

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1537/2022
PERMIT APPLICATION NO. PDPL/00392/2022

APPLICANT

The Trust Company (Australia) Limited
ACN 000 000 993

RESPONSIBLE AUTHORITY

Port Phillip City Council

RESPONDENTS

570 St Kilda Road Pty Ltd

David Wheeler

Joanna Reed

Lindsay Gravina, Eric Koelmeyer and
Others

Owners Corporation No 402478D

Peter Ernest Masee

St Kilda Road Management Pty Ltd (ACN
147 331 413) as trustee for The 564 St
Kilda Road Unit Trust of 355-371

Victoria Street, Brunswick, Victoria, 3056
and Amaroo Pty Ltd (ACN 130 526 224)
as trustee for Amaroo Road Investment
Trust of 817 Old Calder Highway, Keilor
Victoria 3037 together trading as 564 St
Kilda Road JV (ABN 68 614 488 065)

Wei Xin Sue

Adrian Crump, Brett Polkinghorne &
Others

REFERRAL AUTHORITY

Head, Transport for Victoria

SUBJECT LAND

50-52 Queens Road
MELBOURNE VIC 3004

HEARING TYPE

Hearing

DATE OF HEARING

1, 2, 3, 4, 8, 9, 10 and 11 May 2023

DATE OF ORDER

4 July 2023

CITATION

The Trust Company (Australia) Limited v
Port Phillip CC [2023] VCAT 738

ORDER

1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act* 1998, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

- Prepared by: Bates Smart
- Drawing numbers: Project M12568, TP000.00 Rev C, TP-01.00 Rev B, TP-01.02 Rev B, TP-03.00-TP-03.04 Rev B, TP-03.09 Rev B, TP-03.12 Rev B, TP-03.14 Rev C, TP-03.15 Rev B, TP-03.B01 Rev B, TP-03.B01M Rev A, TP03.B02 Rev B, TP-03.B03 Rev B, TP-09.00 Rev B, TP09.04 Rev B, TP-10.00 Rev B, TP-10.03 Rev B
- Dated 7 March 2023

2 In application P1537/2022 the decision of the responsible authority is set aside.

3 In planning permit application PDPL/00392/2022 a permit is granted and directed to be issued for the land at 50-52 Queens Road Melbourne VIC 3004 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

- Construct a multi-storey apartment building with basement car parking, on land in the Residential Growth Zone and Design and Development Overlay and alteration of access to a road in a Transport Zone 2

Jane Tait
Member

Stephen Axford
Member

APPEARANCES

For The Trust Company
(Australia) Limited ACN 000
000 993

Paul Connor SC and Rupert Watters JC,
instructed by Gadens. They called the
following witnesses:

- Tim Biles, Ratio, urban design/planning
- Charmaine Dunstan, Traffix, traffic engineering
- Simon McPherson, Global South, urban design
- John Patrick, John Patrick Landscape Architects
- Ben Watson, Pointilism, visualisation architect (appeared remotely by agreement)

For Port Phillip City Council

Emily Marson, Yun Yu (Day 6), Best Hooper

For Head, Transport for
Victoria

No appearance

For David Wheeler

No appearance

For Lindsay Gravina, Eric
Koelmeyer & Others

Lindsay Gravina, Ms Bezakova (Day 5)

For Adrian Crump, Brett
Polkinghorne & Others

Adrian Crump

For Joanna Reed

No appearance

For Peter Ernest Masse

No appearance

For Wei Xi Sue

No appearance

For 570 St Kilda Road Pty Ltd

Tiphanie Acreman, counsel. She called the
following witness:

- Mark Sheppard, Kinetica, urban design

For Owners Corporation No
402478D

No appearance

For St Kilda Road Management Pty Ltd (ACN 147 331 413) as trustee for The 564 St Kilda Road Unit Trust of 355-371 Victoria Street, Brunswick, Victoria, 3056 and Amaroo Pty Ltd (ACN 130 526 224) as trustee for Amaroo Road Investment Trust of 817 Old Calder Highway, Keilor Victoria 3037 together trading as 564 St Kilda Road JV (ABN 68 614 488 065)

David Vorchheimer, HWL Ebsworth Lawyers.

He called the following witnesses:

- John Glossop, Glossop Town Planning Pty Ltd
- Robert McGauran, MGS Architects, urban design

INFORMATION

| | |
|-------------------------|--|
| Description of proposal | Construction of a 15 storey apartment building with three levels of basement car parking, alteration of access to a Transport Road Zone 2 and reduction in carparking pursuant to Clause 52.06. |
| Nature of proceeding | Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. ¹ |
| Planning scheme | Port Phillip Planning Scheme |
| Zone and overlays | Residential Growth Zone – Schedule 1 (RGZ1) Special Building Overlay – Schedule 2 (SBO2) Design and Development Overlay – Schedule 26 (DDO26) |
| Permit requirements | Clause 32.07-2 – To construct two or more dwellings on a lot in a RGZ1 Clause 43.02-2 – To construct a building or carry out works in a DDO26 Clause 44.05-2 – To construct a building or carry out works in a SBO2 Clause 52.06-3 – To reduce the number of car parking spaces required under Clause 52.06-5 |

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

Land description

The subject site is on the east side of Queens Road, Melbourne. It has a 91.44 metre frontage, depth of 76.2 metres and site area of 6966 square metres. The east (rear) boundary abuts Queens Lane. The site is occupied by a vacant hotel containing several buildings ranging in height from one to six storeys. The main building is set back 14 metres from Queens Road and a multi-level car park is located to the rear with access to Queens Lane.

Directly north and south are 13-14 storey apartment buildings. To the east of Queens Lane are three properties with frontage to St Kilda Road comprising a 16 storey office building, nine storey mixed use building and 17 storey apartment building and hotel.

The west side of Queens Road contains Albert Park Golf Course and parkland.

Tribunal inspection

The Tribunal conducted an accompanied site inspection on Day 1 of the hearing. A second unaccompanied site inspection was conducted after the hearing.

REASONS²

WHAT IS THIS PROCEEDING ABOUT?

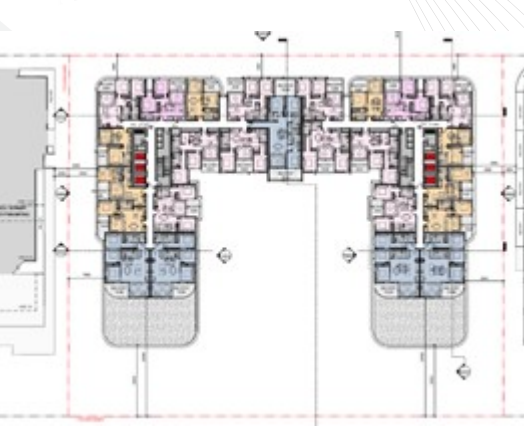
- 1 The Trust Company (Australia) Limited ACN 000 000 993 (the ‘applicant’) applied to Port Phillip City Council (the ‘Council’) to construct a 15 storey apartment building with three levels of basement car parking, alteration of access to a Transport Road Zone 2 and reduction in carparking pursuant to Clause 52.06 on the subject site.
- 2 The proposal includes 379 apartments comprising one to four bedrooms and a total of 425 car spaces in three basement levels with access to Queens Lane. The ground floor contains the main entrance lobby and reception with access to Queens Lane. This level also includes a sitting area, pool, amenities, gym, and offices. The top level (Level 14) contains a communal bar/lounge and terrace. Three layby/indented car parking spaces are provided in Queens Lane, adjacent to the main entrance.
- 3 The building is designed in a ‘U’ shape with two wings extending towards Queens Road, receding at the upper levels. It contains a central, landscaped courtyard for the communal use of residents. The building is set back 15 metres from the frontage and 9 metres, balcony to balcony, from the neighbouring apartments to the north and south. The east (rear) elevation is set back 5 metres from Queens Lane.
- 4 The building has maximum building height of 49.22 metres above natural ground level and 51.62 metres to the lift overrun, plan and services. Excerpts from the plans are provided in Figures 1-4.

Figure 1 – Ground Floor³



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

³ TP03.00 Rev B.

Figure 2- Level 2⁴Figure 3 – Levels 9-11⁵Figure 4 – West Elevation⁶

- 5 After the application for review was lodged, the permit application was amended, through the substitution of amended plans. The amended proposal included several changes that we will not outline in any detail. Suffice to say, they include increased setbacks to the north and south boundaries, alteration of the materiality of the east elevation facing Queens Lane to emphasise the visual divisions of the three modules and relocation of the vehicle drop off zone to within the title boundary. No party objected to the substitution of the plans, but additional statements of grounds were received from neighbouring properties.
- 6 Council failed to determine the application within the prescribed time. It subsequently formed a position on the application based on the amended plans, supporting the grant of a permit subject to conditions including:

⁴ TP03.02 Rev B.

⁵ TP03.09 Rev B.

⁶ TP09.03 Rev B.

- The removal of Levels 13 and 14 with a consequential reduction in building height by 6.8 metres;
 - Provision of two visitor car spaces within the basement;
 - Relocation of the layby spaces in Queens Lane further north;
 - Provision of privacy screens on balconies of apartments facing Queens Lane;
 - Updated roof plan;
 - Improved ESD ratings for apartments and non residential spaces;
 - Apartment layout modifications to meet Standard D18 (Accessibility) and
 - Increased loading bay size in basement.
- 7 Council acknowledges the development is acceptable in respect to the nature and development typology. However, it argues the overall height and scale of the building is excessive and unreasonable and is seeking a yield at the expense of the strategic direction of the land. It says it should not be *'development at all costs'* and conditions should be included on any permit issued to address the height and massing and interface to Queens Lane, including the properties in St Kilda Road.
- 8 The respondents are owners of apartments and commercial properties in St Kilda Road that also have frontage to Queens Lane. They submit the building is excessively high and wide. They say the absence of breaks in the built form will limit access to daylight and reduces the privacy of their apartments. They also say the development fails to respond to the existing pattern of development or the preferred building form of podium and tower, as set out in the Planning Scheme.
- 9 The respondents from 570 St Kilda Road Pty Ltd ('570 St Kilda Road') are located to the south-east of the subject site. They rely on the evidence of Mr Sheppard who supports the development provided Levels 12, 13 and 14 and the roof plant are set back further from Queens Lane and the upper levels are set back from the south and east boundaries to avoid additional overshadowing of adjoining apartments.
- 10 There are also respondents from St Kilda Road Management Pty Ltd ('568 St Kilda Road') who are directly east of the subject site. They say the proposal would have detrimental impacts upon the amenity of Queens Lane which provides the setting for the western address of their building. They are also concerned at the loss of ambient light that would occur in the street due to the width of the development that contains no breaks. They were also concerned about impacts from increased traffic movement in the narrow street.

- 11 Despite these reservations, all the respondents support the grant of a planning permit subject to conditions in response to the recommendations made by their town planning expert Mr Glossop, and their urban design expert, Prof McGauran.
- 12 Mr Glossop recommends a reduction by one level to respond to the design objectives of Design and Development Overlay 26 (DDO26). Prof McGauran also recommends a reduction by one level and modified side and rear setbacks to reduce overshadowing impacts on neighbouring apartments.
- 13 We also received Statements of Grounds from owners of apartments to the north and south of the subject site. They are primarily concerned about amenity impacts on their apartments from the massing and height of the building. These concerns include overshadowing, loss of daylight and visual bulk impacts. They are also concerned about increased traffic congestion in Queens Lane and at the intersections of Roy and Beatrice Streets and the waste management and loading arrangements for the apartments.
- 14 The applicant notes that none of the experts recommend refusal of the application. It says the issues raised by the parties and experts primarily relate to amenity impacts, massing, and height, that can be dealt with by permit conditions. It says the proposal responds acceptably to the physical and policy context and no changes are required to the built form to achieve an acceptable outcome.
- 15 The applicant relies on the urban design/town planning evidence of Mr Biles and urban design evidence of Mr McPherson. Mr Biles considers the amended plans are a carefully considered response to the physical and policy context and the design will sit handsomely in this context. He considers the building setbacks is a courteous response that minimises the amenity impacts on neighbouring properties.
- 16 Mr Biles considers that the benefits of the perimeter block form are significant and justify the application of discretion for height and width. His evidence is that the provision of the central landscaped courtyard is a major benefit to the Queens Road address, improving the experience for pedestrians along Queens Road while also providing amenity for the residents on site.
- 17 Mr McPherson reviewed the architectural merit of the proposal and concluded that the design was an effective, considered, and refined response to the site and context. He considers the building will contribute to the built form setting along Queens Road and enhance the experience of the public realm.
- 18 The applicant also relies on the landscaping evidence of Mr Patrick, traffic engineering evidence of Ms Dunstan and photomontage evidence of Mr

Watson. Mr Patrick peer reviewed the landscape plans prepared by Arcadia and concludes they respond to the surrounding landscape and provide landscaping that enhances the built form and supports amenity and attractiveness of the public realm.

- 19 Planning decisions do not seek ideal outcomes, or outcomes which respond positively to every relevant policy. Rather, acceptable outcomes are the measure by which decisions are to be made. We must decide whether the proposed development will produce an acceptable outcome having regard to the relevant policies and provisions in the Planning Scheme. Clause 71.02-3 requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 20 We have decided to set aside Council's decision and direct a permit be issued subject to a removal of one level and set back of the upper levels and roof plant from Queens Lane. Our decision is a selection of the recommendations of Mr Sheppard, Mr McGauran and Mr Glossop which respond to the design objectives of the Design and Development Overlay Schedule 26 (DDO26). Our reasons follow.

WHAT ARE THE KEY ISSUES?

- 21 The key issues arising are relatively confined in this matter as they mainly relate to the overall height and massing of the building, the overshadowing impacts on adjoining properties and its interface with Queens Lane.
- 22 Most parties and witnesses support development of the site for apartments at this strategic location close to the city and near multiple forms of public transport. Despite this situation, we are faced with different recommendations from witnesses responding to the design objectives of the DDO26. We consider the key issues that need to be determined in this matter are:
 - Is the proposal consistent with the strategic expectations in policy and the RGZ?
 - Is the overall built form response consistent with the design objectives in DDO26 calling for transition?
 - Does the development respond appropriately to the Queens Lane interface?
 - Will the development result in unreasonable amenity impacts on neighbouring properties?
 - Does the development provide a reasonable level of amenity for future residents?
 - Is the car parking provision and access arrangements acceptable?

- Does the landscaping respond to the design requirements of the DDO26?
- Does the design achieve urban design and architectural excellence?

BUILT FORM CONTEXT

23 The subject site is located between Queens Road and Queens Lane, just south of the Albert Cricket Ground and with Albert Park to its west, and St Kilda Road to its east. The location and immediate surrounds are illustrated in the aerial view below in Figure 5.

Figure 5 – Aerial of surrounding area⁷



Subject Site

- 24 In broad terms, the subject site:
- has an overall area of approximately 6966 square metres;
 - is rectangular in shape, with a frontage to Queens Road of approximately 91.44 metres and a depth of approximately 76.2 metres;
 - is not encumbered by a restrictive covenant or easement; and
 - is currently occupied by a vacant hotel comprising several buildings ranging in height from one to six storeys. The main building is set back approximately 14 metres from the Queens Road frontage. Within the principal frontage there is at-grade car parking with access to Queen Road. A further multi-level car park is located at the rear of the site with access via Queens Lane.
- 25 It has the following direct interfaces:

⁷ Nearmap – 1 January 2023.

- To the north: 48 Queens Road / 1 Roy Street, is developed with a 13 storey residential building. The building has a landscaped frontage of approximately 12 metres to Queens Road. The building is characterised by the upper levels having increased setbacks to Queens Road. The building is set back approximately 3 metres from the shared boundary with the subject site. Vehicular access is provided from Queens Lane to a basement level car park.
 - To the east: Queens Lane is an 8 metre wide road. On the opposite side of Queens Lane are three properties that face St Kilda Road, the details are as follows:
 - 564 St Kilda Road comprises a 16 storey office building. The site has vehicular access from Queens Lane which serves a multi-level car park, within the building podium;
 - 566 St Kilda Road is a nine storey mixed use (office and commercial) building. The site has vehicular access via Queens Lane; and
 - 568 St Kilda Road is a 17 storey residential apartment building. The site has vehicular access via Queens Lane to a multi-level basement car park.
- 26 To the south: 54-55 Queens Road is developed with a 14 storey apartment building ('Grosvenor on Queens'). The building is characterised by its 'L' shaped layout and the upper levels having increased setbacks to Queens Road. This building has an approximate setback of 16 metres to Queens Road and a 3 metre setback to the shared boundary with the subject site. Further to the south, on this site, is a two storey Renaissance Revival brick mansion (The Grosvenor) which has a heritage grading.
- 27 To the west is Queens Road which comprises a 19 metre wide road. On the opposite side of Queens Road is Albert Park Public Golf Course and the Albert Park reserve including the lake with its encircling walking track.
- 28 The built form along Queens Road is generally lower than that facing St Kilda Road. The surrounding land (to the north, south and east) is generally developed with multi-storey buildings with a commercial or residential use.
- 29 Further to the north, the built form character of the surrounding environs has traditionally been lower rise and predominantly residential in use that forms an edge to Albert Park.
- 30 The subject site is located approximately 1.1 kilometres from Kings Way and 3.1 kilometres from the Melbourne CBD. It is well served by public transport with tram services located within walking distance on Commercial Road and St Kilda Road and the new ANZAC Station currently being constructed.

IS THE PROPOSAL CONSISTENT WITH THE STRATEGIC EXPECTATIONS IN POLICY AND THE RGZ?

- 31 The subject site and properties to the north and south are within a Residential Growth Zone 1 (RGZ1). The purpose of this zone includes to encourage a diversity of housing types in locations offering good access to services and transport including activity centres and town centres and to encourage a scale of development that provides a transition between areas of more intensive use and development and other residential area. The respondents' properties to the east in St Kilda Road are within a Commercial 1 Zone (C1Z).
- 32 The site is affected by the DDO26 which is applicable to the St Kilda Road North Precinct. The overlay is the key built form control that applies to the site. The subject site is within Sub-precinct 6: Queens Road, which is described as a distinctly lower rise, predominantly residential area that forms the edge to Albert Park. The precinct notes there is a consistency of building scale and siting that creates a cohesive streetscape image.
- 33 There are specific objectives for this precinct that form the basis of our decision. Some of these include:
- To reinforce the primacy of the St Kilda Road boulevard by creating a preferred future built form which provides a transition down in height from the high rise buildings along St Kilda Road to medium rise buildings along Queens Road.
 - To ensure that buildings are of a medium scale with towers setback above a podium.
 - To ensure that development frames long ranging views along Queens Road and forms an edge to Albert Park.
 - To ensure that development provides generous and consistent front setbacks and regular spacing between buildings.
- 34 We will discuss how these objectives are met in our findings regarding building height and scale facing Queens Road and Queens Lane further below.
- 35 DDO26 also contains a series of general, precinct-wide objectives that are relevant to our decision. These relate to City Beautiful, Landscape Setting, Streets for People and Private Amenity and Outlook that will be discussed further below. Clause 2.0 of the overlay contains general requirements for buildings and works that include design quality, separation distances/side and rear setbacks, landscaped setbacks, heritage, street wall/podium, active frontages, tower design and internal amenity, building services, vehicular access and car parking and pedestrian permeability.
- 36 The subject site is within Sub-precinct 6 that contains specific built form and setback requirements which are shown on Map 7 in Figure 6 below:

Figure 6 – Map 7 to Schedule 26 to Clause 43.02 – Building form and Setback Requirements:
Sub-Precinct 6



- 37 The site is also within a Special Building Overlay (SBO2). The SBO, through Clause 44.05, is not a specific point of dispute in this proceeding.
- 38 The Municipal Planning Strategy (MPS) contains policies that are relevant to our decision. These include Clause 02.01-1 that states Council supports St Kilda Road as a preferred location for premier office accommodation and well-designed medium density residential development. The housing policy at Clause 02.03-5 seeks well-located strategic redevelopment to accommodate population growth with a variety of dwellings to meet diverse needs. The MPS also identifies Queens Road as an existing boulevard opposite Albert Park as a regionally significant open space.⁸
- 39 Relevant policies in the Planning Policy Framework (PPF) include Clause 11.01.1R (Settlement – Metropolitan Melbourne). *Plan Melbourne 2017-2050* also identifies the St Kilda Road corridor (including the subject site) as part of the central city where major new development is expected. There are also various policies in the PPF that encourage increased residential densities, including apartment buildings. Specifically, Clause 11.02-1S provides for the consolidation and intensification of existing land uses and Clauses 16.01-1S and 16.01-1R encourage housing diversity. The PPF also encourages urban design that is responsive to the public realm, local contexts, healthy neighbourhoods and land use and transport, movement networks and development infrastructure.⁹

⁸ At Clause 02.04-5 (Open Space and Environment Framework Plan).

⁹ At Clauses 11.01-1R, 11.02-1S, 11.03-1S, 11.03-1R, 15.01-1R, 15.01-2S, 15.01-4S, 16.01-1R, 18.01, 18.02 and 19.03.

- 40 Amendment C203 was gazetted on 14 April 2023. This amendment translates a review of all policies in the Local Planning Policy Framework (LPPF) into a new format to simplify and improve its structure, function, and operation. New local policies of relevance to our decision include:
- Clause 11.03-6L-02 (St Kilda Road North Precinct) – This clause identifies the precinct as the preferred location for higher density residential development;
 - Clause 13.07-1L (Interfaces and Amenity) – This clause includes the former Clause 22.06 (Urban Design Policy for Non-Residential Development and Multi-Residential Development); and
 - Clause 16.01-1L-02 (Location of Residential Development) – This clause has an objective to direct housing growth to designated locations that have the greatest capacity for change and that offer highest accessibility to public transport, shops, and social infrastructure.
- 41 Whilst not applicable to the subject site, the St Kilda Road properties are affected by the Shrine Vista Control and the Alfred Hospital Emergency Medical Services Helicopter Flight Path Protection (Inner Area). These controls were brought to our attention as they may impact the future height of any new or redeveloped buildings in St Kilda Road, directly to the rear of the subject site.

What do the parties' say?

- 42 The applicant argues that residential redevelopment in the St Kilda Road precinct is strongly supported by policy. It says local and state policy direct new development into substantial residential growth areas, such as Queens Road. It highlighted that Mr Glossop acknowledges the St Kilda Road corridor is expected to accommodate major new development given its proximity to arterial roads, public transport, recreation facilities, commercial and public land uses. It urged us to keep this strategic policy imperative front of mind as it did not want it to become a 'background hum' that is overwhelmed by various urban design considerations in the DDO26.
- 43 Council says there is no doubt there is strong strategic support for a multi-storey development on the subject site as the proposal fulfils the strategic aspirations for the locality that is found in policy and RGZ. However, it submits that care must be taken to ensure the built form is acceptable and will not result in unacceptable impacts on adjoining properties and the public realm. The respondents agree with Council and their experts have provided several recommendations to address the objectives and design requirements of the DDO26 and the amenity impacts on their properties.
- 44 Mr Glossop says the most relevant planning control is the DDO26. He notes that a very small proportion of the site at its Queens Road frontage is also

located within a Special Building Overlay - Schedule 2 (SBO2) and a permit will be required pursuant to this control. However, in his opinion the SBO2 is not material to the issues before us.

- 45 Shrine Vista Controls are applicable to the respondents' properties to the east. Mr Biles provided diagrams that indicate the controls are unlikely to restrict the height of buildings in this part of St Kilda Road, although they are covered by the DDO that would require assessment. His evidence is that in this section of St Kilda Road, the Shrine Vista Controls will not limit the application of discretion to exceed the recommended 60 metre maximum preferred height.

Tribunal findings

- 46 We note the parties, and the experts, all agree the proposal has widespread zoning and state and local policy support in the Planning Scheme. The parties all accepted that the site is relatively large, and with its locational advantages, is suited for a residential development of some scale. We note that all of the experts before us agreed that despite the RGZ referring to a four storey limit, the DDO26 encourages a higher density response at this location.
- 47 We agree the development will increase residential densities on a site that is within proximity to jobs, services, public open space, and public transport. This includes Albert Park that is regionally significant parkland and the soon to be completed Anzac Station which will increase accessibility in this area.
- 48 We agree with Mr Biles that the Shrine Vista controls may not significantly impact the future development of properties along St. Kilda Road. However, in the absence of definitive heights for these sites, it is difficult to rule out there will be no impact on height of any future development for the properties to the east.
- 49 We conclude the decision before us revolves around those aspects of the proposal that require us to exercise our discretion against the guidelines and objectives of DDO26. These include those relating to urban design and amenity matters, including whether a development of this scale effectively manages its interfaces with adjoining properties and sub-precincts. We also must consider whether the streetscape presentation to both Queens Road and Queens Lane is consistent with the expectations of the DDO26 and surrounding built form.
- 50 We conclude that despite the various positive aspects of the design, such as the landscaped central court, the perimeter block approach has shortcomings for Queens Lane and adjoining properties. We also have concerns that the height of the proposal is contrary to the design objectives of Sub-precinct 6 that seek to reinforce the primacy of the St Kilda Road

boulevard and to provide a transition down to medium rise buildings along Queens Road. Our reasons follow.

IS THE OVERALL BUILT FORM RESPONSE CONSISTENT WITH THE DESIGN OBJECTIVE IN DDO26 CALLING FOR TRANSITION?

What do the parties say?

- 51 All the experts agree that DDO26 includes specific requirements calling for a transition in the scale of development to retain the primacy of the St Kilda Road corridor. The question before us is to what extent is this achieved?
- 52 Mr Glossop's principal concern is in respect to those design objectives relating to the creation of a consistency in streetscape to Queens Road and a transition in scale between the buildings fronting St Kilda Road and those facing Queens Road. He notes the proposal (excluding services) will sit 6.2 to 8.6 metres higher than its neighbours. He has concerns about the combination of height and width and says the proposed height is too great in the streetscape and should be lowered by one storey.
- 53 He recommends a reduction in height of one storey will reduce the proposed building to a height of 53.80 metres AHD. He notes that while this would still be 2.8-5.2 metres greater than its neighbours, this height difference, coupled with the building width, would be acceptable in respect of maintaining a consistency in streetscape presentation.
- 54 With regards to the policy calling for transition, Mr Glossop is concerned that as none of the existing buildings in the block containing the subject site exceed the 60 metre discretionary height limit (and several are well short of this measure). He considers the height transition sought by DDO26 will not occur, while noting that there could be future additions to the buildings in St Kilda Road.
- 55 Mr Glossop considers that even if all six properties fronting St Kilda Road were developed with buildings of around 60 metres in height, he would still be concerned that the transition in height sought by DDO26 would not be appropriately achieved as the DDO26 sets a 20 metre distinction in building heights between 'high' and 'medium'. He considers this is effectively halved and would provide an outcome whereby it is blurred. He says the distinction will be less easily discernible, particularly given the width of the proposed built form. He also observes that many of the existing buildings to the east of the subject site are well below the recommended 60 metres, and this will result in the primacy of the St Kilda Road corridor being lost.
- 56 Mr Sheppard was not concerned that the height of the proposal would interfere with the perception of a transition to the east and the primacy of St Kilda Road. He says this is because from Queens Road, even a 40 metre form, would block any views to the St Kilda Road towers due to the effect of perspective. His evidence was that the transition would only be visible

from deep within the Albert Park reserve, such as adjacent to the lake, and from this distance, it is difficult to discern St Kilda Road towers from those that have been developed recently along Queens Road.

- 57 Mr Sheppard provided a comparison diagram in his evidence (Figure 6) showing that other developments along Queens Road have been constructed or approved at similar heights to that proposed. He says previous divisions of the Tribunal have found these to provide an acceptable relationship to St Kilda Road.

Figure 6 – Proposed Queens Road interface¹⁰

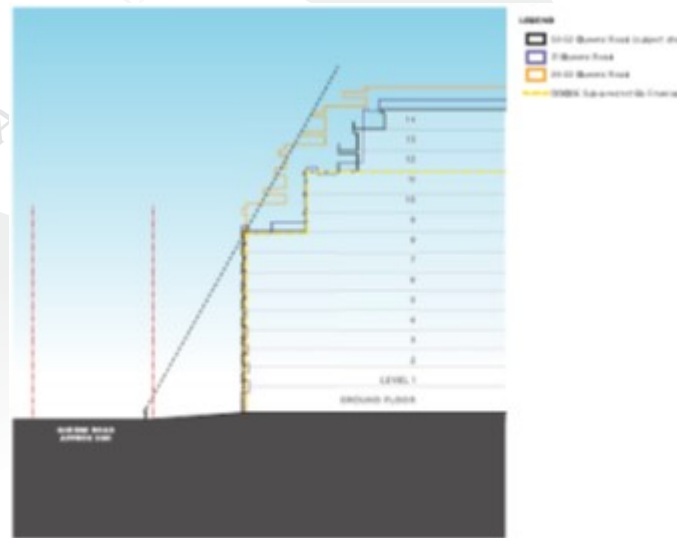


Figure 6. Proposed Queens Road interface, compared with DDO26 envelope and other recent approvals (adopting a common ground level)

- 58 Mr Biles notes that the U-shaped form, with the east and west wings stepping down towards Queens Road, assists in providing a sense of transition towards St Kilda Road because the development visibly steps up towards the east. He also says the built form will reinforce the way the existing buildings to the north (2 Roy Street), and to the south (54/55 Queens Road), step down to the north and south respectfully.
- 59 Mr Biles considers that viewers build up a perception of a place as they move around and through it. He made this observation with respect to Queens Lane but we find it also applies here and can explain the difference in the evidence of Mr Sheppard and Mr Glossop. He places great emphasis on the stepping of the façade to the west, north and south. He says this provides an appropriate massing that indicates the role of the site as a mediating form between St Kilda Road and its lower scale neighbours to the east, 2 Roy Street and the Albert Cricket Ground to the north and 54/55 Queens Road and the retained heritage building to the south. His evidence is that this significantly assists to achieve the required sense of transition.
- 60 Mr Glossop considers the proposal generally accords with the directions set out in DDO26 noting that the mandatory side setbacks are met and apart

¹⁰ Mark Sheppard evidence – Figure 4.

from the height, the other discretionary requirements are met. However, he also notes there is a discretionary limit of 35 metres for tower width that is not met. Although he says the latter is more of an urban design question, he considers the combination of the variations sought to the discretionary height and tower width lead him to conclusion that the overall height is excessive and needs to be reduced by one storey.

- 61 Prof McGauran says the exceedance of the preferred built form, as outlined in the DDO26, results in a failure to respect the character of the local area,¹¹ and fails to achieve multiple goals of the overlay including equitably distributing access to outlook and daylight and to achieve sky views between towers. He says the proposed building is 23% higher than the maximum discretionary building height of 40 metres and nearly 30% to the top of the expansive plant area. He concludes that the exceedance of adjoining development scales by more than two levels is incongruous in what is an otherwise consistently scaled urban block with this site as the infill between its north and south gateway bookends.
- 62 This ultimately led Prof McGauran to recommend the removal of one level, and the tapering of the building to the north and the south to reduce its impacts upon the adjoining buildings.

Tribunal findings

- 63 The experts agreed that the transition is experienced mainly from the west. We agree, although we find there will be some experience of the differences in scale from within Queens Lane. However, we accept that the latter is mainly a question of the impact on the amenity of the lane which is a separate question.
- 64 Mr Glossop made a numerical comparison, noting that the Planning Scheme sets up a 20 metre difference between the recommended heights along St Kilda Road and those addressing Queens Road. We agree that at the proposed height, this difference would be effectively halved. While this is a concern, we find that it does not in itself lead us to a conclusion that the primacy of the St Kilda Road corridor is not preserved.
- 65 We agree with the applicant that we should consider the form that the Planning Scheme encourages for this part of the St Kilda Road corridor, which is 60 metres. We cannot say if, or when, the under sized buildings might be extended or replaced, however we must regard this as a possible outcome that is encouraged by the Planning Scheme.
- 66 Both Mr Glossop and Mr Sheppard nominate locations close to the Albert Park Lake where they say the transition is most likely to be seen, although in Mr Sheppard's case, his view is that it will be difficult to interpret. We agree that the experience of transition will mainly be visible from a distance

¹¹ Clause 21.05-2 Urban Structure and Character.

within the Albert Park reserve, generally from adjacent to Lakeside Drive in the golf course and in the vicinity of the walking track around the lake.

- 67 Our site visit confirmed Mr Bile's view that the perception of a place is not achieved by any one single position, but as people move around a location. As viewers move around the walking track, or across the park, an impression builds of the relationship between the two areas of development. As a result, we disagree with Mr Sheppard that any transition will be difficult to perceive.
- 68 We do not agree with Mr Biles that the perceived stepping towards the north or south is relevant to the required transition. This is not an outcome sought by the Planning Scheme, and in any case, most of the "work" is being done by the neighbouring buildings. This would not change if the proposed building were of a lower scale.
- 69 As a result, we find at the proposed height, there will be some diminution of the ability to "read" the primacy of St Kilda Road from locations around the Albert Park Reserve and particularly as viewers move through the space. We conclude that the proposed building would appear too visually dominant from within Albert Park, which we note has high usage, including for international events. This leads us to the conclusion that the height should be moderated.
- 70 While we accept Council's submission that the removal of two levels would provide an appropriately visible reduction, we are persuaded that the stepped form of the building will provide a mitigating effect. Therefore, we will include a condition to remove one level (from either levels 13 or 14) to provide an acceptable outcome as a condition on the permit.

IS THE BUILT FORM RESPONSE TO QUEENS ROAD CONSISTENT WITH THE DESIGN OBJECTIVES OF DDO26?

What do the parties say?

- 71 The applicant argues the layout provides positive community benefits for the Queens Road address, by providing a deep garden setting that will soften the pedestrian experience in Queens Road and provide a visual link to the landscape of Albert Park opposite. This also benefits the future residents of the site, which they say supports the intensive development of the site. It says the Planning Scheme encourages large sites in favourable locations such as this to optimise the yield. It submits the delivery of residential units at this location is a net community benefit that must not be overlooked.
- 72 Mr Biles considers the benefits of the perimeter block form are significant and justify the application of discretion for height and width. His evidence is that the provision of the central landscaped courtyard is a major benefit to the Queens Road address, improving the experience for pedestrians along Queens Road, while also providing amenity for the residents on site.

- 73 Mr Sheppard agrees that the U-shaped form is an appropriate response to the site because the central landscaped space and the stepped forms of the east west wings provide a good response to the Queens Road and Albert Park context. He acknowledges this layout will provide good amenity for the apartments.

Tribunal findings

- 74 We agree that the layout exceeds the minimum frontage landscape setback requirements in the DDO26. We acknowledge Queens Road is a heavily trafficked environment and the deep landscaped courtyard will provide an attractive interface at the pedestrian scale. This will be further enhanced by the clear pedestrian entries to the development, providing an appropriate level of interaction to the road.
- 75 We also agree that the architectural form of the building, including the stepped form, the introduction of recesses and balconies to create depth in the façade, variation in materials and finishes, and the use of vertical elements emphasise the progression from one building section to another. We consider this effectively presents the development as three connected buildings rather than one monolithic form.
- 76 We have commented elsewhere on the longer distance impacts and whether the proposal preserves the primacy of St Kilda Road. Suffice to say, that with a reduction of one floor, we are satisfied that the proposed interface to Queens Road is acceptable.

DOES THE DEVELOPMENT RESPOND APPROPRIATELY TO THE QUEENS LANE INTERFACE?

What do the parties say?

- 77 Mr Sheppard is concerned about the relationship of the built form to Queens Lane. He says policy anticipates the lane plays a role as both a pedestrian route and for service access. His evidence is that the combination of the length of the façade, and its height, will create an unacceptable building bulk. He considers that notwithstanding the architectural treatment, this will result in an unacceptable sense of enclosure and loss of daylight in Queens Lane.
- 78 Mr Sheppard recommends the three upper floors and plant screen should be stepped back so as not to be visible for a pedestrian standing opposite the façade on the eastern footpath of the lane. He says this could be achieved with a suitably worded performance-based condition. He says this would reduce the visual bulk and sense of enclosure of the building to be similar to that of a 40 metre building, as recommended in the DDO26. He is confident that the architect/designers could manage how the performance-based condition could be integrated into the composition.

- 79 The respondents from 568 St Kilda Road are directly east of the subject site. They say the proposal will have a detrimental impact upon the amenity of Queens Lane which provides the setting for the western address of their building. They are also concerned about the loss of ambient light that would occur in the street due to the height and width of the development that contains no breaks.
- 80 With respect to the impacts upon the Queens Lane environment, Mr Biles considers the architectural treatment is sufficient to visibly break up the form and reduce a perception of building bulk. His view was that pedestrians in Queens Lane will mainly be aware of the lower levels, where the footpath widens. He says pedestrians will also have views into the entrance and communal facilities which will greatly improve the environment in Queens Lane.
- 81 Mr Biles considers the sheer rise of this façade to effectively three floors above the recommended maximum height will not make a perceptible difference to the impression of visible bulk, which, in any case, he regards as an appropriate form in an area that is highly urban and where intensification is expected.
- 82 Mr Biles drew a comparison to buildings at the north end of Little Collins Street in the CBD, which also typically rise sheer to similar heights. In his view, as buildings on the east side of Queen Lane could rise to 60 metres or more, there would be a strong sense of enclosure to the lane. Therefore, he considers there would be little benefit in restricting the height of the proposed form.
- 83 Mr McPherson supports what he termed a “perimeter block” approach to the site because it maximises the amenity on site. He did not feel it necessary to lower the façade height to Queens Lane because he regards this context as not being a sensitive one.

Tribunal findings

- 84 We agree with the experts and advocates that the most relevant controls in this respect are those in DDO26. We find that the controls establish an expectation, through its discretionary controls, that there should be a limit to both the height and width of a development and favours a podium and tower format.
- 85 The policy also provides us guidance about the expected outcomes. In general terms, it encourages building design that minimises adverse amenity impacts upon residential properties, open space, streets, and public places in the area because of overshadowing, wind tunnelling or visual bulk.
- 86 Under the heading ‘Tower Design and Internal Amenity’ it directs that tower forms above podiums should not exceed 35 metres in width to:

- Ensure that daylight penetrates through to parts of the building and streets, and adjoining buildings.
- Reduce their perceived visual bulk.
- Maintain sightlines between buildings.

87 More specifically, within the sub-precinct controls under the heading 'Design Guidelines' it directs us to consider:

Whether the development is designed to avoid or limit over shadowing of adjoining residential properties and the public realm in accordance with the Objectives and Policy Requirements of Clause 22.06 - Urban design policy for non-residential development and multi-unit residential development.

88 It was put to us that the intention of these controls was mainly to ensure amenity within each project. Both Mr Biles and Mr Sheppard gave evidence that this was the focus of the Panel report for Amendment C107 which introduced the DDO26 into the Planning Scheme. We were taken to that report and agree that it contains little reference to external amenity or protection of outlook.

89 Nevertheless, the words in the Planning Scheme specifically reference streets, adjoining buildings, visual bulk and maintaining sight lines. We find this requires us to consider the impacts of the width of the proposed development, as well as the height, upon the amenity of the public street and upon the setting of the existing buildings.

90 We note it is not uncommon for recommendations made by a Panel, as part of the amendment process, to not be translated exactly and ultimately. Therefore, we must administer the Planning Scheme as we find it.

91 We do not agree that we must require the development to provide a gap at its centre, or to be broken into two or more forms, as submitted by some of the respondents. We have come to this conclusion as the control is discretionary, and in any case, such a change would amount to a different proposal. We must assess the proposal that is before us, against the full range of policies that apply to this site.

92 We also note the amended proposal has provided additional setbacks to its north and south boundaries, ensuring there is a separation of at least 9 metres between building elements. This provides effective building spacing, which the existing developments, particularly to the apartments to the south, have not fully allowed.

93 We agree with Mr Sheppard and Mr Glossop that the combination of the sheer height of the façade rising from the footpath, and the unbroken length of this façade, results in unacceptable impacts upon the public environment in Queens Lane and the adjoining developments.

- 94 Prof McGauran arrives at a similar conclusion. However, we do not agree that preserving sunlight to the eastern footpath at the equinox is an appropriate test. We agree with the permit applicant that in a narrow north south street, expectations for sunlight need to be tempered given the Planning Scheme's preference for intensification. We note there is no such test in the Planning Scheme for this precinct.
- 95 We do not agree with Mr Biles that examples in the Melbourne CBD demonstrate that a sheer rise of the façade has little impact upon the pedestrian environment. We found that the Little Collins Street environment is firstly, a very different context with a vibrant street level punctuated by many entrances, lanes, and arcades and secondly, there are no facades in the north end of Little Collins Street approaching the length proposed in this development.
- 96 We have concluded the response to Queens Lane requires further mediation for several reasons.
- 97 Firstly, we find that the combination of height and length results in an unacceptable visual bulk. We find this would dominate the narrow street which the parties agree is intended to play a pedestrian role, in addition to its service role.
- 98 We are not persuaded that Queens Lane is "not a sensitive environment". We agree it may be a less sensitive environment than the adjacent St Kilda Road, however this does not mean it has no sensitivity. It will remain the setting for the western end of the buildings addressing St Kilda Road, including residences, and it is an important address for the residential buildings to the immediate north and south. In any case, the Planning Scheme seeks to enhance the pedestrian role of the street, an intention that the proposal appropriately responds to.
- 99 Secondly, the building above the preferred height, will reduce the exposure to sky and result in a loss of daylight into the street and adjoining buildings. This is unrelieved by any breaks in the length of continuous form. While we are not persuaded that exposure to direct sunlight to the eastern footpath is an appropriate test, the value of daylight was not contested. Further, we note that Mr Patrick found the existing breaks between buildings, particularly on the east side, are valuable in allowing daylight, if not sunlight, and provide an opportunity for landscaping.
- 100 Thirdly, we find that the extent of form that results from the combination of height and width is out of character with both the established and emerging character of Queens Lane. Submissions were made pointing out that this will be the longest continuous built form in any part of Queens Lane south of Park Street. This became evident to us during our site visits.

- 101 As a result, we find that a form that is more responsive to the existing and emerging character, and one that minimises the impact of the visual bulk upon the street environment is required.
- 102 We are not persuaded that the vertical architectural articulation is sufficient to overcome the extent of visual bulk. We find it will provide some distraction from the extent of the façade and it will improve its attractiveness by appearing as several buildings. However, we find this will not reduce the sense of enclosure to the lane to any significant degree.
- 103 We find that the removal of one storey, as we have found to be necessary for the western elevation, is required in Queens Lane. However, we consider this amendment alone is not enough to sufficiently reduce the visual impact of the façade given its unbroken length. We therefore will recommend that the remaining two floors above the preferred height be stepped back to be not visible to a person standing immediately opposite on the eastern footpath. This is consistent with the recommendations of Mr Sheppard. These two measures will therefore provide an appropriate balance of built form in the lane.
- 104 Mr Sheppard also recommended this test should be applied to the plant screen on the roof. The respondents are concerned that the rooftop plant area is relatively extensive, and the screen will read as a storey, adding to the visual bulk.
- 105 The applicant clarified for us that this screen will be in the form of a largely opaque fence-like material. They said the area could be reduced somewhat but disagreed that the area is relatively large, pointing out that all air conditioning is provided centrally requiring plant on the roof, thus avoiding individual condensers on balconies. They say this is a benefit to the neighbours as it removes multiple noise sources (and unsightly plant) to the rooftop where the impacts can be managed.
- 106 The applicant requested the architects investigate how much the plant area could be practically reduced and tabled a drawing number SK03.15 Rev 1, dated 8 May 2023. This drawing shows the screen height can be reduced in the central part from 2.4 metres to 2 metres and the setbacks increased. They confirmed the plant screen setback from the northern parapet of the building should be no less than 5.1 metres.
- 107 The respondents agreed the drawing was an improvement but submitted the setbacks should be as greater, particularly from the north boundary.
- 108 We agree with the respondents that the rooftop plant area does appear excessive compared to other buildings in the area. This is partly because of the U-shaped form which includes long and narrow rooftop areas. We are satisfied that the proposed improvements, as tabled by the Applicant, will result in an acceptable outcome. We find that by reducing the plant screen

height to 2 metres in the central area will assist in ensuring the screen does not read as an additional storey.

- 109 We are mindful that in adopting Mr Sheppard's approach of requiring setbacks to the upper floors from Queens Lane, it will likely reduce the area for plant on the roof. As such, in applying the condition we will allow some flexibility for the applicant to demonstrate that the plant area is reduced as far as practicable, noting that our other requirements to reduce overall height and increase upper-level setbacks will reduce the visible bulk of the proposal.

WILL THE DEVELOPMENT RESULT IN UNREASONABLE AMENITY IMPACTS ON NEIGHBOURING PROPERTIES?

- 110 DDO26 contains a precinct-wide objective:

To encourage building design that minimises adverse amenity impacts upon residential properties, Albert Park Reserve, the Shrine of Remembrance and other open space, streets, and public places in the area as a result of overshadowing, wind tunnelling or visual bulk.

- 111 The General requirements for buildings and works in the DDO26 state that additional side and rear setbacks and separation distances may be required to ensure buildings and design and spaces equitably distribute access to outlook, daylight, and privacy from primary living areas for both existing and proposed development.
- 112 The respondents argue the development unreasonably affects the amenity of adjoining properties by way of overshadowing, privacy, and visual bulk.
- 113 564 St Kilda Road relies on the evidence of Mr Sheppard who considers that the reasonable amenity expectations of surrounding apartment and commercial buildings should be guided by the outcomes for the site in the Planning Scheme, particularly the DDO26.
- 114 Prof McGauran has key concerns about the excessive detrimental impacts arising from the exceedance of the DDO by over 9 metres to the parapet and 11.8 metres to the top of the expansive screened plant area zones. He says this will result in a substantial and unacceptable loss of amenity to adjoining private open space and habitable rooms of residential properties at 568 St Kilda Road and 54 Queens Road. He says this will lead to diminished consistency in built form and shared amenity sought by the DDO26 and State and Local Policy.

Overshadowing

- 115 Council argues that removal of Levels 12 and 13 will reduce the additional overshadowing impact of the building on Albert Park, Queens Lane and the habitable room windows and balconies of the apartments at 54 Queens Road. It says this responds to the precinct-wide objective to avoid or limit overshadowing of adjoining properties and the objectives of the Urban

Design Policy at Clause 15.01-1L. It highlighted that consideration should be given to the magnitude of the impact on the amenity of the adjoining residential properties. It says that whilst there may be a limited number of apartments affected by shadow, any loss will be significant to those dwellings that currently receive limited access to sunlight throughout the day.

116 Mr Glossop agrees with Council that a reduction in height by one storey will cast proportionally less shadow on adjoining properties. However, he considers additional overshadowing alone is not so sufficient to warrant refusal of the application given the shift in shadow throughout the day and the reasonable expectations of living in a highly built-up environment.

117 Mr Sheppard has concerns about the overshadowing impacts of this proposal. He says the proposal causes additional overshadowing to the residential buildings to the south at 54 Queens Road and south-east at 568 St Kilda Road when compared to a built form constructed to the recommended height of 40 metres. He notes that the DDO26 Decision Guidelines include:

whether the development is designed to avoid or limit overshadowing of adjoining residential properties

118 In his view, the proposed form is an unacceptable outcome and goes beyond what he described as “reasonable expectations” given the policy provisions and the fact that the subject site is relatively large and could reasonably be expected to manage its external amenity impacts.

119 Mr Sheppard’s evidence is that the southern elevation should be stepped back to remove any excess shadow, and that this could also be achieved through a performance-based condition. However, he did not have sufficient information to be able to say what setbacks are necessary to achieve this result. He notes that matching setbacks to the north may be required to maintain the symmetry of form, but in his view, they were not required to achieve acceptable amenity outcomes.

120 When questioned on the matter, Mr Sheppard said he did not think it necessary to reduce the overall height if the setbacks he recommends are adopted.

121 Prof McGauran shares Mr Sheppard’s concerns and recommends increased setbacks and the removal of one level of the building to address additional overshadowing beyond the shadow cast by the DDO26 envelope. This ultimately led him to recommend the removal of one level, and the tapering of the building to the north and the south to reduce its impacts upon the adjoining buildings. This was detailed quite specifically in his Recommendation 6 that reads:

Remove level 13 and provide setbacks for the footprint of the current level 14 (new level 13) from the south, north and east boundaries to achieve the following outcomes: -

- No additional overshadowing on the eastern footpath of Queens Lane between the hours of 10am and 2pm at the September Equinox over that contemplated by the DDO
- No additional overshadowing of the existing habitable windows and private open space of levels 8 to 13 of residential units at 54 Queens Road between the hours of 10am and 2pm at the September Equinox over that contemplated by the DDO.
- Setback of the new uppermost level 13 from the northern boundary 10m from the northern boundary (a commensurate distance to the setback of the plantroom and lift overrun of 1 Roy Street from the South Boundary) with commensurate additional setbacks of the plant area back to an alignment with the lift core over to the north and south and an additional 3m from the Queens Lane interface to mitigate its visual bulk and offsite impacts.

122 The applicant submits the DDO26 does not apply any mandatory shadow controls in Sub-precinct 6 and relies on the precinct wide objective, which we have noted above. It says Clause 58 deals with amenity impacts from apartments and specifically excludes overshadowing impacts on private open space as an amenity consideration. It says this view is reflected in many recent decisions.¹² It acknowledges the proposal will have overshadowing impacts on the properties facing Queens Road, Queens Lane and Albert Park and the adjoining properties to the south and east. However, it considers that analysis of impacts is not so great as to require any change to the height or built form.

123 The applicant cautioned us against adopting an unduly restrictive approach to overshadowing given the 40 metre height limit is discretionary and the Planning Scheme contemplates some additional height may be acceptable. It therefore concludes there is no obvious reason why assessment of impacts must be confined to beyond the DDO26 building envelope. It also says that any argument about the unacceptability of shadow impacts must point to something merely more than its existence above the DDO26 envelope to explain why those impacts are unacceptable.

124 The applicant relies on the evidence of Mr Biles who assessed the additional overshadowing of the building to the south beyond that of a preferred 40 metre form in the DDO26. He provided additional material that shows overshadowing occurs when the azimuth or bearing of the sun is

¹² See, e.g., *Hengyi (88 Kerr) JV Pty Ltd v Yarra CC* [2021] VCAT 1093, [160]; *Glen Iris Devco Pty Ltd v Stonnington CC* [2022] VCAT 471, [64] – [69]; *Mirvac BTR Developments Pty Ltd v Moreland CC* [2022] VCAT 300, [126], bullet point 4.

at a relatively sharp angle to the façade of 54 Queens Road. He says this indicates the shadow will move rapidly across the façade.

- 125 He also notes that applying the equinox test is only representing a single point in time, and as the year progresses, both the altitude and azimuth increase, so that the extent of shadow will reduce. In his opinion, the extent of additional shadow is not significant, and it is reasonable in the context of a highly urban setting where there is already extensive self-overshadowing from overhanging balconies and where the site is in a location where intensification is expected.

Tribunal findings

- 126 The diagrams show the building will cast shadows on the apartments at 54 Queens Road (south) and 568 St Kilda Road (east), Queens Road, and the Albert Park Reserve beyond those cast by the DDO26 building envelope. Our findings on what is an acceptable impact on each interface will be discussed below.
- 127 There was much discussion regarding what time of the year we should assess the shadow impacts, given the absence of any mandatory controls for apartments in Clause 58. Most of the diagrams and cross-sections submitted by the applicant reflect the impacts on the Equinox (22 September). We agree with Mr Biles that overshadowing at the Equinox is only one point in time and that for half of the year the shadow reduces due to the altitude and azimuth of the sun. However, we also acknowledge that for the other half of the year, there will be significant shadow impacts on the adjoining apartments.
- 128 We consider that given the ever-changing nature of shadow throughout the year, use of the Equinox is a reasonable benchmark to understand the likely shadow impacts at not the best, nor worst time of the year, for the surrounding residential properties. We have considered that as the year progresses towards summer, the extent of overshadowing quickly reduces. However, applying the more wholistic assessment that Mr Biles encourages, we also note that the impacts will increase as the year moves past March 21 (the autumn equinox) when in Melbourne there are often many days of effective sunshine. As a result, and in the absence of any dynamic shadow analysis, we conclude that to assess the shadow at the equinox is the fair and appropriate standard to apply.

Shadows cast on apartments to the south and east

- 129 During the hearing the applicant provided an updated shadow analysis that shows the impact on the north elevation apartments of 54 Queens Road for a DDO26 envelope and the proposed building. Mr Biles and Prof McGauran quantified the number of apartments affected by shadow at the Equinox and came to a different conclusion on the numbers affected. The applicant argues Prof McGauran's assessment is incorrect for all hours of

the day (i.e between 10.00am and 2.00pm) whilst Prof McGauran conceded that his analysis of the number of apartments at 10.00am was the only time that the numbers were out.

- 130 In the absence of a dynamic test, we have also reviewed the shadow analysis, floor plans and elevations of 54 Queens Road and cross-section diagrams. We consider there are impacts on the balconies or windows of between two to nine apartments between the hours 10.00am and 2.00pm. We acknowledge the extent of shadow creeps up the north elevation wall throughout the day to impact higher and more levels in the afternoon.
- 131 We acknowledge the upper level balconies cast shadow over the lower level windows, but the balconies of some apartments will be fully overshadowed if the building is constructed at the proposed height. Our previous findings include to remove one upper level to address the overlay amenity expectations in the DDO26 for Queens Lane. We consider this amendment will have a commensurate reduction in the extent of overshadowing of the number of apartments in 54 Queens Road.
- 132 We agree with Council that any increase in overshadowing of the balconies and windows in 54 Queens Road will have a significant impact on the amenity of these apartments. However, we are not persuaded to require additional setbacks to minimise the shadow impact to match a DDO26 compliant built form for the following reasons:
- The building is set back a minimum of 6.3 metres from the south boundary. This is greater than the 4.5 metres setback recommended in the DDO26 and responds to the reduced setback of 54 Queens Road (i.e. 3 metres);
 - There is a strategic policy imperative for a building of substantial intensity and height at this location that will inevitably have some amenity impacts on the adjoining and nearby properties;
 - The 40 metre envelope is a discretionary height in the overlay. Therefore, heights that exceed this threshold can be considered given the nature of existing highly built-up environment nearby;
 - Shadow impacts are transitional throughout the year;
 - The existing subdivision pattern in Queens Road and St Kilda Road results in restricted spacing between buildings that will also cast shadows across neighbouring buildings; and
 - There are no mandatory overshadowing measures for private open space for apartments in the Planning Scheme or a measurement of reasonableness that is confined to above the DDO envelope.

Shadows cast over Queens Road and Albert Park Reserve

- 133 Mr Biles prepared shadow diagrams that show existing taller buildings cast some shadow over Queens Road and Albert Park Golf Course at the Winter solstice and Equinox. He considers the 'U' shaped configuration and stepping back of the north and south wings reduces the extent of shadow to less than a built form which conformed to the 40 metre preferred height but was set back only to the 15 metres required by the DDO26. He says the building height would have to be reduced to approximately 27 metres to avoid shadow falling on the parkland at 9.00am on the Equinox.
- 134 We note that none of the expert witnesses have recommended a reduction in height to reduce shadows onto Albert Park. Council also says the extent overshadowing is not unreasonable. We agree with Mr Biles that the impacts on Queens Road and the parkland are reasonable given the context of those cast by the DDO26 envelope.

Shadows cast over Queens Lane

- 135 Prof McGauran expressed concerns about the shadow impacts on the eastern side of the footpath in Queens Lane. He considers that removal of one level and additional setbacks are required to address this concern. Mr Sheppard has also made similar recommendations to reduce the building scale, which we have discussed above.
- 136 The applicant submits that there are no specific shadow controls in the Planning Scheme for the Queens Lane footpath. It says the diagrams show the shadow impacts are restricted to between 2.00pm and 3.00pm for a DDO26 compliant building.
- 137 We agree that shadowing of the east side of Queens Lane is acceptable given the restricted time and current extent of crossovers along this side of the street. However, this does not negate our concerns about the sense of enclosure and amenity of Queens Lane that we have discussed above in our findings.

Visual bulk

- 138 Council also says the building will result in an overwhelming visual bulk impact to Queens Lane and the western interface of properties facing St Kilda Road.
- 139 The respondents are concerned that the overall height and width of the building, including its roof top plant, above the discretionary height of the DDO26, is an unacceptable response to the design requirements of the overlay which seeks to minimise visual bulk impacts to streets and public places.
- 140 The respondent, 568 St Kilda Road, submits that the proposal will have detrimental impacts upon the amenity of Queens Lane which provides the setting for the western address of their building. The first six levels of their

building are serviced apartments but the upper floors, beginning from Level 7, contain apartments in individual ownership. Because of the low height of the present building on the subject site, all the private apartments enjoy an outlook towards the west.

- 141 In the statements of grounds, the owners at the lower levels of their building submit that they understood that any redevelopment of scale would close off their outlook. Owners at the upper levels also submit that the extent of exceedance of the preferred height, without breaks, will completely remove any of their outlook. The owners of all levels submit that the impacts are excessive, and they had not anticipated a building could be constructed above the preferred heights and widths set out in the Design and Development Overlay.
- 142 The respondent at 566 St Kilda Road submits that there should be either two to three towers constructed on the site to reduce the visual impacts and to increase daylight penetration into Queens Lane.
- 143 Prof McGauran is also concerned that the proposal will “*increase perceived bulk and diminished precinct visual coherence due to the site’s excessive height and footprint at upper levels.*”¹³ He also considers the plant area on the roof is relatively large for the size of roof and that it would add to the visual bulk of the building, when seen from the Albert Park Reserve and the upper levels of adjoining buildings.
- 144 The applicant relies on the evidence of Mr Biles who considers the visual bulk impacts have been adequately addressed. He says the building exceeds the minimum side setback requirements of the DDO26 (i.e. 4.5 metres) and setbacks to Queens Lane (i.e. 5 metres). He considers these setbacks, in conjunction with the design treatment of the east elevation, is a courteous design response to the amenity effects of separation distance and interface relationships.

Tribunal Findings

- 145 As we have previously noted, the DDO26 has a requirement for a tower to not exceed 35 metres to reduce its perceived visual bulk. We agree with Mr Biles that the design treatment of the east elevation and setback of the building 5 metres from Queens Lane partially ameliorates the visual bulk impacts of the building facing the lane and buildings in St Kilda Road. However, as our previous findings indicate, this does not go far enough to address the impact of the sheer height and width of the building in terms of the design objectives of the DDO26. Our findings to remove one level and step the building back from Queens Lane will also address some of the visual bulk concerns raised by the respondents.
- 146 We are not persuaded to provide increased setbacks to the south boundary to address visual bulk concerns raised by the respondents. We find these

¹³ Evidence of Prof McGauran, para 16 page 8.

setbacks are satisfactory given that we have recommended the removal of one level and greater setbacks from the laneway to the east. These measures, in conjunction with the use of varied materials and balconies, will provide visual interest of the building facing the adjoining apartments.

- 147 Some of the respondents submit the building will cause a loss of views to Albert Park. Having inspected the respondents' apartments and commercial properties in St Kilda Road, we agree this outlook will be impacted. However, we note the Planning Scheme and DDO26 does not seek to protect existing private views. This comes down to having a reasonable expectation of the built form outcomes sought by the DDO26 and Planning Scheme.

Overlooking

- 148 The design requirements for all sub-precincts in the DDO26 recommend spacing and design that avoids windows of primary living areas and balconies directly facing one another.
- 149 Some of the respondents are concerned their privacy will be reduced due from overlooking between apartments to the north and south.
- 150 The amended plans have increased side setbacks to ensure there is a minimum distance of 9 metres between buildings (balcony to balcony). We are satisfied this distance, and alteration of the apartment layouts to have living areas looking obliquely away from 54 Queens Road, will provide an acceptable level of amenity for the adjoining apartments.
- 151 We consider the amendments reduce the potential for unreasonable overlooking and therefore there is no need for additional screening of windows and balconies. This is consistent with the objectives of the Interface and Amenity Policy at Clause 13.07-1L-02.

Wind

- 152 Prof McGauran reviewed the wind report submitted with the application. He says this report does not address the wind impacts on the balconies of the adjoining apartments to the north and south.
- 153 We agree that a revised wind report is required to assess the impacts on adjoining apartments. This can be dealt with by permit condition.

DOES THE DEVELOPMENT PROVIDE A REASONABLE LEVEL OF AMENITY FOR FUTURE RESIDENTS?

- 154 Council submits the development generally meets the internal amenity objectives of Clause 58 in respect to apartment layouts. Mr Glossop also completed an analysis of the amended plans in relation to Clause 58.07 – Internal Amenity. We accept his evidence that variations of Standard D27 for room depth layout for five apartments is acceptable.

- 155 564 St Kilda Road submits the proposal is non-compliant with the objectives of Standard D19 – Building Entry and Circulation. It relies on the evidence of Prof McGauran who has concerns about the limited access to natural light and ventilation in the common areas and corridors. He says this can be addressed by reconfiguration of the north and south wings to provide a break between the lift/stair cores and the abutting western units. Mr Glossop also agrees the plans should be amended to include a light shaft or similar within the east-west sections of each corridor.

Tribunal Findings

- 156 We acknowledge that not all the corridors and communal areas have access to daylight and ventilation. However, while this may be desirable, we do not consider that significant amendments to the layout of the apartments is required. We accept that these spaces are transitory in nature, and any loss of amenity in the affected corridors are more than offset by the quality design of the communal rooftop spaces and the generous open space of the central courtyard.
- 157 The respondent at 564 St Kilda Road and Council submit that the proposal will result in potential overlooking between apartments. Council says the north and west facing internal balconies in the east elevation should be screened to prevent unreasonable overlooking between the external spaces as they do not have the nine metre separation. Prof McGauran also raised this concern and recommended reconfiguration of the apartments to reposition the living areas further from the diagonal from the adjoining apartment.
- 158 The applicant says that screening measures can be included on one of the balconies to prevent internal overlooking.
- 159 We accept that screening of balconies can be dealt with by permit condition.
- 160 Prof McGauran is concerned the ground floor terraces do not have direct access to the shared pathway into the adjoining communal open space. He recommends the landscape plan be amended to provide all ground floor apartments with access to the internal pathway network.
- 161 This recommendation was put to Mr Patrick who peer reviewed the landscape plan prepared by the applicant. He is opposed to Prof McGauran's suggested amendment as he considers it will break up the soil volume in the central courtyard and therefore reduce its landscaping potential. He is satisfied the ground floor apartments have a suitable outlook to the courtyard and the planting will provide privacy to ground floor occupants.
- 162 We find there is no need to provide individual access from the terraces of the ground floor apartments to the central courtyard. We are satisfied that the layout of the internal pathway is adequate as it provides access around

the perimeter of the site and includes connections from Queens Lane and Queens Road to the internal courtyard. We agree with Mr Patrick that it is desirable to maximise the soil volume above the basement for the planting of larger canopy trees and other vegetation on the site.

IS THE CAR PARKING PROVISION AND ACCESS ARRANGEMENTS ACCEPTABLE?

Provision

- 163 Statements of grounds were received from respondents arguing there is insufficient on-site car parking for the development.
- 164 In accordance with Clause 52.06, the development has a statutory requirement of 435 spaces whereas the amended plans show the provision of A total of 425 car spaces. Council has also included a condition (Condition 1(b)) to allocate two spaces for visitor car parking and Ms Dunstan has recommended the removal of a further car space to improve circulation movements. As a result, the development is proposing 422 car spaces and two visitor car spaces. These include full provision of resident car parking for the two and three bedroom apartments and a shortfall of 13 car spaces for the one bedroom apartments.
- 165 We are satisfied the provision of car parking is acceptable for the following reasons:
- We accept Ms Dunstan's evidence that car ownership for one bedroom apartments is lower than the statutory rate in Clause 52.06. This is based on 2021 census data that indicates 32-45% of residents in this area do not own a vehicle;
 - There is strong policy support¹⁴ for the provision of dwellings without car parking (or reduced car parking) at this location;
 - The site is within the Principal Public Transport Network (PPTN);
 - The site has convenient access to multiple forms of public transport including six tram services, two bus services and rail services at Prahran and the soon to be completed Anzac Station; and
 - The provision of on-site bicycle spaces exceeds the statutory requirements of Clause 52.24.¹⁵ This also supports Council's sustainable transport policies.
- 166 It is noted that as a consequence of our findings to remove one level and provide setbacks to the remaining upper levels, there will be a reduction in

¹⁴ At Clauses 02.03-7 (Transport), 18.02-4L-01 (Car Parking), 18.02-1L-02 (Walking and Bicycle Riding), 18.02-2L (Public Transport) and 18.01 (Land Use and Transport).

¹⁵ In accordance with Clause 52.24, the statutory requirement for the development is 114 bicycle spaces. The development provides 242 bicycle spaces and therefore exceeds the requirement by 76 resident spaces and 38 visitor spaces.

the parking dispensation. The applicant indicated that even if there were a reduction in the number of apartments, they would not seek a change to the parking dispensation as it is unlikely to be practical to change the proportions of the basement by such a small amount.

- 167 From the information we have been provided, we are unable to say with any certainty what the actual impact will be in terms of numbers of apartments. Clearly, there is at least one floor removed, amounting to some 21 apartments of various sizes. We acknowledge the upper level setbacks from Queens Lane will also have an impact on numbers, but it may result in a smaller number of larger apartments, or the reverse.
- 168 Given this situation, we think it is appropriate that the Council could approve an appropriate reduction in the parking dispensation, if required. The applicant could choose to exceed the statutory requirement or may either re-design or re-allocate some of the basement space.

Visitor car parking

- 169 Condition 1(b) of the draft conditions requires allocation of two on-site car spaces for visitor car parking. Council says these spaces are appropriate having regard to the restricted nature of on-street parking in the vicinity of the subject site.
- 170 Ms Dunstan says that as the site is in the PPTN, there is no statutory requirement for on-site visitor car parking. She recommends these spaces should be restricted for use by service personnel, tradespersons or for special reasons (e.g. medical) that would be made available through a booking system with the building management.
- 171 We agree with Ms Dunstan that it is preferable these two spaces are restricted to use by certain personnel instead of general visitor car parking. We have come to this conclusion as visitor car parking is not required in the PPTN and nomination of their use will ensure they are available for that purpose. We see these spaces will be of benefit to the amenity of the residents of the apartments.

Layby car spaces

- 172 Council has included a condition for the relocation of the three layby car spaces in Queens Lane further north from the entrance to face the substation, gym, and office (Condition 1(c)). It says this is required to respond to Council's Urban Design Policy, including its *Activating Laneways Strategy*.¹⁶ It says the relocation of the car spaces will avoid conflict between the pedestrian/main lobby entrance and cement the primacy of the entrance.

¹⁶ This policy was adopted in August 2011 and is a policy document of Clause 5.01-2L-01.

173 Mr Patrick did not support the change of the location of the layby zone as recommended by Council, as he regards the proposed location opposite the entrance as the most practical position where people would want to be dropped off. In cross-examination, he said the proposed 2 metre minimum footpath width (due to there being no podium in the 5 metre setback to Queens Lane) was adequate given the limited pedestrian traffic in the lane. This was also the view of Ms Dunstan, who found no traffic reason to relocate the drop off area. In her opinion, visitors are likely to be dropped off immediately adjacent to the entrance, so this is the most appropriate location for the layby spaces.

Tribunal findings

- 174 We do not consider the relocation of the layby spaces warranted. The indented car spaces are adjacent to the main entrance lobby, and this will reinforce the sense of entry in Queens Lane. They will also provide convenient access to the building for persons with limited mobility.
- 175 We agree with Mr Patrick that due to the setback of the Queens Lane façade, there will be sufficient footpath space given the relatively limited pedestrian numbers that can be expected in Queens Lane.

Traffic Generation

- 176 The layout includes two-way access to the basement levels from Queens Lane. Ms Dunstan says this arrangement is satisfactory and meets the Planning Scheme requirements.
- 177 Surrounding apartment owners are concerned the proposal will increase traffic congestion in Queens Lane and the abutting intersections. They say this will exacerbate existing problems in peak periods. This view is not shared by Council who says its traffic engineers considers the traffic generated by the proposal will be able to be accommodated within Queens Lane, even during peak periods.
- 178 The applicant relies on the evidence of Ms Dunstan. She predicts the development will generate an additional 844 vehicle trip ends per day and 84 trip ends at peak times. She considers this level of traffic is moderate, residential in nature, and can be accommodated on the nearby road network and intersections. She says this is within the environmental capacity¹⁷ of Queens Lane.
- 179 We accept Ms Dunstan's evidence that the traffic impacts of the development on nearby streets are acceptable.

¹⁷ In accordance with Clause 56.06, Queens Lane is classified as an Access Street that has an environmental capacity of between 2,000 to 3,000 vehicles per day.

Waste Collection

- 180 The applicant has submitted a Waste Management Plan (WMP) that indicates private waste collection can occur within the basement by a contractor using a mini waste truck. Ms Dunstan has included swept path diagrams to show waste vehicle movements can be accommodated in the basement.
- 181 We are satisfied that given the waste collection is in the basement, it will not disrupt movement of vehicles along Queens Lane. The WMP will be included as a condition on the permit.

DOES THE LANDSCAPING RESPOND TO THE DESIGN REQUIREMENTS OF THE DDO26?

- 182 The DDO26 contains precinct wide objectives to ensure development contributes to the expanded network of high quality green streets and public places. It seeks:
- To maintain and consolidate the grand landscape setting of the Precinct as an important and distinctive feature of the area by requiring consistent front and side boundary setbacks and high quality landscaping.
- 183 The overlay recommends that frontages along Queens Road should be retained as open space for substantial landscaping and pedestrian activity. Sub-precinct 6b requires a landscaped setback of 15 metres to Queens Road.
- 184 The landscape concept plan includes a central landscaped courtyard between the two wings. This area contains lawn, trees, and understorey planting above the basement car park. It also contains a pathway network to the Queens Road frontage, around the periphery of the site, and through the central courtyard to the main entry lobby.

What do the parties say?

- 185 Prof McGauran recommends the replacement of the ballast treatment to the projecting concrete ground floor roofs of the wings with an irrigated landscaped planter area. He considers treatment of the ballast with just an aggregate could be improved with landscaping given the absence of basement setbacks for deep soil planting. He says this change would address the concerns with urban heat island effects and its impacts on liveability, the parklands context, and sensitive interfaces.
- 186 Prof McGauran is critical of the landscape plan due to the absence of landscape treatments along Queens Lane. He says that given this is the primary entry, an avenue of street planting is required to better integrate the development with its park-side settings. He says neighbouring properties to the north and south have included landscaping at the street interface and street tree planting will improve the experience upon arrival at the entrance

of the building. He says this will also reinforce Queens Lane as the primary pedestrian network.

- 187 The applicant relies on Mr Patrick's peer review of the landscape concept plan prepared by the applicant. He concludes the plan responds appropriately to the expectations of Clause 15.01-2S (Building Design), the expectations of the DDO26 and objectives of Clause 58.03-5 (Landscaping). He considers the landscaping responds to the context of the surrounding landscape and it will support the amenity, attractiveness, and safety of the public realm.
- 188 Mr Patrick had some queries about specific species selection but was confident these can be resolved in the development of the plans and in response to the conditions prepared by Council. He does not support the recommendations by Prof McGauran to extend ground floor access to each apartment off the central courtyard. He is concerned that providing such access would cause the planters to have to be divided up, significantly reducing the soil volume for trees. He was satisfied the three communal access points would be sufficient and allows a more effective landscape treatment to the courtyard.

Tribunal findings

- 189 We acknowledge the landscape plan provides a grand landscape for the building that will provide a suitable interface with Albert Park Reserve. This is consistent with the design requirements of the DDO26 that specify landscaping setback should enhance key view corridors along Queens Road. We consider the proposed landscaping will ensure the building is set within an attractive setting which will enhance this frontage.
- 190 We agree with Mr Patrick that street planting is not warranted along Queens Lane. We consider a more considered approach would be an landscape plan for the length of Queens Lane, instead of just along the frontage of the subject site. We observed Queens Lane is currently dominated by crossovers. We do not consider that the planting of four street trees in front of the subject site will adequately address the pedestrian environment and amenity in Queens Lane.
- 191 We also note that the DDO26 does not identify Queens Lane as a key viewing corridor that should be enhanced with landscaping. However, we are satisfied that the planters proposed will provide an effective greening of the entrance and will contribute to an attractive pedestrian environment. This meets the objectives of the DDO26.
- 192 Whilst we agree that planting on the ground floor roof of the wings would provide additional landscaping, we consider the use of an aggregate a matter of choice of the designer for the building. We see there will be no practical difference by requiring the plans to be amended in accordance with this recommendation. We also acknowledge that when questioned,

Prof McGauran understood that the ballast treatment proposed will provide an acceptable outlook and provide some environmental benefit.

DOES THE DEVELOPMENT ACHIEVE URBAN DESIGN AND ARCHITECTURAL EXCELLENCE?

What did the parties say?

- 193 Most of the experts agree that the proposal provides a very high-quality design response. Generally, they agreed that excellence should be measured by how effectively the proposal responds to the provisions set by the Planning Scheme, and how well it responds to its physical context.
- 194 The applicant relies on the evidence of Mr McPherson who says it was highly refined, citing the architectural modulation, refined materials and the built form that creates a generous communal open space and green setting towards Queens Road.
- 195 Mr McPherson said he made several recommendations that were required to bring the design up to a standard that he was able to support. The key amendments that were made include changes to the façade design and materials. He says these provide a greater contrast between the façade elements and increase the visual impact of the vertical recesses. He was therefore satisfied to support the development as the proposal will “read” as distinct building forms, particularly in Queens Lane. He considers the proposal is a sophisticated response to the four interfaces.
- 196 We are aware that Mr McPherson was called to give evidence that focused on the architectural response and not the built form. The applicant has relied on the evidence of Mr Biles in this respect. However, in response to questions, he said he was satisfied that the façade detailing breaks up the proposal into distinctive modules that will “read” as individual “buildings”. He considers this is an effective response to the context.
- 197 Prof McGauran has several concerns relating to the height, bulk, interface resolution to the streets and neighbours, layout, and amenity, which together, results in an unacceptable outcome that do not achieve design excellence nor respond appropriately to the context and the policy provisions of DDO26.
- 198 He also found several other design deficiencies that indicate a poorly resolved design. He says these would need to be attended to for the proposal to meet a standard of excellence. These includes the use of a ballast roof in lieu of a green roof, the lack of outlook and daylight opportunities in the east west corridors and the lack of direct exterior access for ground floor apartments.

Tribunal Findings

199 We are satisfied that with the changes we have required, the proposed building provides a high level of design resolution and an effective response to both the statutory and physical context.

WHAT CONDITIONS ARE APPROPRIATE?

200 In her evidence, Ms Dunstan said that the amended plans did not include all her recommendations. She considers that further changes to the car parking arrangements are required. This includes:

- removal of a car space and relocation of a column at the bend at Basement Level 1;
- labelling of small car spaces;
- increased setback of the intercom pole; and
- provision of convex mirrors at various locations and adjustment of columns.

201 We agree that these conditions should be included in the permit.

CONCLUSION

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

Jane Tait
Member

Stephen Axford
Member

APPENDIX A – PERMIT CONDITIONS

| | |
|------------------------------|---|
| PERMIT APPLICATION NO | PDPL/00392/2022 |
| LAND | 50-52 Queens Road MELBOURNE VIC 3004 |

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construct a multi-storey apartment building with basement car parking, on land in the Residential Growth Zone and Design and Development Overlay and alteration of access to a road in a Transport Zone 2

CONDITIONS**Amended Plans Required**

- 1 Before the use or development starts, excluding bulk excavation, site preparation, soil removal, site remediation and retention works, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and an electronic copy must be provided. The plans must be generally in accordance with the plans prepared by Bates Smart titled “50 Queens Rd”, Project No M12568, Plans No.s as TP00.00 Rev C, TP-01.00 Rev B, TP-01.02 Rev B, TP-03.00 to TP-03.04 Rev B, TP-03.09 Rev B, TP-03.12 Rev B, TP-03.14 Rev C, TP-03.15 Rev B, TP-03.B01 Rev B, TP-03.B01M Rev A, TP03.B02 Rev B, TP-03.B03 Rev B, TP-09.00 Rev B to TP09.04 Rev B, TP-10.00 Rev B to TP-10.03 Rev B (dated 7.03.23 and Council date stamped 7 March 2023 referred to as “VCAT Submission Issue” but modified to show:
 - (a) The deletion of one level, either Level 12 or 13, and the stepping back of the remaining two floors above so as to be not visible for an observer standing on the eastern footpath directly opposite the proposed façade.
 - (b) Two of the car parking spaces within the basement levels to be allocated for maintenance and medical professionals. One of these two spaces is to be located adjacent to the northern loading bay.
 - (c) The rooftop plant and associated screening to be amended generally in accordance with SK03.15 rev 1 dated 8 May 2023 but further amended to show the plant screen set back from the northern parapet of the building no less than 5.1 metres. These amendments shall be as far as

practicable taking into consideration the changes required in Condition 1(a), to the satisfaction of the Responsible Authority.

- (d) Provide privacy screening to the balcony on one side of the Queens Lane vertical articulation break with detailing, materials and colours integrated into the overall façade design.
- (e) Updated roof plan to include details of the photovoltaic system.
- (f) Indicate on plans the commitment that the apartments will achieve a 7.5-star average NatHERS rating and maximum cooling load as per above.
- (g) For all non-residential spaces, include a commitment to achieving a 10% improvement on Section J Energy Efficiency building fabric requirements of the National Construction Code (NCC).
- (h) Apartment layouts modified so that a minimum 50% of the dwellings meet the minimum requirements of Standard D17 (Accessibility) of Clause 58.
- (i) Any changes required by conditions 4 (Sustainable Management Plan), 12 (Urban Art) 13 (Waste Management Plan) and 14 (Public Realm Plan), 15 (External Lighting Plan), and 16 (Landscape Plan).
- (j) Increased setback of the intercom pole from the garage door at ground floor.
- (k) Removal of a car space and relocation of a column on the inside corner of the first bend within basement level 1 upon entry.
- (l) Labelling of car spaces that are 2.6m wide between structural columns on each side as 'small car spaces' and the same label removed from car spaces that have additional width.
- (m) Provision of convex mirrors at various locations throughout the car parking levels.
- (n) Adjustment of column locations to comply with Diagram 1 of Clause 52.06-9 (Design Standard 2) to the satisfaction of the Responsible Authority.
- (o) Addition of a bicycle repair station within one of the bicycle storage rooms.

No Alterations

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

No Change to External Finishes

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

Sustainable Management Plan

- 4 Concurrent with the endorsement of plans, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority. Amendments to the SMP must be incorporated into plan changes required under Condition 1. The report must be generally in accordance with the SMP prepared by ADP Consulting dated 29 August 2022 but updated to address the following:

- (a) SMP to include meeting NatHERS maximum cooling load requirements as per Clause 58.03-1 Energy efficiency objectives.
- (b) Energy reduction measures relevant to the pool facilities needs to be included in the SMP.
- (c) Water reduction measures relevant to the pool facilities needs to be included in the SMP.
- (d) Urban Heat Island Effect calculations to be provided together with material specifications reflecting the calculations on plans. Alternatively, provide a green factor tool assessment achieving an equivalent score with material specifications reflecting the calculations on plans.
- (e) Proposed stormwater management strategy needs to be clearly reflected on plans:
- (f) 40,000L tank collecting of 3,415m² of non-trafficable roof area connected to all toilets in the development.
- (g) 40,000L tank collecting of 3,602m² of trafficable areas connected to all irrigation systems.
- (h) Provide a maintenance manual for each type of water sensitive urban design device proposed. These must set out future operational and maintenance arrangements for all WSUD (stormwater management) devices appropriate to the scale and complexity of the project. The manual should include inspection frequency, cleanout procedures and as-installed design details/diagrams including a sketch of how the system operates. This manual needs to be incorporated into any Building Maintenance Guide/ Building Users' Guide.
- (i) Revised Construction Site Management.

Incorporation of Sustainable Design Initiatives

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

Implementation of Sustainable Design Initiatives

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

Implementation of Water Sensitive Urban Design Initiatives

- 7 The initiatives in the endorsed Water Sensitive Urban Design (WSUD) Response must be fully implemented. These initiatives must be maintained throughout the operational life of the development to the satisfaction of the Responsible Authority.

Stormwater Treatment Maintenance Plan

- 8 Before the use or development starts, excluding bulk excavation, site preparation, soil removal, site remediation and retention works, a Stormwater Treatment Maintenance Plan detailing the on-going maintenance of the stormwater treatment devices must be submitted to and approved by the Responsible Authority, addressing the following points;
 - (a) A full list of maintenance tasks for each device,
 - (b) The required frequency of each maintenance task (e.g. monthly, annually etc.),
 - (c) Person responsible for each maintenance task.

The Stormwater Treatment Maintenance Plan can be part of the Water Sensitive Urban Design (Stormwater Management) response, or can be contained in a stand-alone manual. When approved, the STMP will be endorsed and will form part of this permit.

Construction Management Water Sensitive Urban Design

- 9 The developer must ensure that throughout the construction of the building(s) and construction and carrying out of works allowed by this permit;
 - (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.

Acoustic Report

- 10 All habitable rooms shall be designed to comply with Clause 58 (Standard D16) of the planning scheme. Prior to occupation of units, an acoustic report detailing testing within habitable rooms over a reasonable sample of units shall be provided to the satisfaction of the Responsible Authority confirming that the minimum internal noise levels have been met. Any further rectification to ensure compliance shall be at the cost of the applicant.

Upper Level Acoustic Testing

- 11 Prior to occupation of units, noise testing shall be carried out on a reasonable sample of upper level balconies overlooking adjacent building rooftop plant and tested in accordance with the Environmental Protection Regulations 2021 and EPA Publication 1826 (Noise Protocol) to the satisfaction of the Responsible Authority. Any non-compliance measured shall be rectified at the cost of the applicant until compliance is demonstrated.

Urban Art Plan

- 12 Before the development starts, excluding bulk excavation, site preparation, soil removal, site remediation, retention works, footings, ground beams and ground slab and temporary structures, 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 0.25% 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.

Waste Management Plan

- 13 Concurrent with the endorsement of plans a Waste Management Plan based on the City of Port Phillip's Waste Management Plan Guidelines for

Developments must be prepared by a Waste Management Engineer or Waste Management Planner to the satisfaction of the Responsible Authority and endorsed as part of this permit. The Plan must include reference to the following:

- The estimated garbage and recycling volumes for the whole development.
- Bin quantity, size and colour.
- The garbage and recycling equipment to be used.
- Collection frequency.
- The location and space allocated to the garbage and recycling bin storage area and collection point.
- The waste services collection point for vehicles.
- Waste collection provider.
- How tenants will be regularly informed of the waste management arrangements.
- Scaled waste management drawings.
- Signage.

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

Public Realm Plan - Queens Lane frontage

- 14 Concurrent with the endorsement of plans, or by such later date as approved in writing by the Responsible Authority, a Public Realm Plan of the Queens Lane frontage is to be prepared and approved to the satisfaction of the Responsible Authority. The plan submitted must provide a high standard of pedestrian amenity. It must coordinate all elements such as bicycle hoops, seating, planter boxes, artwork, pavement types, bollards, awnings and lighting. Details of all paving and footpath treatments including details of the treatment of level changes. Pedestrian access must comply with the *Disability Discrimination Act 1982*.

External Lighting Plan – Queens Lane frontage

- 15 Concurrent with the endorsement of plans, or by such later date as approved in writing by the Responsible Authority, a Lighting Plan of the Queens Lane frontage is to be prepared and approved to the satisfaction of the Responsible Authority. The lighting plan will provide details of light levels and light spill at the following:
- The cross-over to the carpark and carpark entrance (including the bike parking area)
 - The proposed pick-up/drop-off area in front of the building entrance
 - The garbage truck parking/waste collection area.

The Lighting plan to be accommodated by a lighting report prepared by a suitably qualified person that demonstrates the proposed lighting layout complies with relevant Australian e.g., AS1158.3.1 – 2020 and AS4282.

Landscape Plan

- 16 Concurrent with the endorsement of plans, an updated Landscape Plan is required to show compliance with canopy cover and deep soil requirements, as per Clause 58.03-5 Landscaping Objectives. The plan must be submitted to, approved by and be to the satisfaction of the Responsible Authority. The Landscape Plan must be generally in accordance with the Landscape Plan (prepared by Arcadia) submitted with the application but amended to incorporate:
- (a) Minimum area of deep soil provided for each type b and type c tree (as per table D3), including minimum soil plan dimensions.
 - (b) Dimensions of all planters that will make up the remaining deep soil area including minimum required planter soil volume, minimum soil plan dimension and minimum planter soil depth.
 - (c) Where there has been a reduction in soil area requirement for clusters of trees.

When the Landscape Plan is approved, it will become an endorsed plan forming part of this Permit.

Completion of Landscaping

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

Landscaping Maintenance

- 18 The landscaping as shown in the endorsed Landscape Plan must be maintained, and any dead, diseased or damaged plant replaced in accordance with the landscaping plan to the satisfaction of the Responsible Authority.
- 19 An Arboricultural Impact Assessment report is required for review, prior to approval of the permit for works at this site. The report must be prepared by a suitably qualified Arborist (AQF level 5 or equivalent) and include:
- trees on neighbouring properties with TPZs that fall within the subject site,
 - the nature strip tree(s) adjacent the property.

The report must follow the guidelines from Council Arboriculture Victoria and comply with the Australian Standard 4970:2009 Protection of Trees on Development Sites.

Should the report find that any works encroach into 10% or more of the Tree Protection Zone, or into the Structural Root Zone of any tree the design is to be modified to reduce the incursion, unless a non-destructive root investigation (NDRI) can demonstrate that the tree will not be negatively impacted. The NDRI is to be conducted along the line of the proposed works and documented with a root map to show the location, depth and diameter of all roots found. The findings, photographs and recommendations should be presented in the impact assessment report.

- 20 Following council arborist approval of the Arboricultural Impact Assessment, a Tree Protection and Management Plan that details how the trees will be protected, in accordance with AS4970-2009, will be required for endorsement and form part of the permit.

Car Parking and Bicycle Parking Layout

- 21 Before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and bicycles and access lanes as shown on the endorsed plans must be:

- (a) Constructed.
- (b) Properly formed to such levels that may be used in accordance with the plans.
- (c) Surfaced with an all-weather surface or seal coat (as appropriate).
- (d) Drained and maintained.
- (e) Line marked to indicate each car space, visitor space, bicycle space, loading bay and/or access lane.
- (f) Clearly marked to show the direction of traffic along access land and driveways. All to the satisfaction of the Responsible Authority.

Loading/unloading

- 22 The loading and unloading of vehicles and the delivery of goods to and from the premises must at all times be conducted entirely within the site or in a manner that limits interference with other vehicular traffic to the satisfaction of the Responsible Authority.

Piping, Ducting, Service Units

- 23 All service pipes/service units (excluding down pipes, guttering and rainwater heads) must be concealed from view from the public realm and any screening devices suitably integrated into the design of the building to the satisfaction of the Responsible Authority.

Walls on or facing the boundary

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

Glare

- 25 Specular light reflectance must be less than 15 per cent for all external building glazing and cladding materials and finishes when measured at an angle of 90 degrees to the surface of the material (normal incidence), except with the written consent of the responsible authority.

Wind

- 26 The recommendations and requirements of the approved Wind Impact Assessment Report as amended to reflect any changes as a result of Condition 1 and any potential impacts upon adjoining properties, must be implemented to the satisfaction of Port Phillip City Council before the development is occupied.

Vehicle Crossings – Removal

- 27 Before the occupation of the development allowed by this permit, all disused or redundant vehicle crossings, must be removed and the area reinstated with footpath, nature strip and kerb and channel at the cost of the applicant/owner as well as any on street parking signage and line marking changes and to the satisfaction of the Responsible Authority.

Lighting baffled

- 28 All lighting of external areas must be suitably baffled so as not to cause nuisance or annoyance to nearby residential properties.

Crossover – Department of Transport Condition

- 29 Prior to commencement of use all disused or redundant vehicle crossings must be removed, and the area reinstated to the satisfaction of the Responsible Authority and at no cost to the Head, Transport for Victoria.

Satisfactory Continuation

- 30 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Noise and Disturbance

- 31 The roof plant and equipment must not cause excessive noise or vibration effects to any neighbouring properties in accordance with the requirements of the Environmental Protection Regulations 2021 and EPA Publication 1826.4 (Noise Protocol).

Time for Starting and Completion

- 32 This permit will expire if one of the following circumstances applies:
- (a) The development is not started within three (3) years of the date of this permit.
 - (b) The development is not completed within five (5) years of the date of this permit.

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

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

– End of conditions –