intactness. ... All three saw-tooth roof forms appear to retain the curved top sheets. ... The design sits within the street as a well-mannered form, providing light and access for the modern motor vehicle workshop.<sup>10</sup>

- 48 In Ms Gould's opinion, the façade is relatively intact, the east side steel framed window having been replaced with a steel entry door and side light. She states the architects were the firm of Purchas and Teague that designed the Melbourne Wool Exchange, at least two influential mansion houses in the Western District and Hawthorn, the former Kew Town Hall and the nearby Briscoe & Co building on the corner of Hawke, Roden and Adderley Streets in West Melbourne.
- 49 Having regard to current heritage policy, Ms Gould's opinion is that the first 10 metres depth of the building should be retained, being the first saw-tooth roof and associated steel roof trusses, one steel girder truss and one glazed highlight.
- 50 Mr Raworth's opinion was that, while accepting that the former industrial building was a 'heritage building' and had heritage 'interest' or 'value', it was 'simple and unremarkable' and the interest or value was low given the current grading and the existence of better examples. He does not support Ms Gould's opinion that the front 10 metres should be retained because

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<sup>10</sup> Meredith Gould, statement of evidence, paragraphs 12, 13 & 16 (footnotes and figure references excluded).

such retention would be a mere 'token gesture' and would be a substantial impact on the development of the land relative to any heritage benefit.

- 51 We prefer Ms Gould's opinion to Mr Raworth's opinion about total demolition of the former industrial building at 210-212 Stanley Street.
- 52 Total demolition would adversely affect the significance of HO3 & HO471. Although its grading as a contributory building under Amendment C258 is not a seriously entertained planning proposal, we are required to consider any applicable heritage study. The heritage review is such a study and the review assesses the building as having contributory significance.
- 53 The street façade and the south-western elevation facing the at-grade car park on the subject land can now be viewed from Stanley Street and the car park. The saw-tooth roof form is prominent from the car park. These parts of the exterior are in good condition with little subsequent alteration. Neither Ms Gould nor Mr Raworth had the opportunity to inspect the interior of the former industrial building at 210-212 Stanley Street. We have had that opportunity.
- 54 The building is now used as one dwelling. However, the interior continues to clearly demonstrate the former use. It is a relatively well-preserved example of industrial architecture of the interwar period. We therefore find it has significance.<sup>11</sup> It makes a contribution to the historic character of the 'North & West Melbourne' precinct. This is a relevant consideration under heritage policy.<sup>12</sup>
- 55 We do not give weight to Mr Raworth's opinion that retention or partial retention of the former industrial building at 210-212 Stanley Street would severely restrict the development of the land and outweigh any heritage benefit. The impact of development restrictions (or, put another way, the economic or financial impact) is not a matter for expert heritage evidence. Therefore an opinion that the heritage benefit is outweighed by economic impact cannot be given weight. By definition, retention of any heritage fabric potentially involves a restriction, like any other control in a scheme.
- 56 There are no submissions or evidence before us about the design impact of partial or total retention of the industrial building. Mr Scally invited us give weight to State urban consolidation policies in considering total demolition. We decline to do so in this proceeding mainly having regard to local planning policies, to which we refer shortly, that direct the bulk of new higher density housing in the municipal district outside the CCZ to urban renewal areas and other areas beside this part of West Melbourne.
- 57 We would not grant permission to demolish the whole of the former industrial building at 210-212 Stanley Street. We agree with Ms Gould that a minimum of the front 10 metres should be retained so that all parts of the roof associated with the first saw-tooth are retained.

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<sup>11</sup> *Melbourne Planning Scheme* cl 22.05, provisions for 'demolition', dot point 1.

<sup>12</sup> *Melbourne Planning Scheme* cl 22.05, provisions for 'demolition', dot point 2.

- 58 The retention of part of this building does not create difficulties relating to the 'use' of the land. The land is in an MUZ. West Melbourne has a mixed use character. We support Stanley Street Holdings' inclusion of a ground floor office of 76 square metres floor area, because this reflects the area's character.
- 59 In our opinion, the retained part of the former industrial building at 210-212 Stanley Street is a preferred location for a separate office with direct access from the Stanley Street footpath. Consideration should be given to the retention of more than the front 10 metres. Small ancillary home offices for the apartments would be a possible use.
- 60 Mr Raworth is correct in his opinion that much of the significance of the building would be lost if the south-western wall of the retained building (in whole or part) butted up against the north-eastern wall of a redesigned new building. If that occurred, the appreciation of the saw-tooth roof form would be lost. If a revised proposal is to be prepared, we encourage the pedestrian access (or vehicle access, landscaping or communal open space) to be positioned alongside the part or total retention of the south-western wall so that it remains able to be appreciated.

## **BUILT FORM**

### **Physical context**

- 61 One of the factors in assessing the built form is the physical context. The land has a significant area and has two street frontages. Stanley Street and nearby streets are relatively wide and contain median parking. There is limited through traffic due to the railway line to the southwest. The surrounding area has a varied built form character of modest single-storey cottages to substantial commercial/industrial buildings and apartments in converted warehouses. This context reflects this part of West Melbourne starting as a residential area in the nineteenth century and then partly changing with new commercial and industrial buildings in the early twentieth century.

### **Policy context**

- 62 Another factor in assessing the built form is the policy context. The main policies under the scheme are those relating to urban design, the local area of North & West Melbourne, built environment, and housing. The main controls are those in the MUZ, DDO29 and HO3 & HO471.
- 63 Mr Biles' opinion is that the proposal has strong strategic support under State policies for housing intensification around activity centres and near public transport, services and facilities, and for accommodating population growth and investment in the broader central city area. He also points out that the subject land is not in a stable residential area under local policies where growth and change is not encouraged. He further relies on one of the

purposes of the MUZ that supports the provision of housing at 'higher densities'.

- 64 We agree with Mr Biles that the proposal responds positively to these considerations.
- 65 The Council relies more on local policies. Local policies are part of the overall policy context and must also be considered. We now turn to those policies. In general, they are less supportive of the proposal.
- 66 From a municipal strategic viewpoint, the subject land is relatively close to the central activities district of Melbourne. We estimate the land is about 550 metres as the crow flies from the nearest point of the Central City Zone (CCZ) on the corner of Latrobe Street and Spencer Street.
- 67 The scheme seeks to direct more intensive development to other parts of the municipal district, including a number of urban renewal areas. There are a number of MUZ areas north-west of the CCZ, including on the east and west sides of Spencer Street north of Latrobe Street and extending to Hawke Street and Roden Street in West Melbourne. These areas include the MUZ that applies to the subject land. The overall policy for these MUZ areas is:

[To] maintain the predominantly low scale of the [MUZ] in West Melbourne, south of Hawke and Roden Streets<sup>13</sup>

- 68 Having inspected the area, we agree with the Council that the 'predominant scale' of the relevant part of the MUZ (ie the block bounded by Stanley Street, Railway Parade, Roden Street and Adderley Street, together with streetscapes directly opposite) is one, two and three storeys of older industrial, commercial and residential buildings, together with some newer buildings. We find this is low scale. Mr McGurn describes building heights in the 'surrounding area ... typically ranging from one to three storeys'.<sup>14</sup> There are a few four-storey buildings.
- 69 We find the proposal does not respond positively to this policy because it is up to four storeys greater in scale than the predominant scale.
- 70 The local area policy for North & West Melbourne is consistent with the overall strategic policy and provides for higher scale development 'at the Central City Fringe', around North Melbourne railway station and along Flemington Road. The subject land is not in the second and third of these areas. It is also not in the first of these areas, having regard to the distance to the CCZ to which we have referred and having regard to the fact that the DDO33 buffers the DDO29 area from the central city. We will refer to DDO29 in more detail shortly.
- 71 The local area policy clearly states that in other areas, lower scale development 'should be maintained'. It also encourages the re-use of

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<sup>13</sup> *Melbourne Planning Scheme* cl 21.16-5.

<sup>14</sup> Stuart McGurn, statement of evidence, para 10.

industrial buildings with 'efficient recycling potential' if it contributes to the 'traditional' mixed use character of the area.

- 72 We find the proposal does not respond positively to this policy because, at part six-storeys and part seven-storeys, it does not maintain the lower scale development in the local area, particularly around the subject land. The heritage witnesses expressed no opinions about whether the former industrial building at 210-212 Stanley Street could be 'efficiently' recycled as part of the proposal. Nonetheless, the building has already been recycled for residential use and, following our external and internal inspection of that building, we did not observe any features that would prevent recycling for office or other commercial uses that could contribute to the traditional mixed use character of the area.
- 73 Local policy supports higher building forms in West Melbourne in the area adjacent to the Hoddle Grid.<sup>15</sup> We find the subject land is not adjacent to the Hoddle Grid. West Melbourne contains a number of DDO areas. The subject land is not in a DDO area that is adjacent to the Hoddle Grid ie the CCZ.

#### **DDO29**

- 74 We now consider the DDO areas in more detail, with reference to DDO29 and DDO33.
- 75 DDO29 is buffered from the CCZ by DDO33. DDO33 is entitled 'CBD Fringe' and is generally bounded by Adderley Street, Latrobe Street, King Street and Dudley Street. One of its design objectives is to provide a transition between taller built form in the CCZ and lower built form to the north in West Melbourne. It provides for a preferred maximum building height of 40 metres which is significantly greater than that in DDO29.
- 76 DDO29 reinforces the overall strategic directions. In DDO29, a new building should not exceed a preferred maximum building height of four storeys. The proposal exceeds this maximum by two to three storeys.<sup>16</sup>
- 77 As DDO29 includes a preferred rather than mandatory maximum, we agree with Mr McGurn that DDO29 is not to be interpreted restrictively and an application that exceeds the preferred maximum should be considered on its merits. DDO29 provides that three particular matters must be considered in determining an application to exceed the maximum building height.
- 78 First, the DDO29 design objectives must be considered. These objectives include acknowledging the transitional nature of the area, encouraging a new built form character and retention of a mixed use nature, and acknowledging the potential for higher built form around North Melbourne railway station. These objectives provide little support for the proposal. The transitional nature of the area might support something greater than

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<sup>15</sup> *Melbourne Planning Scheme* cl 21.16-5.

<sup>16</sup> No figure in metres is provided, although DDO29 includes a preferred maximum floor to floor dimension for both residential and non-residential use.

four storeys at, for example, the edge with DDO33. The subject land is nowhere near that edge.

- 79 Second, the DDO29 built form outcomes must be considered. There are three specified outcomes. The first is 'higher buildings and a new built form character'. The proposal responds to that outcome. The second is 'development [that] reflects the higher building forms in the area'. The proposal does not respond to that outcome because a part six-storey and part seven-storey building does not 'reflect' (in the sense of sitting comfortably with) building forms in the immediate or nearby area of DDO29. The third is 'development [that] respects the scale of, and provides a transition to, adjoining lower scale heritage buildings'. The proposal does not respond to this outcome for the reasons we have already referred to in relation to the south-western interface with heritage buildings at 230-250 Stanley Street.
- 80 Third, 'any local planning policy requirements' must be considered. We have already referred to the North & West Melbourne policy among others. We have already found that the proposal does not respond well to these policies. We observe that Mr McGurn did not include this matter in his statement and did not consider it in forming his opinions.

### **Structure plan**

- 81 Mr McGurn's opinion is that DDO29 needs to be applied flexibly because, in part, the Council is, in effect, moving to update it by preparing a new West Melbourne structure plan. A discussion paper has been released for the structure plan which suggests that DDO29 is 'broad brush' and does not respond to the characteristics of specific areas or sites, particularly heritage areas. We do not agree the structure plan preparation, now underway, is sufficient reason alone to apply DDO29 flexibly.

### **164-184 Roden Street**

- 82 Before the final day of hearings in this proceeding on 4 December 2017, we became aware that the Tribunal had delivered its decision in relation to an application for the development of 164-184 Roden Street, West Melbourne.<sup>17</sup> This land is about 80 metres to the north of the land in this proceeding. The proposal before the Tribunal was an eight-storey building on a larger corner site with three street frontages of about 2,500 square metres comprising four levels inside retained external walls of a former industrial building and four new levels above the retained walls.
- 83 On 4 December 2017 we invited the parties to address us on any parts of the decision they considered were relevant to the decision in this proceeding.
- 84 The Tribunal stated that until DDO29 is replaced or amended, it has continued relevance, partly because of the number of low-scale heritage

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<sup>17</sup> *Waters v Melbourne CC* [2017] VCAT 1350 (Naylor M, 28 August 2017).

buildings in the area, and it continues to represent the preferred future built form character of the area.<sup>18</sup> We agree with the Tribunal.

- 85 Although the Council had issued a notice of decision to grant a permit, the Tribunal ultimately refused to grant a permit. The Tribunal commented that the characteristics of the land could enable a building of more than four storeys as preferred under DDO29, possibly five or six storeys. The Tribunal's comments do not provide support for a part six-storey and part seven-storey building in this proceeding, because of the significantly different physical context.

### Urban design

- 86 From an urban design viewpoint, Mr Biles supports the built form of the two upper levels because of the street and side boundary setbacks and the 'restrained' concrete wall finishes. We have found, earlier in these reasons, that the interface with 230-250 Stanley Street is a poor response to heritage considerations. We are also not persuaded the two upper levels present positively to Stanley Street. The street-facing wall of these two levels is in a single plane and is setback a modest three metres at the south-western end. The setback increases to the north due to the angle of the street. This will have a dominant effect in the street. We find the effect is confirmed by the photomontages.
- 87 DDO29 does not include any podium or street wall requirements. DDO33 has a preferred 16 metre maximum podium height. Mr Biles supports the street wall height in this proceeding because it 'sits comfortably' with the greater width (30 metres) of Stanley Street, reflects the scale of surrounding industrial buildings. Ms Roberts also supported the street wall height, massing and materials.
- 88 In applying the DDO29 requirements flexibly, we have also considered whether the two upper floors are designed in such a way that future development of nearby land in accordance with DDO29 would significantly reduce the visual impact of those two floors.<sup>19</sup> Although the future development of 215-223 Roden Street, abutting to the south-west, would reduce the visual impact from lower level oblique views from the west in Roden Street, the lower scale forms of the heritage interfaces and the relatively wide frontage of the land to Stanley Street means the visual impact is unlikely to be discernibly lessened by future development.

### Conclusion

- 89 The built form response in relation to overall building height and street wall does not respond well to the scheme's policies and requirements.

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<sup>18</sup> *Waters v Melbourne CC* [2017] VCAT 1350 [43].

<sup>19</sup> This factor was considered by the Tribunal when considering development of 87 Roden Street in *Manhattan Hanson Roden Pty Ltd v Melbourne CC* [2010] VCT 698 [6].

## **OTHER ISSUES**

90 We now briefly address some other issues, most of which were agitated by the parties.

### **Equitable development**

91 Rak Investments Pty Ltd (**Rak**) owns land abutting to the south-west in Roden Street. It is developed with a single-storey commercial building. Rak intends to develop the land. Rak is concerned about the six-storey high wall on its shared side boundary. Based on informal and tentative residential development plans, Rak may construct a multi-level wall also on the shared side boundary but with the rear 4.5 metres of its land set aside for ground level secluded private open space and to create a nine metres wide setback from Stanley Street Holdings apartments directly opposite.

92 Rak's submission is that the rear of the six-storey wall should be setback no less than 4.5 metres off the side boundary to reduce amenity impacts to its possible apartments. Rak contends there would be unreasonable visual bulk and unreasonable sense of enclosure to the occupants of future apartments at lower levels near the boundary. It also contends the rooftop communal open space should be set back further from the shared boundary to minimise noise impacts to apartment occupants on its land.

93 We find a setback is unnecessary. In a West Melbourne location, a full height wall on boundary on one side of a courtyard or balcony in a relatively small number of apartments in an apartment development, is not unacceptable. Dr Greenup's evidence is that the daylight impact would not be unreasonable to the potential ground floor apartments. There is equitable development merit in the wall on boundary. The design of the Stanley Street Holdings' development is better overall with greater setbacks to its north-eastern side boundary.

94 Rak is also concerned about privacy impacts because behind the six-storey wall at the rear of its land at each level is a corridor to apartments from the liftwell and stairwell off Stanley Street. In the 4.5 metres long section of wall opposite Rak's possible void is full height and full width clear glazing which would enable oblique views into the rear wall of Rak's potential apartments and direct views into the rear secluded private open space. If we were minded to grant a permit we would have required treatment of all these windows with louvers or obscure glazing to a height above floor of 1.7 metres.

### **Engagement with the street**

95 As noted above, the continuous ground level floorplate across the Stanley Street interface results in a poor relationship with the street at the south-western end, where the basement projects around 2.8 metres above the adjacent footpath. This is further emphasised by the interruption caused by the double width basement ramp and the need for a flight of 14 stairs to the

office component located at that end of the building. It is an unacceptable response to the street interface. Any future iteration of the proposal should address the effect of the continuous ground floor level

- 96 Whilst we do not find the single level floorplates and basement ramp on their own are sufficient grounds on which to refuse a permit, any further iteration of the proposal should address this issue.

### **Internal amenity**

- 97 Dr Greenup's opinion is that changes are required to the design of five apartments across three of the lower levels to achieve acceptable daylight outcomes. If we were minded to grant a permit we would have required the design changes in permit conditions.

### **External amenity**

- 98 We had many submissions about various external amenity issues. We only need to record one of them. Rak sought the inclusion of wingwalls on the shared side boundary with 205-213 Roden Street at the balcony levels of apartments 409 & 509. The addition of wingwalls was not opposed by Stanley Street Holdings. If we were minded to grant a permit we would have been prepared to include such changes in permit conditions

### **IS THE PROPOSAL ACCEPTABLE?**

- 99 In these reasons, we have focused on aspects of the proposal that were in dispute. We have not addressed the many aspects of the proposal that were not in dispute. Our findings about the aspects in dispute are that the proposal does not respond well to the relevant considerations in the scheme about those matters.
- 100 We are very aware that a permit may still be granted, despite our findings on the issues in dispute, if we find the proposal is nevertheless acceptable in the overall net community benefit assessment.<sup>20</sup> We have carried out that assessment. In this balancing exercise, the positive factors do not outweigh the problematic factors. The proposal is therefore an unacceptable one. The problematic factors cannot be remedied by permit conditions.

### **CONCLUSION**

- 101 For the above reasons, the deemed decision of the responsible authority will be affirmed. No permit will be granted.

Geoffrey Code  
**Senior Member**

Ann Keddie  
**Member**

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<sup>20</sup> *University of Melbourne v Minister for Planning* [2011] VCAT 469 [74]-[77]; *Melbourne Planning Scheme* cl 10.04.