

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P357/2023
PERMIT APPLICATION NO. PDPL/00817/2022

CATCHWORDS

Section 79 *Planning and Environment Act 1987* (Vic); Neighbourhood Activity Centre Policy; Heritage Overlay; Heritage Policy; Building Scale; Building Setbacks; Sight line diagrams; Amenity Impacts.

APPLICANT

JD Bridport Street 1 Pty Ltd

RESPONSIBLE AUTHORITY

Port Phillip City Council

RESPONDENTS

Charlotte Heine

Christine Turner

David Robson Looker

Donna Paul

James Kelly

Jody Williams

Kerry Watts

Ludan Investments Pty Ltd

Matthew Moss

Megan Tucker

Owners Corporation 633620

Patricia Margaret Cash

Richard Tom Poulton

Serena Mitchell

Suzanne Michelmore

Trevor Malcolm McGinley

Victor John Wilk

Brian Benjamin & Esther Benjamin

Danny Galea, David Arter & Others

John Russell Watts, David De Campo & Others

Kelly Antoni & Lou Ouranios

SUBJECT LAND

146-150 Bridport Street
ALBERT PARK VIC 3206

HEARING TYPE

Hearing

DATE OF HEARING

8, 9, 10, 13, 14, 15 & 16 November 2023

and 4, 5 & 6 March 2024

DATE OF ORDER

17 May 2024

CITATION

JD Bridport Street 1 Pty Ltd v Port Phillip
CC [2024] VCAT 440

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) the permit application is amended by substituting for the permit application plans:
 - (a) The following architectural plans prepared by Cera Stribley and filed with the Tribunal:
 - Drawing numbers: Job 21229 Rev C, TP.0100-TP.0102, TP.030, TP.0200-TP.0202, TP.0300-TP.0303, TP.1000, TP.1090, TP.1091, TP.1100-TP.1104, TP.2000-TP.2104, TP.3000-TP.3003, TP.5000-TP.5006, TP.6000-TP.6003
 - Dated: 15 September 2023
- 2 In application P357/2023 the decision of the responsible authority is set aside.
- 3 In planning permit application PDPL/00817/2022 a permit is granted and directed to be issued for the land at 146-150 Bridport Street Albert Park VIC 3206 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

The partial demolition and construction of a multi-storey building over two (2) basement levels within the Heritage Overlay (HO443) and comprising a restaurant (as-of-right); the use of the land for accommodation with a ground floor frontage exceeding 2 metres in width; a reduction in the number of car parking spaces required under clause 52.06-5 for the restaurant and a reduction in the bicycle requirements of clause 52.34.

Jane Tait
Member

Joel Templar
Member

APPEARANCES

For JD Bridport Street 1 Pty Ltd

Nicholas Tweedie SC and Kate Lyle, barristers instructed by Jarryd Gray, lawyer of Minter Ellison lawyers. They called the following witnesses:

- Mark Sheppard – urban designer, Urbis Pty Ltd
- Sophie Jordan – town planner, Contour Town Planners
- Jim Gard’ner – heritage architect, GJM Heritage.
- Valentine Gnanaknoe – traffic engineer, One Mile Grid
- Chris Goss – architect, Orbit Solutions Pty Ltd
- Peter Lovell – heritage architect, Lovell Chen

For Port Phillip City Council
For Brian Benjamin and
Esther Benjamin and Owners
Corporation 633620

Emily Marson, lawyer of Best Hooper lawyers.

Brian and Esther Benjamin in person, Days 1 and 3 only.

For Danny Galea, David Arter
and Others

Dr Joseph Monaghan (Days 1-7) and Jessica Critchley-Roy (Days 8 and 9), both lawyers of Holding Redlich lawyers. They called the following witness:

- John Briggs, heritage architect, John Briggs Architects Pty Ltd
- Matthew Furness, town planner, Ratio Consultants Pty Ltd

For Suzanne Michelmore and
Patricia Margaret Cash

Natalie Blok, barrister by direct brief. She called the following witness:

- Dr James Lesh, heritage architect, Heritage Workshop

For Ludan Investments Pty
Ltd

Daniel Robinson, barrister by direct brief. He called the following witness:

- Carolynne Baker, heritage architect, Urbis

For Donna Paul

Donna Paul, in person.

For Jody Williams	Jody Williams, in person.
For Charlotte Heine, Christine Turner, David Robson Looker, James Kelly, Kerry Watts, Matthew Moss, Megan Tucker, Richard Tom Poulton, Serena Mitchell, Trevor Malcolm McGinley, Victor John Wilk, John Russell Watts, David De Campo & Others and For Kelly Antoni & Lou Ouranios	No appearance.

INFORMATION

Description of proposal	Part demolition and construction of alterations and additions to an existing building including basement, use of land for dwellings, reduction of car parking and bicycle requirements.
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. ¹
Planning scheme	Port Phillip Planning Scheme
Zone and overlays	Commercial 1 Zone Heritage Overlay Schedule 443
Permit requirements	Clause 34.01-1 - to use land for a ‘dwelling’ as the entry at ground level exceeds two metres. Clause 34.01-4 - to construct a building or construct or carry out works. An apartment development must meet the requirements of Clause 58. Clause 43.01-1 - to demolish or remove a building and to construct a building or construct or carry out works. External paint controls and solar energy systems controls apply to HO443. Clause 52.06 – to reduce the number of required car parking spaces (restaurant). 52.34 – to reduce the number of required bicycle parking spaces (restaurant).

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

Land description	<p>The review site is located near the north-west corner of the intersection of Bridport Street and Montague Street. It comprises three separate lots formally recognised as Lots 1, 2, and 3 on Plan of Subdivision 125810. The review site has a frontage of approximately 20.16 metres to Bridport Street and a length of 48.12 metres and rear boundary presentation abutting Bevan Street of 20.23 metres resulting in a total site area of approximately 972 square metres. The land currently comprises three attached, significantly graded two-storey buildings which form one cohesive building when read from Bridport Street. It is constructed abutting the Bridport Street boundary and both side boundaries. The rear of the lot contains a number of single storey structures and at-grade car parking. The land contains no significant vegetation.</p>
Tribunal inspection	<p>10 November 2023 (accompanied) and 23 April 2024 (unaccompanied)</p>

REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 JD Bridport Street 1 Pty Ltd (the ‘applicant’) applied to Port Phillip City Council (the ‘Council’) for the part demolition and construction of alterations and additions to an existing building including basement, use of land for dwellings, reduction of car parking and bicycle requirements at 146-150 Bridport Street, Albert Park.
- 2 The plans show two levels of basement containing 19 residential car spaces and 3 commercial car spaces with access from Bevan Street. The ground and first floor contain a food and drink premises and two apartments per level at the rear. The upper levels are set behind the heritage façade and front section of the existing buildings to be retained within a contemporary addition that contains two apartments with terraces from the living areas at Levels 2-3. This addition is set back 10.2 metres from the frontage, 3 metres (in part) from the east and west boundaries. The top level (Level 4) contains one apartment that is set back 7 metres from Bevan Street. The building has an overall height of 18.3 metres. Other works include retention of two existing shopfronts, construction of a new residential entry in one shopfront and new awning.

Figure 1- Ground Floor (Level 1) Plan³



² The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

³ TP.1100 Rev C.

Figure 2 – First Floor (Level 2) Plan⁴



Figure 3 – Level 3⁵



Figure 4 – Level 4⁶



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- ⁴ TP.1101 Rev C.
 - ⁵ TP.1103 Rev C.
 - ⁶ TP.1104 Rev C.
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Figure 5 – Front (South) Elevation⁷

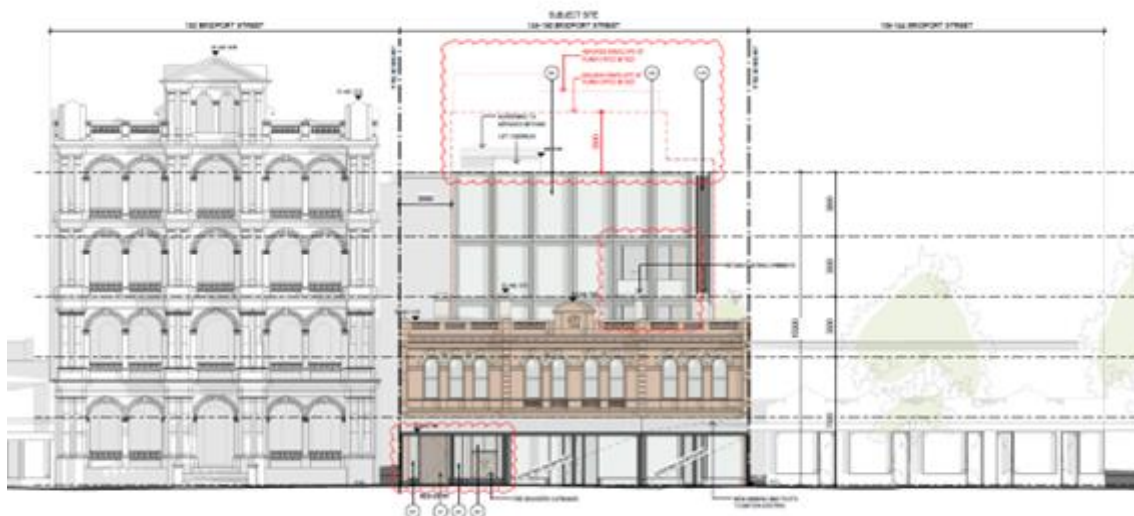


Figure 6 – Rear (North) Elevation⁸

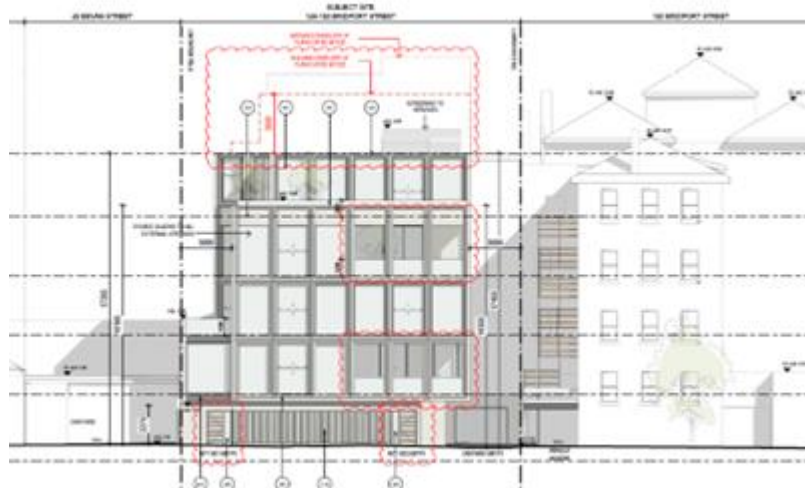
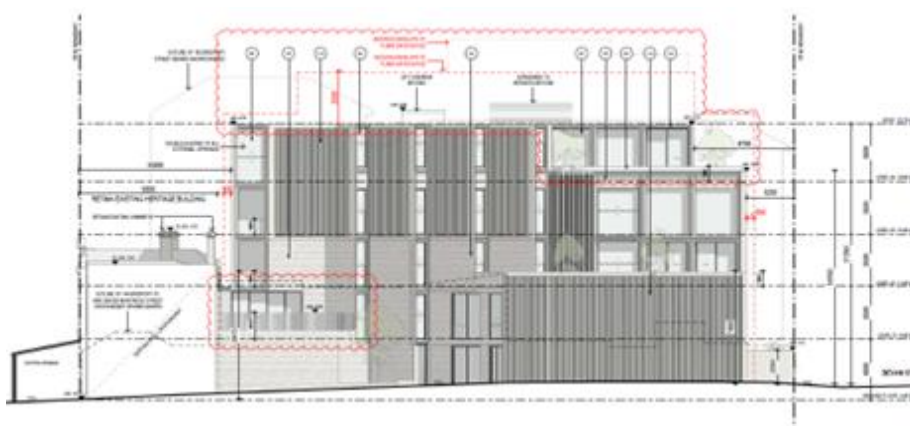


Figure 7 – East Elevation facing Montague Street⁹



⁷ TP.2103 Rev C.

⁸ TP.2101 Rev C.

⁹ TP.2102 Rev C.

- 3 Council initially determined that it would have refused the application on grounds the height and width of the development are inconsistent with the decision guidelines and strategies of its heritage policy. It also considered the bulk and setbacks of the proposal would have unacceptable offsite amenity impacts.
- 4 Amended plans were subsequently submitted that reduced the overall scale of the building by one storey, increased parking provision from 20 to 22 spaces, reduced the size of the food and drink premises, increased the frontage setback of the addition by 500mm (i.e. 10.2 metres), increased the rear setback by 500mm at Levels 1-3 (i.e. 3.5 metres), increased the rear setback of Level 4 by 3.7 metres (i.e. 6.7 metres) and increased setbacks to the west boundary of Level 1 to 3 metres. These plans were substituted to become the application plans considered by this Tribunal.
- 5 Council subsequently advised that it supported the amended proposal, and all the previous grounds of refusal have been appropriately addressed. It says the amended plans are an appropriate balance between the strategic objectives of a large site in an activity centre and the heritage context of the land and its surrounds. It considers the proposal will conserve and enhance the existing heritage fabric and the contemporary design of the addition will sit comfortably in this context. It also submits the addition will not cause unreasonable amenity impacts on adjoining and nearby properties.
- 6 The respondents include residents of apartments in the adjoining four storey building to the west at 152 Bridport Street that is known as 'Biltmore', which has individual heritage significance on the Victorian Heritage Register and is within Heritage Overlay Schedule 62 ('HO62'). Other respondents reside in Bevan Street and St Vincent Place to the north. They argue a five storey building will change the character and appearance of the heritage streetscape and it will usurp and compete with the landmark qualities of Biltmore. They say the proposal is too ambitious and it will impact the sensitive, low scale heritage buildings in the streetscape and wider area such as St Vincent Place.
- 7 The respondents rely on the evidence of heritage advisors, Ms Baker, Mr Briggs, and Dr Lesh. All consider the addition is too big and too tall and it will dominate the host building, compete with the visual prominence of Biltmore, and overwhelm the heritage streetscape. Mr Briggs and Dr Lesh say the development will only be acceptable if a further level is removed and the setbacks are increased, whilst Ms Baker recommends further setbacks of the upper level from the frontage.
- 8 The respondents are also concerned about a loss of amenity of their apartments in Biltmore. They rely on the evidence of Mr Furness who considers the proposal has not had regard to the shared interface with Biltmore and the sheer form and massing will result in an unreasonable loss of amenity to these apartments.

- 9 The applicant refutes these propositions. It says the proposal will produce a high quality outcome that is responsive to the existing and preferred neighbourhood character and heritage values of the area. It acknowledges there will be change to the built form on the review site, to the built form within this section of the Albert Park Neighbourhood Activity Centre ('NAC') and the amenity and outlook from the neighbouring properties. It argues the question is not whether change will occur but whether that change is acceptable having regard to relevant planning policy. It says there is strong policy support for change and growth in this NAC, but it must occur in a respectful way that does not result in unacceptable impacts on the heritage significance or amenity of other properties.
- 10 It relies on the evidence of heritage advisors, Messers Lovell and Gard'ner who consider the proposal is a restrained carefully considered contemporary design that responds appropriately to the subject site and wider heritage precinct. They acknowledge the addition will alter the setting of Biltmore and remove some views of the built form but consider the addition will be subservient to Biltmore, which will maintain its landmark qualities. They also consider the addition responds to the Albert Park village context and will not alter the heritage values of this intact streetscape.
- 11 Town planning evidence was provided by Ms Jordan and urban design evidence from Mr Shepperd, on behalf of the applicant. Ms Jordan considers the development is highly considered and aligns with policy to increase housing diversity in this NAC and there will be no unreasonable amenity impacts. Mr Sheppard considers the addition will be largely concealed by existing buildings in Bridport Street due to the recessive setbacks. He also considers the addition will maintain a reasonable level of amenity for the western neighbours.

WHAT ARE THE KEY ISSUES?

- 12 Considering the provisions and policies of the Port Phillip Planning Scheme and the concerns raised by respondents, we find the key issues in this proceeding include:
- Does the proposal respond to its zoning and policy context?
 - Is the scale and massing of the addition an acceptable response in this neighbourhood?
 - Does the addition respond to heritage policy?
 - Are there unreasonable amenity impacts to abutting and nearby properties?
- 13 Planning does not seek ideal outcomes, or outcomes which respond positively to every relevant policy. Rather, acceptable outcomes are the measure by which planning decisions are to be made. We must decide whether the proposal will produce an acceptable outcome having regard to

the relevant policies and provisions in the Scheme. Clause 71.02-3 requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.

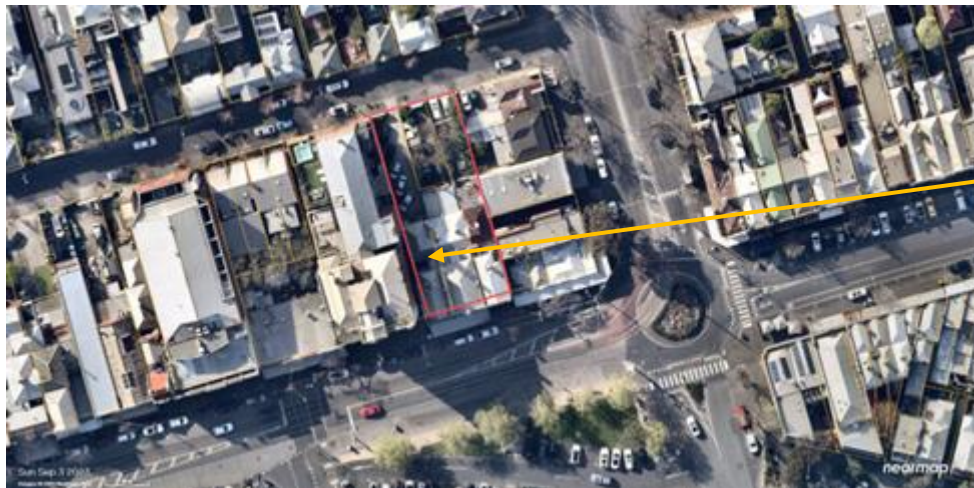
- 14 Having undertaken an inspection of the abutting properties and locality and taking into consideration all the submissions and evidence, we have decided to approve the development subject to removal of Level 4. We find that the five storey addition will sit discordant in the prevailing one and two storey streetscape, despite the ‘backdrop’ of Biltmore. We are not persuaded that the proposal has adequately responded to policy that seeks development to respect the existing character in Clause 11.03-1L-04 for the Albert Park NAC or heritage policy for commercial additions at Clause 15.03.1L. However, we consider that removal of the top level will make it acceptable. Our reasons follow.

WHAT IS THE PHYSICAL CONTEXT?

Review site description¹⁰

- 15 The review site is located near the north-west corner of the intersection of Bridport and Montague Streets. It comprises of three separate lots formally recognised as Lots 1, 2, and 3 on Plan of Subdivision 125810.
- 16 The review site has a frontage of approximately 20.16 metres to Bridport Street and a length of 48.12 metres resulting in a total site area of approximately 972 square metres.

Figure 1 - Aerial Image of the review site (bordered in red) and the immediate area.¹¹



Subject
site

¹⁰ This is largely taken from parties’ submissions and written evidence and confirmed or varied by the Tribunal as required.

¹¹ Council’s submissions - page 10.

- 17 The land currently comprises three attached, significantly graded two storey buildings but which form one unified building when viewed from Bridport Street.

Figure 2 - Photograph of the street elevation of the review site.¹²



- 18 These buildings were constructed around 1901 and were historically used for retail purposes amongst other uses, including residential. The ground floor is presently occupied by three separate retail tenancies. The rear of the review site contains a number of single storey structures and at-grade car parking. A verandah extends over the frontages of 148 and 150 Bridport Street and, according to Mr Lovell, appears to have been constructed in the 1980s or 90s.
- 19 The wider shopfront at 148 Bridport Street is a somewhat intact example of early 1900s retail buildings. It appears to be original, with timber framing and a splayed entrance. The tiled floor to the entrance is modern and the plinth of the shop front appears to be overpainted granite.
- 20 The shop front to 150 Bridport Street retains the original plan form of the shopfront with a recessed entrance with original timber panelled ceiling. The shop window and door are modern but are located on an original Harcourt granite plinth.
- 21 The ground floor shopfront of 146 Bridport Street is not original and comprises a metal clad timber framed display and highlight windows set on a blue tiled plinth. The first-floor level across all three tenancies remains substantially intact, with groups of arched headed windows being a key feature of the architectural presentation and a decorative parapet. The roof of the existing building comprises original chimneys.
- 22 There is no significant vegetation on the review site or any topographical fall of significance.

¹² Mr Lovell's evidence statement - page 7.

Abutting properties

23 The site has the following immediate interfaces:

- (a) To the north (rear) is Bevan Street. It is a local road of approximately 10 metres in width providing two-way access from Merton Street to the west to Montague Street to the east. The footpath on the southern side of Bevan Street is wider than that on the northern side. The rear of the properties at 59, 61 and 63 St Vincent Place South are directly opposite the rear of the review site. Access to a number of properties fronting Bridport Street and St Vincent Place South is taken via Bevan Street with garages and crossovers evident throughout. A number of dwellings also front Bevan Street, particularly on the north side.
- (b) To the east are a number of commercial buildings fronting Bridport Street including 144, 142 and 136 Bridport Street. These commercial buildings are single storey in height and comprise various commercial uses.
- (c) To the south is Bridport Street which is the main retail thoroughfare through the Albert Park NAC. Bridport Street accommodates the No 1 Tram Route which turns up Montague Street. It features several more recently constructed buildings interspersed amongst heritage buildings. Building scale is generally one to two storeys with a handful of more notable buildings which extend up to four storeys.
- (d) To the west is the four-storey Biltmore building at 152 Bridport Street. This building is a significantly graded heritage property registered on the Victorian Heritage Register. While previously commercial in nature, Biltmore was converted to a number of residences in the 1980s and 1990s. The City of Port Phillip Heritage Review identifies Biltmore as “the former Albert Park Coffee Palace” which is of architectural and social significance. It is one of the few major survivors of a number of nineteenth century coffee palaces that were built across Melbourne. This building is constructed with small or no setbacks to the shared boundary and includes a number of habitable room windows directly facing the review site. The Biltmore Building is setback approximately 2.7 metres from the property frontage to enclosed verandah with the building line set back a further 5 or so metres.

Figure 3 - Photograph of north-western corner of Bridport and Montague Streets, with oblique angles of the review site and Biltmore.¹³



24 More detail on the heritage significance of Biltmore will be set out below.

Wider area

- 25 The review site is located within the Bridport Street / Victoria Avenue, Albert Park Neighbourhood Activity Centre ('Albert Park NAC') which is generally commercial in nature and constructed at a one or two storey scale with some notable and greater scale exceptions.
- 26 On the north side of Bridport Street, between Merton and Montague Streets, the review site is located in a row of commercial buildings of mixed scale and age. These range in height from one to four levels and in style encompass Victorian, Federation and contemporary designs.
- 27 On the opposite side of the street, between Merton and Faussett Streets, the predominant built form is one and two storey late Victorian retail premises, which is typical of both sides of Bridport Street to the east of Montague Street. This presentation contrasts with the more architecturally varied appearance between Faussett and Montague Streets where a number of the buildings date from the interwar and post-war periods. The more recent of these are identified in the grading map (Refer to Figure 12) as non-contributory.
- 28 This streetscape includes a large number of more recently constructed buildings of contemporary design. All buildings on the northern side of Bevan Street, between Montague and Merton Streets, are graded as 'significant' in the City of Port Phillip Heritage Policy Map, December

¹³ Source: Mr Lovell's evidence, page 17.

2021, noting that for the majority this reflects the significance of the principal residences fronting St Vincent Place.

- 29 Most are part of the St Vincent Place Precinct (HO258), which is also listed on the Victorian Heritage Register as H1291, with a small number in the Albert Park Residential Precinct/Part Montague Precinct (HO442).
- 30 Bevan Street forms the southern boundary of the St Vincent Place Precinct. It is a horseshoe-shaped neighbourhood, centred on the public garden, that is included in the Victorian Heritage Register as H1291 and heritage overlay HO258. Directly to the north of Bevan Street, St Vincent Place South, in the block between Montague Street and Merton Street, are single-storey and double-storey Victorian houses, many of which are terrace houses.
- 31 To the east, Montague Street contains older and more recent one and two storey buildings used for a mixture of residential and commercial purposes.

Tribunal findings on intactness of streetscape

- 32 There were various positions taken by the different parties as to the intactness and consistency of form and scale in the Bridport Street streetscape.
- 33 The respondents and their witnesses submit Montague Street, which runs in a north-south alignment, provides a distinction between a very intact and consistent two storey scale streetscape to its east, whilst the applicant argues the west is a more diverse streetscape, with varied scale and level of intactness.
- 34 Within the precinct, the section where the review site sits in the street is the least cohesive as compared with the predominantly late Victorian built form, which is more strongly evident along most of the other frontages.
- 35 Along the eastern section of Bridport Street between Montague and Ferrars Streets, where Bridport Street terminates, almost every building is two storeys in scale and constructed at a zero lot line setback, and is of the Victorian era. The exceptions are the church on the corner of Bridport and Madden Streets, and the service station on the southwest corner of Bridport and Ferrars Street. These are double storey and single storey respectively but also setback from respective Bridport Street frontages. There are also a series of Victorian terraces that are set back from the street frontage, albeit minimally, at 90-94 and 100-108 Bridport Street.
- 36 This section of Bridport Street is one that we agree is a highly cohesive and consistent streetscape, with few examples of non-heritage fabric. Even with the examples of Victorian terraces that have small setbacks to Bridport Street, these do not give the appearance of interruptions to the streetscape that are of any material impact given the minimal setbacks and otherwise the consistent scale and heritage appearance.

Figure 4 - North side of Bridport Street, east of Montague Street.¹⁴



Figure 5 - South side of Bridport Street, east of Montague Street.¹⁵



- 37 The insertion of the church is an obvious departure from the streetscape, but again, in our view, does not provide a distinction of material impact. The service station is an obvious outlier, but we find its location on the far eastern corner significantly relegates its impact on this streetscape.
- 38 The section of Bridport Street, between Montague and Merton Streets, is however, more varied. It is varied in numerous ways, including scale, setbacks, architectural appearance and the way in which initial uses influenced the form, detail and scale of the buildings.

¹⁴ Source: Mr Gard'ner's evidence statement, page 24.

¹⁵ Ibid.

- 39 Whilst scale is predominantly one and two storeys, Biltmore and the Hoyts building at 172 Bridport Street are significantly greater in scale and provide dominant features in the streetscape and wider area.
- 40 The contrast in scale is accentuated by the presence of single storey buildings immediately between Biltmore and the Hoyts buildings, and the double storey scale of the buildings on the review site, as well as the Hoyts building itself having had its facade significantly altered in a 1980s style.
- 41 The following is a series of photographs extracted from Ms Jordan's evidence statement at Appendix A2.

Figure 6 - The review site (double storey row) with Biltmore to its west (left).



Figure 7 – Biltmore to the right.



Figure 8 – The Hoyts building



- 42 Furthermore, the detailing of buildings in this section of Bridport Street also varies, with some buildings, such as those abutting to the west of Biltmore being very simple in detail, whilst others, such as that abutting to the west of the Hoyts building having significantly ornate architectural treatment.
- 43 The buildings directly opposite the review site on Dundas Place, on the opposite side of the triangular park, are also varied, although not to the same degree as the north side of Bridport Street. Whilst most buildings in this section are double storey, some have unusually tall facades and parapets for buildings of this scale, and the hotel on the corner of Dundas Place and Montague Street is three storeys in scale.
- 44 Appearance also varies with a mixture of original heritage facades and modern infill buildings. The former Albert Park Post Office, immediately to the west of the hotel, has had later upper floor additions that are readily visible from the street, whilst the ground floor façade has maintained its original fabric.

Figure 9 - Albert Park Post Office¹⁶



Figure 10 - South side of Bridport Street, west of the review site.¹⁷



- 45 Whilst Bridport Street, east of Montague Street, has a very intact streetscape of mainly two storey, consistent scale, the section of Bridport Street that the review site sits within is much more varied in scale, architectural detail and general cohesiveness. The island triangular park directly opposite known as the Broadway Tree Reserve, with buildings set further south, also creates a greater sense of separation between the north side of Bridport Street and the built form on the southern side. Bridport Street is a rather wide road reservation. In our view, this creates more ‘breathing room’ and openness where additions of a scale higher than the predominant one and two storey scale could be supported in principle.

¹⁶ Mr Sheppard’s evidence – page 7.

¹⁷ Source: Ms Jordan’s evidence, Appendix A2.

- 46 The presence of Biltmore and the Hoyts building to the west of the review site, coupled with the urban undulation of the one and two storey mix of scale and differing degrees of façade detail, create a streetscape that can also support further differing forms than currently appear. This is not to say that any built form change would be acceptable, but that there is enough variation to support greater visible scale on the review site than what presently exists.
- 47 Further, the presence, scale and dominating appearance of Biltmore also provides an opportunity where greater scale on the review site could sit comfortably within the streetscape, subject to assessment of factors such as form, detail, setbacks and overall appearance.

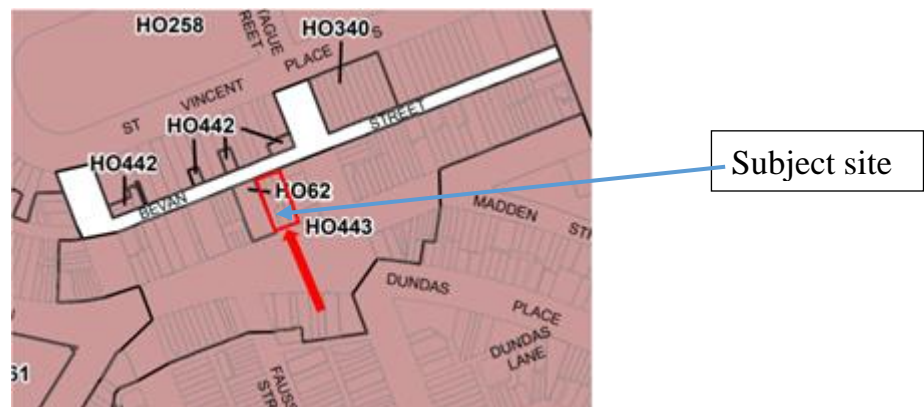
STRATEGIC AND POLICY CONTEXT

- 48 The subject site is within a Commercial 1 Zone ('C1Z') that has purposes including to provide for residential uses at densities complimentary to the role and scale for the commercial centre.
- 49 The site is within Heritage Overlay – Schedule 443 ('HO443') which applies to the Bridport Street/Victoria Avenue Commercial Precinct (Albert Park). This precinct was developed between 1893 and 1901 and is significant for the rows of double storey Victorian shops, terraced dwellings, Edwardian, and inter-war shops. The Statement of Significance notes the precinct is significant as a substantially intact streetscape of Late Victorian commercial buildings that demonstrate:

cohesion through their common scale (primarily double storey),
materials (primarily rendered brick) and detailing (Italianate facades)
with ornamented parapets and so on.¹⁸

- 50 There are other heritage overlays nearby that are part of the context of this area, as shown in Figure 11.

Figure 11 – Planning Scheme showing HO443 and other heritage overlays nearby¹⁹



¹⁸ Contained with the Port Phillip Heritage Review Volumes 1-6 (December 2021) is an incorporated document at Clause 72.04 of the Planning Scheme.

¹⁹ Peter Lovell evidence - Figure 1.

- 51 This includes HO62 that relates to Biltmore, HO442 that relates to 324 Montague Street, 50 Bevan Street, and the rear of 73 St Vincent Place and HO258 that relates to St Vincent Place.
- 52 The existing buildings on the subject site are graded as significant and about other significant²⁰ buildings to the west (within HO62) and contributory²¹ buildings to the east that face Montague Street, as shown on Figure 12.

Figure 12 – Extract from Heritage Policy Map²²



- 53 There is a suite of policies in the Municipal Planning Strategy ('MPS') and Planning Policy Framework ('PPF') that address both settlement policy in activity centres and heritage and built form policies that are relevant to our decision.²³
- 54 The parties drew our attention to the following clauses in the MPS:
- Clause 02.02 (Vision) seeks a city of diverse and distinctive neighbourhoods where well-designed new development is integrated with and enhances our valued heritage and character of neighbourhoods. It also seeks to have vibrant activity centres and employment areas, providing high accessibility to goods and services and prosperous conditions for all residents and businesses.
 - Clause 02.03-1 (Settlement) states that the distinct and diverse activity centres that includes Albert Park (Bridport Street/Victoria Avenue) to provide a range of goods and services to the local catchment.

²⁰ The *Port Phillip Heritage Review* (2021) defines 'significant' heritage places (red) as including buildings and surrounds that are individually important places of either State, regional or local heritage significance and are places that together within an identified area, are part of the significance of a Heritage Overlay.

²¹ In accordance with the *Port Phillip Heritage Review* (2021) a 'contributory' building (green) is defined as including buildings and surrounds that are representative heritage places of local significance that contribute to the significance of the Heritage Overlay. They may have been considerably altered but have the potential to be conserved.

²² City of Port Phillip Heritage Policy Map (December 2021).

²³ Relevant policies in the MPS and PPF are listed in [55] of Council's submission and Attachment 3 of Ms Jordan's evidence.

- Clause 02.03-4 (Built environment and heritage) – This clause notes development within and adjoining low order activity centres needs to be managed to ensure that the existing neighbourhood character and amenity is not eroded. The clause states that Council supports protecting and conserving valued heritage places and precincts by
 - Retaining and conserving heritage places.
 - Development that respects and complements heritage places by using a contextual design approach that retains and enhances the significance of a heritage place.
- Clause 02.03-5 (Housing) – The clause states that it supports increasing residential densities within existing activity centres where the intensity and scale are appropriate to their scale, character and heritage values and does not detract from the centres’ economic capacity.

55 Relevant clauses in the PPF include:

- Clause 11.03-1S (Activity Centres) – The clause calls for activity centres to be built up to the focus of high quality development, activity and living that supports the role and function of each centre.
- Clause 11.03-1L-01 (Activity Centres) – This clause has a strategy to ensure that the heritage scale and form of buildings in the Bridport Street / Victoria Avenue Neighbourhood Activity Centres, is respected.
- Clause 15.01-1L-02 (Urban Design) – This clause calls for high quality designs that integrate with the prevailing neighbourhood character and contribute to the amenity and vitality of the area. This is achieved by supporting development that respects and enhances places with significant heritage significance.
- Clauses 16.01-1S (Housing supply), 16.01-1R (Housing Supply – Metropolitan Melbourne) and 16.01-1L (Housing diversity) – These clauses seek higher density housing and diversity of dwellings in well-located sites in existing urban areas.
- Clause 16.02-1L-02 (Location of residential development) – This clause seeks to discourage medium density development in Limited Residential Growth Areas including established residential areas outside a Heritage Overlay and that have a highly consistent neighbourhood character, or are not proximate to a Major Activity Centre or the PPTN and to limit new development in Minimal Residential Growth Areas affected by a Heritage Overlay.

56 The local policy that relates to the Albert Park NAC is found at Clause 11.03-1L-04. This policy states that development is to be designed to respect the following relevant elements:

- The predominant one and two storey scale of Victorian buildings, with higher development setback from the principle street to minimise its visibility.
 - The prominence of landmark buildings including the ‘Biltmore’ (152 Bridport Street), the Windsor Hotel (107 Victoria Avenue), the Albert Park Hotel (85 Dundas Place) and the former ES&A Bank (95 Dundas Place).
 - The consistent streetscape frontage widths to buildings.
 - Views to Albert Park toward the Bay from Victoria Avenue.
 - The island open space reserve (Broadway Tree Reserve) in Albert Park Village.
- 57 The local heritage policy is found at Clause 15.03-1L. It contains general strategies to respond to, and reinforce, the contributory features of the heritage place, including building height, scale, massing and form, roof form and materials, siting, orientation and setbacks, fenestration and proportion of solid and void features and details, colours, materials, and finishes. It contains policies relating to demolition, alterations and additions to commercial buildings that will be discussed further below in our findings.
- 58 Other documents relevant to our decision include the Heritage Design Guidelines (2022) (the ‘Guidelines’) which is an incorporated document at Clause 72.04 and a policy document under Clause 15.03-1L (Heritage Policy). The Guidelines contain recommendations for demolition, commercial additions, and sight line diagrams. We will address how the proposal responds to these guidelines in our findings below.

Policy arguments

- 59 Council submits there is clear policy support for a mixed-use development given it is within a C1Z, the Albert Park NAC, and Principal Public Transport Network (‘PPTN’). It says this in accordance with settlement and activity centre policies within the MPS and PPF. However, it acknowledges that this does not mean intensification is at all costs as the design must respond to its physical and strategic context that includes its heritage setting.
- 60 Council submits Clause 11.03-1L-01 (Activity Centres) contemplates change in intensity, height and scale to occur within this NAC provided the development is set back from the principal street frontage and is respectful of the scale of existing heritage forms in the streetscape. It says development is supported in activity centres where it positively contributes to the built form character of the centre whilst conserving heritage buildings and streetscapes.
- 61 The respondents argue that it is wrong to assume that just because the land is within a C1Z and within a NAC, means it must be strategically targeted

for urban consolidation. They submit that local activity centres policy, residential policy and heritage policy consistently and unambiguously direct growth, and the provision of housing, to areas other than the Albert Park NAC.

- 62 They argue that the broad assumption that all activity centres are slated for growth and that heritage must be compromised for this growth does not hold true for this NAC. They say that activity centre policy specifically designates this activity centre as a place where development is expected to be subservient to the preservation of the valued heritage streetscape as the predominant imperative.
- 63 The respondents cite Clause 11.03-1L, which contains clauses regarding the design of development in the Albert Park NAC, to respect the predominant one and two storey scale of the Victorian buildings and the prominence of Biltmore. They submit this policy is specific for this location and prioritises the existing streetscape, character and heritage values. Therefore, there is limited opportunity for any built form change and consequently, appreciable growth. In other words, they say this is a location where growth and changes are not expected or directed. They submit that consideration of growth in this activity centre subject to heritage character is a parameter that determines the acceptable and expected extent of growth and change.
- 64 Other respondents rely on the evidence of Mr Furness who considers some level of change could be accommodated at this location. He considers the site falls within an Incremental Residential Growth Area ('IRGA') that is designed to accommodate two to three storey infill development as the site is on a main road and within PPTN.
- 65 The applicant submits the subject site is a prime candidate for more intensive development and the PPF contemplates and encourages development comprising a mix of uses and residential development. This view is shared by Ms Jordan who says the site can accommodate further development as it is centrally located in Albert Park NAC, it is a relatively large area, and is within a C1Z.
- 66 The applicant submits decisions about heritage impact cannot be made without proper consideration of its strategic and physical context. It says different decisions are usually appropriate where change is being encouraged or is expected when compared to other areas where little or no change is envisaged.
- 67 It also says that the mixed-use nature of the proposal also enjoys strategic support in Clauses 11, 15, 16 and 17 which include the creation of 20 minute neighbourhoods, concentration of development in activity centres and strengthening and diversifying the economy to meet the needs of the community.

Tribunal findings

- 68 The question before us is whether there is policy support for this mixed-use development within the Albert Park NAC. We agree that the review site is well serviced, including by public transport, and that it is a very accessible location. It is an inner-city location.²⁴ So there is some expectation for growth based on the PPF. We acknowledge the site is within a NAC which are designed to reinforce the role and character of the local centre to provide goods, services and employment opportunities to serve the needs of the surrounding community.²⁵
- 69 However, we consider this location is not one which the Planning Scheme specifically seeks substantial growth. We find that growth in the Albert Park NAC needs to be moderated to respect the predominant one and two scale of Victorian buildings, the prominence of landmark buildings such as Biltmore and the Broadway Tree Reserve in accordance with the strategies at Clause 11.03-1L-04.
- 70 We see the specific characteristics of this activity centre, nominated in Clause 11.03-1L-04, means the level of change that can be accommodated on the review site needs to be modest to respect these elements. We are of the view that whilst the site is suitable for some form of intensification, the level proposed in this application is too great and fails to adequately respond to physical context and heritage setting. Our findings on built form will be discussed further below.

Housing policy arguments

- 71 Council submits Clause 11.03-1L-01 (Activity Centres) does not seek to limit residential development in the Albert Park NAC. It submits as the site is not referred to in Clause 16.01-1L-02 (Location of Residential Development), the land does not fall within the residential development categories of this clause. It says the City of Port Phillip Housing Strategy 2007 to 2017 (the 'Housing Strategy')²⁶ shows the subject site is within a Minimal Residential Growth Area ('MRGA') as it is within a HO. It submits that this does not align with the commercial zoning and policy at Clause 11.03-1L-04 (Activity Centres) that provides specific direction for development in the Albert Park NAC.
- 72 Some of the respondents argue that there is nothing in the Planning Scheme to suggest that delivery of housing has some special status above other planning aspirations and imperatives in the PPF to achieve the conservation and enhancement of heritage places and precincts. They argue that the introduction of nine dwellings is of far less weight, in this location, than the price to heritage which is demanded by this proposal.

²⁴ When compared with other localities such as Werribee, Broadmeadows or Pakenham.

²⁵ As found in Clause 11.03-1L-04.

²⁶ Incorporated document to Clause 16.01-1L-02.

- 73 The respondents submit that residential policy at Clause 16.01-1L-02 states that housing growth is not expected in this NAC. They note the objective of policy states:

To direct housing growth to designated locations that have the greatest capacity for change, and that offer highest accessibility to public transport, shops, and social infrastructure while maintaining the heritage, neighbourhood character and amenity values of established residential areas that have limited potential for housing growth.

- 74 The applicant submits there is strategic support for the development of housing in the Albert Park NAC. Ms Jordan concurs with this view and says there is a strong focus in the PPF and MPS to deliver increased housing at densities across the municipality. She notes Clause 02.03-5 (Housing) states that moderate residential growth may be achieved, as part of a mixed-use development, in activity centres where the intensity and scale are appropriate to scale and heritage values. However, she acknowledges the site is not specifically identified in Clause 16.01-1L-02 housing hierarchy for IRGA but may fall within the Moderate Residential Growth Area (MRGA) where new development is to be limited in a HO.
- 75 Ms Jordan considers residential development at the upper levels is appropriate as the site is within a NAC, proximate to a Major Activity Centre ('MAC') and is well served by the PPTN to provide a broad range of services and accessibility for future residents.

Tribunal findings

- 76 We acknowledge that there is high level policy in the PPF that encourages the provision of housing growth in this location, given its access to services, including public transport, public open space and shops and other necessary services.
- 77 The evidence presented to us by the planning experts indicates there is some confusion whether the site falls within a MRGA or IRGA. We find this issue is peripheral to our decision as the site is not within a residential zone where Clause 16.01-1L-02 (Location of Residential Development) is applicable. We consider that as the site is within a C1Z, Clause 11.03-1L-04 (Activity Centres) applies and provides specific policy direction for the built form response for the Albert Park NAC.
- 78 We consider Clause 11.03-1L-04 does not specifically encourage or discourage residential development in this particular NAC. This differentiates it from other NACs, such as the Ormond/Glen Huntly Road NAC in Elwood where encouragement exists for the moderate intensification of housing. We find that additional housing at this location is acceptable given the site is within a NAC, within the PPTN and close to a range of shops and services.

- 79 The main task is whether the provision of an additional nine dwellings in the Albert Park NAC aligns with the built form outcomes sought in Clause 11.03-1L-04 (Activity Centres) and heritage policy. We have therefore not prioritised the provision of housing within this activity centre as the policy requires the design to respond to the predominant two storey scale of the Victorian buildings and Biltmore.

IS THE SCALE AND MASSING OF THE ADDITION ACCEPTABLE IN THE BRIDPORT STREET STREETScape?

- 80 Above ground floor level, the proposed additions are to be set back 10.2 metres from the frontage and rise to a maximum height of 18.3 metres from the natural ground level. This equates to between a two and three storey scale difference from the existing heritage buildings in the street.
- 81 The additions are also set back from the eastern side boundary between 2 and 5 metres, with a staggered, saw-tooth layout along part of the eastern elevation. They are also set back from the western boundary 3 metres, except for the stair core which abuts this boundary.

Figure 13 - Proposed level 2 plan²⁷



- 82 The result of the side setbacks is that the additions will be narrower in footprint than the buildings to be retained. However, the height will obviously be taller.

What do the parties say?

- 83 The respondents are concerned about the impact that the proposed additions will have on the streetscape. They say this section of Bridport Street supports one and two storey scale, with the Biltmore building being a 'landmark' building, especially given its heritage status.
- 84 The applicant submits that built form change is supported by policy in the Albert Park NAC and agrees that any such change must occur in a respectful way.

²⁷ TP.1102.

- 85 Mr Sheppard considers there is a lack of direct built form guidance for the subject site given there is no applicable Design and Development Overlay. He says that as a result, his approach was to assess the proposal in response to policy that encourages growth whilst also seeking to ensure the development respects the existing built form character.
- 86 Mr Sheppard also says that on approach from the south along Montague Street, it is not until the pedestrian crossing before the intersection where the proposal will be seen in full view, owing to the hotel and other intervening elements on the southern side of Bridport Street. Similarly, he considers views from within the reserve opposite the review site are much more open to the subject site.

Figure 14 – Corner of Bridport Street and Montague Street²⁸



Tribunal findings

- 87 We have already made findings that this section of Bridport Street, where the review site is located, has somewhat of a mixed character but it is predominantly one and two storeys, except for Biltmore and the Hoyts building. In the Albert Park NAC more generally, the scale of buildings is one and two storeys, with the eastern part of Bridport Street having a more consistent two storey scale.
- 88 It is the degree of change and whether that change is respectful or not that is the real issue here. That requires the exercise of judgement.
- 89 We agree with Mr Sheppard that whilst policy seeks to encourage growth, the existing character of built form must be respected. In a heritage context, where there is a high degree of intact significant heritage fabric which has a

²⁸ Photo extracted from Mr Sheppard's evidence statement - page 12.

relatively modest scale and presence, we consider the potential for greater scale is diminished. We find that heritage and neighbourhood character are closely intertwined, as is often the case in similar contexts.

- 90 We are not persuaded that the proposal has adequately responded to policy that seeks development to respect the existing character in Clause 11.03-1L-04 for the Albert Park NAC. We find that the five storey addition will sit discordant in the prevailing one and two storey streetscape, despite the ‘backdrop’ of Biltmore. We acknowledge that the setback of the addition from Bridport Street is not insignificant, but at a scale of three storeys above the existing buildings on the site to be retained, it will create a great impact when compared with the existing, modest scale.
- 91 We consider this scale will be particularly evident from views to the review site from the east and directly front-on to the site. Much criticism was levelled at the applicant for failing to produce a photomontage taken from the Bridport Street/Montague Street intersection on the southern side. Some of the respondents say that this was a key viewpoint. They argue that producing this photomontage would have shown how great the proposal would have impacted this viewpoint. In part, the absence of such a viewpoint was a reason for us to conduct a second unaccompanied inspection of the subject site and streetscape.
- 92 We agree with the respondents that such a viewpoint is one which provides probably the greatest visibility of the site from the public realm. The absence of a photomontage from this location is a curious omission in the context where Mr Sheppard regards it as a location where the proposal will be most visible. He states:
- The proposal will be most visible in views from the south at the Bridport Street - Montague Street intersection and from Dundas Place Reserve.²⁹
- 93 It is relevant to note that Bridport Street has some physical characteristics which have not assisted in enabling this proposal to be integrated well into its surrounds. Bridport Street is a wide public thoroughfare. It also has the unusual layout on the southern side where the opposite commercial strip is aligned along a curved axis, with Broadway Tree Reserve directly abutting the Bridport Street alignment along the southern side.
- 94 The intersection with Montague Street is also wide and offers open and extensive views from the north around to the west over the review site. The only significant interruption to these views from a built form perspective is the Biltmore building.
- 95 It is evident to us that the impact of the proposal, when viewed from front-on and oblique angles from the east along Bridport Street, as well as from

²⁹ Mr Sheppard’s evidence statement- [31].

the northern reaches of Dundas Place, will provide a domineering appearance of a modern building, and one which will also dominate the existing heritage fabric on the review site. This is contrary to what Clause 11.03-1L-04, neighbourhood activity centre policy seeks to achieve.

- 96 Whilst we acknowledge that at various viewpoints there are intervening features, such as other built form and street trees, in our view, these are not so abundant that they screen the proposed additions to any significant extent and render the additions as a secondary element in the streetscape.
- 97 Mr Sheppard said that the additions will be a background element to the properties on Montague Street that are located near the corner with Bridport Street. We disagree. The buildings between the review site and Montague Street are single storey in scale, and in our view, are very modest buildings. They are each on narrow fronted lots, have modest parapets and small frontages, with low hipped roof forms that are generally concealed behind the front parapets. At present, the upper floor eastern elevation of the existing buildings on the review site are readily visible from many vantage points to the east and south-east, over these buildings, and over the wide intersection of Bridport and Montague Streets.
- 98 What this means is that the proposed additions will also be clearly visible over these buildings. Whilst mere visibility is not a determiner of acceptability, in this context, we find that the additions will be so visible and evident as to be discordant with the prevailing building scale. This is contrary to the strategies in Clause 11.03-1L-04 for the Albert Park NAC.
- 99 For the sake of completeness, we are not concerned with the presentation of the built form from the west, as it is mostly obscured from view by Biltmore, until one transitions to more square angles to the review site frontage.
- 100 Whilst from a neighbourhood character perspective we have found the proposal to be unacceptable, we do, however, see that there are potential solutions to this. During the hearing evidence was given and questions and discussion regarding such solutions.
- 101 One of the solutions, and albeit from a heritage perspective, came from Ms Baker who recommended to increase the front setback of the top floor by an additional five metres. Other suggestions were to set back the upper floor further than Ms Baker suggested or to delete the entirety of the top floor.
- 102 The deletion of the top floor was something that Mr Briggs had contemplated in his written evidence, and he was questioned about this recommendation by the Tribunal. The same matter was also put to other witnesses during the hearing.
- 103 Through submissions, the applicant argued that the increased setback of the top floor would result in an inferior outcome, and urged the Tribunal that the proposal was acceptable in its proposed form. It relied on the evidence

of Mr Lovell who considered that setting back the top floor, as suggested by Ms Baker, will result in an inferior architectural outcome.

- 104 Mr Sheppard was less concerned about the increased setback but considered the greater the number of steps the building has, the less elegant it is likely to be. However, he also said that whilst the additional five metre setback was not ideal, it was manageable from a design perspective.
- 105 We have come to the conclusion that removal of the top floor will resolve our concerns with respect to the impact of the additions from both a streetscape and neighbourhood character perspective. We consider the top level of the building is the problematic element from a neighbourhood character perspective and its deletion will address the concerns raised in our above findings.
- 106 We agree with the evidence and submissions that a further stepping of the front façade of the building by setting the upper floor further back from the levels below will likely result in an awkward design outcome. We consider this will interfere with the architectural language of the additions beyond what has been contemplated through the design process. In our view, doing so may create other issues and so we have refrained from complicating the design further. We find the simplest way to address our concerns is to delete the top level, which will retain the overall design concept which is repeated through the levels of the addition.
- 107 We find that an addition containing two levels above the existing building, that is set back 10.2 metres from the frontage, will be more recessive in the streetscape and will not overwhelm the existing buildings on the review site. Whilst it will be visible from directly opposite and at the intersection to the south-east, we consider the reduction in height will ensure the built form respects the one and two storey scale of Victorian buildings in the streetscape, the prominence of Biltmore and views from the Broadway Tree Reserve in accordance with the strategies for the Albert Park NAC in Clause 11.03-1L-04. This is also on the proviso that the colour scheme is altered to a more muted colour palette which will discuss further below.

DOES THE PROPOSAL RESPOND TO HERITAGE POLICY?

- 108 The Planning Scheme provides a framework to consider whether the proposed development is respectful of the heritage place and surrounding heritage context. Our decision has had regard to the purposes of the heritage overlay and relevant decision guidelines, guidance in the State Policy at Clause 15.01-1S and local policy at Clause 15.03-1L.
- 109 General strategies in the local policy are to encourage high quality, contemporary responses that respect and complement the heritage place by using a contextual approach. This includes responding to and reinforcing the contributory features of the heritage place such as building height, scale, massing and form. The heritage policy also requires new development to

be guided by the statement of significance, urban context and any relevant documentary evidence.

- 110 The five heritage witnesses have different views about whether the proposal responds to the general and specific strategies in the heritage policy in relation to the demolition, the form of the addition, its impacts on Biltmore, and impacts on the Bridport heritage streetscape, St Vincent Place, Montague Street and Beven Street. Findings regarding these issues are addressed below.

Is the extent of demolition acceptable?

- 111 The application includes the partial demolition of the existing buildings including removal of two single storey terraces constructed in the 1870's and the rear of the 1901 retail shop/dwelling facing Bridport Street. The proposal retains the front façade and most of the side walls, roof and chimneys of the original shops.
- 112 Planning approval is required for demolition in accordance with Clause 43.03-1 to demolish or remove a building. Some of the strategies in the heritage policy are to avoid demolition that would result in the retention of the façade of a significant building. It also supports the demolition of a significant or contributory building if it will not adversely impact upon the significance of the place.
- 113 The extent of demolition was not challenged by the parties. Council's heritage advisor concluded that the westernmost shopfront of the façade could be altered to facilitate the residential entrance lobby as it would not transform the significance of the heritage place. All heritage advisors agreed that the loss of heritage fabric is beneath the primary roof or well set back into the subject site. They agreed that the 1870's heritage residences have no visible presence on Bridport Street and have limited visibility at the rear.
- 114 We accept the advice of the heritage advisors that the extent of demolition is respectful of the heritage fabric that contributes to the heritage significance of this precinct.

What is heritage policy for additions to commercial buildings?

- 115 The heritage policy for commercial buildings states:

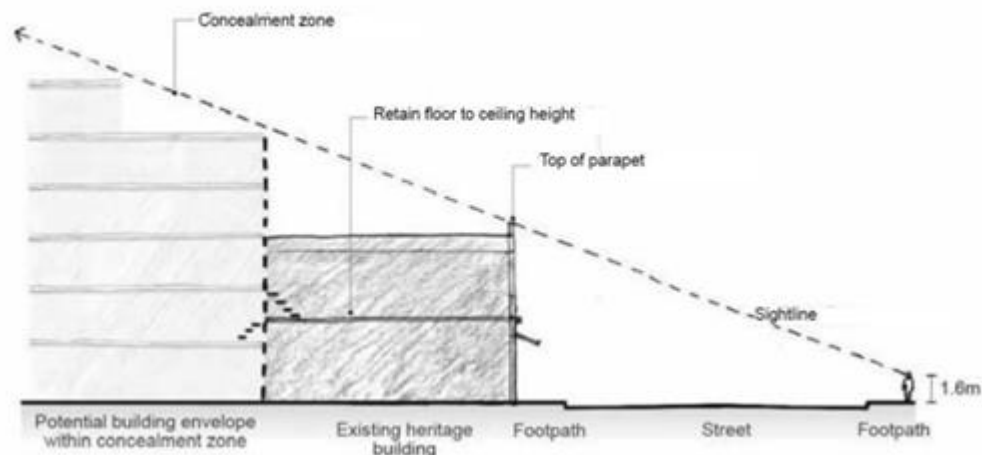
Support additions to commercial and industrial buildings that are set back a minimum depth of the primary roof form (commercial buildings) or two structural bays (industrial buildings) to retain original or early fabric including the principal facade/s and roof features, and which:

- respect the scale and massing of the existing heritage building or streetscape;

- and maintain the prominence of the heritage features of the building or streetscape and do not detract from, or visually dominate, the heritage building or streetscape; and
- are visually recessive against the heritage fabric.

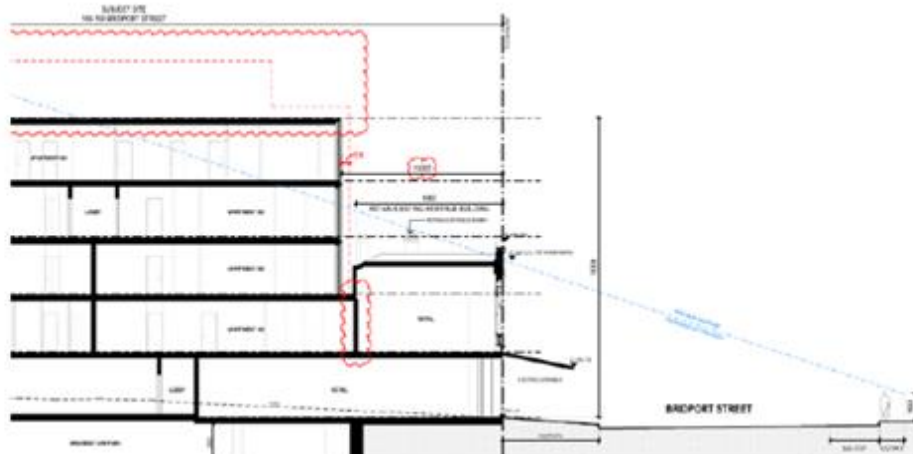
116 The policy guidelines are to contain additions to commercial heritage place within a sightline taken from across the street, as shown in Figure 8 of the Guidelines:

Figure 8 – Sightline for an addition to a two-storey commercial heritage place



117 The proposal will be visible within the Bridport Street streetscape when compared to the sight line, as shown in Figure 15:

Figure 15 – Cross Section showing building setbacks in relation to sight line diagram (blue)³⁰



118 The parties had divergent views about the relevance of this diagram in their assessment of the acceptability of the extent of visibility of the addition.

119 The respondents argue the diagram clearly seeks an outcome explicitly benchmarked on concealment. They say it is a concrete demonstration of

³⁰ Extract from TP.3000.

the outcome sought by heritage policy, which is a strategic driver in this location. Mr Briggs and Dr Lesh consider the additions should be set back in accordance with the sight line diagram to achieve this concealment.

- 120 Mr Briggs' evidence is that the proposal must comply with Figure 8 in clause 15.03-1L. He disagrees that the policy does not seek full concealment of additions. He questioned the comments in the Council's delegate report that supported the proposal where it quoted from the Heritage Design Guidelines Revised, February 2021 that:

Visible additions may be considered when the heritage place is situated on a site or within an area where higher density development is encouraged, or the additions are in accordance with specific development guidelines for the heritage place.

- 121 Mr Briggs considers that full concealment in line with Figure 8 is not necessary in all circumstances to achieve the policy outcomes sought, but he considers that in this case, full compliance should be expected. This opinion is also shared by Dr Lesh.
- 122 Mr Briggs also introduced elements of assessment that are not contained within the Planning Scheme. These include the '20% of the host building' 'performance measure'. He describes this as the test for whether an addition is visually recessive in the following terms:
- An addition that is above the threshold of 20% of the height of the host building, viewed from the perspective of primary heritage vantage point, is unlikely to be generally considered to fit the description of 'visually recessive'.
- 123 Ms Baker has a different view. She acknowledges the upper storey has not been designed to conceal but to respond to atypical form of Biltmore, as opposed to the double storey form of the streetscape. She says the guidelines allow that some visibility may be acceptable provided the additions respect the scale and massing of the existing heritage building or streetscape. She also considers that additions should not detract from or visually dominate the precinct.
- 124 Council submits that whilst the heritage policy encourages additions to be fully concealed, it is not mandatory. It says that there may be ways for new development, within a heritage setting, to be visible provided it is visually recessive. It argues this is consistent with the heritage guidelines.
- 125 The applicant argues that in accordance with Clause 71.02-2, policy guidelines should be seen as an indication of how objectives and strategies can be implemented. It says this clause states that decision makers must take into consideration the policy guidelines but are not required to give effect to them if it is satisfied that an alternative approach meets the objectives.

- 126 The applicant submits the policy guideline at Figure 8 deals with a singular viewing point and has no regard to its context, or the impact of the addition on oblique views. It also says it has no regard to architectural implications of compliance as this is achieved through stepping back of the upper levels.
- 127 The applicant argues Figure 8 provides an indicative sightline for an addition to a two storey commercial heritage place. It represents a guide to decision making and is not a mandatory requirement. It relies on the evidence of Messers Lovell and Gard'ner.
- 128 Mr Lovell says that consideration must be given to the level of significance and consistency or diversity of the streetscape. He says that due to the diversity of the built form on this side of the street, the visible presence of the addition is not an outcome which will detract from the one and two storey significance of the precinct.
- 129 Mr Gard'ner considers given the review site is in the Albert Park NAC, it requires the balancing of the tension between supporting development within an activity centre with built form that positively contributes to the heritage built form character of the centre.

Tribunal findings

- 130 We accept that Figure 8 is one way to achieve overall policy aspirations. We consider Figure 8 is a tool designed to help understand the extent of visual concealment or recessiveness that is expected in the heritage policy. We acknowledge the diagram is an assessment from one particular viewpoint and there are several other viewpoints that should be considered given the level of exposure of the site near the corner of Montague Street, as we have discussed above in our neighbourhood character findings.
- 131 Whilst Mr Briggs introduced his own '20% rule', we do not accept this as a relevant matter to take into account. It is his own tool that he has devised to undertake a visual impact assessment and it does not appear in the Planning Scheme.
- 132 We find the policy guidelines and Figure 8 should not be applied inflexibly, as recommended by Mr Briggs and Dr Lesh. We consider that some visibility of the addition may be acceptable if the addition responds to the scale and massing of the existing building and two storey streetscape in the Albert Park NAC.³¹
- 133 We find the heritage policy requires application of a contextual approach that includes consideration of a range of other factors apart from concealment of the upper levels from directly opposite the subject site. Some of these, as suggested by the heritage witnesses, include the

³¹ Clause 11.03-1L-04 also requires new development to respect the predominant one and two storey scale Victorian buildings with higher development set back from the principal façade to minimise its visibility.

intactness of this section of the streetscape, quality of the design, the height and scale of Biltmore and the extent of visibility from the Broadway Tree Reserve.³²

- 134 We have concerns that the proposal is not sufficiently recessive or concealed to respond to the existing one and two storey scale of the heritage precinct and host buildings which has led us to our findings to delete the top level.

Will the height, scale and bulk of the addition enhance/conserve or detract from the heritage precinct and host building?

- 135 Mr Briggs considers that the ‘Additions’ section of clause 15.03-1L seeks to support additions to commercial buildings where they are set back a minimum depth of the primary roof form of existing fabric and the proposal does not achieve this policy expectation.
- 136 Dr Lesh’s evidence is based on strict compliance with policy in the Planning Scheme. He considers the optimal and best possible outcomes are almost complete invisibility of additions.
- 137 Ms Baker is concerned about the impact the additions will have on the streetscape which she describes as a predominantly one and two storey scale. She considers the additions will dominate this character as a result. She is also concerned about impacts on Biltmore that will be discussed further below. She recommended an additional five metre front setback of the top level to respond to these concerns to address the streetscape and impact on views to Biltmore.
- 138 It was Mr Lovell’s evidence that the increased setback to the top floor, as recommended by Ms Baker, will result in an awkward and ungainly outcome. He considers this will make the proposal a more complex piece of architecture, particularly when viewed from oblique angles where the series of ‘steps’ of the elevations would be more readily apparent.
- 139 Further, Mr Lovell considers that the combination of the 10 metre front setback, and the sides and rear setbacks respond to the setting and manage the overall presentation within its ‘village context’. He also considers the additions will be subservient to Biltmore and will introduce contrasting scale and form to the area. He says the form and design of the addition is successfully managed to the extent that the values which underpin the significance of the precinct will remain unchanged.
- 140 Mr Gard’ner’s evidence is that the height and scale of the proposed additions will be 7.3 metres above the parapet of the existing buildings on the subject site. He considers that the 10 metre setback will retain the visual prominence of the existing fabric within the streetscape and the

³² As recommended in Clause 11.03-1L-04.

additions are massed, presenting more formal facades to the front and rear whilst providing sculptured mass and articulation to the east elevation.

Tribunal findings on the acceptability of the additions

- 141 We are not persuaded that the form of the proposed additions will be acceptable. We say this because of the impact they will have on the heritage character and streetscape within which they would sit, as well as the impact and dominance they will have upon the heritage fabric and significance of the buildings to be retained on the review site. We are not, however, concerned with the impact the additions would have on the significance of Biltmore, which we will discuss further below.
- 142 Whilst the additions are to be setback 10 metres from the site frontage and the side boundaries, we find they will still result in visual prominence to a degree that cannot be supported in this heritage streetscape, particularly from oblique angles to the south-east.
- 143 Further, we also find that the additions will have a dominating impact on the existing heritage fabric that is proposed to be retained on the review site. These existing buildings are identified as being of ‘Significant’ heritage value in the Port Phillip Heritage Review, which is a Policy Document in the Planning Scheme.
- 144 Whilst the height of the additions above the parapet of the existing buildings will be proportionally less than the overall height of those buildings, they will still result in an unacceptable level of visual dominance and will detract from the heritage significance of the existing buildings. This is primarily due to the height but also due to the proposed design language and colour scheme.
- 145 We find there is merit in the argument that the proposal not complying with Figure 8 and the ‘minimum primary roof form’ setbacks that clause 15.03-1L seek, is of consequence. These, in our view, seek to limit the visibility and therefore impact of new additions on the primary heritage fabric on the review site. Non-compliance with the Figure 8 sightline diagram and the ‘primary roof form’ setback sought is demonstrable of the conflict between what this proposal seeks and what policy seeks in terms of visual impact.
- 146 Given the very closely interrelated nature of neighbourhood character and heritage concepts, we find that aligned with our findings on neighbourhood character, if the top floor is deleted, an acceptable heritage outcome can be reached.

What is the significance of Biltmore and should it be seen in the round?

- 147 Biltmore is the principal built form element within the Bridport Street streetscape given its tall, four storey Victorian form. The statement of significance in the Victorian Heritage Register (‘VHR’) and HO62 notes:

Biltmore, Albert Park is of historical significance due to its association with the temperance movement in Victoria and as one of the last surviving examples of the grand coffee palaces which were built in Melbourne in the 1880s. Biltmore, Albert Park is of

architectural significance as a fine and imposing four storey building by architect W. S. Law.³³

- 148 The register identifies the façade of arcaded loggias as the main reason for its significance.
- 149 One of the key differences between the applicant's heritage witnesses and the respondents' witnesses, and to a lesser extent Ms Baker's evidence, is whether Biltmore was designed to be seen 'in the round'. Furthermore, the impact the proposal would have on Biltmore, as well as on the streetscape more generally was another key point of difference.
- 150 The respondents argue Biltmore is a local landmark building that should remain being seen in the round. Dr Lesh agrees and considers it is possibly the grandest surviving coffee house in Melbourne and is central to the history and character of the heritage precinct. He considers that significant elements of heritage fabric do not need to be listed in the Statement of Significance. He says that views westward of the building from the Bridport/Montague Street intersection are significant as they show the building in the round.
- 151 The respondents submit that there is a policy expectation that Biltmore should remain seen in the round and clearly visible as the domineering landmark of the Bridport Street area. They argue views from all sightlines and vistas towards the building are required as to retain its heritage status and to ensure the neighbourhood precinct and streetscape character area are retained. This view is shared by Ms Baker who considers the massing of the additions will reduce the prominence of Biltmore and given its state significance, this prominence should be retained.
- 152 The applicants refute this proposition and argue the statement of significance for Biltmore does not refer to the side elevations of the building but rather the aesthetic values of the façade in great detail. It submits the side and rear elevations have changed over time, such as additional windows, rendering of brickwork and rear additions, as part of the conversion to dwellings.
- 153 The applicant argues there is no statement of significance that cites or implies that Biltmore has local significance because it can be viewed in the round. It states that Biltmore is not able to be viewed from many locations within the heritage precinct as parts of the side elevations are concealed by existing buildings in Bridport Street. Ms Baker agrees and says that views to the east elevation have been interrupted along the east elevation, including at the intersection of Montague and Bridport Streets.
- 154 Mr Lovell considers that views of the side elevations are fortuitous and should not be given the same weight as views of the façade. Mr Gard'ner

³³ Victorian Heritage Database Report - HO 475 - Biltmore.

concur with this view and considers the side and rear windows do not have the elaborate detailing of the principal façade and are therefore secondary elements of the building. Whilst he agrees that Biltmore can currently be seen ‘in the round’, he disagrees that such a situation was an intentional design outcome sought to be achieved with its original inception. He says this is evident in the more utilitarian nature of the side and rear elevations, when compared with the elaborate façade. He states:

These more utilitarian designed wings, while important to the scale and legibility of the heritage building as a former coffee house and hotel, were not designed to be viewed from any distance nor do (sic) contribute to the landmark quality of the façade.³⁴

Tribunal findings

- 155 We disagree with the respondents’ views that the statement of significance for Biltmore identifies its significance is to be viewed ‘in the round’ and completely uninterrupted. Whilst it could be clearer in its identification of what is significant, what is clear, is that the grandeur of the front of the building, and particularly its ornately detailed façade, are the key parts of the building that are significant. These are identified as the significant features in the VHR registration.
- 156 We find that the ‘inclusive’ interpretation of Statements of Significance that Mr Briggs referred to is not a logical way in which to read them. A statement of significance, including in this case, would ordinarily have a section entitled ‘What is significant’, not ‘What is not significant’. The Burra Charter and heritage policy seek to conserve and enhance places of heritage and cultural, and therefore this includes parts of places that are of heritage significance. In our view, it is incumbent on planning authorities to identify what is significant and seek to protect and enhance those elements, rather than what is not significant. This is consistent with heritage practice in planning in Victoria.
- 157 We disagree with the approach to assessment of significance of Biltmore adopted by Dr Lesh. We find elements associated with this building, such as the side elevations and their visibility from afar, are not listed in the Statement of Significance.
- 158 We acknowledge the building has a commanding presence in the area due to its height and scale. The façade is starkly contrasting with the sides and rear of the building. This is plainly evident. The original rendering of the façade returns only marginally around the front section of the east/side elevation. The side elevations are very simply treated, with face brickwork and no detailing.

³⁴ Mr Gard’ner’s evidence statement - [49].

- 159 The west elevation has been altered, at some point, with render. The eastern elevation has also been altered, including the insertion of windows and the external fire escape stairs, which we understand, were part of the conversion of the building in the 1990s to residential apartments. We also note that views of the east elevation of Biltmore are already impacted by existing one and two storey buildings in Montague Street.
- 160 We find there is no policy expectation for Biltmore to be seen in the round. Whilst Clause 11.03-1L-04 requires buildings to respect the prominence of landmark buildings, such as Biltmore, we consider this ‘prominence’ relates to the retention of the façade and not the utilitarian appearance of the side and rear elevations. As our findings below indicate, Biltmore will remain a prominent landmark of the precinct and the principal façade and return will not be impacted by the proposed addition. We find the partial obscurement of the east elevation by the addition is acceptable provided the height is reduced by one level.

Will the addition have an unacceptable impact on Biltmore?

- 161 The respondents argue that substantial concealment of the eastern façade of Biltmore is contrary to the heritage policy strategy that expressly seeks to conserve and enhance the setting and views of heritage places. They rely on the evidence of Mr Briggs who considers the additions should respect the existing contrast between landmark Biltmore and the low-rise heritage surrounds. He considers that obscuring the presently visible eastern wall of Biltmore will ‘usurp and compete with its landmark quality in views from the east and northeast.’³⁵ He says that it will compete with, and detract from, the visual primacy of this state listed landmark.
- 162 Ms Baker agrees and considers the obscuring much of the east elevation of Biltmore will reduce the prominence and landmark status of Biltmore. She acknowledges the eastern façade is not its primary frontage, but nonetheless, it is Victorian fabric that is visible in a predominantly Victorian streetscape.
- 163 The applicant argues the landmark qualities of Biltmore are obtained in the principal frontage. It relies on the evidence of Mr Lovell who concludes that the addition will not alter or diminish the historical or aesthetic values of Biltmore that are identified as contributing to the significance of this building.
- 164 Mr Gard’ner’s evidence is that whilst the scale of Biltmore contributes to its landmark qualities, it is the façade that draws the eye and is the key element of its landmark quality. He agrees that part of the reason it is a building of ‘landmark’ status is due to its contrast to the one and two storey scale of the buildings in the streetscape. He considers that views from the south-east

³⁵ Evidence of John Briggs – [34].

will be the most impactful, but they are adequately managed through the design detail.

- 165 Council agrees with the applicant that Biltmore will remain the prominent feature in this setting as it will remain forward and higher than the addition. It says the amended plans allow the additions to serve as a backdrop to the heritage setting and do not compete with Biltmore and the broader heritage streetscape. It acknowledges the addition will impact views of Biltmore from Montague Street but not in a detrimental way as the primary view of Biltmore is taken from Bridport Street.

Tribunal findings

- 166 We acknowledge the addition will inevitably change existing views towards Biltmore when viewed from Montague Street, the intersection of Montague/Bridport Streets and from Bridport Street. It cannot reasonably be expected that there will be no change to such views in the event of any addition constructed above the adjoining buildings.
- 167 We find the additions are sufficiently set back from the façade of Biltmore, which we find to be its primary significance. This setback, in combination with the lower overall height, will retain visibility of parts of the eastern elevation that includes original window openings and exposed face brickwork.
- 168 Why do we find the impacts on Biltmore acceptable but find the proposal unacceptable in the broader neighbourhood character and heritage impact sense? Biltmore is an imposing building which has its own heritage significance and is individually listed. Its visibility from afar lends to some of its heritage significance. However, we do not agree with the applicant's proposition that any contemporary addition should significantly draw from the scale and visibility of Biltmore, in order to justify its own imposition. Biltmore is a significant outlier in terms of scale and visibility. One example is not the benchmark upon which other development should establish.

What are the impacts on St Vincent Place?

- 169 The respondents argue the addition will intrude on the existing clear sky vistas of the St Vincent Place heritage precinct which is noted for its grandness, harmony and picturesque neighbourhood character. Ms Baker is concerned that the addition may be potentially visible from St Vincent Place. She recommends the upper level of the addition should be concealed from views in this precinct.
- 170 Council submits that the presentation of the addition to land within St Vincent Place heritage overlay is an acceptable outcome. It concludes the addition will not adversely affect the significance of this area as the proposal will not be visually overwhelming.

- 171 The applicant argues that there is no policy reason to conceal new development from views in St Vincent Place. It says the St Vincent Place registration on the Heritage Register does not regulate development beyond the precinct. It submits that what can be seen from St Vincent Place will not unacceptably compromise the heritage significance of this precinct. It submits that protection of the area's heritage status that require it be insulated from any views is unsupportable.
- 172 This view is shared by Mr Gard'ner who considers the addition will not have any adverse impact on the heritage values or presentation of St Vincent Place.

Tribunal findings

- 173 We agree with Council and the applicant that whilst there will be some visibility of the upper levels of the addition from St Vincent Place, this will not detract from this historically important precinct. Based on our site inspection, we note that other higher rise developments are visible in this precinct, including alterations to the rear of Biltmore.
- 174 We find there is no necessity to conceal the development from views in St Vincent Place, as recommended by Ms Baker. In any event, our findings to lower the height of the addition by one level will further reduce the extent of visibility of the built form to the north.

What are the impacts in Bevan Street?

- 175 Council argues that Bevan Street is of mixed character and built form ranging from single storey dwellings to the larger scale of Biltmore and the Hoyts building. It says this street contains heritage and contemporary buildings, as well as the 'back of house' presentation of residential properties and outbuildings with frontage to St Vincent Place.
- 176 Mr Briggs recommends that the primary frontage to the residential development should be to Bevan Street. He considers this is required as the residential development should have minimal presence in the commercial heritage setting of Bridport Street.
- 177 The applicant relies on the evidence of Mr Lovell who notes Bevan Street is not included in a heritage overlay and therefore the main heritage sensitivities regarding the addition are limited to the impacts from the Bridport Street precinct. He says there is no significance associated with the rear of the property and the interface with adjacent properties.

Tribunal findings

- 178 Based on our site inspection, we consider Bevan Street has a more robust, utilitarian appearance that can tolerate some infill development. We note the site abuts the rear yards of two contributory buildings facing Montague

Street to the east and Biltmore to the west which we have found not be adversely impacted by the heights and setbacks of the addition.

- 179 We are satisfied that subject to the removal of the top floor, the addition will provide an acceptable interface to Bevan Street. This is due to the set back of the ground floor from Bevan Street by four metres and Levels 1-3 by 3.5 metres. Whilst there will be a near sheer wall facing this street, this response is acceptable for a street that is not within a heritage overlay.

What are the impacts in Montague Street?

- 180 Photomontage View 4 shows how the addition will present to Montague Street.

Figure 15 – View 04 – Proposed Built Form³⁶



- 181 The respondents are concerned the scale of the addition is too great and it will be highly visible from Montague Street. They say the addition will replace oblique views with contemporary fabric.
- 182 The applicant submits the addition will be seen as a less prominent contemporary addition in the precinct. It relies on the evidence of Mr Gard'ner who considers the addition will not have a negative impact on the smaller scale contributory and non-contributory graded buildings in Montague Street. He considers, as the addition is set back approximately 23 metres from this street, it will not dominate this streetscape.

Tribunal findings

- 183 We find the presentation of the east elevation to Montague Street acceptable as it is set back over 20 metres from the street and is sited behind existing one and two storey shops. We also note the addition is set back 2-3 metres

³⁶ Orbit Solutions – Photomontage A04.04.

from the east boundary for Levels 2 and above which steps the built form away from this frontage. We are satisfied that the inclusion of saw tooth window openings in this elevation provides articulation and visual interest in this varied streetscape. Removal of the top level will also reduce the prominence of the built form in this streetscape.

Are the works to the existing host buildings acceptable?

- 184 A Schedule of Conservation Works³⁷ was devised for proposed works to the existing heritage fabric being retained. This includes retention and restoration of two existing shopfronts and creation of a new residential entry at 150 Bridport Street that includes a fire booster cupboard. It is also proposed to extend the verandah across the entire frontage. The author of this report was not called to give evidence, but it has been referred to, and relied upon, by the applicant, Mr Lovell and Mr Gard'ner.
- 185 Dr Lesh and Ms Baker supported the schedule of conservation works, as set out in their respective statements. Mr Briggs is also supportive but has concerns about the removal of the stone plinth to accommodate the fire booster cupboard. He says this change is not justified and the fire booster cupboard and entry will detract from, rather than enhance, the heritage place.
- 186 Mr Gard'ner agrees and states that it would be desirable if the fire booster cupboard was located to the rear if it was acceptable to Fire Services Victoria. Mr Lovell has a preference to retain and restore the existing shopfront instead of reconstructing it as it would be consistent with the guidelines for conservation in the heritage guidelines.

Tribunal findings

- 187 We find the conservation works will be a positive outcome for the existing heritage fabric to be retained and will be a benefit of the proposal. It is one of the factors that we have considered weighs in favour of the proposal but it is not so significant to outweigh the impact of the proposed building scale and height in the heritage streetscape.
- 188 We note the range of conservation works to the existing shopfronts are generally supported by all the heritage witnesses. We find these works are consistent with local policy at Clause 15.03-1L which is to conserve and enhance significant buildings.
- 189 The main area of concern is whether the shopfront for 150 Bridport Street should be restored or reconstructed. Whilst we agree with Mr Gard'ner and Mr Briggs regarding the position of the fire services cupboard, we consider other options could be implemented to relocate this feature or disguise it in

³⁷ By Bryce Raworth Conservation and Heritage, dated 28 August 2023.

the shopfront, having regard to the relevant authority requirements. This is reflected in Condition 1(c) of the draft conditions.

- 190 Condition 5 of the draft conditions relates to the schedule of conservation works. This condition recommends investigation of whether the original tiling to the floor can be restored and specification of the items of the original shopfront can be salvaged and retained. We are satisfied these matters can be adequately managed by the Responsible Authority.

Is the design of the addition acceptable?

- 191 The addition takes a contemporary form. It is flat-roofed, and uses various forms of concrete finishing, with fluted concrete finish to some of the east elevation walls. Fenestration is simple rectangular form with clear glazing.
- 192 The respondents are concerned that the architectural expression and materiality of the addition is not respectful of Biltmore or the heritage precinct. They rely on the evidence of Mr Briggs who states:

That the design competently presents as solid durable construction with well composed forms, visual interest, and appealing authentic materiality of off-white textured concrete, will not, in my assessment, mitigate against the perception of a substantial new building presence having the scale of a complete heritage building, intruding on top of the heritage place. That the design has portrait format modernist masonry framing to its glazed south frontage, and has its east elevation articulated into vertical sections of smaller elements, in my assessment of the view from the intersection, will only marginally mitigate against the perception of an imposing disruptive bulk.

Whilst the design expression can be considered competent contextual design, with questions regarding the expanse of glazing and brightness of the light concrete, the proposed scale, in my assessment, cannot be considered respectful of the landmark building next door or the heritage scale of the locality.³⁸

- 193 This view is also shared by Dr Lesh who considers the new additions contrast to the heritage area due to their striking architecture.
- 194 Mr Gard'ner has a different view and considers the design adopts a contemporary architectural language with a restrained grid layout articulated by vertically orientated glazing to the south elevation, varied and textured features to the east elevation and restrained grid pattern to the north elevation. He considers this appropriately responds to the context of the precinct and heritage buildings in a contemporary manner. He also says the limited and restrained colour palette, with variations in materials and finishes provides visual interest which refers to the heritage buildings without detracting from its prominence.

³⁸ Mr Briggs' evidence – [3] and [4].

- 195 Whilst Mr Lovell agrees with Mr Gard'ner, he is concerned that the colour palette should be warmer to avoid the harder tones which overly emphasise the modernity of the addition.

Tribunal findings

- 196 From a heritage perspective, the use of modern design detail and materials is a desirable outcome to enable easy distinction between 'new' and 'old' fabric. We find the contemporary design of the addition and the vertical orientation of the window openings in the façade will be complementary to the broader heritage precinct. This is in accordance with the general strategies in the heritage policy to encourage high quality, contemporary design responses that respect and complement the heritage place, including the host building and wider precinct.
- 197 However, we find that the materials and design detail add to the dominant appearance of the additions, particularly when viewed from the oblique from the east. We agree with Mr Lovell that use of off-form concrete and terrazzo aggregate concrete (smooth and fluted) will accentuate the presence of the addition in this heritage setting.
- 198 We will therefore include an additional condition on the permit to revise the materials palette from the stark harder tones to warmer colours, as suggested by Mr Lovell.

ARE THERE ACCEPTABLE AMENITY IMPACTS ON ABUTTING AND NEARBY PROPERTIES?

- 199 The C1Z contains decision guidelines that require consideration of overlooking and overshadowing due to buildings and works affecting adjoining land within a NRZ and the objectives, standards and decision guidelines of Clause 58.
- 200 The respondents argue that every resident has a right and expectation to a reasonable standard of amenity in the context of where they sit. They submit the benefit of the size of the review site is that it provides more flexibility to manage its impacts without compromising the amenity of adjoining residents in Biltmore.
- 201 They rely on the evidence of Mr Furness who considers the development does not achieve an appropriate response to the Biltmore interface. He has concerns that the massing and setback of the west elevation will have a material impact on the residential amenity of Biltmore due to visual bulk, loss of outlook, reduced sunlight and loss of daylight. He considers these impacts go beyond what can be reasonably expected as the Planning Scheme does not support substantial change at this location.
- 202 Council argues the proposal will not unreasonably impact the amenity of neighbouring and surrounding properties due to visual bulk, overlooking and overshadowing. It submits that given the zoning and policy context, a

degree of change is expected in the Albert Park NAC. It considers that those residing within a residential zone adjacent to an activity centre ought to expect a degree of built form change and should not demand the same level of amenity protection which is provided in a residential zone.

- 203 The applicant supports this proposition and submits the proposal will intensify the land that is anticipated and encouraged by policy. It acknowledges that residents of Biltmore enjoy a high degree of amenity that includes expansive views, large private balconies, and multiple aspects, in addition to their high locational amenity. However, it argues that within this context, amenity expectations of the adjoining landowners in Biltmore should be tempered as they are within a C1Z that is within an activity centre.
- 204 Ms Jordan agrees with this proposition and considers that residents in this environment should expect a different level of amenity compared to properties in the residential hinterland. However, she acknowledges the Planning Scheme is committed to maintaining appropriate levels of residential amenity and that intensification of residential or business activity in the C1Z should not unduly impact on nearby residential properties. She considers this has been achieved in this proposal as the addition has been designed in the round as it is set in from all side boundaries, except for the lift core.

Tribunal findings

- 205 The question of reasonableness of the amenity impacts is at the heart of our decision given the context of the site within the Albert Park NAC. As our findings indicate, we consider that some form of built form change can occur in this NAC, provided it is respectful of the existing heritage precinct.
- 206 Based on our site inspection, submissions and evidence, we find the addition will maintain reasonable levels of amenity for the residents of Biltmore and the adjoining residential area in terms of overlooking, overshadowing, visual bulk and wind. We expand on these matters further below.

Visual bulk

West - Biltmore

- 207 The respondents who reside in Biltmore are concerned that the addition is too close and too tall, resulting in an oppressive impact on their dwellings. They rely on the evidence of Mr Furness who says the addition will unreasonably diminish the amenity of these dwellings whose orientation, window placement and setbacks from the common boundary are derived from the adaptive re-use of an important heritage building.
- 208 Mr Furness questions why there is a three metre setback to the west boundary. He says no analysis has been undertaken to assess whether this

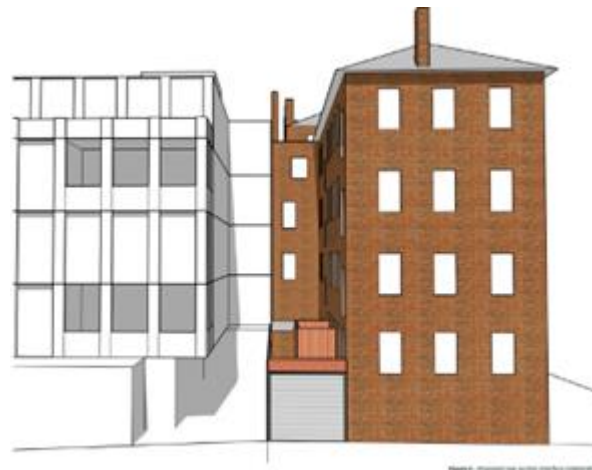
setback responds to the various windows in Biltmore that face the review site. He says these dwellings are vulnerable to built form change as they have living room windows in the east elevation which contribute to their amenity.

- 209 Council submits the three metre setback to the west boundary (with the exception of the lift core) results in acceptable visual bulk impacts to Biltmore given that most of the habitable rooms in the affected dwellings have a dual aspect.
- 210 The applicant relies on the evidence of Ms Jordan and Mr Sheppard. Ms Jordan considers the spacing between buildings of between four to six metres will provide opportunities for outlook to the south-east and north-east for the existing dwellings in Biltmore. Mr Sheppard also conducted an analysis of the layout of the dwellings within Biltmore and concludes the three metre setback will ensure an appropriate level of amenity is maintained to the east facing windows which are not the primary living rooms.

Tribunal findings

- 211 The southern section of the east elevation of Biltmore contains habitable room windows that are set back one metre from the shared boundary at all levels, whilst the northern (rear) section is set back approximately 3.3 metres. Mr Furness generated a diagram that shows the relationship of the addition to Biltmore.

Figure 16 – Proposed rear section interface relationship with Biltmore on the right³⁹



- 212 Apart from our site inspection of all the dwellings in Biltmore, we were provided with floor plans that show the layout of rooms that have an outlook over the subject site.
- 213 Based on our site inspection, we observed that some east facing windows within Biltmore have enjoyed expansive views over the subject site towards

³⁹ Evidence of Mr Furness – Figure 9.

the city and beyond. However, given the dwellings' layout, east elevation windows to living rooms are not the sole means of outlook. The floorplans show that all dwellings have windows that either face Bridport or Bevan Streets, or in the west elevation. These windows also contribute to the internal amenity of the dwellings and are not affected by the addition.

- 214 Whilst some dwellings have bedrooms that have a sole outlook to the east, we consider these to be secondary rooms that can accommodate some outlook to the addition which is to be set back three metres from the common boundary.
- 215 We find the siting of the addition is an acceptable outcome and removal of one level will further reduce the visual bulk impacts to Biltmore, particularly for the upper levels of this building.

North – Bevan Street/St Vincent Place

- 216 Respondents who reside in St Vincent Place are concerned the height and scale of the building will cause unreasonable visual bulk impacts on their yards and living areas, some of which are above their garages.
- 217 Council submits the proposal will not result in unreasonable visual bulk impacts on the properties to the north. It says the height, scale, materiality and design of the addition is an acceptable response to this interface given the level of separation from the NRZ and setbacks of the upper levels.
- 218 The applicant agrees and says the proposal addresses the amenity of residents to the north. Ms Jordan considers the upper levels of the addition are set back from the rear boundary and the road reserve provides a significant physical separation between the built form and neighbouring properties.

Tribunal findings

- 219 We agree with Ms Jordan that Bevan Street, which is approximately 11.5 metres wide, provides a generous separation to the properties that abut Bevan Street. We observed many of these dwellings face St Vincent Place and contain garages and outbuildings abutting Bevan Street.
- 220 We consider the setbacks of the north elevation at Levels 1-3 by 3.5 metres and Level 4 by 6.7 metres also reduces the building scale facing these properties. We find that removal of Level 4, combined with the detailed fenestration, will present an acceptable building scale to the Bevan Street interface.

Overshadowing

- 221 The respondents in Biltmore are concerned about overshadowing of their east facing windows and terraces. They rely on the evidence of Mr Furness who considers that sunlight, particularly to living rooms, provide benefits to their internal amenity and ambient warming in the winter months. He

produced cross-section shadow diagrams to show the impacts on the existing windows in the east elevation of Biltmore for the 22 September (Equinox). These diagrams show morning sunlight will be reduced, including at the lower levels at the rear of the building. Mr Furness considers the cumulative impact of the shadow on these windows and private open space courtyards is substantial in the morning.

- 222 The respondents are also concerned about the extent of overshadowing of the Broadway Tree Reserve to the south. They say the winter shadow diagrams show this area will be overshadowed to such an extent that it is undesirable. They submit this area is used for various public events throughout the year.
- 223 Council submits that the shadow diagrams show that there will be no overshadowing of secluded open space within the dwellings in Biltmore as these areas are primarily on the western side of the building.
- 224 The applicant acknowledges the addition will cast some shadow on the east elevation of Biltmore at the Equinox between 9.00am and 1.00pm. However, it submits this shadow does not impact areas of secluded private open space. Mr Sheppard agrees and considers the extent of additional overshadowing is acceptable in the context of the Albert Park NAC.

Tribunal findings

- 225 We note there is nothing in the Planning Scheme that requires consideration of overshadowing of secluded private open space in a C1Z.
- 226 We observed that Biltmore has communal open space on the west side of the building that includes a swimming pool and terrace. There are also dwellings that have balconies facing Bridport Street or in the west elevation. We note that Apartment 12 has a deck in the east elevation adjacent to the stairwell that includes screening.
- 227 The shadow diagrams show the east elevation of Biltmore will be affected to varying degrees between 9.00am and 12 noon. We are satisfied that the extent of overshadowing of the east elevation of Biltmore is not unreasonable given that not all windows are affected in the morning and there are no impacts in the afternoon.
- 228 There will be no overshadowing of secluded private open space in the NRZ1, which is on the north side of Bevan Street nor will there be any overshadowing of roof top solar systems.
- 229 Shadow impacts from the addition in the afternoon fall over the rear yards of existing commercial buildings facing Montague Street only.
- 230 Clause 15.01-2L-01 contains a strategy to maintain sunlight access to key public open space areas through sensitive design and siting of new development. The winter solstice (22 June) diagrams show there will be an increase in shadows cast over the Broadway Tree Reserve between 2.00pm

and 3.30pm. Given that we are recommending removal of level 4, there will be reduction in the amount of shade affecting this open space to an acceptable level. This area is already currently substantially affected by shadows cast by Biltmore in winter.

Daylighting

- 231 The respondents argue that no assessment has been undertaken of the daylighting impacts on Biltmore. They consider placement of a five storey wall, three metres from the boundary, opposite their windows will have a material effect in the ambient daylight received by their existing dwellings.
- 232 The respondents rely on the evidence of Mr Furness. He considers the proposal will diminish daylight to windows within the central part of the east elevation of Biltmore that serves bedrooms and bathrooms which is beyond what is anticipated in policy. He considers the impact on the dwellings are greater than what is expected in Standard B19 of Clause 55, if it applied to the proposal.

Tribunal findings

- 233 We acknowledge Clause 15.01-2L-02 seeks to achieve a healthy indoor environment for dwellings and Standard D6 of Clause 58.03-1 (Energy Efficiency) requires the siting and design of buildings to ensure the energy efficiency of existing buildings is not unreasonably reduced.
- 234 However, we find that given the separation between the addition and Biltmore ranges from four to over six metres, there will be some daylight access to all habitable rooms in Biltmore. We note the lower levels of the front of this building already have lower access to daylight due to the reduced setback to the common boundary (i.e. one metre).

Overlooking

- 235 Respondents in Biltmore and Bevan Street are concerned that there will be unreasonable overlooking from the addition onto roof top terraces and habitable room windows.

Tribunal findings

- 236 We are satisfied that appropriate screening measures to prevent unreasonable overlooking are implemented in the west elevation of the addition that includes use of fluted glass for full height windows. We agree with Ms Jordan that this glass should be designed to have no more than 25 percent transparency for habitable room windows. This can be dealt with as a condition on the permit.
- 237 We consider that views from north facing windows do not require screening given the width of Bevan Street provides a suitable separation between these properties.

Wind

- 238 The respondents are concerned that this issue has not been adequately addressed by the applicant as it is a requirement of Clause 58.
- 239 Council acknowledges that a wind assessment was not included with the application but has since been submitted by the applicant.⁴⁰ This report concludes the original proposal will not generate unacceptable wind impacts. It considers that a condition can be included on the permit requiring a wind impact assessment.

Tribunal findings

- 240 Clause 58.04-4 (Standard B17 – Wind Impacts) has an objective to ensure the built form, design and layout of development does not generate unacceptable wind impacts within the site or on surrounding land.
- 241 Condition 6 of the draft conditions includes a requirement for a Wind Impact Assessment Report that is based on the amended plans. Given that we are removing the top level of the addition, this condition is not required as the standard is applicable for development for five or more storeys. This condition will be deleted from the permit.

ARE THERE ANY OTHER ISSUES?

Traffic and car parking

- 242 Some of the respondents raised concerns about increased traffic in Bevan Street because of the proposal. They say this street is already overused by cars travelling for various purposes. Issues were also raised in respect of the likelihood that future residents of the proposal would prefer to park in Bevan Street, rather than suffer the inconvenience of traversing the basement levels of car parking as proposed.
- 243 They submit Bevan Street is not just the rear of residential and commercial properties on either side but contains residential properties fronting it as well as the rear of properties fronting St Vincent Place.
- 244 Restricted car parking is permitted along parts of both sides of Bevan Street. This matter was raised by the respondents in the context of existing car parking saturation and traffic movements being difficult. They argue the proposal is set to exacerbate this situation.
- 245 The proposal seeks a reduction in car parking requirements associated with the restaurant component only. The provision of car parking for the residential component meets the requirements of the planning scheme.

⁴⁰ Wind Impact Assessment – Vipac Engineers and Scientists Ltd, 20 October 2023.

246 Clause 52.06 of the planning scheme sets out the following on-site car parking provision requirements as extracted from Mr Gnanakone's evidence.

Figure 17 – Car Parking Requirements⁴¹

Table 7 Clause 52.06 – Car Parking Requirements

Use	No./ Area	Rate	Car Parking Measure	Total
Dwelling	3	1	to each one or two bedroom dwelling	3
	6	2	to each three or more bedroom dwelling (with studies or studios that are separate rooms counted as bedrooms), plus	12
	10	0	for visitors to every 5 dwellings for developments of 5 or more dwellings	0
Restaurant	455 m ²	3.5	To each 100 m ² of each leasable floor area	15

247 A total of twelve car parking spaces are required for the restaurant and three on-site spaces are proposed, requiring a reduction of nine spaces.

248 It was Mr Gnanakone's evidence that the reduction sought is acceptable based on the following reasons:

- Council policy supports reduced reliance on private vehicles;
- The site has excellent access to sustainable transport modes with numerous tram and bus services in the immediate vicinity and access to formal and informal cycling routes, providing access options for residents, employees and visitors;
- The removal of the existing rear crossovers to Bevan Street will create the opportunity for 2 new kerbside parking spaces to service the development;
- It is considered appropriate that parking be accommodated in a shared arrangement for the precinct as a whole, rather than providing car parking for each individual use;
- It is considered that the on-street and off-street parking in the vicinity of the proposed development is appropriate to cater for the car parking demands generated by the restaurant visitors.⁴²

249 In relation to traffic generation, Mr Gnanakone says that given the nature of this development, its location and proximity to public transport and other services, a daily traffic generation of four vehicle movements per day would be a likely outcome, with 10% of those occurring at peak times.

250 Based on a total of 36 movements that would occur throughout the day, with four of those being at peak times, Mr Ganankone says this would be a low volume of traffic and would be similar to existing traffic generation

⁴¹ Mr Gnanskone evidence - Appendix B page 16.

⁴² Mr Gnanakone evidence – page 7.

from the site, although he did not cite any surveys of existing traffic movements associated with the use of the land at present.

Tribunal findings

- 251 Based on the evidence of Mr Gnanakone, we find that the traffic and car parking impact as a result of this proposal will be acceptable. We have come to this conclusion based the current plans before us. However, the reduction by one apartment at the top level will have obvious beneficial effect of reducing the likely number of total vehicle movements across a day, as well as at peak times.
- 252 We find that there are no design issues with the on-site car parking that would likely impact the decision of an occupant of the site to prefer to park in Bevan Street, rather than in their designated space within the basement.
- 253 Whilst we cannot discount the possibility that an occupant of the development might choose to park in the surrounding street network. This would be no different than an existing resident choosing to do so when they might also have their own convenient off-street car parking.
- 254 Whilst residents of the development might prefer to park within a street, as opposed to the basement, we find there are no significant reasons to tip the balance for future occupants to do so on a regular basis such that on-street parking and traffic will be unacceptably impacted. We note the parking layout is workable and complies with the Planning Scheme requirements and vehicles can exit the basement in a forward direction.
- 255 Further, we accept that occupants cannot be compelled to park on site, but when the requirements for on-site car parking provision have been met for the residential component, refusing the application on this ground is beyond the Tribunal's scope.
- 256 In terms of traffic generation, it is obvious the proposal will generate vehicle movements to and from the site and Mr Gnanakone has provided evidence as to what this is likely to be. No other material of evidentiary value put to us to contradict this evidence.
- 257 We acknowledge that there will be some traffic generated from the existing uses on the land. However, no evidence was presented to us about that impact, including surveys or an analysis of the existing uses and an empirical analysis against other similar uses in similar locations. We therefore accept Mr Gnanakone's evidence that the proposed traffic generation is likely to be low and infrequent. This will also be further reduced by a reduction in one apartment.
- 258 For the reasons set out above, we find there are no traffic reasons to direct that no permit be granted.

Landscaping

- 259 The matter of landscaping was also raised by two of the respondents in the context of Clause 58.03-5 (Standard D10 – Landscaping).
- 260 Submissions were made by the respondents that the development proposes removal of existing tree canopy that should be retained. They also argue that there is minimal landscaping detailed in the Landscape Plan which does not comply with landscaping requirement in Standard D10. They further submit the proposal includes only 2% of the site area designated as landscaping which relies almost entirely on narrow planter boxes and large pots. The respondents are concerned that the proposed landscaping may never be planted and may be readily removed from the site. They say this does not ensure the permanent landscaping required to meet the Clause 58 objective as it depends on the residents implementing and maintaining the landscaping.
- 261 Furthermore, the respondents are concerned that a permit condition requiring this landscaping to be carried out and landscaping maintained does not facilitate compliance. They submit it is incapable of enforcement in relation to future owners and occupants on whom the landscaping and its maintenance depends.

Tribunal findings

- 262 Clause 58 applies to apartment developments of five or more storeys in certain residential zones and all residential apartment developments in various non-residential zones, including the C1Z which applies in this case.
- 263 We accept the proposal does not comply with requirements for deep soil planting recommended in Standard D10. However, the objective of this clause requires the provision of landscaping that supports the existing character of the area and reduces the visual impact of buildings on the streetscape.
- 264 In this case, the additions are proposed to an existing building. We find that in this context, provision of landscaping between the existing built form to be retained and the new additions is not something that the existing neighbourhood character demands as it does not display a strong landscape character. It is an inner urban environment, where lot sizes in the residential area are small and commercial properties have little landscaping of any note.
- 265 The proposed landscape plan shows a very modest landscape contribution, with few plants and mostly located in pots or planters and only one specimen of landscaping within natural soil at ground level. In such a context, we are satisfied the landscaping response is acceptable.

Communal open space

- 266 Some of the respondents raised concerns about the absence of communal space in the proposal. They submitted that Clause 58 is premised on, and requires the provision of, communal open space in apartment design. They argue the failure to provide communal open space fails to meet the requirements in Clauses 58.03-2 (Standard D7- Communal Open Space), 58.05-2 (Standard D19 – Building Entry and Circulation) and 58.06-1 (Standard D22 – Common Property).

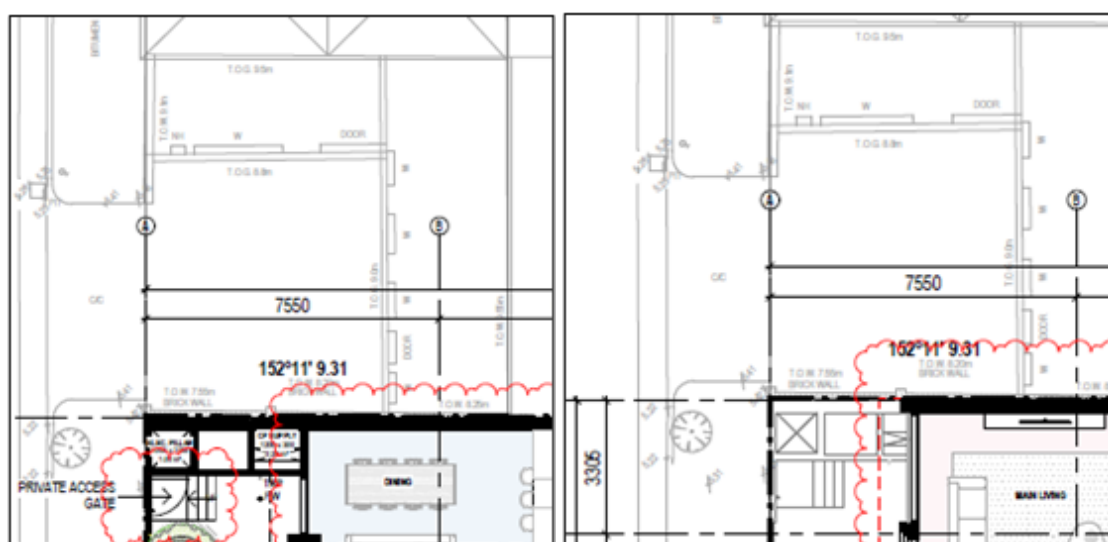
Tribunal findings

- 267 We note that Standard D7, Communal Open Space only applies to developments of 10 or more dwellings, whereas only nine are proposed in this application.
- 268 Standards D19 and D22 relate to provision of certain elements where communal areas exist. There is not a separate requirement for the provision of communal space in these clauses.

Equitable development

- 269 The respondents raised concerns the proposal will impact the equitable development rights on 326 Montague Street that has partly vacant land that abuts the review site. They say the proposal will impact the ability for this site to be developed in the future and the proposal should be set back further to ensure equitable development rights are preserved. This concern was raised in the context of submissions that there are low expectations for growth in this neighbourhood.

Figure 18 - Proposed ground floor (left) and first floor (right) as it abuts 326 Montague Street⁴³



⁴³ TP.1100 and TP.1101.

Tribunal findings

- 270 The submissions on equitable development were not put to the Tribunal in the context of any Planning Scheme controls or policies, nor was any case law referred to in how this concept should be applied in this instance. These submissions were also very brief and absent in detail, and as such, we find it difficult to give them much, if any, weight.
- 271 However, we are not persuaded that there will be any unacceptable equitable development impacts to 326 Montague Street as a result of this proposal. We have come to this conclusion as the adjacent property at 326 Montague Street, already has a single storey structure constructed to the common boundary.
- 272 In the context of this site, including physical and Planning Scheme contexts, we find that it is feasible that a double storey building might be constructed at the rear of 326 Montague Street either on, or close to, the common boundary. Double storey construction in this location would be consistent with the scale of other development at the rear of lots nearby.
- 273 The proposal also provides for the opportunity for a simultaneously abutting boundary construction on 326 Montague Street. This would still provide open northerly aspect to this site.
- 274 The single storey component of the proposal to be constructed along the eastern boundary would similarly allow northerly aspect to be retained, as well as westerly for daylight purposes.
- 275 As such, we have no concerns about the proposal impacting on the ability of 326 Montague Street to be reasonably developed in the future.

WHAT CONDITIONS ARE APPROPRIATE?

- 276 Conditions were discussed at the hearing and any changes to the permit conditions contained in Appendix A of this order reflect those discussions plus further consideration by the Tribunal.
- 277 The respondents submitted the development should delete Level 4 or the alternative, remove of Level 3, of the building. They also considered the lift well should be relocated from the west boundary.
- 278 Some of the respondents requested that additional conditions be included on the permit to require the development to meet all the mandatory objectives and requirements of Clause 58, including Standards D5 (Integration with the street), D7 (Communal open space), D8 (Solar access to communal outdoor open space) and D10 (Landscaping). They also requested that the ESD report be amended to respond the NatHers rating.
- 279 We have reviewed the Clause 58 assessment conducted by Ms Jordan in Appendix 4 of her evidence and accept her analysis that the proposal meets the relevant objectives of this clause.

CONCLUSION

280 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Jane Tait
Member

Joel Templar
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	PDPL/00817/2022
LAND	146-150 Bridport Street ALBERT PARK VIC 3206

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- The partial demolition and construction of a multi-storey building over two (2) basement levels within the Heritage Overlay (HO443) and comprising a restaurant (as-of-right); the use of the land for accommodation with a ground floor frontage exceeding 2 metres in width; a reduction in the number of car parking spaces required under clause 52.06-5 for the restaurant and a reduction in the bicycle requirements of clause 52.34.

CONDITIONS

Amended Plans Required

- 1 Before the use and/or development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale and dimensioned. The plans must be generally in accordance with the amended plans by Cera Stribley Revision C dated September 2023, but modified to show:
 - (a) The deletion of Level 4.
 - (b) Alteration of the materials colour palette to warmer tones.
 - (c) The material for the screening to the balcony associated with dwelling 102.
 - (d) The ‘non-heritage shopfront to be demolished’ annotation on TP.0302 deleted and specific items detailed in accordance with the Schedule of Conservation Works at Condition 5.
 - (e) If feasible, having regard to any relevant engineering and authority requirements, the relocation of the fire booster cupboard from shop 150 to the rear of the building and integrated into the fencing along Bevan Street.
 - (f) The location of a mailroom.
 - (g) ‘Food and beverage’ notation deleted and replaced with ‘restaurant’.

- (h) Shower and changeroom facilities for restaurant employees in accordance with Clause 52.34-5.
- (i) Bicycle signage as required by Clause 52.34-7.
- (j) All columns within each basement to be clearly annotated to comply with AS2890.1.
- (k) A notation that new on-street parking area parallel to the Bevan Street title boundary is to be signposted as 1P and include the same day/time restrictions to match those current parking restrictions in this section of Bevan Street.
- (l) All grades, length of grades, and intermediate levels along the internal edge of the main ramp in accordance with AS2890.1.
- (m) The northern boundary fence identified on the ground floor plan consistent with the north elevation.
- (n) The design of the terrace gates to Bevan Street, as depicted in the north elevation, to allow for some visual permeability to the street.
- (o) The fluted glass in west facing habitable room windows to be no more than 25% transparent.
- (p) Urban Art in accordance with Condition 4.
- (q) Any changes required by Condition 5 Schedule of Conservation Works.
- (r) Any changes required by Condition 6 Waste Management Plan.
- (s) Any changes required by Condition 7 Sustainable Management Plan.
- (t) Any changes required by Condition 12 Landscape Plan.

No Alterations - use and development

- 2 The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority.

No alterations - external materials

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

Urban Art

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

accordance with the approved plan must be installed prior to the occupation of the building to the satisfaction of the Responsible Authority.

Schedule of Conservation Works

5 Prior to the any demolition and endorsement of plans under Condition 1 of this permit, an amended Schedule of Conservation Works based on the report prepared by Bryce Raworth dated 28 August 2023 and the amended plans by Cera Stribley Revision C dated September 2023, must be submitted to and approved by the Responsible Authority. When approved, the Schedule of Conservation Works will be endorsed and will form part of the permit. The amended Schedule of Conservation Works must:

- (a) Revise the South Elevation – Proposed CWS 1.3 (Rev B) plan to align with the Cera Stribley (Rev C) architectural plans dated September 2023 modified in accordance with Condition 1.
- (b) Detail the proposed methodology for paint removal.
- (c) Detail the extent of render repair required and any proposed applied finish (skim coat, limewash or mineral silicate paint to the external walls).
- (d) Detail a historically appropriate colour scheme for the existing building.

Shop 146

- (a) Delete all reference to option B at 4.6;
- (b) Detail the proposed treatment of the reconstructed verandah at shop 146; and
- (c) Specify items to be demolished, salvaged and retained to the shopfront.

Shop 148

- (a) Specify items to be demolished, salvaged and retained to the shopfront.

Shop 150

- (a) Investigate whether the original tiling to the floor of the ingo is still extant below the concrete of the splayed doorway and if applicable, provide an assessment of its restoration.
- (b) Delete reference to ‘salvage and retain granite from No 150 shopfront for reuse’.
- (c) Detail the proposed entrance treatment to shop 150; and
- (d) Specify items to be demolished, salvaged and retained to the shopfront.

Reconstruction of verandah and conservation works

- (a) Provide further details of:
 - i the works required to the existing roof and flashing;
 - ii the works, including specific items to be demolished, salvaged and retained to each shop front;
 - iii the works to the verandah, including like-for-like replacement of the steel verandah battens; and
 - iv reinstatement of urns or orbs to the balustrade and/or parapet.

Once approved by the Responsible Authority, all buildings and works must be in accordance with the demolition method statement.

Waste Management Plan

- 6 Prior to the endorsement of plans under Condition 1 of this permit, an amended Waste Management Plan based on the report prepared by OneMileGrid, dated 14 September 2023 must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When approved, the report will be endorsed and will then form part of the permit.

The report must be amended to detail:

- (a) Any relevant Condition 1 changes and requirements.
- (b) Specify the number of floors specified within the development.
- (c) Provide a wash down area to each waste room.
- (d) The provision of storm water pollution prevention.
- (e) The provision of an electronic waste (e-waste) recycling bin / skip.
- (f) Include scaled waste management drawings.

Once submitted and approved, the waste management plan must be carried out to the satisfaction of the Responsible Authority.

Sustainable Management Plan (SMP)

- 7 Prior to the endorsement of plans under Condition 1 of this permit, an amended Sustainable Management Plan (SMP) based on the report prepared by GIW Environmental Solutions, Revision D, dated 14 September 2023 must be submitted to and approved by the Responsible Authority. The report must be amended to:

- (a) All condition 1 changes where relevant.
- (b) All reports and assessment tools to be published and finalised so as to not be in draft form.

Incorporation of Sustainable Design

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

Implementation of Sustainable Design

- 9 Prior to occupation of the development approved under this permit, an ESD Implementation Report (or reports) from a suitably qualified person or company, must be submitted to and endorsed by the Responsible Authority. The Report must confirm that all ESD initiatives in the endorsed SMP and WSUD report have been implemented in accordance with the approved plans to the satisfaction of the Responsible Authority. The SMP and WSUD initiatives must be maintained throughout the operational life of the development to the Satisfaction of the Responsible Authority.

Incorporation of Water Sensitive Urban Design (WSUD) Initiatives

- 10 Prior to occupation of the development approved under this permit, the project must fully implement the water sensitive urban design initiatives listed in the SMP to the satisfaction of the Responsible Authority. These initiatives must be maintained throughout the operational life of the development to the satisfaction of the Responsible Authority.

Maintenance manual for Water Sensitive Urban Design (WSUD) Initiatives

- 11 Before the occupation of the development approved under this permit, a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority. The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:

- (a) inspection frequency;
- (b) cleanout procedures; and
- (c) as installed design details/diagrams including a sketch of how the system operates.

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

Landscape Plan

- 12 Concurrent with the endorsement of plans under Condition 1 of this permit, an amended Landscape Plans based on the Plans prepared by Myles Baldwin Design, Issue A, dated 14 September 2023 must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When

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

- (a) All condition 1 changes.
- (b) Planter dimension, depth and volume notated.
- (c) Details of access to planter boxes and a maintenance schedule.
- (d) Water Efficient Landscaping as claimed in the SDA and BESS report at Condition 8.
- (e) Water Sensitive Urban Design treatments as claimed in the SDA and BESS report at condition 8.
- (f) Level 1 and 2 plans updated to match Condition 1 plans.

All to the satisfaction of the Responsible Authority.

Completion of Landscaping

- 13 The landscaping as shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority before the occupation of the development and/or the commencement of the use or at such later date as is approved by the Responsible Authority in writing.

Landscaping Maintenance

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

Site Management Water Sensitive Urban Design

- 15 The developer must ensure that:
- (a) No water containing oil, foam, grease, scum or litter will be discharged to the stormwater drainage system from the site.
 - (b) All stored wastes are kept in designated areas or covered containers that prevent escape into the stormwater system.
 - (c) The amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads is minimised when vehicles are leaving the site.
 - (d) No mud, dirt, sand, soil, clay or stones are washed into, or are allowed to enter the stormwater drainage system.
 - (e) The site is developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants in accordance with currently accepted best practice.

Car Parking and bicycle parking layout

- 16 Before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and bicycles and access lanes as shown on the endorsed plans must be:
- (a) Constructed;
 - (b) Properly formed to such levels that may be used in accordance with the plans;
 - (c) Surfaced with an all-weather surface or seal coat (as appropriate);
 - (d) Drained and maintained;
 - (e) Line marked, as appropriate, to indicate each car space, visitor space, bicycle space, loading bay and/or access lane; and
 - (f) Clearly marked to show the direction of traffic along access land and driveways.

All to the satisfaction of the Responsible Authority.

On-Site Bicycle Parking

- 17 Before the development is occupied, bicycle racks must be provided on the land to the satisfaction of the Responsible Authority.

Parking and Loading Areas

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

Vehicle Crossings

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

Applicant to Pay for Reinstatement

- 20 Prior to the occupation of the development, the applicant/owner must do the following things to the satisfaction of the Responsible Authority:
- (a) Pay the costs of all alterations/reinstatement of Council and Public Authority assets necessary and required by such Authorities for the development.
 - (b) Obtain the prior written approval of the Council or other relevant Authority for such alterations/reinstatement.

- (c) Comply with conditions (if any) required by the Council or other relevant Authorities in respect of alterations/reinstatement.

Street Tree Protection

- 21 Tree Protection Fencing is to be established around the trees parallel to the Bevan Street boundary.
 - (a) The fencing is to be a 1.8-metre-high temporary fence constructed using chain wire / cyclone mesh panels, with shade cloth attached (if required), held in place with concrete feet/pads. Alternative materials may be used, if approved by the Responsible Authority.
 - (b) No excavation, construction activity, grade changes, surface treatment or storage of materials of any kind is permitted within the Tree Protection Zone without the prior written consent of the Responsible Authority.

Walls on or facing the boundary

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

No Equipment or Services

- 23 Any plant, equipment or domestic services visible from the primary street frontage (other than a lane) or public park must be located and visually screened to the satisfaction of the Responsible Authority.

Piping and ducting

- 24 All piping and ducting (excluding down pipes, guttering and rainwater heads) must be concealed to the satisfaction of the Responsible Authority.

EPA noise guidelines

- 25 The roof top plant and services must be screened and baffled and/or insulated to minimise noise and vibration to other residences in accordance with Environmental Protection Authority Noise Control Technical Guidelines.

Ongoing Involvement of the Architect

- 26 The applicant must retain Cera Stribley (or a suitably qualified firm), to complete the design and provide architectural oversight of the delivery of

the detailed design as shown in the endorsed plans and endorsed schedule of materials and finishes during construction except with the prior written approval of the Responsible Authority.

Time for Starting and Completion

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

- (a) The development is not started within four (4) years of the date of this permit.
- (b) The development is not completed within two (2) years of the date of commencement of works.

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

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

– End of conditions –