

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P266/2022  
PERMIT APPLICATION NO. PP1360-2020

### CATCHWORDS

Section 79 of the *Planning and Environment Act 1987*; Greater Geelong Planning Scheme; Mixed Use Zone; Significant Landscape Overlay SLO2; Heritage Overlay HO1618; West Fyans-Fyans Street Precinct Structure Plan; Interface with the Barwon River; Interface with Barwon Grange; Suitability of access; Site layout; Internal amenity.

### APPLICANTS

Desbrowe Developments Pty Ltd &  
Glengarry Developments Pty Ltd

### RESPONSIBLE AUTHORITY

Greater Geelong City Council

### RESPONDENTS

Geelong Rowing Association Inc.

Jeanne Yolette Nel

Joel Duggan

Louis De Koker

National Trust of Australia (Victoria)

Vanessa Whittem

### REFERRAL AUTHORITIES

Aboriginal Affairs Victoria

Barwon Region Water Corporation

Corangamite Catchment Management  
Authority (CCMA)

Country Fire Authority (CFA)

Department of Environment, Land, Water  
& Planning

Downer Utilities Australia Pty Ltd

Environment Protection Authority Victoria

Head, Transport for Victoria

Heritage Victoria (DELWP)

Powercor

### SUBJECT LAND

510 & 510A Latrobe Boulevard,  
NEWTOWN VIC 3220

### HEARING TYPE

Hearing

### DATES OF HEARING

19, 20, 21 September and 3, 4 October 2022

### DATE OF INTERIM ORDER

5 October 2022

### DATE OF FINAL ORDER

6 December 2022

### CITATION

Desbrowe Developments Pty Ltd v Greater  
Geelong CC [2022] VCAT 1392



## ORDER

### Amend permit application

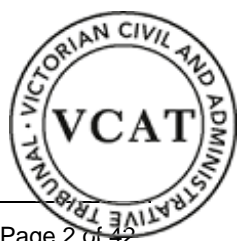
- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended:
  - By substituting for the permit application plans, the following plans filed with the Tribunal:
    - Prepared by: GKA Architects Pty Ltd.
    - Drawing nos.: Plans dated 2 August 2022 (Rev H ‘final VCAT plans’).
  - By amending the description of the permit application to ‘Partial demolition and alterations and additions to existing buildings, development of the land for the purpose of dwellings and café, removal of vegetation (including trees) and reduction in car parking (associated with the purpose of food and drink premises (café)’ based on the following permit triggers:
    - Clause 32.04-6 For the construction of multiple dwellings in the Mixed Use Zone.
    - Clause 32.04-9 For the construction of a building and carrying out of works in association with a section 2 use.
    - Clause 43.01-1 For the removal of trees, construction of buildings and carrying out works in HO1618.
    - Clause 43.01-1 For partial demolition, construction of fences and alterations and additions to existing buildings in HO1305.
    - Clause 43.02-2 For the construction of a building and for the construction and carrying out of works in the Design & Development Overlay, Schedule 26.
    - Clause 43.03-2 For the construction of a building, the construction and carrying out of works and the removal of vegetation (including trees) in the Significant Landscape Overlay, Schedule 2.
    - Clause 44.03-2 For works within the Floodway Overlay.
    - Clause 52.06-3 For a reduction in car parking for the food and drink premises.

### No permit granted

- 2 In application P266/2022, the decision of the responsible authority is affirmed.
- 3 In planning permit application PP1360-2020, no permit is granted.

**Margaret Baird**  
Senior Member

**Stephen Axford**  
Member



## APPEARANCES

For Desbrowe Developments Pty Ltd & Glengarry Developments Pty Ltd ( <b>applicants</b> )	<p>Mr J Cicero, solicitor, Best Hooper. Mr Cicero called the following persons to present expert evidence:</p> <ul style="list-style-type: none"><li>• Ms A Brady, heritage consultant.</li><li>• Ms C Dunstan, traffic engineer.</li><li>• Mr M Negri, town planner.</li><li>• Mr C Czarny, urban designer.</li><li>• Mr A Sheehan, engineer.</li><li>• Mr J Patrick, landscape architect.</li><li>• Mr K Stapleton, author of photomontages.</li></ul> <p>The project architect, Mr Greenwood, presented an overview of the amended plans.</p>
For Greater Geelong City Council ( <b>Council</b> )	Mr D Wong, solicitor, Planology.
For referral authorities	<p>Mr G Hayes for the Head, Transport for Victoria (<b>DoT</b>).</p> <p>No appearances by other referral authorities.</p>
For National Trust of Australia (Victoria)	Ms F Watson with Mrs J Bantow.
For Vanessa Whitem, Louis De Koker ad Jeanne Yolette Nel Koker	Ms V Whitem.
For Joel Duggan	Mr J Duggan.
For Geelong Rowing Association Inc.	Mr I Farran.



## INFORMATION

Description of proposal	Partial demolition and alterations to the existing building, construction of a mixed use development comprising 57 apartments and 17 townhouses and a food and drink premises (79m <sup>2</sup> ).
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> ( <b>Act</b> ) – to review the failure to grant a permit within the prescribed time. <sup>1</sup>
Planning scheme	Greater Geelong Planning Scheme ( <b>scheme</b> ).
Zone and overlays	Mixed Use Zone ( <b>MUZ</b> ). Design and Development Overlay – Schedule 26 ( <b>DDO26</b> ). Environmental Audit Overlay ( <b>EAO</b> ). Floodway Overlay – Schedule ( <b>FO</b> ) (in part). Heritage Overlay – Schedules HO1305 ( <b>HO1305</b> ) and HO1618 ( <b>HO1618</b> ). Significant Landscape Overlay – Schedule 2 ( <b>SLO2</b> ) (in part). Barwon River is in the Public Conservation and Resource Zone ( <b>PCRZ</b> ).
Permit requirements	Clause 32.04-6 For the construction of multiple dwellings in the Mixed Use Zone. Clause 32.04-9 For the construction of a building and carrying out of works in association with a section 2 use. Clause 43.01-1 For the removal of trees, construction of buildings and carrying out works in HO1618. Clause 43.01-1 For partial demolition, construction of fences and alterations and additions to existing buildings in HO1305. Clause 43.02-2 For the construction of a building and for the construction and carrying out of works in the Design and Development Overlay, Schedule 26. Clause 43.03-2 For the construction of a building, the construction and carrying out of works and the removal of vegetation (including trees) in the Significant Landscape Overlay, Schedule 2. Clause 44.03-2 For works within the Floodway Overlay. Clause 52.06-3 For a reduction in car parking for the food and drink premises.

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



Relevant scheme policies and provisions

Clauses 2.01, 2.02, 2.03, 2.04, 11.01-1S, 11.01-1R, 11.0-1S, 11.02-2S, 11.02-3S, 11.03-3S, 11.03-6S, 11.03-6L-04, 12.03-1S, 12.03-1L, 12.05-2S, 13.03-03-1S, 13.04-1S, 13.04-2S, 13.05-1S, 13.06-1S, 13.07-1S, 14.02-1S, 14.02-2S, 15.01-1S, 15.01-2S, 15.01-2L, 15.01-3S, 15.01-4, 15.01-5S, 15.03-1S, 15.03-1L, 15.03-2S, 16.01-1S, 16.01-1R, 16.01-1L-01, 32.04, 36.03, 43.01, 43.02, 44.03, 52.06, 52.34, 55 (applies to the proposed townhouses), 58 (applies to the proposed apartments), 65 and 71.

Incorporated documents are the 'West Fyans –Fyans Street Precinct Structure Plan (City of Greater Geelong, 2009)' and 'Woollen Mills Heritage Area Heritage Design Guidelines, City of Greater Geelong, June 2022'.

Land description<sup>2</sup>

The subject land comprises several lots, with a total area of 10,026m<sup>2</sup>. No. 510 Latrobe Boulevard contains a heritage building, formerly part of the Allied Woollen Mills. The balance of the land is vacant but once contained substantial buildings as part of the Allied Woollen Mills. The subject land is terraced, with an overall slope to the south towards its Barwon River frontage. It is accessed from Latrobe Boulevard via a 4 metre wide lane between two heritage buildings. The land abuts Barwon Grange to its west and a two level brick building (also formerly part of the Allied Woollen Mills) to its east. To the north are commercial properties and a two storey building erected as a dwelling.



Tribunal inspection

Prior to the hearing, as parties were advised at the start of the hearing. In addition, the Tribunal undertook an unaccompanied inspection on 27 September 2022.

<sup>2</sup> Aerial image from Mr Czarny's evidence, Tribunal Book page (TB) TB258.



## REASONS<sup>3</sup>

### INTRODUCTION

- 1 The applicants wish to develop a large, terraced, riverfront, site at Nos. 510 and 510A Latrobe Boulevard, Newtown (**subject land**) for a mixed-use project. As the Greater Geelong City Council (**Council**) failed to grant a permit within the prescribed time under the Act, the applicants have applied to the Tribunal seeking planning approval and the issue of a permit. The Council and respondents oppose a planning permit being granted.
- 2 Since lodging the application for review, the applicants have applied to amend the permit application with revised plans.<sup>4</sup> We have amended the permit application without any objection by any party or other person.

### PROPOSAL

- 3 The project comprises a small food and drink premises fronting the Barwon River and lots with townhouses and apartments (Lots A, B, C, D, E, F, G, H, K and L). The buildings vary from two to five storeys in form. The tallest (in Lot E) is centrally located on the land, with development in the surrounding lots stepping down in height. Lots A, G, F and K comprise two storey buildings. Lots B, C, D and H comprise three storey buildings. Lot L is four storeys. Access from Latrobe Boulevard leads to two cul-de-sacs with a mix of garages and three basement/sub-basement parking areas.<sup>5</sup>

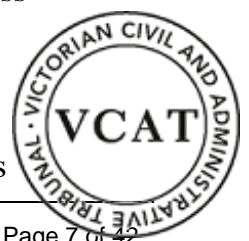


- 3 The submissions and evidence of the parties, supporting exhibits and statements of grounds have all been considered in the determination of the proceeding. In accordance with the Tribunal's practice, not all of this material will be cited or referred to in these reasons.
- 4 TB 369 sets out the changes.
- 5 An extract from the site plan, TP07 Rev H, TB380.



## OVERVIEW OF PARTIES' POSITIONS

- 4 The applicants rely on expert evidence in support of the application and their position that the proposal represents an acceptable and orderly planning outcome. They say given the strategic planning outcomes sought for the subject land and the considered response the proposal has to the site's context and surrounds, notably the Barwon River and Barwon Grange, the proposal is appropriate.
- 5 Through its built form and landscaping, the applicants submit the proposal takes advantage of the strategic context of the land. The proposal is responsive to the visual landscape and existing amenity of the surrounding area. In addition, the proposal provides an acceptable response with respect to heritage, stormwater, traffic, car parking and access considerations.
- 6 The Council opposes the grant of a permit. It has two key issues. These are the presentation to the Barwon River and the suitability of the proposed access into the site. The Council does not take issue with the built form in terms of its overall height and architectural presentation.
- 7 In addition to matters relating to the relevant permissions required for the proposal, and the need for various land owner consents, the Council considers the permit application does not adequately respond to the preferred character outlined in the MUZ, DDO26, SLO2, West Fyans Structure Plan and other parts of the scheme. It says although the strategic policy settings encourage intensification in this area including heights up to five storeys, the subject site has particular constraints that place limits on the extent of development that would be acceptable.
- 8 The Council is particularly concerned about potential visual impacts of the development to the River corridor, primarily because of the inadequate landscape response to this interface. It says the proposal fails to achieve public safety (including with respect to access, parking and pedestrian movement) and an appropriate level of amenity (including with respect to clauses 55 and 58 of the scheme). In the Council's view, it has not adequately been demonstrated that the development has been designed to cater for emergency, waste and delivery vehicle access, nor how the heritage buildings can be protected from traffic movement. Further, arrangements for stormwater management are not resolved.
- 9 The referral authority, DoT, is satisfied (with changes it requests) that the proposal will contribute to road and transport safety. It seeks the introduction of a short right turn lane on Fyans Street at the Latrobe Boulevard intersection with subsequent changes to line marking and potentially relocation of an adjacent bus stop. Justification for these changes is based on the short distance between the Fyans Street/Latrobe Terrace traffic signals and the intersection with Latrobe Boulevard along with the majority of vehicular movements using this intersection to access the subject land. The applicants accept the requested permit condition, although their traffic witness says the works are not required.
- 10 The National Trust has a wider range of concerns in its capacity as an adjacent property owner and more broadly with respect to the proposal's



response to the Heritage Overlay HO1618. It submits the development does not provide a sufficiently sensitive interface to Barwon Grange, and that the proposed massing and design response would detract from the heritage qualities of Barwon Grange. Issues arise with the inadequate protection of trees within Barwon Grange, the location of development on Lot G and communal open space, and the poor quality of the interfaces of Lots G and F to Barwon Grange and Lots A and B to the Barwon River. It also submits the vehicular entry/ exit arrangement is sub-standard.

- 11 Mr Duggan, whose family has owned the adjacent building at No. 512 Latrobe Boulevard for some 40 years, expresses a range of concerns including with respect to access, parking and the implications for a brick boundary wall. He raises additional issues with respect to lighting and contamination.
- 12 Ms Whittem also refers to concerns about emergency access. She opposes any fencing of the River and removal of large trees. Additional issues relate to the layout and internal amenity of the development, environmental sustainability outcomes, the lack of a playground and matters relating to private waste collection.
- 13 The Geelong Rowing Association Inc. does not oppose a permit. It seeks permit conditions with respect to noise abatement. This is to ensure that rowing training and competitions can continue on the Barwon River without complaints or pressure from incoming residents to curtail activities.

## **DECISION-MAKING**

- 14 The Tribunal must decide whether the proposal represents an acceptable outcome having regard to the relevant provisions and policies in the scheme. The provisions and policies are listed in the 'Information' section of these reasons. Not all are recited but all have been considered, together with all material filed and presented.
- 15 Clause 71.02-1 explains that Victorians have various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.
- 16 A responsible authority (and Tribunal on review) must take into account and give effect to the Planning Policy Framework when it makes a decision under the scheme.
- 17 In addressing 'Integrated decision-making', clause 71.02-3 includes:

The Planning Policy Framework operates together with the remainder of the scheme to deliver integrated decision making. Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. ...





## KEY ISSUES

- 18 The parties agree that the subject land is earmarked for redevelopment. We refer to this strategic context below. The key issues in this proceeding focus on the following:
- Documenting the required permit triggers.
  - Considering the use of the building at No. 510 Latrobe Boulevard.
  - Determining whether the proposed entry/exit arrangements to the land, internal road layout, and parking arrangements are acceptable.
  - Determining whether the interface with the Barwon River is acceptable including the built form and landscape response.
  - Determining whether the site layout and landscape design are acceptable.
  - Determining the acceptability of the heritage response including any impacts upon Barwon Grange to the site's west in terms of visual and amenity impacts, and tree protection.
  - Determining whether on-site amenity is acceptable for townhouses and apartments.
  - Determining whether the proposed servicing arrangements are acceptable including waste collection, stormwater and drainage.
- 19 Our reasons address these matters as well as additional issues and concerns raised in the submissions and evidence before us.

## STRATEGIC AND PLANNING CONTEXT

### Overview of the physical context

- 20 The subject land is a large, prominent, site fronting the north bank of the Barwon River. It is a location in Geelong, referred to as West Fyans-Fyans Street, where the strategic directions in the scheme state:<sup>6</sup>

The West Fyans-Fyans Street Precinct is located 1.5 kilometre south of Central Geelong on the northern banks of the Barwon River. The area has a diverse range of land uses including industrial, commercial and residential together with buildings of historical significance and a strong visual relationship with the Barwon River corridor. The area has also been identified as a key housing development area with the potential to undergo substantial change and redevelopment over time.

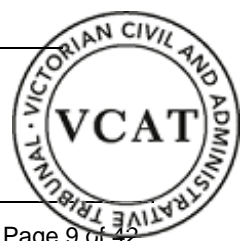
- 21 Consistent with this, the area is targeted through the scheme as a location where infill development is to be facilitated.<sup>7</sup>
- 22 Policy applies to the West Fyans-Fyans Street Precinct following a structure planning process.<sup>8</sup>

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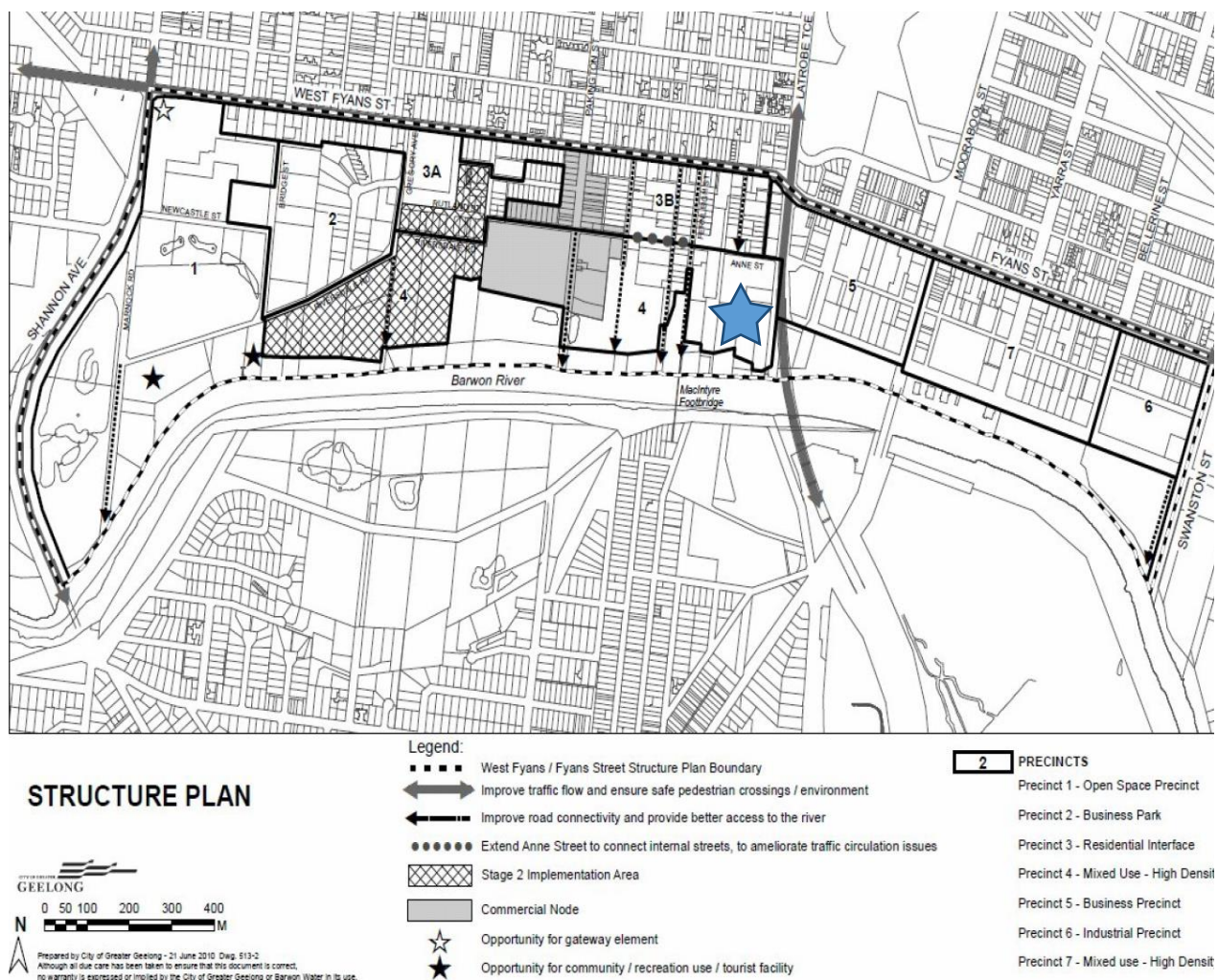
<sup>6</sup> Clause 02.03.01.

<sup>7</sup> Clause 16.01-1R.

<sup>8</sup> Clause 11.03-6L-04.



- 23 The 'West Fyans –Fyans Street Precinct Structure Plan (City of Greater Geelong, 2009)' is to be considered as relevant. It is an incorporated document in the scheme.<sup>9</sup> It is cited as a background document in DDO26 but is not included in the schedule to clause 72.08. We have been provided with other material relating to this process which we acknowledge.<sup>10</sup>
- 24 Clause 11.03-6L-04 identifies the West Fyans-Fyans Street Structure Plan area and includes the following general strategy:
- Ensure that development enhances the visual relationship with public open space areas, including the Barwon River.
- 25 The policy contains strategies for precincts that are identified on a map attached to clause 11.03-6L-04.<sup>11</sup> The subject land is in 'Mixed Use - High Density' Precinct 4. Precinct 4 includes properties surrounding the subject land. It does not include the public land on the River's frontage.



- 26 The strategies for Precinct 4 are:<sup>12</sup>

<sup>9</sup> Schedule 1 of clause 72.04. Background documents are addressed in clause 72.08.  
<sup>10</sup> Panel report with respect to Amendment C205, section 11 of the Tribunal Book, from TB2487.  
<sup>11</sup> The subject land has been notionally marked with a blue star.  
<sup>12</sup> Clause 11.03-6L-04.



Within the Commercial Node support a mix of accommodation and commercial activity including retail, food and drink premises, office, community and recreation uses

Limit non-residential uses outside the Industrial 1 Zone and the Commercial Node to areas with convenient access to and from the river environment.

Encourage medium to high density residential development in the remainder of the precinct.

Within Industrial 1 zoned areas support a range of activities complementary to the long-term mixed-use vision for the area including office, service industry, leisure and recreation activities.

Discourage industrial uses that do not meet Clause 53.10 buffer requirements.

Promote the adaptive reuse of heritage buildings including the former heritage woollen mills.

Design development to provide for or improve pedestrian and bicycle linkages to the river environment and the Rutland Street extension connecting to Pakington Street.

27 A suite of controls seek to give effect to this structure planning:

- The whole of the subject land and abutting land are in the MUZ.
- The whole of the subject land and abutting land are in the DDO26.
- The western part of the subject land and land further to the west are in the SLO2.<sup>13</sup>



- Much of the subject land is in the Woollen Mills Heritage Area (HO1618) with No. 510 Latrobe Terrace being the Collins Bros Pty Ltd (former Union Woollen Mill) (HO1305).
- The south-east tip of the subject land is in the FO.
- The whole of the subject land is in an EAO.

28 With respect to abutting land, it is also relevant to refer to:

<sup>13</sup> TB265.

- The public land abutting the Barwon River to the south in the PCRZ (comprising Council-owned and Corangamite Catchment Management Authority land).
- Adjacent land:
  - to the east in the Heritage Overlay HO1306 ‘Albion Woollen & Worsted Mills (former)’.
  - Barwon Grange to the west in HO108, in the Victorian Heritage Register H1102 and in HO1618.<sup>14</sup>

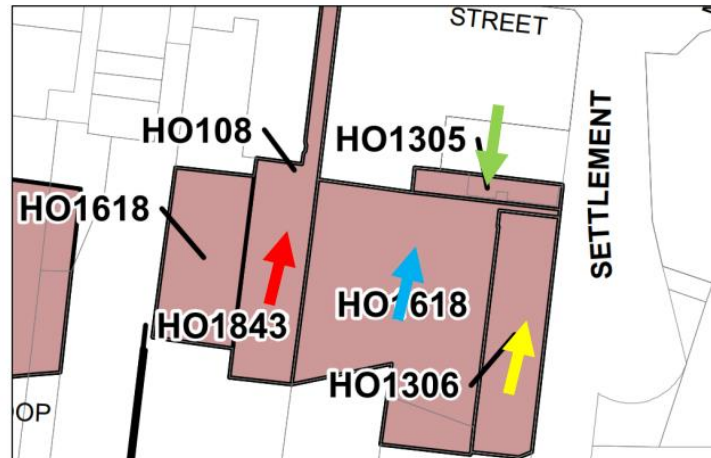


Figure 1 Extract from Greater Geelong Heritage Overlay map, showing Barwon Grange (red arrow), 510A Latrobe Boulevard (blue), 510 Latrobe Boulevard (green) and 512A-560A Latrobe Boulevard (yellow)

- 29 There is no doubt that significant redevelopment is sought for this location and that there is specific guidance about how this should occur, based on the controls and policies that apply. We refer to DDO26 in detail, below, when assessing the issues to be determined.
- 30 There have not been other major developments proposed or approved in relation to Mixed Use Precinct 4 or other nearby locations to which we have been referred.
- 31 The specific circumstances of the land and its environs must be carefully considered and understood. In this case, the future use and development of the subject land must take account of a complex range of physical and contextual considerations that include (but are not limited to):<sup>15</sup>
  - The substantial size of the land in an existing mixed land use setting.
  - The presence of a sewerage easement diagonally through the north-west portion of the land.
  - The only available road access being from Latrobe Boulevard via a 4 metre wide lane between two heritage buildings (Nos. 510 and 55 Latrobe Boulevard) both of which are former Woollen Mills. The heritage setting also includes the single storey Barwon Grange to the

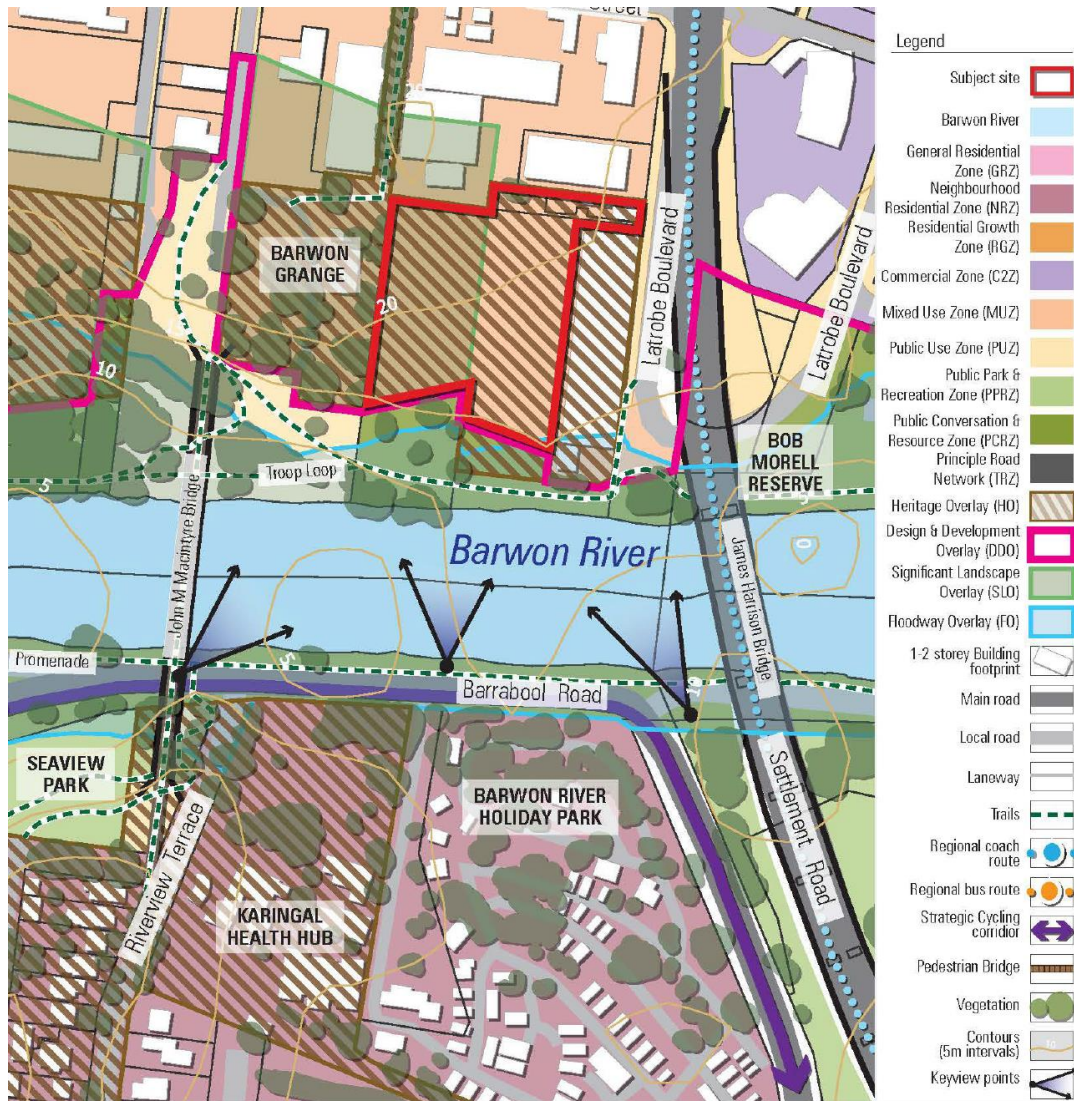
<sup>14</sup> TB210.

<sup>15</sup> TB263.



immediate west of the subject land, which sits in a garden setting with a number of mature trees and boundary planting. A Victorian villa is to the north (Rosebank) but not in a Heritage Overlay.

- The separate building at No. 510 Latrobe Boulevard. A permit issued in 2012<sup>16</sup> allowing the use of that land for restricted retail premises and a reduction in car parking for that use, plus signage.
- The complex site topography which includes terraced land to the west with an embankment to its south falling toward the Barwon River. There is an embankment within the site stepping to the lower eastern portion. There is a general fall toward the Barwon River. The lowest section is within the FO.
- The land's direct frontage to public land along the Barwon River where there are shared tracks along both north and south River banks; views to the subject land from a wide area including Seaview Park, John M Macintyre and James Harrison Bridges; and on-river activities such as training and competition rowing.

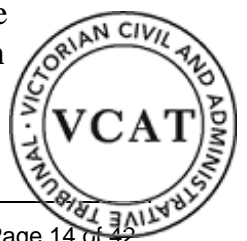


<sup>16</sup> Planning Permit 1109/2012, 12 November 2012, TB2636.



## PERMIT TRIGGERS

- 32 As a consequence of the Council's pre-filed written submissions, early in the proceeding Mr Cicero foreshadowed an amendment to the permit application to address the specific permit triggers based on the substituted plans. This matter was not fully resolved until toward the conclusion of the hearing when a list was agreed with the Council. This is reflected in the order we have made to amend the permit application.
- 33 The Council's grounds question whether all relevant permit triggers have been applied for. It identifies this issue in the context of a subdivision application that is currently before the Council. That permit application is to realign the common boundary between Nos. 510 and 510A Latrobe Boulevard and to create a carriageway easement over No. 510A Latrobe Boulevard in favour of No. 510 Latrobe Boulevard. Related to this is the need for any planning approvals with respect to drainage in the adjacent PCRZ (the nominated legal point of discharge) which the Council contends is prohibited. Further, private drain/s appear to traverse the subject land and easements may be required.
- 34 There is no suggestion that permit application PP1360/2020 cannot be made and determined. Rather, the concern is that the permit application is potentially piecemeal where there are multiple unresolved matters and approvals. We comment as follows should a permit issue in relation to permit application PP1360/2020:
- The subdivision application can be determined by the responsible authority and could be relevant to a range of future development proposals. As the Council's submission notes, permit conditions can ensure that the subdivision is completed before development in permit application PP1360/2020 is commenced.
  - Some unresolved drainage matters involve property law, for example, with respect to private drains that traverse the land which we were informed have been in place for many years. These are separate from this permit application process. There may be multiple ways these can be resolved including the creation of any necessary easements. They would need to be dealt with before any development in permit application PP1360/2020 is commenced.
  - If an issue arises with respect to approvals (or prohibitions) relating to the PCRZ land to drain the land to a legal point of discharge, then this may prevent the permit being acted upon. It would need to be dealt with before any development in permit application PP1360/2020 is commenced.
- 35 The legality of 'without prejudice' permit conditions in permit application PP1360/2020 that seek an easement relating to the private drain was raised at the hearing. It was the subject of our interim order. Subsequently, the Council advised that it reached agreement with the permit applicant with respect to the three relevant conditions. Consequently, it does not make submissions about the lawfulness or otherwise of those conditions.



## NO. 510 LATROBE BOULEVARD

36 The Council submits that it has not been adequately demonstrated that the proposed development is compatible with the existing use of the building located at No. 510 Latrobe Boulevard and will result in an orderly planning outcome required under clause 65.01 of the scheme. For example:

- It is unclear how this building is currently lawfully used and what the associated car parking requirements are with this use.
- How the development and proposed new parking layout for this building are compatible with the lawful use of this building.
- If there is sufficient room for waste to be stored and collected.
- Legal access rights between the development site and No. 510 Latrobe Boulevard given they are in separate ownership.

37 The following is known with respect to No. 510 Latrobe Boulevard:

- The most recent permit for No. 510 Latrobe Boulevard has been cited above.<sup>17</sup> This is for restricted retailing, a reduction in car parking and the display of three business identification signs. The officer report describes the proposal as to sell and display furniture and homewares, with a retail space and gallery, and continued use of a first floor dwelling. The plans included in the Tribunal Book show six car spaces, none in tandem. We note there is no stamp on those plans indicating that they are endorsed.
- From internet information presented at the hearing by Mr Wong, the current use of No. 510 Latrobe Boulevard may be offices in multiple tenancies.
- As noted there is the subdivision application that has been made to the responsible authority and is not before the Tribunal in this proceeding.

38 This permit application PP1360-2020:

- Seeks approval to make some alterations (with partial demolition) to the building at No. 510 Latrobe Boulevard under clause 43.01 (HO1305) and changes to the former substation.
- Does not apply to change the use of the building.
- Does not apply to vary any parking relating to any approved land use.
- Retains access to the building via the lane and provides ‘replacement’ parking in the form of eight car spaces in a tandem format.
- Refers to changes to titles on some of the plans such as TP11 Rev H with respect to the former substation which is to be used for pedestrian access, mail boxes and a heritage display, which are also contained in the applicants’ submission.<sup>18</sup>

<sup>17</sup> Paragraph 31 and footnote 16.

<sup>18</sup> For example, paragraph 40 of the applicant’s submission.



- 39 There is uncertainty with respect to the current use of No. 510 Latrobe Boulevard, and some title and related arrangements. The parking area at the rear does not appear readily accessible today. If the current use and/or development at No. 510 Latrobe Boulevard is unlawful or non-compliant, then these are matters to be rectified and/or the subject of enforcement. Permit application PP1360-2020 does not seek any permissions in relation to these matters. The permit application before us is not contingent on these matters being rectified, nor ownership and title arrangements.
- 40 However, it is relevant to us that the permit application makes changes to the land at No. 510 Latrobe Boulevard including ‘replacement’ car parking in part of Lot L, uses of part of the land to create shared access and re-purposing the small utility building (substation) for communal facilities and access. We refer to this below. We note there is no application to amend any endorsed plans or the permit for No. 510 Latrobe Boulevard.

## **ACCESS AND PARKING**

### **Key issues**

- 41 The key issues relate to:
- The proposed access from Latrobe Boulevard.
  - Works sought off-site by the referral authority.
  - Proposed arrangements for waste collection.
  - The internal road layout including for manoeuvrability and for servicing and emergency vehicles.
  - Access from dwellings to public land.
  - The permit application for a reduction in car parking for the café.
  - The extent and use of tandem car parking for the proposed dwellings.
  - The ‘replacement’ parking for No. 510 Latrobe Boulevard.

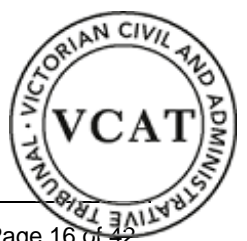
### **Scheme provisions and policies**

- 42 In addition to the strategic directions and policies set out earlier, and relevant provisions in clauses 52.06, 55, 58 and 65.01, clause 2.0 in DDO26 addresses parking, access, traffic and pedestrian movements, including:

#### **Car Parking and Vehicle Access**

Car parks and vehicle access to new development should be designed to:

- Incorporate landscaping and design elements which limit car parking spaces, structures and access ways from dominating street frontages.
- Locate and design car park entries to minimise adverse impacts on pedestrians.
- Where appropriate ensure that the layout of a site allows for the loading and unloading of goods to occur within the site and does not impact on the ability of vehicles to enter or exit the site.



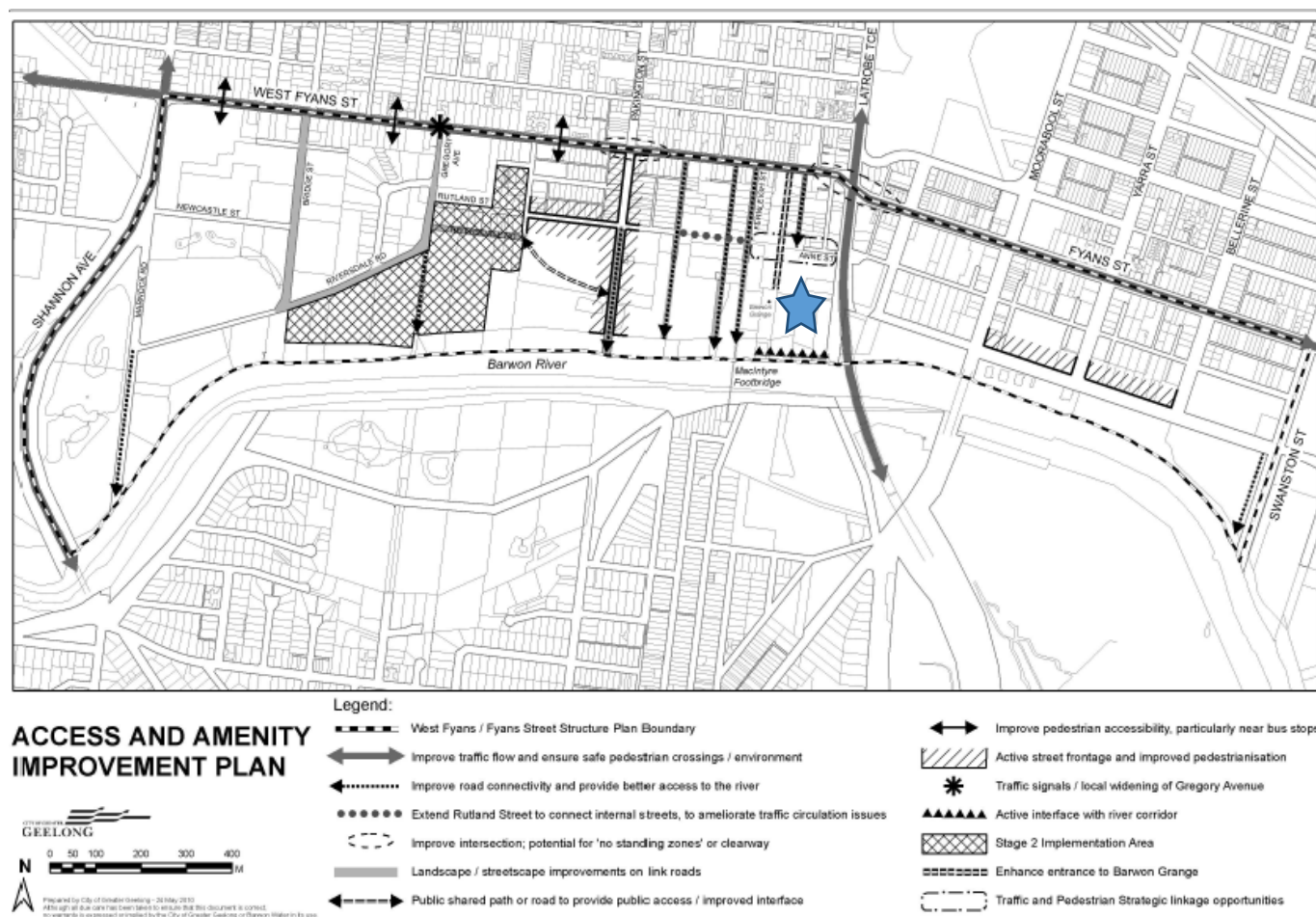
- Limit the need for vehicles to park on the street by providing car parking consistent with the requirements of Clauses 55 and 52.06. Where a variation to these requirements can be adequately justified a minimum of one car parking space per tenant must be provided on the site.

## Traffic and Pedestrian Movements

The design of new development should incorporate:

- Improved traffic connections between Woodstock Street, Westbourne Place and Anne Street to improve manoeuvrability and limit impacts on Latrobe Terrace and West Fyans Street as identified in Map 1 - Access and Amenity Improvement Plan.
- Pedestrian and bicycle connections between Anne, Woodstock and Fernleigh Streets as identified in Map 1 - Access and Amenity Improvement Plan.
- Pedestrian and bicycle connections through to the Barwon River Environs in the locations identified in Map 1 - Access and Amenity Improvement Plan.

43 The Access and Amenity Improvement Plan is below:<sup>19</sup>



<sup>19</sup> We have notionally marked the site with a blue star.



- 44 The Access and Amenity Improvement Plan notates ‘active interface with the river corridor’ with respect to the subject land. It shows a link adjacent to the land’s western boundary as ‘Enhance entrance to Barwon Grange’.

## Findings

### Latrobe Boulevard access

- 45 The Council and some objectors express concern about the proposed access arrangement having regard to the extent of vehicle traffic and shared use. Key issues identified by the Council, National Trust and Mr Duggan are:

- the configuration of the accessway;
- conflicts between vehicles (including service vehicles, such as for waste collection) entering and exiting the subject land;
- potential conflicts between vehicles, bicycles and pedestrians;
- alterations to the parking arrangements in Latrobe Boulevard;
- potential damage to side walls that frame the lane.

- 46 The only available vehicle and formal public access into the site is from Latrobe Boulevard, shown in the image below.<sup>20</sup> It is 4 metres wide.



- 47 The proposal involves a single lane entry/exit and the creation of a shared zone where a passing bay is provided on the north side of the lane. The substation is re-used as a pedestrian space, for access and facilities such as mail boxes. The concept is described in the image, below, which is an extract from Ms Dunstan’s evidence.<sup>21</sup> Her evidence further explains that while the width and location of the crossover has no impact on the provision of on-street car parking along Latrobe Boulevard, two car spaces are required to be removed opposite the crossover to facilitate vehicle access by an 8.8 metre truck. The bollards located on the northern edge of the accessway will need to be removable in order to facilitate the entry movements by 8.8 metre long truck.

<sup>20</sup> TB212.

<sup>21</sup> TB135.



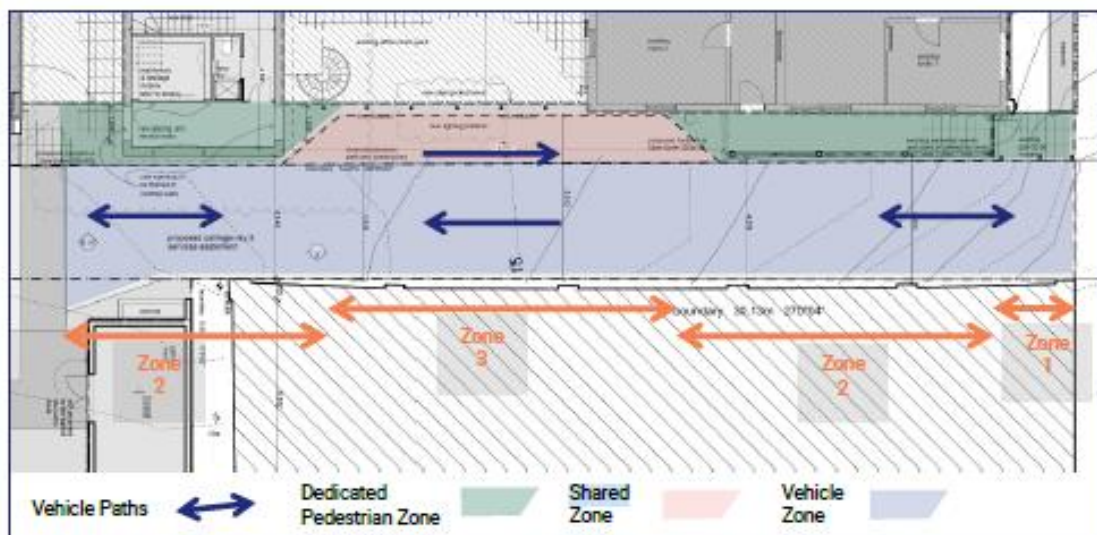
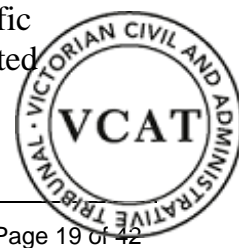


Figure 32: Details of Pedestrian Access at Site Entry

- 48 For detailed reasons set out in her evidence, Ms Dunstan regards the layout as acceptable, referring to the potential for conflicts as low, based on a probability assessment. She relies on traffic generation rates that are substantially lower than provided in a traffic assessment given to the Council when processing the permit application. Those rates were said to be inappropriate for this site, as they were based on growth area volumes. The single lane section is found to be acceptable in Ms Dunstan's evidence because:
- Two-way passing opportunities are available midway along the connection to Latrobe Boulevard that will enable the safe passing of two passenger vehicles.
  - The likelihood of conflicts within this area is minimal with more than 95% of movements not experiencing an opposing movement.
  - Of low traffic volumes along Latrobe Boulevard and the ability for through vehicles to pass any vehicle waiting to turn left into the site.
- 49 Even if the traffic higher volumes were adopted, Ms Dunstan's overall conclusion remains the same as to the acceptability of the layout having regard to relevant scheme provisions.
- 50 The shared zone arrangement is a solution that seeks to overcome the obvious difficulties and potential conflicts between users. There is no contrary expert evidence in this proceeding. The material before us shows that the proposal could be workable but will also have off-site and internal implications. For example, the logistics and impacts around the need to remove bollards for large trucks to enter and exit. Vehicles will be required to wait within the site, at the entry and potentially into Latrobe Boulevard. Larger vehicles will need rely on the full width of Latrobe Boulevard for turning movements. This may not be an issue today with respect to traffic volumes, as most sites have not been redeveloped to the intensity expected by DDO26. It may have longer term implications.



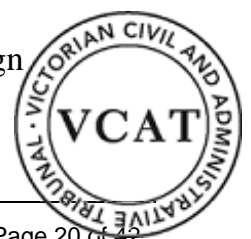
- 51 Ms Dunstan also refers to sightlines given the walls that frame the entry/exit, to which we refer again below.
- 52 Further, we agree with concerns about the need to protect the existing heritage fabric. We agree with the Council that bollards are an option, but they would further narrow the accessway. This would require further consideration as to what approach is suitable and how it can be implemented without creating additional challenges.
- 53 There is no alternative access unless other land was to form part of a larger project area. This is not, however, the application before us. A workable outcome needs to be found. The proposal presented in this proceeding goes a substantial way to satisfying us about the acceptability of the layout, however, there are some relevant outstanding matters that require consideration and resolution.

#### Works required by the referral authority

- 54 After review and receipt of further information, the DoT does not oppose a permit issuing subject to the provision of a short right turn lane on Fyans Street at the Latrobe Boulevard intersection with subsequent changes to line marking, at no cost to the authority.
- 55 Ms Dunstan's evidence is that the works are beneficial and would improve safety, but are not necessary as a consequence of the permit application. The proposal would not create a safety issue, cause deteriorated performance and would only introduce a low number of additional traffic volumes. A bus stop may not need to be relocated and on-street parking may not be impacted.
- 56 Even though the expert evidence is that the works are not required, the applicants agree to permit conditions as sought by the authority. The wording of which was accepted by the parties, including Mr Hayes.

#### Waste collection arrangements

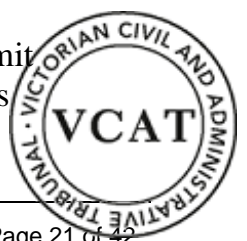
- 57 Separate to the questions of accessibility and manoeuvrability to which we refer elsewhere in these reasons, the Council questions the availability of a small waste collection vehicle for private collections on-site. In Council's experience, this waste vehicle size is not available in Geelong. The lack of suitable vehicles adds to its concerns about the internal operation of the site.
- 58 Some respondents support the Council's concerns, and also raise issues regarding the additional cost of private collection services.
- 59 Ms Dunstan's evidence is that the smaller scale garbage truck is available in the area and gave several examples of recent projects. In her view, the proposed Waste Management Plan (**WMP**) is typical for this type of development and would not impose any unusual costs or limitations on the proposed development.
- 60 Further, Mr Cicero later tabled a letter from consultant firm Leigh Design confirming that arrangements are in place to utilise the smaller size collection vehicle as detailed in the WMP.



- 61 We are satisfied that the private collection service proposed is appropriate for the scale of the development and is an acceptable arrangement for a development such as this. On the information provided by the applicants, there appears to be access to a small-sized collection service and we have proceeded on that basis. We are satisfied that the smaller waste vehicle as outlined in the WMP could operate effectively with some layout changes that we refer to next.

#### Internal access arrangements

- 62 The internal road layout was the subject of detailed consideration through the hearing. The issues are set out in the Council's submission and responded to through Ms Dunstan's evidence. The parties do not agree that the layout is acceptable with respect to relevant standards and objectives clauses 55 and 58, such as with respect to access to all lots and for emergency vehicle and waste collection vehicles. Ms Dunstan is satisfied that loading can be accommodated within the site and the likely frequency of (for example) removal trucks does not warrant an on-site loading bay.
- 63 For convenience, we refer to these matters together, even though we recognise that the provisions of clauses 55 and 58 relate to different residential forms.
- 64 Internal design and layout issues include:
- The lack of a turning area at the end of the access to Lots C and D.
  - The western T-head to accommodate a three point turn for a 8.8 metre heavy ridged vehicle.
  - The eastern accessway to accommodate a three point turn for a 8.8 metre heavy ridged vehicle.
  - Opportunities for cars for dwellings, when provided in a tandem format, to be shuffled in the public realm.
  - The location of some bicycle spaces in the basement.
- 65 Ms Dunstan's evidence refers to additional matters including:
- The shared area for the visitor accessible car space that is 2.1 metres wide and should be increased to 2.4 metres wide to fully comply with AS2890.6-2009.
  - The sight distance triangle is not achieved on the southern edge of the accessway connecting to Latrobe Boulevard (given the restricted width of connection between heritage buildings), and a convex mirror should be provided on the northern side of the accessway that improves the sight distance in this direction.
- 66 Through the hearing, there were various suggestions as to how the layout could be improved and/or made workable. We have had regard to the responses. These matters, in isolation, could likely be addressed by permit conditions but collectively require closer review alongside other findings set out in this decision.



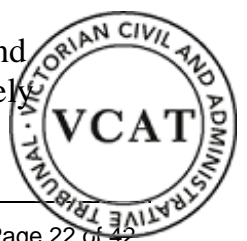
- 67 Additional matters were raised by the Tribunal through the hearing. They include the potential for vehicles to inadvertently impact upon the cantilevered first floor of Lot C, which overhangs the turning space at the end of the cul-de-sac. Even if a low probability, we regard the potential for collision between a larger vehicle and the protruding section of building to be unacceptable and is a contributing factor to other findings we make that the access space to the north of Lot D needs to be relieved significantly.

#### Access from dwellings to public land

- 68 The question of direct access to riverfront public land from the proposed dwellings in Lots C and D is not agreed between the applicants and Council. The Council opposes direct access from dwellings, as this would be seen as encumbering public land for private use. It seeks a clear division between public and private land. We were told that the applicants unsuccessfully offered to the Council landscaping and works to improve the open space as part of this proposal.
- 69 A related matter is with respect to fencing. The Council requires a fence to define the boundary and limit access. It seeks any fencing within the subject site and not on public land. The suggestion of bollards was raised at the hearing rather than fencing, in association with a relocated raingarden and revised landscaping in this part of the site, to which we refer below.
- 70 The Council and applicants will need to resolve the dispute with respect to the public land. The Access and Amenity Improvement Plan depicts an 'active interface with the river corridor' to which the proposed dwellings can contribute, such as through passive surveillance. Dwellings are oriented to the Barwon River as is desirable and appropriate. But we would hope that some form of connection to the public path might be achieved. This would have benefits for both residents on subject land wishing to access the walking path, and public using the path who may wish to access the café or to visit residents within the development.

#### Parking supply and parking reduction for the café

- 71 No party has opposed the permit application for a reduction in parking for the café. This matter has been assessed under the decision guidelines in clause 52.06-7. We accept the location and size of the café are among relevant factors in the acceptability of a reduction.
- 72 All dwellings provide the required amount of on-site parking as set out in clause 52.06. The Council takes issue with two apartments in Lot L that are referenced as two bedroom apartments but, it says, include a large study that could be used as a third bedroom. The Council accepts that a stacker could be used to provide two spaces for these dwellings. There is also scope to modify the dwellings. These are resolvable matters.
- 73 We note that more visitor parking is provided than required by clause 52.06. In this case, that gives opportunities for visitors/service people and others in a setting where convenient nearby on-street parking are relatively limited.



### Extent and use of tandem parking for dwellings

74 The proposal provides a significant amount of parking in a tandem layout. The Council says the amount is excessive as it will lead to too many people needing to shuffle cars, adding to vehicle movements within the site and using visitor spaces.

75 We note that clause 16.01-1L-02 'Increased housing diversity areas' does not apply to the subject land, but it encourages tandem parking.<sup>22</sup>

Car parking policy guideline

Consider as relevant:

- Where more than one car space is provided, encouraging the use of a single-width garage or carport and a tandem parking space on existing or proposed lots with a frontage of less than 10.5 metres.

76 The total length of the tandem pairs exceeds 10.3 metres, in accordance with the relevant scheme requirement,<sup>23</sup> being two spaces of length 4.9 metres plus a 500 millimetres clearance between.

77 We do not consider this to be a fatal flaw but the configuration of the access, such as for Lots C and D, requires refinement and improvement to ensure ease and convenience for users.

### Parking for No. 510 Latrobe Boulevard

78 The proposed replacement parking in four tandem pairs for this property increases the number of spaces that are required to be provided on the land based on the currently endorsed plans. However, tandem parking may not be suitable for the current approved land use, if accommodating both staff and customers.

79 There is no permit application for a different section 2 land use and, if the land is being sought to be used for a section 1 land use in clause 32.04 and no parking reduction is sought, the parking layout would still need to satisfy the responsible authority through the requirements of clause 52.06.

80 This is an unresolved matter with potential implications that we have been unable to assess. An ability to later apply for changes to endorsed plans, as noted in the applicants' submissions, raises intervening inconsistencies that may be problematic.

### **Conclusion**

81 For the above reasons, aspects of the proposed development represent an acceptable outcome but others give rise to unresolved and/or unacceptable outcomes with respect to vehicle, pedestrian and bicycle access and movement within the site, and on-site and off-street parking. They may be able to be resolved, but the proposal before us has not adequately done so.

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<sup>22</sup> TB2393.

<sup>23</sup> TB2181.





## DESIGN, LANDSCAPE AND BUILT FORM OUTCOMES

### Key issues

82 The key issues relate to:

- The scale, massing and form of the development given relevant contextual considerations.
- The interface to and relationship with the Barwon River corridor.
- The spatial arrangement of the buildings on the land.
- Landscape and open space provision, and tree removal.

### Scheme provisions and policies

83 In addition to the strategic directions and policies set out earlier, DDO26 and SLO2 are tailored to this site and precinct. The parties agree that they provide the most specific guidance for the future development of the subject land. There is overlap with respect to landscaping and tree management matters where the land is within SLO2.

### DDO26

84 Clause 43.02 and DDO26 include objectives and decision guidelines. The design objectives in DDO26 are:

To encourage high quality, innovative and contemporary design that is contextually relevant and responds to the unique historical and landscape setting of the area.

To encourage building forms, finishes and colours that make a positive contribution to the public realm.

To ensure that the height and massing of new development is sympathetic and responsive to the topography of the land

To ensure that development adjacent to the Barwon River corridor and open space provides an appropriate interface.

To maximise development opportunities through the consolidation of smaller lots.

To ensure that subdivision design maximises and enhances the development potential of land.

To promote public safety in the public and private realm.

To ensure new built form is sensitive to existing heritage sites and areas of high environmental and landscape value.

To promote best practise Environmental Sustainable Design including but not limited to energy and water including stormwater quality and reuse initiatives.

Promote development which creates a high level of amenity to residents, workers and visitors.

To ensure that buildings are designed to allow for adaptive reuse to meet the long term vision for each precinct.



- 85 A series of buildings and works provisions are set out in clause 2.0 of DDO26. We have considered them fully and do not recite them all. The following are, however, highlighted with respect to design and built form:

Development, where relevant should:

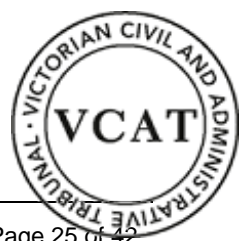
- Ensure the height of buildings are consistent with table 1 of this clause. Where the height of a building exceeds the height of adjoining buildings by more than one storey a high level of articulation and visual interest must be achieved.
- Meet the design objectives for the relevant precinct as detailed in table 1 and in Map 1 – Access and Amenity Improvement Map attached to this clause.
- Avoid blank walls where they abut a street or the public realm.
- Create access links, pedestrian routes and spaces in accordance with the Access and Amenity Improvement Map attached to this Schedule.
- Incorporate best practice stormwater quality and reuse measures into the design of new buildings.
- Discourage the use of reflective material on walls and roofs of buildings where they are visible from the street and the public realm.
- Ensure fences are designed to allow for visual surveillance of both the public and private realm and constructed of materials or painted a colour that compliments the building and surrounding area.
- Ensure plant and equipment is adequately screened and not visible from the public realm.
- Ensure that development includes appropriate acoustic measures to limit the transmission of noise both into and out of buildings to create a liveable mixed use environment.
- Protect the scale and setting of heritage places by ensuring there is a transition in height and spacing between new development and buildings of heritage significance.
- Enhance the appearance and identity of the original entrance to Barwon Grange as a vehicle access and pedestrian route as identified in Map 1 - Access and Amenity Improvement Plan through the use of landscaping and signage

- 86 With respect to public spaces and then landscaping, clause 2.0 in DDO26 includes:

Development adjacent to public space (including roads) should:

- Ensure the setback of buildings provides opportunities for planting to improve the overall appearance of the streetscape.
- Provide opportunities for passive surveillance.

Where a setback is proposed as part of a development landscaping must be incorporated into the design of the site including the provision



of canopy trees where appropriate, to improve the appearance of streetscapes and the public realm.

87 Decision guidelines, in addition to those in clause 43.02, include:

- Whether the development achieves the design objectives for the West Fyans-Fyans Street Precinct Structure Plan 2009 including the objectives of each precinct.
- The impact of the buildings or works on the amenity of the Barwon River environs or any area of existing or proposed public open space.
- The impact of the development and/or works on identified heritage buildings.

88 Table 1 to DDO26 includes the following with respect to (among others) Precinct 4:

Precincts 3A, 3B, 4 and 7 (Excluding the commercial node) Design objectives	Preferred building height	Preferred setback and landscaping
<p>Ensure new development is designed to address adjacent open space and/or the Barwon River corridor.</p> <p>Where land abuts a Public Acquisition Overlay, encourage the design of new buildings to have a frontage to land within that Public Acquisition Overlay.</p> <p>Buildings of 4 to 5 storeys in height should take advantage of the topography and views without adversely impacting on the visual landscape and existing amenity of surrounding properties.</p> <p>Where non residential uses are proposed encourage buildings to have an active frontage on the ground floor, with a clearly identifiable entry</p> <p>Where alternative vehicle access can not be achieved, encourage car parking at the front of buildings adjacent to West Fyans and Fyans Streets.</p>	<p>Within precincts 3B, 4 and 7 encourage buildings of between 2 and 5 storeys, not exceeding 16.5 metres. Buildings up to five storeys should be located adjacent to the Barwon River Corridor with lower levels of such buildings located closest to the river with higher levels to the north.</p> <p>Buildings within precinct 3A, not located within a Residential 1 Zone, should have a height of up to 3 storeys not exceeding 10.5 metres.</p> <p>Buildings within a residential zone within precinct 3A should have a height up to 2 storeys not exceeding 9 metres.</p>	<p>A building should have a setback consistent with surrounding buildings. A reduced setback may be appropriate where it can be demonstrated that the development will make a positive contribution to the streetscape and will not impact on the amenity of adjacent land uses and buildings .</p> <p>Where a site is located on a corner the development must be setback a minimum of 2 metres to enable the incorporation of appropriate landscape treatments. This setback may be reduced where a non residential use is proposed on the ground floor abutting the side street or where the treatment of a side wall incorporates visually interesting elements, makes a positive contribution to the streetscape and will not impact on the amenity of adjacent land uses.</p>

## SLO2

89 Clause 42.03 and SLO2 include a range of objectives and decision guidelines. The statement of nature and key elements of landscape is:

Land adjoining the northern bank of the Barwon River as it passes through Newtown is located within a mixed use environment. It is characterised by an escarpment on the northern bank that ‘overlooks’ the Barwon River. This is of particular visual significance from both the river banks and the higher lands on the south bank. The river banks of the Barwon River have been progressively acquired and developed for a significant open space spine over many years and the enjoyment of this space should not be compromised by inappropriate or imposing development.



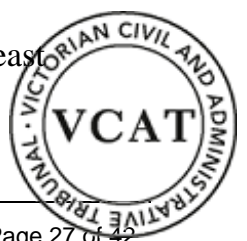
- 90 The 'Landscape character objectives to be achieved' are:
- To protect the visual significance of the escarpment area from intrusions resulting from inappropriate siting, design and materials of buildings and works.
  - To minimise the visual impact of any buildings, structures and works on views to the area from the River bank and the higher lands on the south bank of the River.
  - To encourage siting, design and landscaping of buildings and works that is responsive to the landscape values of the area.
- 91 While SLO2 does not apply to land on the south side of the Barwon River opposite and near to the subject land, views from the higher lands on the south bank are relevant through SLO2.
- 92 Decision guidelines, in addition to those in clause 43.02, include:
- The landscape values of the overlay area.
  - The protection and appropriate enhancement of the landscape and vantage points of high quality.
  - Whether the siting, height, scale, materials and form of proposed buildings and works has been designed to have least visual effect on the landscape and scenic views of the overlay area.
  - Whether approval of the proposed buildings and works is compatible with maintaining the visual significance of the landscape.
  - The benefit of permit conditions requiring all building materials to be non-reflective and of colours which are complementary to those of the landscape.
  - The benefit of the conditions requiring the landscaping of buildings and works, while also having regard to the maintenance of existing viewlines.
  - Whether an alternative site is available on the land for the proposed buildings and works that would better meet the landscape objectives of this schedule.

## Findings

- 93 We set out our findings on the key issues next. They are separated for ease. We have considered the proposal holistically when reaching a conclusion.

### Scale, massing, form and design

- 94 The parties refer to the site's context and specific considerations, or constraints. They have identified these as including the narrow and poorly defined access; the relative isolation of the site with no comfortable pedestrian links to local services or urban amenity; a lack of public open space nearby other than the sensitive Barwon River foreshore; and the sensitive heritage context with significant buildings adjacent to both its east and west boundaries.



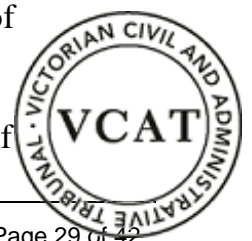
- 95 The Council does not take issue with the built form in terms of its overall scale, height, form or architectural presentation. Its concerns focus on the adequacy of space for an appropriate landscape treatment, within the site, to filter views, mitigate visual impacts, provide for on-site amenity and respond to the Barwon River (to which we refer later).
- 96 Some respondents say that the overall site layout, massing, form and design of the development is too intense particularly given the land's constraints. The National Trust refers to the design objectives of DDO26 that seek development of a high quality, innovative and contemporary design which is contextually relevant to its historical and landscape setting and makes a positive contribution to the public realm. The Trust submits that design response does not live up to these design objectives, to the detriment of the public realm and Barwon Grange.
- 97 The Trust also contends the development does not demonstrate high quality or innovative design and little consideration has been given to responding in a genuine manner to its context and interfaces. While the proposed heights generally comply with the recommended heights, the overall effect is too intense and will visually overwhelm the sensitive interfaces. Additional concerns by Ms Willem relate to the limited amount of communal open space that will not be sufficient for the expected population given the relative isolation of the site. There is no provision for facilities such as a children's playground.
- 98 The applicants submit the subject land is well located, being close to the Geelong CBD to its north and the open space network along the Barwon River to its south. They say there is considerable strategic support for intensification in this precinct and on this site with the expressed goal of reducing development pressure in Geelong's outer growth areas.
- 99 The applicants refer to the proposal as being massed with lower elements (2-3 storeys in height) close to the River and the higher elements (4-5 storeys) centrally located towards the north of the subject land. The location of these buildings and their arrangement respond to the Barwon River context in a manner that advances the outcomes sought by the DDO26 and the SLO2, relying on the expert evidence of Mr Negri and Mr Czarny in particular. The design response places the tallest form near the centre of the site and steps down as it approaches the sensitive interfaces to the west, east and south. They say that the built form of each block is further broken up by steps in plan and elevation, and with a variety of materials and finishes to ensure each building has a high level of articulation. The site layout responds to the topography, with building broken into segments that step with the slope.
- 100 Among additional submissions by the applicants are that the landscape plan, presented through Mr Patrick's evidence, provides for street tree planting along each of the access lanes. These will read as pedestrian spaces and reduce the visual impact of the buildings. There are two small corner planting areas or 'parklets' along the entry drive at the top of each of the north-south access lanes. These provide a further softening of the entry





experience and contribute to the pedestrian experience. A larger communal open space is provided along the western boundary.

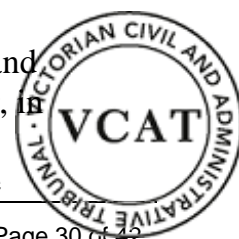
- 101 It is apparent that the numerical provisions of DDO26 seek a proportionate level of development given the strategic attributes, sensitivities and features of the site. Amongst these attributes, the subject land is relatively close to the Geelong CBD and there are bus and rail services close by. There is also the proximity to the River corridor and its open space network.
- 102 The development complies with many of the preferred heights identified in DDO26, with the tallest building at the centre of the site and stepping down from there. Where the built form exceeds the recommended two storey height on the southern interface, we are satisfied that with modifications discussed below, this interface may be acceptable when assessed against the relevant decision guidelines in DDO26. It is relevant that DDO26 contemplates a one (or more) storey height differential with respect to adjoining buildings although the heritage design guidelines to which we refer below (at paragraph 134) are more conservative in this respect.
- 103 It is relevant here to have regard to the articulation of each building, and the stepping of buildings with respect to the slope of the land that will assist to mitigate the visual prominence of each block. This is important given the prominence of the site in the public realm and likely more limited redevelopment opportunities for adjacent heritage sites to the west and east. Having said that, as we address below, we have concerns with respect to the interface of dwellings in Lots F and G in relation to Barwon Grange and also the southern setbacks (to public land) for Lots A, B, C and D in relation to landscape and vegetation matters. Addressing to these concerns may be assisted by less uniformity among the materiality of the overall composition so as to respond to the brick heritage buildings to the west and east and to also achieve a contemporary design that is contextually appropriate to the unique historical and landscape setting. This aligns with comments made by the Council about the architectural treatment, even though the Council did not oppose the permit application on that basis.
- 104 Pedestrian linkages with the wider precinct and urban amenity are somewhat limited, relying on the existing access point that we accept has a restrictive opening between two heritage buildings. The two linkages that are proposed both lead to well established pedestrian paths and there is urban amenity nearby in the Pakington Street precinct. As a result we are not persuaded that the land is so encumbered or isolated that the development potential needs to be moderated.
- 105 We also note that there are development sites with similar potential to the immediate north of the subject land. These could provide opportunities for further pedestrian connections in the future. The officer's report refers to the potential for a public link through the site to the riverfront even though such a link is not shown in DDO26. Mr Czarny recognises the benefit of such a link but does not suggest its exclusion is unacceptable. We have assessed the proposal before us and while such a link has not been identified through the Structure Plan, it may be able to be reconsidered if the Council is open to facilitating that access through its land.



- 106 We are satisfied that the proposed street tree planting within the subject land will provide an appropriate softening of the built environment and create a comfortable pedestrian experience, noting that there is a network of pedestrian paths separate from the vehicle accessways that connect all parts of the site. Mr Sheehan's and Mr Patrick's evidence suggest there may be scope for additional trees where a raingarden/s are currently positioned. Such changes were referred to orally and are not shown on a plan before us.
- 107 We have considered Ms Whittem's concerns with respect to the urban heat effect and sustainability but do not consider the proposal fails for these reasons. Overall the proposed landscaping will contribute a large amount of new plantings, albeit the development will plainly add to hard surfacing as well.

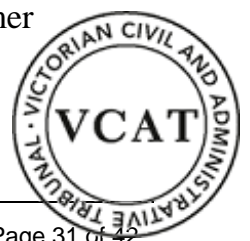
### Barwon River interface

- 108 The visual and functional relationship of the proposed development with the Barwon River and its adjacent precinct is a key issue for the Council and respondents. The National Trust raises specific concerns given the outcomes sought in SLO2. The issues mainly relate to the potential for the proposed development to visually dominate the River environment. This includes views from the water and views from the walking paths on both sides of the River, the pedestrian bridge that crosses the River a short distance to the west of the subject land, and Seaview Park.
- 109 The Council says that the photomontage evidence illustrates that the proposed development would be visually dominant from these locations, and that the proposed landscaping is insufficient to provide an acceptable level of filtering of the views to 'soften' the impact.
- 110 As we have noted previously, the Council did not argue that the overall building form needs to be lowered either at the frontage or overall on the site, although it did express concern that the five storey element (Lot E) would be too prominent when viewed from the road bridge and the higher parts of the south bank. As we have alluded to above, the Council comments that the introduction of red brick panels was a limited response to the red brick of the heritage context. This contributes to Council's conclusion that views to the new development need to be suitably filtered by landscape treatment which would also be in keeping with their view that the River context should be treated as a natural setting. This leads to a key issue for the Council that there is insufficient space provided for landscape treatment and thus limited tree planting to filter views to the buildings in front of Lots C and D.
- 111 The Tribunal also asked about the exposure of the bluestone block retaining wall to these lots. Mr Wong indicated that it would be preferable to provide some planting against this wall to soften the visual impact of the base of the buildings and assist them to integrate with the River setting.
- 112 The Council and respondents have less concern with respect to Lots A and B because of the existing tree planting within the public land. However, the information available to the Tribunal and referred to through Mr Patrick's evidence, most of the over-mature Monterey Cypress and Pine

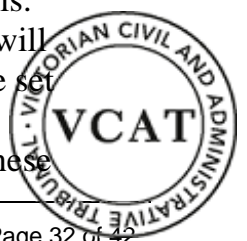


trees are close to the end of their life. The question is therefore whether the proposed landscape response in front of the lots will be sufficient to compensate for the trees to be removed from the subject land as well as the potential loss of large trees from the public land. Today, this vegetation would play a significant role in filtering views to the development from the riverside pathways, and other locations such as from Seaview Park, as demonstrated through multiple photomontages.

- 113 The applicants point to the policy provisions within the DDO that encourage new development to interact with the public domain. They also note that nowhere in policy is there any provision requiring development to be hidden; but rather it requires development to contribute to the Barwon River environment. They rely on the evidence of Mr Patrick, Mr Czarny and Mr Negri.
- 114 Mr Patrick acknowledges that the landscape plan provides only limited opportunities for tree planting in front of Lots C and D, partly because of the location of the raingarden located along this frontage. Through the hearing, and Mr Sheehan's evidence, it appears that this raingarden could be relocated (within the site) without significantly changing the management of drainage.
- 115 As a result Mr Patrick proposes additional tree planting along this frontage, which he considers would provide a more extensive degree of screening of the buildings while still permitting views out for the occupants. A draft concept was tabled that also shows that the path could be moved out from alongside the retaining wall to allow a planting bed to be introduced to provide greenery to soften the visual impact of the base of the buildings. In response to questions from the Tribunal, Mr Patrick suggested a final arrangement could see the trees grouped in a naturalistic way, and avoiding directly blocking views out from balconies so that there would be limited incentive to interfere with the trees as they mature. We understand that changes can be made, however, the landscape solution for this frontage requires resolution.
- 116 Mr Czarny's evidence includes that the composition the buildings generally provide gaps between lots thereby avoiding long presentations of wall. In addition, the buildings are well articulated so that the apparent bulk is further reduced. In his opinion, the presentation to the Barwon River provides an appropriate balance between achieving a visual connection (for passive surveillance) and limiting visual bulk, because of the spacing and the stepping down of the form towards the sites edges.
- 117 Mr Czarny refers to the scale of the units addressing the Barwon River as appropriate, being similar in bulk to the heritage buildings to the east (and further set back further from the River) while the building spacing and architectural articulation limit the apparent visual bulk. He says the architectural design includes panels of brickwork that reference the former wool stores while overall presenting as contemporary well designed housing.



- 118 Mr Czarny acknowledges that Lots C and D present as three storeys that are further elevated by a retaining wall. In his view, this is acceptable given the comparison with the heritage forms to the east. In addition, the three level form provides an effective screening of the five storey Lot E at the centre of the site, which is also at a higher point in the terrain. Any reduction in the height of Lots C and D, such as to two storeys, would reveal more of the development behind which he found would not be a desirable outcome.
- 119 We accept the evidence of Mr Czarny that the architectural form and modelling of the buildings is appropriate, given the spacing between buildings and the similar scale of the existing heritage buildings to the east which extend closer to the river. In addition, we note the evidence that the former wool stores on the subject land extended to the river bank. We find it acceptable that the land can once again house a reasonable level of building bulk that is in proportion to the remaining former wool stores.
- 120 We agree with Council that the development requires some filtering of views to allow it to successfully blend into the River environs as well as not distracting from its considerable heritage context. The proposal before us is not an acceptable architectural presentation because there are limitations on the capacity to filter the development using land within the site. We find the extent of landscape filtering required is directly related to how successfully the buildings provide an innovative and contemporary response to their different heritage abutments. Further, we find the proposal cannot rely upon planting in the public land. If the landscaping is incomplete for any reason, we are concerned that the apartment forms will become overly evident, and the consistency of design across the broad frontage would add to the visual impact.
- 121 More specifically:
- We find that the designs of the façades addressing the Barwon River should include more direct references to their heritage context. As Lots A and B have a different context to Lots C and D, this should result in a slight but discernible difference in the visual presentation of the two groups.
  - We find the proposed landscaping is not sufficient to provide an acceptable interface with the River environment. This may be resolvable in front of Lots C and D. Relocation of the path will allow for adequate planting to soften the visual impact of the stone retaining wall. This will assist the buildings facing the River to be seen as rising to three levels when viewed from the south bank, because the green foreground of the public domain will be seen to extend up to the first balcony level.
  - It is clear that existing tree planting in the public land in front of Lots A and B is close to its end of life. The applicants cannot control this. This land is not within SLO2 or any HO. Removal is required, or will be required in very short term. We are concerned that the available set back area for dwellings in Lots A and B is insufficient to achieve adequate landscaping in front of these lots so as to filter views to these





buildings which are on a high point of the land. The building setbacks narrow moving from west to east, with a pinch point particularly associated with Lot B. This part of the design requires review to ensure setbacks are sufficient to provide meaningful landscaping within the site, there being no certainty as to future planting on the public land once the very tall existing trees are removed. It is not appropriate to borrow from the public land, which is essentially the outcome in the current design. We agree with the National Trust that the presentation of Lots A and B to the Barwon River is inconsistent with the expectations of SLO2.

- 122 Mr Cicero indicted on the last day of the hearing that it would be possible to reduce the overall height of Lots C and D by as much as 0.7 metre through reduced floor to ceiling heights. We are not persuaded this is necessary given the additional landscaping that appears to be able to be achieved, and we would be concerned that any significant lowering of the buildings at the River frontage would begin to reveal more of the development behind. It would, however, have the benefit of reducing overshadowing of the foreshore area, notably the pathway in winter months.

#### Tree removal

- 123 The permit application seeks approval to remove two trees (nos. 13 Aleppo Pine and 20 Grey Poplar suckers). The removal of these trees is not in dispute between the parties.
- 124 No permit has been sought to remove or lop other vegetation.

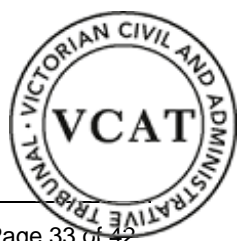
#### **Conclusion**

- 125 For the above reasons, we find many aspects of the proposed development are acceptable and expected for the intensive redevelopment of the land. However, there are unresolved and unacceptable elements of the design and landscape response when assessed against the relevant provisions and policies in the scheme.

#### **HERITAGE**

##### **Key issues**

- 126 The key issues relate to:
- The bulk, scale, height and extent of the proposed development in HO1618.
  - The acceptability of the relationship with the Barwon River and Barwon Grange from a heritage perspective.
  - The ability to protect the Moreton Bay Fig and other trees within the Barwon Grant property and garden.
- 127 The National Trust has other concerns, which are also addressed briefly below.
- 128 No issues have been raised with respect to the partial demolition and alterations to the building at No. 510 Latrobe Boulevard.



## **Scheme provisions and policies**

129 Heritage considerations are assessed through the provisions of clause 43.01, associated policies and documents. The purpose of clause 43.01 includes:

- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.

130 Clause 43.01-6 refers to heritage design guidelines.

131 The decision guidelines in clause 43.01-8 include:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.
- Any applicable statement of significance (whether or not specified in the schedule to this overlay), heritage study and any applicable conservation policy.
- Any applicable heritage design guideline specified in the schedule to this overlay.
- Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.
- Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.
- Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.
- Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.

132 We have considered statements of significance for the multiple heritage places provided through Ms Brady's evidence and the associated materials in that evidence. We do not recite all of this material.

133 Strategies contained in local policy in clause 15.03-1L include:

Retain and conserve significant and contributory heritage places.

Design and site development, including external alterations of buildings, to make a positive contribution to the significance of the heritage place.

Design development in heritage areas to provide a contemporary interpretation that relates to the location, bulk, form and materials of existing or neighbouring significant heritage places.



- 134 The incorporated document ‘Woollen Mills Heritage Areas Design Guidelines, dated June 2022’ addresses HO1618. It has guidelines with respect to (among others) built form and appearance:

Retain the uniformity of scale throughout the area, including the two-storey height limit, minimal front setback, building separation and subdivision pattern by:

- Encouraging the highest point of the roof to be no greater than the highest point of an adjacent building.
- Encouraging buildings to be well separated from adjacent buildings.
- Encouraging front setbacks that are equivalent to the setback of neighbouring buildings or if these are different, the setback may be at a distance that is between the setbacks of neighbouring buildings.

Encourage contemporary interpretation of traditional building design.

Encourage the use of traditional materials such as:

- Masonry with limited regular spaced openings
- Clear glazing
- Smooth rendered masonry
- Pressed, evenly coloured brick
- Non-zincalume corrugated sheet metal roofing.

- 135 Policy guidelines in clause 15.03-1L are included in the clause together with consideration of the ‘City of Greater Geelong Heritage and Design Guidelines (Helen Lardner Conservation and Design, 1997)’.

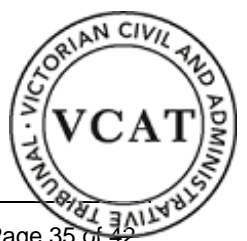
- 136 We have previously referred to the design objective in DDO26 to encourage high quality, innovative and contemporary design that is contextually relevant and responds to the unique historical and landscape setting of the area.

- 137 Clause 43.02 includes the decision guideline:

Whether the design, form, layout, proportion and scale of any proposed buildings and works is compatible with the period, style, form, proportion, and scale of any identified heritage places surrounding the site.

- 138 DDO26 includes the design objective to ensure new built form is sensitive to existing heritage sites and areas of high environmental and landscape value. A decision guideline in DDO26 is ‘The impact of the development and/or works on identified heritage buildings’.

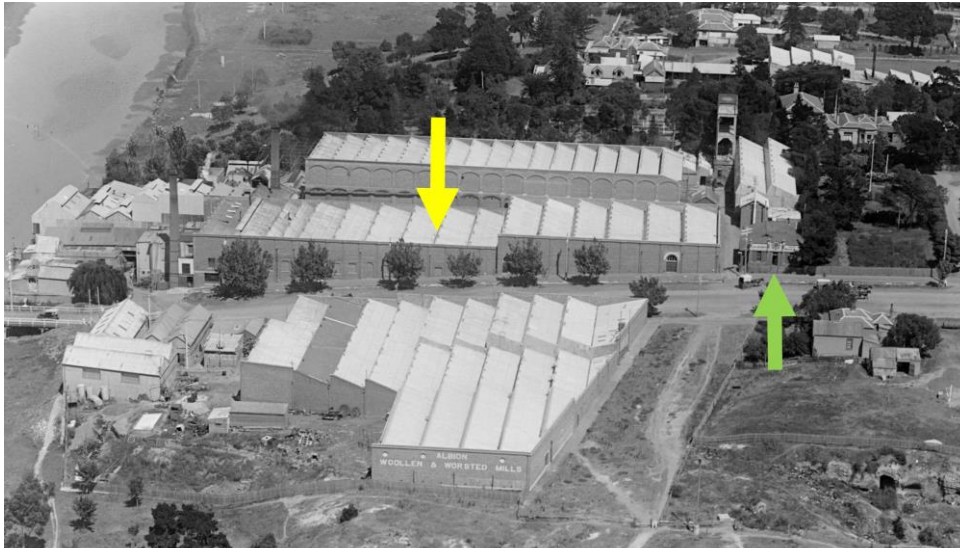
- 139 We have referred to DDO26 provisions with a link adjacent to the land’s western boundary annotated as ‘Enhance entrance to Barwon Grange’.



## Findings

### Historical context

- 140 Historically, the subject land was developed with an industrial building on the eastern portion of the subject land, extending to the Barwon River.<sup>24</sup> The western side has been vegetated land.



### Scale, height and extent of development in HO1618

- 141 We have already made findings with respect to the overall scale, massing, form and design. Those findings are consistent with our conclusions with respect to the heritage provisions of the scheme. This includes with respect to the architectural composition, materiality as well as the River interface having regard to the design objective in DDO26 that refers to the unique historical and landscape setting of the area. Some of our reasons are underscored by the scheme context specifically with respect to heritage that we have cited above. We do not repeat the findings.

### Response to Barwon Grange HO1843

- 142 The transition to Barwon Grange is not a ground raised by the Council but is of significant concern to the National Trust.

### Brief description and significance of Barwon Grange

- 143 The Trust submits Barwon Grange represents one of the last two original mansions on the north bank of the Barwon River. The visual connection of it and surrounding land to the River is vitally important.
- 144 The house, Barwon Grange, is owned by the National Trust and operates as a house museum. Barwon Grange is set in a landscaped garden, with a vegetation buffer that runs along shared boundary and assist to screen the property from the subject land. There are, however, breaks in that

<sup>24</sup> Ms Brady's evidence at Figure 10, TB215. 1920's aerial view with the adjacent Albion Woollen Mills marked with the yellow arrow and No. 510 Latrobe Boulevard marked with a green arrow.



vegetation. The property also contains a substantial Morton Bay Fig tree, near the shared boundary. This tree overhangs the subject land.

145 The statement of significance for Barwon Grange is:<sup>25</sup>

Barwon Grange is important for its associated with early Geelong merchants and businessmen including JP O'Brien and James Chandwick. It reflects the affluence of merchants and business interests in Geelong and its hinterland which was precipitated by the gold rushes of the 1850's and later consolidated in the 1870s. Barwon Grange demonstrates a successful middle class lifestyle of the mid to late nineteenth century. The uses, relative sizes and disposition of the rooms are typical and are now generally interpreted through redecoration and furnishing as a house museum. Barwon Grange is a distinctive example of the Gothic Revival style. It expresses the ideals of the Picturesque movement particularly through its use of architectural details including elaborate roof line, unusual balustraded verandah and through its riverside setting.

#### Proposed interface

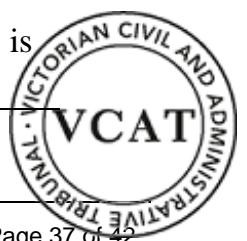
- 146 The proposed development sites townhouses in Lots F and G alongside the common boundary with the Barwon Grange property. The side of Lot A is also adjacent to Barwon Grange. Some existing trees are to be removed along this edge, for which no planning permit is required. This will expose more views to the proposed dwellings than is currently the case.
- 147 Lots F and G comprise attached double storey townhouses. They are separated by a communal open space area which also has three visitor parking spaces. Dwellings in Lot F have a minimum setback to the building line of approximately 4.9 metres with a minimum of 5 metres for dwellings in Lot G. These measures exclude paved areas.
- 148 Lot A comprises two storey dwellings above a basement. The western ground level setback for development in Lot A is a minimum of 7.167 metres with the open space for a first floor dwelling A1.1 located in the ground level setback area.
- 149 The landscape plan shows new Blackwood and Sheoaks along part of the interface, as well as sheds and rainwater tanks. It is proposed to protect the Moreton Bay through stated construction measures, although there is limited information about the extent of canopy pruning that might be required such as for construction access.

#### Consideration of issues

- 150 There are unacceptable impacts or unresolved matters to which the Trust refers and, because of these, it opposes a permit issuing. The applicants have responded through submissions and expert evidence. We address these issues next.
- 151 First, is the ability to protect trees on the Barwon Grange property. This is within respect items such as internal fencing, sheds, and paving in Tree

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<sup>25</sup> TB254.



Protection Zones (**TPZ**). The Trust is concerned that the interface is not appropriate for the heritage setting.

- 152 We note the Trust had raised this consideration through the Panel review of submissions with respect to Amendment C205, being the amendment which introduced the MUZ and DDO26 into the scheme. The Trust made recommendations to amend the exhibited DDO26 to prevent development that would damage the heritage character of Barwon Grange, including the height of buildings adjoining the Grange to be no more than two storeys, and with a minimum setback of 6 metres with a minimum 3 metres landscape buffer.<sup>26</sup>

- 153 The Panel found in part:<sup>27</sup>

Consideration has also been given to the Trust's request for specific building heights and setbacks in the close vicinity of Barwon Grange to be included in Table 1 to the DDO. However, the Panel considers that these are matters that can be considered by Council when assessing any planning permit application and following the giving of appropriate notice to materially affected owners and occupiers of land.

- 154 We agree that there are issues with respect to ancillary structures proposed in the areas of secluded open space. There is also the unresolved matter of a private drain that could impact on the ability to both accommodate vegetation and to position ancillary structures in the setback areas. We note proposed permit conditions with respect to the structures. But given the position of the two storey forms evident through gaps in the boundary vegetation we are persuaded additional, deeper, setbacks are necessary to achieve a stronger planting outcome along the common boundary. Deeper setbacks would assist to find alternative outbuilding locations and more boundary screening. We therefore do not accept the evidence and submission for the applicants that the interface is acceptable as designed.
- 155 Second, is the protection of the Moreton Bay Fig. A significant amount of the tree's structural root zone and TPZ is within an area of ground level open space for a first floor apartment in Lot A. In addition, there are other elements such as sheds. At the hearing, the Tribunal raised some concern about the tree's inclusion in private open space in terms of works that a future occupant of the proposed dwelling/s might undertake (such as digging, paving and pruning). The concept of the tree's protection being better secured by its inclusion in an area of communal open space was canvassed. In the context of the current design, we consider this would be a necessary modification to assist with the tree's management and maintenance. An implication, as also discussed at the hearing, is the need to review the siting of Lots A and F to facilitate accessibility and visibility to a communal space. While permit conditions and legal agreements might be some tools to consider, we think design changes are warranted in the circumstances.

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<sup>26</sup> TB2555, as described in the Panel report.

<sup>27</sup> TB2557.



- 156 Third, is the presentation of development in Lot G to Barwon Grange. The connected built form is approximately 27 metres at ground level and approximately 21 metres at first floor level. The blocks of attached two storey form offer little articulation in locations where the development would be well exposed based on the current design and landscape response. Even with additional trees to which Mr Patrick refers, this outcome is not acceptable. Our conclusion is reinforced by the DDO26 provisions that refer to the entrance to Barwon Grange and the Trust's desire to reinstate the entry. Sceptical comments and criticisms about this ambition have been raised through the applicants' submissions but it is a matter that is reflected in DDO26. Even if this was not the case, the development will have an impact on the private open space and setting of the dwelling. Additional setbacks and/or modified form are required.
- 157 Fourth, the Trust refers to an 'obvious landslip issue in the area'. It says that a sinkhole previously appeared in the curtilage of Barwon Grange. It also says Council has erected numerous signs in the proximity of the subject land warning of sinkholes appearing in grassed areas along the northern riverbank. Given the scale and extent of development proposed, the Trust is concerned about landslip risk along the common boundary and impacts on trees and the dwelling. We have little information to make any findings on these matters, to the extent that might be relevant to our scope. We would expect that structural engineering and property related matters would be addressed with the benefit of expert technical advice.
- 158 Fifth, the Trust objects to the communal open space area. It considers the use of this area for BBQ and recreation purposes for all residents in a development of this scale may affect the experience of visitors to Barwon Grange particularly through noise and odour. We have no concern about this aspect of the proposed development. The communal open space is partly located along the line of a sewer easement; land that has limited alternative development options as part of the planning for the land. We do not consider the use of the communal space will adversely impact on the amenity of Barwon Grange. We note the car spaces within the communal open space are less than ideal, as was also raised through the hearing.

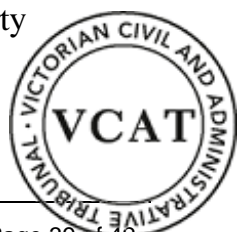
## **Conclusion**

- 159 For the above reasons, we find aspects of the proposed development do not represent an acceptable outcome with respect to the heritage-related provisions and policies in the scheme.

## **LAYOUT AND INTERNAL AMENITY**

- 160 The Council raises a range of concerns about the design response with respect to clauses 55 (for townhouses) and 58 (for apartments). We do not recite all of the relevant scheme provisions nor all of the issues that are set out in the Council's submissions. Some include way-finding and property identification as well as the following:

- Clause 55:



- The failure to account for the two studies as bedrooms also leads to the private open space for these apartments being undersized. Council accepts that these balconies could be increased in size.
- The location of the rubbish bins for the dwellings on Lots C and D that are poorly located and inconvenient. The bin storage for these dwellings and the café are located within a different building Lot E.
- Clause 58:
  - Poor bicycle storage.
  - Apartments with poor amenity.
  - Storage.
  - Living room sizes.
  - Secondary window widths and depths.
  - Communal open space.

161 Ms Whittem questions the development's response with respect to environmental sustainability, urban heat effect and related matters.

162 Given our overall findings, we do not address each of these matters in detail. We have had regard to Mr Negri's evidence and to the applicants' submissions in response to the objections. Suffice to say that there are ways for detailed dwelling design issues to be addressed and refinements made. We accept this could occur through permit conditions. However, other layout changes to which we have referred may have some impact on these matters as well as creating opportunities for improvements.

## **STORMWATER AND DRAINAGE**

163 The Council accepts that stormwater can be managed but issues remain with respect to:

- The lack of any assessment in the stormwater management plan about the need for on-site detention and required storage capacity. This is of concern because it may impact on the site layout.
- The legality of works to drain to the legal point of discharge to which we have referred earlier.
- Addressing two existing drains that traverse the subject land that will need to be protected by easements as part of the development. We note that an objection to the Council by an adjoining land owner sought conditions to provide for stormwater management from their site at No. 498 Latrobe Terrace. Documents provided to the Tribunal<sup>28</sup> show some history with respect to drainage from other properties through the subject land, including the creation of easements, dating back some 18 years to 2004.

<sup>28</sup> Salique Nominees to Greater Geelong City Council, dated 17<sup>th</sup> August 2022.





- 164 Evidence with respect to drainage, stormwater and flooding has been provided by Mr Sheehan. His oral evidence also informed the Tribunal's consideration of the location and extent of proposed raingardens.
- 165 There is no suggestion that these complex property matters are not resolvable or that they should preclude a planning permit from issuing.

## **NOISE**

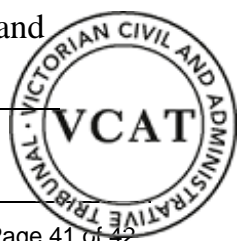
- 166 Two concerns are identified with respect to noise in submissions and statements of grounds.
- 167 First, is the potential impact of noise from early morning and other rowing training and competitions. For the Geelong Rowing Association, Mr Farran has explained the long-standing use of the Barwon River for rowing and the extent and timeframes of rowing activities. This includes many regattas each year and 5.30am training on weekdays and weekends. Noise regulations have limited rowing use over time. Mr Farran expresses concern about further increasing constraints on the use of the River for rowing, including limitations on loud speakers/megaphones.
- 168 The Geelong Rowing Association seeks appropriate consideration of noise attenuation in the design of the development. Over the course of the hearing, it was agreed that all south, east and west-facing windows in dwellings in Lots A, B, C and D could be required to be double-glazed. Mr Farran indicated his support for this condition.
- 169 Second, is a concern raised by Salique Nominees<sup>29</sup> about the potential for existing commercial uses to be protected through an acoustic barrier or measures to address future concerns by incoming residents with respect to commercial noise emissions.
- 170 Land adjoining the site is used for a variety of commercial and industrial purposes. Through the permit application material, it is said that the design response is said to have taken account of noise from such premises through the location of habitable rooms, such as bedrooms. We expect development can be designed and acoustically treated to ensure a reasonable amenity level is achieved in accordance with required standards and proposed permit conditions.

## **CONSTRUCTION**

- 171 Construction of the project is potentially problematic in the Council's submission. This is because of the constrained site access and the likely number and size of trucks and equipment. There is the potential for vehicles to damage the heritage fabric on Nos. 510 and 512 Latrobe Boulevard, with measures needed to address this. The Council says solutions should not compound the issue, such as bollards that would narrow the accessway. The abutting property owner is also concerned in this regard, including because the brick wall leans. Access via the parkland is not a solution that the Council accepts.

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<sup>29</sup> Ibid.



172 There is no suggestion that the land cannot be built on because of construction issues. A construction management plan is proposed by a permit condition and the site's complexities can be expected to require a bespoke approach.

## **CONTAMINATION**

173 Mr Duggan refers to concerns about risks with respect to asbestos and other materials identified in a site investigation report.<sup>30</sup> The report refers to potential contamination sources and issues, with the aim to protect sensitive uses.

174 The report recommends further investigations and would be addressed through the obligations of the EAO and other legislation. Permit conditions are proposed by the Council and accepted by the applicants in this regard.

## **CONCLUSION**

175 The intensive development of the subject land is expected through the scheme and DDO26. We have found many elements of the proposal to be acceptable. However, our reasons set out a range of issues that result in our conclusion that the proposal does not meet the scheme's requirements and does not represent an unacceptable outcome.

176 We do not consider the issues can collectively be resolved by permit conditions because there will be consequential design changes and layout implications for the development that are unknown to us and have not been ventilated, considered or assessed.

177 We have contemplated an interim decision to enable these issues to be reconsidered in the context of this proceeding. We have decided against that process given the nature, scope and extent of outstanding issues. Approaching design revisions through a fresh planning permit application will afford the opportunity to revisit the design concept and site layout so as to achieve an appropriate outcome having regard to the site's prominent public location, and its sensitive interfaces with the Barwon River corridor as well as heritage buildings to the east and west.

178 Consequently, a permit is not granted and no permit is to issue.

**Margaret Baird**  
**Senior Member**

**Stephen Axford**  
**Member**

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<sup>30</sup> Douglas Partners, Report on Preliminary Site Investigation for Contamination, 18 December 2019.

