

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NOS. P2374/2016 & P2588/2016
PERMIT APPLICATION NO. TP-2016-501

CATCHWORDS

Eight storey building including retention of some heritage fabric; Impact on heritage significance; Policy guidance on extent of change; DDO29; Building height; Warehouse shell design; Reduced resident and visitor parking provision.

APPLICANT

P2374/2016

M Waters & others

P2588/2016

Oliver Hume Property Funds (Roden Street)
West Melbourne Pty Ltd

RESPONSIBLE AUTHORITY

Melbourne City Council

RESPONDENT

P2374/2016

Oliver Hume Property Funds (Roden Street)
West Melbourne Pty Ltd

SUBJECT LAND

164 – 184 Roden Street, West Melbourne

WHERE HELD

Melbourne

BEFORE

Rachel Naylor, Member

HEARING TYPE

Hearing

DATES OF HEARING

11, 12 and 24 May 2017

DATE OF ORDER

28 August 2017

CITATION

Waters v Melbourne CC [2017] VCAT 1350

ORDER

APPLICATION P2374/2016

Amend permit application

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by changing the address of the land from 172 – 184 Roden Street, West Melbourne to:

164 – 184 Roden Street, West Melbourne

APPLICATION P2588/2016

Amend permit application

- 2 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by changing the address of the land from 172 – 184 Roden Street, West Melbourne to:

164 – 184 Roden Street, West Melbourne

NO PERMIT GRANTED

- 3 In applications P2374/2016 and P2588/2016 the decision of the responsible authority is set aside.
- 4 In planning permit application TP-2016-501 no permit is granted.

Rachel Naylor
Member

APPEARANCES

For M Waters & others¹ ('the residents')

Mr P Tesdorpf, planning consultant of Land Use Town Planning, Mr M Waters and Mr W Burke.

For Oliver Hume Property Funds (Roden Street) West Melbourne Pty Ltd ('the Applicant')

Mr J Gobbo QC and Ms J Sharp of counsel instructed by Norton Rose Fulbright Australia

They called the following witnesses:

- Mr M Sheppard, urban designer of David Lock Associates (Australia) Pty Ltd;
- Mr B Raworth, conservation consultant and architectural historian of Bryce Raworth Pty Ltd;
- Mr J Walsh, traffic engineer of Traffix Group Pty Ltd; and
- Mr S McGurn, town planner of Urbis Pty Ltd.

The Applicant decided not to call Mr K Stapleton of Pointilism Pty Ltd to give evidence about the preparation of the photomontages presented at the hearing.

For Melbourne City Council

Mr L Riordan, planning consultant of Tract Consultants Pty Ltd

¹ M White, J Cussen, K Aleksandrowicz, T Archibald & J Myers, E Amott, W Bourke & S Hiscock, R Cottrill, D & H Evans, T & J Flood, A Iacono, L Masterson, B McFadzean, A & P Moloney, C Nguyen, S Oliver, K Rieschieck, P Rocca, G Rodgers & H Sweeting, A Sloan & S McMahon, D Stephens & M Hermans, M Wheeler & J Manton, P & H Wilson and C Wood.

INFORMATION

Land description

The site comprises two lots collectively known as 164 – 184 Roden Street, West Melbourne² that has a combined area of approximately 3,667sqm. It has a rectangular shape with frontages to:

- Hawke Street to the northwest,
- Roden Street to the southeast, and
- Adderley Street to the southwest.

164 – 170 Roden Street (also known as 135 Hawke Street) is occupied by a single storey brick warehouse with a sawtooth roof.

172 – 184 Roden Street is occupied by a three storey brick warehouse building.

The land has a fall across the site of approximately three metres.

Description of proposal

The demolition of the existing building at 164 – 170 Roden Street and the demolition of the majority of the building at 172 – 184 Roden Street.

The development of additions creating an overall building height of 8 storeys containing residential apartments and car parking.

Nature of proceedings

Application P2374/2016

Application under section 82 of the *Planning and Environment Act 1987* – to review the decision to grant a permit.

Application P2588/2016

Application under section 80 of the *Planning and Environment Act 1987* – to review conditions 1(c)(i), (ii) & (iii), 1(e), 4, 16 and 17 contained in the Notice of Decision to grant a permit.

Planning scheme

Melbourne Planning Scheme

² The Notice of Decision to Grant a Permit lists the address of the land as 172-184 Roden Street, West Melbourne but the Council officer report assessing the permit application correctly identifies the land comprises two lots with a combined address of 164-184 Roden Street, West Melbourne. Therefore I have amended the permit application by amending the description of the land.

Zone and overlays	Mixed Use Zone (MUZ) Heritage Overlay Schedule 3 – North and West Melbourne (HO3) Design and Development Overlay Schedule 29 – West Melbourne (DDO29)
Permit requirements	Clause 32.04-6 To construct two or more dwellings on a lot in MUZ Clause 43.01-1 To demolish a building and part of a building, to construct a building and to construct and carry out works, and to externally alter a building in HO3 Clause 43.02-2 To construct a building and to construct and carry out works in DDO29 Clause 52.06-3 To reduce the standard car parking requirements for dwellings and residential visitors

REASONS³

WHAT IS THIS PROCEEDING ABOUT?

- 1 Planning permission is sought to develop the land known as 164 – 184 Roden Street West Melbourne by way of demolition, alterations and additions to create an 8 storey residential design. The Council supports this proposal subject to some changes including:
 - Deleting the reference to ‘warehouse’ as the proposal is entirely residential;
 - Increasing the sixth floor setbacks and deleting a fourth floor apartment (changes now included in the substituted amended plans that I am considering);
 - Modifying the snorkel widths and lengths in some apartments; and
 - Providing a minimum of 6 square metres for all private balconies.
- 2 The conditions in the Notice of Decision to grant a permit also include a condition that states:
 4. The Roden Street split level shells must not be used as dwellings without the prior written consent of the Responsible Authority.
- 3 The Applicant seeks a review of some of the conditions in the Notice of Decision. As the amended plans include the changes sought in condition 1(c)(i), (ii) and (iii), the Council and the Applicant agree this condition is no longer necessary. The Council and the Applicant also agree on the wording of conditions 16 and 17 relating to the environmental audit and the ESD statement respectively. Hence, the two conditions remaining in dispute relate to the design of the shells (condition 4) and the snorkels (condition 1(e)).
- 4 The residents seek a review of the Council’s decision to support this proposal as they are concerned about the building bulk and scale, the impact on the heritage significance and the car parking provision. The residents are critical of the Council officer’s report that assessed the merits of the proposal, submitting that it ignored the comments of its heritage and urban design advisors.
- 5 Having regard to the reasons why planning permission is required and the nature of the concerns expressed, the key issues that have led me to conclude that this proposal is not acceptable are:
 - The impact of the height and appearance of the additions having regard to the heritage and urban design considerations; and

³ The submissions and evidence of the parties, the 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.

- The poor design of the shell apartments.
- 6 I have not made any findings about the design of the snorkel rooms as my concerns require a rethink of the entirety of the design.

THE IMPACT OF THE PROPOSAL UPON THE SIGNIFICANCE OF THE HERITAGE PLACE

The Heritage Precinct

- 7 This site is located along part of the southeast edge of the North and West Melbourne heritage precinct⁴. This precinct includes an additional planning control over external paint colours but there are no planning controls over internal alterations to buildings.
- 8 The North and West Melbourne heritage precinct is quite an old planning control, which means the precinct does not have a formal Statement of Significance that identifies what its significance is. Mr Raworth referred to a draft Statement of Significance for the precinct that has been prepared as part of Amendment C258. It states this precinct is of historical, social and aesthetic/architectural significance. In its explanation as to why this precinct is significant, it identifies:
- The precinct's working class history is particularly significant including the proximity of houses to commercial, manufacturing and industrial buildings, historic corner shops and hotels, and churches and schools.
 - Whilst Roden, Adderley and Hawke Streets are not specifically mentioned, the precinct's long and wide streets with street plantings are identified as historically and aesthetically significant.
 - Whilst it appears this particular area is not identified for its industrial development/use, there is recognition of large brick warehouses in the east of the precinct near Victoria Market. There is also recognition that there is some variety in building and allotment sizes, and building heights, styles, materials and setbacks.

The Site

- 9 The building at 172 – 184 Roden Street is a large three storey industrial building that has composite origins and was formerly associated with Briscoe & Co. Mr Raworth considers the ground floor is the original 1889 building and the Hawke and Adderley Street frontages retain their original brick elevations. The first and second floors of the Hawke and Adderley Street frontages and the whole of the Roden Street frontage were constructed around 1937 and are of a relatively simple Art Deco expression.

⁴ The north side of Roden Street, northeast of Adderley Street, forms part of the edge of HO3, hence Roden Street itself and the opposite side of Roden Street are not in HO3. However there are a few individually listed buildings on the opposite side of Roden Street.

The pedestrian entrance from Roden Street is marked by decorative detailing.

- 10 The building at 164 – 170 Roden Street is a two storey industrial building that was a 1925 addition to the main 1889 building at 172 – 184 Roden Street.
- 11 Both of these buildings are identified as D grade buildings and the three street frontages are identified as each being a Level 3 streetscape⁵. Mr Raworth points out the Heritage local policy at clause 22.05⁶ does not identify D grade buildings in a level 3 streetscape as contributory buildings⁷.

Amendment C258

- 12 The Council has publicly exhibited⁸ Amendment C258 that proposes to replace the existing A to D heritage grading system with the Significant/Contributory/Non-contributory grading system and to implement the recommendations of the ‘Heritage Policies Review 2016’ and implement the recommendations of the ‘West Melbourne Heritage Review 2016’.
- 13 I was advised the amendment proposes little in the way of change to the extent of the HO3 area in proximity to this site. It does propose to change the grading of streetscapes including Roden Street and to change the grading of the buildings on this site to both contributory and significant, which is confusing. 164 – 170 Roden Street is listed twice (once for each street frontage) and each has a differing grading. 164 – 184 Roden Street is also listed with a significant grading. The associated draft Statements of Significance state the buildings are of historically and aesthetic significance to West Melbourne. The Applicant has put in a submission opposing these changes to the gradings of this site.
- 14 The amendment also proposes to change the content of the Heritage local policy including the considerations for demolition. Mr Raworth acknowledges that applying this proposed policy would require different considerations to those contained in the policy at present.

⁵ As identified in the Heritage Places Inventory June 2016, which is an incorporated document in the planning scheme. Clause 22.05 explains a D grade building is representative of the historical, scientific, architectural or social development of the local area. They are often reasonably intact representatives of particular periods, styles or building types. In many instances, alterations will be reversible. They may also be altered examples which stand within a group of similar period, style or type of a street which retains much of its original character. Where they stand in a row or street, the collective group will provide a setting which reinforces the value of the individual buildings. Clause 22.05 also explains a Level 3 Streetscape may contain significant buildings, but they will be from diverse periods or styles, and of low individual significance or integrity.

⁶ Heritage Places Outside the Capital City Zone local planning policy.

⁷ The definition of ‘Contributory building’ in the Heritage local policy is a ‘C’ grade building anywhere in the municipality, or a ‘D’ grade building in a Level 1 or Level 2 streetscape.

⁸ The public exhibition period finished on 12 May 2017. In preparing this decision, I note there is no update on the status of this amendment on either the Council’s website or the Department of Environment, Land, Water and Planning’s website.

- 15 Given this amendment is at the exhibition stage, it is not relied upon by the Council in this case. The Applicant provided evidence of its submission in response to the exhibited amendment, expressing concern about the change in the grading of buildings and that the change is not justified. Given this opposition to the amendment detail and the fact that the amendment is at a reasonably early stage in its processing and consideration, I have decided that it should be given limited weight in reaching my decision on the merits of this proposal. To be clear, I have acknowledged the draft Statement of Significance for the heritage precinct, and my findings on the acceptability of this proposal are based upon the heritage gradings and Heritage local policy that currently exist in the planning scheme.

Demolition

- 16 The proposal is to demolish all of 164 – 170 Roden Street and to demolish the majority of 172 – 184 Roden Street. The street facades will be retained and Mr Raworth explains ‘the interior volume including the floor slab and interior columns behind to a depth of one structure bay (the depth varies, but is generally in the order of 6 to 7 metres) will also be retained. The demolition plans contained in the permit application material show the extent of existing slab retained is primarily at the first and second floor levels.
- 17 The Council’s heritage advisor considers the extent of demolition would adversely affect the significance of HO3, particularly as all of the buildings formed part of the Briscoe and Co buildings and are large, distinctive forms in the heritage place, illustrative of an important phase in the development of West Melbourne.
- 18 The demolition section of the Heritage local policy begins with the following:
- Demolishing or removing original parts of buildings, as well as complete buildings, will not normally be permitted in the case of ‘A’ and ‘B’, the front part of ‘C’ and many ‘D’ graded buildings.
- 19 The language used in referring to ‘many D graded buildings’ appears to accept that not all D graded buildings need to be retained. Further the policy sets out a number of considerations before deciding whether to approve demolition:
- The degree of its significance – As Mr Raworth points out, the Heritage local policy does not consider these buildings to be contributory buildings, so their significance to this heritage precinct is somewhat limited.
 - The character and appearance of the buildings and their contribution to the architectural, social or historic character and appearance of the streetscape and the area – The industrial nature of these buildings adds to the character of the area and the street facades of the three storey building at 172 – 184 Roden Street are the key significant elements

that contribute to all three streetscapes and the area. Mr Raworth points out the retention of parts of interior at first and second floor levels of 172 – 184 Roden Street is consistent with the Heritage local policy guidance to retain the front parts of D grade buildings. I accept Mr Raworth's evidence that the street facades of 164 – 170 Roden Street are not particularly prominent and are lowly graded. I also accept his evidence that this building is an addition to, but does not form part of the unified architectural composition of 172 – 184 Roden Street. Hence, the demolition of 164 – 170 Roden Street can be reasonably contemplated subject to an acceptable replacement building.

- Whether the demolition contributes to the long-term conservation of the significant fabric of that building – As the significant fabric is the street facades of 172 – 184 Roden Street, the proposal does contribute to their long-term conservation albeit in an altered form.
- Whether the demolition is justified for the development of the land or the alteration of, or addition to, a building – It is understandable that some demolition will be justified as part of an overall proposal to alter and add to the building at 172 – 184 Roden Street.

20 For all of these reasons, the proposed demolition is acceptable subject to achieving an acceptable overall proposal, including the proposed alterations and additions.

Alterations to Street Facades

21 There are a number of changes proposed to the street façades of 172 – 184 Roden Street, and this is of concern to the residents. The Applicant did point out that the illustration of the upper levels having projecting window frames (as contained in the tabled photomontages) is incorrect as these frames are not intended to project. Otherwise, there are a series of changes to the number, shape and size of openings at the ground level in order to frontages to the warehouse shells, as well as changes to create openable windows in the upper two levels of the street facades. Mr Raworth acknowledges there are quite a lot of changes, but points out the ground floor in particular is already very altered. Given this and the fact that the Heritage local policy does not consider this building to be contributory, the extent of change proposed can be considered acceptable if the balance of the proposal is also acceptable. However, for reasons that I will explain later in these reasons, the warehouse shells are not acceptable therefore the extent of change to the street facades needs to be reconsidered.

Whether the Additions Have an Adverse Impact on the Significance of the Heritage Place

22 There are two key additions proposed to the retained heritage fabric. The first key addition is the new building including the new street walls along Hawke Street and Roden Street to replace the demolished building at 164 –

170 Roden Street. The second key addition is the new upper floor levels (effectively floor levels five to eight).

- 23 Mr Raworth describes the first key addition as an infill building that creates a podium that is slightly lower than the existing street facades of 172 – 184 Roden Street in both Roden and Hawke Streets. He describes it as a contemporary interpretation of the traditional warehouse typology with red brick facades containing three bays of large, tall rectangular openings extending across the first two floor levels and then three bays of large, tall arched openings across the next two floor levels. From a heritage perspective, this design response is acceptable. However, these new facades are not providing an acceptable internal amenity outcome for the dwellings located within it. I will explain my reasons on the warehouse shells later. In regard to the upper levels in this addition, I see no reason for the layout of these apartments to have any compromised internal amenity. This is a new building and the apartments and their street facades should be able to be designed to provide appropriate light and outlook as part of their internal amenity. As this is a new addition or infill building, the new design should seek to achieve a built form outcome that provides an acceptable response to the surrounding heritage character as well as an acceptable level of internal amenity for the dwellings behind.
- 24 In regard to the second key addition, the Council's heritage advisor did not support the original proposal being almost double the height of the existing building, with considerable bulk and being positioned close to the street frontages. However, the Council officer's report considers the proposed design with the modifications contained in the Notice of Decision to grant a permit is proportionally in scale and size to the retained heritage form and adopts a square form interpretive of the former warehouse building.
- 25 The relevant aspects of the Heritage local policy to the design of additions to existing buildings are:
- The external shape of an addition should be interpretive in a level 3 streetscape;
 - The façade pattern and colours of an addition should be interpretive;
 - The details of an addition should be interpretive, being a simplified modern interpretation of the historic form;
 - Higher rear parts of an addition to an existing graded building should be partly concealed in a level 3 streetscape; and
 - The height of a building should respect the character and scale of adjoining buildings and the streetscape.
- 26 Mr Raworth considers the upper level additions to be of a medium-rise scale. He also considers the setbacks from the street frontages render the upper level additions as a secondary element relative to the street façade

below. Mr Raworth's expert evidence statement supports the proposed design and states:

... The step down to a two-storey upper level at the northern end provides a transition in scale toward the lower built form (including graded buildings) on neighbouring sites to the north. The treatment to the elevations references a gridlike façade treatment that commonly characterises older industrial buildings. A relatively neutral and low-key palette of external materials and finishes have been chosen.

- 27 Mr Raworth sees this proposal is an 'evolutionary change to the site' that will not adversely affect the heritage significance of the adjacent streetscapes and wider heritage precinct, particularly given he considers these streetscapes have a mixed character.
- 28 The relevant policy consideration in regard to building height is not only to respect the character (or in this case the mixed character), but also the scale of adjoining buildings and the streetscape. In regard to scale, I agree with the residents that the proposed addition is significantly taller than the surrounding streetscapes that generally contain a building scale of one and two storeys. Hence, the acceptability of this scale needs to be considered in the context of balancing the Heritage local policy with the other relevant planning policies and controls that apply in this case that also provide guidance as to what is an acceptable scale of change. For reasons that I will explain next, I am not satisfied the height of the new upper levels addition is respectful of the scale of adjoining buildings and streetscapes.

THE HEIGHT OF THE ADDITIONS

- 29 The existing street facades of 172 – 184 Roden Street are proposed to contain a total of four floor levels⁹, and there are an additional four upper floors proposed as well. In total, the proposal contains eight floor levels.
- 30 The residents submit an eight storey building height is not an acceptable design response to the existing character of the area or the objectives of DDO29.
- 31 DDO29 specifies a maximum building height of four storeys. As part of this proposal, four storeys can be provided within the existing street facades of 172 – 184 Roden Street. This site is large area in comparison to the majority of properties in the surrounding area. This site has the benefit of three street frontages, with each street having a broad width including median breaks and/or street trees. These characteristics contribute to the potential for this site to accommodate additional building height, but the question is whether four additional storeys in this proposed design is acceptable on this site.

⁹ Ground floor, Upper ground floor, First floor and Second floor.

32 Mr McGurn considers the appropriateness of the proposed building form is informed by the urban design principles outlined in clause 15.01-1, the Urban Design local policy at clause 22.17¹⁰ and DDO29. Mr McGurn states DDO29 provides ‘a benchmark for considering urban design outcomes’ and accepts the built form outcome to be achieved for this site is a maximum building height of four storeys but points out this may be varied with a permit. He acknowledges a variation must demonstrate how the proposal achieves DDO29’s design objectives and built form outcomes and any local planning policy requirements.

33 DDO29’s design objectives are:

- To acknowledge the transitional nature of the area.
- To encourage the development of a new built form character and the retention of the mixed use nature of the area.
- To acknowledge the potential for higher density development near North Melbourne Railway Station.

34 DDO29’s built form outcomes are:

- Higher buildings and a new built form character.
- Development reflects the higher building forms in the area.
- Development respects the scale of, and provides a transition to, adjoining lower scale heritage buildings.

35 It is inherent in DDO29’s objectives and outcomes that this area is intended to transition and change to create a new built form character with higher building forms. This expectation for change is also reflected in the Mixed Use Zone (MUZ) purpose to provide for housing at higher densities. During the hearing, the residents highlighted the MUZ purpose to encourage development that responds to the existing neighbourhood character of the area, however this purpose actually requires a judgment to be made as it encourages development to respond to the existing or preferred neighbourhood character. The Design and Development Overlay is often used in planning schemes as a tool to implement a preferred built form character, and that is exactly what has happened in this area with the inclusion of DDO29 into the planning scheme some years ago. So, the development of this site should be responding to the preferred character articulated in DDO29.

36 The local planning policy framework (LPPF) in the planning scheme locates this site in a stable residential area where limited change is envisaged (clause 21.04). The LPPF also identifies this site is in an area where a lower scale of development should be maintained (clause 21.16-5). Given DDO29, it is reasonable to expect that the lower scale of development contemplated is the specified maximum of four storeys. Clause 21.07-1 of the LPPF provides encouragement to increase housing

¹⁰ Urban Design Outside the Capital City Zone local planning policy.

density and quantity consistent with the existing character of the area. It is reasonable to expect that this character must include the extent of change envisaged by DDO29.

- 37 The first three objectives of the Urban Design local policy at clause 22.17 talk about complementing the scale, siting, mass and bulk of adjoining and nearby built form, ensuring proposed building height relates to the prevailing patterns of height and scale in the surrounding area, and to reduce unacceptable bulk in new development. The residents submit eight storeys in an area that contemplates four storeys does not achieve these objectives. They point out DDO29 has been in place for over 10 years now and has generally delivered a good human scale outcome of buildings up to 4-5 storeys in height. Whilst recent development has included some larger developments, the residents say the circumstances of those approvals are different to the circumstances of this site. Mr Sheppard acknowledges this area is typically two to four storeys in height but is of the opinion this built form is changing with recent approvals and construction of buildings of between six and 13 storeys¹¹. Mr McGurn also referred to similar developments. Under cross-examination, both witnesses agreed that these developments are all proximate to Dudley and King Streets.
- 38 The Applicant provided a map of recent applications, approvals and developments in the West Melbourne area between North Melbourne station and Dudley Street. It is evident that development for greater than four storeys has been approved proximate to the station and Dudley Street. However, in the central area including Hawke, Roden and Stanley Streets and west of Spencer Street, the approved and constructed scale of development appears to be a maximum of five storeys.
- 39 The parties all made reference to the work the Council has commenced to develop a new structure plan for West Melbourne¹². This discussion paper notes on page 42 that DDO29 provides a somewhat broad brush blanket control over a relatively large area that does not respond to the characteristics of specific areas or sites, particularly its heritage areas and buildings. It also states:

The current strategic approach to development in West Melbourne (as referenced in the Melbourne Planning Scheme) refers to a clear distinction in scale from the central city, with higher scales of development located at the fringe of the central city and around North Melbourne Station.

Since these controls were introduced, the scale of development in the central city has increased considerably, having a significant impact on the interpretation of 'clear distinction' when considering development in West Melbourne and how it 'transitions' from the central city.

¹¹ He referred to these examples - 143 Rosslyn Street at 6 storeys, 109 Rosslyn Street at 9 storeys, 185 Rosslyn Street at 13 storeys and 130 Dudley Street at 9 storeys.

¹² Ideas for West Melbourne. A Discussion Paper to inform a new structure plan. February 2017.

- 40 This statement provides an effective summation of the position of the parties in this case. The Applicant and the Council consider the scale of development in the broader West Melbourne area affected by DDO29 is increasing whereas the residents consider the scale is changing at the edges closest to Dudley Street and North Melbourne Station, but not in the centre. Having regard to my earlier description of the developments approved and constructed, I agree with the residents and find the references to development in the broader West Melbourne area by Mr McGurn and Mr Sheppard do not give sufficient regard to the particular characteristics of the area surrounding this site.
- 41 The discussion paper earmarks the area along Dudley Street and between Spencer and King Streets as far north as Roden Street as a growth opportunity area. The residents highlight this as indicative of an intention for the area surrounding this site to be different. Mr McGurn advises this does not change his view about the potential development of this site as it is a 'rare site with capacity for higher form'.
- 42 The discussion paper about this new structure plan nominates this site as a 'strategic site', but the parties agree there is no clear explanation as to what this means. This could be merely highlighting the fact it is a large site, or it could be this identification is as an opportunity for a specific and different built form outcome to the balance of the surrounding area. The Applicant points out page 45 of the discussion paper suggests a new structure plan could develop new built form controls that better respond to local context and individual site characteristics, including at a detailed level on a site by site basis, focussing on the identified strategic sites. However, given no detailed work has yet been done, I am unable to reach any conclusions about what the identification as a strategic site might mean for the development of this site.
- 43 It is evident that DDO29 needs to be reviewed given there are examples, particularly to the northwest and south of this site, where developments higher than four storeys have been allowed. However, I am not persuaded that the four storey height in DDO29 no longer has any relevance. The existing low scale buildings in this area remain and many are affected by heritage controls that may temper their development potential. Existing developments and approvals in the surrounds of this site appear to be no higher than five storeys. DDO29 is a planning control in the planning scheme and its detailed content indicates the preferred future character for this area. Until such time as it is replaced, its preferred maximum building height remains a relevant consideration and in the context of this site still remains a meaningful consideration.
- 44 Whilst there are particular characteristics of this site that may assist a taller development than four storeys on this site, this could be five or six storeys rather than eight storeys. The Council's urban designer referral comments supports the upper levels being split into two wings (primarily adjacent to Hawke and Roden Streets) but considers greater variation in the height of

each wing or their setback is needed to avoid each wing presenting as a single mass. The upper floor levels are set back a minimum of between 3.6 and 4.8 metres from the northeast side boundary (where there are adjoining buildings). These setbacks are minimal. The wings are separated by 13.4 to 16 metres, which means aspects of the higher elements are quite close to Hawke and Roden Streets as well as the adjoining buildings. I am not persuaded this design provides an acceptable transition to the adjoining lower scale heritage building or respects the scale of the Hawke and Roden Street streetscapes in particular. At present, I am not persuaded the planning scheme or the physical context provides support for this proposed eight storey development.

The warehouse shells

- 45 The proposal contains 21 two storey warehouse shells wrapping around the three street frontages (at Ground and Upper Ground floor levels). They show 'P.O.S' areas generally in the ground floor frontage varying in size from 6 to 32 square metres and then a blank two storey floor layout other than for an internal stairwell.
- 46 The Applicant advises the warehouse shells are deliberately not provided with internal layout configurations to enable the buyers to fit them out as they see fit. However, both the Council and Mr McGurn are not satisfied with this approach, and I agree with their concerns.
- 47 The Council imposed condition 4 in the Notice of Decision to grant a permit stating that the shells along Roden Street must not be used as dwellings until Council consents. The Council imposed this condition because of concern that the orientation of the shells along Roden Street may not receive acceptable levels of daylight. Mr McGurn recommends in his expert witness statement that the ultimate layout of all of the shells needs to be reviewed to ensure acceptable amenity levels are provided to future residents. Under cross-examination on day 2 of the hearing, Mr McGurn stated he is not satisfied with this aspect of the proposal because he has not seen layouts for the shells and it is preferable to see the layouts. He expressed the view that if the layouts do not work, it may be necessary to consider alternate commercial/retail uses but that would necessitate consideration of differing car parking requirements.
- 48 The shells are challenging for use for residential purposes as they each have a sole orientation and light source within which there needs to be a sufficient opening but also the provision of private open space. Further challenges are that many of the shells are contained within the retained heritage façades and that there is a slope across the site that impacts upon the extent to which the ground floor level of a number of the shells is located below the footpath level. Mr McGurn's evidence in chief identified that Roden Street ground floor levels are located between 1.5 and 2.8 metres below the footpath level based on the proposed floor level of FL 17.15. Some of these shells are located in the new addition on 164 – 170

Roden Street so I am not persuaded there is any reason why they need to be constrained.

49 For some reason, this three day hearing was listed with the third hearing day 12 days after the first two days. This created an opportunity for me to require layouts of the shells to be prepared with input from Mr McGurn and circulated prior to the resumption of the hearing for consideration by the parties, the Tribunal and Mr McGurn. At the resumption of the hearing on day 3, Mr McGurn explained some proposed changes to the warehouse shells. The ground floor of the proposed shells had been modified to raise the ground floor level to FL 17.55 so the level difference is not as great. 'Workspaces' have been included on the ground floor of the four easternmost shells in Roden Street as it is effectively acknowledged these are not suitable for residential use.

50 I am not persuaded that the shells are acceptable. Even with a raised ground floor level, the ground floors are still between 1.1 and 2.4 metres below the footpath level with private open space located within it. Based on the plans tabled on day 3, it appears accepted by the Applicant that four of the ground floor levels of the shells should not be used for residential purposes. The slope across the site and the heritage fabric to be retained (including the Applicant's choice to keep the first floor slab) are all constraints that are impacting on the ability to create shells on the street frontages that contain an acceptable level of amenity for future residents. The blank floor layouts are unacceptable and the day 3 tabled alternate layouts are also unacceptable. This is an aspect of the proposal that needs to be completely revisited. Perhaps some of the ground floors should be removed if they are too far below ground and/or are not receiving sufficient daylight. Perhaps some of the shells should be retail/commercial spaces instead. Perhaps different dwelling layouts should be considered for the heritage building and the new addition (e.g. removing the shell design). Perhaps the number of shells along each street frontage should be reduced. I reiterate this aspect of the proposal needs to be completely revisited.

Car Parking

51 The residents are concerned that the proposal is seeking a reduction of what they describe as 34% of the total parking requirement. Mr Walsh explains 134 dwellings will have car parking (this includes 22 tandem pairs in the design that will each need to be allocated to one dwelling). The planning permission sought is for the 34 required resident visitor spaces to be reduced to zero and for the 70 required spaces for the one bedroom dwellings to be reduced to 30 spaces.

52 Before turning to the merits of this proposed reduction, the residents raised concern about the need to assess the cumulative impact of all the recent developments occurring in West Melbourne. Mr Walsh responded to questions about this by suggesting the Council is in the best position to assess this. A cumulative assessment is not a consideration that is

specifically required by clause 52.06 of a proposal to reduce car parking. Certainly, a Council can assess cumulative impact but it is possible for a Council to require it of a particular development proposal if it considers that development in combination with other developments warrants it. However, in this case, the Council has not sought a cumulative impact assessment.

Reduced resident parking

53 Mr Walsh considers the reduction in the car parking provision for the one bedroom dwellings is acceptable because the area has good access to public transport and car share schemes; and the 2011 Census shows one bedroom car parking had a rate of 0.4 of a car space per one bed apartment in North Melbourne and 0.5 per one bed apartment in Docklands. This proposal provides 0.43 per one bedroom dwelling.

54 The 2011 Census also shows a rate of 0.8 of a car space per one bedroom apartment in West Melbourne but Mr Walsh does not place weight on this figure as he explained there were only 200 one bedroom apartments in existence at that time (i.e. a small statistical sample). I do note the Council's traffic engineering referral comments on the permit application (including Traffix Group traffic engineering assessment report) observed the car ownership in West Melbourne for one and two bedroom dwellings was similar¹³, and suggested:

... it would be reasonable to allocate an on-site car parking space to a similar number of 1 and 2-bedroom apartments than seek the waiver of resident parking for 81 of the 83 1-bedroom apartments.

55 Whilst the number of one bedroom apartments and the number of car spaces to be reduced in the proposal has changed in the amended plans, it is reasonable to presume the 2011 Census data has not changed, i.e. the similarity in car parking rates for one and two bedroom dwellings in West Melbourne. These rates may change as a result of the 2016 Census data but this detail is not yet known. Given my concerns about the scale of the development and the design of the warehouse shells, the issue of resident parking provision should be reconsidered by both the Applicant and the Council.

56 The current on-street parking restrictions relate to business hours and Saturdays, so Mr Walsh is satisfied that this will discourage long term parking by residents who do not have a car space. Mr Walsh agrees with the residents that the on-street parking becomes saturated when there are events on, e.g. at Ethiad Stadium 50 to 60 times a year or at Festival Hall, but he expects over time that there may be further restrictions imposed by the Council on on-street parking. The Council made no submissions about this likelihood, hence this potential is unknown.

¹³ The 2011 Census date reveals a rate of 0.9 of a car space per two bedroom dwelling.

Reduced residential visitor parking

- 57 Mr Walsh points out this proposal will result in existing crossovers being removed and reinstated with footpath, creating five additional on-street spaces. This is a beneficial consideration in regard to reducing the visitor car parking. Mr Walsh anticipates the projected peak demand for visitor parking will be 21 car spaces during evenings and on weekends and 12 car spaces during weekday business hours. Clearly the additional five on-street car spaces will not cover this projected demand.
- 58 The Council's traffic engineering referral comments on the planning application support the reduction of the then proposal to reduce 41 visitor spaces to zero, which is a higher reduction than the proposal now before me. The referral comments consider the parking surveys in the planning application traffic assessment report suggest visitor parking demands could be accommodated on-street 'which is considered reasonable'. I note page 5 of the planning application traffic engineering assessment report contained three spot surveys showing 34 vacant spaces at 1:00pm and 128 vacant spaces at 8:00pm on Friday 15 April 2016 and 117 vacant spaces at 1:00pm on Saturday 16 April 2016.
- 59 Further spot parking surveys are contained in Mr Walsh's expert evidence statement. They suggest the 21 space demand on weekends could not be catered for at 1:00pm and 3:00pm on Saturday 22 April 2017 when an event was on at Ethiad Stadium, and would take up half or more than half of the available vacant spaces on Friday evenings on 15 April 2016 and 21 April 2017. So, the availability of on-street car parking to cater for the visitor demand is a matter that requires re-consideration as part of any future development proposal for this site by both Council and the Applicant (particularly in the absence of any changes to the parking provision requirements specified in the planning scheme and in the absence of any changes to the current on-street parking restrictions).

Bicycle Parking

- 60 During the hearing, the Council advised that it wants the shortfall of 8 visitor bike spaces provided on the site rather than on the footpath. This request was made with the knowledge of the limitations that exist given the extent of the heritage street facades. Hence, any visitor bicycle parking locations is a matter of detail that should be included (as appropriate) in any future planning application for development on this site.

CONCLUSION

61 For the reasons given above, the decision of the responsible authority is set aside. No permit is granted.

Rachel Naylor
Member