



6.1 **9 - 11 PALMERSTON CRESCENT SOUTH MELBOURNE**

LOCATION/ADDRESS: **9 - 11 PALMERSTON CRESCENT SOUTH MELBOURNE**

EXECUTIVE MEMBER: **LILI ROSIC, ACTING GENERAL MANAGER PLACE STRATEGY AND DEVELOPMENT, PLACE STRATEGY AND DEVELOPMENT**

PREPARED BY: **SCOTT PARKINSON, PRINCIPAL PLANNER**

1. PURPOSE

- 1.1 To provide Council position on planning permit application 1163/2017 for the construction of a multi level (19 storey), mixed use building over two basement levels containing 54 dwellings, a food and drinks premise, office and a reduction in the car parking requirements

2. EXECUTIVE SUMMARY

WARD:	Gateway
TRIGGER FOR DETERMINATION BY COMMITTEE:	Council Delegation
APPLICATION NO:	1163/2017
APPLICANT:	Frater Lacus Pty Ltd
EXISTING USE:	Commercial building
ABUTTING USES:	Commercial and residential
ZONING:	Commercial 1 Zone
OVERLAYS:	Design and Development Overlay – Schedule 26-2
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired

- 2.1 The application proposes the construction of a multi level (19 storey) mixed use building over two basement levels containing 54 dwellings, a food and drinks premise, office and a reduction in the car parking requirements.
- 2.2 The applicant has lodged an application for review (ref P931/2018) with VCAT on 25 May 2018 for failure to determine the application within the prescribed time (60 days) and the purpose of this report is to establish Council's position at the Tribunal. A Practice Day was held on 29 June 2018 which vacated the Compulsory Conference that was to be held on 16 August 2018 and extended the hearing to six days starting 22 October 2018.
- 2.3 Following notice of the VCAT application, three statements of grounds were lodged with the Tribunal. They raised similar concerns to the objections which is discussed below and again later in this report.



- 2.4 This report provides the basis of Council's position in the upcoming VCAT Compulsory Conference and hearing.
- 2.5 Council received 111 objections with the majority of objections related to overdevelopment, inappropriate height and bulk, traffic and parking impacts, amenity impacts on adjoining sites, lack of onsite loading, inconsistencies with the provisions of the DDO, ESD, disabled access and construction impacts.
- 2.6 Whilst the site is strategically located for an increase in residential density, concerns are raised with a number of aspects of the proposal including:
 - 2.6.1 The building would not incorporate a podium / tower form and would be inconsistent with the preferred character of the precinct.
 - 2.6.2 The building would have a dominant form and not provide an appropriate human scale of development.
 - 2.6.3 The building would exceed the mandatory maximum height control of the Design and Development Overlay.
 - 2.6.4 The building fails to provide an active frontage to facilitate viable and vibrant business activity.
 - 2.6.5 The insufficient side and rear setbacks to the adjoining sites which would not meet the requirements of the Design and Development Overlay (DDO26).
 - 2.6.6 The development would not allow for equitable development rights of adjoining properties.
 - 2.6.7 Adequate provision has not been made to protect the sites to the north and east from unreasonable overlooking.
 - 2.6.8 Poor internal amenity, particularly in respect to inadequate daylight to the apartments on the lower levels of the building and balconies that do not meet the minimum dimension of Clause 58.
 - 2.6.9 The traffic generation and proposed access arrangements would adversely affect the RoW.
 - 2.6.10 The development would not provide an adequate amount of on site parking or adequate vehicle access to the parking areas.
 - 2.6.11 The proposal would not provide an appropriate mix of dwellings.
- 2.7 It is considered that the development as proposed is not acceptable and therefore should not be supported. It is recommended that Council advise VCAT that, had it been the Responsible Authority for the determination of the application, it would have issued a Notice of Refusal to Grant a Permit.



3. RECOMMENDATION

3.1 That Council adopt Recommendation "Part A" and "Part B" to advise VCAT that:

- It would have issued a Notice of Refusal to Grant a Permit.
- Authorise the Manager City Development to instruct Council's Statutory Planners and/or Council Solicitors on the VCAT application for review.

RECOMMENDATION "PART A"

3.2 That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, advise VCAT that, had it been the Responsible Authority for determination of the application, would have issued a Notice of Refusal to Grant a Planning Permit for the construction of a multi-level mixed use building over two basement levels containing 54 dwellings, a food and drinks premise, office and a reduction in the car parking requirements at 9 - 11 Palmerston Crescent, South Melbourne on the following grounds:

1. The proposal does not adequately satisfy the relevant objectives and strategies of the Local Planning Policy Framework (LPPF) namely 21.04-1 (Land Use - Housing and Accommodation), 21.05-2 (Built Form – Urban Structure and Character), 21.05-3 (Built Form – Urban Design and the Public Realm), 21.06-7 (Neighbourhoods - St Kilda Road North Precinct) of the Port Phillip Planning Scheme)
2. The building scale and massing is contrary to Clause 21.05-2 (Built Form – Urban Structure and Character), 21.05-3 (Built Form - Urban Design and the Public Realm, 21.06-7 (Neighbourhoods - St Kilda Road North Precinct), 22.06 (Urban Design Policy for Non Residential Development and Multi Unit Residential Development) and 43.02 (Design and Development Overlay) of the Port Phillip Planning Scheme.
3. The proposal is inconsistent with the design objectives of the Design and Development Overlay Schedule 26, particularly in relation to overall height, podium / tower form, active frontages and side and rear setbacks.
4. The development would not allow for equitable development rights on the adjoining sites to the north (1 - 7 Palmerston Crescent, South Melbourne) and east (24 Albert Road, South Melbourne).
5. The proposal results in unacceptable level of internal amenity by virtue of the poor daylight to dwellings contrary to Clause 22.13 (Environmentally Sustainable Development) of the Port Phillip Planning Scheme.
6. The proposal has not provided an appropriate mix of dwellings, contrary to Clauses 21.04-1 (Land Use) and 21.06-7 Neighbourhood) of the Local Planning Policy Framework.
7. The proposed development fails to achieve the standard and objective of Clauses 58.02-3 (Dwelling Diversity), 58.02-5 (Integration with the Street) 58.04-1 (Building Setbacks) and 58.05-3 (Private Open Space).



8. The development would not provide acceptable vehicle access to and from the site in accordance with Clause 52.06 of the Port Phillip Planning Scheme which would impact the traffic flow in the RoW.
9. The proposal has not considered the cumulative traffic impacts in the RoW and on the surrounding streets.
10. The proposal has not adequately provided visitor parking spaces on site, contrary to Clause 52.06.
11. The proposal is an overdevelopment of the subject site and would not be in keeping with the orderly planning of the area.

RECOMMEDATION “PART B”

- 3.3 Authorise the Manager City Development to instruct Council’s Statutory Planners and/or Council’s solicitors on the VCAT application for review.


4. RELEVANT BACKGROUND

There is no relevant history or background for this application.

5. PROPOSAL

- 5.1 The application proposes the construction of a multi-level (19 storey) mixed use building over two basement levels containing 54 dwellings, a food and drinks premise and a reduction in the car parking requirements.
- 5.2 The plans which are the subject of this report are those drawn by Rothe Lowman entitled “Residential *Development 9 - 11 Palmerston Crescent South Melbourne VIC 3205*”, project no 217118, plan no’s TP00.00, TP00.01, TP00.02, TP00.03, TP01.01, TP01.02, TP01.03, TP01.04, TP01.05, TP.01.06, TP01.07, TP01.08, TP01.09, TP01.10, TP01.11, TP01.12, TP01.13, TP01.14, TP01.15, TP01.16, TP01.17, TP01.18, TP.01.19, TP01.20, TP01.21, TP01.22, TP01.23, TP02.01, TP02.02, TP03.01, dated 01.02.18 and date received by Council 20/02/2018.
- 5.3 The proposal is detailed within the below table:

	Proposal
Site area	476.4sqm
Type of development	Mixed use development within a tower
Land uses	Residential Dwellings, retail (food and drinks premises) and office.
Demolition	Demolition of all existing buildings and works on site (no permit required).
No of dwellings	54 dwellings over levels 1 to 18 comprising 17 x one bedroom (50sqm to 61.5sqm), 32 x two bedroom (75.6sqm to 97.8sqm) 4 x three bedroom (112.2sqm) and 1 x four bedroom (261.5sqm) dwellings.

<p>Setbacks and tower separation</p>	<p>The building is designed with a creased façade that would angle away from the front boundary. The design does not incorporate a podium / tower form but provide an interplay of different angles and setbacks up and across the façade.</p>  <p>Front (Palmerston Crescent) elevation. Building is designed with a creased feature façade</p> <p>The building would be built directly to the side boundaries of the site</p>
<p>Podium height</p>	<p>No podium provided</p>
<p>Tower height</p>	<p>60m above natural ground level and 64m above natural ground level including the lift overrun and plant / services.</p>
<p>Commercial floor area</p>	<p>52.8sqm food and drinks premises on the ground floor. 47.7sqm office at the front of level 1, accessed from the ground floor.</p>
<p>Loading bay</p>	<p>A loading bay (6.5m x 3.2m) would be provided on the ground floor accessed from the RoW. The loading bay would provide a clearance height of 4m.</p>
<p>Car parking</p>	<p>44 on site car parking spaces would be provided with 43 spaces accommodated within a mechanical car stacker system accessed from the rear of the site via the RoW. The stacker system would be located within the two basement levels (33 parking spaces)</p>



	and on level 1 (10 parking spaces). 1 car spaces for visitor parking would be provided at grade on the ground floor.
Bicycle parking	21 bicycle spaces would be provided within the basement and ground floor levels.
Private open space	Each apartment would be provided with secluded private open space in the form of a balcony ranging in size from 8.1sqm to 33.9sqm, accessed from the main living room.
Communal facilities	Communal spaces located on level 19 comprising a 238sqm open area. Partly covered by a pergola.
Storage	27 storage units located in the basement mezzanine and level 1 accessed by lift and stairs.

5.4 The built form of the development is described as follows:

Ground floor

5.5 The building would abut all boundaries though at the ground floor level 1 would cantilever above the two vehicle access areas at the rear and middle of the ground floor.

5.6 Contains a food and drinks premises, a lobby for lifts and stairs, communal waste and services, substation and car parking access.

Level 1

5.7 Level 1 would accommodate an office which would gain access from the ground floor via a dedicated stairway; 6 resident stores; 10 car parking spaces in a stacker arrangement and 1 x one bedroom apartment.

Levels 2 to 5

5.8 Levels 2 to 5 would each contain 5 dwellings comprising 1 x one bedroom, 2 x two bedroom and 1 x three bedroom apartments.

Levels 6 to 17

5.9 Levels 6 to 17 would each contain 3 dwellings comprising 1 x one bedroom and 2 x two bedroom apartments.

Level 18

5.10 Level 18 would contain 1 x four bedroom apartment.

Level 19



- 5.11 Level 19 would contain two areas (139.9sqm and 98.1sqm) of communal open space on the roof level with a plant area at the rear.
- 5.12 The proposal would have a maximum building height of 60m above natural ground level, and 64m above natural ground level including the lift overrun and plant / services.
- 5.13 A varied palette of materials and finishes are proposed and would include rendered finish, bronze metal cladding, timber look cladding and clear, grey tinted and opaque grey glazing.

6. SUBJECT SITE AND SURROUNDS

Description of Site and Surrounds	
Site Area	476.4sqm
Existing building & site conditions	<p>The subject site is located on the eastern side of Palmerston Crescent approximately 55m south from the intersection with Park Street, 110m north from the intersection with Kings Way and opposite Matthews Lane.</p> <p>To the north (side) of the site is a single width Right of Way (RoW) which is accessible via Palmerston Crescent. The RoW provides vehicular access to the subject site, the property to the north 1 - 7 Palmerston Crescent and the multi level commercial car park to the east (20 and 24 Albert Road).</p> <p>The site is irregular in shape with a western frontage to Palmerston Crescent of approximately 11.5 metres, a northern boundary of approximately 35 metres, a north east boundary of 2.52 metres, a combined eastern boundary of approximately 12.34 metres at the rear of the site and a southern boundary of approximately 38.5 metres.</p> <p>The site is currently developed with a two storey rendered building used for commercial purposes.</p>
Surrounds/neighbourhood character	<p>The surrounding area has a mixed character in terms of built form and land use. Land to the north, east and south is zoned Commercial 1 and land to the west on the opposite side of Palmerston Crescent is zoned Mixed Use. Within this area is a mix of multi storey residential and office development and older single and double storey office and commercial buildings.</p> <p>The area is undergoing substantial change, partly as a result of the recent amendment application of DDO26 to the area in 2016 as part of Planning Scheme Amendment C107. A number of sites in the surrounding area are either subject to current planning permit applications or have approval for multi-storey, mixed use buildings.</p> <p>Palmerston Crescent is fully constructed with concrete upright kerb and channel, and asphalt footpaths incorporating a mix of low recent and established medium height street trees. Footpaths along both sides are of a generous width, but are lacking in street furniture. Car parking is allowed along parts of both sides of the street and is a mix of 1P, 2P and P ticket during the day (9am-6pm) Mon-Fri. There is a</p>



	<p>on street loading bay located directly outside the subject site on the eastern side of Palmerston Crescent.</p> <p>The Clarendon Street activity centre is located 800m west of the site.</p> <p>The site has good access to public transport with tram routes 3, 5, 6, 8, 16, 64, 67 and 72 operating along St Kilda Road with a tram stop located 170 metres to the north east. A new tram stop is located outside 200 Wells Street. Bus routes 216, 219 and 220 operating along St Kilda Road with a bus stop located to the east. The site is located close to the proposed Anzac train station.</p>
<p>Interfacing Property</p>	<p><u>North</u></p> <p>To the north is a single width (3.0m) RoW which is a public laneway owned by the City of Port Phillip. The RoW allows access to the subject site, the property to the north 1 - 7 Palmerston Crescent and the multi level car parks to the east (20 and 24 Albert Road).</p> <p>Beyond the RoW to the north, is 1 - 7 Palmerston Crescent. This property is developed with a four storey commercial building that is developed over the majority of the site. The building contains a number of north facing windows on all four levels that have an outlook over the subject site.</p> <p>Further to the north the site at 9 - 13 Park Street contains a single and a double storey commercial building. Planning Permit 9/2017 has recently been approved by VCAT for a 20 storey mixed use building for 37 dwellings and a 110sqm food and drinks premises on the ground floor. 48 car parking spaces were proposed (no visitor spaces) in a mechanical shuffle car stacker accessed via the RoW.</p> <p>As detailed in the VCAT order <i>McCardel v Port Phillip CC</i> [2018] VCAT 633 (2 May 2018), the Tribunal found that:</p> <p><u>In relation to the requirements of the DDO26:</u></p> <ul style="list-style-type: none"> • Building height to the maximum 60m allowed under the DDO26 is supported, because the proposal generally achieves the requirements for this sub-precinct, including 'architectural excellence'. • It is acceptable to build the tower on the east boundary, rather than require the 4.5m setback of the DDO26. The property to the east, 5 - 7 Park Street, is subject to a separate VCAT appeal for a multi-storey development and also includes a wall built to the common boundary. • It is necessary to setback the podium and tower a minimum of 4.5m from the centre of the laneway. This is to achieve equitable development rights with the adjoining site at 1-7 Palmerston Crescent to the south. A condition was included to require this. This will result in significant changes to the podium, which will have to be setback an additional 3 m. • Encroachments of up to 800mm into the prescribed tower setbacks from Park Street and Palmerston Crescent are acceptable. This is because they are generally small and would be indiscernible from the street.



In relation to car parking and loading facilities:

- The reduction of 7 residential visitor car parking spaces and 4 visitor spaces for the food and drink premises is acceptable.
- A condition requires that a loading space be provided. VCAT found there is a practical requirement to provide on-site loading for tradespeople, removalists, deliveries to the retail premises and the like.
- Some traffic impacts would occur; however this is to be expected in an area designated to accommodate higher density development.

In relation to other matters:

- Higher density residential development is specifically encouraged on this site.
- Some overshadowing to adjoining apartments (particularly in the late afternoon) was acceptable given the strategic context of the site.
- Potential noise impacts to future residents could be mitigated through conditions.
- Potential noise impacts to surrounding residents from increased traffic (particularly waste vehicles) would be addressed by a condition restricting collection times.
- The proposal would not unacceptably impact views to and from the Shrine of Remembrance.
- There was no evidence of any significant social effects, despite the number of objections received and the number of parties represented at the hearing.

East

To the east at 24 Albert Road is a two level car park building that is built directly to the boundary it shares with the subject site. Further to the east (approximately 26m) the property at 24 - 26 Albert Road is developed with a 11 storey office building.

South

To the south the site at 13 - 21 Palmerston Crescent is developed with a six storey rendered and concrete panel building that is currently used as a commercial car park and gym. Planning Permit (VCAT) 916/2014 has been issued for the development of a 19 storey mixed use building comprising retail premises, a restricted recreation facility and dwellings on this site. The building is designed in a podium / tower typology with an enclosed pedestrian arcade proposed to run along the length of the adjoining boundary at ground floor

The endorsed plans show that the ground floor is setback 3.5m from the boundary it shares with the subject site with windows to 2 x food and drinks premises, lobby lounge, shop and gymnasium on the northern elevation that would face onto the subjects site.



	<p>The building is designed with a curved form to the northern elevation where the podium levels (levels 0 to 4) are setback between 3.685m and 7.59m from the northern boundary with three dwellings on each level with a principal orientation to the northern boundary. The upper level tower form (above level 4) is designed with a setback between 5.7 to 8.5m with two dwellings on each level with a principal orientation to the northern boundary.</p> <p><u>West</u></p> <p>Palmerston Crescent is located to the west of the site. Beyond Palmerston Crescent at 15 -17 Park Street is a 6 storey commercial office building.</p>
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7. PERMIT TRIGGERS

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

Zone or Overlay	Why is a permit required?
<p>Clause 34.01 Commercial 1 Zone</p>	<ul style="list-style-type: none"> ▪ Pursuant to Clause 34.01-4 a Planning Permit is required for the use of the site for dwellings (frontage at ground floor exceeds 2 metres) ▪ Pursuant to Clause 34.01-4 a Planning Permit is required to construct a building or construct or carry out works on a site in a Commercial 1 Zone.
<p>Clause 43.02 Design and Development Overlay 26 (DDO26-2)</p>	<ul style="list-style-type: none"> ▪ Pursuant to Clause 43.02 a Planning Permit is required to construct a building or construct or carry out works on a site affected by a Design and Development Overlay.
<p>Clause 52.06 Car Parking</p>	<ul style="list-style-type: none"> ▪ Pursuant to Clause 52.06-2, the car parking spaces required under Clause 52.06-5 must be provided on the land prior to the commencement of a new use. A permit may be granted to reduce or waive the number of car spaces required by the table included in Clause 52.06-5. ▪ Pursuant to Clause 52.06-5, a dwelling requires: <ul style="list-style-type: none"> ○ 1 car parking space to each one or two bedroom dwelling; ○ 2 car parking spaces to each three or more bedroom dwelling (with studies or studios that are separate rooms counted as bedrooms) and ○ 1 car parking space for visitors to every 5 dwellings for developments of five or more dwellings. ▪ Pursuant to Clause 52.06-5 a food and drinks premises requires 4 car parking spaces per 100sqm of leasable floor area. ▪ Pursuant to Clause 52.06-5 an office requires 3.5 car parking spaces per 100sqm of net floor area.



	<ul style="list-style-type: none"> ▪ A total of 59 car parking spaces are required for the 54 dwellings, 1 car parking space for the office (47.7sqm) 2 car parking spaces for the food and drinks premises (52.8sqm) and 10 visitor car parking spaces. ▪ 44 car parking spaces are proposed for the dwellings and 1 visitor car parking space. No car parking is proposed for the office or foods and drinks premises. <p>A Planning Permit is required to reduce the number of car parking spaces</p>
<p>Clause 52.34 Bicycle facilities</p>	<ul style="list-style-type: none"> ▪ Pursuant to Clause 52.34 a new use must not commence until the required bicycle facilities have been provided on the land. ▪ Pursuant to the table at Clause 52.34-3 1 space for every 5 dwellings is required for residents and 1 space for every 10 dwellings is required for visitors. ▪ Bicycle parking is not required for the food and drinks premises or office. ▪ A total of 16 bicycle spaces (11 spaces for residents and 5 for visitors) is therefore required for the 54 dwellings. ▪ 21 bicycle spaces would be provided for the development. <p>A Planning Permit is <u>not</u> required for bicycle facilities</p>

8. PLANNING SCHEME PROVISIONS

8.1 State Planning Policy Frameworks (SPPF)

The following State Planning Policies are relevant to this application:

- Clause 11: Settlement
- Clause 15: Built Environment and Heritage
- Clause 16: Housing

8.2 Local Planning Policy Framework (LPPF)

The following local planning policies are relevant to this application:

- Clause 21.03-1 Environmentally Sustainable Land Use and Development
- Clause 21.03-2 Sustainable Transport
- Clause 21.04-1 Housing and Accommodation
- Clause 21.04-3 Office and Mixed Activity Areas
- Clause 21.05-2 Urban Structure and Character
- Clause 21.06-3 Urban Design and Public Realm



- Clause 21.06-5 South Melbourne
- Clause 22.06 Urban Design Policy for Non Residential Development and Multi Unit Residential Development
- Clause 22.12 Stormwater Management
- Clause 22.13 Environmentally Sustainable Development

8.3 Other relevant provisions

- Clause 43.02 Design and Development Overlay
- Clause 52.06 Car Parking
- Clause 52.34 Bicycle Facilities
- Clause 58 Apartment Developments
- Clause 65 Decision Guidelines

8.4 Relevant Planning Scheme Amendment/s

8.4.1 Better Apartments Design Standards

This State Government amendment (VC136) introduced the Better Apartments Design Standards into all Planning Schemes on 13 April 2017. The Better Apartments Design Standards have been introduced to improve the liveability and sustainability of apartments across Victoria. The amendment has inserted a new particular provision at Clause 58 (Apartments Developments) to introduce new requirements for apartments developments of five or more storeys in a residential zone and all apartment developments in other zones.

8.4.2 Urban Design Guidelines for Victoria

Amendment VC139 introduced the Urban Design Guidelines for Victoria to all planning schemes on 29 August 2017. The guidelines replace the Guidelines for Higher Density Residential Development as well as the Activity Centre Design Guidelines (DSE 2005) and Safer Design Guidelines for Victoria (DSE 2005). They have resulted in a number of planning scheme changes that require the assessment of new built form for apartment buildings of five or more storeys in height.

The below assessment includes consideration of the proposed development against Clause 58 and the new Urban Design Guidelines for Victoria.

8.4.3 Amendment C154 - St Kilda Road North Precinct

A request has recently been made to the Minister to prepare and approve Amendment C154 to the Port Phillip Planning Scheme pursuant to Section 20(4) of the *Planning and Environmental Act 1987* to update Schedule 26 to Clause 43.02 - Design and Development Overlay (DDO26). The Planning Scheme Amendment seeks the following:

- Administrative changes to address issues resulting from the expression of controls that are causing confusion including changing the word 'must' to



- ‘should’ through-out the DDO where the requirement is not intended to be mandatory to improve transparency and consistency with other DDO’s
- Make changes which implement an element of the adopted Precinct Plan
 - Make changes which strengthen the existing control where the outcome is not being achieved on a consistent basis.

Amendment C154 would have the following impact on the proposed development:

8.4.4 Northern interface

- At ground level and level one it would be mandatory for the proposed building to be set back 2.2 metres from the boundary with the lane.
- At levels 2-4, the habitable room windows in the podium should be setback 4.5 metres from the centreline of the right-of-way to achieve the stated design objective of DDO26: “To ensure a high degree of internal amenity for building occupants, including providing for outlook and privacy, natural ventilation, sunlight and daylight and noise minimisation”. It is acknowledged that DDO26 does not specifically deal with podium level setbacks for this sub-precinct, nor specifically with laneway interfaces, however the side and rear setbacks sought above podium heights are designed to ensure that no unreasonable overlooking impacts arise from the proximity of habitable rooms in adjacent developments equitable development outcomes and to achieve equitable development outcomes. A form of screening element that creates the impression of a podium, constructed to the lane boundary would be an acceptable outcome.
- At levels 5 and above it would be mandatory to set the building back 4.5 metres from the boundary to the lane (as distinct from the centreline of the lane, which has previously been acceptable under the current DDO26).
- The proposed setbacks to the north, at any level, would not be permitted under the changes requested to update DDO26.

8.4.5 Eastern interface

The requested changes to DDO26 mean that along the eastern interface construction to the rear boundary is not acceptable. A mandatory setback of 4.5m from the eastern boundary would have to be provided to all levels.

8.4.6 Southern interface

- Considering that the approved development on the adjoining site at 13 - 21 Palmerston Crescent has habitable room windows within 200mm of the boundary, the proposed development may not be constructed to the boundary on the southern side.
- The requested changes to DDO26 would mean that it is mandatory for the development to be setback 4.5m from the southern boundary above the podium height.
- The proposed podium level setbacks at less than 4.5m from the boundary or less than 9m (physical distance not a visual line) from the approved building at 13 - 21 Palmerston Crescent are not supported and should be increased to achieve the design objective relating to private amenity and outlook.

8.4.7 Mandatory on-site storage and screening of waste materials



The proposed plans appear to comply with the new mandatory requirement that waste materials storage and services must: be provided on-site, located away from footpaths, be screened from areas of high pedestrian activity and not impede pedestrian access.

- 8.4.8 Mandatory on-site loading and service-vehicle parking requirements
- The proposed development provides one internal on-site loading bay, which is requested to be a mandatory requirement of the updated DDO26.
 - It is unclear from the plans whether on-site service vehicle parking is proposed to be provided at the rear of the building – that is also a mandatory requirement of the updated DDO26.
- 8.4.9 Mandatory location of car park exhaust stacks away from pedestrian areas
- It is unclear from the advertised plans whether the proposed development complies with the Amendment C154 requested mandatory requirement for exhaust stacks from underground car parks to be located away from main pedestrian areas and incorporated into the building design or adequately screened.

9. REFERRALS

9.1 Internal referrals

The application was referred to the following areas of Council for comment. The comments are discussed in detail in Section 9.

9.1.1 Strategic Planning

Council's Strategic Planning Unit have reviewed the proposal and provided the following comments (Comments copied verbatim):

DDO non-compliance

Building height

- *The height of the proposed building (measured from the top of the solid balustrading of the roof terrace) exceeds the mandatory maximum building height of 60m and must be reduced. Further, the proposed communal open space and building services exceed the dimensions permitted to qualify for an exemption to the mandatory building height under Clause 4.0 and must be reduced.*

Street wall / Podium

- a) The combination of the 18m podium height (approximately 5 storeys) and 5m frontage setback above the podium is intended to provide a unifying element within this sub-precinct and a 'human scale', providing interest and activity for pedestrians at the street edge.*
- b) The plans show a podium of approximately 21m (comprising of 6 storeys from the ground floor up to level 5, measured at the top of the level 6 solid balustrading), which exceeds the discretionary height and the number of storeys intended to be accommodated in the podium.*
- c) Above the podium (level 6 and above) the building wall is setback at least 5m from the street however balconies with solid balustrading are proposed within the frontage setback blurring the transition from podium to tower.*



This is not considered to be an acceptable design response in the context of the human-scale DDO objectives. Above level 4, balconies should be further set back from Palmerston Crescent to provide clear distinction between the podium and the tower.

- d) Minor frontage setbacks are proposed within the podium at levels 2 – 5 within the façade providing visual interest, noting a zero setback for the first 18m of the building is a discretionary requirement. This is supported as an outcome.*

Side and rear setbacks

- a) The proposal provides a zero-setback for a significant portion of the side and rear boundaries.*
- b) Along the northern and eastern boundaries, habitable room windows and terraces are proposed within the setback area, relying on borrowed amenity from the R.O.W and setbacks from existing buildings. This is not supported. Setting all levels of the proposed development back 4.5 metres from the middle of the R.O.W is considered to achieve the 4.5 metre spacing required, to provide adequate building separation to provide outlook and amenity to habitable room windows and maintain equitable development rights for the adjoining sites.*
- c) Along the southern boundary, the site abuts an existing 6 storey carpark providing a blank wall to the boundary. At 13-21 Palmerston Crescent, a permit has been issued for a 19-storey residential building in a podium / tower typology with an enclosed pedestrian arcade proposed to run along the length of the adjoining boundary at ground floor. The approved plans contain habitable rooms within the podium (setback 3.6m – 7.5m from the boundary), and habitable rooms within the tower (setback 5.7m – 8.6m from the boundary).*
- d) The proposed development relies on the setback distance of the approved development to achieve a '9m visual line', and does not meet the required 4.5m setback to the podium, nor the minimum 9m tower separation. This compromises amenity and outlook, does not satisfy the objectives of the DDO and is an unacceptable outcome. Achieving a 9m physical separation between the approved and proposed podiums and towers along the southern boundary would be an acceptable outcome.*

Active Frontages

- a) Greater activation at street level at the Palmerston Crescent / R.O.W corner is encouraged, to contribute to a high-quality pedestrian environment.*
- b) This could be achieved by reconfiguring the ground floor so that the retail premises (Food & Drink) opens out onto Palmerston and the inactive space (stairwell) is relocated behind.*
- c) Foyer areas should have visibility to the street and be designed to encourage activity and interest both within and external to the building. In the proposed configuration, the lobby / lounge areas are not visible from the street and do not offer an outlook to the street. Reconfiguration of this space is encouraged.*

RECOMMENDATION

It is recommended that the proposal should not be supported unless the following modifications are made:



- a) *Reduce the overall building height to comply with the mandatory building height requirements.*
- b) *Increase frontage setbacks above level 4 to provide clear distinction between the podium and the tower.*
- c) *Improve activation of the ground floor frontage to Palmerston Crescent through reconfiguring the internal layout.*
- d) *Increase the side / rear setbacks along the northern and western boundaries to 4.5 metres from the centre of the R.O.W to provide adequate access to daylight and outlook for habitable room windows facing the laneway, and to ensure equitable development rights for sites abutting the R.O.W.*
- e) *Achieve 9m physical separation between the approved and proposed towers and podiums along the southern boundary.*

9.1.2 Urban Design

Council's Urban Designer considers the proposal to be an overdevelopment of the site which cannot be supported. The referral comments detail the following particular concerns:

- *It is over the maximum height*
- *It does not achieve setbacks on all side and rear boundaries, compromising the equitable development opportunity of properties to north and east, and the solar access and outlook of approved development to south, particularly secluded open space.*
- *It undermines sky views and solar access to streets inherent to neighbourhood character, setting a poor precedent*
- *It utilises public ROW for vehicle queueing, servicing and other operational requirements for development of this size*

The full referral comments have been provided below:

This proposal does not comply with the objectives of DDO26:

- *to maintain landscape setting,*
- *maintain sky views between towers,*
- *adequate sun penetration to street,*
- *high degree of internal amenity,*
- *equitable access to outlook and*
- *equitable development potential.*
- *Nor does it comply with mandatory heights or boundary setbacks.*

The development of this relatively narrow site relies on compromising development opportunity or borrowing amenity of adjacent sites and public realm. This proposal would set a precedent for a significant increase in development density, changing the character of the precinct.

*Specifically, this proposal undermines the precinct wide objectives for Landscape Setting, Private Amenity and Outlook: "To provide for the future development of the St Kilda Road North Precinct, as a Precinct **integrated with its urban and landscape surrounds.**"*

"To maintain and consolidate the grand landscape setting of the Precinct as an important and distinctive feature of the area by requiring consistent front and side boundary setbacks and high-quality landscaping."



The consistent 4.5m set side boundary backs provide a 9 metre wide through-block visual connections and sky/tree canopy views. The proposal does not provide these setbacks on side and rear boundaries.

*The building separations are "To ensure a high degree of **internal amenity** for building occupants, including providing for outlook and privacy, natural ventilation, sunlight and daylight and noise minimisation. . . .*

- *Assist in maintaining the sense of space and 'open sky views' at street level.*
- *Provide opportunities for buildings to have an outlook."*

Infill of this smaller sites with zero setback development will create a precedent for urban wall, compromising the objective, significantly changing the precinct character and reducing the internal amenity of homes.

'For Sub-Precincts 1, 2, 3 and for properties in Sub-Precinct 4 without a primary frontage to St Kilda Road:

- *Development above the podium height must be **set back** a minimum of 4.5 metres from side and rear boundaries and at least 9 metres from existing towers.*
- *Where there is no podium or an existing tower, a setback of 4.5 metres to the boundary must be provided.'*

The proposal provides zero setback for significant portion of side and rear boundaries. Generally, setbacks are not achieved.

The proposal illustrates a 9m separation for less than half the southern boundary from approved tower instead of 4.5m setback. The tower separation of 9m setback is in addition to the 4.5m boundary setback. Levels 6-9 have balconies protruding into this 9m tower separation further compromising outlook, amenity and equitable development.

The northern boundary has a combination of setbacks between zero and 2.7m. All amenity is borrowed from 3m wide public lane and existing building setbacks. There is over 10metres of blank north facing wall with zero setback and only one small north-east balcony with 2.7m setback to glass line.

It may be considered that the 4.5m setback is from centreline of ROW.

The western boundary has zero setbacks for majority and a small portion of 1.4m setback.

The street interface of podium is acceptable. The north-west corner of street interface is dominated by office stair and booster. Further detail in drawings is required to determine how this contributes to safety and activity.

'For all Sub-Precincts:

Additional side and rear setbacks and/or separation distances may be required to ensure buildings are designed and spaced to:

- *Equitably distribute access to an **outlook**, daylight and achieve privacy from primary living areas for both existing and proposed development.*
- *Achieve **sky views** between towers, ensure adequate sun penetration to street level and mitigate wind effects.*
- *Avoid windows of primary living areas and balconies that directly facing one another.*
- *Maintain the equitable **development potential** of adjoining lots.'*



Generally, the proposal compromises outlook and equitable development potential. See boundary setback discussion above.

The approval for residential tower to south of proposal (13-21 Palmerston Crescent) has for four apartments/floor (52 homes) with northern amenity. Two of these homes/level (26 homes in total) have no alternative outlook. The proposed development has over 10m of blank wall with zero setback within the 9m minimum tower separation, to address privacy for primary living space of these homes. This loss of solar access and outlook is significant and will compromise 13 levels above the podium (level 6-18).

*'Development with a direct frontage or **abuttal to any road**, excluding Kings Way, must:*

- be built to the boundary, and*
- not exceed 18 metres in height within 5 metres of any street frontage.'*

The proposal broadly follows the street boundary. However, the 6th floor balcony is RL23.2 and top of solid balustrade is in order of RL24.20, a 21m podium. This is 3m more than permissible 18m.

The balcony fenestration to the west provides some sculptural interest and is an appropriate contemporary response for this context. The balcony setback, for tower, from street boundary is unclear in drawings but appears less than 2m. Setback to glass line is approximately 5m.

It should be noted that 'a permit may be granted' for balconies within setback.

*'Development beyond the setbacks identified above must not exceed a **height of 60 metres**. A permit may not be granted to construct a building or construct or carry out works which are not in accordance with this requirement unless allowed by clause 4.0 of this schedule.'*

'Within Sub-Precinct 2 and Sub-Precinct 3, a permit may be granted to allow architectural features such as domes, towers, masts and building services that do not exceed the maximum height by more than 4 metres and do not exceed 10% of the gross floor areas of the top building level or 50 square metres (whichever is the greater). (No gross floor area limit applies to the installation of solar panels.)

The rooftop lounge is 139m² and 4m over the maximum permissible height. This is not an architectural feature or building service. The entire rooftop is habitable. Approximately 70% of rooftop is greater than 60m maximum building height. Servicing and plant area is noted as 73m² (excluding stair and lift). No lift overrun is shown despite lift access to rooftop lounge. Further detail is required.

***Sections** are illustrated without existing development to south or permissible future development to north and east.*

*The basement **carpark** is appropriate. The podium carpark is only partially sleeved and extends less than 4m from street frontage along ROW. Carpark access is at rear of lane and needs to be demonstrated due to narrow manoeuvring space and location of existing carpark access. The impact of queuing while waiting for single car lift needs further detailed as this will occur in shared public ROW. Further detail required.*



Mixed use component is desirable in this location and inclusion is to be commended. Each use is approximately 50m² with narrow or restricted access. Note the retail and office approximately 1% of total GFA. It is appropriate to include a mix of apartment sizes.

There is a suggestion that **sustainability** is informing design. It is unclear from architectural drawings integration of this. The following should be noted:

- there are 54 homes but only space for 6 bikes
- majority of homes (approximately 65%) have primary outlook west. It is acknowledged, that on some levels, there are significant balcony projects. Further demonstration of sun shading (to minimise direct sun and heat load) is required for best practise sustainability.
- the north-east facing apartments in podium (levels 1-5) have highly compromised amenity, access to daylight and outlook due to existing or potential podium developments permissible under DDO26. Access is only via half flight of stairs from elevator.

This proposal is an overdevelopment of the site and cannot be supported. It;

- is over the maximum height
- does not achieve setbacks on all side and rear boundaries, compromising the equitable development opportunity of properties to north and east, and the solar access and outlook of approved development to south, particularly secluded open space.
- undermines sky views and solar access to streets inherent to neighbourhood character, setting a poor precedent
- utilises public ROW for vehicle queueing, servicing and other operational requirements for development of this size

Planners comments

Refer to section 11.1, 11.2, 11.3, 11.4 and the Clause 58 assessment of this report to the discussion of the above issues.

9.1.3 **Traffic**

Council's traffic engineers have reviewed the proposal and provided the following comments:

Car Park Layout:

- Accessway - Access to the site is proposed via R3058.
 - I have concerns given the proposed access arrangements given that a vehicle required to perform a corrective manoeuvre to enter the car lift. Additionally, in the event that a vehicle queues waiting to enter the lift sufficient space has not been provided to allow one vehicle to exit the site, and the TIA states that vehicle will prop on the eastern end of the laneway.
 - All queuing will need to be maintained within the site and queuing along the laneway is not supported. It is recommended a passing area be provided within the site to avoid impacting access to other properties that area accessed from laneway R3058.
 - A queuing assessment has been undertaken by the applicant where a the 98th percentile queue will be 1.5 vehicles. I have concerns that queuing into the site will affect vehicle access to adjacent properties.



- Pedestrian sightlines - Are considered acceptable given that vehicle access is provided via laneway and all car spaces are offset from the laneway.
- Mechanical Parking - The applicant has proposed mechanical parking to be accommodated via Klaus 4200 and Klaus 4000 Stackers in the following configuration:
 - *Level 1, 5 bays within a Klaus 4000 and 5 bays within a Klaus 4200. Can the applicant please clarify if the stackers accessed from Level 1 can accommodate a total of 10 car spaces, 5 in each row as shown and not only 4 in the unit 4000 and 5 in the rear 4200 stacker.*
 - Basement Plan 1, is shown to accommodate 18 parking bays, in the order of 8,5,5, utilising stacker units Klaus 4300, Klaus 4000 and Klaus 4000 respectively. Can the applicant clarify if an empty platform is required to access the Klaus 4300 whilst driving through other stackers? If so this will reduce the capacity of the other two stackers in the system to accommodate 4 vehicles each. Can the product manufacture confirm the capacity of the stackers given in the current arrangement.
 - Can the *applicant* update swept path diagrams to include structural components of car stackers for council traffic engineers to review?
 - Please *dimension* clear platform width of each bay.
- *Car lift - Make and model, as well as platform width and length of the car lift have not been provided.*
 - *Can the applicant update the TIA to include this? Please update Swept path diagrams to include structural components of the car lift specific to the make and model*
- *Accessible Parking Bay - No onsite parking has been allocated to the commercial use of the proposal, thus no accessible parking bays are required to be provided within the site*
- *On Street Parking - The existing on-street parking surrounding the site is short term parking.*

Residents and employees 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

- Generation per space- a traffic generation rate of 0.30 movements per car parking space per peak hour and 3.0 movements per day has been adopted by the applicant and is considered satisfactory. Anticipated traffic generation is 114 daily movements including 11 movements in peak hour.
- The traffic report states that laneways have a theoretical capacity of 300 vehicle movements per day. Whilst the anticipated traffic generation in the TIA is 114 daily movements per day, the applicant states movements in the laneway will be kept under 300 vehicles per day.
- Can the applicant provide evidence/traffic survey data about existing number of vehicle movements within the laneway and the cumulative impact the proposal will have on the operation of the laneway.

Loading and Waste

- Loading - A loading bay has been provided that can accommodate a small rigid vehicle. All loading should be contained within the site as per Clause 22.06. This is considered satisfactory.



- Waste collection - The proposal should be referred to Councils Waste Management department for assessment.

Parking overlay and parking provisions:

- *Clause 52.06 of the planning scheme requires a total of 72 off-street parking spaces comprising of:*
 - *59 resident spaces*
 - *10 resident visitor spaces*
 - *2 spaces allocated to the food and drink premises*
 - *1 spaces allocated to the office.*

The development plans indicate the provision of 44 parking spaces, consisting of 43 resident spaces and 1 resident visitor space. Thus, the applicant seeks a waiver of:

- *16 resident spaces*
 - *9 resident visitor spaces*
 - *2 spaces for food and drink premises*
 - *1 office space*
- The existing on-street parking is generally high turnover or ticketed parking
 - Residents/visitors/staff 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 restrictions displayed
 - In terms of car parking provision, reference should be made to CoPP's Sustainable Parking Policy. We also suggest comparing previous approved parking provision rates of adjacent developments as part of the Planning team's assessment / determination. Note that the assessment for the appropriate rate for car parking provision lies with Statutory Planning.

Bicycle parking provisions:

- *Clause 52.34 of the Planning Scheme requires the following bicycle provision:*
 - *11 resident parking spaces, 5 resident visitor parking spaces*
 - *0 spaces allocated to the office component of the proposal*
 - *0 space allocated to employees of the retail (food and drink premises).*

The site generates a total bicycle parking requirement of 16 bicycle spaces. The applicant exceeds this requirement providing 21 bicycle spaces consisting of 15 resident spaces and 6 visitor spaces.

Approximately 27% of the bike parking provided is in the form of horizontal rails, this exceed the minimum 20% requirement as per AS2890.3

Other:

- All proposed crossovers must be installed to Council satisfaction.
- Redundant crossovers to the site to be reinstated to Council specifications.
- All signage and line marking to be installed to Council satisfaction.

Planners comments

Refer to section 11.5 of this report to the discussion of the above issues.



9.1.4 Sustainable Design

Referral comments have been provided from Council's Sustainable Design Officer which have been summarised below:

Principal Concerns

The referral comments have raised three principal concerns which have been copied below:

- *Daylight*
Daylight is likely to be poor particularly on lower levels. Gaining adequate daylight for the affected apartments may require reconfiguration of the light courts, and thus the apartment designs throughout the building, and this level of impact is understood to not be conditionable. Comments have been written as such.
- *Bicycle facilities*
Bicycle parking numbers provided are well below Council's Best Practice Standard's for both resident and visitor parking. The Best Practice Standard is for 1 space per dwelling for residents and 1 visitor space per 4 dwellings.
- *Communal space*
There is no breeze protected area to enjoy the sun in cooler months, limited separation between the communal and penthouse terrace, a roof that block winter sun, and very limited veggie patch. The roof area has a lot of seating, but will likely to be used in low numbers, so more garden for residents would appear worth advocating for.

Other required changes to the plans and Sustainable Management Plan (SMP)

In addition to the principal concerns listed above, other changes to the plans and the SMP have been identified. These have been summarised as follows:

Changes to plans

Floor plans

- a) Annotate any bicycle charging points
- b) Indicate location and annotate clotheslines for each apartment
- c) Indicate shading to the café and office glazing
- d) Note in drawings that the windows and glazed doors of all habitable rooms are to be double glazed
- e) Indicate height to extent to underside of soffit over
- f) Annotate the provision of taps and floor waste gullies to all balconies and courtyards

Roof plan

- a) Indicate any photovoltaic system (annotate array size)
 - i. Elevations
- b) Indicate sash operation for all windows and glazed doors
- c) Indicate effective shading for all sun exposed north and west facing glazing
 - i. Sections
- d) Indicate ceiling height for habitable rooms



Changes to SMP

- a) Provide reference to an external standard for maximum Volatile Organic Compounds
- b) Provide a preliminary NatHERS assessment of sample units or provide information on how energy efficiency requirements will be achieved, including a maximum cooling load of 30 MJ/M2 per annum.
- c) Provide a maintenance manual for water sensitive urban design initiatives. These must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures appropriate to the scale and complexity of the project.
- d) Provide detail of the albedo of the roofing and paving material where these will be exposed to direct sun.
- e) Window and door format and sash operation need to be clearly indicated using architectural drawings conventions. Indicate operable glazing for habitable rooms that do not appear on elevations (e.g. Unit 2.03 bedroom) Consider operable, rain resistant windows to common corridors where permissible.

Additional Considerations

A number of further considerations have been suggested but as these have only been listed for consideration they have not been repeated here.

Planners comments

Refer to section 11.5 of this report to the discussion in regard to internal amenity. It is recommended that the suggested changes to the plans and Sustainable Management Plan be included as conditions should a permit be issued.

9.1.5 **Waste Management**

I have reviewed the WMP for 9 - 11 Palmerston Crescent and have the following comments:

- *Hard waste has not been considered and will need to be shown on the plans.*
- *The 1100L bins look to big to fit through the waste door to the lobby. Could this be checked?*

Planners comments

The referral comments from Council's Waste Management Coordinator have not raised fundamental concerns about the waste management associated with the development. It is recommended that should a permit be issued conditions be included requiring details of hard waste collection and the size of the doors to the waste area.

9.2 **External referrals**

The application was not required to be externally referred.

10. PUBLIC NOTIFICATION/OBJECTIONS

- 10.1 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 (1009 letters) and directed that the applicant give notice of the



proposal by posting two notices on the site for a 14 day period, in accordance with Section 52 of the Planning and Environment Act 1987.

10.2 The application has received 111 objections. The key concerns raised are summarised below (officer comment will follow in italics where the concern will not be addressed in Section 11):

- a) Overdevelopment
- b) Development is too large for the site / a small inner suburban site
- c) Poor design / is not design excellence
- d) The development is not a site responsive design.
- e) The development does not reinforce the fine grain pattern of development in the surrounding area
- f) Exceeds maximum building height
- g) No podium is provided / development exceeds podium height of 18m
- h) The building services exceed the requirements for services outlined in the DDO
- i) A building at a 60m height should meet or exceed all of the requirements of the DDO
- j) The development exceeds overlay controls
- k) Cumulative impact of development
- l) Poor activation of the street
- m) No separation is provided to building / Boundary to boundary development

10.2.1 *There are no density controls that affect the site or other blanket restrictions on the scale of development allowed for the subject site. Consideration of the proposed scale of development for this site requires an assessment of the proposal against state and local planning policies and the specific development controls (particularly DDO26) that affect the site. An assessment of the proposal against state and local planning policy is provided in section 11.1 of this report and an assessment of the development against DDO26 is provided in 11.2 section of this report.*

- The development would overshadow adjacent buildings / apartments
- The building is not designed to be setback 9m from adjacent habitable room windows and would result in adverse amenity impacts
- The development does not provide for equitable development

10.2.2 *An assessment of the impact of the development on the amenity of existing dwellings, including overshadowing is considered in sections 11.2, 11.4 and the Clause 58 assessment (refer to attachment 1) of this report*

- Traffic
- The development would adversely impact on the RoW
- Inadequate access is provided / multiple vehicle movements are required to access the car park and loading area from the RoW
- Inadequate loading facilities are provided
- Inadequate provision for waste collection
- No consideration has been made about cumulative traffic impacts in RoW
- Insufficient visitor car parking is provided



- The use of car lifts would lead to queuing in the RoW would affect access and the use of the RoW
- 10.2.3 *An assessment of traffic associated with the development (including the traffic impact on the RoW), parking, waste and loading facilities is considered in section 11.5 of this report.*
 - No diversity of apartments
 - Poor internal amenity for residents / limited natural light would be provided
 - The development does not meet the Better Apartment Design Standards (BADS)
 - Poor layout of apartments
 - Lower level apartments and south facing apartments would not receive adequate daylight
 - Does not meet disability standards
- 10.2.4 *The internal amenity that would be provided for the proposed apartments is considered in Section 11.5 of this report. An assessment of the development against Clause 58 Better Apartments Design is provided in Appendix 1.*
- The development does not provide any contribution to public open space / community facilities.
- 10.2.5 *The Planning Scheme includes requires for contributions to public open space to be considered / required at the subdivision stage. The site is not affected by any Development Contributions Overlay.*

Wind impact

- 10.2.6 *A Wind report prepared by Vipac Engineers and Scientists was submitted with the application. The Wind Report concludes that the wind conditions associated with the proposed design are expected to create wind conditions along the pedestrian level footpath that are within the criterion for walking and wind conditions for the building entrance within the criterion for standing*

Construction impact

- 10.2.7 *Any potential construction impact would be considered (should a permit be issued) as part of building and local laws permit requirements and thus are not considered within the planning permit process.*

Impact of glazing / reflectivity of the building on surrounding property

- 10.2.8 *The extent of glazing that is proposed for the building is not considered to create significant glare or adverse reflection on adjoining property.*

Urban art is not provided

- 10.2.9 *The plans do not include any details of Urban Art and this would be required as a condition of any permit should the development be approved.*

Noise from use of roof terrace



10.2.10 *Any unreasonable noise from residents would be controlled by general state EPA provisions to control noise in residential settings.*

10.3 A consultation meeting was not held.

10.4 It is considered that the objectors do not raise any matters of significant social effect under Section 60 (1B) of the Planning and Environment Act 1987.

10.5 VCAT

Following notice of the S79 application at VCAT, seven (7) statement of grounds (including joint statements of grounds) were lodged with the Tribunal. The concerns raised in the statements of grounds match the concerns raised in the objections.

11. OFFICER'S ASSESSMENT

11.1 Strategic Planning Policy Framework

11.1.1 State Policy

State Planning Policy provides an impetus for the residential intensification of sites that are well served by physical and social infrastructure. Particular reference is provided at Clause 16.01-2 (Location of Residential Development) where the strategies of this clause encourage higher density housing development in sites that are well located in relation to jobs, services and public transport. Benefits of more intensive housing include the provision of more diverse and affordable housing choices to meet the needs of Melbourne's growing population and better use of existing infrastructure to reduce Melbourne's urban sprawl.

The subject site is located near jobs and services being near the Melbourne CBD and The South Melbourne Activity Centre and has excellent access to public transport. Therefore, there is state policy support for the development of higher density housing on this site.

11.1.2 Local Policy

a) Is the site suitable for this density of development?

Clause 21.04-1 Housing and Accommodation of the MSS sets out Local Policy objectives and strategies for new housing including:

1. *To provide significant opportunities for new residential development in designated locations which have the capacity for change, and which offer highest accessibility to public transport, shops, and social infrastructure.*

1.1 *Direct the majority of new residential development to preferred housing growth areas to achieve:*

Substantial residential growth within strategic sites and precincts located within or in close proximity to a Major Activity Centre or the Fishermans Bend Urban Renewal Area. New housing will generally be in the form of higher density development, including tower-podium developments. The



height, scale and massing of new development must be in accordance with any Design and Development Overlay for the area, the urban design local policy or must respect the surrounding built form context or in the case of the Fishermans Bend Urban Renewal Area, the Fishermans Bend Strategic Framework Plan, July 2014 (amended April 2015).

Pursuant to this policy, the land is considered to be located in a **Substantial Residential Growth Area** as defined in the policy:

Strategically appropriate locations for higher density residential development (being proximate to major activity centres and / or the PPTN or within the Fishermans Bend Urban Renewal Area) which provide new housing opportunities as part of the renewal of precincts and large sites. They offer the potential for more intensive development through the creation of a new built form character.

Notwithstanding that the site is not located within a Major Activity Centre, the site is considered to be in a strategic precinct that is approximate to a major activity centres and the fixed rail public transport (Trams) and ANZAC station. Therefore, it is considered to be an appropriate location to accommodate an increase in residential density, subject to compliance with the Design and Development Overlay requirements and the urban design local policy, traffic, parking and the Better Apartment Design Standards / Clause 58.

b) Are the proposed land uses consistent with the strategic policy framework?

The Port Phillip Planning Scheme includes Local Policy objectives and strategies for land use under a number of different themes. The objectives and strategies that are relevant to this application are those grouped under Office and Mixed Activity Areas at Clause 21.04-3.

The relevant objectives and strategies of this theme include:

1. *To ensure new uses support the future strategic role and function of the office and mixed activity areas, as defined in Table 2.*
 - 1.1 *Support the consolidation of the Business 5 zone area and Schedule 1 to the Capital City Zone as vibrant office and higher density residential precincts.*
 - 1.2 *Support increased residential densities, generally in the form of higher density development, in all Mixed Use zones and Schedule 1 to the Capital City Zone.*
2. *To facilitate viable and vibrant business activity in office and mixed use precincts*
 - 2.2 *Ensure that the nature and intensity of office and commercial activity is appropriate to its location.*
 - 2.3 *Maintain and promote active land uses at ground floor that encourage pedestrian activity.*



- 2.4 Encourage residential uses above the ground floor in the Business 2 and Business 5 zones to ensure that commercial functions are not lost.*
- 2.6 Encourage the provision of generous ground level floor-to-ceiling heights to provide for current or future commercial land uses.*
- 2.7 Ensure new use and development provides appropriate car parking, storage and loading facilities.*

Part of the purpose of the Commercial 1 Zone is:

- *To create vibrant mixed use commercial centres for retail, office, business entertainment and community uses*
- *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*

The proposed development would provide a commercial tenancy near the front of the ground and first floors (food and drinks premises and office) and dwellings on the levels above. The mix of residential and commercial uses measures favourably with the strategic direction of local policy and the purpose of the commercial zoning of the site to ensure commercial functions are not lost. The provision of commercial tenancies on the ground floor and residential uses on upper levels would be also consistent with other mixed used development that has been developed or approved in the surrounding area.

The building would be designed with the entry to the commercial tenancies, residential lobby and booster cupboard at the front of the ground floor. The food and drinks premise would not present directly to the street but would be setback behind an entryway and the stairway access to the office on the first floor. The design of the ground floor provides a poor level of activation to the street. As designed, the booster cupboard and entry way to the building would not provide any active uses on the ground floor that would encourage pedestrian activity. While the site is constrained by its small frontage, it could still be designed to provide a more active frontage than that which is proposed. The design to provide two separate entrances on the frontage is poorly conceived and fails to provide an active link to the street. The proposed building fails to satisfy the local policy requirement for active frontages to facilitate viable and vibrant business activity. It is recommended that this is included as a ground of refusal.

Clause 21.04-3 includes an objective and strategy that development in office and mixed-use precincts should provide appropriate car parking, storage and loading facilities. The proposal would provide loading facilities but only limited provision for visitor car parking (1 space). As proposed, the development would need to rely on visitor parking in the surrounding area. This is not considered appropriate and some provision should be made to allow for more visitor car parking. A specific assessment of loading facilities and car parking for the development will be considered later in this report, section 11.6.



11.2 Design and Development Overlay

The subject site is within Schedule 26 to the Design and Development Overlay for the St Kilda Road North Precinct, and more particularly, in Sub Precinct 2 (Northwest Corner) DDO 26-2.

The Northwest Corner Sub-Precinct has a mixed character and role, and presents considerable opportunity for development and change as a higher density residential and mixed use enclave, based around lively, pedestrian focussed streets. The objectives for Sub-Precinct 2 are:

- *To ensure that new development creates a vibrant residential and mixed use environment, through an increased scale and density of development.*
- *To reinforce the primacy of the St Kilda Road boulevard by ensuring development provides a gradual visual and physical transition from the higher scale development of St Kilda Road, across the Sub-Precinct to Kings Way.*
- *To ensure that development provides for a fine grain character in the form and articulation of new buildings.*
- *To create a high quality public realm through additional tree planting and maintaining access to sunlight along the key pedestrian streets of Bank and Park Streets.*
- *To improve the streetscape environment of Kings Way through high quality built form and consistent landscaped setbacks.*
- *To ensure the development in Kings Way creates a landscaped boulevard through high quality architectural design and a landscaped public realm interface.*
- *To ensure that podium design and heights create and reinforce a ‘human scale’ to provide visual interest and activity for the pedestrian at street level along Kings Way.*
- *To improve the streetscape environment of the Northwest Corner Sub-Precinct through high quality built form.*
- *To ensure that buildings are scaled to maintain a respectful setting and backdrop for the Shrine of Remembrance.*

Sub-Precinct Requirements

It is noted that all requirements in this table are discretionary unless otherwise stated within the requirement section of the table.

Requirement	Assessment
<p>Development should be generally in accordance with Map 3 of this schedule which shows:</p> <ul style="list-style-type: none"> - 18m podium to Park and Wells Streets, with 5m setback beyond the podium - 60m mandatory height* <p>*Within Sub-Precinct 2 and Sub-Precinct 3, a permit may be granted</p>	<p>Does not Comply</p> <p>The building would be designed as a singular vertical form through has a creased feature façade that provides a sculptural architectural expression to the design.</p> <p>This design as one singular vertical form does not reflect the intention of the Design and Development Overlay for consistent built form that reinforces a human scale.</p>



<p>to allow architectural features such as domes, towers, masts and building services that do not exceed the maximum height by more than 4 metres and do not exceed 10% of the gross floor area of the top building level or 50 square metres (whichever is the greater). (No gross floor area limit applies to the installation of solar panels.)</p>	<p>The Design and Development Overlay seeks to achieve this through a design intention for a building typology with a defined podium / tower form. This ensures that the upper levels of buildings would be clearly setback to emphasize the lower podium levels to achieve a “human scale” of development.</p> <p>The proposed building, while visually interesting, would look out of context and not provide an appropriate human scale of development. Moreover, without the provision of a podium and tower separation the building would have a dominant visual impact even though the site is one of the smallest sites in this part of the northwest corner of the St Kilda Road North precinct.</p> <p>The design of the building has not incorporated a podium / tower form as specified in the Design and Development Overlay and is therefore included as a recommended ground of refusal.</p> <p>The submitted plans include dimensions that which show that the building would have a maximum building height of 60m above NGL. However, the plans show that part of the parapet / balustrade to the roof terrace would exceed 60m. The 60m height control is a mandatory requirement.</p> <p>The plans show that a pergola and services would be provided on the roof level which would exceed the 60m height limit. The pergola (55sqm) and services (133sqm) would have a combined area of 188sqm which exceeds the maximum 50sqm that are allowed under the exemption to the mandatory height requirements in Section 4.0 of DDO 26. The plans also show that part of the services would exceed the 4.0m maximum height allowed under the exemption in Section 4.0 of the DDO.</p> <p>The noncompliance with the mandatory height control of the DDO is included as a recommended ground of refusal.</p>
<p>A 3 metre landscape setback must be provided to the direct frontage or abuttal to Kings Way.</p>	<p>Not Applicable</p>



<p>Development within 13 metres (inclusive of the 3 metre landscape setback) of a direct frontage or abuttal to Kings Way must not exceed a height of 40 metres.</p>	<p>Not Applicable</p>
<p>Development with a direct frontage or abuttal to any road, excluding Kings Way, must:</p> <ul style="list-style-type: none"> – be built to the boundary, and – not exceed 18 metres in height within 5 metres of any street frontage. 	<p>Does not comply</p> <p>The proposed building would be built to the boundary but does not provide a podium / tower form sought by the controls of the Design and Development Overlay. The resulting form would be dominant, would not reflect the consistent form sought in the precinct and not provide an appropriate human scale of development.</p>
<p>Development beyond the setbacks identified above must not exceed a height of 60 metres. A permit may not be granted to construct a building or construct or carry out works which are not in accordance with this requirement unless allowed by clause 4.0 of this schedule. (Mandatory)</p>	<p>Does not comply</p> <p>The submitted plans include dimensions that which show that the building would have a maximum building height of 60m above NGL. However, the plans show that part of the parapet / balustrade to the roof terrace would exceed 60m. The 60m height control is a mandatory requirement.</p> <p>The plans show that a pergola and services would be provided on the roof level which would exceed the 60m height limit. The pergola (55sqm) and services (133sqm) would have a combined area of 188sqm which exceeds the maximum 50sqm that are allowed under the exemption to the mandatory height requirements in Section 4.0 of DDO 26. The plans also show that part of the services would exceed the 4.0m maximum height allowed under the exemption in Section 4.0 of the DDO.</p> <p>The noncompliance with the mandatory height control of the DDO is included as a recommended ground of refusal.</p>
<p>Building facades should follow the alignment of the street frontage to follow the distinctive curvilinear street pattern.</p>	<p>Complies</p> <p>The building façade follows the alignment of the street.</p>
<p>Development must maintain the existing levels of solar access to the southern footpaths of Bank and Park Streets when measured between 10am and 2pm at the Equinox.</p>	<p>Complies</p> <p>Palmerston Crescent is located to the south of Bank and Park Streets and thus the proposal would not affect solar access to these two streets.</p>



<p>Development should not overshadow the adjoining dwellings in residential areas south west of Kings Way and comply with the objectives of Clause 55.04-5 - Overshadowing.</p>	<p>Complies</p> <p>The proposal would not overshadow the adjoining dwellings in the residential area south west of Kings way which is located a considerable distance from the subject site.</p> <p>The application material includes a Shadow Analysis which indicates that the proposed building would overshadow the site to the south between the hours of 9am to 3pm where shadows cast by the development would affect a number of apartments in the approved development at 13 - 21 Palmerston Avenue. The VCAT order for <i>McCardel v Port Phillip</i> included commentary in regard to overshadowing of an adjacent building in this precinct. The VCAT decision found that overshadowing impact must be balanced with the strategic context of the site and the application of DDO26 (paragraphs 101 - 111).</p> <p>This is a relevant consideration in the assessment of this application. The DDO allows for a 60m high building to be developed on the site. Given the proximity of the 13 - 21 Palmerston Crescent to the subject site overshadowing from a 60m high building is inevitable. Changes to the setbacks of the building would not significantly alter the overshadowing impact created by a 60m high building that would be located directly on the boundary of 13 - 21 Palmerston Crescent and therefore the overshadowing associated with this proposal is considered reasonable.</p>
<p>Development should reinforce the fine grain pattern of the Sub-Precinct.</p>	<p>Complies</p> <p>The site would maintain the fine grain nature of the street given that it would not alter the existing subdivision pattern in the street.</p>
<p>Large redevelopment and proposals that consolidate smaller sites should incorporate through-block pedestrian links and express the historic fine grain subdivision into their design.</p>	<p>Not Applicable</p> <p>This site is not considered to be a large development site.</p>

Buildings and Works General Requirements:

It is noted that all requirements in this table are discretionary unless otherwise stated within the requirement section of the table.

Requirement	Assessment
<u>Design Quality</u>	Does not comply



<p>New developments should achieve urban design and architectural excellence.</p> <p>Developments on corner sites with a St Kilda Road, Albert Road, Kings Way or Queens Road frontage or abuttal should not express the side street podium requirement to those roads.</p> <p>Where a podium / tower typology is not proposed for a corner site, a high quality architectural response is required which achieves an appropriate transition to podium / setback requirements on adjoining sites, including through building articulation/massing, building materials, finishes and design detail.</p> <p>Developments on large sites should minimise building bulk and promote vertical articulation in their design.</p>	<p>The use of materials and level of articulation would provide for a visually interesting building. However, the design does not incorporate a podium / tower form or even provide a design response that provides a suitable reference to a lower podium.</p> <p>The building is designed with a creased feature façade. This design would provide visual interest and break up the form of the building which is one singular vertical form. However, the design does not provide any measures that provide a reference to a lower podium level. The design feature of the creases in the façade do not make any reference to the 18m podium level. The lower crease in the building shown to be taken at an arbitrary point approximately 25m from the ground level. The overall form would create a building that does not provide for a “human scale” of development and a building that would not complement the form of buildings that are expected in this part of the St Kilda Road North precinct.</p> <p>The most problematic aspect of the design is that it fails to provide appropriate setbacks to its adjoining properties. All levels of the building would be built directly to the two side boundaries. As a result, the development seeks to borrow amenity from the adjacent properties to the side and rear. This would adversely affect the amenity to those dwellings in the approved development to the south at 13 - 21 Palmerston Crescent (916/2014) and not provide equitable development opportunities for the properties to the north at 1 - 7 Palmerston Crescent and rear at 24 - 26 Albert Street. A detailed discussion about the lack of sufficient setbacks is provided later in this report. It is recommended that this matter be included as a ground of refusal.</p>
<p><u>Separation Distances / Side and Rear Setbacks</u></p> <p>For Sub-Precincts 1, 2, 3 and for properties in Sub-Precinct 4 without a primary frontage to St Kilda Road:</p> <ul style="list-style-type: none"> – Development above the podium height must be set back a minimum of 4.5 metres from side 	<p>Does not comply</p> <p>Clause 2 of the DDO requires development above the podium height to be setback a minimum of 4.5 metres from side and rear boundaries and at least 9 metres from existing towers</p> <p>Where there is no podium or an existing tower a setback of 4.5m from the boundary is required. The DDO also includes provisions that additional</p>



<p>and rear boundaries and at least 9 metres from existing towers.</p> <ul style="list-style-type: none"> – Where there is no podium or an existing tower, a setback of 4.5 metres to the boundary must be provided. <p>For all Sub-Precincts - Additional side and rear setbacks and/or separation distances may be required to ensure buildings are designed and spaced to:</p> <ul style="list-style-type: none"> – Respect the existing urban character and pattern of development. – Equitably distribute access to an outlook, daylight and achieve privacy from primary living areas for both existing and proposed development. – Achieve sky views between towers, ensure adequate sun penetration to street level and mitigate wind effects. – Avoid windows of primary living areas and balconies that directly facing one another. – Maintain the equitable development potential of adjoining lots. 	<p>side and rear setbacks may be required to ensure equitable development potential of adjoining lots.</p> <p>There are no podiums or existing towers on adjacent sites to the north (1 - 7 Palmerston Crescent), south (13 - 21 Palmerston Crescent) and east (24 Albert Road) therefore the DDO suggests that a 4.5m setback should be provided from the side and rear boundaries.</p> <p>A recent VCAT decision is relevant in the consideration of the proposed separation / side and rear setbacks. This decision (<i>65 Palmerston Crescent Pty Ltd v Port Phillip CC 2017 [VCAT] 887</i>) in relation to the development at 61 - 65 Palmerston Crescent in the same DDO (but different precinct) as this site, made the following comments at paragraph 46 of this decision:</p> <p><i>“...the only direct reference to separation distances as an urban design technique is in sub precincts 5 and 6 (relating to land on Kings Way and Queens Road) where consistent spacing between towers is seen as a characteristic of this precinct. Separately, we consider that transitioning down in scale from Albert Road to the north side of Palmerston Crescent is the identified means to achieve the integration of future development in Sub precinct 3. Consequently, we find that the exercise of discretion on side and rear setbacks relates to issues of amenity and equitable development in this case”</i></p> <p>They further noted at paragraph 74 the following:</p> <p><i>“These findings are relevant to the issues raised by the Council. They call for careful site by site consideration of existing conditions and development potential of a review site and its neighbours, as well as the Overlays requirements. As such, our decision can only relate to this site rather than setting a framework for others under the Overlay”</i></p> <p>This decision highlights the need to consider the site specific conditions that relate to individual applications particular in regard to the potential impact on neighbouring sites.</p>
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	<p>Specific assessment of the particular impact of this development as it relates to neighbouring sites is therefore provided below:</p> <p><u>Response to the northern boundary 1 - 7 Palmerston Crescent</u></p> <p>To the north is a single width RoW which is a public laneway. Beyond the RoW further to the north, the property at 1 - 7 Palmerston Crescent is developed with a four storey commercial building that is built over the majority of the site.</p> <p>The proposed building would be built directly to the boundary providing a total setback of 3.0m (width of the RoW) from the 1 - 7 Palmerston Crescent site. The plans show that habitable room windows and balconies would be built directly or close to the boundary as detailed below:</p> <ul style="list-style-type: none">• Ground floor - Apartment 1 terrace (rear of building) setback 0.6m from the boundary (2.1m from the centreline of the RoW).• Levels 2 to 5 - Habitable room windows and terraces to apartments at front of the building built directly to the boundary (1.5m from the centreline of the RoW) and terraces to the rear apartments setback 0.6m from the boundary (2.1m from the centreline of the RoW)• Levels 6 to 17 - Habitable room windows and terraces to apartment at the front of the buildings setback 1.37m from the boundary (2.87m from the centreline of the RoW) and terraces to apartments at the rear of the boundary setback 0.6m from the boundary (2.1m from the centreline of the RoW). <p>The property at 1 - 7 Palmerston Crescent is a large site (1265sqm). Over time, it is reasonable to expect that this site may be redeveloped in line with the proposed heights and setbacks of DDO26. There are concerns that the proposed development of apartments designed with areas of private open space and habitable room windows directly or close to the boundary would compromise the potential future development of the 1 - 7 Palmerston Crescent site.</p> <p>To allow for equitable development between the two sites a minimum setback of 4.5 metres from the centreline of the laneway should be provided.</p>
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This would allow a similar 4.5 metres setback to be provided for a development on the 1 - 7 Palmerston Crescent site to provide a total separation of 9 metres. A distance of 9 metres would provide adequate building separation between habitable room windows and private open space on both sites of the laneway which would remove the need for screening that would increase visual bulk and enclose the habitable spaces within the apartments.

The recent VCAT decision for the proposed development at 9 - 13 Park Street included a requirement that the building must be setback a minimum 4.5m from the centreline of the RoW to allow for equitable development rights for the land at 1 - 7 Palmerston Crescent site. This is detailed in paragraph 52 of the VCAT order *McCardel v Port Phillip CC* [2018] VCAT 633 (2 May 2018) outlined below:

52. We are not persuaded by the evidence of Mr Twite or the submissions of the applicant that this setback should be an average setback. If equitable development rights were to be achieved, then each site should equally contribute to those equitable development rights regardless of the size and proportions of each respective site. The fact that the subject site is smaller than the adjoining site at 1 - 7 Palmerston Crescent, we find is a constraint that the subject site must address. We do not find that it is acceptable to require an adjoining site to have to compensate for the constraints of the subject site. In order to achieve the equitable development rights that Mr Twite sees necessary, despite the fact he only sees it necessary at the Tower level, we find it is necessary across all levels of the building both the podium and the tower. This is to achieve a minimum of 4.5 metres from the centreline of the right-of-way to allow equitable development of both sites, and we will require conditions in order to achieve this.

This recent VCAT decision for a site in the immediate vicinity reinforces the concerns about the impact that small setbacks can have on the equitable development of adjoining property. As determined in the *McCardel vs Port Phillip*



decision the impact of buildings on the future development potential of adjoining sites needs to be considered in the design of buildings. The *McCardel* decision identifies that there is also a requirement for small allotments to provide equitable setbacks and not rely on larger sites to compensate for the development constraints of smaller sites. The limited setbacks that this application proposes to the north is not considered to allow for equitable development opportunities for the adjacent site and is not supported. It is recommended that this matter be included as a ground of refusal.

Response to the southern boundary - 13 - 21 Palmerston Crescent

To the south the site at 13 - 21 Palmerston Crescent is developed with a six storey rendered and concrete building that is used as a car park and gym. Planning Permit 916/2014 has been issued for the development of a 19 storey mixed use building comprising retail premises, a restricted recreation facility and dwellings on this site.

The endorsed plans show that the ground floor is setback 3.5m from the boundary it shares with the subject site with windows to 2 x food and drinks premises, lobby lounge, shop and gymnasium on the northern elevation that would face onto the subjects site. The building is designed with a curved form to the northern elevation where the podium levels (levels 0 to 4) are setback between 3.685m and 7.59m from the northern boundary with three dwellings on each level with a principal orientation to the northern boundary. The upper level tower form (above level 4) is designed with a setback between 5.7 to 8.5m with two dwellings on each level with a principal orientation to the northern boundary.

The proposed building would be built directly to the southern boundary with two light courts to provide light to bedrooms at levels 2 to 5 and a 2.0m setback provided to habitable room windows for the levels above level 5. As a result, the proposed development borrows the amenity from its adjacent site to provide separation, daylight and outlook for those habitable rooms near the southern boundary.



The limited setback that would be provided is far less than the setback provided in the design of the 13 - 21 Palmerston Crescent tower. The subject site is considerably smaller than the 13 - 21 Palmerston Crescent site but this should not mean that the site should rely so heavily on the setbacks / separation provided on another site. The limited setbacks that are provided from the southern boundary is not considered acceptable. The small setback of the proposed building would adversely affect the outlook and daylight for the north facing apartments that would be built in the 13 - 21 Palmerston Crescent building. The curved form of the tower at 13 - 21 Palmerston Crescent would provide a total setback of 3.68m to 7.5m on the lower podium levels and 5.7m to 8.5m on the upper tower levels. This is not considered adequate space to ensure a reasonable level of amenity is provided between the apartments on both sides of the boundary.

The small setbacks provided from the southern boundary also results in poor internal amenity to a number of bedrooms on the southern side of the building. The plans show that the lower levels (levels 1 to 5) of the building would have bedrooms where light is provided by small light courts (3.6 x 1.2m and 2 x 3.6m). The referral comments from Council's Sustainable Design Officer have raised concerns about the daylight that would be provided at the lower levels of the building. It is considered that the small size of these light courts would not allow adequate daylight to the bedrooms of the southern apartments on the lower levels.

As such, the setback provided to the building as it relates to the south is not supported. It is recommended that this matter is included as a ground of refusal.

Response to the eastern (rear) boundary - 24 - 26 Albert Road

The site to the rear is developed with a two level car park built directly to the boundary with the subject site.

The proposed building would be built directly to the rear boundary and would include habitable room windows directly on the boundary.



	<p>The zero setback to the eastern boundary would not provide equitable development opportunities for the future development of 24 Albert Street. While the site is currently used as a commercial car park there is the potential that this car park could be redeveloped in the future. The proposed development of the building on the subject site with no setbacks and habitable room windows built directly on the boundary would preclude any future development of this site which is not considered acceptable.</p> <p>The zero setback to the eastern boundary would result in poor internal amenity to the bedrooms and living areas of the rear apartments in the proposed development. The rear dwellings would have a constrained outlook from the bedroom and east facing window of the living room and would receive inadequate daylight particularly those apartments in the lower levels of the building.</p> <p>As such, the setback provided to the building as it relates to the east is not supported. It is recommended that this also is included as a ground of refusal.</p>
<p><u>Landscaped Setbacks</u></p> <p>Frontages along St Kilda Road and Queens Road must be retained as open space for substantial landscaping and pedestrian activity:</p> <ul style="list-style-type: none"> – St Kilda Road frontages should function as a forecourt for public, private and communal use. Public seating areas should be provided in these forecourts. – Queens Road frontages should be designed to provide substantial landscaping, including, where appropriate, large scale canopy trees. <p>Clear sightlines should be provided from the footpath to the building façade to increase perceptions of pedestrian safety.</p> <p>Water sensitive urban design treatments should be incorporated into frontage design to manage and reduce stormwater runoff.</p>	<p>Not Applicable</p> <p>There is no landscape setback requirement along Palmerston Crescent.</p>



<p>Exhaust stacks from underground car parks must be located away from main pedestrian areas and incorporated into the building design or adequately screened.</p> <p>Grade differences between the ground floor level and natural ground level should be kept to a minimum. Where level differences cannot be avoided (for example, due to the Special Building Overlay), stairs, terraces, disabled access ramps must be designed to not visually dominate the frontage setback space or significantly reduce the area for landscaping.</p>	
<p><u>Heritage</u></p> <p>New development must respect the form, massing and siting of heritage buildings on the development site or adjoining sites.</p>	<p>Not Applicable</p> <p>The site and neither of the adjoining sites are subject to a Heritage Overlay.</p>
<p><u>Street Wall/Podium Level</u></p> <p>The design of podiums should create a ‘human scale’ providing visual interest and activity for pedestrians at the street edge, ameliorate wind effects and provide access to sunlight and sky views.</p> <p>The design of buildings should reinforce the pattern of the street by aligning their façade with the curvature of the street frontage.</p> <p>The design of new buildings should include openable habitable windows and balcony doors on the first five levels of the ‘street wall’ to enhance the sense of connection, surveillance and safety at ground level.</p> <p>All car parking at ground level or above must be sleeved with active uses to ensure it is not visible from the street.</p>	<p>Does not comply</p> <p>As discussed previously in this report, the proposed building does not provide a podium form. As such, the proposed building would not provide for a “human scale” of development and as such is not supported.</p> <p>The plans show that parts of the building would extend slightly outside of the title boundary. The extension of the building outside the title boundaries is not supported. The grounds of refusal include grounds related to the design of the building which fails to provide a podium / tower form and appropriate setbacks from the boundaries of the site. Therefore, a separate ground of refusal about the projections outside the title boundary is not considered necessary.</p>



<p>Buildings located on corner sites should address both street frontages.</p>	
<p><u>Active Frontages</u></p> <p>New development should provide integrated community and active space at street level that contributes to a high quality public realm. All building frontages (except on laneways and service streets) should:</p> <ul style="list-style-type: none"> – Be orientated towards the street. – Allow for natural surveillance and a visual connection into the building through transparent windows and balconies. – Avoid blank walls, large areas of reflective services, high fences, service areas, car parks and garage doors in the podium interface areas. – Provide clear glazing to street frontages; security grills must be visually permeable and mounted internally. – Provide no or low, visually permeable front fencing. <p>New development along Queens Lane and Bowen Lane should incorporate lighting, entry doors, habitable rooms with windows, and display windows.</p> <p>Design pedestrian entrances to open directly onto the street, as a key feature of the façade and at the same level as the public footpath.</p> <p>Foyer areas should have visibility to the street and be designed to encourage activity and interest both within and external to the building.</p> <p>New development within a residential zone should provide:</p> <ul style="list-style-type: none"> – Individual entry points to ground level dwellings to create multiple residential addresses along the 	<p>Does not Comply</p> <p>As discussed previously, the design of the ground floor fails to provide an active frontage. On the ground floor it is proposed to provide the entry to the commercial tenancies, the residential lobby and a booster cupboard.</p> <p>The design of the ground floor provides a poor level of activation to the street.</p> <ul style="list-style-type: none"> • The proposal would be oriented to the street. • It fails to provide natural surveillance because it would be dominated by the lobby and separate entrances. • No podium is provided which is unacceptable as it would not provide a human scale. <p>While the site is constrained by its small frontage, it could still be designed to provide a more active frontage than that which is proposed. The design to provide two separate entrances on the frontage is poorly conceived and fails to provide an active link to the street.</p> <p>The design of the building fails to satisfy this requirement of the Design and Development Overlay for active frontages and this failure is recommended to be included as a ground of refusal.</p>



<p>building façade, rather than a single entry point.</p> <ul style="list-style-type: none"> – Entrances with weather protection and lighting. <p>New development within a commercial or mixed use zone should provide:</p> <ul style="list-style-type: none"> – Transparent windows and entrances for at least 80 per cent of the width of the street frontage of each individual retail premises, or at least 60 per cent of the width of the street frontage of each premises for other commercial uses. – Lighting design that is incorporated to the façade to contribute to a sense of safety at night. 	
<p><u>Tower Design and Internal Amenity</u></p> <p>Tower forms (above podiums) should not exceed a maximum width of 35 metres to:</p> <ul style="list-style-type: none"> – Ensure that daylight penetrates through to parts of the building and streets, and adjoining buildings. – Reduce their perceived visual bulk. – Maintain sightlines between buildings. <p>New residential development must have access to onsite communal or private open space in the form of rooftops, podiums, balconies or courtyards.</p>	<p>Complies</p> <p>The tower portion of the building would not exceed 35m in width.</p> <p>Communal open space would be provided on level 19 in the form of two areas (154sqm and 84sqm) of communal open space.</p>
<p><u>Building Services</u></p> <p>Waste materials storage and services must be provided on site and should be screened from areas of high pedestrian activity.</p> <p>Waste storage or services should not impede pedestrian access and</p>	<p>Complies</p> <p>The waste storage areas and services would be well located on the ground floor located adjacent to the vehicle access.</p> <p>The roof top services would be screened and this would appropriately reduce noise and visual impacts on surrounding sites and public areas. It</p>



<p>should be located away from footpaths.</p> <p>New buildings should provide internal and on-site loading facilities and on-site service vehicle parking at the rear of buildings to minimise disruption of traffic or pedestrian access and avoid laneway congestion.</p> <p>Building services on rooftops should be screened to avoid detrimental noise and visual impacts on the amenity of both private and public realms.</p> <p>Noise attenuation measures and suppression techniques should be incorporated into developments to ensure noise does not unreasonably affect the amenity of public areas and nearby residences.</p> <p>Green roofs, roof gardens and vertical gardens should be encouraged in new or refurbished buildings. Green roofs are defined as a vegetated landscape built up from a series of layers that are installed on the roof surface as 'loose laid' sheets or modular blocks.</p>	<p>is noted that the services would be required to meet EPA guidelines at all times.</p> <p>Noise attenuation measures to the apartments could be included as a condition on any permit.</p> <p>The mail boxes for the site would be located near the main entrance to the lobby area and are convenient and accessible.</p> <p>No, green roofs, roof gardens or vertical garden are proposed.</p> <p>The development would include a dedicated loading bay.</p> <p>The development includes the provision of 27 storage cages in the basement, mezzanine and level 1. Given the limited storage provision within dwellings, it is considered that each dwelling should be provided with an external storage space. A condition could be added to any approval.</p>
<p><u>Vehicular Access and Car Parking</u></p> <p>Vehicle crossovers should be no more than 6m wide, with a maximum of one crossover per site.</p> <p>Vehicle ingress and egress must be located on lanes, where possible.</p> <p>Car access ways should not visually dominate the façade of a building, and be visually permeable to retain a visual connection through the site and allow for natural surveillance.</p> <p>Car parks should be built underground or located to the rear of the site to enable active uses on the street frontage. Where car parks are built above ground, they should not front the site or be visible from St</p>	<p>Does not Comply</p> <p>Access arrangements and the impacts on the surround traffic network are discussed in Section 11.6 below.</p>



<p>Kilda Road, Queens Road or Punt Road.</p> <p>Car parking within a podium should incorporate floor to ceiling heights of 3.5m to enable future adaptation for habitable uses.</p> <p>Open/at-grade car parks should not be located in front setback areas.</p>	
<p><u>Pedestrian Permeability</u></p> <p>New development should include pedestrian links along St Kilda Road, Queens Road and areas in the Mixed Use Zone to create mid-block links and increase the permeability of the Precinct.</p> <p>Development should enhance existing links/laneways by providing a mix of active and non-active frontages, appropriate to the role of the link / laneway.</p>	<p>Not Applicable</p> <p>The size and location of the site does not lend itself to a through block link.</p>

11.3 Other Urban Design / Built Form Requirements

Other relevant Urban Design policies to this proposal include Clauses 15.01-2 Urban Design Principles of the State Planning Policy Framework (SPPF) and 22.06 Urban Design Policy for Non Residential Development and Multi-Unit New Residential Development of the Local Planning Policy Framework (LPPF). Clause 15.01-2 requires consideration also be given to the Design Guidelines for Higher Density Residential Development (Department of Sustainability and Environment, 2004).

A full assessment against the objectives and policies of these other policies is not necessary, because these issues have generally been addressed through the assessment of the DDO26 and Clause 58 requirements. Comments on those issues not already considered are provided below:

11.3.1 The Urban Design Policy includes consideration for the impact on any landmarks, views or vistas. The proposed application would not affect any special or protected landmarks, views or vistas.

11.3.2 The Urban Design Policy includes consideration of noise protection for future residents. The subject site is in a Commercial 1 Zone and is predominantly surrounded by a mix of uses. A number of these uses generate noise as a result of the activities carried out on-site, and many have building plant and equipment for heating and cooling etc. Accordingly, it is considered that the new dwellings should feature noise attenuation measures in their construction, so as to achieve a satisfactory level of internal amenity for the new residents.



This could be provided for by a condition of any approval that may issue for the proposal.

- 11.3.3 The provision of Urban Art is a requirement of the Urban Design Policy. The plans do not identify an area for Urban Art to be located. Should a permit be issued it is recommended that a condition is included requiring details of an Urban Art contribution in line with the requirements of this provision of the Urban Design Policy.

11.4 Residential Amenity

A full assessment against Clause 58 (Apartment Developments) has been undertaken and is attached to this report (Attachment 1). The proposed design of the building, particularly the lack of a podium / tower form and appropriate side setbacks is considered to not be responsive to the features of the site and surrounding area and preferred future development of the area. The development also provides a poor diversity of dwellings (only 9% of dwellings to have three or more bedrooms), would provide poor interaction with the street and does not protect the future development of the sites to the north and east from overlooking. The development also provides poor internal amenity given the small size of the balconies. It is recommended that these are included in the grounds of refusal. Please refer to the Clause 58 assessment attached to this report for the full assessment.

11.5 Internal Amenity

- 11.5.1 The proposed development would provide an internal floor area for the apartments between 50sqm and 261sqm which would, in the main, provide comfortable and practical living arrangements for future residents.
- 11.5.2 A full assessment against Clause 58 (Apartment Developments) has been conducted and is attached to this report. As detailed in this assessment the apartments would meet the objectives in the On Site Amenity and Facilities and Internal Amenity sections of Clause 58 except in regard to the dimensions to the balconies.
- 11.5.3 All of the apartments would be provided with their own individual areas of private open space in the form of terraces which are shown to provide a minimum of 8.1sqm. The size of the balconies are considered adequate and would provide for the reasonable recreation and service needs of residents. However, not all of the balconies provide the minimum dimensions throughout the balcony to ensure the balcony space is usable. This would not provide adequate balcony space for residents of some of the apartments. It is recommended that this matter included as a ground of refusal.
- 11.5.4 The application has been assessed by Council's Sustainable Design officer who has raised concerns about the daylight that would be provided to apartments in the lower levels of the building. The plans show that the lower levels (levels 1 to 5) of the building would have southern bedrooms where light would be provided by small light courts (3.6 x 1.2m and 2 x 3.6m). The light courts are not of sufficient size to provide suitable daylight to the bedrooms. The referral comments from Council's ESD officer note that the lightwells provided for



daylight to bedrooms on the buildings south do not meet the minimum BESS requirements. BESS requires lightwells on buildings over 9 storeys to have a minimum area of 51sqm and a minimum width of 6m. There are also concerns about the daylight to some of the rooms of the rear apartments given the limited setback provided from the eastern boundary. The application material did not include any daylight modelling. It is recommended that this matter is included as a ground of refusal.

11.6 Traffic and Parking

11.6.1 Traffic

- a) Council's Traffic Engineer has provided comments that the traffic generation rates adopted by the applicant have been checked and are considered satisfactory. These rates anticipate that traffic generated by the development would have a peak hour generation of 114 daily movements and 11 movements in peak hour.
- b) However, a cumulative traffic analysis of the anticipated traffic impact resulting from the proposed development and other proposed developments that would access the RoW has not been provided. Without this information it is not possible to determine if the traffic generation associated with the development would have negative impacts on the RoW.
- c) As this information has not been provided, traffic generation associated with the development is undetermined. It is therefore recommended that concerns about cumulative traffic generation in the RoW also be included as a ground of refusal.

11.6.2 Car Parking

- a) Forty four (44) parking spaces would be provided with 43 spaces accommodated in a mechanical car stacker system accessed from the rear of the site via the RoW and 1 visitor space provided at grade.
- b) Pursuant to Clause 52.06, sixty two (62) parking spaces should be provided for residents (59 spaces) the food and drinks premises (2 spaces) and office (1 spaces) as well as 10 visitor spaces. As a result, the proposal seeks approval for a reduction of fifteen (15) spaces for the dwellings, 2 car parking spaces for the food and drinks premises, 1 parking space for the office and 9 visitor spaces.
- d) The sites location with good access to public transport and services is a persuasive reason to support the reduction of the four parking spaces for the dwellings and the shop. The site is well served by public transport with trams (routes 3, 5, 6, 8, 16, 64, 67 and 72) and bus services (bus routes 216, 219 and 220) located nearby. The entrance to the future Anzac railway station is also located close to the site approximately 170m east of the site. The site is also close to the South Melbourne Activity Centre (800m west of



the site) and near the Melbourne CBD. The good access to public transport and the close proximity to local services would ensure that suitable public transport alternatives are readily available to residents and that services are easily accessible without the need to rely on private transport.

- e) One visitor car parking would be provided for the development. With the public transport alternatives that are accessible to the site there is considered justification for a reduction of some visitor spaces for the development. However, a reduction of nine visitor spaces is not considered appropriate. Provision should be made for some visitor parking in order to cater for the needs of residents. With only one visitor parking space provided it would be difficult for tradesman to be able to service any of the apartments, health workers to assist residents of the apartments or to provide visitor parking for friends and family.
- f) In this location there are no real alternatives for visitors to park within the nearby area during the day. There is some street parking provided near the subject site but this is either highly restricted or ticketed during business hours. This is not considered a viable alternative for visitors and therefore some visitor car parking should be provided within the development. Parking in this area is also to be further restricted through the loss of spaces to create the new tram stop in Park Street and those spaces that would be disrupted by the works associated with the construction of the Anzac Station.
- g) It is noted that Clause 21.04-3 has objectives and strategies that new development should provide appropriate car parking facilities. The limited visitor parking provided and lack of suitable alternative to cater for visitors is considered contrary to this provision.
- h) In light of the absence of alternatives for visitor car parking some parking for visitors should be provided on site. This may not necessarily need to be in line with the 10 spaces required by Clause 52.06 but the one visitor car parking space proposed is not considered appropriate and therefore it is recommended that the lack of visitor car parking be included as a ground of refusal.

11.6.3 Accessing and Manoeuvring

- a) Council's Traffic Engineer has assessed access and manoeuvring associated with the development. Concerns have been raised about the access arrangements where a vehicle is required to perform a corrective manoeuvre to enter the car lift and sufficient space has not been provided to allow one vehicle to exit the site (the Traffic Impact Assessment states that vehicle will prop on the eastern end of the laneway). There are also concerns about access and manoeuvring within the development to the car lift and car stackers. Swept path diagrams have been asked by Council's Traffic Engineer to demonstrate that vehicles can enter and exit the car lifts and car stackers.



- b) Concerns have also been raised about the queuing of vehicles waiting for the car lift. The Traffic Impact Assessment included a queuing assessment which determined that the 98th percentile queue will be 1.5 vehicles (it is noted that the submitted Traffic Impact Assessment determined that the full cycle of traveling from one floor to other would take approximately 65 seconds). Council's Traffic Engineer has raised concerns about how this queuing would affect vehicle access to adjacent properties.
- c) The inadequate access and manoeuvring (within the RoW and the internal car park area) and proposed queuing in the RoW is not supported. It is recommended that access and manoeuvring associated with vehicles entering and exiting the car lifts and car stackers and the resulting impact on the operation of RoW is included as a ground of refusal.

11.6.4 Bicycle Parking

Twenty one (21) bicycle parking spaces would be provided. This is more than the 16 spaces required by Clause 52.34. Council's Traffic engineers are supportive of the number of bicycle spaces that would be provided and has not raised any issues with the proposed bicycle facilities. Bicycle parking for the development is therefore considered acceptable.

11.6.5 Loading

The development provides a loading bay that can accommodate a small rigid vehicle (6.5m length x 3.2m width and a height clearance of 4m). Comments have been provided from Council's Traffic Engineers that the loading bay is considered satisfactory.

11.7 **Sustainable Design**

Refer to Council's Sustainable Design referral comments within the internal referrals section of this report.

12. **COVENANTS**

- 12.1 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 Land in Plan of Consolidation 107420 [Parent Title Volume 09283 Folio 097].

13. **OFFICER DIRECT OR INDIRECT INTEREST**

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

14. **OPTION**

- 14.1 Refuse as recommended, as per recommendation "Part A"
- 14.2 Approve with conditions.
- 14.3 Authorise the Manager City Development to instruct Council's Statutory Planners and/or Council's Solicitors on the VCAT application for review, as per Recommendation "Part B".



15. CONCLUSION

- 15.1 Whilst the site is strategically located for an increase in residential density, concerns are raised with a number of aspects of the proposal including:
- a) The building would not incorporate a podium / tower form and would be inconsistent with the preferred character of the precinct.
 - b) The building would have a dominant form and not provide an appropriate human scale of development.
 - c) The building would exceed the mandatory maximum height control of the Design and Development Overlay.
 - d) The building fails to provide an active frontage to facilitate viable and vibrant business activity.
 - e) The insufficient side and rear setbacks to the adjoining sites which would not meet the requirements of the Design and Development Overlay (DDO26).
 - f) The development would not allow for equitable development rights of adjoining properties.
 - g) Adequate provision has not been made to protect the sites to the north and east from unreasonable overlooking.
 - h) Poor internal amenity, particularly in respect to inadequate daylight to the apartments on the lower levels of the building and balconies that do not meet the minimum dimension of Clause 58.
 - i) The traffic generation and proposed access arrangements would adversely affect the RoW.
 - j) The development would not provide an adequate amount of on site parking or adequate vehicle access to the parking areas.
 - k) The proposal would not provide an appropriate mix of dwellings.

TRIM FILE NO:

PF17/327752

ATTACHMENTS

- 1. Better Apartments Design Standards Assessment**
- 2. Advertised Plans**
- 3. Better Apartment Design Standards Plans**
- 4. Objector Map**