



6.4 **135-137 BANK STREET, SOUTH MELBOURNE**
LOCATION/ADDRESS: 135-137 BANK STREET, SOUTH MELBOURNE
EXECUTIVE MEMBER: LILI ROSIC, ACTING GENERAL MANAGER, PLACE STRATEGY AND DEVELOPMENT
PREPARED BY: KATHRYN POUND, PRINCIPAL URBAN PLANNER

1. PURPOSE

- 1.1 To determine Council's position on the upcoming Victorian Civil and Administrative Tribunal (VCAT) hearing for planning permit application 37/2017.

2. EXECUTIVE SUMMARY

WARD: Gateway
TRIGGER FOR DETERMINATION BY COMMITTEE: More than 16 objections
APPLICATION NO: P37/2017
APPLICANT: Insight Planning Consultants
EXISTING USE: Former Town Hall Hotel, currently vacant
ABUTTING USES: Dwellings
ZONING: Neighbourhood Residential Zone – Schedule 1 (NRZ1)
OVERLAYS: Heritage Overlay – Schedule 440 (HO440)
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL N/A

- 2.1 This report relates to an application for partial demolition and buildings and works to modify the façade, externally paint the building and to construct a four storey building (plus two basement levels) containing six dwellings and the waiver of one visitor car space.
- 2.2 A previous application for partial demolition, construction of a four storey building (plus two basement levels) containing 11 dwellings and a reduction of the standard car parking requirement (two visitor spaces) (P272/2015) was supported by Council. The application had been advertised and ten objections were received. Council issued a Notice of Decision to Grant a Permit and an appeal was subsequently lodged at VCAT by some of the objectors.
- 2.3 The Tribunal (*Thibault v Port Phillip CC [2016] VCAT 1772*) determined to refuse the application on the following grounds:
1. *The extent of demolition and modifications to the façade would adversely affect the significance of the heritage place.*
 2. *The development would adversely affect the amenity of the dwellings at 1 and 1A Wilson Street.*



3. *The internal amenity of the two north facing ground floor apartments would be unacceptably compromised.*
- 2.4 This application was advertised and Council received 23 objections. The objections related to height, bulk, extent of demolition, inadequate car parking, traffic impacts, noise, overlooking, overshadowing, loss of daylight to windows, poor internal amenity, non-compliance with various Clause 55 standards and failure to respond to issues raised in the previous application.
- 2.5 Council Officers assessed the application and determined not to support the proposal. A Notice of Refusal to Grant a Permit was issued on 3 January 2018. The grounds of refusal were:
 1. The development would adversely affect the amenity of the dwellings at 1 and 1A Wilson Street.
 2. The internal amenity of the two north facing ground floor apartments would be unacceptably compromised.
 3. All car parking spaces cannot be accessed safely or conveniently.
- 2.6 The applicant lodged an appeal with VCAT against Council's decision on 1 February 2018. One objector has joined as a party to the appeal. He represents 11 adjoining and nearby residents. Two other objectors have lodged Statements of Grounds but have not been joined as parties to the appeal.
- 2.7 A compulsory conference was held on 14 June 2018. No agreement was reached.
- 2.8 A full hearing is scheduled for three days commencing 6 August 2018. The applicant circulated amended plans which they intend to rely on at the hearing on 21 June 2018. The amended plans make a number of changes to the originally advertised plans, including reduction of the number of dwellings from 11 to 6, increase to rear setbacks, changes to the external design and internal layout changes.
- 2.9 An information meeting involving residents and Council Officers was held on 28 June 2018 to discuss the amended plans.
- 2.10 Council Officers have assessed the amended plans and have formed the view that they should be supported. They address the issues that led to Council's recent refusal and the refusal of the previous application by VCAT.
- 2.11 The proposal as amended would be an acceptable response in terms of heritage and character, provides sufficient car parking and would not cause any unreasonable traffic impacts (subject to conditions) and would not cause any unreasonable off-site amenity impacts.
- 2.12 It is recommended that Council informs the Tribunal (VCAT) and all parties to the appeal that it supports the application as shown on the amended plans circulated on 21 June 2018, subject to conditions. This would be Council's position at the upcoming hearing.



3. RECOMMENDATION

- 3.1 That Council adopt Recommendation "Part A" and "Part B" to advise VCAT that it supports the application with conditions and in the event that VCAT determines to grant a permit for the application, any permit issued should incorporate the conditions to this permit.
- 3.2 Authorise the Manager City Development to instruct Council's Statutory Planners and/ or Solicitors on the VCAT application for review.

RECOMMENDATION "PART A":

- 3.3 That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, advise VCAT and other parties to the appeal that on the basis of the amended plans circulated on 21 June 2018, that Council changes its position and now supports the issuing of a planning permit, with conditions, for partial demolition and buildings and works to modify the façade, externally paint the building and to construct a four storey building (plus two basement levels) containing six dwellings and the waiver of one visitor car space at 135-137 Bank Street, South Melbourne.
- 3.4 That the decision be issued as follows:

1 Amended Plans Required

Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and an electronic copy must be provided. The plans must be generally in accordance with the plans substituted for VCAT (received by Council on 25 June 2018) but modified to show:

- a) The retention or restoration/ recreation of the early painted sign on the eastern wall.
- b) A notation that the flagpoles are being retained.
- c) The kitchen and bedroom 1 windows of dwelling 102 modified to have obscure glazing or sill heights of at least 1.7 m above the finished floor level, or screened to prevent horizontal or downward views to neighbouring properties.
- d) The correct rear laneway width/s, based on updated survey information (noting that the width may vary at different points).
- e) The car lift modified, as necessary, so that it can be accessed from both directions on Wilson Street by a B99 vehicle with a 300 mm clearance from the property boundary of 1 Wilson Street; and, reflecting the correct laneway width (which is understood to be approximately 4.4 m). Swept paths must be submitted to demonstrate



that this has been achieved without the need of corrective manoeuvres within the laneway. Full specifications of the car lift must also be provided, with the correct overall and effective platform width and length reflected on the plans.

- f) Car space 2 modified, as necessary, so that it can be egressed by a B85 vehicle with no more than one corrective manoeuvre (four movements in total); and, reflecting the correct laneway width (which is understood to be approximately 4.4 m). Swept paths must be submitted to demonstrate that this has been achieved with adequate clearance maintained. This car space must be allocated to a resident.
- g) Car space 1 may be deleted to achieve the requirements of conditions e) and f) above. If it is to be retained, it must be modified, as necessary, so that it can be egressed by a B85 vehicles with no more than one corrective manoeuvre (four movements in total); and, reflecting the correct laneway width (which is understood to be approximately 4.4 m). Swept paths must be submitted to demonstrate that this has been achieved with suitable clearance. This car space must be allocated to a resident.
- h) The screen to the first floor south facing windows designed to prevent horizontal views, but allow upward views.
- i) The screen on the east and west sides of the second floor south facing balcony designed to prevent downwards views, but allow horizontal and upward views.
- j) Cross section elevation drawings of the screens associated with conditions 1c), h) and i) which:
 - i. Are drawn to scale and fully dimensioned.
 - ii. Clearly delineate any solid parts of the screen and any louvre or batten parts of the screen.
 - iii. Clearly illustrate how any louvre or batten system will allow the horizontal and/ or upward views (depending on what the condition specifies) but will prevent horizontal and/ or downward views (depending on what the condition specifies) to neighbouring properties.
 - iv. Show the exact width and thickness of each louvre or batten, the exact spacing between each louvre or batten and a section detail from behind the screen demonstrating that direct views of adjacent private open space and/ or windows are precluded, while allowing outlook horizontally and/ or upward from the balcony and/or window (depending on what the condition specifies).
- k) Details as outlined in conditions 7, 8, 10, 11 and 13.



2 No Alterations

The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority, unless the Port Phillip Planning Scheme exempts the need for a permit.

3 No change to external finishes

All external materials, finishes and colours as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

4 Privacy Screens Must be Installed

Privacy screens as required in accordance with the endorsed plans must be installed prior to occupation of the building and thereafter maintained to the satisfaction of the Responsible Authority.

5 Walls on or facing the boundary

Before the occupation of the development allowed by this permit, all new or extended walls on or facing the boundary of adjoining properties and/or a laneway must be cleaned and finished to a uniform standard to the satisfaction of the Responsible Authority. Unpainted or unrendered masonry walls must have all excess mortar removed from the joints and face and all joints must be tooled or pointed also to the satisfaction of the Responsible Authority. Painted or rendered or bagged walls must be finished to a uniform standard to the satisfaction of the Responsible Authority.

6 No equipment or services

No plant, equipment or domestic services (including any associated screening devices) or architectural features, other than those shown on the endorsed plan are permitted, except where they would not be visible from the primary street frontage (other than a lane) or public park without the written consent of the Responsible Authority.

7 Urban Art Plan

Before the occupation of the development allowed by this permit, an urban art plan in accordance with Council's Urban Art Strategy must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The value of the urban art must be at least 0.5% of the total building cost of the development to the satisfaction of the Responsible Authority. Urban art in accordance with the approved plan must be installed prior to the occupation of the building to the satisfaction of the Responsible Authority.

8 Landscape Plan

Before the development starts (other than demolition or works to remediate contaminated land), a detailed Landscape Plan must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When the Landscape



Plan is approved, it will become an endorsed plan forming part of this Permit. The Landscape Plan must incorporate:

- a) Buildings and vegetation (including botanical names) on neighbouring properties within 3m of the boundary;
- b) All street trees and/or other trees on Council land;
- c) A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways; and
- d) Water sensitive urban design.

All species selected must be to the satisfaction of the Responsible Authority.

9 Landscaping Maintenance

The landscaping as shown the endorsed Landscape Plan must be maintained, and any dead, diseased or damaged plant replaced in accordance with the landscaping plan to the satisfaction of the Responsible Authority.

10 Waste Management Plan

Before the development starts (other than demolition or works to remediate contaminated land), an amended Waste Management Plan based on the City of Port Phillip's Waste Management Plan Guidelines for Developments must be prepared by a Waste Management Engineer or Waste Management Planner to the satisfaction of the Responsible Authority and endorsed as part of this permit. Once submitted and approved, the waste management plan must be carried out to the satisfaction of the Responsible Authority.

11 Sustainable Management Plan

Before the development starts (other than demolition or works to remediate contaminated land) an amended Sustainable Management Plan that outlines proposed sustainable design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. When approved, the Assessment will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed.

12 Incorporation of Sustainable Design initiatives

The project must incorporate the sustainable design initiatives listed in the endorsed Sustainable Management Plan to the satisfaction of the Responsible Authority.

13 Water Sensitive Urban Design

Before the development starts (other than demolition or works to remediate contaminated land) a Water Sensitive Urban Design Report that outlines proposed water sensitive urban design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The report must demonstrate how the development meets the water quality performance



objectives as set out in the Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) or as amended.

When approved, the Report will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed.

14 Incorporation of Water Sensitive Urban Design initiatives

Before the occupation of the development approved under this permit, the project must incorporate the water sensitive urban design initiatives listed in the endorsed Water Sensitive Urban Design Report to the satisfaction of the Responsible Authority, and thereafter maintained to the satisfaction of the Responsible Authority.

15 Maintenance Manual for Water Sensitive Urban Design Initiatives (Stormwater Management)

Before the development starts (other than demolition or works to remediate contaminated land) a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority.

The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:

- inspection frequency
- cleanout procedures
- as installed design details/diagrams including a sketch of how the system operates

The WSUD Maintenance Manual may form part of a broader Maintenance Program that covers other aspects of maintenance such as a Building User's Guide or a Building Maintenance Guide.

16 Site Management Water Sensitive Urban Design (larger Multi-Unit Developments)

The developer must ensure that:

- a) No water containing oil, foam, grease, scum or litter will be discharged to the stormwater drainage system from the site;
- b) All stored wastes are kept in designated areas or covered containers that prevent escape into the stormwater system;
- c) The amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads is minimised when vehicles are leaving the site.
- d) No mud, dirt, sand, soil, clay or stones are washed into, or are allowed to enter the stormwater drainage system;



- e) The site is developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants in accordance with currently accepted best practice.

17 Parking and Loading Areas Must Be Available

Car and bicycle parking and loading areas and access lanes must be developed and kept available for those purposes at all times and must not be used for any other purpose such as storage to the satisfaction of the Responsible Authority.

18 Lighting

External lighting of the areas set aside for car parking, access lanes and driveways must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.

19 Vehicle Crossings

Before the occupation of the development allowed by this permit, vehicle crossings must be constructed in accordance with Council's current Vehicle Crossing Guidelines and standard drawings to the satisfaction of the Responsible Authority. All redundant crossings must be removed and the footpath, naturestrip, kerb and road reinstated as necessary at the cost of the applicant/owner and to the satisfaction of the Responsible Authority.

20 Car Parking Allocation

Without the further written consent of the Responsible Authority car parking for the approved development must be allocated on any Plan of Subdivision at a rate of not less than two car spaces for each dwelling. The ground level car space/s must be allocated to residents.

21 Car Lift Maintenance and Provision

The mechanical car lift is to be maintained in a good working order and be permanently available for use for the parking of vehicles in accordance with its purpose, to the satisfaction of the Responsible Authority.

22 Car Lift Operation

Prior to the occupation of the building, internal and external warning lights must be installed to indicate when the car lift is in use and the default position of the car lift must be at the ground level (to give priority to vehicles entering from the laneway over vehicles exiting the building).

23 Provision of Bike Racks on the Pavement

Before the use commences one circular stainless steel bike rack must be installed at the cost of the applicant/owner on the adjacent public footpath in a location to the satisfaction of the Responsible Authority. Once the rack has been installed it will become a Council asset and the developer will have no further ongoing obligations or responsibilities regarding the racks.



24 Time for Starting and Completion

This permit will expire if one of the following circumstances applies:

- a. The development is not started within two (2) years of the date of this permit.
- b. The development is not completed within two (2) years of the date of commencement of works.

The Responsible Authority may extend the periods referred to if a request is made in writing:

- Before or within 6 months after the permit expiry date, where the development allowed by the permit has not yet started; and
- Within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

NOTES:

Building Approval Required

This permit does not authorise the commencement of any demolition or construction on the land. Before any demolition or construction may commence, the applicant must apply for and obtain appropriate building approval from a Building Surveyor.

Building Works to Accord with Planning Permit

The applicant/owner will provide a copy of this planning permit to any appointed Building Surveyor. It is the responsibility of the applicant/owner and Building Surveyor to ensure that all building development works approved by any building permit is consistent with this planning permit.

Drainage Point and Method of Discharge

The legal point of stormwater discharge for the proposal must be to the satisfaction of the responsible authority. Engineering construction plans for the satisfactory drainage and discharge of stormwater from the site must be submitted to and approved by the Responsible Authority prior to the commencement of any buildings or works.

Construction Management

All construction activities associated with the development must comply with the requirements of Council's Local Law No. 1 (Community Amenity) 2013.

Days and Hours of Construction Works

Developers



Except in the case of an emergency a builder must not carry out building works outside of construction hours:-

- Monday to Friday: 7.00am to 6.00pm; or
- Saturdays: 9.00am to 3.00pm.

An Out of Hours permit cannot be obtained for an appointed public holiday under the Public Holidays Act, 1993.

Vehicle Crossing Permit Required

A vehicle crossing permit must be obtained from Council's City Permits Unit prior to the carrying out of any vehicle crossing works.

No Resident or Visitor Parking Permits

The owners and occupiers of the development allowed by this permit will not be eligible for Council resident or visitor parking permits.

Laneways to be Kept Clear

During the construction of the buildings and works allowed by this permit, the laneway(s) adjacent to the subject land must be kept free of parked or standing vehicles or any other obstruction, including building materials, equipment etc. so as to maintain free vehicular passage to abutting benefiting properties at all times, unless the necessary permits have been obtained from Council's City Permits unit pursuant to Local Law No. 1 (Community Amenity) 2013. For further information, contact Council's City Permits unit on Ph: (03) 9209 6216.

RECOMMENDATION "PART B":

- 3.5 Authorise the Manager City Development to instruct Council's Statutory Planners and/ or Solicitors on the VCAT application for review.

4. RELEVANT BACKGROUND

- 4.1 A previous application for partial demolition, construction of a four storey building (plus two basement levels) containing 11 dwellings and a reduction of the standard car parking requirement (two visitor spaces) (P272/2015) was supported by Council. The application had been advertised and ten objections were received. Council issued a Notice of Decision to Grant a Permit and an appeal was subsequently lodged at VCAT (VCAT reference P2461/2015) by some of the objectors.
- 4.2 The Tribunal (*Thibault v Port Phillip CC [2016] VCAT 1772*) determined to refuse the application on the following grounds:
1. *The extent of demolition and modifications to the façade would adversely affect the significance of the heritage place.*

2. *The development would adversely affect the amenity of the dwellings at 1 and 1A Wilson Street.*
3. *The internal amenity of the two north facing ground floor apartments would be unacceptably compromised.*

5. PROPOSAL

- 5.1 The proposal as shown on the amended plans circulated 21 June 2018 is for partial demolition and buildings and works to modify the façade, externally paint the building and to construct a four storey building (plus two basement levels) containing six dwellings and the waiver of one visitor car space.
- 5.2 The front wall, approximately 5.7 m of the western wall and approximately 10.5 m of the eastern wall of the existing building would be retained, while the rest would be demolished. Some changes are proposed to existing openings within the retained walls.
- 5.3 Two basement levels would be built to all site boundaries and would be accessed via a car lift from the rear laneway. Each level would contain three double garages (one for each dwelling). A bin store, 8 bicycle parking spaces, accessible toilet and services area would also be provided within the basement levels.
- 5.4 Two additional car spaces would be located at the rear of the building, accessed via the rear laneway.
- 5.5 Six, three-bedroom dwellings would be constructed within the building, each with a balcony as summarised:

Apartment	Internal area/ layout	Private open space
G01	167 sqm at ground level	15 sqm west facing balcony at ground level
G02	91 sqm at ground level (bedrooms), 58 sqm at first level (living areas) (149 sqm total)	18 sqm north facing balcony at first floor
101	120 sqm at first floor	13 sqm north facing balcony at first floor
102	115 sqm at first floor	11 sqm west facing balcony at first floor
201	137 sqm at second floor	10 sqm balcony and 13 sqm balcony at first floor (both north facing)
202	100 sqm at second floor (bedrooms), 99 sqm at third floor (living areas) (199 sqm total)	27 sqm south facing balcony at second floor and 35 sqm north facing terrace at third floor

- 5.6 The building would have a maximum height of 13.4 m, with the additional height being 3.1 m.

- 5.7 The design of the new building would be contemporary with materials being render with bluestone tiles, timber screens and zinc cladding and a flat roof form.
- 5.8 The building would be setback as follows:
- At the ground floor, the building would be:
 - Extended on the east boundary beyond the 10.5 m length of retained wall, aside from a 1 m deep light court for apartment G02
 - Setback 1 to 2 m from the rear boundary, and
 - Extended on the west boundary beyond the 5.7 m length of retained wall, aside from a 3.2 m deep balcony for apartment G01 and where a 0.5 m deep planter box is proposed.
 - At the first floor, the building would be:
 - Extended on the east boundary 5.5 m beyond the 10.5 m length of retained wall to a total length of 16 m; the rear portion of the building would be setback 1 m or 2.6 m from the east boundary
 - Setback 0.8 to 1 m from the rear boundary, and
 - Extended on the west boundary beyond the 5.7 m length of retained wall, aside from a 2.4 m deep balcony for apartment 102 and where a 0.7 m deep planter box is proposed over the balcony below.
 - At the second floor, the building would be:
 - Setback 2.8 m from Bank Street, into which two balconies for apartment 201 would project (behind the existing façade)
 - Extended on the east boundary 5.5 m beyond the 10.5 m length of retained wall to a total length of 16 m; the rear portion of the building would be setback 1 m or 2.6 m from the east boundary
 - Setback 5.5 m from the rear boundary, into which a 2.1 m deep balcony for apartment 202 would project, and
 - Setback 0 m or 0.7 m from the west boundary beyond the 5.7 m length of retained wall.
 - At the third floor, the building would be:
 - Setback 7.9 m from Bank Street, into which a 3.8 m deep terrace for apartment 202 would project
 - Setback 1 m from the east boundary
 - Setback 8.8 m from the rear boundary, and
 - Setback 0.7 m from the west boundary.



6. AMENDMENTS TO THE PLANS

6.1 The amended plans circulated on 21 June 2018 that are now under assessment include the following key changes from the original (advertised) plans:

- Internal layout changes with total of six dwellings proposed (reduced from eleven).
- Reconfiguration of basement layouts, with removal of one car space.
- Increase in setbacks from rear (south) boundary from:
 - 0 m to 1 m at the ground floor
 - 0 m to 0.8-1 m at the first floor
 - 2.1 m to 5.5 m at the second floor, and
 - 5.3 m to 8.8 m at the second floor.
- Changes to external materials and design.
- Reduction in overall height by 0.5 m.

6.2 The amended plans also include the following key changes from the plans assessed by VCAT:

- Internal layout changes with total of six dwellings proposed (reduced from eleven).
- Retention of a larger length of wall on the east boundary.
- Reduction in height of the ground floor openings in the façade.
- Replacement of mansard style roof with flat walls and roof.
- Other changes to external materials and design.
- Reduction in height of wall on west boundary adjacent to rear yard of 133 Bank Street.
- Increase in setbacks from rear (south) boundary.

6.3 In accordance with the standard requirements of VCAT, the applicant served notice of the amended plans on all parties to the appeal and on all persons who were notified of the original application or lodged an objection to the original application. This did not result in any additional parties to the appeal.

7. SUBJECT SITE AND SURROUNDS

Description of Site and Surrounds	
Site dimensions	The site is rectangular shaped block with a frontage to Bank Street of 17.22 m, depth of 24.87 m and overall site area of approximately 425 sqm.
Existing building and site conditions	The site is occupied by the former Town Hall Hotel, a double storey building constructed in 1870 and renovated in the inter-war period. It



	<p>has a significant grading in the Emerald Hill Residential heritage precinct (HO440).</p> <p>The building is currently vacant.</p> <p>The building is built to all site boundaries so there is no vegetation on the site. The rear part of the building is single storey.</p> <p>There is no vehicle access onto the site.</p> <p>The site is relatively flat.</p>
Surrounding area	<p>The site is located approximately 55 m to the east of the South Melbourne Central Activity Centre. It has good access to public transport, being 90 m north of the no. 1 tram on Park Street and 170 m east of the no. 12 tram on Clarendon Street.</p> <p>The surrounding area is residential, comprising a mix of single and double storey dwellings within the Emerald Hill Residential heritage precinct. Many have a significant grading. The western end of Bank Street is more varied in terms of built form, due to the proximity to Clarendon Street and commercial uses.</p> <p>To the immediate east of the site at 133 Bank Street is a significantly graded dwelling that has a double storey extension. It has a courtyard and garage to the rear.</p> <p>To the immediate south of the site is an unnamed bluestone laneway that is approximately 4.4 m wide. It is a 17 m long dead-end laneway providing access from Wilson Street.</p> <p>South of that are two relatively recent three storey townhouses at 1 and 1A Wilson Street. They have their principal outlook towards the subject site, and first floor balconies which also face the subject site and provide their private open space.</p> <p>To the immediate west is Wilson Street, a 4.3 m bluestone laneway providing access between Bank Street and Park Street.</p> <p>West of that at 141 Bank Street is a significantly graded double storey terrace dwelling that has been recently extended. It forms the end of a row of four matching terraces. It has a courtyard and a double storey outbuilding at the rear, with several windows facing towards the subject site.</p> <p>Opposite the site on the other side of Bank Street are significantly graded single storey dwellings at 150 and 152 Bank Street.</p>

8. PERMIT TRIGGERS

The following zone and overlay controls apply to the site, with planning permission required as described.

Provision	Why is a permit required?
Neighbourhood Residential Zone – Schedule 1	<p>A planning permit is required to construct two or more dwellings on a lot pursuant to Clause 32.09-6.</p> <p>A development must meet the requirements of Clause 55.</p> <p>A minimum garden area of 25% must be provided and a maximum building height of 9 m and 2 storeys (excluding basements) is allowed. However, pursuant to Clause 32.09-14, transitional provisions apply to this application because it was lodged on 16 January 2017, before Amendment VC110 was introduced on 27 March 2017. Therefore the minimum garden</p>



	<i>area and maximum height requirements do not apply to this application.</i>
<i>Heritage Overlay – Schedule 440</i>	A planning permit is required to demolish or remove a building and construct a building or construct or carry out works pursuant to Clause 43.01-1. <i>External paint controls apply pursuant to Schedule 440 to the Heritage Overlay, and therefore a permit is also required to paint the building pursuant to Clause 43.01-1.</i>
<i>Clause 52.06 Car parking</i>	A planning permit is required to reduce the number of car parking spaces required by Table 1 at Clause 52.06-5. <i>Dwellings require two car spaces to every 3 bedroom dwelling, plus one car space for visitors to every five dwellings. This equates to a requirement of 13 spaces (12 for residents and 1 for visitors).</i> <i>Fourteen car spaces are proposed, but they would all be for residents. Therefore a reduction of one visitor space is sought.</i>

9. PLANNING SCHEME PROVISIONS

State Planning Policy Frameworks (SPPF)

9.1 The following State Planning Policies are relevant to this application:

Clause 11	Settlement
Clause 11.06	Metropolitan Melbourne
Clause 15	Built Environment and Heritage
Clause 16	Housing
Clause 18	Transport
Clause 19	Infrastructure

Local Planning Policy Framework (LPPF)

9.2 The Municipal Strategic Statement (MSS) contains a number of clauses which are relevant to this application as follows:

Clause 21.03	Ecologically Sustainable Development, including
Clause 21.03-1	Environmentally Sustainable Land Use and Development
Clause 21.03-2	Sustainable Transport
Clause 21.04	Land Use, including
Clause 21.04-1	Housing and Accommodation
Clause 21.05	Built Form, including
Clause 21.05-1	Heritage
Clause 21.05-2	Urban Structure and Character
Clause 21.05-3	Urban Design and the Public Realm
Clause 21.06	Neighbourhoods, including



Clause 21.06-5 South Melbourne

- 9.3 The following local planning policies are relevant to this application:
- | | |
|--------------|--|
| Clause 22.04 | Heritage Policy |
| Clause 22.12 | Stormwater Management (Water Sensitive Urban Design) |
| Clause 22.13 | Environmentally Sustainable Development |

Other relevant provisions

- 9.4 The following particular and general provisions are relevant to this application:
- | | |
|--------------|--|
| Clause 52.06 | Car Parking |
| Clause 52.34 | Bicycle Facilities |
| Clause 55 | Two or More Dwellings on a Lot and Residential Buildings (ResCode) |
| Clause 65 | Decision Guidelines |

Incorporated documents

- 9.5 The following incorporated documents are relevant to this application:
- Port Phillip Heritage Review – Volumes 1-6 (Version 25, May 2018)
 - Port Phillip Design Manual (2000)
 - South Melbourne Central Structure Plan (2007)

Relevant Planning Scheme Amendment/s

Amendment VC110

- 9.6 Amendment VC110 was gazetted on 27 March 2017 and amended the residential zones by introducing mandatory garden area and building height requirements.
- 9.7 Specifically, the Neighbourhood Residential Zone was amended to include a minimum garden area requirement of 25% for a lot of this size at Clause 32.09-4. It was also amended to include a maximum building height of 9 m and 2 storeys (excluding basement/s) at Clause 32.09-9.
- 9.8 However, transitional provisions were included in the Neighbourhood Residential Zone at Clause 32.09-4, so that these requirements do not apply to an application lodged before the approval date of the amendment. Because this application was lodged on 16 January 2017, it benefits from the transitional provisions and the minimum garden area and maximum height requirements do not apply.



10. REFERRALS

Internal referrals

- 10.1 The application was referred to the following areas of Council for comment. The comments are discussed in detail in Section 12.

Heritage Advisor

- 10.2 Council's Heritage Advisor provided the following advice in relation to the advertised proposal:

The current application is a amended version of a previous application that was refused by VCAT on various ground, chiefly amenity impacts, but also in relation to heritage. I provided detailed comments on that previous application and some changes were made to the design that was ultimately considered by VCAT.

In response, the overall design concept, including the changes that I originally recommended, has been maintained, but several changes have been made in response to the issues identified by VCAT. Those that are relevant to heritage include:

- The retention of a greater section of the eastern side wall. This is a positive change, as it will retain more of the original fabric, including the opportunity to retain an early painted sign on that wall (this should be made a condition of permit.)*
- The reduction in height of the ground floor openings in the facade. This is also a positive change as it will reduce the potential visual impact of these openings upon the façade. I note that the existing openings are not original and the new openings adopt a simple symmetrical arrangement, which is consistent with the symmetrical appearance of the original building.*
- Changes to the addition from a mansard style roof to a rectilinear profile with a flat roof, as a consequence of increasing setbacks at the rear to reduce amenity impacts. Because of this, the addition will now be slightly more visible when viewed from Bank Street, both when viewed from directly in front (when it will be slightly visible above the parapet) and in oblique views from the sides. Nonetheless, the upper level will retain a setback from the façade of about 7.5 metres, which, according to the plans will place it slightly behind the transverse ridge of the two storey terraces to the west of the laneway and is set behind the retained chimney on the west side wall by about 1m. This is, I believe, a reasonable setback that will ensure the addition will appear suitably recessive in accordance with the objectives of the heritage policy in the context of Bank Street.*

Overall, I believe the proposed changes will ensure that the potential heritage impacts upon the building will be reduced when compared to the previous scheme. Other aspects such as colours and materiality are acceptable.

As noted above, one recommendation is for the early painted sign on the eastern wall to be retained or restored/recreated as part of the scheme. One final



suggestion is this: the façade has original flagpoles which are an important part of the design. The various elevations and renders all show these as being retained, but unlike some other features there are no specific notes (or at least none that I could see) saying they will be retained – a bit ‘belt and braces’ but I would like a note on plan specifying this.

- 10.3 Council's Heritage Advisor reviewed the amended plans and advised that:

Having reviewed the latest set of plans I see that the setback of the top floor is actually increased slightly (although the overall height also slightly increases). Because of this, there will be no perceptible change to the visibility of the addition. The slight changes to the design also do not significantly change the visual impacts of the additions and, overall, the design, is of a good quality.

Accordingly, the amended design is acceptable in relation to heritage.

Planner comment:

- 10.4 This advice is discussed in section 12 of this report. Conditions are recommended to require the sign on the eastern wall and retain the flagpoles (refer recommended conditions 1a) and b)).

Urban Design Officer

- 10.5 Council's Urban Designer provided the following advice:

The design is well developed and articulated with the building's mass and form responding to the existing character of the streetscape. Detail design is of high quality and builds on the character of the existing hotel. The bluestone plinth is appropriate and the simple and restrained material palette is well considered.

The centralised entry to the lobby area from Bank Street is supported as it provides a legible entrance and focal point to the façade.

Ground level terraces to apartment G01&2 provide an active frontage on Bank Street and sensitive response to the heritage building.

The retention of façade and art deco features is supported. The integration and detail of the service cabinet into the façade is innovative.

The Wilson Street façade is sufficiently activated through ground level windows and corner balcony.

Verticality of fenestration is supported and relates well to building character

Smaller ground floor window recess to bedroom in apartment G01 (on drawing number A16008_TP 133B and plan A16008_TP 211B) appears to be non-functional. Ensure this is a functional window. This may be a drawing error.

The strong horizontality of the third floor extrusion is undermined by the ‘pop-top’ sky-light window extrusion when viewed from Bank Street and further afield. If additional light into apartment 301 is desired, this could be achieved through skylights or other architectural intervention that does not impede on the overall interpretation of the building.



Apartment's G01 and G02 have inefficient use of space and layout with entries opening directly onto the dining table not allowing for circulation space.

Urban art: *The penetrations into façade, retention of glazing bars, addition of art deco style lights and decorative screen detailing are positive architectural interventions but do not represent a unified, coherent artwork. (Recommend liaison with Council's arts team if the proposed art contribution is satisfactorily achieved.)*

Recommendation:

We support the proposal with the following conditions:

- *Removal of the extruded 'pop-top' skylight above the third floor roof.*

Planner comment:

10.6 The Urban Designer was not asked to provide advice on the amended plans now under consideration. However, the 'pop-top' skylight has been removed from the plans. While the ground level terraces facing Bank Street would be removed, habitable rooms would ensure an active frontage is retained. Windows and balconies would be retained to Wilson Street. The internal layout of dwellings has been revised as a result of the reduction in number of dwellings from 11 to six, and all layouts provide sufficient circulation space. A condition is recommended to address Council's urban art requirements (**refer recommended condition 7**).

10.7 This advice is discussed in section 12 of this report.

Transport Safety Engineer

10.8 Council's Transport Safety Engineer assessed the original and the amended plans. He provided the following advice in relation to the amended plans:

Car Park Layout:

- Access ways – *Access to basements levels is proposed via a single car lift accessed via ROW.*
- Pedestrian sightlines *provided by the applicant do not fully comply with Clause 52.06. Given the low level of pedestrian activity expected in R.O.W and both the garage and car lift set back from the R.O.W, I am satisfied that the design does not compromise pedestrian safety.*
- Car lift – *The specifications including make and model of the car lift have not been provided by the applicant. These should be provided for review by Council traffic engineers to confirm the platform width and length of the car lift demonstrated on the development plans. The applicant must have an action plan in place for when scheduled maintenance occurs or the car lift is temporarily unavailable.*
- Car Park Dimensions –
 - *I have concerns regarding the ability of a vehicle to access and egress double car garage within the ground level. Previously submitted swept path diagrams required multiple corrective*



manoeuvres for a vehicle to egress from space 01. I have concerns the proposed arrangement will impact access to the car lift and access to adjacent properties that area also accessed via the ROW.

- *Given the location of the stairs and lift opposite to car space 12 (Basement Level 2) and Car space 06 (Basement Level 1), I have concerns of how a vehicle will access/egress from this space.*
- *As per VCAT findings identifying for previously submitted application 272/2015 that it was critical that the design provided safe and efficient access for future users, council have concerns that this has not been achieved.*
- *Gradients- have been checked and are considered satisfactory in accordance with the Port Phillip Planning Scheme*
- *Headroom- car park headroom clearance is considered satisfactory in accordance with the Port Phillip Planning Scheme*
- *Bicycles- Clause 52.34 requirement for bicycle spaces is 1 resident spaces and 1 resident visitor space. The applicant exceeds this requirement and is proposing 8 bicycle spaces within Basement Level 1. This is considered satisfactory. Bicycle parking configuration within the site has been reviewed and is considered satisfactory.*
- *Car Lift-*
 - *The applicant has previously provided a car lift queuing analysis; it was determined that queuing within the ROW is low and considered satisfactory. A condition should be placed on the permit for the installation of warning light when car lift is in use and priority for vehicles entering.*
 - *A diagram has been shown on drawing no. A16008_VC01 2101 demonstrating a vehicle accessing the car lift. It is unclear what vehicle this is. Additionally, the diagram does not demonstrate any clearance from the north-west boundary of 1 Wilson Street. Noting this I have concerns given the proposed arrangement.*

On Street Parking:

- *The existing on-street parking surrounding the site is short term paid parking or residential permit zones.*
- *Residents of the development will not be eligible for resident parking permits and visitors utilising on-street parking provisions will be required to abide by the parking restrictions displayed.*

Traffic Generation:

- *Traffic Generation anticipated from the redevelopment of site is expected to have minimal impact on the surrounding street network.*

Loading and waste



- *Loading- there is no requirement for a loading bay for the proposed development*
- *Waste collection- The proposal should be referred to Councils Waste Management department*

Parking overlay and parking provisions

- *Clause 52.06 of the planning scheme requires 13 off street parking spaces, 12 resident spaces and 1 resident visitor space. The proposal provides 14 spaces, given that some spaces specifically garage spaces annotated unit 301 within basement level 2, it is unclear how these spaces are to be allocated. Can the applicant please clarify this.*
- *Note that the assessment for the appropriate rate for car parking provision lies with Statutory Planning.*

Other:

- *All proposed crossovers must be installed to Council satisfaction.*
- *The applicant has proposed to install an on-street bike hoop on the Bank Street footpath subject to council approval. Council support the installation of an on-street bike hoop however council have a standard bike hoop that is typically installed to accommodate on-street bicycle parking. The on-street bike hoop would need to be installed to council satisfaction and a cost to the applicant.*

Planner comment:

- 10.9 A condition is recommended to require that the car lift specifications are provided and reflected on the plans (**refer recommended condition 1e**). This outcome was foreseen by VCAT (refer paragraph [59]).
- 10.10 Another condition is recommended to require that warning lights be installed to indicate when the car lift is in use and that the default position be at the ground level (**refer recommended condition 22**). This outcome was also foreseen by VCAT (refer paragraph [60]).
- 10.11 Standard conditions are also recommended in relation to construction of the crossover and provision of the on-street bike hoop (**refer recommended conditions 19 and 23**).
- 10.12 In relation to the concerns regarding access into the ground level car spaces and the access into the car lift, Council's Traffic Engineer has been consulted in formulating recommended conditions (**refer recommended conditions 1e-g**). These conditions require it to be demonstrated that the two ground level spaces and the car lift can all be accessed in a safe way. This can be achieved through modifications, either by removing car space 1 and widening car space 2 and the car lift (the subsequent loss of car space would not result in any dwelling having less than two car spaces), or by shifting the spaces and car lift further north and/or by widening the car lift to the west. These may require some internal layout modifications (an outcome that was foreseen and accepted by VCAT (refer paragraph [57])).



- 10.13 In relation to the concerns regarding the access and egress into car spaces 6 and 12, the applicant provided updated swept path diagrams. These were reviewed by Council's Traffic Engineer who confirmed that they demonstrated suitable access/ egress was achieved.
- 10.14 The applicant has clarified that no visitor car parking would be provided on the site, and that the two ground level car spaces would be allocated to residents.

Waste Management

- 10.15 Council's Waste Officer identified various matters that needed to be resolved prior to any planning permit being issued.

Planner comment:

- 10.16 Conditions are recommended to ensure that these matters are all addressed through an amended Waste management plan (**refer to recommended condition 10**).

Sustainable Design

- 10.17 Council's Sustainable Design Officer assessed the advertised proposal and advised that:

This application [is] almost of a standard where I could approve it as meeting Council's current expectations for environmentally sustainable design.

To counter this, the applicant should address the following points if they wish to have their Sustainable Design Assessment statement approved:

We expect a development of this size to achieve a minimum of 50% overall score and minimums in Energy, Water, Stormwater and IEQ categories in BESS. In areas falling short from the changes below, adjustments need to be made to bring the project up to meet the BESS minimums.

Water Comments

Water 1.1 Water Efficient Fixtures – The development needs to commit to providing dishwashers and washing machines as part of the base building if they are to be included within the BESS assessment. If this is not the case then amend them to default/unrated in BESS.

Energy Comments

Thermal performance – Commitment to an energy efficiency standard at least 10% above minimum NCC compliance (6.6 star average energy rating) is expected of a development on this size.

Shading – Exposed NW facing glazing – provide operable external shading devices off of the face of glazing

Clothes drying - Please indicate on plans the location of the indoor drying rails / clothesline.

Stormwater Comments



Additional notes on the plans needed to indicate size and location of rainwater tank proposed and connection to all toilets.

Provide a Maintenance Manual for Water Sensitive Urban Design Initiatives.

Urban Ecology Comments

Urban Ecology 3.1 Food Production – Provide further information on the drawings and in the report which shows that each dwelling has a food production area. If this is not the case then amend to 0 in BESS.

Planner comment:

- 10.18 Conditions are recommended to ensure that these matters are addressed through amended documentation (**refer to recommended conditions 11-16**).

External referrals

- 10.19 The application was not required to be externally referred.

11. PUBLIC NOTIFICATION/OBJECTIONS

- 11.1 It was determined that the proposal may result in material detriment therefore Council gave notice of the proposal by ordinary mail to the owners and occupiers of surrounding properties and directed that the applicant give notice of the proposal by posting three notices on the site for a 14 day period, in accordance with Section 52 of the Planning and Environment Act 1987.
- 11.2 The application has received 23 objections. The key concerns raised are summarised below and are addressed in the assessment of the proposal at Section 12 of this report:
- Excessive height
 - Design, bulk and massing not in keeping with character of area
 - Extent of demolition (including the western façade) is inappropriate
 - Inadequate car parking provision for visitors
 - Access to the car parking would damage adjacent properties
 - Traffic impacts from congestion caused by cars waiting to use the car lifts
 - Noise from the car lift
 - Overlooking of adjoining rear yards
 - Overshadowing of adjoining properties at 133 Bank Street and 1 and 1A Wilson Street
 - Loss of daylight to existing windows
 - Non-compliance with various Clause 55 standards
 - Inadequate provision of private open space and communal open space
 - Poor internal amenity
 - Plans do not address issues in the previous application



- 11.3 An information meeting was held on 28 June 2018 with residents and Council Officers.
- 11.4 It is considered that the objections do not raise any matters of significant social effect under Section 60 (1B) of the Planning and Environment Act 1987.

12. OFFICER'S ASSESSMENT

Have the amended plans addressed the issues that led to the previous application being refused by VCAT?

- 12.1 The Tribunal determined to refuse the previous application on the following grounds:
1. The extent of demolition and modifications to the façade would adversely affect the significance of the heritage place.
 2. The development would adversely affect the amenity of the dwellings at 1 and 1A Wilson Street.
 3. The internal amenity of the two north facing ground floor apartments would be unacceptably compromised.
- 12.2 In articulating these grounds, the Tribunal made it clear that the balance had not been struck between competing heritage, character and amenity outcomes.

Ground one: heritage

- 12.3 In considering whether the proposed demolition would adversely affect the significance of the heritage place, the Tribunal considered that (emphasis added)

14. 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.

15. 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.



16. *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.*

12.4 The Tribunal went on to consider that (emphasis added):

20. *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.*

21. *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.***

12.5 It is now proposed to keep a greater section of the eastern side wall, with the opportunity to retain the early painted sign on the wall. Further, there would be a reduction in height of the ground floor façade openings, which as Council's Heritage Advisor has stated:

"This is also a positive change as it will reduce the potential visual impact of these openings upon the façade. I note that the existing openings are not original and the new openings adopt a simple symmetrical arrangement, which is consistent with the symmetrical appearance of the original building".

12.6 For these reasons, it is considered that the Tribunal's heritage ground has been addressed.

Ground two: amenity impacts to 1 and 1A Wilson Street



- 12.7 The Tribunal found that the development would adversely affect the amenity of the dwellings at 1 and 1A Wilson Street, finding that (emphasis added):

72. 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.

*73. 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.***

*7.4 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.*

- 12.8 The amended plans have increased the setbacks of the building from the rear (south) boundary). The ground and first floor would be setback a minimum of 1 m, which matches the setback of the townhouses at 1 and 1A Wilson Street. The second and third floors would be setback 5.5 m and 8.8 m respectively and would meet the side and rear setback standard B17 of Clause 55.
- 12.9 As a result, the appearance of bulk of the development when viewed from the ground and first floors of 1 and 1A Wilson Street would be significantly decreased. The second and third floors would have minimal visibility.
- 12.10 The increased setbacks would also significantly reduce the extent of overshadowing of the first floor balconies and increase the amount of daylight into the ground and first floor living areas of 1 and 1A Wilson Street. The daylight to existing windows standard B19 of Clause 55 would be met. The balcony of 1 Wilson Street would not be shadowed by the proposal between 9 am and 3 pm at the equinox, while the balcony of 1A Wilson Street would be affected by approximately 2 sqm of additional shadow at 3pm only.



12.11 While the setback of the first floor would not meet the side and rear setbacks standard B17 at Clause 55 in relation to the rear boundary, it has been designed to respond to the neighbourhood character of the area. This includes the three storey townhouses at 1 and 1A Wilson Street (the height and setback of which the proposed ground and first floors would match) and the two storey garage at 141 Bank Street. There are also a number of existing high (two to three storey) walls abutting Wilson Street which adds to this existing built form character.

12.12 For these reasons, it is considered that the Tribunal's external amenity ground has been addressed.

Ground three: internal amenity

12.13 The Tribunal found that the two front north facing ground floor apartments would have unacceptably compromised internal amenity:

75. 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.

76. 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.*

12.14 The layout of all of the dwellings has been revised as part of the amended application. Only one dwelling (G01) would have its private open space and living areas on the ground floor. The private open space would comprise a balcony facing Wilson Street and the living area would have a dual aspect with windows facing north and west to maximise light penetration. The other ground floor dwelling (G02) has been redesigned over two levels so that its living room and private open space are on the first floor with a northern orientation.

12.15 For these reasons, it is considered that the Tribunal's internal amenity ground has been addressed

Other matters raised by the Tribunal



- 12.16 The Tribunal raised the following matters which did not form part of the refusal grounds but which the Tribunal would have addressed through conditions if a permit were granted.

Traffic in the rear laneway

- 12.17 The Tribunal identified a number of issues in relation to traffic in the rear laneway, which would have been addressed through conditions if a permit were to issue (emphasis added):

*53. 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.***

*54. **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.*

*55. 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.***

*56. 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.***

*57. **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.**

58. 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.

59. 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.**

60. 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.**

- 12.18 As discussed in relation to Council's Traffic Engineer's referral advice, conditions are recommended to address these matters (**refer recommended conditions 1e)-g) and 22**).

Height of wall adjacent to 133 Bank Street

- 12.19 The Tribunal found that the height of the wall adjacent to the rear yard of 133 Bank Street should not exceed the height of the existing wall, stating (emphasis added):

66. 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.***

- 12.20 The plans currently under assessment show this wall being 3.2 m high, which is less than the existing wall height of 3.3-3.4 m. Therefore this issue has been addressed.

Have the amended plans addressed the issues that led to the previous Council position to not support the application?

- 12.21 When Council Officer's assessed the original (advertised) proposal, a delegated decision was made that Council not support the proposal on the following grounds:
1. The development would adversely affect the amenity of the dwellings at 1 and 1A Wilson Street.
 2. The internal amenity of the two north facing ground floor apartments would be unacceptably compromised.
 3. All car parking spaces cannot be accessed safely or conveniently.
- 12.22 Grounds 1 and 2 have been addressed, as discussed above.
- 12.23 Ground 3 was particularly in relation to access to car spaces 1, 3, 7 and 13 and into the car lift.
- 12.24 As discussed in relation to Council's Traffic Engineer's referral advice, it has now been demonstrated through updated swept path diagrams that all internal car spaces could be accessed appropriately.
- 12.25 Also as discussed in relation to Council's Traffic Engineer's referral advice, conditions are recommended to ensure that the ground level car spaces and car lift would be appropriately access (**refer recommended conditions 1e)-g**). These may require some further internal layout changes and/ or the removal of one of the car spaces (which is acceptable since it would not affect the resident parking provision under Clause 52.06).
- 12.26 The use of conditions which potentially required internal modifications to address access and traffic impacts was foreseen and accepted by the Tribunal when considering the original proposal (refer paragraphs [57]-[60]). Because of this, the conditions have been carefully drafted in consultation with Council's Traffic



Engineer, to provide Council and residents certainty that there would be no unreasonable traffic impacts. It would not be appropriate for Council to refuse the application on this issue alone when these conditions could achieve the same result.

- 12.27 Ground 3 can therefore be addressed, through the recommended conditions, should Council be of a mind to support this application.

Local planning policy framework

- 12.28 Clause 21.04-1 Housing and accommodation sets out a five tier hierarchy for residential growth in the City of Port Phillip: substantial, moderate, incremental, limited and minimal residential growth areas. In the consideration of the previous application, the Tribunal found that:

'...it is possible this site could be classified as 'incremental growth' because the definitions of the incremental, moderate and substantial growth areas make no mention of the relevance of a 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, having regard to the Heritage local planning policy. Hence, that is what my consideration of the merits of this proposal has done.' [32]

- 12.29 Despite this classification in the lowest tier of residential growth, there is potential for some form of apartment building on this site given the existing built form on the site. To a lesser extent, the proximity to the South Melbourne Central Activity Centre and fixed rail public transport also favour some increase in density. However, it is clear that any development must not be detrimental to the heritage character of the area, and accord with Council's local heritage policy at Clause 22.04.
- 12.30 Clause 21.05 Built form sets out a range of objectives and strategies for urban structure and character at Clause 21.05-2 of relevance to this proposal.
- 12.31 Clause 21.06-5 sets out the key planning challenges, vision and strategies for the South Melbourne neighbourhood area including the following of relevance:

Vision

High quality residential environments in established residential areas are maintained.

Excellence in the design of all development and the public realm, incorporating best practice environmentally sustainable design techniques is achieved.

Local strategies

In all areas zoned Residential (except areas zoned Mixed Use)

6.5.49 Ensure all new development responds to the following character elements:



- *The historic, low-rise Victorian and Edwardian architectural character of the area.*
- *The low scale of development that is predominantly 1 and 2 storeys in most streets with the exception of some taller buildings along the foreshore and in the vicinity of Albert Road.*
- *The wide streets and boulevards, as well as the intricate network of small streets and back lanes.*
- *The small size of most residential lots in the neighbourhood.*
- *The differences between the diversity contributing to the distinctive neighbourhood character of some of the smaller areas in Emerald Hill.*

12.32 A detailed assessment against the relevant character and built form themes follows. Overall, the proposal would be generally consistent with the relevant local policy, with a site responsive design.

Heritage

12.33 The Tribunal considered that the extent of demolition proposed would adversely affect the heritage significance of the place, but that the proposed building would not adversely affect the heritage significance of the place. As previously discussed, the demolition and façade have been addressed by the current plans. It is further considered that the proposed building would not cause any new potential heritage impacts. This was discussed by Council's Heritage Advisor, who is supportive of the proposal on heritage grounds.

12.34 Overall, the proposal is generally consistent with the relevant heritage provisions in the planning scheme. This includes Council's local heritage policy at Clause 22.04 because:

- Important elements of the façade would be retained, notably the signs, flagpoles, first chimney and other Moderne-style features.
- A contemporary design approach has been adopted for the new works.
- The new works would be clearly distinguishable from the original parts of the original building.
- The new works would not obscure any contributory elements of the building.
- Only a small section of the top floor addition would fall outside of the 18 degree sightline prescribed by Performance Measure 1 for diverse streetscapes. Council's Heritage Advisor identified that Bank Street was a diverse streetscape in the referral for the original application. This proposal would be slightly more visible when viewed from Bank Street compared to the first proposal considered by the Tribunal. However, as Council's Heritage Advisor has advised:



Nonetheless, the upper level will retain a setback from the façade of about 7.5 metres, which, according to the plans will place it slightly behind the transverse ridge of the two storey terraces to the west of the laneway and is set behind the retained chimney on the west side wall by about 1m. This is, I believe, a reasonable setback that will ensure the addition will appear suitably recessive in accordance with the objectives of the heritage policy in the context of Bank Street.

Neighbourhood character considerations

- 12.35 The proposal would be an appropriate response to the character of the surrounds and the relevant character provisions of the planning scheme.
- 12.36 In considering the previous proposal, the Tribunal did not raise any concerns from a wholly character perspective. They also considered that a four storey building could be accommodated, despite surrounding properties being developed with single and double storey dwellings:

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. [paragraph 2]

- 12.37 The Tribunal eventually concluded that a four storey building was acceptable:

... 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... [paragraph 34]

- 12.38 While the design has changed compared to what was considered by the Tribunal (for instance, removal of mansard roof, different external materials and colours), the design does not raise any new character or built form issues. In particular, the proposed contemporary design would be cohesive with the heritage façade and the overall scheme would be of a high quality.

Off-site amenity

- 12.39 The Tribunal specifically considered off-site amenity impacts in relation to 133 and 141 Bank Street and 1 and 1A Wilson Street and found that the only unreasonable amenity impacts would be to the latter properties, as previously discussed. The proposal would both reduce the number of overall dwellings and increase the setbacks of the property from the rear boundary and would therefore not cause any additional amenity impacts beyond what was previously



considered by the proposal. As previously discussed, the amenity impacts to 1 and 1A Wilson Street have been addressed and therefore it is considered that there would be no unreasonable off-site amenity impacts as a result of this development (subject to conditions to address overlooking). Notwithstanding this, the issues raised by objectors have been addressed in turn.

Daylight to windows

- 12.40 There are a number of habitable room windows at 1 and 1A Wilson Street which face the subject site. The proposal would comply with the daylight to existing windows standard B19 of Clause 55 and would not cause any unreasonable loss of daylight into these windows.
- 12.41 There are several habitable room windows at 141 Bank Street which face the subject site. The proposal would not comply with the daylight to existing windows standard B19. However, the objective would be met and the rooms would receive sufficient daylight. This is because the affected rooms have south facing outlook and windows that would provide additional access to light.

Overshadowing

- 12.42 The proposal would cause some additional shadow to the rear yard of 141 Bank Street (which is approximately 42 sqm in area) at 9 am, 10 am and 11 am. At 9am it would cause approximately 6 sqm of additional shadow, at 10 am it would cause approximately 6.5 sqm of additional shadow and at 11 am it would cause approximately 8 sqm of additional shadow. Despite this, the extent of shadow would not be unreasonable in an inner city built up area and at these times there would still be a part of the yard that would not be in shadow.
- 12.43 The proposal would not cause any additional shadow to the balcony of 1 Wilson Street (which is approximately 13 sqm in area) between 9 am and 3pm at the equinox.
- 12.44 The proposal would cause some additional shadow to the balcony of 1A Wilson Street (which is approximately 12 sqm in area) at 3 pm only. It would cause approximately 2 sqm of additional shadow, leaving approximately 7 sqm that would not be in shadow. Despite this, the extent of shadow would not be unreasonable since this is a limited amount of shadow at 3 pm only, and over half of the balcony would receive solar access.
- 12.45 The proposal would cause some additional shadow to the rear yard of 133 Bank Street (which is approximately 50 sqm in area) at 2pm and 3pm. At 2pm, less than 1 sqm of additional shadow would be caused (leaving approximately 4 sqm of the yard not in shadow). At 3pm, less than 0.5 sqm of additional shadow would be caused (meaning that the whole yard would be in shadow). Despite this, the extent of shadow would not be unreasonable since the amount of additional shadow would be minimal.

Overlooking

- 12.46 There would be no potential for unreasonable overlooking or loss of privacy from the proposal, subject to the recommended condition to modify the kitchen and bedroom 1 windows of apartment 102 and the design of some of the screens (**refer recommended conditions 1c), h), i) and j)**).
- 12.47 In particular:
- The ground level habitable room windows and balcony would face public roads, so any views to habitable room windows beyond those would be into rooms that are already visible from the street.
 - The east facing habitable room windows would be located forward of the rear yards to the east which would prevent any direct views. Timber screens would further limit views.
 - The east facing balcony would also be located forward of these rear yards, and would be screened to a height of 1.7 m.
 - There would be no west facing habitable room windows (aside from the kitchen which would be modified as discussed above).
 - There would be no unreasonable views from the south facing windows. The first floor windows would be screened (apart from the bedroom window which would be modified as discussed above). Downwards views from the second and third floor windows to the balconies and habitable room windows of 1 and 1A Wilson Street would be prevented by the proposed double storey wall near the boundary. A recommended condition will require that the screen be designed to prevent horizontal views.
 - There would be no unreasonable views from the second floor south facing balcony, because it would have 1.7 m high screening the east and west sides and views down to the south would be prevented by its setback beyond the proposed double storey wall near the boundary. A recommended condition will require that the screen be designed to prevent downwards views.

Visual bulk

- 12.48 The development would not cause any unreasonable visual bulk impacts from any of the adjoining or nearby sensitive interfaces. This is despite the proposal not complying with the side and rear setbacks standard B17 at Clause 55 in relation to the side boundaries and rear boundary at the bottom two floors.
- 12.49 The north-south oriented properties to the east and west have their primary outlook away from the subject site. Meanwhile, the setbacks from the rear (south) boundary have been increased which will significantly reduce the visibility of the upper two floors from 1 and 1A Wilson Street (as previously discussed).
- 12.50 The 1 m ground/ first floor setback from the rear boundary responds to the character of the area, notably the townhouses opposite and other existing high (two to three storey) walls on or near side and rear streets/ laneways. Further, the

4.4 m wide rear laneway would provide additional separation between the ground and first floor and townhouses opposite, reducing any perceived visual bulk.

Noise

- 12.51 The proposal would not cause any unreasonable noise to adjoining residents. In particular, the car lift and services would be enclosed within the building, limiting potential noise emissions.

Internal amenity

- 12.52 The proposed dwellings would have a good level of internal amenity, and all relevant Clause 55 standards would be met. In particular, all but one of the dwellings would have north facing living areas, all but two would have north facing balconies and all but one would have a dual aspect. Therefore the dwellings would receive ample daylight and solar access with opportunities for natural ventilation. Each dwelling would have a lockable double garage with storage, and reasonably sized balcony.

Clause 55 Two or more dwellings on a lot and residential buildings (ResCode)

- 12.53 The application has been assessed against Clause 55 and would satisfy all of the objectives and most of the standards.

- 12.54 Variations have been sought and could be supported in relation to the following standards:

- Building height
- Site coverage
- Permeability
- Side and rear setbacks
- Walls on boundaries
- Daylight to existing windows
- Overshadowing open space
- Accessibility

- 12.55 The variations are acceptable for the reasons discussed in relation to built form and off-site amenity impacts previously in this report. The exception to this is in relation to accessibility. This standard was not met because it has not been demonstrated that 50 per cent of the dwellings would comply with the accessibility requirements of Standard B41. However, due to the large size of the dwellings and limited scale of the development, it is sufficient that the dwellings would be able to be modified to comply if required in the future.

- 12.56 Conditions have been recommended to address aspects of the following Clause 55 provisions:

- Landscaping (**refer recommended conditions 8 and 9**).



- Overlooking (**refer recommended condition 1c**).
- Waste and recycling (**refer recommended condition 10**).

Car and bicycle parking and traffic impacts

- 12.57 Pursuant to Clause 52.06, the required car parking rate is two spaces to each three-bedroom dwelling and one space for visitors to every five dwellings. With six, three-bedroom dwellings proposed, this equates to a requirement of 12 resident car spaces and one visitor car space: 13 in total. This proposal includes 14 car spaces, exceeding the car parking requirement of Clause 52.06, however no visitor space is proposed.
- 12.58 Council and the Tribunal (at [41]-[43]) previously supported the waiver of two visitor spaces. The Tribunal concluded that:
- ...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 ... 'prevent unreasonable off-site parking impacts to the surrounding area'. [paragraph 43]*
- 12.59 For this reason, the proposed waiver of one car space is considered acceptable. The applicant has also shown an one-street bike hoop which could be used by visitors.
- 12.60 The layout of the car spaces and lift has not been entirely resolved to the satisfaction of Council's Traffic Engineer, as previously discussed. However, conditions are recommended which require further modification and swept path diagrams to demonstrate that all spaces could be accessed appropriately (**refer recommended conditions 1e-g**).
- 12.61 The width of the rear laneway has been shown differently on various plans submitted, at 4.2, 4.4 and 4.5 m. From an on-site inspection, it appears that the laneway is approximately 4.4 m wide, although it may vary at different points. To ensure that all traffic movements work, recommended conditions require that the laneway be re-surveyed and the correct width/s be reflected on the plans, including in the updated ground floor car space and car lift swept path diagrams (**refer recommended conditions 1d-g**).
- 12.62 Traffic generated by the proposal would be acceptable, as Council's Traffic Engineer advised:
- "Traffic Generation anticipated from the redevelopment of site is expected to have minimal impact on the surrounding street network".*
- 12.63 Clause 52.34 Bicycle facilities sets out a bicycle parking rate for developments of four or more storeys of one space to each five dwellings for residents and one space to each ten dwellings for visitors. Therefore there is a requirement to provide one resident space. The proposal includes eight bicycle parking spaces in the basement and two bicycle parking spaces on the street, exceeding the bicycle parking requirement of Clause 52.34.



Sustainable Design and Water Sensitive Urban Design

- 12.64 A Sustainable Management Plan has been submitted which outlines various sustainable design and water sensitive urban design initiatives. A condition will require the submission of an amended SMP for endorsement to ensure Council's standard requirements are met (**refer recommended conditions 1k) and 11-16**).

13. COVENANTS

- 13.1 The applicant has completed a restrictive covenant declaration form declaring that there is no restrictive covenant on the titles for the subject site known as Lot 1 of Title Plan 68277M (Parent Title Volume 07812 Folio 162).
- 13.2 There is a small party wall easement on part of the east boundary. This wall is proposed to be demolished and a new wall built on the boundary.

14. OFFICER DIRECT OR INDIRECT INTEREST

- 14.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

15. OPTIONS

- 15.1 Approve as recommended.
- 15.2 Approve with changed or additional conditions.
- 15.3 Refuse.

16. CONCLUSION

- 16.1 The proposed development as shown on the amended plans circulated on 21 June 2018, subject to the recommended conditions, complies with the relevant State and Local planning provisions and address the issues which lead to Council's recent refusal and the refusal of the previous application by VCAT because it would:

- Be an appropriate response to the heritage significance of the site and surrounds.
- Not cause any unreasonable off-site amenity impacts (subject to some generally minor overlooking conditions).
- Provide for a good level of internal amenity for future residents.
- Be an appropriate response to the character of the area.
- Comply with all of the Clause 55 objectives and most of the standards.
- Provide an appropriate number of car spaces, which could be accessed in a functional and safe manner (subject to conditions).



- 16.2 It is recommended that Council informs the Tribunal (VCAT) and all parties to the appeal that it supports the application subject to conditions, as per Recommendation "Part A".

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TRIM FILE NO:

PF17/1525

ATTACHMENTS

1. VCAT Decision
2. Plans considered by VCAT
3. Advertised plans (refused by Council)
4. Application plans (substituted at VCAT)
5. Objector map