

## RED DOT DECISION SUMMARY

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

### VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

### ADMINISTRATIVE DIVISION

### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1969/2015  
PERMIT APPLICATION NO. PLN15/0355

**IN THE MATTER OF** Caydon Cremorne No.1 Development Pty Ltd  
v Yarra CC

**BEFORE** Laurie Hewet, Senior Member  
Ann Keddie, Member

<b>POTENTIAL GUIDELINE DECISION</b>	No
<b>LOCATION OF PASSAGES OF INTEREST</b>	Piecemeal applications: paragraphs 42-52 Building height: paragraphs 53-70 Limiting the supply of car parking: paragraphs 71-99 Housing diversity: paragraphs 89-97
<b>REASONS WHY DECISION IS OF INTEREST OR SIGNIFICANCE</b>	
<b>APPLICATION – significant, interesting or unusual use or development; application of policy, provision or principle; or circumstances</b>	The decision is of general interest because it relates to a substantial redevelopment of the old Richmond Maltings Site in Cremorne and is the home of the Nylex Sign situated on top of some old silos. The proposal is for a substantial mixed use development including 18 and 13 storey residential towers and lower built forms. The site is listed on the Victorian Heritage Register. The decision covers a wide range of issues associated with the redevelopment of this significant site.

### Summary

This decision relates to the site in Cremorne which is the old Richmond Maltings Site and is the home to the Nylex Sign situated on top of some old silos.

The proposal is for part of the site only and does not actually affect the Nylex sign. The sign is located on part of the site that is the subject of a separate application (Stage 2) currently with the Council.

The proposal is for a substantial mixed use development including 18 and 13 storey residential towers and lower built forms. The site is zoned Comprehensive Development Zone (CDZ3) and there is an incorporated document that includes a building envelope plan with recommended building heights and setbacks and design principles. A discretion is available to approve variations to the incorporated document

that "are not minor". The site is also listed on the Victorian Heritage Register, and the Director General of Heritage Victoria has refused an application for the site. The decision of the Director General occurred during the hearing. The permit applicant is appealing that refusal to the Heritage Council.

The Tribunal had to consider a number of issues in this case. An interim decision has been issued providing the applicant with the opportunity to amend their plans. The Tribunal found that the 18 storey tower is too high because it has a number of adverse impacts associated with its height above the recommended heights for the site (paragraphs 53-70).

Other amendments to the plans are also required including:

- A reduction in the number of car parking spaces to encourage a greater use of alternative transport modes (paragraphs 71-86). While critical of the Council's lack of strategic work and policy development on this issue for this locality, the Tribunal adopted the Council's position about encouraging modal shift by limiting car parking supply because of existing traffic conditions in Cremorne in which some intersections are approaching capacity.
- Provision of a greater diversity of apartment sizes, i.e. fewer one bedroom apartments and more two and three bedroom apartments (paragraphs 89-97).
- Other detailed changes to the layout of ground level open spaces and pedestrian lanes.

There is also a discussion about piecemeal applications (paragraphs 42-53). The Tribunal followed the approach previously adopted in *Rowcliffe Pty Ltd v Stonnington CC* [2005] VCAT 1535.

The Tribunal rejected the Council's submission that the application ought to be remitted so it can be considered with the stage 2 and 3 applications currently with the Council.

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PERMIT APPLICATION NO.PLN15/0355

**CATCHWORDS**

Application under S.79 of the *Planning and Environment Act* 1987 for review of the failure to grant a permit within the prescribed time, piecemeal application, car parking/modal change, landmarks and overshadowing of the Yarra River.

**APPLICANT** Caydon Cremorne No.1 Development Pty Ltd  
**RESPONSIBLE AUTHORITY** Yarra City Council  
**RESPONDENTS** Riseheath Pty Ltd; John Saunderson; Belinda Freake; Christopher Andrew Wood; Michael Wilson; David Plitz; Sandra Lewis; Robert Bruce Craig; Michael Lewis; Michael Coffey; Barry Nathan; Benjamin Cebon; Owners Corporation PS 5234545; Scott Barker  
**SUBJECT LAND** 2 Gough Street CREMORNE VIC 3121  
**WHERE HELD** Melbourne  
**BEFORE** Laurie Hewet, Presiding Senior Member  
Ann Keddie, Member  
**HEARING TYPE** Hearing  
**DATES OF HEARING** 11, 12, 13, 14, 15, 18, 19, 20, 21 & 22 January 2016 and 4 February 2016  
**DATE OF ORDER** 18 March 2016  
**CITATION** Caydon Cremorne No.1 Development Pty Ltd v Yarra CC (Red Dot) [2016] VCAT 423

**ORDER**

1. By no later than 15 April 2016, the Applicant must advise the Tribunal in writing whether it wishes to take up the opportunity to amend the plans of the proposed development, and if so, by what date the amended plans will be prepared (the '**Amended plans date**'). A copy of the response to this order must be provided to the other parties.
2. By close of business on the **Amended plans date**, the Applicant must circulate to the Tribunal and all parties a copy of the amended plans to

scale. The Applicant may also provide by this date a written submission supporting the amended plans.

3. By close of business fourteen days after the **Amended plans date**, the Council and objectors may make written submissions in response to the changes detailed in the amended plans. There is not an opportunity for these submissions to address matters other than changes detailed in the amended plans.
4. At any stage prior to this date any party may request a further hearing to make further written and oral submissions about the amended plans.

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**Laurie Hewet**  
**Senior Member**

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**Ann Keddie**  
**Member**

## APPEARANCES

### For Applicant

Mr John Cicero instructed by Ms Carol Daicic, both of Best Hooper solicitors

He called the following witnesses:

- Mr David Sutherland, architect
- Mr Robert Earl, landscape architect
- Mr Mark O'Dwyer, urban design
- Professor Phillip Goad, architect
- Ms Colleen Peterson, town planner
- Mr Peter Lovell, heritage consultant
- Mr John Kiriakidis, traffic engineer

Witness statements proffered by Ms Anna Barklay, town planner (statement titled Statement of Facts) and Mr Chris Goss (Visual Amenity) were tabled but the authors were not called to give evidence.

### For Responsible Authority

Mr Terry Montebello of Maddocks Solicitors

He called the following witnesses:

- Mr Jim Holdsworth, architect
- Mr Marco Negri, town planner
- Mr Jim Kostas, wind engineer
- Ms Charmaine Dunstan, traffic engineer
- Mr Jim Antonopolous, acoustic engineer
- Professor Rob McGuaran, architect

### For Respondents

Ms Michelle Quigley QC appeared on behalf Riseheath Pty Ltd. Ms Quigley appeared on days 1 and 2 of the hearing only.

Mr Michael Coffey appeared on his own behalf and on behalf of Belinda Freake, Christopher Wood, Michael Wilson, David Pilz, Sandra Lewis, Robert Craig, Michael Lewis, Benjamin Cebon, the Owners Corporation PS523454, Scott Barber.

Submissions were also made by Belinda Freake, Christopher Wood, Benjamin Cebon, Scott Barber.

Mr Barry Nathan and Mr John Saunderson appeared on their own behalf.

## INFORMATION

### Land Description

The review site forms part of the Cremorne precinct that is bounded by Hoddle Street to the west, City Link and the Yarra River to the south, Church Street to the east and Swan Street to the north.

The site is located in the south-west corner of the precinct at the Gough Street and Cremorne Street intersection. It comprises the eastern part of a larger site commonly known as the "Nylex Site". The site, south of Gough Street, is adjacent to City Link, the Yarra River and Hoddle Street. The site was formerly used for industrial purposes (malting) originally established in the 1850s. The total site currently comprises a range of heritage and non-heritage buildings including three groups of silos. A double sided sky sign (the Nylex Sign) is mounted on top of one of the silos. The sign and its supporting silos do not form part of the site that is the subject of this application.

The total site comprises two titles, has an irregular configuration with a frontage of 68.7m to Cremorne Street, 161m to Gough Street and 139.1m to Harcourt Parade. It has an area of 11,025m<sup>2</sup>.

The north side of Gough Street comprises commercial buildings and to the north west there are single storey dwellings fronting Melrose Street.

To the south of the review site is an industrial building currently zoned Commercial 2 (17-21 Harcourt Street). A permit exists for the site that allows a nine-storey office building. This site is also the subject of a planning scheme amendment application to facilitate a residential development.

A ten storey building (the ERA Apartments) occupies the east side of Cremorne Street. Commercial uses occupy the building's three storey podium.

Description of Proposal

The proposal is to develop the eastern part of the total site and is referred to as Stage 1 of a three stage development. Stage 2 relates to the balance of the site, while Stage 3 relates to the adjoining site at 17-21 Harcourt Street.

Stage 1 includes an 18 storey, east – west oriented elliptical tower, located in the southern part of the site, which includes a 5 storey podium facing Cremorne Street, a 13 storey with a 4 storey podium north – south oriented rectilinear tower. A total of 258 apartments are proposed together with a mix of shops and a supermarket. Six 3 and 4 storey SOHO offices are also proposed, located along the western side of a proposed north-south lane that extends from Gough Street under the southern tower to the northern boundary of the site at 17-21 Harcourt Street (Stage 3) in the south. Vehicle access is proposed from Cremorne Street, with car parking provided over six levels (three basement levels and three within the podium).

Nature of Proceeding

Application under Section 79 of the *Planning and Environment Act* 1987 – to review the failure to grant a permit within the prescribed time<sup>1</sup>.

Zone and Overlays

Clause 37.02: Comprehensive Development Zone (CDZ3)

Clause 45.03: Environmental Audit Overlay (EAO)

Clause 44.04: Land Subject to Inundation Overlay (LSIO) – does not affect that part of the site on which the development is proposed.

Clause 45.07: City Link Project Overlay (CLPO) - does not affect that part of the site on which the development is proposed.

Clause 43.01: Heritage Overlay (HO350). No permit is required under HO350 because the site is included on the Victoria Heritage Register.

Two Victorian Heritage Registrations apply to the site:

- H2049 Nylex sign
- H2050 Richmond Maltings

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

## Permit Requirements

- A permit is required under the CDZ3 to use land for dwellings, shop and supermarket, construct a building or construct or carry out works, and to reduce car parking requirements.
- A permit is required under Clause 52.02 to remove the light and air easement at the southern end of the land.
- A permit is required under Clause 52.07 to waive loading bay requirements.



## REASONS<sup>2</sup>

### WHAT IS THIS PROCEEDING ABOUT?

1. This is an application to review the failure of the Responsible Authority to grant a permit within the prescribed time in respect of a permit application for a mixed use development at 2 Gough Street, Cremorne. The Responsible Authority ultimately decided that had it not been for the application for review it would have refused permission on 13 grounds. The grounds are summarised as follows:

- The proposal is contrary to the Comprehensive Development Zone, and is not generally in accordance with the planning and design principles for the site.
- The height, setbacks, massing and design would unreasonably impact the character and amenity of the area including through overshadowing of the Yarra River and the ERA apartments and impact on the landmark quality of the Nylex sign.
- A visual assessment of the proposal's impact has not been provided.
- The sighting and layout of the proposal provides for an inferior outcome to that set out in the Design Principles.
- The proposal would unreasonably impact the heritage buildings that are to remain on site, affecting their appreciation and subsequent reuse.
- The sighting and layout of the proposal provides for a poor outcome in respect of the public realm and accessibility and is not generally in accordance with the Design Principles.
- The height of the building and south boundary setback would unreasonably impact the equitable development potential of the site to the south.
- The layout and configuration of apartments would result in unreasonable internal amenity outcomes in regards to outlook, daylight and ventilation.
- The layout and shared use of laneways for vehicle access, loading and waste collection (north-south, central east-west and southern east-west links) would lead to compromised levels of pedestrian amenity and safety within the development.
- The proposal does not provide adequate noise attenuation and would not provide a reasonable level of amenity for future residents.

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<sup>2</sup> We have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. We do not recite or refer to all of the contents of those documents in these reasons.

- Wind conditions in the north-south and southern most east-west link would lead to poor levels of amenity.
  - The car parking provision is too high and would unreasonably impact traffic conditions in the area.
  - The absence of an on-site loading bay for the shop would adversely impact traffic flow and road safety of the area.
2. The Council's grounds of refusal were formulated in response to the application plans. Subsequent to the Council's decision and prior to the hearing, the applicant circulated amended plans. These plans were substituted for the application plans at the commencement of the hearing. The Council however continues to pursue all of the grounds of refusal.
  3. There are a number of objectors to the application. The objectors generally support the Council's grounds of refusal but also raise other matters with particular emphasis on traffic impacts, access and egress arrangements, overshadowing impacts and the impact of the proposal on the Cremorne area generally.
  4. The Council and the objectors also submit that consideration of the proposal is premature because the application is for Stage 1 of an overall development that incorporates the balance of the review site (Stage 2) and the site to the south (17-21 Harcourt Street - Stage 3). The Council has received a planning permit application for Stage 2 but that application has not received detailed consideration and is, or is likely to be, the subject of a request for further information. Notice of the application has not been given. The Council has also received a combined rezoning and permit application for the land at 17-21 Harcourt Street. It is a proposal to rezone the land to a Comprehensive Development Zone and to construct a mixed use development on that land. Authorisation for that application has not been granted (at the time of the hearing). There has been no notice given of that combined application.
  5. The Council submits that the application constitutes a piecemeal application and refusal of it is justified on that basis alone. Alternatively the Council submits that the Tribunal should exercise its powers under S.51(2)(d) and/or S.51A of the *Victorian Civil and Administrative Tribunal Act 1998* to remit the application to the Council so that it can be reconsidered by the Council in conjunction with the Stage 2 and 3 applications.
  6. The applicant rejects the proposition that the application is piecemeal and submits that the proposal is supported by planning policy, and responds in an acceptable manner to the provisions of the Comprehensive Development Zone, the Comprehensive Development Plan and the design principles in the Incorporated Document that affect the site. The applicant resists the Council's request for the Tribunal to remit the application to the Council for reconsideration.

7. The proposal raises a number of complex matters ranging across issues as diverse as the role of car parking demand management in traffic management generally, the effect of building height, the provision of diverse and affordable housing, the creation of useable public spaces, acceptable outcomes for retained heritage buildings, and internal and external amenity impacts. The Council and objectors say that many of these issues arise because the proposal is a piecemeal application and should not be considered in isolation from the Stage 2 and 3 applications.
8. Having considered the submissions and the evidence and having inspected the review site, neighbouring properties and the surrounding area generally, we have concluded that the principal issues in this case can be categorised as follows:
  - Is the application piecemeal?
  - Is the southern tower too high?
  - Does the proposal manage traffic impacts in an acceptable manner and is there too much car parking?
  - Does the proposal provide for a diversity of housing options?
9. For the reasons we set out below, we have concluded that the Stage 1 application does not constitute a piecemeal application to the extent that precludes its consideration. We have sufficient information available to us to make a decision on the current application and to be confident that the consideration of subsequent stages of the development of this precinct can proceed and will not be prejudiced by our decision in this application. We are not persuaded that parties to this application, who may also have an interest in the Stage 2 and 3 applications, will experience procedural disadvantage because of our decision on Stage 1.
10. We are satisfied that the proposal does have regard to the provisions of the CDZ, the Comprehensive Development Plan and the applicable design principles for the site. Unlike many Comprehensive Development Zones, CDZ3 provides relatively wide discretion to consider variations to the development plan included in the Incorporated Document. We have assessed the proposal against the development plan, the associated design principles and the relevant State and local policies.
11. While we have concluded that the proposal is broadly acceptable, there are aspects of it that are not. Further amendments are required before we would be prepared to grant a permit. Having regard to the type of amendments that are required, the imposition of conditions on a permit is not the appropriate mechanism to achieve those changes. We have for example concluded that the elliptical tower should be reduced in height, but we acknowledge that this is likely to have implications for the relationship between that tower, the lower tower and the podium. Rather than imposing a permit condition requiring a reduction in the tower height, we have

decided to provide the applicant with the opportunity to prepare amending plans to address that issue together with the other issues that concern us. In accordance with the attached Order, we have provided the parties with the opportunity to provide further comment on the applicant's amended plans. We have also identified a series of additional changes that ought to be incorporated into any amended plans. Some of these changes were identified during the course of the hearing and accepted by the applicant, while there are some changes that the applicant disputes.

12. We have adopted this course of action in preference to the Council's submission that the matter be remitted to the Council for further consideration. It is not appropriate to apply the procedures available to the Tribunal under the VCAT Act to remit the application to Council in the circumstances of this case.
13. Our reasons are set out below.

### **SETTING THE SCENE FOR OUR CONSIDERATION OF THIS APPLICATION.**

#### **The site context**

14. The review site is part of the Cremorne precinct that is a discrete pocket of the City of Yarra nestled between Hoddle Street to the west, the Monash Freeway/City Link and the Yarra River to the south, Church Street to the east and Swan Street to the north. It is a precinct that exhibits a rich industrial heritage. It comprises a number of disused (or underused) industrial complexes, but also a wide range of operational businesses with various commercial and industrial foci. There is a TAFE College. The Frankston/Sandringham railway line dissects the precinct and intersects with the Belgrave/Lilydale railway line just to the north of the precinct at Richmond Station. East Richmond Station is in the north-east part of the precinct. Intermingled among the various industrial, commercial and other business, there are residential uses located in factory conversions, older style and refurbished dwellings, modern apartments and contemporary infill townhouses and single dwellings. The precinct is a couple of kilometres from the Melbourne CBD. The Monash Freeway/City Link forms the precinct's southern boundary, together with the Yarra River. Hoddle Street/Punt Road, one of Melbourne's busiest thoroughfares, forms the Cremorne's western boundary. The street network within the precinct comprises narrow streets laid out in a primarily north/south and east/west grid. Some streets traverse the precinct, while others are truncated or run between intersecting streets. There are "T" intersections, off set "T" intersections and four way cross intersections. An aspect of the street network brought to our attention by all parties is the constrained access to the surrounding arterial roads.
15. The review site is located in the south-west corner of the precinct at the Gough Street and Cremorne Street intersection. It forms part of a larger site

which comprises two titles, with an irregular configuration and a frontage of 68.7m to Cremorne Street, 161m to Gough Street and 139.1m to Harcourt Parade. It has an area of 11,025m<sup>2</sup>. The site was formerly used for industrial purposes (malting) originally established in the 1850s. The total site comprises a range of heritage and non-heritage buildings including three groups of silos. A double sided sky sign (the Nylex Sign) is mounted on top of one of the silos. The site is commonly known as the "Nylex Site".

16. Abutting the review site to the south is an industrial building currently zoned Commercial 2 (17-21 Harcourt Street). A permit exists for the site that allows a nine-storey office building. This site is also the subject of a planning scheme amendment application to facilitate a residential development.
17. A ten storey building (the ERA Apartments) occupies the east side of Cremorne Street. Commercial uses occupy the building's three storey podium
18. The application we are required to consider relates to the eastern part of the total site. An application to develop the balance of the site has been submitted to the Council. A red brick fence borders the Gough Street and Cremorne Street sections of the review site.
19. While the review site is just one site in the Cremorne precinct, it is a significant and prominent site because of its industrial heritage, because it is part of a larger site which is home to the Nylex sign and it is proximate to the Yarra River and City Link. It is a site identified in the planning scheme for redevelopment.

### The Planning Scheme

20. The significance of this large site and the complexities associated with facilitating its redevelopment are reflected in the planning scheme provisions applying to it.
21. The total site was rezoned from Business 3 to the Comprehensive Development Zone with a schedule (CDZ3) in 2008<sup>3</sup>. The purpose of the CDZ is *to provide for a range of uses and the development of land in accordance with a comprehensive development plan incorporated in this scheme*. The schedule to the zone has the following purposes:
  - To allow a comprehensively staged, mixed use development on the site which will create activity during the day and evening and generate local employment opportunities.
  - To conserve and enhance key heritage buildings through refurbishment and reuse.
  - To allow the continuation of limited major advertising in the precinct.

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<sup>3</sup> Amendment C101.

- To ensure that development on the site will complement and enhance the Yarra River environs.
  - To ensure the combination of uses, their density and the scale and character of development does not prejudice the amenity of the surrounding area.
  - To retain the visual dominance and preservation of views of the landmark Nylex sign and associated silos through the sensitive siting of new building envelopes on the site.
  - To provide a well designed, attractive open plaza space within the development which is accessible to the surrounding community.
  - To ensure a high quality architectural response to the site that acknowledges and is respectful of the scale and form of buildings within the site and its immediate environs.
22. There is an Incorporated Document in the planning scheme relating to the site titled “Planning and Design Principles for the Richmond Malting Site, Cremorne – November 2007”. The Incorporated Document comprises a plan that identifies existing buildings and Council recommended building heights and setbacks across the site. The part of the site affected by this application shows heights at RL17 at the Gough Street and Cremorne Street edges (for setback distances of 10m and 6m respectively) and a height of RL38 for a greater part of the balance of the site, inside those setbacks. Arrows representing pedestrian access and circulation are also shown. A 5.00m wide pedestrian lane runs north/south off Gough Street is also shown. It follows the footprint of Building 4 immediately adjacent to the western boundary of the review site. The lane takes a dramatic right angle turn to the west, before heading south again, linking with an east/west lane providing access to the balance of the site that is not part of this application. A “public plaza” is shown in the centre of the total site and a further “public plaza” further to the west. Recommended building heights are shown at the western end of the site ranging from RL16 to RL38.
23. The plan is no more detailed than that.
24. The Incorporated Document also includes Planning and Design Principles that comprise a series of 23 dot points expressed in primarily aspirational terms. We make further comments about these Design Principles later.
25. Under the CDZ3 permits are required to use land (for dwellings, shop and supermarket) building and works and subdivision.
26. In considering an application to use land, decision guidelines require consideration of, among other matters, the design principles in the Incorporated Document. With respect to applications for buildings and works, the following provision applies:

A permit is not required to make minor variations to the comprehensive development plan “Planning and Design Principles for

the Richmond Maltings Site, Cremorne – November 2007” if such variations are to the satisfaction of the responsible authority. A permit may be granted for development which is not generally in accordance with the comprehensive development plan: “Planning and Design Principles for the Richmond Maltings Site, Cremorne – November 2007” or for variations to the comprehensive development plan which are not minor.

27. CDZ3 therefore provides for a permit exemption for buildings and works that make minor variations to the plan and contemplates variations to that plan that are not “generally in accordance” with the plan and are “not minor”.
28. Because of the wide discretion provided by Clause 4.0 of CDZ3, this is not a case about whether the proposal is generally in accordance with an Incorporated Document that tightly controls the form, scale, intensity and layout of a site’s development. Such controls do exist and are regularly applied in planning schemes. In circumstances where those controls apply a proposal must typically be “generally in accordance” with those controls and variations are limited to those that can satisfy the principles of being “generally in accordance”<sup>4</sup>.
29. The Incorporated Document applying to this land provides a broader discretion. We discuss in more detail below the approach we have adopted in applying the available discretion in assessing matters such as the height of buildings.
30. The Design Principles are to be read in conjunction with the plan. They reference a range of matters including the conservation and enhancement of heritage features, the provision of opportunities for the interpretation and appreciation of the site’s cultural heritage attributes, and the retention of the visual prominence and landmark qualities of the Nylex sign. These principles apply notwithstanding that, for the reasons discussed below, heritage matters are not before us in this case. The Principles also identify opportunities for “tall development” at the eastern end of the total site (the location of the review site) and encourage a mix of uses that create local employment opportunities and vibrant pedestrian and public spaces.
31. There is also a Car Parking Control in CDZ3 that specifies that car parking allocation must be in accordance with a table that identifies uses and car parking rates for each use. A permit is required to reduce car parking requirements.
32. A Heritage Overlay covers the whole of the Richmond Maltings site under the Yarra Planning Scheme (HO350). Pursuant to Clause 43.01-2 no permit is required under that overlay to develop a heritage place which is included on the Victorian Heritage Register. Consequently, issues relevant under the

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<sup>4</sup> These principles are conveniently summarised in *Fabcot Pty Ltd v Whittlesea City Council* [2014] VCAT 600.

heritage overlay that include the effect of the demolition of buildings or the proposed buildings and works on the natural or cultural significance of the heritage place, are not before us in this case.

33. The site as a whole has two listings on the Victorian Heritage Register. H2049 for the Nylex sign and H2050 for the Richmond Maltings, and includes the whole of the site. There are a variety of buildings on the site constructed as early as 1880 and up to the early 1960s. The registration documentation contains a suite of permit exemptions relating to the demolition of specifically identified buildings, and minor works to the interior and exterior of registered buildings.
34. An application for works and development associated with the current proposal was submitted to Heritage Victoria in June 2015. On 8 January 2016 (day 2 of the current hearing before the Tribunal) the Executive Director of Heritage Victoria refused to issue a permit on four grounds. The applicant advised us during the hearing that an appeal against the Executive Director's decision had been lodged with the Heritage Council of Victoria. Upon being advised that the executive director had refused the application under the Heritage Act, the Council and objectors applied to adjourn the current proceeding pending the resolution of the application under the Heritage Act. For reasons provided orally at the hearing that application was refused.
35. There are a range of policies at both State and local level that are relevant to the consideration of the issues that we have to decide. Both the applicant and the Council, in submissions and through the evidence led, provided a comprehensive analysis of the policy framework and consequently it is not necessary for us to repeat that material in great detail. Suffice to say that in broad terms the policy framework seeks to achieve the following:
  - Increased supply of housing in existing urban areas.
  - Provision of new housing in or close to activity centres and employment corridors and at other strategic redevelopment sites that offer good access to services and transport.
  - The design of energy efficient buildings.
  - Improved housing choice, better use of existing infrastructure and improved energy efficiency of housing.
  - High quality urban design and architecture that reflects the particular characteristics, aspirations and cultural identity of the community.
  - Protection of the environmental, cultural or heritage significance of the locality from development that would diminish the significance of the place.
  - Maintenance and enhancement of the natural landscape character of the Yarra River corridor in which the topography, waterway, banks



and tree canopy are dominant features providing a highly valued, secluded, natural environment for the enjoyment of the public.

- Promotion of sustainable personal transport and the provision of an adequate supply of car parking that is appropriately located and designed.
- Retention of the City of Yarra's existing urban framework and identity as a low-rise urban form with pockets of higher development.
- Creation of a safe and engaging public environment where pedestrian activity and interactions are encouraged.
- Fostering the existing eclectic mix of commercial, industrial and residential land uses in Cremorne.
- Redevelopment of the review site as a strategic redevelopment site in a manner that contributes positively to the urban fabric and public domain and protects the heritage of the site.
- Maintenance of the prominence of the landmark Nylex sign and the visually and historically significant silos.
- Ensuring new residential developments close to sources of noise, fumes and air emissions are designed to minimise these impacts.

36. Our summary of the applicable policy provisions is formulated on the basis of the planning scheme policy framework. We acknowledge that there are other policy documents to which we were referred that sit outside the planning scheme and that have some relevance to the issues under consideration. We refer to those documents where appropriate and necessary<sup>5</sup>.

### **What is proposed?**

37. The current proposal is Stage 1 of a larger development of the site. Only Stage 1 is under consideration by us in this hearing. Stage 1 is focussed on the eastern part of the site and includes the following elements:

- Demolition of the rear of the 1922 office building (building 3) and the retention of the front portion of that building fronting Gough Street.
- Demolition of the gabled office bay on the south side of the 1930s malt house (building 4). The reuse and internal works for the retained section of the malt house is part of the Stage 2 application and not before us in this application.

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<sup>5</sup> The Swan Street Structure Plan is an example of a document adopted by the Council but which does not form part of the planning scheme.

- Demolition of most of the brick walls to Gough Street and Cremorne Street.
- Construction of new buildings as follows:
  - Three storey plus roof terrace SOHO offices south of the retained part of the office building (building 3).
  - Three storey SOHO offices east and southeast of the former malt house (building 4).
  - A 13 storey building including a four storey podium at the corner of Gough and Cremorne Streets. Retail use is proposed at the ground floor and apartments above.
  - An 18 storey elliptical configured tower including a five storey podium south of the malt house and oriented east – west across the site’s southern boundary.
  - A supermarket is proposed on the ground floor of the southern tower. There are three basement levels of car parking and three levels of car parking above the ground floor within the podium, and apartments above that. Apartments also sleeve the car parking.
  - A pedestrian and bicycle lane runs north – south from Gough Street. Part of the lane is open to the sky and buildings cover part of it.
  - A combined (private) vehicle/pedestrian/bicycle road runs east-west through the building off Cremorne Street, at about the midpoint of the site. Access and egress to the basement and podium car park (six levels) is obtained from this road.
  - A combined (commercial) vehicle/pedestrian/bicycle road runs east - west off Cremorne Street along the southern boundary of the site. This road provides access to a ground level loading/unloading “zone” at the rear of the supermarket. Potential pedestrian linkages to the balance of the site are shown along the southern boundary, and between the SOHO buildings.
  - Proposed uses include<sup>6</sup>:
    - Supermarket/retail: 774m<sup>2</sup>
    - SOHO offices: 384m<sup>2</sup>
    - One bedroom apartments: 207

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<sup>6</sup> The number and type of apartments and the associated car parking spaces changed during the course of the hearing. We have relied on the figures provided by Mr Kiriakidis in his addendum report (exhibit A52)

- Two bedroom apartments: 37
- Three bedroom apartments: 14
- SOHO apartments: 6 (5 x 2 bedroom and 1 x 3 bedroom).
- A total of 361 car parking spaces are proposed as part of Stage 1, of which 90 are to be allocated for future Stage 2 uses. The distribution of the car parking for Stage 1 uses is:
  - 223 resident spaces
  - 6 retail staff spaces
  - 9 spaces associated with the SOHO offices
  - 33 spaces for residential and office visitors

### **What is proposed in Stages 2 and 3?**

38. Stage 2 is focussed on the western part of the site, and Stage 3 on the land to the south at 17-19 Harcourt Parade. Neither Stage 2 nor Stage 3 are part of the application before us. Applications for both these stages have been submitted to the Council but processing of them has not advanced to public notice or exhibition. During the course of the hearing we advised the parties that we wished to be informed about these proposals because it is relevant for us to be aware of what is proposed on the balance of the site in considering the Stage 1 application.
39. Current plans for both Stages 2 and 3 and associated material were provided to us, although we were not provided with all documentation for those applications. The material provided is sufficient in terms of informing our views about Stage 1.
40. In broad terms Stage 2 proposes the following:
  - The retention and reuse of the 1880s malt house and the 1930s malt houses and the 1952 concrete silos.
  - The demolition or partial demolition of the 1920s malt house, the 1952 drum malt house, the 1962 silos, the 1956 malt house and the 1939-40 barley house.
  - Three basement levels of car parking and three podium levels of car parking.
  - A 20 storey building along the site's southern boundary, another 20 storey building along the southern boundary toward the western end of the site and a 7 storey building on the northern boundary toward the western end of the site.
  - A total of 399 apartments (1, 2 and 3 bedrooms) and 78 serviced apartments, office, retail, restaurant and café uses.

- The dismantling of the Nylex sign as part of the silo demolition, and its repositioning on top of the 20 storey building.
41. With respect to Stage 3, that site currently benefits from a permit for a nine storey office building, three levels of car parking and a cafe<sup>7</sup>. The site is the subject of a request under S.96A (combined rezoning and permit application). It is proposed to construct a 17 storey building comprising 271 dwellings, retail and office space. A total of 278 parking spaces are proposed accessed off Cremorne Street. The southern Cremorne Street access on the review site will be designed in a way that links Stages 1 and 2 both practically and aesthetically.

## OUR FINDINGS

### Is the application piecemeal?

42. The Council submits that the applicant's approach to obtaining planning approvals for the site is problematic because there are aspects of the Stage 1 application that are reliant on approvals being obtained for Stages 2 and 3, neither of which are before us and are in the early phase of consideration by the Council. The Council submits that the granting of a permit for Stage 1 would pre-empt consideration of the Stage 2 and 3 applications. While acknowledging that the staging of large developments is a common and accepted practice, the attempt to obtain approval for Stage 1 in isolation from Stages 2 and 3 is, in the Council's submission, prejudicial to the orderly planning of the area, and amounts to a piecemeal application.
43. The Council identifies a number of features of the Stage 1 application that have ramifications for our consideration of the application. These are summarised below:
- The various setbacks along the southern boundary abutting the land at 17-21 Harcourt Parade (Stage 3) which is currently in a commercial zone and is subject to a combined rezoning and permit application.
  - The setbacks to one of the retained buildings (building 4) and the east-west link through that heritage building, an outcome that is wholly dependent on decisions made by Heritage Victoria.
  - Assumptions being made about what will happen with land and buildings in Stage 2 (building 4 or the silos) which are also reliant on decisions being made by Heritage Victoria.
  - The extent to which the Nylex sign will retain its prominence given that it will be dwarfed by development in Stage 1 and its proposed elevation as part of Stage 2 is also dependent on decisions made by both Council and Heritage Victoria.

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<sup>7</sup> Permit No. PL08/0921 issued 4 August 2009

- Conditions seeking to impose requirements for traffic works and streetscape works relevant to the whole site in connection with a permit for Stage 1.
  - The quarantining of 90 car parking spaces for Stage 2 as part of Stage 1.
44. The Executive Director of Heritage Victoria's refusal of the application for Stage 1 works is also a factor that the Council and objectors submit contributes to and reinforces their view that it is inappropriate for the application to be considered in isolation from and in advance of other applications.
45. In relation to this matter specifically, we reiterate our earlier comments that issues relevant under the heritage overlay that include the effect of the demolition of buildings and the proposed buildings and works on the natural or cultural significance of the heritage place, are not before us in this case. As we observed during the hearing, we appreciate the heritage significance of the site and acknowledge, as many of the witnesses did, that there is often a "blurring" of issues around the appropriateness of the proposal having regard to urban design and built form issues and heritage issues. Our consideration of the merits of this proposal and the appropriateness of the design must have regard to the surrounding built form context and the relevant local planning policies, and not heritage significance. The decision of the Executive Director of Heritage Victoria is of no consequence to the matters we have to decide.
46. Mr Montebello referred us to the decision of the Tribunal in *Rowcliffe*<sup>8</sup> in which the issue of piecemeal applications received detailed consideration. In that decision the Tribunal discussed the difficulties for decision makers created by applicants who pursue their proposals in a piecemeal manner. In broad terms, these difficulties include an inability to assess the global affect of impacts or change. In such proposals the Tribunal also identified the prospect of applicants gaining an advantage from proposing something less than what is ultimately proposed, while the community is disadvantaged in that a proper assessment of how the ultimate development of the subject land will transpire does not occur. The Tribunal commented that in these circumstances decision making is made harder, and more speculative<sup>9</sup>.
47. In *Rowcliffe* the Tribunal addressed the issue of piecemeal applications by focussing on the following three points:
- i Is there any risk to orderly planning in this application by excluding a portion of land from the proposal?
  - ii Is there any risk to orderly planning involving the excluded portion of the land, by excluding it from the subject proposal?

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<sup>8</sup> *Rowcliffe Pty Ltd v Stonnington CC* [2005] VCAT 1535

<sup>9</sup> [2005] VCAT 1535 paragraph 22

Alternately, is there any constraint of future discretion in respect of the excluded portion of the land?

- iii Is there any inherent unfairness to the public in splitting proposals? This adverts to their need to fight two proposals instead of one, to incur two sets of costs, two lots of time and labour.
48. In Rowcliffe the Tribunal analysed the application by reference to the legal principles for piecemeal applications established in *Pioneer Concrete (Qld) Pty Limited v Brisbane City Council & Ors*<sup>10</sup> and concluded that the application before it did not constitute a piecemeal application and granted a permit for the proposal.
  49. We agree that the approach adopted by the Tribunal in Rowcliffe is a sound and methodical way to proceed in the analysis of these matters and we have adopted that approach.
  50. With respect to the first point, in the application before us there is no excluded portion of land although only part of the land is the subject of this application. That part of the site that constitutes Stage 1 can be regarded as a self-contained planning unit because all of its parts are contained in the one application and it is not reliant on portions of the site that are not part of the application. We have been provided with information about the application for the balance of the land (Stage 2) and for Stage 3 and, notwithstanding their unresolved status, the information presented to us is sufficient to allow us to form a view on this point<sup>11</sup>.
  51. In relation to the second point, we are satisfied that there is no significant risk to orderly planning flowing from the consideration of the discrete part of the land contained in Stage 1 and there is no constraint on future discretion required in the consideration of Stages 2 and 3. We detail our findings with respect to the matters identified by the Council, in our assessment of the merits of the proposal. We are also influenced by the fact that Stage 2 of the application is subject to the same planning scheme controls that apply to Stage 1 and as such, the consideration of Stage 2 will be subject to the same assessment against policy and controls as Stage 1. With respect to Stage 3, the merits of that proposal will not escape rigorous scrutiny because it will be subject to assessment under the combined planning scheme amendment and permit application.
  52. Our finding on these points are relevant to the alleged unfairness associated with the splitting of the proposal over the three stages. Each of the subsequent stages will be assessed on their merits in accordance with relevant policies and planning scheme provisions. The grant of a permit for

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<sup>10</sup> [1980] 145 CLR 485, @ 504 per Stephen J.

<sup>11</sup> We have also been provided with information in the form a "Precinct Master Plan" that encapsulates Stages 1, 2 and 3, which was introduced through the evidence of Mr Sutherland. The Precinct Master Plan is broadly consistent with what is depicted in the Stage 2 and 3 applications but it has no statutory basis, and we are not being asked to endorse it as the basis for the development of the land as a whole.

Stage 1 will be a relevant matter in the consideration of those applications, but the continued involvement of interested and affected parties in the consideration of Stage 2 and 3 applications is not compromised because of our consideration Stage 1.

### **Is the southern tower too high?**

53. As previously described, it is proposed to construct a 13 storey building including a four storey podium at the corner of Gough and Cremorne Streets, and an 18 storey elliptical configured tower south of the malt house and oriented east – west across the site’s southern boundary. The podium at its highest level rises to a height of RL 17<sup>12</sup> (about AHD 22) which is consistent with the recommended building heights in the Incorporated Document for that part of the site along the Cremorne and Gough Street frontages. The 13 storey building rises to a height of AHD 47.35 which exceeds the recommended building height of RL 38 for the balance of the site, by the equivalent of around one and a half storeys. The 18 storey tower rises to a height of AHD 62.25 including the roof pavilion. The lift overrun rises to about AHD 65.
54. The acceptability of the height of the southern tower at 18 storeys was the subject of extensive submissions and evidence.
55. The applicant submits that the height of the tower and the degree to which it exceeds the RL 38 nominated in the Incorporated Document is acceptable because:
  - The CDZ3 contemplates the approval of buildings that vary from the recommended heights shown in the development in the development plan that forms part of the Incorporated Document. The discretion available to grant a permit for development, which is not generally in accordance with the development plan, or for variations to the plan that are “not minor”, provides scope to consider significant departures from the recommended heights.
  - When exercising the discretion provided by CDZ3, the design principles in the Incorporated Document are to be considered as is the totality of the planning policy framework as it applies to the site. The height of the tower responds well to those design principles that seek to:
    - Maintain a low rise edge to the Gough Street residential interface.

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<sup>12</sup> The application plans reference the various RL heights as being measured from the corner of Gough Street and Cremorne Street. We have proceeded on the basis that this is an accurate depiction of the RL’s nominated in the Incorporated Document. There were no submissions to the contrary on this point.

- Provide for tall development at the eastern end of the site (within which the southern tower is proposed) consistent with the built forms adjacent to the east (ERA Apartments).
  - Maintain the prominence and landmark qualities of the Nylex sign and clock and the silos that support this feature.
  - Strengthen the built form edge to the Monash Freeway and the Yarra River whilst allowing for access to sky and long distance views.
  - Provide for an appropriate stepped built form along the Gough Street frontage.
- Since 2008 when the site was rezoned CDZ3, there has been a substantial move in planning policy. Recent changes in policy have responded to demographic change and population growth and at the same time, there has occurred a tightening of planning scheme controls over residential development opportunities in established residential areas throughout metropolitan Melbourne and the City of Yarra specifically. The combination of these events has created increased impetus for strategic development sites such as the review site to be developed to a scale and intensity that may not have been contemplated at the time the recommended heights were applied to the site.
  - The architectural expression of the two towers is of a high quality and the stepped height profile between the two creates an appropriate and desirable delineation both from the podium and from each other, an outcome needed to articulate the design and create an architectural composition capable of being read as a defined object in the urban context.
  - The proposal's impact on the Nylex sign is limited to certain localised vantage points. When viewed from some vantage points to the west, the development provides an acceptable backdrop.
  - The tower's overshadowing impacts on the Yarra River are confined to a relatively short period of the day at the winter solstice and, having regard to the currently highly urbanised northern bank of the river at this point, and the strategic development site status of the review site, the impact is acceptable.
  - The tower's overshadowing impact on the amenity of the ERA apartments is acceptable in the context of the review site's status as a strategic development site and its inner urban context.
56. The Victorian planning system is to a large extent a performance based system, i.e. a system in which applications are assessed having regard to outcomes encouraged by the planning scheme, rather than being assessed against a set of rules and regulations.



57. In this case a recommended building height of RL 38 is specified in the development plan for this part of the site. The southern tower exceeds the recommended height by a significant amount, comprising 5 levels and the roof pavilion or about 19.25m (excluding the lift overrun).
58. Ms Peterson in her evidence commented that her research had failed to identify any basis for the nomination of a recommended height of RL 38 in the Incorporated Document. Mr Montebello however referred us to the documentation prepared by the Hansen Partnership in 2006 that accompanied the application to rezone the site to CDZ3<sup>13</sup>. That report recommended a height of RL 38.35 for this part of the site and there is a discussion about building heights generally and the rationale for the recommended heights. In relation to the eastern end of the total site in which the southern tower is proposed, the report comments that a podium with higher buildings above allows continuation of the traditional hard urban edge to Cremorne Street whilst ensuring the scale of the building at its base relates to nearby smaller buildings in Gough Street. The report states that the upper level setbacks provide a transition in scale, with the new built form at the eastern end sited in the “view shadow” of the approved 10 storey building to the east of the site (the ERA apartments). Building heights at maximum RL38.35 “will be clearly subservient to the silo buildings and the existing (Nylex) sign. The report states that the scale and siting of the new built form proposed at that time on the eastern portion of the site “has been carefully designed so as not to restrict wider views to the 1960s silos and the Nylex sign”.
59. The Hansen Report does not form part of the planning scheme. It does however provide useful background information underlying the rezoning of the site and the form and content of the CDZ3. The relevance of the Hansen Report is limited to that extent. What the report does illustrate is that the adoption of the recommended heights and the setbacks in the Incorporated Document, do not appear to have been applied in an arbitrary manner, but rather as a result of a contextual analysis of the site’s opportunities and constraints.
60. Of course, it is not the Tribunal’s role to examine or explore the events, circumstances and rationale underpinning the adoption of the CDZ3 and the Incorporated Document to this site. We must apply the planning scheme as we find it at the time we make our decision. Our analysis of the Hansen Report and the Explanatory Report for Amendment C101 has been undertaken in order to test Ms Peterson’s evidence that she was not aware of any objective basis for the specification of RL 38 in the Incorporated

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<sup>13</sup> Combined Rezoning and Stage 1 Planning Permit Application for a mixed Use Development at Richmond Maltings, 2 Gough Street, Cremorne. Town Planning Report Prepared on behalf of the Richmond Malt Pty Ltd by Hansen Partnership, September 2006. 44. The documentation included an application for a combined rezoning and planning permit. Amendment C101 to the planning scheme rezoned to site to CDZ3 and included the Incorporated document.

Document, and by inference, that there is therefore no objective basis for it. We do not agree with her on this point.

61. As we have discussed above, the planning regime as it applies to the review site recognises it as a strategic redevelopment site and also seeks to reconcile that status with the site's varied development constraints. The inclusion of the recommended building heights in the Incorporated Document constitutes an important element in the reconciling of the planning scheme's competing policies and objectives with the site's attributes and constraints.
62. There is a discretion to exceed the recommended height but the extent to which this proposal exceeds that recommended height is not acceptable. We have reached that conclusion because of the following impacts associated with the height of the southern tower above the RL 38:
  - At 18 storeys, the southern tower does not successfully achieve a transition in scale from built forms to the east and in the wider Cremorne precinct. This is an outcome encouraged by the Design Principles in the Incorporated Document and the proposal is an unacceptable response to that outcome.
  - At 18 storeys, the southern tower has an impact on the visual prominence and landmark qualities of the Nylex sign and clock and the 1960s silos that support this structure. Our analysis on this issue is, of course, complicated by the fact that the Nylex sign is located in Stage 2 of the site's overall development and what is proposed in that stage for the sign is not before us. Additionally, the silos on which the sign is located are subject to a permit exemption for demolition under the Victorian Heritage Register listing for Richmond Maltings. This too is not before us. We have therefore analysed the impact of the proposal on the Nylex sign assuming its retention at its existing location and height. There are localised and short distance views of the sign that will be disrupted by the southern tower but these views are likely to be disrupted in any event by a tower constructed at RL 38. The most significant impact will be when viewed more distantly from the west. In these views the southern tower will form a backdrop to the Nylex sign, replacing the existing clear sky against which the Nylex sign is seen at the moment. We have not concluded that this impact is by itself unacceptable, but the prominence of the sign is impacted. It is an impact that flows directly from the proposed height of the southern tower above the recommended height for the site. It is an impact specifically identified in the Design Principles.
  - At 18 storeys, the proposed tower has a shadow impact on the west facing apartments in the ERA apartments. We have been provided with 3D shadow diagrams which show the shadow impact of the

proposal on the ERA apartments. Ms Peterson provided an accurate description of what is conveyed in those diagrams. It was her evidence that some apartments at the lower levels above the podium will retain about 1.5 to 2 hours access to sunlight between midday and 2.00 pm (at the equinox). Other apartments at higher levels will achieve greater access to sunlight. Ms Petersen's evidence is that this is acceptable in an inner urban context in which significant redevelopment is encouraged<sup>14</sup>. Part of the difficulty in assessing the acceptability of this impact is the lack of specific direction provided by the planning scheme about shadow impacts in a context such as that confronting us in this case. The Design Guidelines for Higher Density Residential Development discusses maintaining sunlight and daylight in accordance with Clause 55 of the planning scheme, but Clause 55 does not apply to developments above 4 storeys and does not provide a practical basis to assess this proposal. There is however a recommended height applying to this site and we have concluded that the additional height above the recommended height contributes to an impact we are unable to support.

63. With respect to the impact of the southern tower on the Yarra River, we received extensive submissions and evidence from both the Council and the applicant focussing primarily on the visual impact and overshadowing considerations. Clause 12.05-2 of the SPPF is a policy introduced in December 2015. The policy applies to the length of the River including the review site and its objective is to:

Maintain and enhance the natural landscape character of the Yarra River corridor in which the topography, waterway, banks and tree canopy are dominant features providing a highly valued, secluded, natural environment for the enjoyment of the public.

64. Strategies focus on strengthening and enhancing the river's natural environment, heritage and overall health. There is a focus on the River's landscape, natural topography and vegetation and natural setting. With respect to overshadowing there is a strategy to avoid overshadowing of the river, its banks and adjacent public open space to ensure that the amenity of the public realm is maintained year round.
65. The Swan Street Structure Plan includes a provision that the north bank of the River not be overshadowed between 11.00 am and 2.00 pm at the winter solstice.
66. The evidence on this matter is very mixed. Mr Holdsworth is unconcerned by the proposal's impact on the river, while Mr Negri's evidence is highly

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<sup>14</sup> We note that part of Ms Peterson's evidence about the acceptability of 1.5 to 2 hours access to sunlight was based on an erroneous interpretation of a Tribunal decision (*Arundel Group v Boroondara CC & Ors* [2012] VCAT 1073). In that case the Tribunal found that 1.5 to 2 hours access to sunlight was acceptable because it maintained an existing condition. The Tribunal's decision cannot be interpreted to apply more broadly to establish the acceptability of sunlight to apartment buildings.

qualified on this point. The planning and design witnesses called by the applicant are generally unconcerned by the proposal's impact. Mr McGauran however remains strident in his criticism on this aspect of the proposal. His concern relates to the 9.00 am winter solstice shadow that extends to the southern bank. We note that part of the southern bank is already shadow affected at that time, and the approved office development at 17-21 Harcourt Street will also cast a shadow on the southern bank at that time.

67. Any consideration of the proposal's impact on the River, and in particular the application of Clause 12.05-2 must have regard to the very robust, urban and industrial character of the River's northern edge, comprising the Monash Freeway and remnant industrial buildings, and the planning scheme provisions that provide for the redevelopment of these sites incorporating substantial built forms.
68. Whilst we have concluded that the height of the southern tower is not acceptable for the reasons outlined above, the additional overshadowing of the Yarra River is not an inconsequential consideration. The shadow impact of the tower is not such that we would require the height of the tower to be lowered only because of that impact. However, we do observe that the cumulative impacts of Stages 2 and 3 and the development of other sites along Cremorne's river edge, is a matter that will require careful consideration and must be addressed if policy protecting the amenity of the Yarra River is to be given effect to.
69. Our assessment of the height of the southern tower relate to a series of impacts of the proposed height above the RL 38 that, taken together, have led us to conclude that the extent to which the tower exceeds the RL 38 is not justified. Our findings should not be interpreted as a finding that a building would or would not be acceptable on this site. Such a finding would be contrary to provisions of the planning scheme and the discretion provided by CDZ3 to allow variations to the Incorporated Document. We have focussed on the proposal that is before us and for the reasons explained above, we have concluded that the height of the southern tower is not acceptable.
70. We have not specified a height that we consider acceptable, nor have we identified the number of levels that need to be removed to achieve an acceptable outcome. We note the evidence of Mr McGauran and Mr Holdsworth that a reduction in height by removing four levels is necessary. We acknowledge that such a reduction would in all likelihood address our concerns, but a lesser reduction may also be acceptable. The current variation in height between the two towers is a successful compositional element. We are therefore content to provide the applicant with the opportunity to demonstrate that a lesser reduction can respond meaningfully to the issues identified by us.

**Does the proposal manage traffic impacts in an acceptable manner and is there too much car parking?**

71. The Council and the objectors express concerns about the impact of the proposal on both the local street network and the arterial road network. The Council submits that these impacts are most appropriately assessed in an holistic manner, having regard to the cumulative impacts of Stages 1, 2 and 3 and potentially other sites in Cremorne likely to be subject to redevelopment. The Council expresses concern that the staged approach to obtaining permits for the Maltings site compromises the ability of authorities including the Council and VicRoads to assess all the traffic impacts and impose appropriate conditions, restrictions and requirements for traffic mitigation works.
72. The Council's concerns that each stage of the site's development will be assessed in isolation are exaggerated. It is inconceivable that an assessment of Stages 2 and 3 for example, will not have regard to what is ultimately approved in Stage 1. The Council's fear that the applicant will seek to constrain consideration of each subsequent stage to the impacts associated with only that stage presents a narrow perspective on the planning system and on the system's capacity to assess the merits of proposals in a comprehensive manner. We are confident that an alert Council and VicRoads will assess the cumulative impacts of each stage as they come forward for assessment.
73. The second observation we make about the Council's submission is that the strategic analysis of the cumulative traffic impacts of developments in the Cremorne precinct is a matter that is, at least partly, in the hands of the Council, and VicRoads. Notwithstanding the fact that the rezoning of the review site occurred in 2008, and that the wider Cremorne precinct has been earmarked for significant redevelopment for some years, we were not presented with any substantial strategic traffic analysis or related policy development for the precinct undertaken by the Council.
74. In this case, the major dispute between the Council and the applicant in relation to traffic management and car parking relates to the quantum of car parking provided for this proposal<sup>15</sup>. The Council submits that excessive parking is proposed and the provision of car parking should be reduced and greater emphasis placed on encouraging sustainable transport options such as the use of bicycles and scooters, walking and public transport.
75. The Council relied on the evidence of Ms Dunstan on these issues. It is Ms Dunstan's evidence that based on her empirical analysis, parking should be provided at a rate of 0.5 spaces per one bedroom apartment, 0.7 spaces per two bedroom apartment, 1 space per three bedroom apartment and 0.12

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<sup>15</sup> With respect to traffic management generally, the expert witnesses called by both the Council and the applicant agree that vehicle volumes generated by Stage 1 can be accommodated in the existing street network. VicRoads has not objected to the Stage 1 application.

spaces per dwelling for visitors<sup>16</sup>. The application of these rates to the residential component of the proposal equates to a parking provision of 148 spaces plus 33 for visitors (181 total).

76. The statutory requirement for parking under the CDZ3 generates a parking requirement for the residential component of 311 spaces.
77. The applicant proposes to provide 236 resident spaces (including the SOHO offices and apartments) plus 33 visitor spaces at the rate of 0.81 spaces per one bedroom apartment, 1.15 spaces for two bedroom apartments and 1.43 spaces for three bedroom apartments, plus resident visitor parking at 0.12 spaces per dwelling (269 total). It is the evidence of Mr Kiriakidis that this provision is consistent with his empirical analysis of parking demand generated by this proposal.
78. The areas of difference between the two witnesses relate to issues of public policy and the different approaches to undertaking empirical analysis of parking demand.
79. With respect to public policy, it is Ms Dunstan's evidence that there is support in the planning scheme at a broad policy level, for limiting car parking supply as a component of encouraging sustainable transport options and managing traffic generation impacts generally<sup>17</sup>. Clause 21.06 of the Municipal Strategic Statement (MSS) is relevant in this respect. It states that:

Parking availability is important for many people, however in Yarra unrestricted car use and parking is neither practical nor achievable. Car parking will be managed to optimise its use and to encourage sustainable transport options.

80. Clause 21.06-3 of the MSS states that new large developments are required to prepare and implement integrated transport plans to reduce the use of private cars and to encourage walking, cycling and public transport use.
81. Mr Kiriakidis acknowledges the public policy dimension of this issue but queries the extent to which such an approach is justified on this site, and the benefits associated with limiting parking generally. Mr Kiriakidis considers that the developer of the site is probably in the best position to assess the market demand for car parking.
82. On this aspect of the dispute, we are sympathetic to the Council's position and agree that there is at least high level policy support in the planning scheme for the approach advocated by the Council. We are troubled at the lack of local policy development on this issue, especially as it relates to the Cremorne precinct, and the review site specifically. There is for example no car parking overlay applicable to this site of the type that applies in parts

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<sup>16</sup> There is no dispute between the expert witnesses with respect to resident visitor parking and parking for commercial uses.

<sup>17</sup> See clause 18 of the State Planning Policy Framework.

of, for example, the City of Melbourne where maximum rates are specified and a permit required to exceed the maximum. There is no local policy in the planning scheme applying to Cremorne or the review site specifically of the type referred to us during the hearing<sup>18</sup> in which the Council, having analysed the issue, specifically encourages lower parking rates in new development, in the area affected by the policy.

83. The Swan Street Structure Plan<sup>19</sup> probably contains the strategic analysis that comes closest to representing a policy position of the type that would lend weight to the Council's submissions on this point. Largely it is a document that sets the scene for more detailed analysis and policy development at a local level. The Structure Plan does however address Cremorne and the various precincts that comprise it, and acknowledges that traffic congestion is likely to increase as development proceeds, and there is therefore a need to promote sustainable transport options. A range of objectives and strategies are recommended around this theme.
84. There is broad, although not unanimous, agreement between the parties about the contextual issues that inform decisions around the provision of car parking, and the need to encourage sustainable transport options as a means of addressing in part, traffic generation and congestion. Ms Dunstan described public transport access as "excellent" but Public Transport Victoria (PTV) in its response to the referral of the application commented that the site is not ideally located with regard to public transport and increased provision of public transport to the area is challenging. PTC further commented that the provision of car parking must be informed by the limited connection to public transport.
85. We have described previously the review site's proximity to the fixed rail network and we are satisfied that the site has reasonable access to public transport, enjoys access to bicycle infrastructure, is located in an area which exhibits "walkability" features, has access to an activity centre and is close to the Melbourne CAD. Ms Dunstan described the area as being subject to high levels of traffic congestion in a constrained street network. Mr Kiriakidis broadly agreed with that assessment. He stated that key roads providing access to Cremorne and the review site are at or approaching their practical capacities.
86. There is a wide range of initiatives needed to address the traffic congestion issues in Cremorne. Most of these initiatives are beyond the control of the applicant in this case, and are the responsibility of the Council and VicRoads. Limitations on the provision of car parking is however one component of a wider strategy necessary to address traffic congestion generally and, in Cremorne specifically, that does fall within the ambit of

<sup>18</sup> For example Clause 22.07 Whitehorse Planning Scheme : Box Hill Central Activities Centre.

<sup>19</sup> January 2014. The Structure Plan has been adopted by the Council but it has not been included in the planning scheme and there is no planning scheme amendment that could be regarded as seriously entertained that seeks to include it in the planning scheme.

the applicant's responsibility. Notwithstanding our reservations about the Council's lack of detailed policy analysis and development on this issue, the existing levels of congestion in Cremorne calls for an approach that at least begins the process of reducing the reliance on car dependency and encouraging increased use of alternative transport methods. The review site is one site where this approach can be usefully employed.

87. Our conclusions on this matter are primarily influenced by the policy considerations associated with the management of the proposal's contribution to the traffic congestion being encountered in Cremorne. We have also been usefully informed by the empirical analysis carried out by both Mr Kiriakidis and Ms Dunstan on parking demand. As we have discussed above, both witnesses came to different conclusions about the quantum of car parking generated by the proposal. The source of the differences derives from the use of ABS data and the method by which social housing is accounted for in the analysis of that data. It is not necessary for us to resolve the dispute between the witnesses by making findings about the analysis of ABS data. While the analysis by Mr Kiriakidis presents a parking rate more akin to the applicant's assessment of the market preference for parking, Ms Dunstan's analysis provides us with some comfort that a reduced provision based on lower rates, can at least contribute to encouraging alternative transport options, without compromising development viability.
88. The council is concerned about the provision of car parking in Stage 1 that are intended to be quarantined and ultimately form part of the parking provision for Stage 2. We do not share those concerns. Subject to the imposition of appropriate permit conditions the quarantining of those spaces can be accommodated. We are confident that appropriate conditions to give effect to this arrangement can be formulated.

### **Does the proposal provide for a diversity of housing options?**

89. The proposal provides for the following distribution of apartment types:
- One bedroom apartments: 207
  - Two bedroom apartments: 37
  - Three bedroom apartments: 14
  - SOHO apartments: 6 (5 x 2 bedroom and 1 x 3 bedroom).
90. The council and the objectors submit that there is an unacceptable concentration of one bedroom apartments and that planning scheme policies aimed at facilitating a diversity of housing options is not achieved by this proposal<sup>20</sup>.

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<sup>20</sup> Clause 16 SPPF and Clause 21.04-1 MSS of the Yarra Planning Scheme.



91. We share those concerns. In a large development in excess of 260 apartments a concentration of 80% of single bedroom apartments is not consistent with policy outcomes encouraging housing diversity. The applicant's evidence in support of the high proportion of single bedroom apartments is that it reflects the applicant's assessment of market demand. Increasing the proportion of 2 and 3 bedroom apartments also impacts on affordability issues.
92. We find this evidence unsatisfactory because while market preference and affordability issues are relevant and important issues, so too is planning policy that encourages diversity of housing options in developments of this type and scale. We do not accept the proposition that larger apartments can or will be provided in future stages.
93. The *Design Guidelines for Higher Density Residential Development*<sup>21</sup> contains an Element relating to Dwelling Diversity. Objective 5.1 is to *provide a range of dwellings sizes and types in higher density residential developments*. Design suggestion 5.1.1 calls for *a mix of dwelling types particularly in larger residential developments (e.g. to suit single people, family groups of varying sizes, students, the elderly, people of limited mobility and people of low to moderate incomes)*.
94. The objective is worthy but not especially helpful in terms of providing specific guidance about what might constitute an acceptable distribution of dwelling types and sizes. The difficulty confronting us therefore is the lack of specificity in planning schemes about what constitutes an appropriate distribution of apartment sizes.
95. It would have been of assistance to us if the evidence presented on behalf of the applicant at least attempted to provide an analysis of housing diversity issues that balanced policy objectives with the applicant's assessment of market preference. We note however that Professor Goad, who gave evidence for the applicant, did express concern about the high concentration of 1 bedroom apartments.
96. Mr McGuaran in his evidence recommended amendments to the internal layout so that as a base case 25% of apartments are capable of being redesigned or combined to provide larger apartments in the event that the market dictates a higher proportion of larger apartments.
97. We are unable to be specific about the changes needed to achieve an acceptable outcome, other than to say we regard Mr McGuaran's recommendation as an absolute minimum level of change we might consider acceptable.

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<sup>21</sup> Department of Sustainability and Environment, 2004. This is a reference document to Clause 15.01-2 and is to be used in assessing the design residential development of five or more storeys.

## **Other Amendments**

89. In addition to the matters identified above, we have also identified a series of additional changes that ought to be incorporated into any amended plans. Some of these changes were identified during the course of the hearing and were accepted by the applicant. The applicant disputes other changes suggested during the hearing. Some of the changes are quite detailed and although some were subject to extensive submissions and evidence, we record below only briefly our findings about whether we consider them necessary.

### Changes accepted by the applicant

90. Each of the following changes can be readily incorporated into amended plans and we consider that each change is acceptable and addresses to some extent issues raised during the hearing.
- a Widening of the footpath along the Gough Street and Cremorne Street frontages by at least 1 metre.
  - b Removal of the walls currently proposed to be retained at the corner of Gough Cremorne Streets, with the purpose of opening up that corner and increasing site transparency.
  - c Removal of the retained parts of the wall at the north east corner of the north south lane at the Gough Street entrance.
  - d Changes to the loading bay including imposing restrictions on its use, its designation as a “zoned area” and the removal of the refuse services area.
  - e Providing minimum floor to ceiling heights in the apartments of 2.65m and no less than 2.4m where bulk heads are necessary.
  - f Adopting changes to the car park layout generally in accordance with the evidence of Ms Dunstan.
  - g Increasing the width of the midpoint of the east west lane to the south of building B4 to 3.25m.
  - h The removal of six car parking spaces at each level of the podium car park to improve the proposal’s interface to the south.
  - i Clarification that all apartments are designed to meet AS/NZS 2107:2000 Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors.

### Further changes required but not conceded by the applicant

91. The following matters relate to issues about which the applicant does not agree are necessary but which are capable of being incorporated into amended plans. We have concluded that each of these changes are

necessary, for the reasons previously stated or for the reasons outlined under each point.

- a A reduction in the height of the southern tower, and any consequential changes that derive from that change.
- b The rearrangement of the north – south lane to relocate at least some of the SOHO offices and apartments to the eastern side of the lane. This change would have the benefit of exposing the eastern elevation of building B4 as contemplated in the development plan and design principles of the Incorporated document, and would also assist in contributing to increased activation of the lane by minimising the presentation of the car park wall to the lane. Removing the built form immediately adjacent to building 4 would allow more flexibility in development opportunities for that building. We record here that the north south lane ought to adopt a configuration that provides clear vision of sight through the site, to the extent possible. This configuration is preferable to the “dog leg” arrangement pursued by the Council, and is consistent with the Safer Design Guidelines<sup>22</sup>.
- c Residential car parking provided at a rate consistent with the evidence of Ms Dunstan:
  - 0.5 spaces per one bedroom apartment
  - 0.7 spaces per two bedroom apartment
  - 1 space per three bedroom apartment
  - 0.12 spaces per dwelling for visitors
- d The provision of a greater diversity of apartment types and sizes to better achieve housing diversity objectives.

## CONCLUSION

92. For the reasons explained above, we do not find the proposal as presented at the hearing delivers an acceptable planning outcome on the review site.
93. We have provided the applicant with the opportunity to prepare amended plans to address the concerns raised by us.
94. We are not persuaded that the powers available to us to remit the application under S.51(2) VCAT Act or to invite the Council to reconsider the application under S.51A of the Act are appropriately applied in the circumstances of this case. The Council’s submission in support of this approach was largely predicated on the application being found to be unacceptable because of its piecemeal nature. We have not found in favour of the Council on this point and consequently remittal of the application is not appropriate.

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<sup>22</sup> Department of Sustainability and Environment, safer Design Guidelines for Victoria.

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**Laurie Hewet**  
**Senior Member**

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**Ann Keddie**  
**Member**