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fitzroy residents' association

Established in 1969 to promote, protect and enhance residential amenity

SUBMISSION ON BEHALF OF THE FITZROY RESIDENTS ASSOCIATION

VCAT Reference No P1092/2020
Permit Application No PLN19/928

Pace Development Group Pty Ltd vs Yarra City Council
223-229 Johnston Street and 369 Gore Street, Fitzroy

INTRODUCTION

The Fitzroy Residents Association supports the position of the Yarra City Council as set out in the Delegate Report presented to the City of Yarra's internal Development Assessment Panel on 22 October 2020.

The Association has considered the amended plans and supporting documents, circulated under cover of the letter from Minter Ellison dated 16 December 2020, which the applicant will seek leave to substitute on the first day of the hearing. It found that the amended plans dated 7 December 2020 by SJB Architects address many of the minor, but cumulatively important, deficiencies in the original design.

The proposal remains, however, 11 storeys in height with insufficient upper level setbacks and is not a suitable response to the context or planning policies and controls applying to the site.

THE SITE AND SURROUNDS

The subject site is a consolidated corner site that has a main frontage to Johnston Street (38.31m), Gore Street (73.94m) and Argyle Street (27.35m) and a section of laneway along its western boundary.

The site is irregular in shape, resulting in a total site area of 2437.6m². The site is gently sloped from the south east to the north west with an approximate 2m fall along the Gore Street frontage. While Gore Street is 20m wide, Argyle Street to the north is only 7m wide and presents a far more sensitive interface than the principal street abutments.

The northern part of the site, known as 369 Gore Street, is occupied by a collection of structures including the former Argyle Shirt Factory (1880-90), which is the oldest and largest, located on the north-east corner of Gore Street and Argyle Street. It is proposed to retain this building, removing the roof and restoring most of the externally visible fabric to incorporate it into the new development.

Across Gore Street is 338 Gore Street, a recently completed 10 storey mixed use residential building with an 8 storey street wall defining the street intersection, often referred to as The Lyric, being the name of the theatre that formerly occupied part of the site. This building is separated from Argyle Street by a 2 storey renovated brick warehouse with a pitched metal roof, 340 Gore Street and 208 Argyle Street, which has been converted to dwellings.

The urban design evidence by Craig Czarny provides a useful plan (page 14) showing the heights of buildings in the vicinity of the site. It reveals that within the extent of DDO10, recent developments predominantly comprise 6 storey buildings at a maximum. While, outside DDO10 and towards the Smith Street corridor recent developments include a higher range between 8 and 10 storeys.

The Lyric at 338 Gore Street, approved in 2015, is the anomaly in this section of the Johnston Street Neighbourhood Activity Centre, being outside DDO10 and being primarily a Johnston Street site buffered from the low rise historic streetscape to the north.

THE PLANNING FRAMEWORK

ZONES

The site is in the **Commercial 1 Zone** (Clause 34.01) and the Johnston Street boundary abuts the **Road Zone, Category 1** (Clause 36.04).

OVERLAYS

Three overlays apply to the site:

Heritage Overlay HO 334 South Fitzroy

The City of Yarra Review of Heritage Overlay Areas 2007 is an Incorporated Document at Clause 1.0 to Schedule to Clause 72.04. Documents Incorporated in this Planning Scheme, outline the following gradings for the subject site:

- No. 223 – 229 Johnston Street Fitzroy is graded as ‘not contributory’
- No. 369 Gore Street (eastern building) is graded as ‘individually significant’

A copy of the citation for the South Fitzroy Precinct, taken from the City of Yarra Review of Heritage Overlay Areas (Graeme Butler & Associates, 2007, updated March 2013) has been provided to the Tribunal as Appendix B to the evidence of Council’s heritage expert.

Design Development Overlay Schedule 10

The current built form controls applying to the subject site are to be found at Schedule 10, which relates to the ‘Johnston Street Precinct – West of Smith Street’ and specifies the following preferred future character:

- *A more consistent streetscape with the street-frontage ‘façade wall’ at the predominant two to three storey height of 20th and 19th Century buildings.*
- *Vibrant street life and increased pedestrian activity due to an increasing amount of street- oriented development particularly on Johnston Street.*

Environmental Audit Overlay Clause 45.03

PROVISIONS

There are a number of Provisions applicable to this application, which are addressed in full by the Council assessment.

PLANNING POLICY FRAMEWORK

The following State level policies apply to the application:

Clause 11 Settlement

Clause 15 Built Environment and Heritage

Clause 16 Housing

Clause 17 Economic Development

Clause 18 Transport

LOCAL PLANNING POLICIES

Clause 21.03 establishes a **Vision** for the City of Yarra that focuses on Land Use, Built Form, Transport and Environmental Sustainability with the intention of facilitating a city that provides for increased opportunities for employment, provide areas of higher development amongst a low-rise urban form, encourage design excellence, safe and active streets dominated by walkers and cyclists and promote state-of-the-art environmental design.

The Strategic Framework Plan of Clause 21.03 locates Johnston Street within a Neighbourhood Activity Centre.

Clause 21.04-1 **Accommodation and housing** seeks to '*accommodate Yarra's forecast increases in population*' and '*retain a diverse population and household structures*' whilst reducing potential amenity conflicts between residential and other uses.

Clause 21.04-2 **Activity centres** includes objectives to '*maintain a balance between local convenience and regional retail roles in Yarra's activity centres*'.

Clause 21.05 **Built Form** broadly seeks to facilitate quality built environments in the City of Yarra, and outlines objectives and strategies to protect and enhance Yarra's heritage places, ensure new development responds positively to Yarra's urban fabric, and encourage new development that enhances the public realm.

Objective 14 at Clause 21.05-1 **Heritage** seeks to ‘*protect and enhance Yarra’s heritage places*’ in part through strategies supporting the conservation of heritage places.

Clause 21.05-2 **Urban design** describes Yarra’s built form as ‘*low-rise urban form punctuated by pockets of higher development*’, noting that this characteristic serves to differentiate Yarra from adjoining cities (including the City of Melbourne) and strengthen the municipality’s sense of place.

This is supported by Strategy 17.2 which specifies that ‘*Development on strategic redevelopment sites or within activity centres should generally be no more than 5-6 storeys unless it can be demonstrated that the proposal can achieve specific benefits such as:*

- *Significant upper level setbacks*
- *Architectural design excellence*
- *Best practice environmental sustainability objectives in design and construction*
- *High quality restoration and adaptive re-use of heritage buildings*
- *Positive contribution to the enhancement of the public domain*
- *Provision of affordable housing.’*

PLANNING SCHEME AMENDMENTS

Council is currently reviewing the local planning policies contained in the Yarra Planning Scheme as part of Planning Scheme **Amendment C269**, which seeks to update existing policies and introduce new policies to reflect the evolving needs of the municipality and adopt the new Planning Scheme format introduced by the Victorian State Government.

The draft amendment was exhibited in November and December 2020. The date previously set for a Planning Panel to consider submissions to this major planning scheme revision had to be vacated due to delays, including the local government elections, arising from COVID -19 restrictions.

Yarra is one of the first municipalities in Victoria to rewrite its planning scheme in a format that aligns more directly with the State Policy Framework, and the draft reflects in depth of research and widespread consultations, including input from the Fitzroy Residents Association. New policies for the natural environment and adaptation to climate change, amongst others, indicate the broad sweep of this review.

Amendment C270, seeks to apply interim built form controls across Activity Centres in Fitzroy and Collingwood. It seeks Design and Development Overlay – Schedule 36 (DDO36) to the Fitzroy East and Johnston Street North area, which reflects the Johnston Street Built Form Framework prepared by Hansen Partnership.

The framework plan identifies No. 369 Gore Street as having heritage significance and the area between Argyle and Smith Street as a high change area.

The proposed draft DDO36 would allow a height range of 6 to 9 storeys, with a prominent street wall on the north side of Johnston Street and the scale of development transitioning down to Argyle Street.

A preferred building height of 30.4m is identified for the subject property, with discretionary street wall heights to Johnston, Gore and Argyle streets where the heritage façades are not retained. Upper levels should be visually recessive, and DDO36 seeks a 10m upper-level setback above the street wall to Argyle Street and 6m for Johnston and Gore streets; with development over 16.4m in height being set back a further 3.2m at the top level.

Further, regarding 'street wall heights', DDO36 states that development should retain the visual prominence of the heritage street wall in vistas along the street; and the heritage fabric of the return façade of heritage buildings on corner sites. The interim control would also require that: *New development must not overshadow: – the opposite footpath of Johnston, Napier, George, Gore and Kerr Streets (as applicable), measured as 3.0 metres from the relevant property frontage between 10am and 2pm at 22 September; and – any opposite kerb outstands, seating and/or planting areas (as applicable), between 10am and 2pm at 22 September.*

ASSESSMENT

BUILT FORM

There is a strong convergence of the expert opinions of Ms Brady and Mr Czarny that the proposal will overwhelm and diminish the retained portions of the former Shirt Factory and fails to provide a suitable transition in scale to the low rise Mixed Use zoned land to the north.

The height and design will be detrimental to the streetscape of Argyle Street and will fail to establish the consistent podium level of four to 6 storeys for this part of Johnston Street as sought by the Interim DDO36 of Yarra Planning Scheme Amendment C270.

The Fitzroy Residents Association submits that the DDO Schedule 36 proposed by Amendment C270 should be taken as an indication of the general scale of development that the Council is contemplating for this part of the Johnston Street Neighbourhood Activity Centre.

The Amendment, and the supporting background document *Johnston Street Built Form Framework 2019*, provides useful guidelines for the assessment of a development that is well in excess of the scale contemplated by the Current DDO Schedule 10 applying to the site.

Recognising the development potential of this part of Johnston Street, the draft DDO 36 does not seek to impose mandatory height controls or setbacks but sets out objectives, including internal amenity, accessibility and environmental performance standards to ensure the highest quality development and to minimise adverse impacts on the surrounding area.

The one metre reduction in overall height, and projecting balcony modifications to mitigate the overshadowing to the south side of Johnson Street, fails to address the fundamental concerns about height and bulk.

The Fitzroy Residents Association maintains its original position that the building should be reduced in height by a minimum of two floors to ensure that the overall scale and form of the new development provides a suitable transition to low scale residential areas and protects these properties from an unreasonable loss of amenity through visual bulk, overlooking and overshadowing.

For the reasons outlined in the evidence of Ms Brady, the Fitzroy Residents Association favours the removal of levels 5 and 6, rather than the upper levels. This would have the added benefit of reducing street wall height on Johnston Street to more closely align with the DDO36 guidance of four to 6 storeys, while also increasing the setbacks from the north.

In Gore and Argyle Streets removal of levels 5 and 6 ensures that the low heritage street wall remains the visually dominant element of the streetscape and the upper level are more recessive providing a clear visual distinction between lower street walls and upper level development.

To ensure that this is the outcome of such modification, the applicant should be required to demonstrate that any built form above a 6 storey profile (say 20.8m above Argyle Street) be concealed from standing eye height on the northern side of Argyle Street directly opposite the proposal. The footpath datum level in Argyle Street must be accurately shown at approximately 2m lower than Johnston Street.

PLANNING POLICY

Town Planning and Urban design witnesses for the applicant argue that the strategic thrust of Plan Melbourne, State and Local planning policy to promote housing and employment in activity centres and sites such as 223-229 Johnston Street outweigh issues of context and heritage.

Recent capacity monitoring for Yarra by SGS Economics as part of expert evidence for Amendment C231 (Yarra Housing Strategy August, 2019) found there is ample dwelling capacity in Yarra's activity centres.

Based on planning controls proposed in current amendments there is a total potential capacity of 32,730 dwellings across Yarra's activity centres. This far exceeds the predicted dwelling demand for 16,540 dwellings in all of Yarra to 2031.

Local Planning Policy Framework 17.20 states: Development on strategic redevelopment sites or within activity centres should generally be no more than 5-6 storeys unless it can be demonstrated that the proposal can achieve specific benefits such as:

- Significant upper level setbacks
- Architectural design excellence
- Best practice environmental sustainability objectives in design and construction
- High quality restoration and adaptive re-use of heritage buildings
- Positive contribution to the enhancement of the public domain
- Provision of affordable housing.

On all key strategic objectives this development continues to fall well short of demonstrating significant setbacks, architectural excellence, best practice in sustainability design, high quality restoration, a positive contribution to the public domain or affordable housing provision.

On this last point, the Fitzroy Residents Association is concerned that all apartments are provided with at least one on-site car parking space. Given the high number of households seeking to live in Fitzroy that do not own a car, such provision unnecessarily increases purchase and on-going maintenance costs.

Removal of two floors of the development should be coupled with a commensurate or even greater reduction in on-site car parking. This should allow for at least one level of basement excavation to be avoided.

For reasons discussed above, the Fitzroy Residents Association finds that the submissions and expert evidence on behalf of Council offer compelling reasons why the proposal as presently designed should not be granted a permit.

1. The proposed height, setbacks, massing and design of the building will dominate the surrounding streetscapes and will not positively respond to the surrounding context.
2. The proposed height, setbacks, massing and design of the building would unreasonably impact the heritage character of the area and the heritage significance of the South Fitzroy heritage precinct.
3. The proposal fails to respond to the off-site amenity of the surrounding properties and public realm, resulting in unreasonable visual bulk, noise, overlooking and overshadowing impacts.
4. The proposal would result in an unacceptable internal amenity outcome, contrary to clause 15.01-2 (Urban design principles), clause 21.05-2 (Urban design), and clause 58 (Apartment Developments) of the Yarra Planning Scheme.
5. The proposal has not adequately dealt with wind matters with regard to on-site and offsite amenity.

Submission on behalf of the Fitzroy Residents Association

Martin Brennan

Chair

20 January, 2021

