

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## ADMINISTRATIVE DIVISION

### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1998/2016  
PERMIT APPLICATION NO. TP274/2016

### CATCHWORDS

Proposed apartment building; Relevance of 4 storey height in DDO8; Policy support for increased density of housing; Site with limited constraints; Proximity to PPTN; Underdevelopment; Amendments required to proposal.

<b>APPLICANT</b>	Jabala Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Maribyrnong City Council
<b>REFERRAL AUTHORITY</b>	Melbourne Water
<b>SUBJECT LAND</b>	6 Cross Street, Footscray
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Rachel Naylor, Presiding Member Ann Keddie, Member
<b>HEARING TYPE</b>	Hearing
<b>DATES OF HEARING</b>	14, 15 and 16 March 2017
<b>DATE OF ORDER</b>	20 July 2017
<b>CITATION</b>	Jabala Pty Ltd v Maribyrnong CC [2017] VCAT 1083

### ORDER

#### Amend permit application

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

Prepared by:	11 dimensions
Drawing numbers:	TP06, TP101 – TP108, TP201 – TP205, TP301 – TP303, TP401 – TP406 and TP505 – TP510, all Rev A
Dated:	January 2017

### **Opportunity to amend the proposal**

- 2 By no later than **Friday 4 August 2017**, the Applicant must advise the Tribunal and the other parties in writing whether it wishes to take up the opportunity to amend the proposal and by what date this material will be prepared.

**Rachel Naylor**  
**Presiding Member**

**Ann Keddie**  
**Member**

## APPEARANCES

For Jabala Pty Ltd ('the Applicant')

Mr T Pikusa of counsel instructed by Bazzani Scully Priddle Lawyers

He called the following witnesses:

- Mr S Schutt, landscape architect of Hansen Partnership Pty Ltd;
- Ms C Dunstan, traffic engineer of Traffix Group Pty Ltd;
- Mr M Barlow, town planner of Urbis Pty Ltd;
- Mr S McGurn, town planner of Urbis Pty Ltd;
- Mr J Talacko, daylight expert of Ark Resources Pty Ltd; and
- Ms V Huang, ESD consultant of LID Consulting in regard to the waste collection and waste management plan.

Mr Pikusa chose not to call Mr C Goss to give evidence about the preparation of the photomontages as neither the Council nor the Tribunal wished to cross-examine Mr Goss.

For Maribyrnong City Council ('the Council')

Ms N Luketic, solicitor of Harwood Andrews

For Melbourne Water

No appearance

## INFORMATION

Land description	<p>The site is on the northeast corner of Cross and Hocking Streets in Footscray. The Cross Street frontage is 39m, the Hocking Street frontage is 62m and the total area is 2,418 square metres.</p> <p>Much of the site currently contains a single storey warehouse used as a place of assembly, with car parking and access areas on parts of its west and north sides.</p> <p>The site is located opposite the West Footscray train station, areas of which are being contemplated for medium to high rise, mixed use development.</p> <p>The site is south of the car park associated with Whitten Oval and a Victoria University campus.</p> <p>To the east is 4 Cross Street that has a permit for a six- storey apartment building. To the east of 4 Cross Street is a reasonably new, low scale building used as a Victoria University campus.</p>
Description of proposal	<p>Development of a building up to seven storeys in height comprising two commercial tenancies (food and drink premises) with a combined floor area of 175 square metres and residential apartments on the ground floor; residential apartments on the upper floors; and car parking on the ground floor in the form of car stackers accommodating 66 vehicles and four individual car spaces (3 visitor spaces and one commercial space).</p> <p>The building steps up to the street corner from four to seven storeys. The building has an overall maximum height of about 23 metres. The design is contemporary with modules that define a three storey podium with predominantly rendered white concrete walls on the upper levels.</p>
Nature of proceeding	<p>Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.</p>
Planning scheme	<p>Maribyrnong Planning Scheme</p>

Zone and overlays	<p>General Residential Zone Schedule 1 (GRZ1)</p> <p>Design and Development Overlay Schedule 8 – 4 and 6 Cross Street Footscray (DDO8)</p> <p>Parts of the street frontages of the site are affected by a Special Building Overlay (SBO)</p> <p>Environmental Audit Overlay</p>
Permit requirements	<p>Clause 32.08-1 To use part of the land for the purpose of food and drink premises in GRZ1.</p> <p>Clause 32.08-4 To construct two or more dwellings on a lot in GRZ1.</p> <p>Clause 32.08-6 To construct a building or construct or carry out works for food and drink premises in GRZ1.</p> <p>Clause 43.02-2 To construct a building or construct or carry out works in DDO8.</p> <p>Clause 44.05-1 To construct a building or construct or carry out works in SBO.</p> <p>Clause 52.06-3 To reduce the standard car parking requirements for dwellings, residential visitors and food and drink premises.</p> <p>Clause 52.07 To waive the loading bay requirement.</p>
Tribunal inspection	<p>We undertook an unaccompanied inspection of the site and surrounds at the start of Day 2 of the hearing. We advised the parties of our observations when the hearing resumed.</p>
Recent changes to the planning scheme	<p>We issued an Interim Order on 9 May 2017 providing the Applicant and the Responsible Authority with the opportunity to make written submissions addressing any implications arising from the gazettal of recent planning scheme amendments VC110, VC134 and VC136.</p>

## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Jabala Pty Ltd (the Applicant) seeks planning permission to construct a building of between four and seven storeys in height on No. 6 Cross Street Footscray. The building will contain residential apartments, two food and drink premises and car parking. The Council officer's report that considered the merits of this proposal recommended that the proposal be approved subject to permit conditions requiring (amongst others) some changes to the height and setbacks of the building. The Council, however, determined to refuse the proposal because of its failure to satisfy the Design and Development Overlay (DDO8) that applies to this site and No. 4 Cross Street, particularly that the height of the building exceeds four storeys. The Council also refused the proposal because the frontage to Hocking Street is not acceptably active and there is insufficient car parking.
- 2 Having considered the submissions and expert evidence presented, we have decided to issue an interim decision. This is largely because, at the Applicant's request, we have before us substituted amended plans that reduce the overall building footprint, particularly at the upper levels. We find this amended design is an underdevelopment of the site. The Applicant advised us during the hearing that its initial design concept discussed at a pre-application stage with the Council and the plans contained in the permit application were greater in size than the concept before us. This site is suitable for an intense development that contains a mix of land uses. We are of the opinion a greater intensity of development should be considered for this site, particularly because of its locational attributes.
- 3 This site is situated on the east corner of Cross Street and Hocking Street. It is located directly opposite the newly reenergised and recently upgraded West Footscray train station, and is adjacent to part of Victoria University and the Western Bulldogs football club at Whitten Oval that incorporates administrative, training, corporate and social activities as well as being the home of their VFL club. The site is alongside the substantial car parking areas adjacent to the Whitten Oval and university campus. It is in close proximity to the community facilities in and around Whitten Oval that include a café and child care centre. Within this context, this site, the commercially zoned property on the opposite street corner of Cross/Hocking Streets, and No. 4 Cross Street together present a significant opportunity for new intensive development and a mix of land uses that can contribute to, and capitalise upon, the existing benefits of this location. This is why we find this proposal is an underdevelopment.

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<sup>1</sup> The submissions and evidence of the parties, the supporting exhibits given at the hearing including the Applicant's Tribunal Book 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.

- 4 The original design contained in the permit application proposes a bigger building, but in our view it too did not take full advantage of the opportunities afforded by the physical and planning contexts of this site. These reasons explain why we find the context of this site creates a significant development opportunity.

### **SHOULD THE FOUR STOREY HEIGHT REFERENCED IN DDO8 BE DETERMINATIVE IN THIS CASE?**

- 5 This is the key issue in this case. The Council's reliance on what it considers to be the building height sought by DDO8 overstates its significance. To rely on this in isolation of the balance of planning policy and the physical characteristics of the site and surrounds is stifling the considerable development opportunities that exist for this site.

### **The background to DDO8**

- 6 DDO8 applies only to Nos. 4 and 6 Cross Street. It was initially applied to No. 4 in March 2013 (Amendment C70) and it was applied to No. 6 in August 2015 (Amendment C131).

- 7 The Explanatory Report for Amendment C70 includes an aerial photograph of No. 4 Cross Street and surrounds that displays quite different physical conditions to what currently exists. For example, Victoria University's campus and the car park associated with Whitten Oval and Victoria University at the north end of No. 6 did not exist; and there is no evidence of the West Footscray station redevelopment.

- 8 Amendment C131 was a site-specific amendment that included rezoning this site from Commercial 2 and Special Use Zones to the General Residential Zone to enable residential uses to be developed on the site. The Council referred to Amendment C131's Explanatory Report that states the Amendment will:

... facilitate the redevelopment of 6 Cross Street Footscray for residential purposes in accordance with the West Footscray Urban Design Framework, which guides the future development of the area north of West Footscray Railway Station.

...

The objectives and requirements set within DDO8 are of equal relevance to 4 and 6 Cross Street and should be applied to 6 Cross Street.

- 9 The Explanatory Report states that the amendment will guide redevelopment of the site in a sustainable manner, while taking into account surrounding land uses. This is very similar wording to that contained in the Amendment C70 Explanatory Report.

## DDO8

- 10 The purposes of a Design and Development Overlay include identifying areas affected by specific requirements relating to the design and built form of new development. In terms of specific built form guidance in this case, the relevant design objective of DDO8 is:

To ensure the development of the land is consistent with the West Footscray Urban Design Framework (2008).

- 11 DDO8 includes a number of application requirements that must be provided ‘to the satisfaction of the responsible authority’ including:

A report showing that the proposed use/development is consistent with the West Footscray Urban Design Framework (2008), including how the proposal:

- Adds to the pedestrian amenity of the street; and
- Provides a maximum height of up to four storeys.

- 12 The decision guidelines section of DDO8 includes:

Before deciding on an application, in addition to the design guidelines in Clause 65 and Clause 43.02-5, the responsible authority must consider, as appropriate:

- The information submitted .... ;
- ...
- The West Footscray Urban Design Framework (2008); ...

- 13 The key difference in the positions of the Council and the Applicant in this case is that the Council considers these references to effectively specify a preferred four-storey height, whereas the Applicant considers these references to be a guideline for consideration at best. Mr McGurn contends that the language in the decision guidelines section makes it clear the application information (including the required reports) and the West Footscray Urban Design Framework (the WF UDF) are discretionary matters to consider ‘as appropriate’ to the particular facts and circumstances of a site.

- 14 We agree with the evidence of Mr Barlow and Mr McGurn that DDO8 is written differently from current DDO schedules in other planning schemes that specify built form and/or land use outcomes that are sought to be achieved. There are many examples of DDO schedules in Victorian planning schemes that, for example, specify maximum or preferred building heights and setbacks for particular sites or areas. DDO8 does not do this:

- It does not set out any specific built form requirements for the development of the particular properties at 4 or 6 Cross Street.
- It requires consideration of the WF UDF. This is unusual because this is a strategic planning document that is not incorporated into the planning scheme. Strategic planning documents like a UDF often



form part of the background material that has informed the creation of a DDO schedule and may therefore be a reference document in the planning scheme policies, so as to provide an explanation as to what has informed the creation of a DDO schedule that contains specific built form requirements.

- DDO8 requires the WF UDF to be considered, yet this document is only a reference (or background) document to the Economic Development section of the Municipal Strategic Statement (the MSS). In other words, it is not a nominated reference document to either the Housing or the Built Environment and Heritage sections of the MSS.<sup>2</sup>
- The reference in DDO8 to a maximum four-storey height is not framed in the way a built form requirement would typically be framed in a DDO schedule, e.g. as a specific built form requirement. Rather, DDO8 expects a permit application to include a report showing that the proposed use/development is consistent with the WF UDF.
- The buildings and works section of DDO8 says an application to construct a building must demonstrate a range of things, including consistency with the WF UDF, but this is only as part of a report submitted with a permit application.

15 So, whilst there is reference to a maximum height of up to four storeys in the permit application requirements for a report to be submitted, the remainder of DDO8 focuses upon considering whether a development is consistent with the WF UDF (such as in the purpose and the buildings and works sections). Also, as pointed out by Mr McGurn, DDO8's decision guidelines require consideration 'as appropriate' of the WF UDF, which provides discretion in considering the content of the WF UDF.

## **West Footscray Urban Design Framework (WF UDF)**

### Relevant aspects of the WF UDF

- 16 The purpose of the WF UDF is explained in its overview. It provides a vision and series of action plans for a 15 year period 'to improve the quality, function and amenity of key public and private spaces across the West Footscray area'. The WF UDF was adopted in 2008. The parties agree that the 15 year period is nearing the two thirds mark. In other words, it has already been in place for a considerable period of time, and both the physical and planning policy contexts have changed extensively since 2008.
- 17 The area encompassed in the WF UDF is also very large, extending from Ballarat Road in the north, to Geelong Road in the south and east, and as far west as Ashley Street. This site is located close to the mid-point of the eastern boundary of the area along Geelong Road.

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<sup>2</sup> Refer to the list of Reference Documents in clause 21.12, specifically pages 1 and 2, of the MSS.

18 The WF UDF contains guidelines, action plans and an implementation plan. During the hearing, the focus was upon Guideline 03 titled ‘Development Attitudes’.

19 The way to use Guideline 03 is explained at the start of the guideline section in the WF UDF:

The guidelines are designed to give further detail to the framework drawing, by elaborating on and explaining each element. The guidelines are robust enough to be applied across the whole neighbourhood and last the fifteen year implementation period.

The guidelines are not intended to be read through from start to finish, but instead they are a reference source for each symbol shown on the framework drawing. They guide and manage change for all of the elements that make up West Footscray.<sup>3</sup>

20 The ‘framework drawing’ referred to in the above quotation is on pages 38 and 39 of the WF UDF. It has a notation ‘priority node 2 West Footscray intermodal interchange’ and the site, the area to its west and some of the land to its north appears to be shaded a grey/brown colour that the parties consider relates to the place based aspiration and guideline G03\_01 for ‘higher density living’. The ‘intent’ text at the beginning of guideline G03\_01 includes the following:

The area to the north of West Footscray Station is currently a mix of industrial, commercial and residential buildings. The land size is generally much larger than surrounding house blocks. The changing role of the industrial land use within this area provides an opportunity to provide a high number of additional dwellings, as is already being seen on the old South Pacific Tyres site. Due to the taller character of existing industrial buildings and the larger land sizes in this area, new residential developments should have a maximum height of four storeys.

21 Having inspected the site and surrounds, much of the industrial land to the west of this site has now been developed with buildings of 2 to 4 storeys in height. Development has also occurred at the north end of Hocking Street, in and around Whitten Oval including on the Victoria University site. There are only a few houses and the commercial buildings located at the corners of Hocking and Cross Streets that remain from the older building stock.

22 We were referred to guideline 03.01.04 that states:

Development in the identified area north of West Footscray Station should accommodate the majority of additional dwellings, new development should be at a scale that respects and integrates with the existing retail streetscape, with potential for buildings to be built up to four storeys, mixed use development should be located along Barkly Street.

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<sup>3</sup> Extract from page 046 of the WF UDF.

- 23 We are not persuaded the reference in this guideline to four storeys is directly applicable to this site. First, it is a general guideline. Second, it is a guideline that applies to the high-density area earmarked for Barkly Street as well as to the area north of West Footscray Station. Third, one interpretation could be that the four storey reference is linked to the former words about ‘the existing retail streetscape’, presumably Barkly Street, given there is no retail streetscape near West Footscray Station. In addition it is one of 11 guidelines.
- 24 We consider other relevant guidelines include:
- 03.01.1 Ensure new buildings respect and add to the built and social character of the street and respond to the features of the immediate site, complying with the requirements of the Maribyrnong Planning Scheme.
  - 03.01.6 Maintain the existing street character within the remaining areas of the West Footscray neighbourhood, by ensuring new development is consistent with the built form, scale and character of surrounding development, in accordance with the requirements of the Maribyrnong Planning Scheme.
  - 03.01.08 Encourage the design of innovative and sustainable new buildings that become local exemplars and promote the value of good development.
- 25 We noted during the hearing that the site could also fit the criteria for guideline G03.02 ‘large development parcels’ as it is an industrial/business parcel. The intent of this particular guideline finishes with the statement that ‘all development should comply with the appropriate planning overlay outlined in the Maribyrnong Planning Scheme’.
- 26 Hence, these extracts from the WF UDF suggest that consideration should be given to the content of the planning scheme, which includes the local planning policy framework; and to the character and features of the site and the surrounds.

#### Weight to be given to WF UDF in this case

- 27 The WF UDF is over 9 years old. The physical context to which it was responding to at that time has changed in the area surrounding this site, so we find the built form guidelines are of limited value. The guidelines about building height are generic to a broad area that extends some distance to the west of this site, as well as along Barkly Street that is even further removed from this site. Hence, we are not persuaded that the reference to a four storey height should be construed to be a maximum building height permitted on this site. The more pertinent guidelines in the WF UDF in this case are those that seek new buildings to respect and add to the built form character; to respond to their physical and planning policy contexts; and to become local exemplars and promote the value of good development. We have given greater weight to the current physical and planning policy

contexts of this site in reaching the conclusion that this proposal is an underdevelopment of the site.

### **The current physical context**

- 28 This site is located directly opposite the pedestrian entrance and some of the car parking associated with West Footscray Station. We advised the parties that, during our inspection, we observed people leaving the station and walking north along Hocking Street, including train staff visiting the café at Whitten Oval.
- 29 The Council submits that development on this site needs to be tempered because of the low scale residential houses located on the opposite side of Hocking Street in proximity to the northern end of this site. We do not share this view. These residential properties range from older single storey houses to newer three storey attached townhouses. Their residential amenity and character are already affected by existing development and land uses as they are to the north of the commercial property on the opposite corner of Hocking and Cross Streets, and they are opposite the large open car park to the north of this site. Apart from considering any redevelopment of No. 4 Cross Street, this site has a significant development opportunity because it lacks adjacencies where potential character and amenity impacts such as visual bulk and overshadowing may temper the scale of development. In other words, this site presents an opportunity for a scale of development that is greater than four storeys.
- 30 In addition to the recent development at the West Footscray station, Whitten Oval and Victoria University, Mr Barlow highlighted that VicTrack has sought expressions of interest for the development of its land located on the opposite side of Cross Street and to the southeast of this site. It is an area of approximately 5,000 square metres, which VicTrack suggests ‘could include residential dwellings as well as retail space’. These recent and anticipated developments, the development potential of the commercial property on the opposite corner of Hocking/Cross Streets and the approved development at No. 4 Cross Street create a robust physical context for this site that is largely unaffected by constraints. This context presents the opportunity for development on this site that is substantially taller than four storeys.

### **The planning policy context**

- 31 The planning scheme often provides guidance about the future development opportunities within the municipality generally and within particular parts of a municipality.
- 32 Mr Barlow referred to aspects of Plan Melbourne and State planning policies, some of which have changed since the hearing with the recent introduction of the new Plan Melbourne and amended State policies. We sought the views of the parties on these recent changes to the planning scheme. Both Council and the Applicant agreed that the site has the benefit

of transitional provisions and thus the building height and garden provisions now in the General Residential Zone do not apply to this proposal. It is our view that the State planning policy support for development in proximity to public transport remains unchanged; and, in this case, the local planning policy framework provides sufficient clear guidance as to the significant development potential of this site. In our opinion it is a development potential that is greater than that envisaged in the WF UDF based on the following:

- i The housing growth policy at clause 21.04-2 estimates between 14,000 and 16,000 new dwellings will be needed in the municipality;
- ii The residential capacity and location policy at clause 21.07-1 identifies locations where substantial change is appropriate and encouraged.
- iii The Housing Framework Plan at the end of clause 21.07 is difficult to read to the north of West Footscray Station because the words describing the station are sitting over it. However, this plan is derived from the Housing Strategy and the parties agreed that the Housing Change Policy Areas map on page 30 of that document does identify at least part of Hocking/Cross Streets intersection as a substantial change area.
- iv The Housing Strategy explains on page 29 that this site is part of a substantial change area because:

Sites relatively free of development constraints, larger in size, and with greater potential for higher density redevelopment were next identified and designated Substantial Change Opportunity Sites. These are anticipated to accommodate the majority of future housing growth in conjunction with the Footscray CAD and Highpoint PAC. These sites were mapped as Substantial Change Areas in the Housing Change policy map.
- v The table at the start of clause 21.07 describes substantial change areas as including ‘other smaller sites’, which this site is having regard to the above Housing Strategy explanation.
- vi Clause 21.07-1 describes the anticipated residential development in substantial change areas as predominantly including apartments (amongst others).
- vii Clause 21.07-2 seeks to continue the role of the municipality as a location for affordable housing through increasing supply and a diversity of housing opportunities.
- viii Clause 21.09 recognises the benefit of locating new developments near public transport and encouraging the use of public transport.

33 Another relevant matter is the fact that a Special Building Overlay (SBO) is adjacent to the Cross Street frontage of this site and extends along Hocking Street generally in front of this site. Melbourne Water has specified

conditions it wants imposed on any permit that include a ground floor finished floor level of at least 25.7 metres to Australian Height Datum. During the hearing, the Council's engineering services internal referral was tabled that states revised flood mapping indicates the flood inundation areas are not currently consistent with the SBO mapping in the planning scheme. On day 3 of the hearing, the Council provided us with a map based on a 2015 updated version of the SBO prepared by Melbourne Water. This shows the extent of flood inundation is concentrated along the Cross Street frontage and wrapping around the corner into Hocking Street (but it no longer extends further north along Hocking Street). We were advised that, at this stage, this updated mapping has not progressed into a formal planning scheme amendment.

### **What is an acceptable built form response for this site?**

- 34 Having reached the conclusion that the physical and planning policy contexts support a significant development on this site, the question is then what is an acceptable built form response?
- 35 Both the substituted amended plans that we are considering (the VCAT plans) and the original planning application plans correctly locate the bulk of the proposed building around the corner of Cross and Hocking Streets. The surrounding context can easily absorb the seven storey height given its robust nature. Whilst the overall seven storey building height is acceptable, we are surprised that the VCAT plans have lessened the extent of building along the north, west and south boundaries. As explained earlier, none of these boundaries are constrained in terms of character or amenity, so this design response underutilises these interfaces.
- 36 We gave consideration as to whether we could grant permission subject to permit conditions that reintroduced the floor area of the upper levels that is contained in the permit application plans. However, in our opinion, that design response also underutilises these interfaces. We understand from the Applicant that it has modified the design over the course of the pre-application and permit application processes and as part of this application for review to address the concerns of both the Council and the Applicant's own expert witnesses. Given our findings about the development opportunities of this site, we are of the view further development can and should be contemplated. Added to this, there are aspects of the design such as the streetscape presentations that are not acceptable as proposed.
- 37 We have determined that the Applicant should be provided with the opportunity to amend the proposal if it wishes to address our concerns. We will require the Council and No. 4 Cross Street (as the adjoining land owners and the Responsible Authority), and Melbourne Water be given the opportunity to consider these changes. In that way we can determine whether an acceptable outcome can be realised before we decide whether a permit should be granted. What follows are our suggestions as to what may be an acceptable building form on this site.

- 38 We prefer the appearance of the proposed building in the permit application plans. The VCAT plans distinguish between the lower and upper levels by enclosing the three levels above the ground level in large squares that emphasise the horizontality of this part of the building form. We prefer the greater variety of materials in the advertised permit application plans<sup>4</sup> in that they present as vertical panels in each façade, creating visual interest. In the VCAT plans, the setting back of the upper levels diminishes the strength of the design as presented in the original scheme in the permit application plans, where the robust vertical elements give the built form a strength and real presence as it addresses both the corner and the new station opposite. The change in facade material and use of a curved element gives further emphasis to the importance of the corner, whilst remaining part of the whole composition.
- 39 Whilst the building steps up in height to the street corner, the VCAT design does not highlight the corner at the street level in a location where the ground floor street interface is an important element of any successful architectural treatment of the corner. We prefer the higher floor to ceiling of the commercial tenancy on the corner in the permit application plans, as it both emphasises and creates visual interest at the street corner.
- 40 The stepping down of the building along the Cross Street frontage is an unnecessary response to the robust train station environment opposite. We find this streetscape in particular is non-sensitive, as it is broad and lacking in the need for a tempered design response. The built form does not exploit this design opportunity in either the VCAT plans or the original permit application plans. We see merit in the section of level 4 (the fifth storey) along Cross Street being built to the east side boundary (as in the permit application plans)<sup>5</sup>. We appreciate that this will mean a building on this site will sit higher at the east boundary than the approved four-storey development of No. 4 Cross Street, but we have no concern about such a step in the built form along this section of Cross Street. We note the Council's advice that there have been recent discussions about possibly changing the development on No. 4 to an alternative, smaller, development. This possibility does not change our view that a seven storey building with a five storey form built across the Cross Street frontage is a preferable design outcome for this site.
- 41 Given the lack of sensitivity or constraints to the north and west, we also suggest that this site has greater development potential than that shown in the VCAT plans and the permit application plans. For example:
- The extent of the level 5 floor plan shown in the permit application plans is an acceptable extent of built form. Given what we have said about the Cross Street frontage, consideration could also be given to

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<sup>4</sup> As contained in tab 11 of the Tribunal book.

<sup>5</sup> To be clear, apartments 4.04 and 4.09 in the VCAT plans could be extended to the eastern side boundary.

extending the form in a similar way to level 4 with the modifications to apartments 4.04 and 4.09 subject to considering any changes made to the approved development at No. 4.

- The extent of the level 6 floor plan shown in the permit application plans is an acceptable extent of building form. Consideration could also be given to extending the floor level to the north, wrapping it around the north side of the communal courtyard area subject to an analysis of the acceptability of any internal overshadowing of the communal courtyard space.

## **THE HOCKING STREET FRONTAGE ACTIVATION**

- 42 One of the Council's grounds of refusal is that the frontage to Hocking Street is not acceptably active.
- 43 The VCAT plans illustrate two commercial tenancies. One is located at the street corner and the second tenancy abuts the first with a frontage to Hocking Street. To the north, beyond these two tenancies, is the main residential entry lobby, the entrance to the car park and visitor car parking that also contains various services, a second smaller corridor to the apartments at the northern end of the building, and the west edge of the northern apartments. This includes apartment G.01 that is oriented to face north with a sideage to Hocking Street.
- 44 The General Residential zoning restricts the capacity of this site to provide an active frontage as the only retail land uses that can be granted planning approval are a food and drink premises and a convenience shop. In this case, the Applicant has sought planning permission for two food and drink premises.
- 45 Earlier we observed some of the benefits of the location of this site. These include its location opposite West Footscray Station; it is between the station and Whitten Oval, near to the Victoria University campus; and is within walking distance of the activity centre along Barkly Street. We explained our observations during our inspection of pedestrians leaving the station and travelling north along Hocking Street. Given these circumstances and the possible future development of the VicTrack land in Cross Street, we agree with the Council that activating the Hocking Street frontage as much as possible is a preferable design outcome.
- 46 During the hearing there was discussion about whether a convenience shop was proposed in the application. Ultimately, it was confirmed that this land use was not included in the permit application, but the Applicant expressed a desire to include it, so there is some flexibility as to what could be incorporated into the development. We support the possibility of this land use being included in the development but given the circumstances of this permit application and the fact that such a use requires planning permission, we cannot include it in our considerations. We say this because planning permission is required for such a land use and the potential impacts of such



a use including its car parking and loading requirements. Any views expressed by the surrounding properties need to be considered in determining whether to grant planning permission for a convenience shop. Nevertheless, we suggest a larger commercial tenancy should be included in the design that wraps around the street corner as this would be a good design outcome from both a development and land use viewpoint. Then, in the future, the Applicant may seek separate planning approval for a convenience shop if it wishes.

- 47 We note that the permissible floor area for a convenience shop is greater than that shown in the VCAT plans. We also note there is no limit on the floor area that may be allocated to food and drink premises. As already mentioned, we suggest there is an opportunity in this development to expand the amount of commercial floor space. One of the benefits of this is that it provides an improved streetscape presentation. It also creates an opportunity to deal with the potential for flooding along the Cross Street frontage without unnecessarily impacting upon the activation of this frontage. The VCAT plans require the ground floor south-facing apartments to be elevated above the street for both flooding and privacy/internal amenity reasons. Mr Talacko's evidence is that, in these apartments, the inclusion of solid balustrades along the street frontage creates some difficulty for daylight penetration. Hence, extending the corner commercial tenancy to the east and possibly to the north as well is an opportunity that should be explored, particularly as it could replace an apartment/apartments with poor amenity.
- 48 We are also of the view that it would be desirable to create another commercial tenancy in the northwest corner of the ground floor of the building. In our opinion, the level of internal amenity in apartment G.01 is limited given it is located adjacent to both Hocking Street and the public car park at the rear of the site, which includes a pedestrian path close to this corner providing access from Hocking Street across to Whitten Oval and Victoria University. This corner of the site has the benefit of a northwest orientation, which would be a good location for a food and drink premises with some outdoor seating. This opportunity should be considered as part of the preparation of any amended proposal that responds to this interim decision.

## **THE CAR PARKING PROVISION**

- 49 The Council's grounds of refusal include that the proposal provides insufficient car parking. We do not share this concern for the following reasons:
- a The planning scheme provides the opportunity for planning permission to be given to reduce or waive a car parking requirement.
  - b Ms Dunstan gave evidence that this site is well served by public transport including the train and a number of bus routes. She pointed

out there are car share opportunities in and around Footscray activity centre. It appears to us there is no reason why the provision of an on-street car share space in the vicinity of West Footscray station could not be considered by the Council, including along a part of this site's street frontages.

c The proposal seeks to reduce the residential car spaces from 80 to 65, the residential visitor car spaces from 15 to 3, and the commercial tenancy (shop) car spaces from 7 to 2. Having regard to Ms Dunstan's evidence about the likely demand for car parking based on 2011 census data being lower than the planning scheme standard requirements, we accept the proposed reductions in the resident car parking. We accept Ms Dunstan's evidence that the peak resident visitor demand is provided on the site, so a reduction of the standard requirement is acceptable. In regard to the commercial tenancies, we agree with Ms Dunstan's evidence that it is acceptable to provide staff parking (e.g. one car space per tenancy) on the site and that customer parking can be accommodated on street. Hence, the proposed car parking provision is acceptable in this case.

d Whilst we have given the WF UDF guidelines limited weight, we note that Guideline 03.01 'higher density living' contains two guidelines that are relevant to the issue of car parking provision and development to the north of West Footscray Station:

03.01.9 Consider the waiving of the required car space rates in new developments which are close to reliable public transport, on a case by case basis.

03.01.10 Encourage non-car based living through improving the public transport system, bike and pedestrian networks and providing car share options.

50 We appreciate that the changes we have suggested to the extent of the development on the site may change the required car parking under the planning scheme and that this is an issue that will need to be reconsidered by us in accordance with any amended proposal. We have made findings about the car parking contained in this proposal in the hope that it will assist the Council and the Applicant in considering amended plans that respond to this interim decision.

## **CONCLUSION**

51 We have set out in this decision the aspects of the proposal that we find unacceptable and require modification. It is our expectation that the Applicant will need to consider amending the plans of the proposed development, and possibly amending the number, allocation and distribution of car spaces and the waste management.

52 It is our view that the aspects of the proposal that are unacceptable can be dealt with as part of this application. By issuing this interim decision, we

are allowing the Applicant the opportunity to respond to our concerns. If the Applicant does not wish to amend the proposal, we will order that Council's decision be affirmed and no permit will issue.

53 Initially, we seek advice from the Applicant as to whether the opportunity afforded by this interim decision will be taken up and, if so, the time required for the preparation of amended plans and the additional material required. If the Applicant advises that it wishes to take up this opportunity, we will then issue further directions that:

- require amended plans, a written explanation of the amendments made and any associated documentation and additional material to be served on the Tribunal, the Council, Melbourne Water and the owner/occupier of No. 4 Cross Street given it is the only other adjoining property (the details of the ownership will be required to be supplied by the Council);
- provide an opportunity for Council, Melbourne Water and No. 4 Cross Street to make written submissions on the proposed amendments and associated material and any changes required to the draft permit conditions; and
- if anyone considers a further hearing is required that they must advise in writing as part of their written submission and explain why they are seeking it.

54 We will consider the amended plans, any associated documentation, the additional material and all written submissions and decide whether a further hearing is required. Ultimately, we will determine if the amendments and any additional material are acceptable (with or without a further hearing). If we find the amendments are acceptable, we will order that a permit be granted subject to appropriate conditions. If we find the amendments are not acceptable, we will order that no permit be issued.

**Rachel Naylor**  
**Presiding Member**

**Ann Keddie**  
**Member**