

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P2461/2015  
PERMIT APPLICATION NO. 272/2015

**CATCHWORDS**

Port Phillip Planning Scheme; Demolition; Additions; Heritage Significance; Facadism; Neighbourhood Character; Building Height; Traffic; Car Parking; Visitor Car Parking; Car Lift; Swept Paths; Amenity Impacts; Internal Amenity.

<b>1<sup>ST</sup> APPLICANT</b>	Donna Thibault & others
<b>2<sup>ND</sup> APPLICANT</b>	Natalie Burdon & others
<b>RESPONSIBLE AUTHORITY</b>	Port Phillip City Council
<b>RESPONDENT PERMIT APPLICANT</b>	Andrews & Morrissy Development Pty Ltd
<b>SUBJECT LAND</b>	135-137 Bank Street, South Melbourne
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Rachel Naylor, Member
<b>HEARING TYPE</b>	Hearing
<b>DATES OF HEARING</b>	1 & 2 June and 19 & 20 July 2016
<b>DATE OF ORDER</b>	21 October 2016
<b>CITATION</b>	Thibault v Port Phillip CC [2016] VCAT 1772

**ORDER**

The decision of the Responsible Authority is set aside.

In permit application 272/2015 no permit is granted.

Rachel Naylor  
**Member**

## APPEARANCES

For Donna Thibault & others

Mr D Vorchheimer, solicitor of HWL Ebsworth Lawyers

He called the following witnesses:

- Mr R Deutscher, architect and urban designer of Deutscher Associates; and
- Mr J Brownlie, traffic engineer of SALT.

For Natalie Burdon & others

Mr P Barber, planning consultant of Urban Edge Consultants

For Port Phillip City Council

Ms S Armstrong, solicitor of Best Hooper

For Andrews & Morrissy Development Pty Ltd

Mr C Taylor, solicitor of Planning & Property Partners Pty Ltd

He called the following witnesses:

- Mr B Raworth, heritage architect of Bryce Raworth Pty Ltd;
- Mr S Howe, landscape architect of John Patrick Landscape Architects Pty Ltd;
- Mr T Biles, town planner and urban designer of Message Consultants Pty Ltd;
- Mr J Kiriakidis, traffic engineer of GTA Consultants; and
- Mr C Goss of Orbit Solutions in regard to the preparation of photo montages.

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## INFORMATION

Land Description	<p>The site has a rectangular shape with a 17.22m primary frontage to Bank Street, a 24.87m secondary frontage to Wilson Street and a 17.1m rear laneway frontage. The total site area is approximately 425sqm.</p> <p>The site contains the former Town Hall Hotel, a one and two storey building that is currently vacant. The building has a maximum height of 10.6m. The Bank Street front façade is from the Interwar period and is of a Moderne style.</p> <p>Surrounding the site are residential houses, many of which are attached and double storey in height. Two contemporary townhouses on the opposite side of the rear laneway contain three storeys.</p>
Description of Proposal	<p>Demolition of all but the front façade and part of the side return wall along Wilson Street.</p> <p>Construction of a four storey building behind the front façade, built to all boundaries at the lower levels and stepping back at the upper levels. The building has a maximum height of 13.9 metres.</p> <p>The building will contain 11 dwellings (7 two bedroom and 4 three bedroom). Two basement levels will contain 13 car spaces accessible via a car lift from the rear laneway. Two car spaces are also provided at ground level accessed via the rear laneway.</p>
Nature of Proceedings	<p>Two applications under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.</p>
Zone and Overlays	<p>General Residential Zone Schedule 1 – General Residential Areas (GRZ1)</p> <p>Heritage Overlay HO440 – Emerald Hill Residential Precinct (HO440)</p>
Permit Requirements	<p>Clause 32.08-4 To construct two or more dwellings on a lot in GRZ1.</p> <p>Clause 43.01-1 To demolish parts of the buildings, to construct a building and to construct or carry out works and to externally paint a building in HO440.</p> <p>Clause 52.06-3 To reduce the standard residential visitor car parking requirement from 2 spaces to zero.</p>

Inspection of Site and a            18 July 2016  
Number of Surrounding  
Properties Accompanied by  
Representatives of the Parties

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## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

Andrews & Morrissy Development Pty Ltd (the permit applicant) seeks planning permission to construct a four storey building with basement car parking behind the front heritage façade of the existing hotel building on the land at 135-137 Bank Street, South Melbourne. The Council supports this proposal and has granted notice of its intent to give planning permission subject to conditions. Neighbours from properties surrounding the site and further afield oppose planning permission being granted. They are concerned about the height and form of the proposed building from both a neighbourhood character and heritage perspective; the amenity impacts on nearby properties; the practicality of a car lift at the rear of the building; and the car parking provision.

This site is large in comparison to its surrounding neighbours and the existing partly two storey hotel building is a broad commercial building form sitting amongst generally residential and narrower buildings. Hence, the site already contains a different building form to surrounding buildings, and this proposal seeks to expand on this by replacing the majority of the existing building with a new four storey high building that generally curves inwards (into the site) as it rises in height. Four storeys may sound high, but the proposed building is actually about one storey higher than the Bank Street front façade of the hotel building. At the rear, the proposed four storey building is a more significant change due to the fact that that part of the hotel is currently single storey.

The design needs to respond to the heritage significance and to the character and amenity of the neighbourhood. There is conflict in this case in considering the relevant heritage, character and amenity planning policies. On the one hand, the heritage considerations seek new buildings to be set back from the heritage fabric. On the other hand, locating the bulk of the building away from the heritage fabric and closer to the rear creates character issues and amenity issues for the surrounding properties. Hence, the development of this site requires balancing of the conflicting policy considerations to achieve an acceptable outcome.

I have decided that no planning permit should issue for this proposal for particular design reasons. In making this decision, I have considered the following key issues:

Will the demolition adversely affect the significance of the heritage place?

Will the proposed building adversely affect the heritage significance?

Is a four storey building respectful of the character of the neighbourhood?

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<sup>1</sup> I have considered the submissions of the parties, all the written and oral evidence, all the exhibits tendered by the parties, and all submissions received after the hearing in response to my Interim Order about permit conditions. I do not recite or refer to all of the contents of those documents in these reasons.

Are the external amenity impacts acceptable?

Is the internal amenity created for future residents acceptable?

Is the car parking provision acceptable?

Is the vehicle access to the basement, including the car lift, acceptable?

I will now explain my findings on these key issues.

### **WILL THE DEMOLITION ADVERSELY AFFECT THE SIGNIFICANCE OF THE HERITAGE PLACE?**

The proposal is described by various witnesses including Mr Raworth as including 'partial demolition'. These words are technically correct but are also vague as to the actual extent of proposed demolition. In this case, everything is being demolished except the front façade and the return western side wall along Wilson Street for a length of about 5.8 metres.

Planning permission is required to demolish parts of a building. This site is shown on the Port Phillip Heritage Policy Map as a significant heritage place and it is located within a heritage precinct. The objectives of the Heritage local planning policy include:

To retain and conserve all significant and contributory heritage places.

To discourage the demolition of significant and contributory heritage places.

Why this hotel is a significant heritage place in the Emerald Hill Residential Precinct (HO440) is an interesting question. This situation is acknowledged in the Council's Urban Design and Heritage Adviser referral comments that state:

This is a Significant place within the HO440 precinct. While it is a Significant place at the precinct level it does not have an individual citation in the Port Phillip Heritage Review and has not been assessed as being of individual significance at the local level. The contribution of the building is therefore primarily in its streetscape presentation to Bank Street and Wilson Street. (The SoS for HO440 is, however, curious in that it makes very little reference to the commercial buildings including hotels within the precinct).

I have read the whole extract of section 6.31 in the Port Phillip Heritage Review relating to the HO440 precinct. There is no mention of this site, this hotel or hotels generally in the whole extract. The section of the extract that is the Statement of Significant explains the precinct is of historical, architectural and aesthetic significance. The explanation of why the precinct is significant can be summarised as:

It is the fine and rare collection of Victorian dwellings and 'contemporaneous residential shops' that are of architectural and aesthetic significance; and

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Its historical significance is its representation of the earliest phase of residential and commercial development in South Melbourne. The commercial development is described as ‘the commercial development along Clarendon Street which ties the two residential halves of the precinct together’.

Given this situation, there appears to be a real question about the significance of, and the contribution made by this hotel in this heritage precinct. It is therefore arguable that the demolition of most or even all of the hotel will not adversely affect the significance of this heritage precinct. The Council’s Adviser describes this building as one of a number of nineteenth century hotels that were modified during the twentieth century in this municipality. In other words, nothing particularly significant about this hotel is identified by the Council’s Adviser. Its Moderne style façade to Bank Street is described as being of primary significance, and Mr Raworth agrees. Hence, the Council Adviser supports the demolition of all but this front façade and a return section along Wilson Street up to and including the first chimney.

Despite my reservations about the significance of this building and whether any of it should be retained, the permit applicant has chosen to retain the front façade and part of the return wall in Wilson Street. This means I must consider the impact of the proposal upon the significance of this retained fabric of the building.

The purpose of the Heritage Overlay includes conserving and enhancing heritage places and elements that contribute to the significance of heritage places. The decision guidelines include considering the significance of the heritage place and whether the demolition will adversely affect that significance. Remembering that the heritage place in this case is the Emerald Hill Residential Precinct, this hotel does not contribute to its significance based on the content of the Statement of Significance. Mr Raworth acknowledges that his description of this hotel and the contribution that it makes in his expert evidence statement could be akin to the Heritage local planning policy definition of a contributory heritage place rather than a significant heritage place. Regardless of the hotel’s classification as significant, there is agreement between the parties that the heritage significance of this building is its external building fabric.

### **Facadism**

Mr Deutscher describes the retention of the front façade and a return section of wall along Wilson Street as ‘facadism’. He considers this to be a maligned approach to designing with heritage fabric. Hence, it is his opinion that keeping the front façade and part of the return wall is ‘like creating a set for a western movie’. Mr Raworth disagrees. He acknowledges facadism is not an ideal heritage outcome, but considers it to be a practical response that balances planning and design outcomes. Mr Raworth points out facadism is common with industrial and commercial buildings. He acknowledges it is not good practice where there are internal heritage

controls or where the rear external fabric is of value, but often (and in this case) the significant heritage fabric is about the contribution to streetscape(s) visible in the public realm. Like the Council's Heritage Adviser, Mr Raworth's opinion is the external fabric visible from Bank Street, particularly the front façade, is of primary heritage significance in this case.

Given the significance of this heritage precinct does not appear to include either this hotel or hotel buildings more generally, the contribution that this particular hotel and its front façade make to the significance of this heritage precinct is debatable. On the basis that the parties all consider the front façade (if not more) should be retained, I have considered the merits of what is proposed to be retained.

I am not persuaded a common use of facadism with industrial and commercial buildings is sufficient justification for its application in this case. Keeping only the front wall or the front wall and sections of the adjoining side walls must surely be a bare minimum of retention when heritage significance is an issue. The acceptability of such minimal retention must also turn on the particular circumstances of the site, the significance of the heritage place and the significance of the elements to be retained. I agree it can be common for only a heritage shopfront/front facade in a commercial shopping strip to be kept, but this often in a situation where the adjoining commercial buildings are of a similar scale and also built boundary to boundary. In other words, that those circumstances mean the loss of the building fabric behind the shopfront/front façade will not be visible and will therefore not affect the significance of the heritage place.

This site does not have these characteristics. It is exposed to public view on all sides including full public views from Bank Street, Wilson Street to the west and the laneway at the rear and oblique public views from Bank Street across the single storey front section of the house at No. 133 Bank Street to the east. The name 'Town Hall Hotel' appears on the front façade and both side walls and is publicly visible. Mr Raworth supports the demolition of the east side wall and the name on its wall because its visibility is less than those parts of the building visible in Bank and Wilson Streets. However, given the exposure of this site and that it is the public views that Mr Raworth and Council's Heritage Adviser consider are significant, it would be desirable to see at least part of the east side wall retained as well, as it is visible obliquely in Bank Street. The permit applicant submits this may be possible subject to structural building advice.

The position of the Council and Mr Raworth is that the front façade is considered to the important/significant feature in this case. The purpose of the Heritage Overlay and the Heritage local planning policy both seek the conservation and enhancement of heritage places and elements that contribute to the significance of heritage places. Hence, not only is the conservation of the front façade and parts of the side walls a relevant consideration, so too is what happens to these elements in the proposed



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design, i.e. the enhancement of these elements. I am not persuaded the front façade is being enhanced in this proposal.

Mr Raworth describes the front façade as prominent within its streetscape and a representative example of a Victorian hotel that has evolved into a ‘somewhat debased character’. The front façade was entirely remodelled in 1936 to generally take on its current form. The fenestration of the ground floor of the front façade has been modified and replaced in more recent times, hence its Moderne style has been somewhat compromised.

The proposal includes further modifications to all of the ground floor openings including new windows, doors and openings of varying sizes, and modifications to the upper parapet by cutting out sections of it to provide openings to the balconies proposed behind it. Mr Raworth considers these modifications are acceptable given the existing configuration of ground floor openings is not original and the original upper part of the parapet remains legible.

It is accepted by the Council’s Adviser and Mr Raworth that the front façade is the significant element of the hotel. Given this and the proposal to retain only it and parts of the return side wall(s), an acceptable outcome is for its significance to be enhanced. Further modifications to the appearance of the front façade do not enhance its significance. I am not persuaded these modifications could be described as having neutral impact of the heritage significance either. The proposed modifications at ground and parapet levels are reasonably extensive and detract further from what remains of its Moderne style and its heritage significance.

Given the extent of demolition proposed, the significance of the retained facades of the building and the enhancement of this significance is a relevant consideration. At the very least, if facadism is to be contemplated in this case, it should be on the basis that the retained façade is enhanced as the significant element of the retained section of the building. To be clear, on the basis of this proposal, I find the proposed demolition will adversely affect the heritage significance of the existing hotel building.

### **THE VISIBILITY OF THE ADDITION IN A HERITAGE STREETScape**

The proposed building reaches 13.9 metres and is four storeys in height. The residents submit this is just too high in an area that is predominantly one to two storeys in scale and much of which has heritage significance. The permit applicant describes the predominant scale in the area surrounding this site as two storeys and I agree with this. The Wilson Street townhouses at the rear of this site contain three storeys but, as these are a modern addition to the area, this height is actually more akin to the historic two storey scale found in this area.

The residents do not like the height of the proposed building from either a heritage or neighbourhood character perspective. In terms of the heritage considerations, the Council and the residents place weight on the 18 degree sightline in the Heritage local planning policy. The Council considers that

the visible addition will appear clearly as a secondary and recessive element behind the façade. The residents submit that the failure of this proposal to achieve this sightline is unacceptable.

Mr Deutscher gave evidence early in the hearing that the 18 degree sightline is not met as the proposal does not measure it from the base of the parapet, as stated in the Heritage policy. Further material was provided later in the hearing that confirmed this. Compliance with this 18 degree sightline is complicated in this case because the height of the parapet and its base varies across the entire front façade.<sup>2</sup>

The sightlines in the Heritage policy are generic in that they apply to any building (e.g. residential or commercial) and in any context, all of which can have an impact on the relevance of, and necessity to achieve, this requirement. Further, these sightlines are a 'performance measure' associated with the policies about additions and alterations being distinguishable from the heritage fabric and being sited and massed behind the principal façade so that it is 'preferably' not visible, particularly in intact or consistent streetscapes, which this section of Bank Street is not. The parties all agree this is a diverse streetscape as per the Heritage policy.

This section of the Heritage policy on additions and alterations has a specific policy aspiration for corner sites that allows additions to be 'sited and massed so it is visually recessive from the front of the building'. Hence, it is arguable that this is the more relevant policy than the policy associated with sightline performance measures. Mr Raworth's opinion is that, in the end, it does not matter because new additions are not meant to be invisible, particularly in a diverse streetscape. Further, it must be remembered that the Heritage policy is just that, a policy. It is not a planning control or an overlay control that rigidly controls development. Rather, a local policy provides a guide in exercising the discretion available to consider granting a permit. For all of these reasons, I am not persuaded it is necessary or appropriate in this case to require compliance with the 18 degree sightline.

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<sup>2</sup> Refer to Drawing No. VC\_102 Issue A that illustrates the extent of variation. For example, the base location varies by 1.0 metre and the parapet top varies by 0.9 metre, which in turn means the height of the parapet above the base varies from 0.5 metre to 2.2 metres.

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Pursuant to the Heritage Overlay, the relevant considerations are whether the addition is in keeping with the character and appearance of adjacent buildings and the heritage place; and whether the additions will adversely affect the significance of the heritage place.

As I found earlier, this hotel's significance in this heritage precinct is questionable. The hotel building has no direct connection with any of the reasons why this precinct is significant. Hence, the proposed addition is not in keeping with the heritage place because the heritage precinct is primarily focussed upon residential buildings. In turn, this means the proposed addition will not adversely affect the significance of the heritage precinct.

The proposed addition is different to the character and appearance of adjacent residential buildings, however this is acceptable in this case because that distinction already exists. The hotel building is commercial and has a different character and appearance to the adjacent residential buildings. The proposed addition reinforces this.

For these reasons, I find the proposed additions will not adversely affect the significance of the heritage place.

## **PLANNING POLICY CONTEXT**

The Council officer's report states, and the residents submit, this site is within a 'minimal residential growth area' because it is located within a Heritage Overlay.<sup>3</sup> The planning scheme explains this type of growth area is 'where new development will be minimised in order to retain recognised heritage values'. Mr Biles considers this site is within an 'incremental growth area' due to its close proximity to the Clarendon Street activity centre and the surrounding diverse neighbourhood character. The planning scheme explains this type of growth area is 'where there is justification for some further medium density infill housing'. The Council's oral submissions in the hearing acknowledged that, despite the minimal change classification, the existing streetscape already has a diversity of density and building scale.

I agree with Mr Biles that it is possible this site could be classified as 'incremental growth' because the definitions of the incremental, moderate and substantial residential growth areas make no mention of the relevance of a Heritage Overlay. This interpretation is supported when the associated objectives and strategies about future residential growth are also considered. For example, strategy 2.1 for incremental growth areas includes requirements for new development to be in accordance with 'where applicable, the Heritage Overlay'. Even if my interpretation is incorrect, strategy 2.1 for 'minimal growth' does not specify what minimised new development means in terms of residential density or building scale. This means this proposal can still be considered on its merits, including having regard to the Heritage local planning policy.

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<sup>3</sup> Pursuant to clause 21.04-1 of the Municipal Strategic Statement in the planning scheme.

Hence, that is what my consideration of the merits of this proposal has done.

## **NEIGHBOURHOOD CHARACTER**

The residents submit the proposed building form is excessive and will not sit comfortably in the streetscape. The overall height is not a suitable or responsive transition to the interfacing two storey heritage buildings.

### **Building Scale**

I agree with Mr Biles' evidence that the reasonably flat topography of this neighbourhood means taller buildings can be seen in the surrounds. In saying this, I agree with the residents that the immediate neighbourhood is low scale but I also agree with Mr Biles that the low scale is occasionally punctuated by taller buildings. Hence, the juxtaposition of a four storey building amongst generally two storey buildings (including heritage buildings that are taller than a modern day two storey building) does fit in to this neighbourhood. It may not be a 'comfortable' fit (to use the residents' word) but in planning terms it needs to be an acceptable fit, and the difference in scale is, broadly, an acceptable fit. I have used the term 'broadly' deliberately because whilst broadly in this neighbourhood the scale is acceptable, I still need to consider the acceptability of the visual bulk amenity impact upon the immediately adjacent properties. This is a matter that I will discuss later in these reasons.

### **Building Design**

Mr Deutscher says the proposed design looks like a 'black Darth Vader cap' against the skyline. Deciding whether a design is an acceptable response to the neighbourhood character is not a beauty competition and, like art, architecture can be liked or disliked. Hence, Mr Deutscher's description is his own view and, understandably, there will always be a level of subjectivity associated with the analysis of architecture.

Mr Biles explains the mass and scale of the proposed building is designed to sit behind the front façade with a sloping mansard style roof that largely conceals the top two floor levels. The lower two and a half floors feature bluestone tiles and rendered finish, being materials that are evident in this neighbourhood. The zinc standing seam profile cladding on the top two levels is a different material but appropriate for a mansard roof form. The fact that this roof form extends over two floor levels and is a design solution that is not common in this neighbourhood does elevate its prominence. However, the colour of the roof as depicted in the photomontage images assists to blend the building with the bluestone colour of Wilson Street and the rear laneway. Hence, I do not share Mr Deutscher's concern about the appearance of the building.

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## **Landscaping**

The proposal includes landscaping that Mr Howe explains is intended to ‘soften the presentation of the building from the public realm, and introduce green elements within an otherwise built up, urban environment’. The landscaping primarily includes climbing and trailing plants that need to be planted in ‘cut outs’ within the road reserve/footpath of Bank Street (at least two cut outs), Wilson Street (2 or 4 cut outs) and the rear laneway (2 cut outs). The Council is agreeable to this subject to a permit condition requiring the permit applicant to enter into a legal agreement with the Council that the owner of the land will maintain the landscaping, provide an indemnity in favour of the Council and keep comprehensive insurance cover against damage or injury from the erection and use of the projections.

Mr Biles considers the landscaping is an important feature of this design as it is a softening of the urban space and is a beneficial contribution to the design. I am not persuaded by the evidence of Mr Howe or Mr Biles that landscaping is important in this case. This is a robust urban environment with landscaping limited to street trees, front gardens and scattered rear gardens/trees. The existing hotel has hard edges to all of its road frontages. The proposed building contains similar hard edges with each of its road frontages. I do not share the view of the permit applicant that it is necessary to introduce green elements to what is already a built up, urban environment. My finding is further reinforced by the cumbersome nature of the maintenance of the landscaping and the need for indemnity and insurance. To impose such obligations on future land owners should be an absolute necessity in order to gain planning permission. I am not persuaded that it is a necessity in this case given the built up, urban environment surrounding this site.

I have no concern with the inclusion of landscaping on the west side of the rear eastern wall (facing the rear laneway) and in the light court on the east side of the proposal (facing No. 133 Bank Street). These areas are within the site itself so their existence and maintenance will be a matter for the future owners.

Mr Howe proposed a climbing plant feature on the first floor of the east elevation above the garage. During the hearing he explained that this will necessitate the inclusion of a planter that is 500mm high and projects 500-600mm to the east of the first floor wall. It will also require rungs on the south side of the eastern light court in order to access it for maintenance. No. 133 Bank Street points out the Council has imposed permit condition 1(f) requiring the garage wall (below the proposed planter) to be lowered in height. Given all of these circumstances, I am not persuaded the inclusion of this planter is an acceptable design outcome.

## **CAR PARKING PROVISION**

Some of the residents consider that the proposed reduction of two residential visitor car spaces should not be permitted. They submit the standard visitor

car parking requirement should be met on the site ‘in order to prevent unreasonable off-site parking impacts to the surrounding area’.

Mr Kiriakidis is of the opinion that the peak visitor parking demand will be at a lower rate per dwelling (0.12 car spaces) than the standard planning scheme rate of 0.2 car spaces. This is because of:

Empirical research at other similar types of residential development in South Yarra, Abbotsford and Hawthorn; and

The site’s high accessibility to public transport services and pedestrian and cycling pathways.

Mr Kiriakidis’ evidence about empirical research at other similar residential developments in inner areas of Melbourne is not unusual as expert traffic engineers often put this argument to the Tribunal in cases such as this. Indeed, Mr Brownlie agrees with Mr Kiriakidis’ evidence about reducing the visitor car parking. Mr Kiriakidis’ empirical research may well be correct, but those sites and developments are not detailed in his evidence statement, so whether they are comparable to this site and this proposal is unknown to me. For this reason, I have given this aspect of the evidence limited weight in this case. Rather, I find the site’s high accessibility to alternate modes of transport and various services and facilities, and the extent of parking restrictions already in place in the neighbourhood are sufficient reason to (and I quote the residents submission) ‘prevent unreasonable off-site parking impacts to the surrounding area’.

## **ACCESS TO THE SITE AND TRAFFIC IN WILSON STREET AND THE REAR LANEWAY**

### **Access to the Site**

Mr Grieve and other residents have expressed concern about the amount of traffic that will be generated by this proposal and the impact this will have upon the use of Wilson Street and the rear laneway, both of which are currently constructed as bluestone laneways with no footpaths. Mr Grieve would prefer vehicle access to this site to be via Bank Street through the ground floor of the front façade.

As this proposal is to retain the front façade, my earlier findings about the heritage significance and the need to enhance the façade stand. Hence, creating a break in the front façade to provide vehicle access is not an acceptable design outcome in this case. If the entire hotel building was demolished, this issue could be revisited but, again, the creation of a new crossover would also require planning permission pursuant to the Heritage Overlay. This means vehicle access would still need to be considered in the context of its impact upon the heritage significance of the Bank Street streetscape. In other words, the potential to gain vehicle access from Bank Street is by no means a certainty.

In this case, what is proposed is to use the 4.3 metre (approx.) wide Wilson Street laneway to access the rear 4.5 metre (approx.) wide unnamed laneway to

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gain access to two car spaces and to a car lift that provides access to the proposed basement car park.

## **Traffic in Wilson Street and the Rear Laneway**

### Wilson Street

Wilson Street extends between Bank Street and Park Street. It provides two way access and has a combination of other lanes accessing it, the rear or sideage of individual properties facing it, and some individual houses facing it as well. It is used by the Council on its garbage and recycling collection days to empty bins, a situation that was witnessed by myself and the parties' representatives on the day of the accompanied inspection.

The fact of the matter is Wilson Street is a road that provides two way access but vehicles cannot pass each other. Mr Kiriakidis explained the trafficable width is approximately 3.5 metres, which is a single lane width and this means the theoretical peak hour capacity is 30 vehicle movements.<sup>4</sup> His surveys suggest that it presently carries up to 10 vehicle movements in the AM peak hour and 6 vehicle movements in the PM peak hour. The proposal will generate up to 4 vehicle movements in a peak hour, which when combined with existing peak traffic is well below Wilson Street's peak hour capacity. Mr Kiriakidis acknowledges there is potential for conflict between vehicles in Wilson Street and estimates this to occur every 9 weekdays, which he considers an acceptable level of conflict.

The residents submit there is also an impact on pedestrians and cyclists given Mr Kiriakidis' evidence includes counts of these volumes in Wilson Street. This is an existing situation, particularly as some houses have Wilson Street as their principal address and frontage. This road is under the management of the Council. If the traffic volumes or behaviours are of concern to residents and/or the Council, the arrangements for access and speed in the street can be reviewed. The fact that pedestrians and cyclists use Wilson Street and this proposal will increase the traffic volumes along it does not mean an unacceptable traffic situation arises.

The use of Wilson Street is a public right available to all and hence the potential for conflict between vehicles along its length already exists regardless of this proposal. This proposal will increase the peak hour traffic using the street, but based on Mr Kiriakidis' evidence this increase is well within the capacity of Wilson Street. The Council has no concern about this traffic generation or the potential for conflict. Given these factors, the traffic impact on Wilson Street is acceptable.

### The Rear Laneway

The rear laneway currently provides vehicle access to No. 133 Bank Street at its end and to Nos. 1 and 1A Wilson Street on its south side. During the hearing, these properties highlighted the difficulties already faced in

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<sup>4</sup> Based on the Australia Standard AS/NZS 2890.1-2004.

manoeuvring in the laneway and at its intersection with Wilson Street. These residents are concerned about the appropriateness of this proposal providing all vehicle access via this laneway, including the ability to safely and efficiently utilise the proposed car lift.

This laneway, like Wilson Street, is a road that can be legitimately used for access. Mr Brownlie agrees with Mr Kiriakidis that the traffic generated in this laneway can be accommodated. Mr Brownlie's concern is the potential for vehicle conflict and the ability to safely and efficiently access the car lift.

Like Wilson Street, there is the potential for vehicle conflict between the future residents on this site and the three residential properties at No. 133 Bank Street and No. 1 and No. 1A Wilson Street. This is likely to be a matter of self-regulation between all of these users. Again, the peak traffic volumes are within the road capacity and the low potential for conflict is not sufficient reason to refuse this proposal.

The more critical issue is the design of the car parking on the site so that it provides safe and efficient access for future users. The design provides two car spaces accessed directly from the rear laneway and a car lift that provides access to two basement levels containing car spaces, some storage, bicycle parking and building services/plant areas.

The provision of car parking on this site is difficult to achieve because of its size, dimensions and potential access opportunities. The residents cannot have it both ways in terms of the parking and traffic concerns as they go hand in hand. The permit applicant's decision to provide car parking is something that at least some of the residents want, hence this will inevitably create some additional traffic. The permit applicant's decision to access the car parking via a mechanical car lift is a modern day approach to providing car parking on sites that may otherwise be unable to provide car parking (in a traditional form). Car lifts and car stacker systems provide for the efficient use of land as well as an efficient car parking arrangement. Hence, the inclusion of a car lift in the design of this building is an acceptable outcome.

Mr Brownlie's evidence early in the hearing identified some difficulties in the design with regard to accessing the car lift. Accordingly, Mr Kiriakidis' evidence later in the hearing was that the ground floor entry to the car lift can be widened (the nibs typically required for a garage door are not required) to the maximum 3.0 metre width of this particular car lift system. However, this is not as wide as Mr Brownlie recommends in order to create efficient and safe access. So, Mr Kiriakidis suggests lengthening the car lift area by 0.4 of a metre and reducing the adjoining double garage in the proposal to the standard dimensions in the planning scheme of 5.5 metres width and 6.0 metres length. These changes mean the swept path analysis shows a vehicle travelling into and out of the car lift is clear of the corners of the apartment in the ground floor southwest corner of the proposed building.



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These swept path diagrams also show that the 300mm clearance from the body of a B85 vehicle is touching parts of the front boundary of No. 1 Wilson Street. This is of concern to this resident as this boundary provides vehicle and pedestrian access to their dwelling as well as a small front garden bed that is framed by bollards. During cross-examination, Mr Kiriakidis acknowledged the existing vertical sewer pipe in the rear laneway adjacent to the southwest corner of the proposed building may affect the swept path diagrams tabled, but considers this is an acceptable impact. It appears to me that the swept path is tight, particularly between the southwest section of the proposed building and No. 1 Wilson Street. If I had been of a mind to grant a permit, I would have required a further review of the swept paths to achieve the 300mm clearance line outside of the title boundary of No. 1 Wilson Street. If that necessitates further changes to the layout/extent of the ground floor of the proposed building, so be it.

Mr Kiriakidis was asked during cross-examination about the ability of the car lift to accommodate a B99 vehicle. He advises it would be a tight squeeze as the length of a B99 vehicle is 5.2 metres and the maximum length of the car lift is 5.6 metres. There is nothing in the relevant Australian Standard that specifies what size vehicle should be accommodated in mechanical parking systems. Much of the Australian Standard focuses upon a B85 vehicle, so as a minimum that is what this design should provide for.

The evidence presented in this case about the accessibility of the car lift was specific to the proposed car lift brand. Its specifications including its opening design, maximum width and the need to place the mechanical equipment on the west side of the lift in order to achieve efficient access are all factors relevant to achieving an acceptable design outcome in this case. If I had been of a mind to grant a permit, the type of car lift and the relevant specifications and design requirements would have been included as a permit condition.

Mr Kiriakidis considers the service time of the car lift will be 2-3 minutes so the default position for the lift should be at the ground level. His view is there is adequate room to queue in the basements and given the limited width of the laneway, preference should be given to vehicles wishing to enter the proposed building. If I had been of a mind to grant a permit, this ground level default position would have been included as a permit condition.

## **AMENITY IMPACTS**

### **133 and 141 Bank Street**

These two properties are located on either side of the site.

#### **141 Bank Street**

No. 141 Bank Street is separated from the site by the width of Wilson Street. This property has recently constructed double storey alterations and additions to the house and built a double storey garage/loft at the rear. This work has significantly reduced the size of the secluded private open space

and also changed the levels of this space, as much of it is now in the form of tiered decking.

Having inspected this property, I am satisfied that the potential for overlooking can be minimised to accord with clause 55 (commonly known as ResCode). The proposed building does cast additional shadow onto the rear secluded private open space, but Mr Biles considers this impact is acceptable because this is an inner urban location and the additional shadow is between 9am and 12noon, during which time some sunlight still remains at each hour. The shadow impact is primarily upon the decking immediately to the south of the house. I agree with Mr Biles that the southern section of this open space area retains sunlight. On balance, I find this impact is acceptable.

The remaining issue is building bulk. No. 141 is oriented north-south, so the proposed building is to the side of its principal outlooks from the house and rear garage/loft. There is already a two storey wall along much of the Wilson Street frontage of this site, hence I agree with Mr Biles that the main change in this proposal is the incorporation of the raking roof. There is no doubt that the new building will be visible, as it will from properties further beyond No. 141 including No. 1 Palmer Street. However, being able to see a building and even being reasonably close to a larger new building is not sufficient reason to refuse planning permission.

### 133 Bank Street

Like No. 141, No. 133 Bank Street is oriented north-south, so the proposed building is to the side of its principal outlooks. Having inspected the house, particularly the first floor front and rear balconies, I am satisfied that the proximity of the proposed building does not create any overlooking issues or an unreasonable building bulk impact.

The Council imposed condition 1(f) requiring the eastern garage wall on the boundary adjoining No. 133's rear open space area to be reduced in height from 4.5 metres to 3.6 metres. The permit applicant opposes this condition. Reviewing the Council officer's report reveals this required change is associated with the clause 55 objective for walls built on boundaries. This objective includes to ensure that the location, length and height of a wall on a boundary limits the impact on the amenity of existing dwellings. The Council officer report notes the proposed 4.5 metre high wall will replace an existing 3.5 metre high wall. The rationale for the condition to reduce the height appears to be twofold. First, the wall is adjacent to the rear private open space area, which will be impacted by this wall. Second, at that time, the permit applicant advised the wall height could be reduced to 3.6 metres. I agree with the Council that the wall height should be reduced as a higher wall height does have a building bulk impact on No. 133's open space area. During the hearing, the permit applicant advised the existing wall height is actually 3.3-3.4 metres high and would prefer that height. If I had been of a mind to grant a permit, I would have required the wall height of the garage to match the existing boundary wall height.

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It appears the shadow of the proposed building will extend into the rear private open space area of No. 133 at 2pm and 3pm. Whilst it was identified during the hearing that some existing shadow is missing on this area in the proposed shadow diagrams on Drawing No. TP142, there is nevertheless extensive existing shadow upon this area already. Hence, the small amounts of new shadow will not unreasonably impact upon the use of this space.

### **1 and 1A Wilson Street**

These properties are to the rear (south) of the site on the opposite side of the unnamed laneway. No. 1A is on the east side and No. 1 is on the west side, at the corner of Wilson Street.

They are concerned about the shadow impact upon their first floor living areas and balconies (which are their only areas of secluded private open space). No. 1 Wilson Street is also concerned with the shadow impact on their ground floor bedroom window adjacent to the laneway.

The residents submit these habitable room windows and balconies are north facing, so the potential amenity impacts in terms of shadow and north facing sunlight are matters for consideration. The permit applicant submits the wall heights and setbacks meet the relevant clause 55 objective and the north facing windows objective of clause 55 is not relevant because the associated standard B20 only applies where a north facing window is within 3 metres of a boundary.

Clause 55 states that all of the objectives must be met. The standards are an important consideration, but they are not the end of the relevant amenity considerations. Sometimes amenity impacts are of a more general nature. For example, visual bulk/building bulk — just because clause 55 standards are met in regard to the length of walls on boundaries and wall heights and setbacks does not mean that the visual bulk impacts have been acceptably dealt with. This is an amenity impact of a more general nature that cannot and should not be distilled into individual components.

My inspection of these dwellings confirmed that they have been designed to have a primary orientation to the north, towards this site. Hence, any new development on this site will change the outlook and amenity of these dwellings. The question is the acceptability of the extent of general amenity impact that will occur as a result of this proposal.

My finding is that the heritage and amenity considerations are impacting upon each other at this point and there should be a balance struck between these two arguably competing considerations. Setting back the upper levels to respect the heritage significance of the front façade pushes the building bulk towards the rear of the site. The proximity of the proposed four storey building to these two existing dwellings is creating a visual bulk and shadow impact, of which the latter is thereby impacting upon the amount of sunlight received into the ground and first floor habitable rooms. It is an impact that is driven by the front setback and the number and size of

apartments proposed, particularly in the upper two levels. I am not persuaded the extent of impact, particularly on the first floor living areas and balconies of Nos. 1 and 1A Wilson Street, is a necessary design outcome in this case.

I have already said I am not persuaded it is necessary or appropriate in this case to require compliance with the 18 degree sightline in the Heritage local planning policy. Similarly, the number and size of apartments proposed can be changed. In my opinion, the sunlight into and the outlook from the first floor balconies and living areas of Nos. 1 and 1A Wilson Street is the principal consideration. The heritage significance and the amenity of the properties to the rear should be balanced to achieve an acceptable outcome. I cannot say what an acceptable outcome should be as both considerations need to be analysed together. This is a design challenge for the permit applicant.

### **THE INTERNAL AMENITY**

Mr Biles and the permit applicant consider the proposal addresses internal amenity in a satisfactory manner. I agree with this except for the two front (north facing) ground floor apartments. The internal amenity of these apartments are unacceptably compromised by the retention of the existing hotel's front façade.

These two apartments are about 11 to 14 metres deep. They are both heavily reliant upon light coming in from the new north facing openings proposed in the front façade. I have already made findings that these openings are not acceptable from a heritage perspective. Nevertheless I have considered the merits of the proposed design of these apartments and find the internal amenity is poor for the following reasons:

The openings in the front façade will contain mirrored glass, a very dark tinted grey glass and an open section where the private open space is proposed. As such, the level of daylight able to reach into the apartments, particularly the open plan living, dining and kitchen areas appears to be poor.

The private open space is provided on the street and is surrounded on three sides by walls/internal glass walls and partially enclosed by walls on the street frontage. This is a poor location and design for private open space.

Often when heritage significant commercial buildings are further developed and their front facades are retained, the internal amenity of the ground level is not an issue because a commercial/retail land use is proposed at ground level that does not require as high a level of internal amenity as that expected for residential apartments. This proposal does not do this. In my opinion, the heritage significant front façade does create limitations in achieving an acceptable level of internal amenity. Providing appropriate daylight, ventilation and private open space for ground floor apartments is a challenging exercise in the design of a new building on this site.

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## **CONCLUSION**

For the reasons explained above, the decision of the Responsible Authority is set aside. No permit is to issue.

Rachel Naylor  
**Member**