

www.fitzroyresidents.org.au
info@fitzroyresidents.org.au

fitzroy residents' association

Established in 1969 to promote, protect and enhance residential amenity

VCAT Hearing Monday 21 – 25 September, 2020

P422/2020 84-104 Johnson Street, Fitzroy

Martin Brennan, Chair

FITZROY RESIDENTS ASSOCIATION

Introduction

In April 2020 when SJB Planning on behalf of SMA Projects lodged an application with VCAT pursuant to Section 79 of the *Planning and Environment Act 1987*, the proposal for 84-104 Johnson Street (Council reference PLN2019/0491) was a seriously inadequate response to both the opportunities of the site and the requirements of the Yarra Planning Scheme. A total of 175 objections were lodged.

Subsequently, in a Delegate report dated 26 June 2020, the serious deficiencies of the proposal were identified in six grounds for refusal. After extensive architectural revisions, the removal of 30 residential apartments, exhaustive testing and modelling and the input of no less than 12 expert witnesses, the proposal now before the Tribunal *may* meet the amenity and energy efficiency expectations of State and local planning policy. Concerns about acoustic performance and wind effects *may* also be resolved. However all of these matters remain outstanding.

As a response to the strategic and physical context, the proposal remains unacceptable. Contrary to some expert witness statements, there is ample guidance in the Yarra Planning Scheme for the design of a mixed use building on this prominent site that would make a positive contribution to the public realm and be compatible with the heritage and streetscape values. A building of about eight storeys, set back sufficiently behind a three storey street wall would make a valuable contribution towards achieving the objectives of the State and local housing and

employment policies, without compromising the function and appearance of the Johnson Street West Neighbourhood Activity Centre.

The Fitzroy Residents Association continues to support the position of Council as set out in the Supplementary Delegate Report dated 28 August 2020. For reasons discussed below in terms of the Association's Statement of Grounds, the FRA finds that the submissions and expert evidence on behalf of Council offer compelling reasons why the proposal should be refused a permit.

GROUND 1

The height and bulk of the proposed development does not respond to nearby buildings and the streetscape as required by the Yarra Planning Scheme.

The height of the building in the revised plans remains at 11 storeys 38.35 metres plus the services and structures associated with the roof-top communal open space. Minor changes to boundary setbacks and reductions to the street wall heights have not appreciably reduced the bulk of the building.

The reduction in apartment yield by 30 is driven by the need to meet internal amenity guidelines and energy efficiency rather than urban design considerations.

We agree with the Council position that increases to the setbacks of the two upper levels have been offset by the changes to the materials and the excessive floor to ceiling height of level 10, resulting in a conspicuous feature with no architectural merit.

This proposal has created some debate about the 'emerging built form' in this part of Fitzroy and various lists of completed and approved developments have been compiled to support arguments for taller development. The FRA endorses the expert analysis by James Gard'ner (Table at para 46), who concludes (para 48):

This suggests that the currently proposed height of development at 11 storeys is unprecedented within the immediate context of the subject land. The proposed new development also substantially exceeds the six to seven storey height of new and emerging built form within those parts of Brunswick, Johnston and Smith streets that are subject to the Heritage Overlay

Furthermore, Mr Gard'ner's firm, GJM Heritage, has undertaken heritage analysis of all of the Brunswick Street, Johnson Street and Smith Street areas in conjunction with Hansen Partnership and recommended to Council that the north side Johnson Street

between Brunswick Street and Smith Street be removed from HO334 because the less consistent heritage context and streetscapes are less sensitive to new taller built form. All of the taller developments referred to in other evidence are in or north of this section of Johnson Street and at least 100m from the subject site.

The citing of previous VCAT decisions in favour of some of these developments does not provide any justification for allowing 11 storeys on the subject site.

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 84-104 Johnson 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 (VIF2019).

Directions for guiding future residential growth in these areas has now been informed by the current heritage significance, detailed heritage reviews and urban design analysis being undertaken for Yarra's activity centres and provides guidance on the levels of growth appropriate in each precinct. YPS Amendment C269 now on public exhibition places the subject

site in a 'Moderate Change Area'

C269 new policy 16.01-2L

Location of residential Development

In moderate change areas (as shown on the Strategic Housing Framework Plans in this clause):

- *Support medium density residential and mixed use development in the form of apartment buildings that respond to heritage significance and streetscape character*
- *Encourage lot consolidation where appropriate to facilitate increased densities and efficient use of land.*

The subject site is in an area predicted for 'moderate change in the form of 5-8 levels mid-rise developments. Brunswick Street, however, will remain low rise because of the higher heritage values and other considerations such as maintaining employment opportunities. This has implication for the future visibility of this proposal from various vantage points along Brunswick Street and the important Johnson Street intersection

GROUND 2

The proposed development does not meet the requirements of the South Fitzroy Heritage Overlay (HO334) and the Yarra Planning Scheme.

As part of the Brunswick Street and Smith Street Heritage Review, which included Johnston Street between Nicholson and Smith streets, GJM Heritage recommended the removal of Johnston Street West from HO334 (South Fitzroy Precinct) and for this commercial strip to be included in a new precinct-based Heritage Overlay. The review recommended a Heritage Overlay extent and included a heritage citation for a new Johnston Street West Precinct. This was prepared in recognition that Johnston Street has a predominantly commercial high street heritage character rather than the residential and commercial/industrial character of the majority of the South Fitzroy Precinct.

Irrespective of the weight that the Tribunal may attribute to the heritage and built form analysis recently undertaken for Council that informs YPS Amendment C270 and the corresponding changes to the MSS and all local policies including the boundaries and roles of activity centres (YPS Amendment C269 approved by the Minister for Planning to be placed on public exhibition from 20 August 2020), the FRA submits that the proposal does not satisfy current State or local heritage requirements.

In particular, the following objectives outlined in clause 22.02-5.7.1 are not met:

- Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape.
- Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place.

- Be visually recessive and not dominate the heritage place.
- Encourage similar façade heights to the adjoining contributory elements in the street. Where there are differing façade heights, the design should adopt the lesser height.

The transitions in height of the two corner podiums are not considered to adequately respond to the scale of adjacent heritage buildings.

Peter Lovel states in his Summary of Opinion: *'The building would present prominently in both closer and more distant views but not such that the experience of the heritage place is diminished.'*

Based on the 3-D renders prepared by the architects and the Visual Amenity evidence of Orbit Solutions Pty Ltd, we strongly disagree. From all distances and angles, the proposal appears as an over-scaled office block that has been dumped into the fine-grained historic streetscapes, detracting from significant heritage buildings.

There are no strategic objectives that would outweigh the negative impacts of this proposal and could not be satisfied by a significantly smaller, more refined building on this key site.

The proposal does not satisfactorily address the Decision Guidelines at Clause 43.01-8 including:

- *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.*

The new built form will not ensure that an appropriate setting and context for heritage places in this part of the South Fitzroy Precinct is maintained or enhanced.

The proposal will be detrimental to the legibility of the heritage place (Clause 15.03-1S). It is abundantly clear from the visual amenity modelling that the proposal will not achieve an outcome that will be visually recessive and that it will dominate the heritage place (Clause 22.02-5.7.2).

GROUND 3

The proposed development does not meet the ESD requirements set out in policies adopted by the Yarra City Council.

The internal layout, south boundary setbacks, materials, balcony dimensions and openings have been further changed since the Council released its position on the Revision D plans. It is the evidence now of Mr Talacko of Ark Resources Pty Ltd that the proposal can deliver a best practice environmentally sustainable design outcome and thereby contribute to a quality internal amenity.

The modelling and full dimension drawings (Revision E plans dated 4 September 2020) were not previously available to Council or objectors.

The FRA will therefore defer to Council as to whether or not it is now satisfied that the following matters, contrary to the objectives of clauses 16 and 58 of the Yarra Planning Scheme have been adequately addressed and will achieve a Best Practice Standard in relation to ESD:

- Daylight constraints to apartments on lower levels, particularly adjacent to existing buildings;
- Limited natural ventilation to single sided apartments (despite achieving Clause 58 Standard D27 which requires a minimum of 40% of dwellings to be provided with effective natural ventilation).
- Energy efficiency and thermal comfort (despite achieving compliance with Clause 58 Standard D6).

Council was rightly critical of the small size and poor location of the communal open space originally allowed in this development. Relocation to the rooftop is supported by the applicant's witnesses.

The relocation of the communal open space and increase in size resolves the issue of space allocation and overshadowing, however there are still concerns with the useability of this space. Access to the terrace is only provided via stairs (with a motorised stair lift). No lift access is provided. This is contrary to the objective of the Standard which notes that communal open space should be accessible, useable and capable of efficient management. This aspect of the roof terrace would have to be addressed in order for this space to satisfy the Standard in Clause 58.

It is also noted that the location of the roof terrace is likely to raise issues with wind impacts within this space. If 2m high balustrades are required to make wind conditions safe (walking conditions) for the level 9 terraces, what is required to make the roof-top open space safe or even useable? It is the submission of the FRA that the roof top open space should achieve sitting criteria to be a useful space.

The Landscape Evidence for the applicant does not specifically address wind comfort levels on the roof, other than the need to anchor the root balls of the proposed trees for safety.

GROUND 4

The number of car park spaces fails to respond to the Yarra City Council's Strategic Transport Statement which seeks to encourage active transport.

While having a preference for fewer on-site car parking spaces, in favour of sustainable transport and more affordable housing, the FRA agrees that the provision of visitor as well as resident and staff parking will alleviate pressure on the existing or the available on street parking. The management of the car parking can be handled by a Parking Management Plan condition, as already flagged by Council.

GROUND 5

The number of car movements will impact adversely on local residential streets and the major thoroughfare of Johnston Street, Fitzroy.

The Transport Evidence Statement by John Kiriakidis predicts a net increase of 252 movements per day to be generated by the proposal compared to the existing 66 car spaces on the site.

A proportionate reduction in on-site car parking for residents, relative to the removal of at least two floors as advocated for other reasons, would have the benefit of avoiding significant increases in local traffic movements and would be supported by the FRA.

GROUND 6

The amenity and viability of the emerging and creative businesses operating in the Moran and Cato building will be adversely impacted.

Occupants of the Moran and Cato Building and the associated building at 105 Victoria Street, Fitzroy, immediately south of the subject site sought to be represented by the Fitzroy Residents Association in this matter. We therefore append a full copy of their objection lodged with Council.

The objection refers to a number of provisions of the Yarra Planning Scheme, the most relevant being Clause 22.05 Interface Uses Policy and Clause 53.06 Live Music and Entertainment Noise, which place the onus on noise attenuation and the protection of internal amenity for new development with the 'agent of change': in this case being the proposed redevelopment of the subject site primarily for residential use. It states that:

A noise sensitive residential use must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from any:

- *Indoor live music entertainment venue to below the level specified in State Environment Protection Policy (Control of Music Noise from Public Premises) No. N2 (SEPP-N2)*
- *Outdoor live music entertainment venue to below 45dB(A) assessed as an Leq over 15 minutes.*

The primary expert evidence statement relative to this concern is that of Nicholas Peters addressing the acoustic performance. He relies on measurements and observations taken in 2017. Perhaps due to the timing of the measurements or because the three closest live music venues adhere to limits on outdoor music noise, he found the main sources of noise from these venues to be patron noise and mechanical noise.

The Moran and Cato Building (277-285 Brunswick Street) has an existing roof-top bar (Known as Naked for Satan) and a permit to construct additional bar space on the roof of 95-105 Victoria Street, linked by a bridge. This new outdoor tavern spaces would be within 10m of some apartments and could potentially impact their amenity. When this permit was issued, the nearest noise sensitive uses were 25m away. The expert advice has assumed that this project is likely to proceed and made recommendations accordingly.

The Tribunal will need to be satisfied that the noise impacts, as well as other issues identified by the objectors have been adequately addressed in the latest revision of the proposal.

CONCLUSION

The Fitzroy Residents Association requests the Tribunal to refuse to grant a permit for the proposed development at 84-104 Johnston Street, Fitzroy.

The FRA along with the people we represent through the Joint Statement of Grounds, believe that the impact on our neighbourhood, activity centre and streets given its height and bulk is unacceptable.

We also believe that its failure to respect and reflect on the heritage value of adjacent buildings and streetscape would do irreparable damage to the values held by our community.

The Tribunal should also be made aware of the expectations of our community and our city council which is to ensure that new developments respond to highest level of ESD standards, promote active transport and reduce the impacts of traffic.

And finally the impact on emerging and creative enterprises operating in the nearby Moran and Cato building have existing rights and their future prospects need to be taken into account in determining the appropriateness of this development.