

## RED DOT DECISION SUMMARY

The practice of VCAT is to designate cases of interest as 'Red Dot Decisions'. A summary is published and the reasons why the decision is of interest or significance are identified. The full text of the decision follows. This Red Dot Summary does not form part of the decision or reasons for decision.

### VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

#### ADMINISTRATIVE DIVISION

#### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P339/2012  
PERMIT APPLICATION NO. PLN 11/0665

**IN THE MATTER OF** ACCC Pty Ltd trading as AWC Property v  
Yarra City Council & Ors

**BEFORE** Rachel Naylor, Presiding Member  
Ann Keddie, Member

<b>NATURE OF CASE</b>	Proposed 14 storey building comprising 10-11 storeys above an existing heritage building opposite Richmond Station
<b>REASONS WHY DECISION IS OF INTEREST OR SIGNIFICANCE</b>	
<b>POLICY – interpretation or application of policy</b>	Analysis of the tension between urban consolidation and central city policy versus the application of a heritage overlay to a small former industrial precinct
<b>APPLICATION – significant, interesting or unusual use or development; application of policy, provision or principle; or circumstances</b>	Consideration of railway noise impact – in this case the horns and announcements from Richmond Station  Consideration of car parking provision and traffic in a compact precinct with existing parking and traffic issues

#### SUMMARY

This case is about the insertion of an additional 10-11 storeys above an existing 1920's manufacturing/warehouse building, located within a well defined heritage precinct, already the subject of considerable redevelopment.

The State and local planning policies are consistent in their message that the subject land is located in an area where an intensity of development is encouraged. Based on the local planning policy framework, it is our finding that the subject land is within the Swan Street Major Activity Centre. The recent inclusion of the Richmond Station precinct in State planning policy that encourages high scale and high density mixed residential and commercial developments further identifies the area around the station as one where an intensity of development is encouraged. However, this does not create a 'free-for-all' situation in regard to the height and form of development that is acceptable for this land. There are other considerations that come into play through the planning policies and controls that are relevant in this case.

The subject land is a site with constraints as it is within a Heritage Overlay in a discrete industrial sub-precinct; and it has interfaces with a number of other properties and adjoins a major railway station, Richmond Station. This is an area where heritage is clearly manifest in its built form.

We are of the opinion new development in this small heritage precinct between Stewart and Tanner Streets should respond to the existing building form, character and heritage value of the area, and provide for a built form transition to lower scale development to the north on Richmond Hill.

In regard to railway noise, the evidence presented argued for 55 dBA as the appropriate noise level criterion to achieve in bedrooms. Given there is only about 4.5 hours during which there are limited trains and no announcements or train horns, and in light of the evidence that announcement and horn noise can be occasional, random, and annoying, we find the bedrooms should achieve an internal noise level of 50 dBA Lmax.

The evidence about traffic and parking left us with the impression that there is an issue in terms of cumulative parking and traffic impacts given the remaining future development potential that exists within this sub-precinct. If the Council does have a vision for higher density in the balance of this sub-precinct, then it should be taking a precinct wide approach to the benefits and dis-benefits of parking and traffic.

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VCAT REFERENCE NO.P339/2012  
PERMIT APPLICATION NO.PLN 11/0665

**CATCHWORDS**

Application under Section 79 of the *Planning and Environment Act 1987* (the Act) to review a **failure to grant a permit within the prescribed time**. Mixed Use Zone. Heritage Overlay-Schedule 332 (Richmond Hill Precinct). Clause 52.06 Car Parking. Fourteen (14) storey building. Mixed uses (ground floor commercial and 80 dwellings). State and Local Planning Policy Framework. Built form & heritage character. Streetscape. Overlooking, overshadowing, daylight. Car parking, traffic.

<b>APPLICANT</b>	ACCC Pty Ltd trading as AWC Property
<b>RESPONSIBLE AUTHORITY</b>	Yarra City Council
<b>RESPONDENTS</b>	A J Flude, A Marasco, R Clark, S Polan, B & L Rutter, D Butler, A Hughes, G Lacey, J Young, G Brekke, E Tzaros, P & K Franklin, L Gelsomino, B Wilson, Dr P Stahle, N Crockford, A Watkins, K Sund, D Gabbedy, B Goad, J Obst, B Batcheler, B Adair, C Berry, G Wilson, L Martin, G Prue and D Gearon
<b>REFERRAL AUTHORITY</b>	Director of Public Transport
<b>SUBJECT LAND</b>	5 & 9-13 Stewart Street, Richmond
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Rachel Naylor, Presiding Member Ann Keddie, Member
<b>HEARING TYPE</b>	Hearing
<b>DATES OF HEARING</b>	14-18 & 21-23 May 2012
<b>DATE OF DIRECTIONS HEARING</b>	6 August 2012
<b>DATE OF ORDER</b>	9 August 2012
<b>CITATION</b>	ACCC Pty Ltd tas AWC Property v Yarra CC (includes Summary) (Red Dot) [2012] VCAT 1180

**ORDER**

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by

substituting for the permit application plans, the following plans filed with the Tribunal:

- Prepared by: Plus Architecture Pty Ltd
- Job No. 11321 Drawing numbers: 2.12-2.19, 3.2, all revision C, SD 0100-SD 0101 revision 7, SD 0102-SD 0111 revision 8, SD 0112-SD 0114 revision 9, SD 0115 revision 12, SD 0200 revision 5, SD 0201-SD 0203 revision 4, SD 0300-SD 0301 revision 6.
- Plot date: 23/3/2012

2 The decision of the Responsible Authority is affirmed.

3 In permit application PLN 11/0665 no permit is granted.

Rachel Naylor  
**Presiding Member**

Ann Keddie  
**Member**

## APPEARANCES:

### For Applicant

Mr C Wren SC of counsel, instructed by Best Hooper Solicitors (Ms T Cincotta & Ms S Raso)

He called Mr Briggs, design architect of Plus Architecture to explain the plans at the start of the hearing.

He also called the following expert witnesses:

- Mr M Montgomery, lead visualiser of Urban Angles Pty Ltd;
- Mr T Marks, acoustic engineer of Marshall Day Acoustics;
- Ms A Brady, heritage consultant of Lovell Chen,
- Mr M O'Dwyer, architect of H2O Architects,
- Ms C Heggen, town planner of Message Consultants;
- Mr J Kiriakidis, traffic engineer of GTA Consultants; and
- Mr A Biacsi, town planner of Contour Consultants.

### For Responsible Authority

Mr J Rantino, solicitor of Maddocks

He called the following expert witnesses:

- Ms R Riddett, heritage consultant of Anthemion Consultancies; and
- Mr R McGauran, architect of MGS Architects.

### For Respondents

Ms E Tzaros, Mr G Brekke & Mrs K Franklin appeared for Save the Face of Urban Richmond Group. They called lay evidence from Ms L Gelsomino

Mr R Clark, Mr G Prue and Dr P Stahle appeared in person

Mr R Clark also appeared for Mr B Batchelor and Mr D Gearon

## INFORMATION

### Land Description

The review site comprises two parcels of land, 5 and 9-13 Stewart Street Richmond which occupy the southern part of the block bounded by Stewart Street, Margaret Street, Tanner Street and Stewart Place. The area of the site is approximately 1,130sqm, with frontages of 44.2m to Stewart Street, 31.9m to Margaret Street and 15.8m to Stewart Place. Two storey brick former industrial/ manufacturing buildings currently occupy the site.

Immediately to the south, across Stewart Street, are the elevated platforms of Richmond station. Townhouse style warehouse conversions abut part of the site's north and west boundaries. Apartment buildings abut the site to the north and east, across Margaret Street. Some parts of these buildings are new and others utilise part of the existing heritage building stock. Upper levels are generally set back from the street edge. Heights of the newer buildings range from three to seven storeys.

The low scale residential area of Richmond Hill is to the north of the former industrial precinct, across Tanner Street.

The site is very well located in terms of its access to public transport, retail, entertainment and other services and faculties.

### Description of Proposal

Construction of a 14 storey building comprising 10-11 storeys above the existing buildings, ground floor office and 20 seat café with dwellings on the upper levels. Car parking is provided in two basement levels and on the first and second floors, all accessed by car lifts. Vehicular access is from Margaret Street. A rooftop communal recreation area is provided for residents.

### Nature of Proceeding

Application under section 79 of the *Planning and Environment Act 1987*.

### Zone and Overlays

**Clause 32.04:** Mixed Use Zone (MUZ)

**Clause 43.01 :** Heritage Overlay (HO 332 Richmond Hill Precinct) (HO332)

**Clause 45.03 :** Environmental Audit Overlay

Permit Requirements

**Clause 32.04-1:** A permit is required to use land as an office and food and drink premise (café) in MUZ.

**Clause 32.04-5:** A permit is required to construct 2 or more dwellings on a lot in MUZ.

**Clause 43.01-1:** A permit is required to demolish or remove, externally alter or to construct a building or construct or carry out works in HO332.

**Clause 52.06-1:** A permit is required for a reduction in the required provision of car parking.

**Clause 52.07:** A permit is required to waive the provision of a loading bay

Tribunal Inspection  
Accompanied by the Parties

16 May 2012

## REASONS

### OVERVIEW

- 1 This case is about the insertion of an additional 10-11 storeys above an existing 1920's manufacturing/warehouse building, located within a well defined heritage precinct, already the subject of considerable redevelopment.
- 2 The Applicant considers that the new building not only fulfils the expectations for intensive residential development in activity centres but that it is also displays design excellence such that it will become an icon in the not too distant future.
- 3 Council disputes the design quality and considers that the building form is inappropriate in its heritage setting. The objectors to the application oppose the grant of a permit on a variety of grounds, all related to their primary contention that the proposal represents an overdevelopment of the site. They say the proposal does not respect its location in a heritage precinct, ignores the equitable development opportunities on adjoining sites, and has unacceptable off-site amenity impacts including overshadowing and traffic impacts.
- 4 The State and local planning policies are consistent in their message that the subject land is located in an area where an intensity of development is encouraged. Based on the local planning policy framework, it is our finding that the subject land is within the Swan Street Major Activity Centre. The recent inclusion of the Richmond Station precinct in State planning policy that encourages high scale and high density mixed residential and commercial developments further identifies the area around the station as one where an intensity of development is encouraged. However, this does not create a 'free-for-all' situation in regard to the height and form of development that is acceptable for this land. There are other considerations that come into play through the planning policies and controls that are relevant in this case.
- 5 The subject land is a site with constraints as it is within a Heritage Overlay in a discrete industrial sub-precinct; and it has interfaces with a number of other properties and adjoins a major railway station, Richmond Station.
- 6 This is an area where heritage is clearly manifest in its built form. We have concluded that the retention of much of the existing facades of the host buildings does not in this case justify a further 10-11 storeys on the subject land. Although by its design the tower is clearly distinguishable from the original fabric, we cannot conclude that it achieves local policy to be visually recessive and not dominate the heritage place<sup>1</sup>. Further, although the built form and appearance of the proposed building is separated from

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<sup>1</sup> Clause 22.02



the lower levels that are part of ‘the significance of the heritage place’<sup>2</sup>, we consider that the striking design and height of the building will adversely affect the physical manifestation and understanding of that significance which is so clearly evident in the precinct today.

- 7 We are of the opinion new development in this small heritage precinct between Stewart and Tanner Streets should respond to the existing building form, character and heritage value of the area, and provide for a built form transition to lower scale development to the north on Richmond Hill. This proposal fails in these regards.
- 8 The proximity of the proposed building and its impacts by way of overlooking to the east and west and overshadowing to the west were of particular concern to residents living in townhouses/apartments in Stewart Place and Margaret Street. We are satisfied the setbacks of the proposed building are reasonable, hence we do not consider they need to be increased in order to address amenity concerns or to satisfy the equitable development objective.
- 9 It is the findings we have made in regard to the proposal’s response to the area’s heritage significance, coupled with aspects of the building’s design that have led us to affirm Council’s decision to refuse this proposal. We are cognisant that other issues were raised during the hearing and so we have also provided findings on a number of these, in the hope that it will assist the parties in their consideration of any new planning application for this land.

## **BACKGROUND**

- 10 ACCC Pty Ltd trading as AWC Property applied to Yarra City Council (‘the Council’) for a permit to construct a 14 storey building comprising an office and cafe on the ground floor, and dwellings on the upper levels. Notice of the application was given and the Council received 140 objections and 2 letters of support for the proposal.
- 11 The permit applicant then applied to the Tribunal to review the Council’s failure to make a decision within the prescribed time. Subsequently, the Council decided it would have refused the application on the following grounds:
  1. The height and bulk of the development is inappropriate for the neighbourhood context and fails to comply with objectives contained in policy at clauses 15.01-1 (Urban Design) and 21.05-2 (Urban Design) of the Yarra Planning Scheme.
  2. The height and scale of the development will visually dominate the heritage place, which is contrary to the purpose of the heritage overlay at clause 43.01 and fails to comply with clauses 21.05-1 (Heritage) and 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay).

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<sup>2</sup> Clause 43.01

3. The proposed development fails to adequately respond to the off-site amenity impacts on the immediate neighbours to the west through overlooking, and visual bulk by failing to comply with Objective 2.6 of the former Department of Sustainability and Environments (DSE) Guidelines for Higher Density Residential Development.
  4. The development provides an excessive amount of car parking on site and is therefore not consistent with both State and Local policies relating to sustainable transport at clauses 11.01, 18 and 21.06.
- 12 Subsequent to the Council decision, the Applicant circulated amended plans. The amended plans reduce the number of apartments from 90 to 80; increase the setbacks from Stewart Place and Margaret Street; reduce on-site car parking spaces from 81 to 75; and increase on-site bicycle parking spaces from 29 to 123. There was no objection to the application to substitute amended plans, so we granted leave. Hence it is these plans that form the basis of our decision.
- 13 A considerable number of further amendments were proposed by the Applicant during the course of the hearing in response to suggestions from expert witnesses and questions of clarification that arose. We acknowledge the detail was of assistance in explaining the design and the suggested changes may create some improvements, but overall these further amendments are not sufficient. We have concluded that the proposal is not an acceptable planning outcome for this site and location. In our opinion, a more sophisticated approach is needed for the design of this site, and this involves a rethink of the whole proposal. Our reasons follow.

## **REASONS FOR DECISION**

- 14 During this eight day hearing there were many matters raised in submissions and evidence. It is not our intention to deal with all of these in explaining the reasons for our decision. Rather, we have decided to focus upon those issues that have had particular influence in our consideration of the merits of the proposal and our decision to refuse to grant a permit. The issues we wish to make findings on are:
- i Is the proposal supported by the planning policy framework, zone, overlay and particular provisions of the planning scheme?
  - ii Is the building height and form an appropriate response to its context?
- 15 We have also made findings on some other matters which arose during the hearing in the hope that it will assist all parties in considering any new planning application for the subject land. They are:
- The car parking and traffic;
  - The noise from Richmond Station; and
  - The amenity impacts.

## The Planning Policies & Controls

- 16 State planning policy seeks to locate new housing in or close to activity centres and at other strategic redevelopment sites that offer good access to services and transport. None of the parties disputed the fact that the subject land has excellent access to services such as Swan Street commercial centre, the parkland, sports and entertainment facilities, and public transport, particularly Richmond Station and the Swan Street tram.
- 17 Some of the expert witnesses described the subject land as being located within the Swan Street Major Activity Centre, but the Council officer report states the land is just to the north of the activity centre. Ms Heggen said the Planning Scheme is at best ambiguous or at worst confused, as there are two indicative but contrary maps in the planning scheme. This ambiguity or confusion is a matter of some significance in this case because a Major Activity Centre (MAC) has:
- ... the potential to grow and support intensive housing developments without conflicting with surrounding land uses.<sup>3</sup>
- 18 The words “without conflicting with surrounding land uses” means that potential amenity conflicts, for example, are of lesser importance or significance in a MAC than in an area that is adjacent to the MAC. This therefore influences the weight that we can give to some of the residents concerns, so it is necessary for us to determine whether the subject land is within the Swan Street MAC or not.

### Is the Subject Land in a Major Activity Centre?

- 19 Mr Wren explained the MSS needs to be understood by reading both the indicative maps and the associated text. Whilst clause 21.04-2 provides a broad strategic framework, the Central Richmond and Cremorne neighbourhood areas at clause 21.08 provide greater guidance by including part of the subject land (the Stewart Street frontage) within the MAC bubble. The associated text describes the Richmond Station precinct as part of the MAC as well.
- 20 We appreciate that this former industrial precinct does not have a visual connection with the Swan Street commercial precinct, and its distinctive built form and emerging character also differentiate it from the Swan Street commercial precinct. Hence the inclusion of this area within the MAC may not be obvious in physical terms. However, planning is not just about the physical but also about providing direction for the future and that is part of the role of the MSS. We agree with Mr Wren that the Council’s local planning policy framework does include the subject land or at least parts of it within the MAC both in the conceptual maps and the associated text. Hence, it is our finding that the subject land is within the Swan Street Major Activity Centre.

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<sup>3</sup> Extract from Clause 11.04-2 (page 10 of 21)

- 21 The Tribunal is not the planning policy maker. Rather, the Council makes policy as part of its role as a planning authority. The role of the Tribunal is to consider if a policy is relevant, whether it makes sense, and whether there are any competing policies or any overriding community interest to the contrary. In this case, we find the planning policies are relevant and make sense in the way Mr Wren has explained it. We do not find there are any competing planning policies in this planning scheme about the intensity of development envisaged<sup>4</sup>, nor any overriding broad community interest to the contrary (which is not the same as the objections by nearby residents in this case). Hence, we find we should seek to implement the policy framework that includes the subject land or part thereof in a MAC.

### High Scale High Density in Richmond Station Precinct

- 22 During the hearing there was discussion about recent development and opportunities for further development around the subject land. This included the Applicant pointing out that the redevelopment of Richmond Station itself to a height of 20-25 storeys had been mooted.
- 23 After the hearing, the Minister for Planning changed the planning scheme to include a new objective and strategy in Central Melbourne State planning policy. The objective is to support Central Melbourne's capital city functions through high scale and high density mixed residential and commercial development opportunities. The strategy identifies particular locations for such development including the 'Richmond Railway Station Precinct'<sup>5</sup>.
- 24 The use of the term 'precinct' suggests an area that may be broader than the station itself, however the precinct has not been defined by the Minister or the Department of Planning and Community Development. DPCD states the precinct includes publicly owned land and privately owned properties in the surrounding area, and anticipates higher scale and higher density development in this area 'will result in the critical mass needed to strengthen Central Melbourne's capital city function and private opportunities for growth and investment'.
- 25 We agree with Mr Wren's submission at the directions hearing we convened in relation to this change to the planning scheme that the State planning policy has heightened the opportunity for substantial growth in this area. However, we are of the opinion not all of the area around the station is or should be considered to provide the same opportunities for

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<sup>4</sup> We also note the Council's commitment to this area forming part of the MAC is reinforced through the inclusion of this area within the draft Structure Plan for the Swan Street MAC that has been exhibited for public comment recently. However, we have not given any significant weight to this document (and, indeed, the Council did not seek to rely upon it) as it is in the embryonic stages of its potential implementation into the planning scheme.

<sup>5</sup> This change (Amendment VC92) occurred on 29 June 2012, after the hearing. We provided the parties with the opportunity to respond in writing to these changes and we invited the Minister for Planning to make a submission about this change. We have taken the written responses received into account.

growth. Indeed, this is reflective of the variety of built form which exists in the central city itself as it is not all the same in terms of scale or character.

- 26 Clearly strategic structure planning will need to be undertaken to define the extent and characteristics of the precinct. We agree with Mr Wren the Council and DPCD might like to revisit the draft Swan Street Structure Plan as part of any structure planning exercise. We are not persuaded the identification of this precinct in the State planning policy means the Council's desire to have an individual identity for Richmond cannot be achieved. Nor does it mean the areas of historic significance around Richmond Station that are recognised through the imposition of a Heritage Overlay can be ignored. In our opinion such characteristics can be incorporated into the future strategic planning of the precinct. For example, there are large areas of under-developed land along Swan Street and Punt Road immediately adjacent to Richmond Station that offer significant opportunities for substantial growth.
- 27 Hence, it is our finding that this change to State planning policy does not negate the need to consider the development opportunities in light of the particular context of the subject land, including its physical context and the relevant planning controls.

#### The Intensity of New Development

- 28 Whilst we have found the subject land is part of the MAC and State planning policy now specifically encourages an intensity of development in this area, this does not mean that there is a 'free-for-all' in regard to the intensity of new development on the subject land. We acknowledge the land is considered to be a strategic redevelopment site despite it not being specifically identified as such in the MSS; and such sites are earmarked as preferred locations for 'the majority of new development'. Nevertheless there are also other considerations that come into play through the planning policies and controls that are relevant in this case. We agree with Mr Rantino's submission that justifying the built form by achievement of urban consolidation and increased housing choice is only one side of the policy ledger.
- 29 The subject land is within a Mixed Use Zone, a zone which forms part of the suite of residential zones found in the planning scheme. The site is also affected by a Heritage Overlay. The form and scale of any development must respond to these controls as well as the built form policies in the planning scheme and the physical context of the subject land and its surrounds.
- 30 In regard to the other built form policies in the planning scheme, the Yarra Planning Scheme seeks to protect valued character, including its identity as a low-rise urban form with pockets of higher development, and its heritage places. This area is one such heritage place.

### Physical Context of the Subject Land

- 31 This brings us to Council's view that the proposal fails to respond sufficiently to its context and is therefore not acceptable. In our view, any development, in or out of an activity centre and the central city, should respond to its particular context.
- 32 In regard to the surrounds, we note a considerable amount of redevelopment has already taken place within this heritage precinct. However, there remains scope for the provision of further housing on sites in the immediate area, both to the west of Stewart Place and to the east near Wangaratta Street. Further to the south, much of Cremorne is identified for redevelopment, and there are also significant, and in our opinion far greater development opportunities on sites on both the north and south sides of Swan Street at the intersection with Punt Road.
- 33 All of this paints a picture of an area that is undergoing change and this change is already evident between Stewart and Tanner Streets with a number of properties featuring new buildings or additions to former industrial buildings. However, the subject land is constrained by its location within a Heritage Overlay in a discrete and particular industrial sub-precinct; and by its interfaces with a number of other properties, all of which have been developed or redeveloped in recent years for primarily residential purposes.

### Higher Development

- 34 Reference was made during the hearing to clause 21.05 of the MSS and strategy 17.2 that states in part:

Development on strategic redevelopment sites or within activity centres should generally be no more than 5-6 storeys unless ...

- 35 This is the only reference to a specific building height in clause 21.05 and there is no other such reference to building height in the balance of the local planning policy framework. It must be remembered that strategy 17.2 falls within clause 21.05-2 that relates to urban design and contains the following opening sentence:

Looking at the built form of the whole municipality, a clear picture emerges of a low-rise urban form punctuated by pockets of higher development.

- 36 This clause then sets out seven objectives to be achieved, including objective 17:

To retain Yarra's identity as a low-rise urban form with pockets of higher development.

- 37 Hence, we find the local planning policy framework envisages that there will be circumstances where new tall buildings (including development higher than 5-6 storeys) may be permitted. We also note that the Landmarks and Tall Structures local planning policy at clause 22.03

includes a policy that acknowledges the possibility of new tall buildings as well.

- 38 The physical context of this area already contains some buildings that exceed the building height nominated in strategy 17.2. We find this area clearly presents as a distinct precinct that contains buildings that have always been taller than the predominant one to two storey scale found in the residential hinterland to the north. In some cases, they are taller than the nominated 5-6 storey height range. As such, this precinct is already one of the 'pockets of higher development' referred to in the policy framework. Given the recent change to State planning policy, the Richmond Station precinct is likely to further develop as one of the pockets of higher development in the municipality.

### Heritage

- 39 Mr Rantino identified the following 'guiding principles' from the heritage policies and Heritage Overlay in considering whether the proposed development has adequately responded to the heritage considerations:

'Conserve and enhance' (Clause 43.01) the 'distinctive' and visually related group of externally well preserved factories and warehouses (statement of significance) for the sub-precinct;

'Protect the heritage skyline of [the] heritage precincts' (Clause 21.05-1);

'Protect buildings and streetscapes and heritage significance from the visual intrusion of built form' (Clause 21.05-1 Strategy 14.6);

'Conserves the historic fabric and maintain the integrity' of the heritage precinct (Clause 22.10).

- 40 We agree the heritage considerations are important in this case as the intensity of development expected and sought for locations such as this need to be balanced with the significance of this heritage place.

## **The Design Response**

### Response to Heritage Significance

- 41 The site is within Heritage Overlay HO332, the Richmond Hill Precinct. This precinct is further divided into sub-precincts<sup>6</sup>. The subject land and surrounds are contained within the 'south industrial sub-area' circumscribed by the rear of the Punt Road terraces, and Tanner, Wangaratta and Stewart Streets. The statement of the sub-precinct's significance includes the following:

- As a distinctive and visually related group of externally well preserved factories and warehouses, associated with the growth of the clothing manufacturing industry in the City, dating from the early decades of the twentieth century and symbolic of

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<sup>6</sup> City of Yarra Review of Overlay Areas, 2007. Graeme Butler and Assoc.

Richmond's special role in the development of key manufacturing centres in the first half of the twentieth century

- For the precinct's strategic location, next to major transport links (railway, Punt Road) and the resultant distinctive angled siting of key buildings to face the railway.

42 As we have already noted, planning policies seek to protect and enhance the City's heritage places, support their restoration, and amongst other things, seek to protect the heritage skyline and subdivision patterns and protect buildings, streetscapes and precincts from the visual intrusion of built form.

43 Our observation is that, somewhat unusually, this precinct clearly demonstrates its heritage to the passer by. The retention of significant proportions of the industrial building fabric has retained and reinforced the remnant heritage evident along all of the streets within this sub-precinct. The subdivision pattern and hard edged buildings speak to a history of manufacturing and warehousing. The extent of remaining fabric and the precinct's discrete area reinforce its cohesion, readily apparent on inspection from any of the streets within the sub-precinct. This is an area where its heritage is clearly expressed in the built form.

44 The strong curve and uniformity of façade heights along Stewart Street as it follows the long wall of the railway reserve reinforces the cumulative impact of this built form. A further clearly visible characteristic is the angled setbacks of the higher portions of the original buildings facing the railway above the Stewart Street facades.

45 The proposal minimises the demolition of the existing external fabric by retaining and restoring the Stewart Street façade and retaining part of each façade that turns down the side streets of Stewart Place and Margaret Street. Both the heritage experts (for the Council and the Applicant) agreed that an approach which largely retains (and restores) the exterior of the existing building is the correct one. Both emphasised the importance of retaining fabric to Stewart Place and Margaret Street.

46 The substituted amended plans propose minimal alteration to existing openings in the façades to be retained. However, Mr Dwyer suggested that increased openings to the street would benefit the operation of the café; and both Mr Biasci and Mr McGauran suggested improving the pedestrian entry from Margaret Street. Ms Heggen acknowledged these changes could be made but pointed out such changes would need to be assessed in terms of their potential impact on the heritage significance of the facades to be retained and of the sub-precinct. We agree, and thus we make no finding on the appropriateness of the suggested changes.

47 Ms Riddett's evidence was that the planning scheme places constraints on development in places where heritage values are seen to be important. Her opinion was that the 'over-scaled and dominant' proposed new building would adversely affect the heritage precinct by its change in scale. In her view, the lower scaled redevelopments in the immediate area are more in accord with the expectations of planning policy.



- 48 Ms Brady, on the other hand, stressed that very limited views of the new building would be available from within the heritage precinct due to the existing built form. She said that the visibility of the new building from further away is of less concern than that from the immediate streetscapes within the heritage precinct. The retention of most of the host building would continue to ‘tell the story’ of the significance of the precinct. Her evidence was that the proposal illustrates the tension which exists between new development and the retention of ‘heritage fabric and character’. She considers that the impacts on the significance of the heritage precinct are within an acceptable range.
- 49 We however, are not persuaded that the retention of much of the existing facades is sufficient in this case to justify an additional 10-11 storeys above the existing building on the subject land.
- 50 In Mr O’Dwyer’s design evidence, he emphasised what he considers to be the ‘iconographic’ nature of the design. This future prominence of the new building as an icon was put as a positive outcome of this proposal. In contrast, Mr McGauran attributed what he saw as a ‘dominant’ form to its incongruity within the precinct, the absence of a legible setback from Stewart Street, and the lack of a visual break between the old and new parts of the building.
- 51 We agree with Mr O’Dwyer that the proposed building will be prominent in this location. Indeed it will be highly visible from within the Richmond Hill Precinct, particularly from the more northerly parts, as well as from Punt Road and Brunton Avenue. Although by its design the tower is clearly distinguishable from the original fabric, we cannot conclude that it achieves local policy to be visually recessive and not dominate the heritage place<sup>7</sup>. Further, although the location, built form and appearance of the proposed building is removed from the lower levels that relate to the significance of the heritage place<sup>8</sup>, the striking design and height of the building will adversely affect the physical manifestation and understanding of that significance which is today so clearly evident in the precinct.
- 52 Thus we find that the proposal, by its appearance and height is not ‘in keeping with the character and appearance of adjacent buildings and the heritage place’<sup>9</sup>.

### Building Height

- 53 Mr Rantino stated if the proposed building was approved, it would be the tallest building in the municipality. Ms Heggen disputed this and tabled the structure plan that applies to the Nylex sign and a permit in Cremorne. Both envisage similar heights to this proposal. Her evidence was that, as the proposed building is on a site at the southern ‘edge’ of the Richmond Hill Precinct, it has similar attributes to those developments in Cremorne

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<sup>7</sup> Clause 22.02

<sup>8</sup> Clause 43.01

<sup>9</sup> Clause 22.02

which edge the Monash Freeway. Nevertheless, there was no dispute between the parties and their expert witnesses that the proposed building would be taller than any of the other buildings in this industrial precinct. Mr McGauran stated the proposal is about 22 metres higher than the apartment building at 1 Margaret Street and about 10 metres higher than some of the development in Tanner Street.

- 54 We acknowledge the proposed tower is different in both density and form from that which is generally found in this area. However, the planning policies call for and expect change to occur in this area because of its inclusion in the Major Activity Centre and the recent change to State planning policy to encourage an intensity of development in the Richmond Station precinct.
- 55 Some witnesses referred to the Swan Street Structure Plan<sup>10</sup> which contemplates built form of 7-10 storeys between Stewart and Tanner Streets. We have already explained why we have given this document limited weight (in footnote 4). We note also that the document is an urban design exercise and it is unclear to what extent it has considered the implications (if any) of tall buildings on identified heritage significance.
- 56 Whilst we accept that there are circumstances where higher buildings can be accommodated in heritage areas, we have concluded that new development in this precinct between Stewart and Tanner Streets should respond to the existing building form, character and heritage value of the area, and provide for a built form transition to lower scale development to the north on Richmond Hill. The Yarra Planning Scheme specifically identifies protection of ‘heritage skyline’<sup>11</sup> and protection from the “visual intrusion” of built form<sup>12</sup> within heritage areas.
- 57 The Tribunal has on many occasions observed that the strategic imperative to provide housing does not override other considerations. Council considers that the proposal is an inappropriate response to the site, and not just on heritage grounds. There was much discussion at the hearing regarding the retention of Yarra’s identity as ‘a low rise urban form with pockets of higher development’ where strategic development sites should be in the order of 5-6 storeys unless particular benefits can be demonstrated, such as:
- Significant upper level setbacks
  - Architectural design excellence
  - Best practice environmental sustainability objectives in design and construction
  - High quality restoration and adaptive re-use of heritage buildings

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<sup>10</sup> David Lock and Associates March 2012- ‘revised’ draft released for public comment May 2012

<sup>11</sup> At Clause 21.05-1

<sup>12</sup> *ibid* strategy 14.6

- Positive contribution to the enhancement of the public domain
- Provision of affordable housing

- 58 Whereas the Applicant argued that the proposal directly addressed each of the above<sup>13</sup>, Council disagreed. Mr McGauran's evidence was that the site was not a 'gateway' as it is not freestanding and is located mid-block. He also said the proposal had inadequate setbacks, which in combination with the proposed height resulted in unacceptable off-site amenity impacts, in particular to the pedestrian realm. Interfaces to both the base building and adjoining residential development had been poorly resolved. The proposal could not be said to have achieved design excellence in its planning, external composition or ESD provisions. Nor had it made a contribution to the public realm.
- 59 Having regard to this evidence and the constant flow of amended or explanatory documents presented during the course of the hearing, we are of the view that the design of the building is unresolved. The basis of Mr O'Dwyer's assurances regarding its design excellence was not evident from the documentation before us. In a precinct characterised by 2-6 storey early 20<sup>th</sup> century buildings with contemporary additions above and set back, the design incorporates a saw tooth façade to the north, a curved wall to the north west, a column to the west, various setbacks to the south, and a largely flat façade to Margaret Street. It is the combination of this fractured design typology with the material selection, setbacks and height which results in the proposal's unacceptability in this location.
- 60 There were statements by various experts and submitters about what the building height should be, for example Mr McGauran suggested 6-7 storeys with possibly an additional two levels on the north side subject to the quality of the design resolution. We have not turned our minds to what precise height a building on this site should be because we agree with Mr McGauran that it is the quality of the design resolution that will, in part, determine whether a building height is acceptable or not on the subject land. However, it is clear that the surrounding redevelopments of heights in the order of 6-7 storeys have had more regard to the existing built form character of the area and have contributed to the establishment of a new character that generally utilises the solid heritage base with contemporary additions above. Whilst employing differing design treatments, none seek to dominate the precinct.
- 61 We think the success or appropriateness of these redevelopments has been achieved by employing an appropriate scale and setbacks, and by the selection of materials that are 'well mannered' in the context. We do not agree with Mr Biasci that the building's wide variety of façade treatments diminishes its overall mass and stimulates visual interest. Rather, for the reasons we have outlined above, we have come to the conclusion that the

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<sup>13</sup> Refer to Mr Biasci's evidence report at para 60

proposed 'signature' or iconographic building does not achieve an acceptable planning outcome on the subject land.

### Setbacks

- 62 Another aspect of the design which concerns us is the footprint of the new building on the old. Mr McGauran expressed dissatisfaction with the treatment of the junction between the existing and new parts of the building and the various street setbacks. He said that the design failed to adequately distinguish the two parts of the building, and that the proposed setbacks adequate to provide a legible differentiation between the two.
- 63 Setbacks vary around the building. Along Stewart Street, the glazed east and west corner treatments at level 3 appear from the elevation to partially address Mr McGauran's concern and separate the new and old parts of the building. However, it seems from the photomontage that this separation will only be apparent to those on the railway station platforms as it cannot be read from ground level. The setbacks vary between 4 and 6 metres in what appears to be a somewhat random manner, confused further by the 1.7 metre high privacy screens running between the planter and the front façade (not shown clearly on the elevations) that would be seen from the street. It is our view that this interplay between old and new has not been designed in a satisfactory manner.
- 64 In our opinion, setbacks along Stewart Street which reflect the angled setback pattern identified as part of the distinguishing heritage characteristics of the precinct, successfully incorporated into other redevelopments, would be a more appropriate response to context.
- 65 Ms Heggen suggested that the interface with Stewart Place would be improved by cutting back the projecting north and south walls to within half a metre of the face of the building, leaving the balconies projecting towards the street. From level 4 and above, dark full height movable louvred screens would enclose them to provide sun screening, with a fixed section along the northern edge preventing overlooking of the upper floor balconies of 1-7 Stewart Place. We agree that these changes would improve this interface but we think a setback of 3 metres to the face of the screens would be a more acceptable interface.
- 66 There was considerable discussion at the hearing as to the effect that the curved, north west upper portion of the building would have on 1-7 Stewart Place. In regard to the setback from the north boundary with 7 Stewart Place, we are of the view the majority of this interface is not sensitive as it features a solid boundary wall. Hence, we think there is further opportunity to build closer to the majority of this boundary as part of any new design for the land. For reasons we will come to, we have concluded that a setback of 2-3 metres from the rear (east boundary) of 3-7 Stewart Place would result in an acceptable outcome, as the principal private open space to these dwellings is the balconies to the west. We are satisfied that screening devices can minimise any direct overlooking impacts.

- 67 The north facing sawtooth section of the proposed building has elements set back between 1.5 and 4 metres from the northern boundary. Despite this optimal northern orientation, all apartments have inboard bedrooms and narrow north-south balconies. We note that the design of the 3 storey recently constructed apartments to the north effectively turns its back on the subject land. As such, there would not appear to be any significant impediment to building closer to this boundary, and an improved apartment and balcony layout might be devised on the subject land as a result.
- 68 The setbacks of around 3 metres to Margaret Street reflect those existing on the other side of the street, although with less variation. These are acceptable.

### Equitable Development

- 69 The Guidelines for Higher Density Residential Development<sup>14</sup> (The HD Guidelines) contain an objective to ensure areas can develop with an equitable access to outlook and sunlight. This objective for 'equitable development' leads to a consideration as to the appropriate set back between buildings, having regard to access to outlook, daylight access and privacy for residents plus sunlight to adjoining private open spaces of dwellings.
- 70 Mr Prue stated that he wished to retain his development rights. As we see it, the properties surrounding the subject land have all been redeveloped in recent times to create townhouses or apartments. As such, we are of the view any further development of these properties in the short and medium term is unlikely. For example, Mr Prue's warehouse conversion into a townhouse style of development has potential to go up higher in terms of the number of storeys but, without consolidating his land with his neighbours at 1-7 Stewart Place, there is insufficient land for any significant change to this interface.
- 71 The proximity of the proposed building and its impacts by way of overlooking to the east and west and overshadowing to the west were of particular concern to residents living in townhouses/apartments in Stewart Place and Margaret Street. For reasons that we will come to, we are satisfied these impacts are reasonable in this case, hence we do not consider there needs to be any further changes to the setbacks in regard to the equitable development objective.

### Conclusion

- 72 The findings we have made in regard to the building's response the heritage significance of the precinct, coupled with aspects of the design discussed above are the primary reasons why we have decided to refuse this proposal. There are a number of other issues that were raised during the hearing. In the hope that it will assist the parties in their consideration of any new

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<sup>14</sup> DSE 2004. A reference document in the planning scheme providing guidance for the design of buildings over 4 storeys in height.

planning application for this land, we have also provided findings on some of these issues.

## The Amenity Impacts

### Noise from Richmond Station

- 73 The HD Guidelines acknowledge the need to consider external noise sources. Richmond Railway Station is located directly opposite the south side of the subject land. It contains 5 dual platforms, with platforms 9 and 10 closest to the subject land. In the Dimmeys decision<sup>15</sup>, the Director of Public Transport advised that Richmond Station is the busiest metropolitan railway station apart from the City Loop. It services the Burnley, Frankston, Cranbourne and Sandringham rail corridors as well as diesel passenger and freight trains.
- 74 Marshall Day Acoustics submitted an acoustic report as part of the planning application which:
- a made reference to previous VCAT decisions dating back to 2002 and 2003;
  - b measured the background noise level at 79 dBA Lmax; and
  - c recommended acoustic glazing primarily to the south facing living and bedroom windows to achieve internal noise levels of 60 and 55 dBA Lmax respectively.
- 75 SLR Consulting Australia Pty Ltd peer reviewed this report for Council. It questioned (amongst other things) where and at what height the background noise levels were measured; and why the report contained no reference to the Dimmeys VCAT decision that recommended an internal bedroom noise level of 50 rather than 55 dBA Lmax.
- 76 Mr Marks of Marshall Day Acoustics gave evidence at the hearing. He expressed disappointment with the Dimmeys decision (he gave acoustic evidence in that case) and said that he remains 'still quite firm' that 55 dBA is the appropriate criterion for bedrooms. He stated at 55 dBA there is a 2% chance of an awakening event and the likelihood is 0%; and at 50 dBA there is a 1% chance of an awakening event, hence a requirement for an internal noise level of 50 dBA is unnecessary. He said that a result of such a low internal noise level is to increase awareness of any noise coming from adjacent apartments. In addition, the cost impost of requiring 50 dBA rather than 55 dBA is 'significant and onerous' having 'a significant adverse effect'. We presume he meant a significant adverse effect as it relates to the cost to the developer.
- 77 Because of the queries raised in the peer review about the background data, the Tribunal requested Mr Marks to obtain (over a lunch break) the background noise level measurements obtained by his office. The data

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<sup>15</sup> *Richmond Icon Pty Ltd v Yarra CC* (includes Summary) (Red Dot) [2011] VCAT 2175

provided demonstrated that the background noise level used in the Marshall Day Acoustics report was incorrect. Mr Marks quite rightly advised us of this after lunch and then corrected his evidence based on a background noise level of 83 dBA Lmax (rather than 79 dBA Lmax).

78 We have given Mr Marks' evidence in this case limited weight because the background noise level relied upon in his expert evidence was incorrect. The acoustic shielding required to the living rooms and bedrooms will need to be increased by an additional 4 dB beyond that recommended in the evidence report. Indeed we note the increase of 4 dB is almost the amount which he had suggested to us would lead to a 'significant and onerous' cost implication. Council cross-examined Mr Marks on this point. He explained that the extra cost occurs because of the need to upgrade the glazing for the bedrooms (or apartments where bedrooms open onto living rooms) that are exposed to the railway. Changes to the other internal/external materials would not be required.

79 The background noise measurements revealed that it is the noise from station announcements and train horns that has caused a background level (83 dB) that is 1 dB higher than that recorded at Dimmeys (82 dB). Mr Marks described this noise as occasional, random, and annoying, but one which is more easily attenuated than the low frequency noise caused by trains running along railway tracks. We asked Mr Marks about the noise levels based on the train timetable for the Belgrave train that uses platforms 9 and 10 closest to this site. The timetable suggests on a Friday night/Saturday morning the last train through Richmond Station is listed at 1.12am and then the first train on Saturday morning is listed at 5.41am. Mr Marks had no specific knowledge of the times of the trains travelling through the station and said the background noise measurements showed no evidence that announcements or train horns have a lowered audibility at such times. Given there is only about 4.5 hours during which there are limited trains and no announcements or train horns, and in light of Mr Marks' view that announcement and horn noise can be occasional, random, and annoying, we find the bedrooms should achieve an internal noise level of 50 dBA Lmax.

### Visual Bulk, Daylight and Overlooking to Western Properties

#### Visual Bulk

80 The scale of the proposed development will change the outlook for the neighbouring properties to both the west and east. As we have found the subject land and indeed surrounding land is included within the Swan Street and Richmond Station MAC and given the recent change to State planning policy about the Richmond Station precinct, an increase in building scale in the form of an apartment building sitting above the heritage building base is appropriate. As such, there will be a visual bulk impact upon the neighbouring properties that will be greater than in areas outside a MAC, and this impact is acceptable given the planning policy context that applies.

## Daylight

81 Having inspected each of the townhouse style dwellings at 1-7 Stewart Place, it is clear that the rear light court is important. It provides daylight and ventilation to all levels, and is particularly important to the rear rooms in the lower levels of these dwellings. Mr Clark suggested a greater setback of the lower levels of the new building is needed in order to retain an appropriate level of amenity into their dwellings. He referred to an additional small setback of around 1-1.5 metres at second floor level<sup>16</sup> that is incorporated in the new apartment building to the north of the subject land as an example of what they would like. However, we are persuaded by the expert evidence that a reasonable level of light will be maintained into this light court with the design as proposed, or possibly a lesser setback of 2-3 metres for the following reasons:

- The intensity of development encouraged by planning policy means that a high degree of change is anticipated and this will inevitably create some impacts upon neighbouring properties.
- The test to be applied is not sunlight into rooms, but daylight into rooms. The HD Guidelines suggest spacing between building to provide daylight access. Ms Heggen pointed out the existing light courts have dimensions of around 1 metre by 3 metres and this is already sufficient for daylight access.
- Whilst there will be some new shadow cast in the morning into parts of these light courts, this impact does not result in an unacceptable impact on access to daylight.

82 The residents said they were confused as to whether or not the boundary wall of the existing building on the review site would remain. This is important to them because efforts have been made to integrate this wall into their residential conversions by placing art/sculpture or landscaping on it and by attaching balconies to it.

83 Ms Heggen expressed the view the boundary wall should stay as it forms part of the amenity of this rear boundary, as well as performing a functional role with the balconies and other features attached to it. We agree, should its retention be possible. However, the Applicant explained that the part of the wall that is on the title of the subject land will need to be removed for structural reasons. The part of the wall affected is generally located at the rear of 5 and 7 Stewart Place. Mr Wren advised the Applicant is willing to reinstate the balconies of 5 and 7 Stewart Place as part of the proposed development. If there are structural issues with the retention of this wall, then we think the Applicant's solution is appropriate.

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<sup>16</sup> We were provided with the plans of this development that illustrate a setback of 1-1.2 metres (it is not dimensioned).



- 84 Mr Clark expressed concern about the potential loss of an existing window in the boundary wall to the rear of Mr Batcheler's property at 3 Stewart Place, as it has been integrated into a balcony style outdoor space with landscaping. Mr Wren and Ms Cincotta provided extracts from other legislation to support the Applicant's view that there is no legal right to the maintenance of this window. Mr Wren advised the window at the rear of 3 Stewart Place can remain, but will do so with a wall built behind it. We agree with Mr Rantino's observation at the end of the hearing that it is up to the parties to resolve this legally outside of this planning application. If the Applicant has the legal right to build up against this window, then it can happen.

#### Overlooking

- 85 The HD Guidelines contain an objective to maximise residential amenity through the protection of privacy within the subject land and on neighbouring properties. The associated design suggestion refers to minimising the potential for overlooking and the accompanying text suggests existing dwellings be protected in accordance with the requirements of clause 55. The clause 55 objective is to limit views into existing secluded private open space and habitable room windows.
- 86 What this all means is that it is not the intent to prevent all views from the proposed development into neighbouring residential properties but rather minimise or limit the potential for views. Hence, we have confidence that any new design including one which may bring the building closer to the dwellings at 1-7 Stewart Place can minimise or limit the potential for overlooking by the way in which the proposed dwellings are oriented and/or suitably screened.

#### Substation

- 87 The substation is shown on the plans in the northwest corner of the subject land, next to 7 Stewart Place. The location of the substation was a concern to the residents of 1-7 Stewart Place, particularly Mr Prue and Mr Clark. Before the hearing these residents circulated an expert witness statement by Mr Melik, an electrical engineer, in regard to electro-magnetic impacts. At the start of the hearing, Mr Clark advised they would not be calling Mr Melik, but sought to rely upon his statement. Mr Wren opposed this and referred to Tribunal decisions about telecommunications towers where the health risks of electro-magnetic radiation were deemed inadmissible. We agreed with Mr Wren and ruled, as per his request, that the internal configuration of the substation room is not a relevant planning consideration having regard to the issue of electro-magnetic emissions.
- 88 We dealt with this matter orally at the start of the hearing, but we note it was a matter of specific concern to Mr Prue who was not present to hear the reasons for our ruling. Hence, we wish to provide a brief explanation of our reasons. Whilst we acknowledge this concern, we are bound to consider the merits of a proposal having regard to the relevant standards that apply.

These standards are set by the Government, not by this Tribunal. There is an Australian Standard that sets out maximum human exposure levels to electro-magnetic emissions; and we adopt the findings of Deputy President Gibson in *Heland Pty Ltd v Kingston CC* [2005] VCAT 2927:

It is not for the Tribunal to question such standards. In making decisions and imposing conditions the Tribunal should accept standards that are set by relevant Government agencies responsible for controlling the matters addressed by the standards and should not look behind them.

- 89 If there are negative health effects associated with the substation, it is up to the laws of the land to deal with the issue. It is not the role of the Tribunal to make the law; that is a matter for the Governments of Australia. Rather, it is the role of the Tribunal to apply the law, which includes the standards set by Australian Government agencies. In this case, Mr Melik's statement makes it clear the standard is met. As such, this is not a reason why this proposal should be refused.
- 90 We made it clear to Mr Clark after making our oral ruling that whilst we could not consider the health effects of the substation, we could consider the appropriateness of the proposed location of the substation as part of our consideration of the merits of the design of the proposal.
- 91 Mr Clark and the other residents of 1-7 Stewart Place suggested in their submissions that the substation be relocated to the Margaret Street side of the building. At the end of the hearing, Mr Wren tabled a plan suggesting the substation be relocated further to the south, immediately to the north of the ground floor office. From a planning and urban design perspective, either location would be acceptable having regard to the design of the proposal. However, given Mr Prue's concern, if the Applicant can relocate it we consider such a solution would be acceptable.

#### Sunlight to Properties on the east of Margaret Street

- 92 We received a number of submissions from residents of apartments on the opposite (east) side of Margaret Street expressing concern about the overshadowing from the proposed building. Ms Gelsomino provided us with an explanation of her particular concerns given her personal circumstances. Whilst we acknowledge her submission, we cannot give it greater weight than that afforded by the planning scheme in our consideration of the merits of the proposal. The planning scheme contains design standards and these must be applied to achieve acceptable outcomes, not the best or optimal outcome. The outcome may indeed not be the best or optimal outcome for an individual.
- 93 An objective of the HD Guidelines is to provide an equitable access to daylight and sunlight with design suggestions that seek to maintain daylight into dwellings and sunlight into private open space. Hence, in terms of equitable access, the Guidelines provide a distinction in the amenity to be maintained in nearby properties as the maintenance of sunlight into

apartments is not an expectation of the Guidelines. However, sunlight into private open space is an expectation, which brings into question the shadow impact upon the west facing balconies of the apartments at 1 Margaret Street.

- 94 The shadow diagrams circulated with the substituted amended plans illustrate the proposed building will cast a shadow at 3pm on the September Equinox. The St Four Group suggested the extent of the illustrated shadows is wrong because of a photograph they had taken of the existing shadow cast across Margaret Street being different to that shown in the shadow diagrams. However, it must be remembered that there is a difference in the shadow cast at the March and September Equinox periods as the March period is during daylight saving time.
- 95 During the hearing, we requested the Applicant provide a section of the shadow cast onto 1 Margaret Street as the substituted amended plans show the shadow effectively hitting the ground whereas, in reality, the shadow will climb the wall of the 1 Margaret Street apartment building. The information subsequently tabled later in the hearing illustrates there will be a number of balconies in shadow from the 1 Margaret Street building itself until about 1.00pm, and then by the proposed building at 3.00pm. So the question for us is whether the reduction in sunlight to approximately 1-2 hours in the afternoon at the September Equinox is acceptable.
- 96 Ms Heggen gave evidence that it is acceptable because these apartments are separated from the subject land by the width of Margaret Street, their existing set back, as well as the proposed set back of the new building. She also stated it is acceptable because of the development potential of this site as recognised by the Council's draft Structure Plan reference to up to 10 storeys, Mr McGauran's suggested building height of 7-9 storeys, and her support for 13-14 storeys.
- 97 We have already found the building height needs to be reduced for other reasons, but it may well be that a new building on this site could be at least 6-7 storeys (like other existing buildings in this precinct) and hence such a height will cause shadow impacts on 1 Margaret Street. Further, the subject land and 1 Margaret Street are within the Swan Street MAC, where a higher intensity of development is encouraged. Given these factors, we find the shadow impact is acceptable.

#### Internal Amenity

- 98 Council was critical of aspects of the internal configuration of the building. Mr McGauran suggested various amendments to the plans including relocating lifts to provide improved access to them, improved pedestrian access from Margaret Street, the introduction of natural light and ventilation to corridors, and improvements to the width and configuration of access to apartments. Ms Heggen was generally satisfied that a number of aspects of the design that Mr McGauran saw as reducing amenity in apartments which have deeply inset bedrooms and small balconies were adequately

compensated by the locational advantages of the site and proposed communal open space on the rooftop. Mr Kiriakidis suggested improvements to the car lift access and had suggestions about the provision of disabled parking. The Tribunal queried whether the amenity of some apartments is compromised by the irregular room shapes resulting from the form of the building; constrained arrangements for service areas and internal corridors; and the orientation and size of balconies.

- 99 The Applicant produced various documents throughout the hearing which sought to address these deficiencies in the design. However, as we have concluded for other reasons that a permit should not issue, the design will need to change. This is an opportunity to review the various matters raised regarding the internal amenity of the proposal.

### **Car Parking and Traffic Management**

- 100 All the parties agreed that this area on the north side of Richmond Station is heavily utilised in terms of on-street parking and has the flow on traffic effects associated with this. There was dispute between the parties as to what car parking should be provided on the subject land.
- 101 The Applicant proposes to provide 75 car spaces comprising 3 office spaces, 1 café space and 74 residential spaces<sup>17</sup>. The Council wants 49 residential car spaces comprising 1 space for each 2 and 3 bedroom apartment and 0.12 visitor spaces per apartment. Dr Stahle said the car parking should meet the planning scheme requirements. The St Four Group stated any increase in residents in this area will create parking, traffic and safety concerns. However, in a practical sense, the St Four Group acknowledged any development on the subject land will and should provide some parking. They suggested capping the parking to the standard rates (residential and visitor) for the total number of dwellings in the lowest three residential levels of the new building regardless of the overall building height.
- 102 There was no dispute between the Council and the Applicant about the provision of car parking for the office and café components of the proposal and the residents' submissions focussed upon the overall effects of more cars in the area and the provision of residential parking, hence we do not intend to make any findings about the commercial car parking provision.
- 103 All the parties were in agreement that the residential car parking required by the planning scheme<sup>18</sup> should be reduced. We agree with this, so the question is the number of car spaces that should be provided and how they should be allocated between residents and visitors.

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<sup>17</sup> There was discussion during the hearing about some changes to the car park layout that may slightly reduce the residential parking component, but for the purposes of our findings we have decided to refer to the number of spaces contained in the substituted amended plans.

<sup>18</sup> After the hearing the car parking requirements changed as a result of the introduction of a new clause 52.06. We have provided the parties with the opportunity to respond in writing to these changes and we have taken these written responses into account.

- 104 In regard to Council's suggested car parking provision, Mr Rantino emphasised the State planning policies about promoting alternatives to reduce private motor vehicle use, particularly in proximity to a MAC. He stated such policies need to be consistently applied, and we agree with this. However, we expressed some doubt as to whether the Council itself is being consistent and contrasted this proposal with the Dimmeys development as an example. In the Dimmeys case, the Council supported just over one car space for each one and two bedroom dwelling and no visitor car parking. Mr Rantino acknowledged the differences but explained this is what the Council wants in this case<sup>19</sup>.
- 105 The Applicant relied upon the evidence of Mr Kiriakidis to support its car parking provision and the resultant traffic impacts upon the surrounding road network. Overall, we are not persuaded by Mr Kiriakidis' evidence and this is due to a number of matters identified predominantly through the cross-examination by the Council and the St Four Group.

#### Resident Parking

- 106 Clause 52.06 requires 89 resident car spaces based on one space for 1-2 bedroom dwellings and two spaces for 3 bedroom dwellings. Mr Kiriakidis gave evidence the ABS Census 2006 reveals car ownership of an average of 0.8 spaces per dwelling based on the following:

One bedroom	0.68 per dwelling
Two bedroom	0.90 per dwelling
Three bedroom	1.00 per dwelling

- 107 These car ownership rates equate to 64 resident spaces for this proposal, which is less than the 71 car spaces proposed. However, the cross-examination by Council and the St Four Group casts some doubt in our mind as to whether this empirical data can be relied upon:

- The census data was for the whole suburb of Richmond and Mr Kiriakidis did not know if the access to public transport is comparable between this suburb and the subject land<sup>20</sup>;
- Mr Kiriakidis acknowledged the downward trend of car ownership is not evident in the 2001-2006 Yarra data provided in the hearing;

<sup>19</sup> There was discussion during the hearing about a concurrent hearing for a development on the south side of Swan Street, in Punt Road Cremorne. In that case for an 8 storey building with both resident and visitor on-site parking, we note the Tribunal stated at paragraph 73 of its decision (*A Genser & Associates (Aust) Pty Ltd v Yarra CC* [2012] VCAT 695) that the Council was not opposed to the adequacy of the on-site parking provision. Such provision is different and not consistent with the position of the Council in this case, albeit we note both sites arguably have similar alternative transport attributes.

<sup>20</sup> Mr Kiriakidis' statement was made after Mr Rantino referred to Council's Central Richmond ABS data of all households that reveals 17.4% of households had no vehicles, which is 1 in 6 households and 43.3% have one vehicle. Whereas in the whole of Yarra 20.1% had no vehicles therefore this area has less households with no vehicles than Yarra as a whole.

- The census data used was that for one or more storey apartments rather than apartments of 3-4 storeys because Mr Kiriakidis said the latter sample size was too small and to rely upon it would be statistically unsatisfactory;
- Mr Kiriakidis also thought 3-4 storeys would be more modern and house residents with higher household incomes, which means car ownership is likely to be higher. This would not further the Council's position of reducing the resident parking; and
- The census data is 2006 and does not include the more recent developments that have occurred in Richmond in the last 5-6 years.

### Visitor Parking

108 Clause 52.06 requires 16 visitor spaces. This is a new requirement as, at the time of the hearing, the old clause 52.06 required residential but not visitor parking. During the hearing, Mr Kiriakidis gave evidence there is no visitor car parking required and in his view it should not be required in any event. Mr Kiriakidis' letter received after the hearing stated the empirical assessment in his evidence report 'satisfactorily responds to' the assessment framework to be considered in reducing car parking in clause 52.06. Mr Rantino's letter after the hearing noted the Council's request for visitor parking is:

... consistent with the State government's decision to continue to prescribe visitor parking for developments regardless of the number of dwellings, the number of storeys and regardless of whether the land is in, in the vicinity of or not in the vicinity of an activity centre.

109 Clause 52.06 requires 0.2 visitor spaces per dwelling and Mr Kiriakidis relies upon surveys undertaken by other consultants of typical peak visitor demands of 0.12 spaces per dwelling. In this case the Council agrees with Mr Kiriakidis' rate. The history to this rate is explained in another case we determined together near the corner of Alma and St Kilda Roads<sup>21</sup>, and so is the rationale behind us accepting that rate:

50 Ms Dunstan explained this rate was first identified in surveys undertaken by Cardno Grogan Richards in 2003 and November 2010 of two residential developments in Beacon Cove and South Yarra. It found a rate of 0.06 visitor spaces during the day and 0.12 visitor spaces in the evenings and weekends. Ms Dunstan provided a list of VCAT cases where the rate of 0.12 visitor spaces has been considered by the Tribunal in residential developments. However, she acknowledged that does not mean this rate of visitor car parking will always be appropriate.

51 We asked Ms Dunstan whether the site's proximity to public transport would be a determinative factor in applying a reduced visitor car parking rate. She expressed the view this is less

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<sup>21</sup> *Kasment Pty Ltd v Port Phillip CC* [2011] VCAT 1885

relevant than the proximity to a range of services and facilities and the type and size of the dwelling/household. She explained, for example, a small studio, one or two bedroom apartment household is more likely to go out with visitors due to the small size of the apartment. Whereas a three bedroom apartment or a townhouse is more likely to have visitors coming to the dwelling. Hence, we accept her opinion that a visitor parking rate of 0.12 spaces per dwelling is appropriate in this instance as:

- this proposal predominantly contains bedsits and one and two bedroom dwellings in an apartment style development; and
- there is a range of services and facilities within walking distance.

110 The number of three bedroom apartments proposed is small (9), hence the visitor demand may be different if a higher rate of visitor parking is applied to these apartments, but we accept this is unlikely to be significantly different to the quantum of visitor car parking sought by the Council.

111 There was no dispute between the parties about the range of services and facilities within walking distance of the subject land, but the St Four Group pointed out this has created an on-street car parking problem of its own, including in evenings and on weekends. Reducing or waiving the visitor car parking requirement places a demand on on-street parking. Mr Kiriakidis' analysis of on-street car parking supply was based on two inventories on a typical weekday that revealed 11 vacancies at 1pm and 19 vacancies at 8pm.

112 The St Four Group provided us with infringement notice reporting data over a two year period obtained from the Council that demonstrates, for example, the permit zone infringements dominated 75% of a 24 hour period and there appears to be an infringement notice issued on Stewart Street almost every minute for a 12 hour period from approximately 9.00am. In light of this data, Mr Kiriakidis acknowledged that parking is difficult in this location; he accepted the St Four Group submission that the current situation and this proposal are not fair and equitable; and he pointed out the Council is doing its job by enforcing the parking restrictions.

113 The St Four Group also pointed out Mr Kiriakidis' inventories did not take place on a day when there was an event/events in the sports and entertainment precinct. Mr Kiriakidis acknowledged this but stated one does not design for a 'football Friday night', rather for the 85<sup>th</sup> percentile design event. In response to Ms Tzaros' question, Mr Kiriakidis stated he has not analysed the number of events in the sports and entertainment precinct.

114 The St Four Group explained the MCG, Olympic Park and AAMI Stadium are all less than one kilometre from the subject land. They stated in 2011 attendance at AFL matches at the MCG (54 events) averaged 56,842 and at the time of this hearing in 2012 the average attendance had been 57,314,

whereas Yarra Park has a car park capacity of 'a mere 3800 cars'. Further, in 2011 there were 247 events at the Melbourne and Olympic Park venues. In simple terms 247 events over a calendar year is about 67% and 301 events (including AFL matches) is about 82%.

- 115 Whilst not quite reaching the 85<sup>th</sup> percentile identified by Mr Kiriakidis, it is our view that the residents have, with their data, quantified the problems that they face. We can only presume that the Council agrees with them to the extent that they have asked for some visitor parking to be provided, thereby acknowledging that there is limited on-street parking available. We think all this suggests that there is merit in the proposition that some visitor car parking should be provided, however that in turn creates another problem for this proposed design. As Mr Kiriakidis pointed out, the design is not conducive to visitor parking because car parking can only be accessed via car lifts.
- 116 Presumably car lifts operate via some sort of key or automated device that residents would be able to use, the question is whether visitors would also be able to effectively use it. We note design standard 4 in the new clause 52.06 relates to 'mechanical parking' and states in part:

Mechanical parking may be used to meet the car parking requirement provided ....car parking spaces that require the operation of the system are not allocated to visitors unless used in a valet parking situation.

- 117 Mr Kiriakidis and the Council's Senior Development Engineer (in the letters we received after the hearing) both state design standard 4 relates to car stackers, but we are not sure this is correct. If that was what was meant it would have been easy for the standard to be headed 'car stacker parking'. It seems to us mechanical parking could include for example car stackers, car turntables or car lifts. Hence, we think this raises another question as to whether and how visitor parking should be accommodated in a development that relies upon mechanical parking.

### Conclusion

- 118 The Council recognises that intensive development should and will occur in this industrial sub-precinct on the subject land and remaining underutilised land. Indeed the draft Structure Plan continues this theme, but we note the Council's advice that this plan appears to only explore urban design ideas and not contemplated the resultant parking and traffic implications.
- 119 All parties are in agreement some car parking should be provided on the subject land, but how much and for whom is debatable. We think it is desirable for the Council to take a leading role in determining this<sup>22</sup>, rather than having situations such as this one with varying information, opinions and submissions. Based on the material and evidence presented, we think

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<sup>22</sup> For example, through a Council policy or an amendment to the policies or controls in the planning scheme that clearly identifies the Council's preference for car parking provision in this precinct.



there is some merit in the provision of a quantum of visitor car spaces on the subject land, but whether this can be achieved in reality is another matter.

- 120 We think that the inability to provide convenient access to any car parking for the disabled or visitors again indicates a lack of resolution in the design of this proposal.
- 121 We do not intend to go through the traffic evidence and cross-examination other than to note Mr Kiriakidis' view that there 'remains some capacity' in the surrounding road network for additional traffic. His qualified evidence about this left us with the impression that there is an issue in terms of cumulative parking and traffic impacts given the remaining future development potential that exists within this sub-precinct. We agree with Mr Kiriakidis that if the Council does have a vision for higher density in the balance of this sub-precinct, then it should be taking a precinct wide approach to the benefits and dis-benefits of parking and traffic. We suggest the Council and the Applicant review the parking and traffic implications further as part of any new permit application.

## **CONCLUSION**

- 122 The review site presents a good opportunity for redevelopment, despite a number of constraints. Given its attributes, the use of the land for commercial uses and apartments is appropriate. However, we find that in this particular location, the design, height and setbacks are not appropriate. They do not respond acceptably to the existing built form and heritage context. There are also other issues relating to car parking and internal amenity that need to be addressed. We consider that the design as a whole should be reconsidered and a new proposal devised.
- 123 We will therefore affirm Council's decision. No permit is granted.

Rachel Naylor  
**Presiding Member**

Ann Keddie  
**Member**