



6.1 **1 VICTORIA AVENUE, ALBERT PARK**
LOCATION/ADDRESS: **1 VICTORIA AVENUE, ALBERT PARK**
EXECUTIVE MEMBER: **LILI ROSIC, GENERAL MANAGER, DEVELOPMENT,
TRANSPORT AND CITY AMENITY**
PREPARED BY: **PHILLIP BEARD, PRINCIPAL PLANNER
MICHAEL MOWBRAY, PRINCIPAL PLANNER**

1. PURPOSE

- 1.1 To assess a proposal to demolish the existing two storey building and construct a new three storey building, comprising a nine suite residential hotel above ground level (as-of-right) food and drink premises and basement car parking for five car spaces within car stackers.

2. EXECUTIVE SUMMARY

WARD:	Lake
TRIGGER FOR DETERMINATION BY COMMITTEE:	Demolition of a significant graded building and more than 15 objections.
APPLICATION NO:	880/2019
APPLICANT:	SJB Planning P/L
EXISTING USE:	Vacant commercial and residential
ABUTTING USES:	Commercial and residential
ZONING:	Commercial 1
OVERLAYS:	HO 443
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired

- 2.1 This proposal is for the demolition of all existing buildings on the site, which comprise a two storey commercial/residential uses to be replaced by a three storey (plus roof terrace) mixed commercial and residential building consisting of nine Residential Hotel suites and basement car park comprising a pit stacker/lift for five cars.
- 2.2 The application was advertised and received 165 objections, most of which raised concerns regarding both the loss of heritage fabric and the design quality of the replacement building. Due to these concerns and discussions between Council and the applicant, the plans were revised retaining the three storey built form and basement but removing the roof terrace. The plans were formally substituted and as a result, re-advertised and 17 additional objections were received bringing the total to 182.
- 2.3 In terms of demolition, it is Council policy that buildings which are not structurally unsound and have heritage value should be retained. On the previous application on this site (348/2018), the permit applicant and Council previously both obtained structural engineering reports, which had opposing conclusions regarding the structural integrity of the building. These and other very detailed views were all put to VCAT at a substantial hearing in March/April 2019. In summary, VCAT determined that demolition



may be justified because part of the building is structurally unsound but only if a suitable replacement building is proposed. VCAT went on to determine that the proposed replacement building was unacceptable and upheld Council's decision to refuse the application.

- 2.4 As to the now proposed replacement building, it is considered that it is a notable improvement over the building originally proposed. It is considered that Council's concerns expressed when this application was first lodged, have been suitably addressed via amended plans.
- 2.5 It is therefore recommended that the application be supported subject to conditions including the provision of additional privacy screening.

3. RECOMMENDATION PART A

- 3.1 That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, issue a Notice of Decision to Grant a Permit.
- 3.2 That a Notice of Decision to Grant a Permit be issued for demolition of the existing buildings and construction of a three storey building (plus basement) comprising as of right food and drink premises and a nine suite Residential Hotel together with reduction in car parking requirements for the food and drinks premises at 1 Victoria Avenue, Albert Park.
- 3.3 That the decision be issued as follows:

Amended Plans

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans forming part of the application but modified to show the following:
 - (a) The matters referred to in the revised BESS and other ESD documentation including additional landscaping details referred to in condition 7 of this permit.
 - (b) The first and second floor residential hotel balconies as facing generally south-east screened so as to allow outward and distant views but prohibit downward views into adjacent open space or habitable room windows of 28 Merton Street, Albert Park.
 - (c) Deletion of the word 'bar' from the basement store area.

No Layout Change

2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

External colours and Finishes

3. All external materials finishes and paint colours are to be to the satisfaction of the responsible authority and must not be altered without the written consent of the Responsible Authority.

Equipment and Services Above Roof Level

4. No equipment, services and architectural features other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.



Plant and Equipment

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

Outdoor Lighting

6. Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.

Incorporation of water sensitive design and Sustainable Design Initiatives

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

Site Management Water Sensitive Urban Design

8. 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.

Walls on or facing a boundary

9. Before the occupation of the development allowed by this permit, all new 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.

Car parking Areas must be Available

10. Car parking 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.

Applicant to pay for reinstatement

11. Before the occupation of the development allowed by this permit, the applicant/owner must do the following things to the satisfaction of the Responsible Authority:



- a) Pay the costs of all/any alterations/reinstatement of any Council and Public Authority assets that may be 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 if needed.
- c) Comply with conditions (if any) required by the Council or other relevant Authorities in respect of alterations/reinstatement if needed.

Vehicle Crossings

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

Car Stacker Maintenance

13. The mechanical car stackers are to be maintained in a good working order and be permanently available for the parking of vehicles in accordance with their purpose, to the satisfaction of the Responsible Authority.

Storage and disposal of garbage and collection

14. Provision must be made for the storage and disposal of garbage related to the residential hotel to the satisfaction of the Responsible Authority. All garbage storage areas must be screened from public view and garbage collection must, without the written consent of the Responsible Authority, utilise Council collection and must take place from the kerbside no more than three days a week at non-peak times of day.

Amenity

15. The amenity of the area must not be detrimentally affected by the development through the:
 - a) Transport of materials, goods or commodities to or from the land
 - b) Appearance of any building, works or materials
 - c) Emissions of noise, artificial light, waste water, waste products, grit or oil;
 - d) Presence of vermin.

Waste Management Plan

16. An adequate waste management arrangement must be provided for the premises, in accordance with Council's Community Amenity Local Law No:3 and a revised Waste Management Plan must be submitted indicating that waste collection must occur by using Council's kerbside collection service and must take place no more than three times per week. Once to the satisfaction of the Responsible Authority, the Waste Management Plan will be endorsed and form part of this permit. Waste collection must always be in accordance with the endorsed Waste Management Plan to the satisfaction of the Responsible Authority.

Regulation of deliveries and rubbish collection



17. Deliveries to and from the residential hotel, including rubbish collection, must only take place between:

7am and 7.30pm Monday to Friday

7am and 5pm Saturday and Sunday

Disposal of Bottles

18. No disposal of bottles or drink containers from the residential hotel may take place after 10.00pm or before 8.00am on any day of the week, unless with the further consent of the Responsible Authority.

SEPP N1

19. All air conditioning and refrigeration plant associated with the residential hotel must be screened and baffled and/or insulated to minimise noise and vibration to other residences to ensure compliance with noise limits determined in accordance with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1.

Storage of goods

20. No goods associated with the residential hotel are permitted to be stored or left exposed outside the building so as to be visible from any public area.

Approved Use

21. Without further approval from the responsible authority, the site (above ground level) is to be exclusively used as a Residential Hotel meaning the provision of temporary accommodation mainly for travellers and tourists.

On Site manager/Desk Clerk

22. The residential hotel use must be subject to there being an on-site manager/desk clerk at all times the use is operating. Such person must be in attendance 24 hours a day and in addition to managing the day to day operations of the use, must attend to any matters raised under Conditions 23 and 24 and upon request, be available to park and/or retrieve guest cars from the site's car parking facility, which must not be undertaken at any time by residential hotel guests. The manager is to be responsible for the implementation and on-going compliance with the Management Plan under condition 23 to the satisfaction of the Responsible Authority. The Management Plan and house rules must not be altered except with the consent of the Responsible Authority.

Residential Hotel Management Plan

23. Before the residential hotel use starts, a management plan must be prepared to the satisfaction of the Responsible Authority. The plan must include but not be limited to, the following:
- a) Procedures, and standards for guests to minimise amenity and parking issues in the neighbourhood (with guest parking by valet/desk clerk only)
 - b) Establishment of a Complaints hotline for adjacent residents.
 - c) Standards for property maintenance, health and cleanliness including measures to be undertaken to ensure areas surrounding the establishment are kept clean of litter.



- d) Establishment of house rules (to be displayed in a prominent location and clearly visible to guests in the premises at all times) regarding:
 - (i) Guest behaviour and no refund eviction practice and processes should inappropriate guest behaviour occur
 - (ii) Control of noise from inside and outside the site
 - (iii) Control of alcohol consumption,
 - (iv) Ensuring that the number of guests per unit must not exceed the number included in the appropriate tariff

Once to the satisfaction of the Responsible Authority, the Management Plan will be endorsed and form part of this permit. The management of the use must always be in accordance with the endorsed Management Plan to the satisfaction of the Responsible Authority.

Phone Number and phone contact

- 24. The name and a 24-hour contact number of the residential hotel manager must be displayed on the outside of the building visible to passers-by. This contact number must be available at all times for the use of residents in the vicinity of the premises so that they can call to register any complaint or comment about the operation of the premises or the conduct of the patrons/guests. This phone number must be staffed at all times and any concerns expressed, actioned and satisfactorily resolved as soon as practical by the on-site staff. A permanent register of all calls to this number must be maintained and this register must be made available at all times for inspection by the Responsible Authority.

Ancillary uses

- 25. There shall be no ancillary facilities provided for the residential hotel use or within its floor plans. This includes, cafes, restaurants, bars, conference rooms, meeting rooms, breakfast rooms, departure lounges and waiting areas or gymnasium for use by outside patrons.

No Signage

- 26. This permit relates only to the use of the land and does not comprise an approval for the erection of any advertising signs. The location and details of any advertising signs to be erected on the land must be the subject of a separate planning application.

Car parking allocation

- 27. Not less than two on site car spaces are to be allocated to residential hotel guest parking and not less than three on site car spaces are to be allocated to staff of the food and drink premises, to the satisfaction of the Responsible Authority.

Urban Art

- 28. 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.



Time for starting and completion

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

- a) The development is not started within two years of the date of this permit.
- b) The development is not completed within two years of the date of commencement of works.
- c) The residential hotel use is not started within 3 years of the date of this permit.

3.4 RECOMMENDATION – PART B

That Council accepts that car parking provision for the Residential Hotel component only is to its satisfaction.

3.5 RECOMMENDATION - PART C

That Council authorise the Manager City Development to instruct Council's Statutory Planners and/or solicitors on any future VCAT application for reviews and/or any independent advisory committee appointed by the Minister for Planning the consider the application(s).

4. RELEVANT BACKGROUND

- 4.1 The previous application 348/2018 on this site, proposed the full demolition of the existing buildings, construction of a 4-storey building comprising seven dwellings and commercial tenancies at ground level, associated basement car park comprising 14 spaces for residents and 1 space for commercial tenancies and reduction of car parking for proposed commercial uses. Council did not support the application on the following grounds:
1. *The proposed demolition would not meet the provisions of Council policy – Clause 22.04 – nor the provisions of the Heritage Overlay (Clause 43.01) in that the building is not structurally unsound and its demolition would detrimentally affect the heritage significance of the immediate and wider neighbourhood and adversely affect the village feel of the neighbourhood activity centre.*
 2. *The proposed development would not be in keeping with its surroundings as required by the Heritage Overlay and would additionally not be sufficiently responsive to the site and its context and would not comfortably integrate with or enhance the prevailing neighbourhood character as required by Local Policy in particular Clauses 21.05-1, 21.05-2, 21.05-3 and 22.06 of the Port Phillip Planning Scheme.*
- 4.2 The matter was heard by VCAT and the Tribunal affirmed Council's decision to not support the application. Key reasons for VCAT's decision are found in the following paragraphs of the order, together with a map also extracted from the VCAT order depicting the various eras and 'sections' of the existing building.

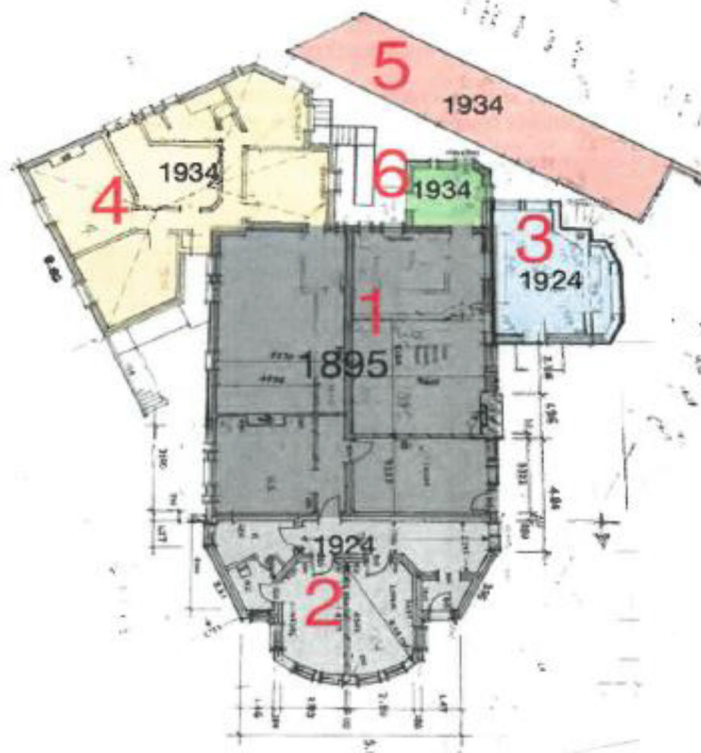


Figure 1(BsBS): Building Portions.

“38 The term ‘structurally unsound’ is not defined in the policy at Clause 22.04-3 or in other clauses, and accordingly it has its ordinary English meaning.⁶ The meaning of ‘structural’ is relevantly defined in the Macquarie Dictionary to be ‘of or relating to structure; relating or essential to a structure.’⁷ The definition of ‘unsound’ is ‘not sound’ where ‘sound’ is relevantly defined as ‘free from injury, damage, decay, defect; in good condition, robust.’⁸

*39 The meaning of the expression ‘structurally unsound’ has previously been considered by the Tribunal in the context of the Port Phillip Planning Scheme. In *Harding v Port Phillip CC*⁹ the Tribunal stated that the expression ‘in ordinary usage would include the meaning that the building or significant parts of it, such as the foundations and/or walls and/or roof, are likely to collapse within the foreseeable future (say within the next 10 years).’¹⁰*

*40 In *Advant Pty Ltd v Port Phillip CC*¹¹ the Tribunal broadly agreed with the approach taken in *Harding*, and stated that ‘if a building is structurally unsound for the purposes of demolition policy in this scheme, its structural core comprising its walls, roof or foundations must be more likely than not to fail to such an extent, within the medium term without repair or remedial works, as to make the building likely to collapse or unable to be reasonably safely occupied.’¹²*

42 These previous decisions provide guidance but ultimately, we have to form our own opinion about the structural condition of the building based on the material presented to us. Even if a building can be demonstrated to be structurally unsound, this must be considered together with other matters in determining whether demolition should be



allowed. These matters include the heritage significance of the place in question; whether the building can be feasibly rectified and re-used, and the merits of doing so having regard to its level of contribution to the heritage place.

52 Whilst the building itself is of relatively modest significance, we find that it is typical and representative of buildings from a period of development which are recognised as being historically and aesthetically interesting in their own right in HO443. The building is substantially intact to its inter-war form and in our view, it is a building of significance which contributes towards an appreciation of the heritage precinct, and which plays a role in formulating the visual impression of the historic and aesthetic character of the area. The fact that the building is not a remarkable example of its type does not undermine its significance. In our view, a building does not need to be remarkable or the best example of its type to be a meaningful element within a heritage precinct.

85 We have carefully considered this evidence and on balance, we consider that the following structural elements of the building are degraded, damaged, or in poor condition:

- The footings of the 1895 part of the building, consisting of unmortared bluestone plinths underlain by cobblestones. It is very likely that these footings have moved and caused cracks in the masonry;*
- The footings of building portions 2-6, which consist of shallow concrete strip footings. On balance, it appears that these footings have not prevented differential movement;*
- The walls have out of plane movement and contain cracks. Certain walls are leaning and bowing as a result of foundation movements;*
- The galvanised ties within existing wall cavities bonding the internal and external masonry skins together;*
- Although not strictly a 'structural' matter, the external render, flashings, weepholes and damp-proof courses which contribute to making the building 'weatherproof' are inadequate, as are the corroded steel plates and lintels over the steel windows.*

86 It is Mr Cross's view that any lime mortar mix in the building may not be suitable for structural purposes under AS 3700-2011 and that any part of the existing structure that is used to support reconstructed work will require a special design known as a 'Performance Solution' and certification by a qualified engineer. We do not consider that the use of the mortar mix in any retained portions of the building is practically impossible.

89 The building was occupied at the time of our inspection. Nevertheless, based on the facts and circumstances of this case, we accept that without remediation works being undertaken on the building, it is likely that within 10 years or so the structural core of parts of the building, including parts of the footings and the walls, will fail so as to make at least part of the building likely to collapse, or unable to be reasonably safely occupied. However, we are not persuaded that the building is beyond repair.

91 There is a dispute about the practicality of undertaking the necessary works to underpin the footings of the 1895 building. Mr Jackson is of the view that these issues could be resolved, and Mr Gardiner's evidence is that underpinning is not desirable and other methods may be available. On the other hand, Mr Cross has significant



reservations about whether these footings can be underpinned. Whilst there would no doubt be practical issues in attempting to rectify the bluestone footings of the 1895 building, we are not persuaded that completing the works is impossible.

95 Whilst it might be the case that the building could be restored, having considered Mr Grimes' evidence we are of the view that the \$3,425,000 estimate to renovate and mediate the building is likely to be conservative and that the cost is likely to be higher because more work is likely to be required. This additional work includes the removal of additional internal and external render (where required); additional Helifix ties; removal and replacement of additional windows and doors; brickwork replacement and work to mate the brickwork amongst other things. We accept that the cost of rectification is likely to be significantly greater than \$3,425,000. We do not consider that the rectification of the building to address the structural issues we have identified is practically impossible, but it would involve significant expense.

100 Based on the facts and circumstances of this case, we have been persuaded that significant parts of the building are 'structurally unsound' in sense of that expression described in previous Tribunal decisions such as Harding, Advant and Ford. We find that structural elements of some parts of the building, particularly the footings and walls of the 1895 building and the Victoria Street façade, are elements of the structure of the building which manifest in a risk of collapse within the foreseeable future without repairs or remedial works.

102 If we accept Mr Cross' evidence, the parts of the building requiring renewal include the walls of the 1895 building and parts of the Victoria Avenue façade which contribute to the role of this building in the streetscape. We place weight on the extent of work that appears likely to be required which could be said to be out of proportion to the role of the building from a heritage perspective. We have considered the relevant Scheme provisions, including the purposes and decision guidelines of the Heritage Overlay and the relevant policies in the Scheme. Our conclusion is that whilst a decision to demolish the building would adversely affect the significance of the HO443 precinct, this adverse outcome may be justified because at least parts of the building are structurally unsound, but only if a suitable replacement building is proposed."

Proposed Replacement Building

"135 Whilst that is the design philosophy adopted with the proposed building, we consider that the starting point (i.e. the street wall) is too high and that as a result the building will have a dominance which is not in keeping with the character and appearance of the heritage place recorded in the statement of significance.

136 The visual impact of the street wall and the way it extends beyond that of the primarily double storey commercial built form is exacerbated by the way in which the review site, and hence any new building, has a prominent location at the five-way intersection. A reduction in the street wall by one level would result in a street wall of approximately RL 11.8 metres or 800mm lower than the nearest commercial buildings. We consider this transition in height more in keeping with, and consistent with, the double storey character of the heritage place. Our concern is not so much with the actual measurement (three level street wall 2.4 metres higher and a two-level street wall 800mm lower than the commercial buildings to the west). Instead our concern is



how the street wall will appear when viewed in juxtaposition with the parapet heights of the nearest heritage buildings and in the wider heritage precinct where street walls/parapets are primarily double storey.

138 We acknowledge there is a different context to Victoria Avenue, particularly towards Dundas Lane where single storey dwellings are located to the south of the lane and double storey dwellings diagonally opposite on the other side of Merton Street. We consider that a two-storey street wall, whilst higher than the single storey dwellings would be more in keeping with the double storey commercial and residential buildings on the opposite side of Merton Street. A two-storey street wall would also recognise that it is acceptable to step up from the single storey dwellings to a two-storey street wall, and a higher building, where they are separated by a laneway which also forms a boundary between residential and commercial zones. In the absence of Heritage Overlays it may well be that a new building on the commercial side of the boundary would provide for a much greater and more abrupt increase in height. In principle, we therefore support the notion of a two-storey street wall continuing along the whole Merton Street frontage.

139 Our lack of support for a three-storey street wall follows through to the overall four storey height of the building. A reduction in the height of the street wall means that upper levels are more exposed and more prominent in views within the heritage place. Whilst we accept the evidence put by all heritage witnesses that a recessed upper level is acceptable, we consider that the four storey building results in a building which is not consistent with and is discordant with the double storey scale of the nearest commercial buildings in Victoria Avenue and Bridport Street. Despite the setbacks, articulation and angled roof along Merton Street and Dundas Lane, we consider that a four-level building will visually dominate the single storey dwellings on the opposite side of Dundas Lane.

Ground level

149 We consider that the extent of glazing is excessive and agree with Mr Lovell that the continuous display windows glazing contrasts strongly with the broken pattern of shop fronts in the precinct. If a new building is constructed on the site it should include more vertical wall elements and other design features such 'in-goes' to create greater articulation more in keeping with the existing commercial shop fronts in the precinct.

160 It will be evident from our preceding comments about different elements of the building that we do not find it warrants our support. Whilst we support the concept of a contemporary design response, we consider that the street wall is too high and that as consequence the building needs to be reduced in height. We also consider that upper level setbacks are inadequate to provide a visually recessive top and that the extent of unbroken glazing at ground floor is excessive. Furthermore, the building materials and colours, when considered along with the points above, does not result in a building of design excellence in the manner required by policy. It is a building which because of the site context within the heritage precinct, will be unacceptably dominating within the heritage precinct, is not in keeping with the primarily double storey scale of the heritage place described in the statement of significance and, as such, will adversely affect the significance of the heritage place. For these reasons, we would not issue a permit for the development of the new building."



164 Most importantly however, under Clause 22.04-3, a permit for demolition should not be issued for demolition unless the building is structurally unsound and the replacement building demonstrates design excellence. Whilst we may be satisfied about the first limb, we are not satisfied that the replacement building displays the necessary level of design excellence to justify demolition of the existing building. For this reason, we would not issue a permit for the demolition of the building.

171 Having regard to all of the material before us, we have been persuaded that, on balance, whilst a decision to demolish the building would adversely affect the significance of the heritage place HO443, this is an adverse outcome that may be justified, where a suitable replacement building is proposed. However, we are not persuaded that the replacement building is of sufficient architectural merit - design excellence in the words contained in the planning scheme – to warrant approval for the reasons we have set out in our reasons”.

- 4.3 In summary, it is considered that there is sufficient justification in the Tribunal decision that would allow demolition of the existing building based on it being structurally unsound which in this instance, is considered to be one of the key threshold issues under Council’s Heritage Policy (Clause 22.04).

5. PROPOSAL

- 5.1 It is proposed to demolish all buildings on the site and construct a new three storey building plus basement level. The proposed building is described as follows:

Basement Level:

- 5.2 Five car spaces provided in car stackers accessed directly from the rear laneway being Dundas Lane. The basement level would also accommodate the following:
- A food and drink tenancy of 123m² in area,
 - A store/laundry area for the serviced apartments,
 - A toilet and amenities areas
 - A store area for the bar and kitchen,
 - Stair, lift and access lobbies and
 - Two building services areas one of which would contain a 15,000 litre rainwater tank.
- 5.3 As noted above, the basement would be accessed directly from Dundas Lane via a new 5.6m wide crossover. It would essentially abut all boundaries aside from a small indented section fronting Victoria Avenue.
- 5.4 The application proposes to allocate the car parking as follows:
- Tenancy 1 Staff – One space
 - Tenancy 2/2A Staff – Two spaces (One space each)
 - Serviced Apartment Staff – Two spaces

No car parking is proposed to be provided on-site for guests of the serviced apartments or customers of the food and drink premises.



Ground Floor:

- 5.5 This level would accommodate the remaining commercial floorspace comprising two tenancies of 234m² and 92m² each. There would also be a refuse area, single kitchen, entry lobby on Victoria Lane and the top level of the car stacker. Setbacks would for the most part be zero (to Victoria Avenue and Merton Street and mostly to Dundas Lane) aside from some small indentations for planter boxes, the entry lobby and window recesses.

First Floor:

- 5.6 Five serviced apartments are proposed at this level. They would be between 60m² and 94m² each. They would all be arranged around the perimeter of the building and would consequently be orientated mainly towards the Merton Street and Victoria Avenue boundaries. One would, however, be orientated towards the front 'corner' of the site.
- 5.7 Setbacks to the boundaries would be zero aside from a front balcony facing the Victoria Avenue/Merton Street intersection (3.5m setback at its greatest). Additionally, two 'rear' facing balconies are proposed, which depict 1.8m setback to the rear laneways and 4.9m setbacks to Merton Street and Victoria Avenue.

Second Floor:

- 5.8 A very similar layout to the level below is proposed, although four serviced apartments are proposed at this level and boundary setbacks would be greater at a consistent 1.8m to each frontage. The apartments would vary in size from 67m², to 90m². The front 'point' of the building would be defined by two balconies and a planter box at the point itself.

Roof Level:

- 5.9 A generally central roof plant area of 212m² is proposed and would be setback generally 2.8m to all boundaries. It would be slightly beneath a 41.5-degree sloping roof feature which would occupy the 2.8m setback noted above. The roof plant area would contain solar panels, gas hot water units and air conditioning units. It would be accessed by a lift overrun.

General Description:

- 5.10 The proposal would be relatively simple in its presentation. Most of the ground and first levels would be clad in textured render finish with recessed brick sections surrounding the window openings. Windows at ground level would generally be full height whilst at the level above, they would be smaller and generally rectangular, although some windows would have slightly greater vertical proportions. The windows to the uppermost level would comprise full width glazing, that is, they would constitute almost all of the elevation treatment to the main street frontages. The rear of the uppermost level would have some rendered sections amongst the glass.
- 5.11 The proposal also includes a sloped/pitched roof over the whole building (on each elevations) within which would be the plant/service area as previously noted.
- 5.12 The main podium section of the building – being the vertical street wall height up to the recessed upper level balconies - would be just over 8m high with overall height being just over 12m to the top of the angled roof. By way of information, the previous proposal depicted a building of just over 14m high (excluding roof plant).



6. SUBJECT SITE AND SURROUNDS

Site area	500m ² approx.
Existing site conditions.	<p>The site is irregular in shape and is an island. It features two primary street frontages, Victoria Avenue to the west (22.5m) and Merton Street (22.5m) to the east. To the rear of the site are two secondary frontages to Victoria Lane (16.2m) and Dundas Lane (16.2m)</p> <p>The subject site currently contains a double storey building, with some single storey elements (front and rear) together with garages and car parking structures to the rear.</p> <p>Vehicle access to the site is provided via Dundas Lane and Victoria Avenue.</p> <p>The site features no established vegetation or any slope of consequence.</p> <p>The building displays a somewhat eclectic style but is generally of the Art Deco style with some Arts and Crafts and Victorian influences. Its current appearance dates from the mid-1930s when substantial modifications to two Victorian dwellings were undertaken and the shops and flats were added.</p> <p>It addresses the Victoria Avenue intersection with a curved single storey element with balcony above meaning that the majority of the building behind is two storeys. It addresses Victoria Avenue with some walls offset from the boundary at irregular angles together with differently shaped and proportioned windows being noted across the building.</p> <p>However, many of its interfaces to its boundaries are at zero setback at both levels.</p> <p>It is currently used for commercial and residential purposes with at least three commercial tenancies at ground level and two dwellings above. None of the building is currently occupied.</p> <p>The existing building also has two garages but evidence is that these are (were) used for storage and car parking meaning that there is no car parking readily available for the existing building.</p>
Site Surrounds	<p>The site is located within the Bridport Street/Victoria Avenue Neighbourhood Activity centre and its surrounding character is partly based on that location. It does, however, have residential interfaces also.</p> <p>Beyond the intersection of Victoria Avenue and Merton Street to the north – at a distance of almost 50m – is the heart of the Victoria Avenue commercial area. These buildings are generally two storey, Victorian and Edwardian buildings with zero front setbacks. Immediately opposite across Merton Street is the blank side wall of another two-storey commercial building (a small supermarket).</p> <p>Further to the south and across Merton Street, the site is diagonally opposite several two storey, Victorian terrace dwellings.</p>



	<p>Across Victoria Avenue to the west is Albert Park Primary School (at a distance of approximately 35m).</p> <p>To the south west, across Victoria Lane, are several two storey buildings again used for commercial purposes at least at ground level, whilst to the south-east, across Dundas Lane, are single storey Victorian dwellings forming part of a very consistent 'run' of such dwellings in Merton Street.</p> <p>The site abuts the Primary Public Transport Network having convenient access to the Route 1 Tram line and is within walking distance to the Route 96 Tram and the Route 606 Bus route.</p>
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7. PERMIT TRIGGERS

Zone or Overlay	Why is a permit required?
<p>Clause 34.01 Commercial 1 Zone (Schedule 1)</p>	<p>Under the provisions of Clause 34.01-4, a permit is required to construct a building and carry out works.</p> <p>Under Clause 34.01-1, a permit is also required for use of the land for Residential Hotel, (which is nested under the broader category of 'accommodation'), due to frontage at ground level exceeding two metres.</p> <p>A Residential Hotel is defined under the Port Phillip Planning Scheme as: <i>Land used to provide accommodation in serviced rooms for persons away from their normal hotel place of residence. If it has at least 20 bedrooms, it may include the sale of liquor for consumption on, or off, the premises, function or conference rooms, entertainment, dancing, amusement machines, and gambling.</i></p> <p>A Food and Drink Premises is defined as: <i>Land used to prepare and sell food and drink for immediate consumption on, or off, the premises.</i></p> <p>It may include a restaurant, convenience restaurant, a bar a Take away food premises, etc.</p> <p>*A planning permit is not required for the use of the land for a for a Food and Drink premises under this zone.</p>
<p>Clause 43.01 Heritage Overlay (Schedule 443)</p>	<p>Under Clause 43.01-1, a permit is required to demolish or remove a building, construct a building or construct or carry out works.</p>



<p>Clause 52.06 Car Parking</p>	<p>Under Clause 52.06-3, a permit is required to reduce the number of car parking spaces prescribed by the Table at Clause 52.06-5.</p> <p>The table indicates car parking should be provided at the rate of 3.5 spaces per 100m² of floorspace for food and drink premises. A permit is triggered for the proposed shortfall.</p> <p>*A Residential Hotel is not listed not listed in the Table at 52.06-5 and Clause 52.06 identifies that where land uses are not listed in the table, the amount of car parking required would need to be to the satisfaction of Council.</p>
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Clauses 55 (Two or more dwellings on a lot - Rescode) and 58 (Apartment Developments) do not apply to this application and are not permit triggers.

Clause 55 does not apply to the development of a 'residential building' within a Commercial 1 zone.

Clause 58 only applies to apartment developments. Apartments – by way of the Planning scheme 'Meanings of Terms' under Clause 73 – are a form of dwelling but are not a form of 'residential building'. Therefore, Clause 58 does not apply.

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

8. PLANNING SCHEME PROVISIONS

8.1 Planning Policy Frameworks

The following State Planning Policies are relevant to this application:

Clause 11: Settlement, including:

Clause 11.01-1R1: Settlement - Metropolitan Melbourne

Clause 11.02: Managing Growth

Clause 15: Built Environment and Heritage, including:

15.01-1: Built Environment

15.01-1S: Urban Design

15.01-1R: Urban design - Metropolitan Melbourne

15.01-2S: Building Design

15.01-5S: Neighbourhood character

15.02-1: Sustainable development

15.03: Heritage

Clause 17.04: Tourism

Clause 17.04-1S Facilitating Tourism



Clause 19: Infrastructure including

Clause 19.01-1S: Energy supply

Clause 19.01-2S: Renewable energy

Clause 19.01-2R: Renewable energy - Metropolitan Melbourne

Clause 19.03: Development Infrastructure

Clause 19.03-4S: Stormwater

Clause 19.03-6S: Waste and resource recovery

Clause 21.03: Ecologically Sustainable Development, including

Clause 21.03-1 Environmentally Sustainable Land Use and Development

Clause 21.04: Land Use, including

Clause 21.04-1 Housing and Accommodation

Clause 21.04-2 Activity Centres

Clause 21.04-6 Tourism and The Arts

Clause 21.05: Built Form, including

Clause 21.05-1 Heritage

Clause 21.05-2 Urban Structure and Character

Clause 21.05-3 Urban Design and the Public Realm

Clause 21.06: Neighbourhoods, including

Clause 21.06-3 Albert Park/Middle Park

Clause 22.04: Heritage Policy

Other relevant provisions

Clause 52.06: Car Parking

Clause 65: Decision Guidelines

8.2 Relevant Planning Scheme Amendments:

There are no recently gazetted or proposed amendments that would affect assessment of this proposal.

8.3 Aboriginal Heritage

The proposal does not require a Cultural Heritage Management Plan. Under Part 2, Division 2 (Exempt activities), Section 10, the proposal is exempt from the requirement for such a plan. Even though the development would be for more than three residential hotel suites, the subject site in any event is not within 200 metres of Victorian coastal waters (approximately 780m from the foreshore) and it is also less than 1,100m² in area (approximately 500m²).

9. REFERRALS

9.1 Internal referrals

Council's Heritage and Urban Design Sections:



A single joint referral response from Urban Design and Heritage was received in relation to the original plans. This response raised significant concerns, which essentially led to the current proposal now under assessment. The revised proposal now subject to this application was re-referred and joint comments have been received as per below.

The design response in the advertised plans is much improved from the initial design and the proposal should be commended for its commitment to meet VCAT and Council's concerns with a considered, contextual response.

In terms of its overall scale, form, materiality and detailing, the proposed building will now sit comfortably within the heritage context. The advertised design response also presents greater legibility as the pattern language is more refined. Fewer elements and a consistent rhythm is delivered by the appropriately scaled fenestrations on ground floor and level 1, with indents to the façade providing vertical articulation. While this is not continued through to the top storey, the upper level is setback enough to limit any legible inconsistency and provides a modest point of difference from the two-storey built form in Victoria Avenue and reads as a recessive element. This delivers improved horizontal and vertical articulation with reduced visual bulk and a referenced scale to the surrounding terraces and shops. In conclusion, the advertised design response successfully resolves the following concerns that have been highlighted for reference from the previous advice.

Council's Heritage Advisor and Urban Designer, identified the following concerns (in blue) with the design of the proposal as originally submitted in this application, from an urban design and heritage perspective and also having regard to the key issues raised in the VCAT decision. Council's Heritage Advisor and Urban Designer have outlined the following concerns to the applicant, with clear advice in relation to the changes required to the proposal as initially advertised.

- **BUILT FORM**

Height, form & mass.

In principle, a three-storey development is supported. Being an island site on a prominent corner in Albert Park, the site presents the opportunity to incorporate a building that contributes to wayfinding.

Street wall and setbacks.

- *Having said the above, in accordance with VCAT's decision, a consistent two storey street wall is sought, and any upper level should read as a recessive element. The proposed setbacks and façade articulation as initially proposed (see below) were not sufficient causing the development to read as a three-storey street wall. Because of this, further setback of render elements is needed to provide a visual break and successfully address the dominant two-storey street wall resolved by the Tribunal.*



The initial design presented a built form response with a **three storey** street wall.



The **'newly'** (word added by author) advertised design response now presents a clearly defined **two storey** street wall with the third storey clearly set back with a pitched roof form to reduce its visual bulk, form and mass. From various vantage points, this revised design will be less visually dominant and will maintain a street wall consistent with its context along the south side of Victoria Avenue.

Response to the character and streetscape.

- City Design supports a contemporary approach as long as the rhythm, proportion, and overall architectural language of the heritage landscape is referenced. The initial design response, however, proposed to introduce several new elements not common in the area, from the canvas and glass awnings to the aluminium sunshades framing the windows and the timber arcade flanking the main entrance, (See images below).



The proposed three storey development with elements not referenced in the heritage landscape.



Above are some of the elements not referenced from context that diminish the effectiveness of the response to character and streetscape.

Below are examples where the scale and rhythm of the streetscape character is lost in an abundance of fenestration scales and style.



The architectural expression and detailing of the advertised design response has been greatly simplified and the unnecessary and distracting detailing has been removed, as shown in the images below.



- *It now presents a refined pallet of elements and a stronger pattern language that respects and is more appropriate to the historic context. The scale and rhythm of fenestrations has been rationalised and are now set within indents in the façade. This breaks the building down into vertical bays in a manner that is consistent with the heritage buildings on Victoria Avenue (see comparison images below). The array of awning types and materials have been consolidated creating a line that references the other awning in the street and provides pedestrian amenity. At the corner the awning has been removed to provide a clean and defined profile that is consistent with historic corner buildings in the precinct such as the Albert Park and former Windsor hotels.*



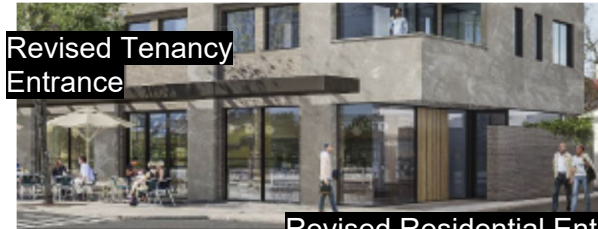
Plans showing how the ‘**newly**’ (word added by planner) advertised design response references the historic built form in Victoria Avenue.

- **View lines.** Whilst the site presents an opportunity, due to its location, to reinforce the sense of place and contribute to wayfinding, an appropriate transition to the lower-scale heritage properties is expected. In the initial plans this transition was poorly resolved in both Victoria Avenue, and Merton Street for the reasons previously discussed (lack of clear streetwall expression, lack of clear setbacks to upper level etc.).
- This issue has been resolved by removing the material difference, establishing a clear streetwall with a recessive upper level, which now includes a continuous hipped roof form that references the historic residential roof forms in Merton Street. See comparison images below: initial design at left, advertised design response at right.



○ **PUBLIC REALM & GROUND FLOOR**

- **Legibility and access to entry and lobby areas.** In the initial design legibility was problematic for both the commercial tenancies and residential lobby, as the facade articulation on Merton Street emphasised the middle section of the building making it read as the main entrance. Pedestrian access to residents from the Victoria Lane is supported, however, the narrow timber arcade framing the entrance did not contribute to an adequate sense of address. Because of this we recommended that the hierarchy of main entrance to residential lobby should be clearer.



Revised Tenancy
Entrance



Proposed Residential
Entrance

Revised Residential Entrance

As shown above, the revised residential entrance in the advertised design response (at left) has removed the timber arcade framing that was compressing the space and making it difficult to identify as an entrance (shown at right). The tenancy entrance has improved slightly, highlighted by being central to the awning.

FAÇADE TREATMENT AND DETAIL

- **Response to surrounding character.** As stated above, the overall architectural expression of the proposal does not correspond to the heritage character of the area. Terracotta cladding, aluminium window frames, metallic eave and roof structure correspond more to an area with a strong industrial setting.



Proposed design



Revised design



Existing fabric next door

The façade treatment and detail issues have been resolved in the **newly** (word added by author) advertised design response by replacing or removing 'out of character' materials and details including the terracotta (now replaced with smooth renders that references the traditional buildings in the area) and the metal elements bolted to the side of the building (which diminished the legibility of the setback to the upper level) and the mixture of awnings. Removing and replacing these elements has simplified the design and has incorporated materials, finishes and details (smooth render, regularly spaced windows, simple muted palette of colours and materials) that respect and complement the historic buildings in the area offering a more considered, contextual design response.

- **Materials:** ... In the initial design we questioned the presence of the canopy protecting the corner and entrance, while it does provide some pedestrian amenity, noting this is not a place where continuous weather protection is required).

In the re-advertised plans, removing the awning over the corner presents a more appropriate corner condition without adversely affecting pedestrian amenity.



Conclusion

The points outlined (in blue) provided the applicant with clear advice in relation to the changes required to the initial proposal to address Council's concerns from an urban design and heritage perspective and having regard to the key issues raised in the VCAT decision.

As noted below, the '**newly**' (word added by planner) advertised plans have now resolved most of Council's concerns with the initial proposal and in our opinion represents a more considered contextual response that will sit comfortably within the heritage context and can be supported.

- Reinforce the two-storey street wall as resolved by VCAT, ensuring any volume above two storeys is recessed so it doesn't interfere with the street wall legibility.

Resolved in full

- Integrate better with the heritage character of the area, a contemporary development should draw from the predominant architectural language of the area and reinterpret it while honouring the history of the site and surroundings.

Resolved in full

- Remove unnecessary elements that distract from the design intent, say the roof pergola structure, metal sunshades, entrance arcade and corner canopy.

Resolved in full

- Improve internal amenity, dignifying the entrance and residential lobby as well as providing most apartments with private open space, this will also assist with potential future transition from serviced apartments to long-term apartments, increasing housing options.

Resolved in part

- Enhance sense of address, emphasising main residential access.

Resolved in full

- Ensure an adequate transition to the lower scale residential streetscape is achieved by articulating façade elements and balancing visual bulk.

Resolved in full

- Simplify material palette and massage architectural envelope to integrate better to the heritage fabric, scale and architectural language of the area.

Resolved in full

- Include innovative and creative solutions that demonstrate design quality, set a good precedent for new development and go above and beyond the application requirements.

Resolved in part

Planners Comments:

It is considered that all the key matters have been fully resolved. Those that are not fully resolved are not considered fundamental to this proposal, such as the internal amenity of the



residential hotel suites, which are considered adequate and suitable and do not require resolution by way of conditions.

Matters regarding demolition are assessed later in section 11 of this report.

7.2 Council's Traffic Engineering Section

(COMMENTS ON ORIGINAL/SUPERCEDED PLANS)

- *Vehicle access is proposed via Dundas Lane. Access to the mechanical stackers will be directly from the laneway.*
- *Parking is provided using Woehr Combilift 543-2.0. A total of five spaces will be provided on-site.*
 - *The report indicates the mechanical stacker can provide an available platform of 2.5m wide x 5.7m long and will satisfy the minimum height clearance outlined in Clause 52.06. These dimensions and height clearance are considered acceptable. However, it is recommended they clearly show the available platform dimensions and provide a cross section for this area for confirmation.*
 - *I suggest the Applicant indicate how the door for the mechanical stacker will be fitted.*
 - *The swept path assessment indicates vehicles and enter/exit the stacker. Can the swept path assessment plan also annotate the laneway's carriageway and footpath widths?*
 - *It is noted if a vehicle approaching the site from Merton Street while the stacker is being used, I have concerns the vehicle will prop across the footpath crossing (near Merton Street). The Applicant may want to consider reposition the mechanical stacker at 'Refuse' area.*
- *Plans needs to be updated reflect Council standard drawings/designs of new crossover. Also, the crossover should be designed/constructed perpendicular to the laneway.*
- *Any ramp or gradient change required to access the mechanical stacker must be contained wholly within their site.*
- *The plans do not clearly show the existing bluestone crossover in Dundas Lane will be removed. Can the applicant confirm if the existing crossover will be removed and the footpath reinstated? All redundant crossovers must be reinstated to Council satisfaction.*
- *To ensure vehicles do not park in this section of Victoria Lane and Dundas Lane (i.e. obstruct vehicle access) I recommend installing No Stopping restriction along the building.*
- *Applicant shall be responsible for costs incurred by Council to modify any existing on-street parking signage and line-marking.*
- *Full pedestrian sight triangles have not been provided in accordance with Clause 52.06 of the planning Scheme. However, I am satisfied to allow the reduced sight triangles in this case; vehicles must give way to pedestrians when entering/leaving a road related area.*



Traffic Generation and Impact

- *TraffixGroup has assumed all five parking spaces will be 'filled' and 'vacated' during AM and PM peak hour respectively. The level of traffic generation for each hour are considered acceptable.*

Parking Overlay and Parking Provisions

- *Clause 52.06 of the planning scheme requires a minimum of 16 parking spaces for the Food and Drink premises.*
- *In the absence of a parking rate for the Serviced Apartment, TraffixGroup has considered using a parking rate of 0.35 space per apartment. An empirical assessment was undertaken that noted 0.3 space per apartment was typical for similar sites but adopted 0.35 to be conservative. Based on the 0.35 space/apartment the site requires 3 parking spaces.*
- *A total of 19 parking spaces.*
- *The site will provide 5 parking spaces. No parking spaces will be provided to visitors/customers.*
 - *Tenancy 1 Staff – 1 space*
 - *Tenancy 2/2A Staff – 2 spaces*
 - *Services Apartment Staff – 2 spaces*
- *Given the above, the proposed development results in a shortfall of 14 car parking spaces and is seeking a waiver.*
- *It is noted, on-street parking is nearing full capacity.*
- *Note that the assessment for the appropriate rate for car parking provision lies with Statutory Planning. Reference should be made to CoPP's Sustainable Parking Policy. We also suggest comparing previous approved parking provision rates of adjacent developments as part of the Planning team's assessment / determination.*

Public Transport:

- *The subject site has convenient access to Route 1 Tram and is within walking distance to Route 96 Tram and Route 606 Bus.*

Loading Zone and Waste Collection:

- *While a Loading Zone is not required in the planning Scheme it is recommended they provide a loading area on-site that is shared/accessible for waste collection (if privately managed).*
- *The Waste Management proposal must be referred to Councils Waste Management department for assessment. We encourage waste collection to be undertaken on site.*

Bicycles:

- *Clause 52.34 of the planning scheme requires 5 bicycle parking spaces be provided on site for the proposed land uses (3x Staffs and 2x Visitors).*



- *The report and plan does not indicate any bike racks provided on site. It is recommended they update this section to clearly identify the amount and location of the bike racks.*
- *Locations of bike racks must consider Clause 52.34.*
- *We recommend bike racks are installed within their site near the building's entrance for visitors/customers.*
- *Also, give the parking waiver we recommend additional bike racks are installed within their site.*

On Street Parking:

- *The existing on-street parking in this area is a mixture of 1/4P, 1P & 2P parking, which is generally occupied and high turnover. Parking surveys undertaken by the applicant in the previous Traffic Report indicate that there parking levels are high (i.e. occupied).*
- *As mentioned above, we encourage the applicant consider off-street parking for employees.*
- *Residents/visitors/staff of the development will not be eligible for resident parking permits and will need to abide by on-street parking restrictions.*
- *The proposed crossovers for this development will result in no loss to on-street parking, this is considered acceptable.*

Other items

- *Future residents/visitors/staff will not be eligible for residential parking permits.*
- *The Waste Management Plan (WMP) will need to be referred to Council's Waste Management department for assessment.*
- *All redundant crossovers must be reinstated to Council satisfaction.*
- *All proposed crossovers must be installed to Council satisfaction.*

Applicant shall be responsible for costs incurred by Council to modify any existing on-street parking signage and line-marking.

Planners Comments:

In response to the above comments provided by Councils Traffic Engineers, amended plans and additional information was submitted to address concerns. Additional comments from Council Traffic Engineers were provided on the current amended plans as follows:

• **Car park layout and accessway**

The car park layout is similar to the previous plans. It is proposed to provide five car parking spaces via a mechanical stacker (Wohr Combilift 543-2,0). The stacker will have direct access from Dundas Lane.

Traffic report indicate the mechanical stacker will provide:

- *a 2.5m wide x 5.7m long useable platform area. This is considered acceptable.*
- *Height clearance of 2.05m, 1.8m and 1.75m for the entrance, upper and lower platform levels, respectively. This is considered acceptable.*



The swept path diagrams demonstrate the vehicle will manoeuvre along the verge of the kerb/channel (opposite the site). This is somewhat unrealistic given the raised kerb/channel and footpath. In addition, the movement shows cars will require the full width of the laneway. This suggest turning movements into/out of the site may be tight.

As part of the swept path diagrams the Applicant should clearly show the outline of the platform and structural components of the mechanical stacker.

The proposed crossover must be designed in accordance with Council standards and constructed to Council satisfaction.

Near the footpath/crossover all grade or level difference changes must be contained within the site.

Bike Racks

The proposed bike racks within the basement are not conveniently accessible. Users will need to either walk through the serviced apartment lobby or the food and drink area to access the Lifts. In addition, given the parking waiver I suggest they provide more bike racks on-site to promote alternative modes of transport for visitors and staffs. On-street parking in this area is highly occupied.

We can support the installation of one bike rack along Victoria Avenue. The bike rack will be installed by Council at the cost of the Applicant. A future assessment by Council officer will need to be undertaken to determine suitable location.

Other

The redundant crossover on Victoria Avenue and Dundas Lane will need to be removed to Council satisfaction. I note the redundant crossover on Dundas Lane is not clearly annotated on the plan.

Proposed canopy/awning must be installed in accordance with Building guidelines.

Planner's Comments

As a result of the second set of comments provided by Traffic, additional supporting material and commentary was supplied by the applicant which included operation methods of the car stackers, waste collection methods and additional clarification of certain dimensions amongst other things. The responses were sent to Council's Traffic Engineer who raised no further comment or concerns received below.

The assessed plans show provision of two bicycle racks, for visitors, in Victoria Avenue. This is considered sufficient and would address the above comments made by Council's Traffic Engineers.

No loading bay is proposed. This is considered acceptable due to the relatively modest nature of the proposed commercial tenancies, the need to provide car parking in the basement – which in this instance is considered a more important provision than a loading bay and by way of comparison, the fact that loading for the existing building occurs on the street. It is also noted that there is no formal planning scheme requirement for loading bay provision. Servicing the new building would occur from the surrounding streets as noted above, similar to what has previously occurred for many years in relation to the existing building and land uses.

7.3 Council's Sustainable Design Section

COMMENTS ON ORIGINAL/SUPERSEDED PLANS



BESS Assessment

The project needs to meet the minimum 50% overall score and minimums in Energy (50%), Water (50%), IEQ (50%) and Stormwater (100%) categories in BESS to demonstrate best practice in sustainable design. Considering your response to the points below, should any category fall short of the minimum targets, adjustments will need to be made to demonstrate that the project meets the BESS minimums.

Management 3.3 Metering

To claim this credit, indicate on architectural plans and commit in report that all major common area services will be separately submetered.

Water 1.1 Water Efficient Fixtures

Washing machines have been incorrectly scoped out of the BESS assessment there is a laundry indicated on plans for the serviced apartments. The development needs to commit to providing washing machines part of the fitout if they are to be included within the BESS assessment with a star rating beyond "default or unrated". Please amend report and BESS entries accordingly.

Planner's Comments:

The applicant responded to these matters in the form of the amended plans (and an updated SMP) that now form the basis for the current assessment. Council's ESD officer advised that all queries have been resolved and that there are now no outstanding matters with regard to ESD matters.

7.4 Council's Waste Management Section

COMMENTS ON ORIGINAL/SUPERCEDED PLANS

I have reviewed the WMP and have following comments;

- *This can be accepted with waste collection 3 times each week to reduce the impact of traffic amenity.*
- *Would recommend space for organic/food waste for future council services.*

Planner's Comments:

Some additional comments were later received from the Waste Management Section and sought the applicant's views about the traffic impact for the collection of 6 x 1100 litre bins four times a week from Dundas Lane. It was suggested that the applicant should assess having their own waste collection, but noted that if this was not the case, that any waste to be collected during non-peak traffic hours to minimise any impact/queuing along these laneways.

Council's Waste Management Section further commented that

As suggested initially if they could keep the collection times to '3 times' would be great and also space for organic/food waste bin.

... and further

While we have no objection of waste being collected three times a week, the applicant may want to consider providing their own waste collection and be undertaken wholly within their site.



Other consideration should waste be collected kerb-side, we recommend any waste to be collected during non-peak traffic hours to minimise any impact/queuing along these laneways.

The applicant responded to the above comments, as follows:

It is noted that the proposed plans indicate that a waste room is to be provided adjacent to Dundas Lane. Accordingly, it is expected that waste collection is to be similar to the existing arrangements, i.e. kerbside waste collection from Dundas Lane.

Planner's comments:

It is noted that the revised/substituted plans do not change any aspect of the proposal with regard to waste disposal or collection. In that sense, the proposal would continue to utilise Council rubbish collection from the kerbside in Dundas Lane. As required by recommended Condition 14 (Storage and Disposal of Garbage collection), this would occur three times a week and in non-peak periods. Subject to the Waste Management Plan being updated to this effect, there are no further outstanding matters.

9.2 External referrals

The application was not required to be externally referred.

10. PUBLIC NOTIFICATION/OBJECTIONS

10.1 Both the original and Section 57A revised plans were advertised by way of Council giving notice by ordinary mail to the owners and occupiers of surrounding properties (206 notices sent) and by placing three public notices on site for a minimum 14 day period, in accordance with s52 of the Planning and Environment Act 1987.

10.2 There have been a total of 182 objections received to both rounds of advertising, with 17 being to the new Section 57A plans. The vast majority of the objections raised the matters in the first two bullet points below. Other separate points of objection are also listed with an associated number of objections (in brackets) received raising those specific matters.

- Demolition – Exiting building not structurally unsound, would be contrary to local policy, Heritage Overlay and Tribunal decision.
- Replacement building – too tall for and generally out of keeping with the area, not displaying 'design excellence', generally excessive in its presentation by way of style and form with insufficient setbacks, not in keeping with the locality and 'village' atmosphere, contrary to Heritage Overlay, insufficient car parking, excessive amenity impacts (rooftop noise, overlooking, shadowing), would not align with Tribunal decision.

Other grounds of objection:

- Serviced apartments inappropriate use for the area, leading to pedestrian, management, noise and traffic difficulties/safety concerns related to nearby school. (28)
- Loss of existing trees. (2)
- External materials (including new roof) not in keeping with the area and potentially flammable in some instances. (9)
- Loss of existing cultural value (potentially internally as well). (12)



- Limited community benefit/no sense of community. (2)
- No demand or need for additional retail/café space. (15)
- Roof deck leading to direct noise/amenity impacts. (16)
- Basement bar inappropriate for the area, leading to management, patron noise, safety and access difficulties from rear lane. (28)
- Possible precedent in relation to demolition of other buildings in the area. (9)
- Potential conversion of hotel suites into dwellings with insufficient parking. (2)
- Construction concerns. (1)
- Excessive amount of retail space. (1)

Each of the above matters are considered in the officer assessment section of this report.

10.3 No consultation meeting has taken place.

10.4 Council must consider whether the number of objections raise any matters of significant social effect under Section 60(1B) of the Planning and Environment Act 1987.

10.5 It is clear that the large number of objections indicate that the local community feels it would be adversely affected by the proposal, and that the impact of the development would be experienced beyond the subject site and its immediate vicinity.

10.6 Notwithstanding, it has not been established by evidence that the development would have a social effect as outlined in the procedures set out in Planning Advisory Note 63 (Planning and Environment Act (Recognised Objectors) Act 2015 and VCAT guide to submissions).

11. OFFICER'S ASSESSMENT

11.1 Key Issues:

Based on the various Planning Scheme settings and provisions together with the grounds of objections, it is considered that this proposal raises the following key issues:

- Demolition.
- The replacement building's size, height, design quality, appearance and character.
- Car parking and access arrangements.
- Amenity impacts, mainly shadowing, overlooking and occupant noise
- Intensity of the site's use, appropriateness of proposed uses.

An assessment of these matters follows using the local policy provisions together with the relevant Planning Scheme provisions. Assessment of the above matters are guided by the clauses listed in section 8 previously.

11.2 Demolition:

It is proposed to demolish all existing buildings on the site. Whilst not determinative, Council policy at Clause 22.04 is that significant graded buildings should be retained. Generally, demolition of a building identified as having significant heritage value would only be accepted if the building is structurally unsound. This matter was raised and



assessed at length in the most recent tribunal decision on this site, with relevant paragraphs outlined in section 1 of this report by way of relevant background.

The Tribunal decision does not contain one definitive or discreet single statement that the existing building is structurally unsound to the extent that demolition of the existing building in isolation of any assessment of the replacement building, is justified. It does, however, contain many separate statements that lead to a conclusion that much of the existing building is structurally unsound.

Paragraph 85 lists several physical components of the existing building that were considered damaged, degraded or in poor condition. Paragraph 89 concluded that within 10 years or so – without remediation works being done – that the structural core or parts of the existing building will fail to the extent that part of the building would be likely to collapse. That same paragraph, however, goes on to say that the Tribunal was not convinced that the building is beyond repair or at paragraph 91, ‘impossible to repair’. But, even so, officers consider that a building that could physically be repaired does not mean that it is not structurally unsound.

Paragraph 95 further states that the Tribunal accepted that the cost of necessary rectification works is likely to be significantly greater than one witnesses’ estimate of just over \$3.5 million, but again noted that any such works whilst not practically impossible, but would clearly involve significant expense.

In a form of conclusion of the matter, paragraph 100 of the Tribunal decision states that it was persuaded that significant (author emphasis) parts of the building are ‘structurally unsound’ and that structural elements of some (author emphasis) parts of the building are at risk of collapse without repairs or remedial works.

Structural unsoundness is amplified to some extent at paragraphs 102 and 171 where the Tribunal states that whilst demolition of the existing building would adversely affect the significance of HO 443, such adverse outcome may be justified because of the issue of structural unsoundness. This paragraph then goes on to link that justification to the suitability of any replacement building.

The Tribunal also expressed at paragraph 164 of the order:

Most importantly however, under Clause 22.04-3, a permit for demolition should not be issued for demolition unless the building is structurally unsound and the replacement building demonstrates design excellence. Whilst we may be satisfied about the first limb, (author emphasis) we are not satisfied that the replacement building displays the necessary level of design excellence to justify demolition of the existing building. For this reason, we would not issue a permit for the demolition of the building.

So, as noted previously, officers conclude that the Tribunal has recognised that much of the existing building is structurally unsound but whilst very expensive, it would not be physically impossible to repair. Again, however, the ability to be able to physically repair a building, expensive or not, is not saying that the building is therefore structurally sound. Instead, it might be possible to repair the existing building, but that does not change its structural condition.

Officers conclude that there is sufficient commentary in the Tribunal decision to indicate that large parts of the building are structurally unsound and that its decision may have been different if the replacement building was found to display design excellence.

11.3 The replacement building’s size, height, design quality, appearance and character:



Paragraphs 135 to 139 of the Tribunal decision essentially conclude that the previously proposed three storey street wall and four storey overall height were unacceptable. The general conclusion was that a two storey street wall would be acceptable. No firm conclusion was reached in the above paragraphs about overall height, only that four storeys would be unacceptable. However, it is considered reasonable to conclude that if the street wall were lowered from three to two storeys and that as a consequence, overall height were lowered from four storeys to three, then that would also by extension be acceptable.

Paragraph 160 ultimately concludes that the replacement building as originally assessed was too tall, its materials and glass composition were poor and that its upper level was not suitably recessive to the extent that the building was not supportable.

The original proposal in this application was clearly different from that assessed by the Tribunal and was an attempt to address the concerns summarised previously in this report. As noted however, in the initial set of joint Heritage and Urban Design referral comments, it was not considered that the proposal adequately addressed the Tribunal concerns and thus, plans were formally substituted and re-advertised.

It is these plans that Council's Heritage Advisor and Urban Designer now accept as depicting a suitable replacement building. It is acknowledged that there may be many ways of designing a building for this site and that the concept of design excellence is a very subjective one, but where a Tribunal decision has outlined reasonably detailed concerns and ultimately, those concerns are considered to have been addressed in heritage and urban design terms, it is difficult to conclude that the proposed new building is still unsatisfactory.

The concerns expressed in the vast majority of objections regarding height, appearance, setbacks, character, materials and overall mass and bulk are noted. However, the majority of those related to the pre-substituted plans which Council's urban design section also considered unsatisfactory. Several of the most recent objections continue to express concerns about height, form, mass and materials but in the light of the now supportive internal referral comments, the proposal under the most recent set of plans constitutes an acceptable replacement building, not only in the light of the positive referral comments but also noting the following.

It is firstly noted that the subject land is an island site and isolated from surrounding properties by roads and laneways. Its massing – as noted in several objections – comprises a 'singular' form, rather than a rhythmic form with clear grain. The existing building displays a relatively large extent of articulation with varied wall forms, angles, setbacks and roof treatments. The proposal would contrast with this and, agreeing with the objections, read as a single form.

The question becomes whether this would be out of character with the surrounding area noting the types of other nearby development and the island nature of the site. In summary, it is considered that it would not. The character of the area is varied and whilst comprising buildings with varied lot/grain sizes and setbacks, is not consistent in those matters. The subject site is not part of a 'run' of buildings and any new building will always to some extent, read as a separate and stand alone form.

Acceptability of the proposal's massing is always also to some extent linked to its height and its façade treatments. As previously noted, the two storey wall height is considered to suitably respond to the Tribunal's concerns. Additionally, the now further recessed uppermost level with a simple, pitched roof form above is considered to



provide a somewhat recessive 'cap' to the building such that it would not appear as excessive in its island setting. The façade treatments are considered to be relatively simple with regular shaped and sized windows at each level, something typical of Victorian architecture (even though it is recognised that the proposed windows would be larger than those found on Victorian buildings). Even so, the outcome of having simple and consistent window sizes at each level would be achieved, with the windows surrounded by simple brick cladding.

The window openings would also be slightly recessed, something that would also aid in reducing the appearance of mass and bulk. Other walls would be rendered in a simple and consistent fashion.

Therefore, whilst acknowledging that the proposal's massing would be different from that of the existing building, it is considered that the proposal's overall height, its pitched roof form, its recessed uppermost level beneath and its simple façade treatments would all combine to represent appropriate massing for an island site in a commercial zone.

One other key matter is that of transition to nearby buildings. No concerns are raised in relation to interfaces and streetscape relationships to nearby two storey buildings, but the interface in Merton Street is to a single storey building. Some comfort in that regard is taken from an extract from paragraph 138 of the Tribunal decision which states the following.

We consider that a two-storey street wall, whilst higher than the single storey dwellings would be more in keeping with the double storey commercial and residential buildings on the opposite side of Merton Street. A two-storey street wall would also recognise that it is acceptable to step up from the single storey dwellings to a two-storey street wall, and a higher building, where they are separated by a laneway which also forms a boundary between residential and commercial zones.

The above comments indicate that an assessment of the Merton Street interface was considered and alluded to a lowering of the street wall down to 2 storey being an acceptable outcome. The revised/substituted plans show a two storey street wall with a recessed uppermost level and pitched roof above. It is acknowledged that this is the proposal's most notable change in scale, the reduction is however considered to be acceptable. The ground and first floor level walls would be a horizontal distance of just over 8m to the nearest wall of 28 Merton Street whilst the recessed uppermost level would be horizontally separated essentially by approximately 10m. Again, noting the island nature of this site, those distances are considered sufficient to enable the proposal to read distinctly from the closest Merton Street building.

The street wall facing Merton Street would be about 3m higher than the roof of 28 Merton Street whilst the top of the proposal's roof would be about 6.8m higher than the neighbouring roofline. In some circumstances, most commonly where the subject site and its neighbour were part of a run of buildings, this would be considered an unacceptable transition. But as previously noted, the subject site and its neighbour are not part of such a run of buildings. They are distinct and separated from each other by an almost 5m wide lane.

Additionally, the proposal's roof is a pitched and recessive feature and at its highest, would be horizontally separated from the closest point of the neighbouring roof by about 14m. This is also considered an acceptable break in the built form.



On balance, it is considered that the transition to the adjacent single storey building in Merton Street is acceptable and sufficient in this instance.

The more notable interface, being that in Victoria Avenue, would comprise the proposal's two storey street wall of about 8.5m high to another two storey street wall of about 9m high at 3-5 Victoria Avenue, separated by a laneway generally 6m wide. This is considered acceptable, as is the height difference between the proposal's roof and the uppermost parapet of the existing building at 3-5 Victoria Avenue, which equates to approximately 3m in that instance.

In terms of the building's boundary setbacks, it is considered that they are sufficient, noting the Tribunal comments regarding a two storey street wall. That is, the appropriateness of a wall's setback is partly a product of its height and in this instance, the Tribunal is clear in that a two storey street wall (i.e. a wall with zero setbacks) would be acceptable. It is again acknowledged that the existing building has varied setbacks and notable articulation as a result but it does not automatically follow that a new building on this site need follow a similar approach. An 'island' site in a commercial zone is considered to be a location where zero setbacks up to two storeys could commonly and logically be contemplated.

Above the street wall, the uppermost level would be setback 1.8m from all boundaries. This is considered relatively generous in the heart of a commercially zoned activity centre.

Several objections raised concerns regarding the proposal's materials, one claiming that a proposed material may be combustible/flammable. This is a matter governed by the Building Regulations.

It is also noted that the majority of objections raising concerns about external materials did so in relation to the original/substituted plans. The revised plans now being assessed show a much simpler materials palette comprising mostly glass, render and brick window surrounds. These materials are relatively common in both the nearby commercial and residential areas and are quite reflective of the materials found on the buildings directly and diagonally opposite (and adjacent in Victoria Avenue) and are similar to those found on the existing building. The charcoal coloured roof, whilst not a common feature per se, would be of a muted and non-intrusive colour and would acknowledge the roof colour of the adjacent building in Victoria Avenue.

On balance, it is considered that the proposal's materials and colours would be appropriate for this setting with this conclusion being amplified by the absence of any such concerns raised in the Urban Design/Heritage referral.

The replacement building is also assessed in more specific detail under the relevant local policies, as follows.

Clause 21.05-1: Heritage Objectives:

1 To conserve and enhance the architectural and cultural heritage of Port Phillip.

This would be clearly not be achieved by demolition of the existing building. The existing building has architectural significance, both of which would be lost if the demolition were supported. However, the matter of appropriateness of demolition in relation to structural soundness has been discussed previously. It is also considered that the replacement building would be appropriate within this setting.



Clause 21.05-2: Urban Structure and Character:

Relevant Objectives are identified as follows:

- 1. To reinforce key elements of the City's overall urban structure*
- 2. To protect and enhance the varied, distinctive and valued character of neighbourhoods across Port Phillip.*
- 3. To ensure that the height and scale of new development is appropriate to the identified preferred character of an area.*
- 4. To retain Port Phillip's fine grain street pattern.*

These outcomes would be achieved. It is considered that the proposal would suitably respect (but not replicate) the low rise local character of Merton Street in particular and it would suitably integrate with the village character of the wider area. The neighbourhood that it would be part of is one that has a close residential interface (single storey) and a low rise (two-storey), low intensity commercial area. The proposal would respect or enhance these qualities in its re-advertised and substituted form.

Additionally, the proposal would not alter the area's fine grained street pattern being an island site. It is acknowledged that the proposal would not be as highly articulated as the existing building but such a response is not considered essential for this site and the proposal's zero setbacks, two storey main form with recessed level above is considered appropriately responsive to the surrounding neighbourhood character.

- 6. To protect and enhance the distinctive and valued character of the traditional retail strips across Port Phillip.*

It is considered that this objective would be met as previously assessed. The site is an island one but not be fully read as being part of a run or strip of buildings. Even so, it would be of an appropriate height and appearance so as not to diminish the physical characteristics of the 'village' atmosphere within which it would be located.

- 9. To ensure new development minimises any detrimental impacts on neighbouring properties.*

Refer to the separate assessment later in this section.

21.05-3 Urban Design and the Public Realm Key Issues

Relevant Objectives:

- 1. To ensure the design of new development is of a high quality and enhances the amenity, comfort, safety and visual amenity of the public realm.*
- 3. To ensure new development provides a positive contribution to the public realm.*

It is considered that the proposal would be of a high quality, and that it would appropriately integrate with the character and visual amenity of the public realm and thus, it would make a positive contribution.

Clause 21.06-3 Neighbourhoods (Albert Park/Middle Park):

Bridport Street / Victoria Avenue Neighbourhood Activity Centre:

Relevant Objectives:

- 6.3.6 Require all new development to respect the following elements:*



- *The predominant 1 and 2 storey scale of Victorian buildings, with higher development setback from the principle street to minimise its visibility.*

The proposal would adequately respect the low rise character of its surrounds as previously assessed in its most recent and re-advertised form. This new design would be of a suitable height with a two-storey street wall and a sufficiently recessed upper level with pitched roof above.

Clause 22.06: Residential Multi Unit Development

This clause includes several policy outcomes and subsequent objectives related to multi-dwelling and non-residential development.

The following is a summary of the proposal's alignment (or otherwise) with the overall policy outcomes being sought.

New development should respond to the context of places within the municipality and Development should Integrate with the prevailing neighbourhood character and contribute to the amenity and vitality of the area.

It is considered that the height of the proposed building would be appropriate for this site and that it would suitably integrate with this area, whilst not necessarily matching the height of all buildings at all interfaces. Again, the island nature of the site is noted in this regard.

There is a predominant building height established by the two storey Victorian and Edwardian shop and residential buildings. The proposed building would respect this prevailing neighbourhood character.

To encourage the development of integrated urban art in new development that reflects the identity of place, community values, innovation and creativity.

There are no submitted concepts for urban art. A plan is required by recommended condition 28.

The Public Realm.

Aside from matters of mass and bulk (wider public realm impacts), it is considered that the proposal now being assessed would bring activation into the abutting streets. In addition, the development would provide good levels of surveillance from the windows and the fully enveloping perimeter balconies. The character of the building in terms of its materials and colours – as they would relate to the public realm – is considered modest and simple and would suitably address local public realm character.

Street Level Frontages.

The proposal, as noted above, would provide good and strong activation of the street frontages and the simple articulation of the building's main frontages coupled with their weather protection canopies would also suitably integrate with local character and allow for protected use of the street level.

Landmarks, Views and Vistas.

None would be affected.

Energy and Resource Efficiency.

As previously assessed.

Private and Communal Open Space and Residential Amenity.



Residential amenity is assessed later in this section. There is no substantial communal open space now proposed given the deletion of the roof terrace whilst the various balconies are considered appropriate and adequate for a residential hotel.

Car Parking and Pedestrian Access.

Car parking matters are assessed later in this section (in terms of proposed parking supply). There are no outstanding technical or design matters related to car parking noting the ultimate resolution of the issues raised by Council's Traffic Engineer.

Pedestrian access is considered legible and appropriate in relation to the hotel whilst the commercial tenancies would each be separately accessed from the two main street frontages.

Loading Facility

None is proposed. There is now no formal Planning Scheme requirement for a loading bay. In any case, the absence of one is considered acceptable because the commercial facilities would in some ways be similar to what currently exists on site with no loading bay provided. In any case, the proposed new tenancies are considered to be relatively modest in size and loading from the street is not considered to be a fundamental or detrimental issue. Similarly, the servicing of the residential hotel would take place from the nearby streets and is not considered to be something that would cause undue detriment most likely only involving only a relatively small delivery style van.

Site Facilities

All facilities would be provided.

Heritage Overlay considerations (Decision Guidelines as relevant):

- *The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.*
- *Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.*
- *Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.*
- *Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.*
- *Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.*

As has been previously discussed, matters of the demolition of the existing building and the design quality of its replacement are respectively considered to have been either suitably addressed or are appropriate for this setting. It cannot be disputed that the significance of the heritage place will be diminished to some extent through the demolition in particular, but justification for that has been previously noted in this report.

In summary and in conclusion, it is therefore considered that the replacement building by way of form, height, mass, setbacks and materials/colours would be acceptable and appropriate for this setting.



11.4 Car parking and access arrangements.

Car Parking (Clause 52.06)

This proposal represents a 'clean sheet of paper' approach due to all parts of the existing building proposed to be completely demolished. Technically, therefore, no parking credits from the existing development and use can be claimed. That is, all car parking likely to be generated by the proposal needs to be assessed on its merits.

However, there is still considered to be some logic to comparing what currently exists (and until relatively recently had been used for commercial and residential purposes for many years) with what is proposed by way of likely car parking intensity. That is, it makes little sense to ignore what car parking shortfall relates/related to the existing building when looking at the merits of the currently proposed parking shortfall.

In that sense, the existing building comprises three commercial tenancies totaling approximately 475m² whilst the two dwellings are each three or more bedrooms. Two on site garages exist but it is understood that these have most recently been used for storage. However, assuming that they could be used for parking, the existing building has a car parking supply of two and parking demand of at least 18 car spaces, using the commercial rate of three spaces per 100m² of floor area and the residential rate two spaces per dwelling (six spaces). A commercial rate of 3.5 spaces per 100m² results in a parking demand for the existing building of up to 20 spaces in total (commercial and residential combined).

The Planning Scheme parking rates would require 17 car parking spaces for the new commercial tenancies. The Planning scheme would not require any specific provision of car parking for the residential hotel. Therefore, the day-to-day reality is that the existing/previous use generated a similar extent of car parking demand when compared to the proposal. Even noting that the previous occupants of the dwellings may have had a very low level of car ownership, it is still somewhat reasonable to assume that the existing/previous use generated a parking demand of somewhere between 16 and 18 car spaces, again very similar to the demand for 19 to 20 car spaces (including the two car spaces for the residential hotel) as proposed.

Even so, noting the above is for information only, the new car parking arrangements are assessed below.

The primary use in this application is 'Residential Hotel'. There is no planning scheme rate specified for this use, therefore parking must be to the satisfaction of the Responsible Authority. Previously, Council has accepted a parking rate for residential hotel of 0.3 car spaces per hotel suite, or alternatively approximately, one car space for every three suites. With the nine suites now being proposed, a satisfactory parking provision would generally be three car spaces for the residential hotel. The application proposes to allocate two car spaces for this use for staff and not guests.

Based on the above acceptable rate, three car spaces would be allocated to the residential hotel use, with one less car space allocated to the commercial uses. In this instance, it is considered more beneficial to allocate residential hotel car parking to



guests as opposed to staff. The former would have a greater expectation that some parking would be provided (persons who have driven from regional areas for example) whilst the latter would be more likely to use public transport or make other alternative arrangements.

Assuming the allocation of two guest car spaces for the residential hotel (as opposed to three using the accepted rate), it is difficult to argue that provision of two car spaces would be insufficient to the point where additional car spaces should be provided or the application refused on car parking reasons grounds.

Whilst taxi and shuttle services are the most likely form of public transport to be used by hotel guests, the availability of these services adds weight to the fact that two car spaces allocated for hotel guests would be satisfactory. Recommended condition 27 requires this provision, whilst recommended conditions 22 and 23 require that guests themselves not operate or access the car stacker system, with a staff member or concierge or similar being available to park any guest cars in the stackers.

The commercial floor space totals 502m² (including a basement kitchen store area). This would require 17 car spaces under the provisions of Clause 52.06 (car parking). The application proposes to allocate three car spaces to these tenancies.

On the surface, this would appear a significant parking shortfall. However, Council has adopted a centre based approach to car parking for commercial tenancies in activity centres (consistent with many VCAT decisions), which does not involve providing all car parking required by the Planning Scheme. It generally only involves providing car parking for staff and in this instance, one car space per tenancy is generally considered reasonable. It could be argued that the 234m² tenancy may generate more than one staff car space but even so, given the site's access to a tram line directly outside and its close location to a well served light rail line, it is considered that non-car options exist in this instance and would reasonably cater for staff of the commercial uses. Recommended condition 27 requires the allocation of three car spaces to the food and drink premises staff.

It is also relevant to note that nine share car spaces exist nearby with the closest being opposite the site in Cardigan Place. Additionally, the site has a 'walk score' of 96 out of 100 on the Walk Score website. Both these factors would again tend to mitigate against the provision of extra car parking for either staff or customers, the latter of which are very likely to live in proximity to the site.

It is further acknowledged that the proposal would have a substantial car parking shortfall should the residential hotel be changed to conventional apartments at some stage in the future. However, that would require a new and separate planning application process should that change eventuate.

Drop-off arrangements:

Most residential hotel guests arrive by taxi, private shuttle (or similar) or in some instances, public transport. The site is well served by public transport with tram route 1 directly outside the site, light rail route 96 about 450m from the site and bus route 606 about 300m from the site and forms part of the Principal Public Transport Network (PPTN). Given the relatively small scale of the proposed Residential Hotel component



of the application (i.e. 9 suites) it is considered this is an acceptable and manageable arrangement.

Vehicle Access Arrangement:

In terms of access, which is more of a technical matter, the resolution of all concerns raised by Council's Traffic Engineer is given great weight to the extent that it is not considered that any substantive or fundamental access concerns exist in relation to the assessed/substituted plans (refer to traffic comments on the S57a plans in the referral section above).

11.5 Amenity impacts

A number of objections raised the concerns about future occupant noise, partly from the residential hotel use but mostly in relation to the basement bar and the roof terrace. Many objections also raised concerns stemming from the height and form of the building and its layout, mainly shadowing and potential overlooking.

From a use standpoint, each component of the proposal is assessed below.

- Roof terrace

The substituted/re-advertised plans no longer include a roof terrace. This has been replaced on the current amended plans with a plant and equipment area. A standard condition, requiring noise levels of the all plant and equipment (SEPP) would be included on any permit granted (refer to recommended condition 19).

- Ground level commercial uses.

It is anticipated, as no request to license these premises has been lodged, that the commercial uses would comprise relatively low intensity cafes or similar which are considered to be in keeping with the character of the area and consistent with being in the heart of an activity centre. Additionally, they would interface the Victoria Avenue and Merton Street frontages and as such, are unlikely to cause occupant noise that would be excessive or substantially above background noise levels. They would potentially generate some noise impacts at the rear by way of deliveries and waste collection. Garbage collection impacts would be controlled through a revised Waste Management Plan that would stipulate collection hours as being generally within normal operating hours and that it must occur at least three times per week. (Refer recommended conditions 16 and 17). It is also noted that the proposed commercial uses are 'as of right' and do not require a planning permit within the C1Z.

However, should any of these tenancies wish to become licensed, separate planning approval would be needed and amenity control conditions would be applied to any permits at that time.

Furthermore, it is considered desirable to activate as much of the ground level as reasonably possible. It could be argued that the tenancies would be larger than several existing commercial tenancies within proximity of the subject site (as well as those existing on the site) and thus be out of keeping with the village character. However, the tenancies are generally considered to be modest in size.



- Basement tenancy

It is understood that many objectors consider that the basement tenancy will be a 'Bar', as the submitted plans show it abutting an area of 53m² and referenced as 'Bar Kitchen Stores'. While this conclusion is understandable, as with the ground level tenancies, there is no aspect of this application relating to that or the other tenancies being licensed and/or being able to serve alcohol. Notwithstanding, it is noted that the Commercial 1 zone has a general amenity control requiring that land uses do not detrimentally affect the amenity of the neighbourhood. Again, as with the ground level tenancies, should a separate permit be applied for relating to the sale and consumption of alcohol, then a full assessment, following public notification, would take place at that time and if supported, a suite of amenity conditions would be applied.

However, for purposes of clarity, recommended condition 1 (c) requires deletion of the word 'bar' from the basement store area.

- Residential Hotel

These uses are generally low impact and would mostly involve customer / clients requiring temporary accommodation within an inner city location, often for business reasons. However, it is also recognised that non-business travelers (tourists) could also use the premises (potentially from one large group).

It is therefore acknowledged that occupants may use the residential hotel in a more impactful manner and in doing so, create amenity impacts upon the closest residential properties, notably those adjacent in Merton Street to the rear of the site.

Noting that the site is an island and is located in the heart of an activity centre, it is considered appropriate that a 'commercial' form of accommodation be provided in this location. The site is very well served by public transport and is very well located in relation to recreational, tourist and business type uses (such as the CBD and nearby convention facilities). The land is in a Commercial 1 zone and there is not considered to be any interface or amenity reasons that would suggest the residential use per se would be inappropriate for this site.

Nonetheless, it is acknowledged that the use would have the potential to generate amenity impacts and that these should be reasonably controlled. Therefore, should a permit be issued, conditions are recommended that would minimise broad and overall amenity impacts, together with more specific matters such as the car stacker operation, the need for an on site manager (with 'hotline'), the preparation of a Management Plan, collection and storage of rubbish, delivery hours.

Local policy support for the residential hotel use can be found most particularly at Clause 21.04-6 (Tourism and The Arts) which states the following as key objectives:

Objectives

1. *To promote Port Phillip as a premier tourist destination.*
2. *To improve access to Port Phillip's attractions.*
3. *To minimise the impact of tourism and entertainment uses.*



4. *To minimise the impact of gaming venues.*
5. *To create an environment in which the arts can flourish.*

In particular, it is considered that objectives 1 and 2 above offer support for the use. A residential hotel in this location would improve access to local facilities and the generally small locally based business found in the area. The use would also add to the overall 'flavour' that Port Phillip continues to be a viable and an attractive tourist destination. The other objectives relate to controlling amenity impacts, which continue to be discussed in this section.

Clause 17 – at State policy level – also promotes the facilitation of tourism as an arm of economic development by seeking the following outcomes:

- *Encourage the development of a range of well-designed and sited tourist facilities, including integrated resorts, accommodation, host farm, bed and breakfast and retail opportunities.*
- *Seek to ensure that tourism facilities have access to suitable transport.*
- *Promote tourism facilities that preserve, are compatible with and build on the assets and qualities of surrounding activities and attractions.*
- *Create innovative tourism experiences.*
- *Encourage investment that meets demand and supports growth in tourism.*

These are considered to further reinforce the appropriateness of the residential hotel use in the heart of a commercial area. The proposal is considered to be one that would well achieve the above strategies by providing a form of accommodation that is well located in terms of public transport. It would relate well to the existing commercial facilities of Albert Park village and that in and of itself, would enhance and allow for a potentially unique tourist experience.

In terms of 'physical' amenity impacts such as overlooking and overshadowing, the following is noted.

The subject site is an island but it nonetheless has some residential interfaces, especially to the south-east in Merton Street. The abutting property at No, 28 Merton Street interfaces the subject site with one habitable room window, a low side fence and a side open space area. The closest balconies on the subject building, whilst not used for 'normal' residential purposes would still be able to overlook that open space and potentially, the window at No. 28 directly facing the subject site at distances of generally 9m to approximately 11m. It is considered reasonable that some protection of that dwelling's privacy be maintained and therefore, recommended condition 1 (b) requires the first and second floor balconies facing generally south-east towards No. 28 be screened so as to allow outward and distant views but not to allow views downward into the adjacent open space and windows.

There are no other sensitive residential interfaces in terms of potential overlooking.

The submitted shadow diagrams indicate that the side open space parcel at 28 Merton Street would not be shaded until 1pm and at that time, would experience approximately 30% shading. This amount would increase beyond 1pm with complete shading occurring from approximately 2pm onwards. This would be similar to the current extent



of shading (it would be greater) but the extent of discernible change would be moderate. The proposal would result in shading to less than 25% of the adjacent open space parcel for almost 4 hours and noting that the primary open space to No. 28 is at the rear of that building (not its side), this extent of shading is considered reasonable. That rear parcel of open space would essentially not be shaded to any discernible extent by the proposal.

11.6 Other objections not previously assessed

- Loss of existing trees.

There are no significant trees on the subject site. All large nearby trees are in the footpath/public realm and would not be removed as a result of any permit issued, should that happen.

- Loss of existing cultural value (potentially internally as well).

The site is not included on the Victorian Heritage Register being the only formal indication of any internal heritage controls. No internal heritage controls apply to this site or building.

In terms of other potential cultural values, it is acknowledged that one previous resident was a well known film director. However, this has not elevated its protection under the Heritage controls.

- Limited community benefit/no sense of community.

The proposal would offer some community benefit by way of access to new and improved commercial facilities, encourage tourism, increase economic activity in the centre and additional pedestrian activity along this section of Victoria Street. Whilst it is arguable that such benefits would largely accrue to the owners/operators in an economic sense, it is considered that increased tourism will likely benefit the activity centre and the broader municipality. The same would hold true for the residential hotel by way of increased local economic activity.

However, that is not uncommon when new developments and uses take place in commercial zones. It is rare when a new use/development clearly and unambiguously offers community benefit (which could take the form of a not for profit use or something that has a non-economic basis). Commercial developments are normally private enterprise undertakings that are driven by economics to some extent.

Nonetheless, as previously noted, the ground level is most likely to be accessed and used most often by the local community and this could be argued to offer some local community benefit.

The residential hotel is less likely to be used by the immediate local community but through the inclusion of its patrons being in the local area. Nevertheless, it is likely to offer some benefit potentially to businesses other than those on the subject site and may be utilised by visitors to nearby families.

A sense of community is extremely difficult to define in planning terms and in any case, is not considered relevant to the assessment of this proposal.

- No demand or need for additional retail/café space. Excessive amount of retail space.

The site is in a commercial zone. Having its ground floor essentially fully occupied by commercial uses is considered reasonable and beneficial in terms of activating the



area. Other uses could potentially be contemplated, but commercial uses as shown on the plans are as-of-right in the zone and their extent cannot be controlled.

Demand for the proposed spaces and uses is not a planning matter.

- Possible precedent.

All planning applications are assessed on their merits and on a case-by-case basis.

- Potential conversion of hotel suites into dwellings with insufficient parking.

Should a permit be issued, it would specifically refer to and allow (amongst other things) a residential hotel. The use 'dwelling' in this instance would also require planning approval based on the building's frontage being greater than 2m in width. Therefore, should 'conventional' dwellings be sought, this permit (should it be issued) would need to be amended and additionally, any such amended planning application would need to include a new/revised car parking shortfall component. That is, in summary, a change to conventional dwellings would require planning approval and any associated or different parking shortfall would be assessed as part of that request.

- Construction concerns.

These matters would be dealt with under the Victoria Building Regulations at the building permit stage and/or Council's Local Law.

- Excessive amount of retail space.

The amount of retail space, given the site's zoning, is considered reasonable and appropriate. As previously discussed, it would aid in activating this local activity centre.

12. COVENANTS

- 12.1 The applicant has completed a restrictive covenant declaration form declaring that there is no restrictive covenant on the titles for the subject site known as CA 1 Parent Title Volume 09567 Folio 852.

13. OFFICER DIRECT OR INDIRECT INTEREST

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

14. OPTIONS

- 14.1 Approve as recommended
14.2 Approve with changed or additional conditions
14.3 Refuse - on key issues

15. CONCLUSION

- 15.1 The proposal relies on demolition of the existing buildings in order to proceed. The proposed demolition is supportable based on the previous assessments and Tribunal conclusions especially noting the conclusions regarding structural soundness.
- 15.2 It is further considered that the proposed replacement building would be suitable for this site and that it is considered that it would not result in detrimental amenity and/or car parking impacts or unacceptable character/form or mass outcomes.
- 15.3 It is therefore recommended that the application be supported.



PLANNING COMMITTEE
25 FEBRUARY 2021

TRIM FILE NO:
ATTACHMENTS

PF19/57043
1. 880/2019 - ADV - re-advertised plans sept 2020