VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P639/2025
PERMIT APPLICATION NO. PDPL/00710/2024

CATCHWORDS

Port Phillip Planning Scheme; use of land for a store (self storage facility) in a Commercial 1 Zone; Schedule 34 to the Design and Development Overlay in the Port Phillip Planning Scheme; policies at Clauses 02.03-1, 11.03-6L-03 and 17.02-1L of the Port Phillip Planning Scheme; comparison of land use against policies for the St Kilda Road South precinct and the St Kilda Road neighbourhood; acoustic impacts on residential properties arising from movements associated with a loading bay; traffic movements and turning movements in a laneway; assessment of net community benefit.

APPLICANT	Zig Inge 180 St Kilda Road Pty Ltd
RESPONSIBLE AUTHORITY	Port Phillip City Council
RESPONDENTS	Brenda Forbath David Nash Elaine Francis Smith Ernest Bennett Helen Shingles Nicholas Peter Buskens Philip Bird RSL Care RDNS Ltd Suzanne Margaret Lau Gooey Vanessa Gaye Lucas Andrew Hill & Merynne Hill Dianne Rooney & Ward Rooney
SUBJECT LAND	180 St Kilda Road ST KILDA VIC 3182
HEARING TYPE	Major Case Hearing
DATE OF HEARING	24, 25, 26, 27 & 28 November 2025
DATE OF ORDER	15 December 2025
CITATION	Zig Inge 180 St Kilda Road Pty Ltd v Port Phillip CC [2025] VCAT 1102

ORDER

Amended application

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

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- Prepared by: BN Architecture
- Drawing numbers: A00.00, A00.01, A00.03, A00.04, A00.06 to A00.08, A01.01 to A01.05, A01.10, A01.30, A01.40, A03.01 to A03.07, A03.10, A04.01, A04.02, A09.50, A11.01 to A11.03, A11.10, A11.11, A60.01, A100.21 to A100.26, A100.30
- Dated: 10 October 2025 (Revision B)

No permit granted

2 In application P639/2025 the decision of the responsible authority is affirmed.

3 In planning permit application PDPL/00710/2024 no permit is granted.

Michael Deidun
Presiding Member

Kate Partenio
Member

APPEARANCES

For Zig Inge 180 St Kilda Road Pty Ltd:	Tiphanie Acreman, Barrister instructed by Sashank Krishnamoorthy, Solicitor of Norton Rose Fulbright Australia She called the following witnesses: • Tim McBride-Burgess, Town Planner of Contour Consultants • Leigh Furness, Traffic Engineer of Traffix Group • Tim De Young, Traffic Engineer of Eukai • Christophe Delaire, Acoustic Engineer of Marshall Day Acoustics
For Port Phillip City Council:	John Hannahan, Solicitor of Harwood Andrews
For Brenda Forbath:	Brenda Forbath appeared in person
For David Nash:	David Nash appeared in person
For Elaine Francis Smith:	Suzanne Lau Gooey
For Ernest Bennett:	Ernest Bennett appeared in person
For Helen Shingles:	Chris Shingles
For Nicholas Peter Buskens:	Nicholas Buskens appeared in person
For Philip Bird:	Philip Bird appeared in person
For RSL Care RDNS Ltd:	Reto Hofmann, Solicitor of Rigby Cooke Lawyers He called the following witness: • Thomas Evans, Acoustic Engineer of Resonate Consultants
For Suzanne Margaret Lau Gooey:	Suzanne Lau Gooey appeared in person

For Vanessa Gaye Lucas:	Vanessa Lucas appeared in person
For Andrew Hill & Merynne Hill:	Andrew and Merynne Hill both appeared in person
For Dianne Rooney & Ward Rooney:	Vanessa Lucas

INFORMATION

Description of proposal	The addition of two storeys above an existing three storey building, and use of the land for a self storage facility.
Nature of proceeding	Application under section 77 of the *Planning and Environment Act 1987* (Vic) – to review the refusal to grant a permit.
Planning scheme	Port Phillip Planning Scheme
Zone and overlays	Commercial 1 Zone Design and Development Overlay 34
Permit requirements	Clause 34.01-1 to use land within the Commercial 1 Zone as a Store Clause 34.01-4 to construct a building and construct or carry out works on land within the Commercial 1 Zone Clause 43.02-2 to construct a building and construct or carry out works on land to which the Design and Development Overlay applies Clause 52.05-2 to construct or put up for display a sign in Section 2 of 52.05-11
Relevant scheme policies and provisions	Clauses 02, 11, 13, 15, 17, 18, 34.01, 43.02, 52.05, 52.06, 52.29, 52.34, 53.18, 65 and 71.02.
Land description	The land is an irregular shaped allotment with a frontage to St Kilda Road of 30.48 metres, a depth of between 46.69 metres and 49.83 metres, and a rear abuttal to a laneway that is approximately 5 metres wide. It has an overall area of 1258 square metres, and presently supports a three storey office building above a two level basement car park.
Tribunal inspection	The Tribunal inspected the review site and surrounding area prior to the hearing, on 18 November 2025, and again after the hearing on 2 December 2025.

REASONS[1]

WHAT IS THIS PROCEEDING ABOUT?

1 Zig Inge 180 St Kilda Road Pty Ltd (the 'applicant') seeks a review of the decision of the Port Phillip City Council (the 'Council') to refuse to grant a planning permit for the use and development of a self-storage facility on land at 180 St Kilda Road, St Kilda (the 'review site').

2 Amended plans were circulated prior to the hearing. In response to the amended plans the Council now relies on a single ground of refusal, being:

> 1. The proposed access and servicing of the building from the rear lane will result in unacceptable amenity impacts at the interface with the adjoining residential use.

3 A large number of nearby residents and other interested people have lodged Statements of grounds in this proceeding, including a number who are parties to the proceeding (the 'respondents'). Collectively, these people oppose the proposal for the following reasons:

a The potential traffic impacts in the rear laneway;

b The potential acoustic impacts on the surrounding properties;

c A range of other potential off-site amenity impacts to the nearby residential land uses; and,

d Whether the proposed land use is appropriate in this location.

4 The issues or questions for determination are:

a Is the proposed land use appropriate?

b Is the proposal an appropriate built form response to its context?

c Will there be any unreasonable off-site amenity impacts?

d Is the proposed signage appropriate?

e Does the proposal appropriately provide for car parking and traffic movements?

5 The Tribunal must decide whether a planning permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Port Phillip Planning Scheme, we have decided to affirm the Council's decision, and direct that no planning permit be granted. Our reasons follow.

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[1] The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

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IS THE PROPOSED LAND USE APPROPRIATE?

6 The land is located within the Commercial 1 Zone. The purposes of the Commercial 1 Zone are set out below.

> **Purpose**
>
> To implement the Municipal Planning Strategy and the Planning Policy Framework.
>
> To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.
>
> To provide for residential uses at densities complementary to the role and scale of the commercial centre.

7 Under the provisions of the zone, the use of the review site for a Store is nestled under the term Warehouse, which is a Section 2 use. This means that a planning permit is required before the land use can commence. Clause 65 of the Port Phillip Planning Scheme provides the following guidance in relation to the grant of a planning permit.

> Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

8 The Commercial 1 Zone also contains provisions and Decision guidelines that relate to the proposed use of land. However, aside from referring one to the Municipal Planning Strategy and the Planning Policy Framework, there is no guidance to assess whether a use is strategically appropriate for a particular location. Clearly, that task is left to planning policy.

9 Our ultimate task as a decision maker is to determine whether a proposal will achieve a net community benefit, as guided by Clause 71.02-3 of the Port Phillip Planning Scheme, as set out below.

> **Integrated decision making**
>
> 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.
>
> 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…

10 The applicant does not address the proposed use of the land in their opening written submissions, but does set out the following in their conclusions.

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63. The application provides for a modest proposal which provides a conveniently located self-storage facility designed to service the growing storage needs of residential and commercial uses in the near and broader area. The proposal contributes to improving the public realm for this part of St Kilda Road and to diversification of the local economy.

64. On a proper assessment of the material before the Tribunal, it will be demonstrated that the PNPE9 proposal represents a net community benefit and a permit ought to be granted subject to appropriate conditions.

11 In their written closing submissions, the applicant sets out the following.

80. Policy in relation to street activation does not require that the majority of the use occur at the front of the site. It says nothing about which part of the site should be the "most active". Policy seeks to create active frontages, not the most active part of the site to be located at the front of the use.

81. The proposal will achieve this. The office/retail on the southern portion of the frontage will sell supplies such as boxes, tape, locks, and packing materials. The experience of Storage King is that members of the public travel to the retail office to purchase this material, in addition to their storage unit customers. The use will have the appearance of a Storage King office when driving past it on St Kilda Road. This is the experience most people who view the site will have.

82. The previous office use had limited activation of the street frontage. The site has had an uninviting, relatively inactive frontage as an office with dark tinted front windows and relatively little public access for decades. It is now derelict, run down and covered with graffiti. This proposal represents a distinct improvement in terms of aesthetics and active frontage.

12 We are not persuaded that the proposed land use is a natural or appropriate fit into this location, as guided by the Port Phillip Planning Scheme. We make this finding for the following reasons.

13 Firstly, the proposed land use is not consistent with the purposes of the Commercial 1 Zone. Clearly the proposal does not comprise residential land use, which is referred to in the third purpose of the zone. However, it is also not a land use that would assist to create a 'vibrant' activity centre. Indeed, there is likely to be very little activity generated by the proposal to St Kilda Road, and instead most activity will occur to the rear laneway, where customers will either park in the car park, or park in the loading bays, and access their storage units.

14 We anticipate that the only activity that will be occurring on a regular basis through the front of the site will be for a proportion of new customers when they first agree to rent a storage unit (if and when this occurs in person), or some existing customers who prefer to park in St Kilda Road to collect or

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drop off a small item in a storage unit. We anticipate the second of these groups to be low, given the more convenient access to the lift, and therefore the overwhelming majority of the storage units, from the car park that is accessed from the rear laneway. We also note that in the event the car parks along St Kilda Road are occupied, drivers will need to navigate a circuitous route in order to access the car park off the rear laneway. This is because currently, the left hand turn from Somerset Street into the rear laneway is difficult for vehicles of most shapes and sizes, due to the tight proportions of the southern end of the laneway. As such, we anticipate the on site car parking off the rear laneway to be preferred for people needing to park to attend the site, rather than the car spaces in St Kilda Road.

15 We also consider that the display area that will 'activate' part of the ground level frontage, along with the office/retail area, to be largely unsuccessful in providing real activity to St Kilda Road. As we understand it, the only goods for retail sale form the site are boxes and other goods to assist with packing items, which will hardly provide for an engaging display area or a highly pedestrianised retail space. These are spaces that will not contribute in a meaningful way to the creation of a vibrant mixed use centre.

16 For these reasons we concur with the written submissions of one of the respondents which submits that the proposal will:

> … entrench inactivity and dormancy.
>
> Store is not an active use in the traditional sense – it is largely goods already bought sitting idle in storage.
>
> The operating hours spread over a long period of the day are likely to result in any attendances being dispersed across any day. Those attendances will be purposeful, being to retrieve goods already bought and owned. The use does not create activity that makes a positive contribution to a commercial centre i.e. being a warehouse it is not retail.[2]

17 Secondly, the proposal does not comprise a land use that is consistent with the policy intent for this locality. The Economic Development Plan at Clause 02.04-1 of the Port Phillip Planning Scheme identifies the review site as part of the St Kilda Road South Mixed Use Activity Area. Clause 02.03-1 sets out the following guidance for the St Kilda Road neighbourhood.

> With a grand landscape setting that is flanked by the Shrine of Remembrance (in the City of Melbourne), St Kilda Road is one of Melbourne's most famous boulevards. The new Anzac Station will enhance access to the area, and catalyse residential and commercial development and public realm improvements.

[2] Paragraphs 27-29 of the written submission filed on behalf of RSL Care RDNS Ltd.

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> The area has a diverse population and is a significant employment hub with a workforce of over 20,000. A 37 per cent population growth is forecast by 2031, along with significant growth in worker numbers.
>
> Council supports:
>
> - Maintaining the role of St Kilda Road as a preferred location for premier office accommodation and well-designed, higher density residential development.
> - …

18 The proposed self-storage facility fails to recognise the preferred location of St Kilda Road for office development and residential development. Further, it is not clear to the Tribunal how a self-storage facility, with its low level of street activation, will complement the identification of St Kilda Road as a famous boulevard.

19 Clause 02.03-6 of the Port Phillip Planning Scheme seeks to:

> Maintaining the role of St Kilda Road as the City's premier commercial strip.

20 A self-storage facility is nestled under the definition of Warehouse. While this is a commercial land use, it will hardly fit in with the role of the City's premier commercial strip. Rather, a Store or a Warehouse is a 'back of house' role that one would usually expect to find located behind the premier commercial strip, or in another commercial area.

21 Clause 11.03-6L-03 applies to the St Kilda Road South Precinct. The review site is within the St Kilda Road South Precinct, and the smaller St Kilda Road Neighbourhood within that precinct. As such, the following policies apply:

> **St Kilda Road South Precinct**
>
> **Policy application**
>
> This policy applies to the St Kilda Road South Precinct, as shown on the map to this clause.
>
> **General**
>
> **Objective**
>
> To strengthen the St Kilda Road South Precinct's image, liveability and sense of place as it transitions to increased residential uses.
>
> **Strategies**
>
> Create a diverse series of neighbourhoods with a strong sense of place, community and local identity.
>
> Encourage land uses that create activity nodes and community focal points for local residents and workers.
>
> Provide additional opportunities for housing growth throughout the Precinct due to its proximity to public transport and activity centres.

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Improve the amenity and function of St Kilda Road as a key pedestrian spine by providing active land use 'edges' at street level throughout commercial and mixed use areas.

Maintain solar access to key pedestrian streets and green links, including St Kilda Road, Wellington Street, Alma Road and Carlisle Street.

Ensure the interface between commercial and residential uses is well designed and non-residential uses are managed to protect residential amenity.

Discourage larger-scale licensed premises, bars and nightclubs that may impact on the amenity of the surrounding area.

…

St Kilda Road Neighbourhood

Objective

To reinforce the St Kilda Road Neighbourhood as a niche retail and business area, a growing residential community and a safe and friendly pedestrian environment.

Strategies

…

Along the eastern side of St Kilda Road (DDO34):

- Create a continuous activated edge to the street through a diverse range of ground level retail and complementary commercial uses.
- Support upper level office and residential, and residential to the rear of commercial premises.

22 We find that the proposed land use is not a good fit with this policy, to the extent where it could be said to be discouraged by this policy. We make this finding for the following reasons:

a A self-storage facility with a distinct lack of activation of St Kilda Road will not strengthen the image, liveability or sense of place of this activity centre;

b This is not a land use that creates activity nodes and community focal points for local residents and workers;

c The proposal does not provide for housing growth, on a site that is ideally located and sized for a housing development;

d The proposal does not provide an active land use at street level, and therefore fails to improve the amenity and function of St Kilda Road as a key pedestrian spine;

e The proposal will not contribute to the desired continuous activated edge by failing to provide a ground level retail or complementary commercial use. While the proposal has a small office/retail space at

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the ground floor fronting St Kilda Road, this is hardly a core retail space.

f The proposal fails to incorporate upper level office or residential uses, as encouraged in this neighbourhood.

23 Ms Acreman submits that the policies that identify St Kilda Road as a famous boulevard and the City's premier commercial strip should be read as applying to that part of St Kilda Road that exists north of the St Kilda Junction. We do not read that intent anywhere in the Port Phillip Planning Scheme, and instead identify the policies above at Clause 11.03-6L-03 as specifically applying to a short stretch of St Kilda Road south of the St Kilda Junction, that includes the review site. It is therefore evident that the policies encouraging activity nodes, the creation of a key pedestrian spine, active land use edges at ground level, and ground level retail and complementary commercial uses with residential and office uses above, to be specifically tailored for this relatively small stretch of St Kilda Road, that includes the review site.

24 The final piece of relevant policy guidance is found at Clause 17.02-1L of the Port Phillip Planning Scheme, which contains the following Strategies.

> Ensure use supports the future strategic role and function of the office and mixed activity areas, as defined in Table 1.
>
> Ensure that the nature and intensity of office and commercial activity is compatible with and responsive to its location, particularly in Mixed Use zones.

25 In relation to the first strategy above, Table 1 identifies the primary functions of the St Kilda Road South precinct as:

a Commercial/office role;

b Intensification of housing; and,

c Active ground floor uses.

26 Secondary functions of this precinct are identified as an employment node, and retail showrooms/restricted retail. We form the view that the proposed land use does not fit into any of these primary or secondary roles. While a self-storage business is a commercial role, it is not one that adds an identifiable level of commercial activity to the St Kilda Road spine. Instead, most of the commercial activity will occur either in the rear laneway, or internal to the building in a manner that does not activate St Kilda Road.

27 Further, we note that policy at Clause 17.02-1L creates an ability for a light industrial/warehouse role to be identified as a primary or secondary function of a precinct, and that option is not taken up for the St Kilda Road South precinct. This land use is however encouraged in three other commercial precincts in the municipality. One of these three other precincts is the Fisherman's Bend urban renewal area, which is a very large

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precinct, which is conveniently accessible by car from this part of the municipality.

28 We find ourselves attracted to the submissions filed on behalf of one of the respondents, which includes the following analysis:

> In particular, the Storage King:
>
> (a) will not assist in creating a vibrant activity centre;
>
> (b) will not provide meaningful employment;
>
> (c) is anticipated to have a detrimental impact on the liability of the neighbouring residential area through noise and activity created by the loading and vehicle access arrangements at the residential interface, access that the Applicant intends to provide after hours and on weekends and public holidays;
>
> (d) will not provide a "well-designed building" that will contribute to safe, lively and high amenity places";
>
> (e) will not provide well-designed new development that will enhance the character and beauty of the neighbourhood;
>
> (f) does not make any contribution to affordable, accessible and diverse housing types to meet the needs of the population or provide meaningful community facilities and services in an area suite to housing; and
>
> (g) will make no contribution to a healthy and safe environment for residents, workers and visitors to the municipality.[3]

29 We put many of these concerns to Mr McBride-Burgess in our questions to this witness. Orally, Mr McBride-Burgess is of the opinion that while the proposal is not a land use that will achieve some of the policy objectives we have set out above, that the proposed land use does not detract from the policy objectives for this part of St Kilda Road from being achieved in the precinct as a whole. Mr McBride-Burgess also notes the high level of glazing and multiple access points at ground level of the front façade, and that people will be seen at the upper levels moving along the internal corridors, behind the front façade to St Kilda Road. He opines that this provides an appropriate level of activation and surveillance of the street.

30 We are not persuaded by this evidence. Instead, we find that the proposed land use is the antithesis of what policy is encouraging in this locality, through its lack of active street frontage at ground floor, the very low level of pedestrian activity that will be generated, the very low level of employment that will be provided on the review site, and absence of any meaningful level of commercial activity at the St Kilda Road frontage.

31 Ms Acreman submits that a proposal does not need to achieve every single line in planning policy, in order for a planning permit to be issued. We agree with this submission. We hope that through the depth of our

[3] Paragraph 49 of the written submission filed on behalf of RSL Care RDNS Ltd.

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assessment set out above, we have demonstrated that we are not focussed on any single line in policy, but rather the clear, consistent and repeated strategic intent for this premier commercial strip on a famous boulevard, as set out in a number of policies found in the Port Phillip Planning Scheme.

32 Ms Acreman also sets out that nothing is currently occurring on the land, and that is not a good outcome for land use in Victoria. She further submits that the proposal will bring significant commercial investment to a currently vacant building, and as a result there will be a more active frontage that occurs at present. We acknowledge the preference for vacant buildings within an activity centre to be developed and actively used. We also acknowledge the benefit associated with the use and development of a presently vacant site in an activity centre, and the money that will be spent on improving the visual appearance of the site, including through the construction of two additional floors. However, that does not mean that one has to accept any Section 2 use that is put forward. As we identified earlier in this assessment, Clause 65 of the Port Phillip Planning Scheme sets out:

> Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

33 Planning takes a longer term view to achieving the strategic priorities set out in planning policy. Just because one of the preferred land uses is not currently occurring on a specific site, does not mean that a land use that is the antithesis of what policy encourages, should be permitted. Just as in significant change areas, where underdevelopments are not allowed as a stop gap measure until a higher form of development becomes economically feasible, in this context that is before us we do not find policy support to entrench a land use that will present such a poor level of pedestrian activity and activation of St Kilda Road, contrary to the strong and consistent policy intent.

34 The Council in their written submissions sets out the following.

> 134. The proposed use is not supported by this policy and it will not contribute in any significant way to street activation. However, it is not inconsistent with the future directions and Council acknowledges that there is a need for this use in community. The office on the ground floor and pedestrian entry point at the St Kilda Road frontage provide an acceptable contribution to street character.
>
> 135. The use is characterised as a Store which falls within the Warehouse group in the nesting diagrams in the Planning Scheme. It is not within the Industrial group of uses and it is a section 2 use in the C1Z. Council considers that there is no particular policy support for the proposed use in this area but neither are there clear policy statements discouraging such a use.

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35 We go further than the Council's finding that there is no clear policy statements discouraging such a land use. Instead, we find that the proposed land use is a poor fit to this important boulevard, and is not supported by the policies of the Port Phillip Planning Scheme that are set out above. We consider that to be a significant disbenefit of the proposal, to be weighed in a net community benefit analysis as part of our integrated decision making approach to this proposal.

IS THE PROPOSAL AN APPROPRIATE BUILT FORM RESPONSE TO ITS CONTEXT?

Provisions of Schedule 34 to the Design and Development Overlay

36 The land is covered by Schedule 34 to the Design and Development Overlay (DDO34). DDO34 provides the following Design objectives.

> To strengthen the boulevard character and visual cohesion of St Kilda Road through; a greater consistency in street wall height and overall building scale within sections of the streetscape; and the regular spacing of buildings.
>
> To ensure the scale of buildings reinforce the topographic high point of St Kilda Hill and the entry point of St Kilda Junction, whilst avoiding higher scale intrusions within other sections of the streetscape.
>
> To reinforce the fine grain streetscape character of the Victorian-era shop-fronts between Charnwood Road and Alma Road, re-establish a fine grain of development on larger sites, and ensure buildings contribute to an enhanced public realm through ground floor activation, passive surveillance and solar access to footpaths.
>
> To ensure new development reinforces prominent corners along St Kilda Road at Wellington Street, Alma Road and Inkerman Street by creating a strong address to each street frontage.
>
> To ensure that new development protects the amenity of, and achieves a transition down in scale to established residential areas, and does not compromise the heritage values of adjoining or nearby properties.

37 DDO34 creates a discretionary building height limit of 21.5 metres or 6 storeys on the review site. It also applies the following desired Built form outcomes.

- Achieve greater consistency in overall building scale along St Kilda Road between Inkerman Street and 166 St Kilda Road, and Alma Road and Octavia Street.
- Avoid building heights which create intrusions in the streetscape and detract from the higher scale clusters at St Kilda Hill and St Kilda Junction.
- Achieve a transition down in scale and respect the established fine grain, low scale of the adjoining residential area.

- Ensure the amenity of adjoining and nearby residential development is not unreasonably impacted in terms of visual bulk, access to daylight, outlook and overshadowing.
- Preserve view lines and maintain the visual prominence of the landmark St Kilda Post Office Hotel.
- Respect the heritage values of adjoining and nearby heritage places.
- Maintain solar access to the southern kerb-line of Inkerman Street and Alma Road.

38 DDO34 also applies the following discretionary controls:

a A street wall height of 11 metres (3 storeys);

b Upper level setbacks (above the street wall) of 5.0 metres; and,

c A zero front setback to St Kilda Road.

39 And the following mandatory built form controls:

a A 4.5 metre side and rear boundary setback, to developments with an overall building height of 5 storeys or more. This setback only applies to common boundaries, that is one that is shared with an adjoining property. It therefore does not apply where the rear boundary of the review site abuts a laneway. OR

b A 9.0 metre setback from any window or balcony on any adjoining property. OR

c No side boundary setback can be provided in certain circumstances.

Response to DDO34

40 The proposal involves the construction of two additional storeys above an existing three storey building. The proposal will rise to a height of 20.8 metres, and therefore comply with the height limit under DDO34. The existing street wall of the building also complies with DDO34, by presenting a three storey street wall with no setback to St Kilda Road. The proposal will 'fill in' and complete the three storey wall, by removing the outdoor terrace that accommodates part of the existing level 2, and extending the internal floorspace at level 2 to the entire footprint of the levels below.

41 The proposed additional levels above the street wall are proposed to be setback 4.5 metres from St Kilda Road, as opposed to the 5.0 metres sought by DDO34. Aside from Mr & Mrs Hill, none of the parties that oppose the grant of a planning permit, raised any concerns with this reduced setback. Mrs Hill in her submission identified the non-compliance with the discretionary setback, but failed to identify any adverse impacts resulting from the proposed setback, or put to the Tribunal why the preferred setback should be achieved on the review site.

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42 We are persuaded by the following extract from the evidence of Mr McBride Burgess that this reduced setback is appropriate, for the following reasons.

> 163 The proposed new Levels 3 and 4 are setback 4.5 metres behind the existing street wall. While slightly less than then preferred 5 metre setback, I consider it provides an acceptable outcome given:
>
> - The setback is sufficient to provide some recession to these levels when viewed from the street.
> - Part of the adjoining property at 170 St Kilda Road is located within the Heritage Overlay, but this is the northern part of the property, separated from the Review Site. The 9 metre setback of the proposed Level 4 from the northern boundary provides further separation between the proposed built form and the heritage building. The upper levels will therefore not detract from the heritage value of this property.
> - The upper level design and materiality provide a clear distinction between the street wall and the upper levels.
> - The approved development at 190-192 St Kilda Road (715/2016/B) has an approximate upper level setback of 2.4 metres.

43 With respect to the requirements for side and rear boundary setbacks as set out in DDO34, the proposal does the following:

a It fills out the missing piece of level 2, resulting in the loss of the existing outdoor terrace, and the provision of a consistent parapet height to the rear boundary to the height of a three storey building, above a partly protruding basement. This complies with DDO34 as a 4.5 metre setback from a rear boundary is only required where the rear boundary is a common boundary with another property. Further, DDO34 requires a 9.0 metre setback from a window on an adjoining site, and as the residential properties to the east of the rear laneway do not adjoin the review site, this setback does not apply to the review site. As such, those setbacks do not apply where the rear boundary of a site abuts a laneway.

b It provides a rear setback of 4.5 metres to levels 3 & 4, which provides for a stepping down in height to the residential interface to the east of the review site;

c To the northern side boundary, a zero setback is provided to level 3, where it will abut an existing boundary wall. This is in accordance with the provisions of DDO34;

d To the northern side boundary, a setback of 9.01 metres is proposed to part of level 3 and level 4, in order to provide the extent of separation

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from existing windows and balconies that is sought under DDO34; and,

e To the southern side boundary, no setback is provided. This is in accordance with DDO34 under the existing site conditions, as the adjoining site to the south has not been developed above the street wall. It is also in accordance under the potential future conditions, noting that the adjoining site to the south has approval to be developed with a six storey mixed use development, which is to be built to the common boundary with the review site at all levels.

44 In addition, we find that the proposal is an appropriate response to the Design objectives of DDO34. We make this finding for the following reasons.

a The proposal will contribute to the visual cohesion sought in relation to street wall heights and overall building heights;

b The proposal avoids a higher scale intrusion, above the discretionary heights sought in this part of St Kilda Road;

c As set out above, the proposal fails to enhance the public realm through ground floor activation as a result of the proposed land use. However, as DDO34 is a built form control, not a land use control, and as the built form to St Kilda Road is largely unchanging, we consider this proposal response to this specific guidance in a neutral manner;

d The review site is not on a prominent corner; and,

e For the reasons set out below, we find the proposal protects the amenity of established residential areas, partly as a result of a transition in scale.

45 We also find that the proposal is an appropriate response to the Built form outcomes sought for this precinct under DDO34. We make this finding for the following reasons. One of the Built form outcomes seeks to ensure residential amenity of nearby residential development is not unreasonably impacted in terms of visual bulk, access to daylight, outlook and overshadowing. We will address each of these issues in turn.

Visual Bulk

46 In terms of visual bulk, the main impact will be from the proposal to 'fill in' the missing piece of the existing level 2, which will have the effect of increasing the height of the podium wall to part of the rear boundary of the review site with the laneway. While this will result in increased bulk visible from the property to the east of the laneway, the proposed extension of level 2 will bring a consistent parapet height to the rear elevation of the building, that matches the parapet height of the adjoining property to the north, and is lower than the wall heights of other buildings that abut this laneway.

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47 We also note that the proposed parapet height to the rear boundary of the review site is less than that approved on the adjoining site to the south at 190-192 St Kilda Road, where a four storey wall to a height of 17.4 metres[4] will abut the rear laneway boundary, if the existing planning permit is acted upon. This compares to a proposed wall height to the rear boundary on the review site of approximately 13.5 metres.[5]

48 For these reasons we consider that the increased parapet height to part of the rear elevation is consistent with the existing character of built form, and also consistent with the reasonable expectation created by the Port Phillip Planning Scheme in this location. We also consider that the separation provided by the approximately 5.5 metre wide road reserve for the laneway, provides a good level of separation and mitigation of visual bulk, for a wall height of up to 13.5 metres on land in a Commercial 1 Zone. For these reasons we find that the increased visual bulk that will prevail, is an acceptable outcome in this context.

49 Above the podium, the residential properties to the east of the review site will benefit from the rear setback to the proposed levels 3 & 4. As a result of this setback, the proposed upper levels will not be visible opposite the site from locations in the rear laneway, and from the windows in the adjacent dwelling that face the laneway opposite the review site. While viewing positions located further afield in the residential hinterland will open up views to the proposed upper levels on the review site, these viewing locations will have the benefit of distance to reduce any potential visual bulk. Further, the extent of built form that will be viewed will be within reasonable expectations for this location, given the compliance of the proposed development with the discretionary built form parameters of DDO34, including the discretionary height limit.

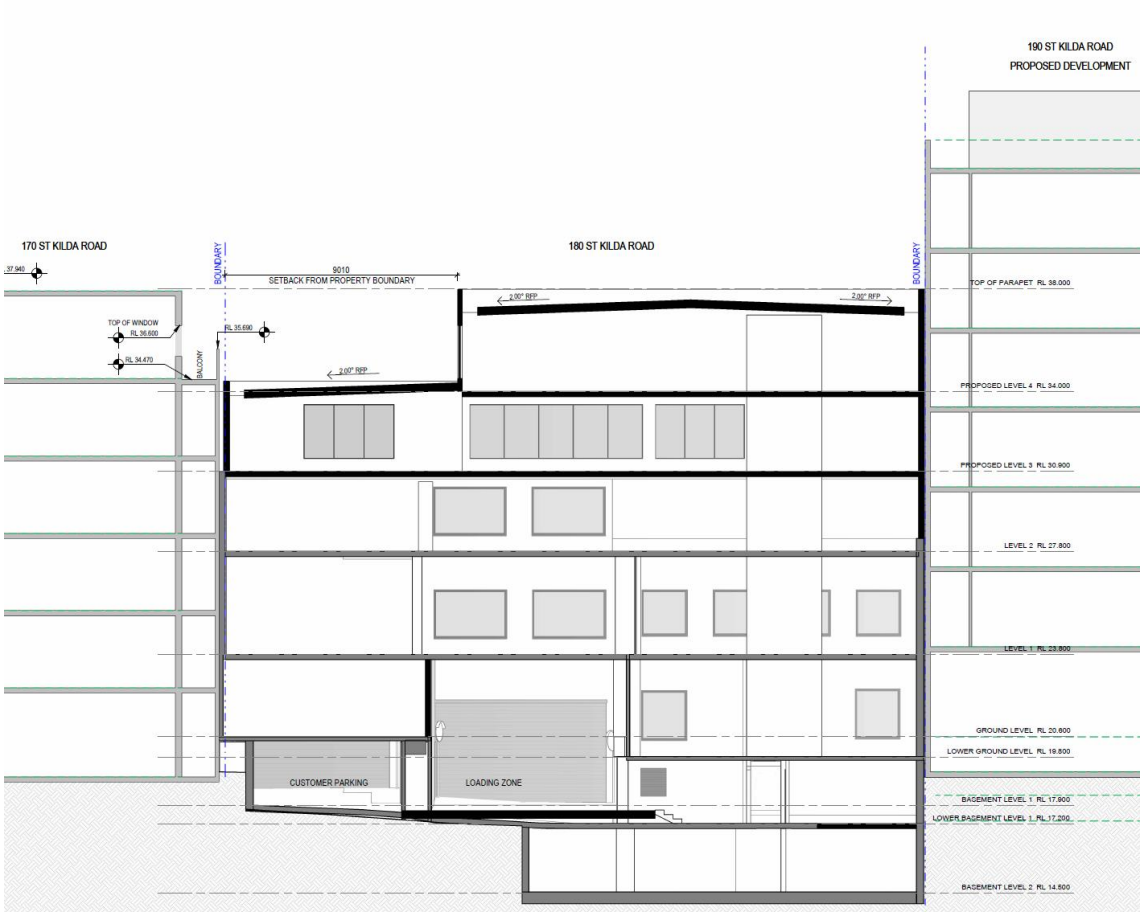
50 The proposed development also abuts residential development to its north. Here, a minimum 9.0 metre setback is provided to existing windows and balconies, and the proposed development rises a maximum height of two storeys above the floor level associated with those existing windows and balconies, as depicted on the section below.

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4 Taken from Plan TP-201 dated September 2023 prepared by PTD Studio, which depicts a level at the laneway of ADH 17.3 metres, and a parapet height of AHD 34.7 metres.

5 Arrived at from the east elevation on Plan A04.02, which depicts a parapet height of RL 30.9 metres, above a laneway which appears to slope down to around RL 17.4 metres at the southern end of the eastern elevation.

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51 Mr & Mrs Hill raise a concern regarding the length and articulation of the northern elevation of the proposed level 5 on the review site. They describe this elevation as only containing some small windows, and a material that will be highly reflective. We are not persuaded by these submissions. The proposed northern elevation is well articulated by a number of large windows, and variation is provided in the detailing and color of the wall material. As the proportion of the northern wall that is the external metal cladding is low due to the extent of windows, we also do not consider that it will be unreasonably reflective.

52 Having regard to the generous setback that is proposed from the sensitive interfaces to the immediate north of the review site, and for the reasons set out above we find that the proposed development will not result in any unreasonable levels of visual bulk to this interface.

Loss of outlook

53 The outlook from the residential properties to the east of the review site, where that outlook is towards the review site, will be to the existing three storey base of the existing building on the review site. The proposed upper level additions will not affect the outlook from windows aligned to view towards the rear laneway, opposite the review site.

54 The outlook from the windows and balconies to the north of the review site will be affected by the proposed upper level additions, however as explained above a generous setback in accordance with DDO34 is proposed on the review site. Further, when this setback is combined with the relative height of the additions from the available viewing locations on the adjoining site to the north, the impact on outlook will be acceptable and within the reasonable expectations created by the discretionary provisions under DDO34.

55 We acknowledge that the proposed height of the additions will interrupt the existing pleasant southerly outlook from Mr & Mrs Hill's property, however this is to be expected in an activity centre location where 6 storey buildings or taller development are encouraged. Indeed, the approved development further to the south at 190-192 St Kilda Road will be even taller again than that proposed for the review site, and will also have an impact on this outlook. To the extent that the loss of this outlook will block views of the St Kilda Post Office Hotel, we find that DDO34 only seeks to retain views of this building from the public realm, and not from private windows or balconies.

Loss of daylight

56 Given the setback to the proposed upper levels from the rear, as well as the separation provided by the relatively wide rear laneway (at approximately 5.5 metres in width), it is not expected that they could impact the receipt of daylight to residential properties to the east of the review site. Likewise, given the large side boundary setback provided adjacent to windows to the north, and the relative height of the additions compared to those windows, there will be no discernible loss of daylight to those nearby residential properties to the north of the review site.

Overshadowing

57 The final amenity impact to be considered under DDO34 is overshadowing. The only affected residential property from shadowing impacts is that located on the opposite side of the rear laneway from the review site. The shadow diagrams provided with the amended plans demonstrate that the proposed upper levels on the review site will not cause overshadowing of the rear area of secluded private open space at this nearby property. While we understand that the front yard of that property is surrounded by a high fence and could also be considered as private open space, its location in a narrow setback to the south of the dwelling on that site, means that it already has limited solar access at the equinox. The proposal will add a small amount of shadowing at 2:00pm at the equinox to this front yard, and complete the overshadowing of this space at 3:00pm at the equinox. We consider that to be an acceptable outcome, given the absence of shadowing of the rear area of secluded private open space, and the reasonable built form expectations that should prevail in this locality.

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58 The plans also demonstrate that there will be some loss of solar access to the west facing windows of this adjacent residential property. However, as even Clause 55 in a purely residential context does not seek to limit overshadowing of west facing habitable room windows, we certainly do not consider that such an approach should apply here, at the immediate interface to land within the Commercial 1 Zone. For these reasons we find that the proposal appropriately limits the potential shadowing impacts on the adjacent residential property.

Conclusion

59 In relation to the other remaining Built form outcomes for this DDO34 precinct, we find that these are achieved for the following reasons.

a The proposal will contribute to a greater consistency in building scale;

b The proposal will not be of a height that will create an intrusion in the streetscape;

c The proposed rear setbacks that comply with DDO34 will achieve an appropriate transition in scale to the adjoining residential area;

d The proposal will not impact the visual prominence of the St Kilda Post Office Hotel;

e There are no abutting heritage places, and that which is further to the north of the review site will not be affected by the proposal.

f The proposed upper levels will not impact solar access to Inkerman Street or Alma Road.

60 For these reasons we find that the proposed development is an appropriate built form response to its context, and the guidance provided by DDO34.

WILL THERE BE ANY UNREASONABLE OFF-SITE AMENITY IMPACTS?

61 The applicant submits that the amenity expectations for dwellings in this location where they are either on, or adjacent to, land in a Commercial 1 Zone should be appropriately tempered. The applicant couches the acoustic impacts from traffic movements in the laneway as one example of the type of amenity impacts that are within the bounds of reasonable expectations in this context. To support these submissions the applicant points to the car and truck traffic generated by other land that abuts the laneway, including that associated with the Europa on Alma retirement village.

62 The evidence of Mr McBride-Burgess supports these submissions, and sets out the following in his written evidence statement.

> 215 There will be some acoustic impacts from the vehicle access. Whilst the proposal was originally seeking approval to operate 24/7, including vehicle access, the amended proposal seeks only to operate between 7:00am and 10:00pm.

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216 Vehicles using the car park will only be able to access the site during these hours and for loading, this is further confined to 7:00am and 6:00pm.

217 These hours of operation and vehicle access are appropriate for a commercial context, including one with nearby residential properties. From a town planning perspective, that the level of noise generated by the use is appropriate for the context.

218 From a review of the Statements of Grounds, I understand that there is also a concern around the acoustic impacts arising from the beeping for SRV's reversing into the loading bay spaces.

219 As noted above, the VCAT Amended Plans proposes that the loading bay will only be accessible between the hours of 7:00am and 6:00pm.

220 From a town planning perspective, the loading zone will not result in an unacceptable amenity outcome for the residential properties that sit at the border with a commercial precinct.

63 Clause 13.07-1S Land use compatibility sets out the following guidance.

Objective

To protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts.

Strategies

- Ensure that use or development of land is compatible with adjoining and nearby land uses
- Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses.
- Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.
- Protect commercial, industrial and other employment generating uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively.

64 At a local level, this policy is supplemented by that at Clause 13.07-1L-03 of the Port Phillip Planning Scheme, which contains the following guidance.

Objectives

To manage amenity conflicts between commercial, industrial and residential activities while maintaining the viability of commercial or industrial activities.

To minimise the detrimental impacts of non-residential uses on residential amenity.

To ensure that non-residential uses in residential zones are compatible with the surrounding residential context and serve the local community.

Non-residential use and development strategies

…

Address possible impacts on residential amenity from established and future non-residential uses through appropriate design and management measures that:

- Provide acoustic protection to adjoining residential properties.
- Minimise noise transmission within the building, including from machinery and ventilation systems, between floors or separate units and to adjoining residential properties.
- Minimise the opportunity for views from adjoining residential properties into the site, especially where the storage, preparation, business or industrial activity could present an unsightly appearance.
- Minimise the opportunity for light spill due to fixed or vehicular lights, outside the perimeter of the site and on to habitable room windows of nearby residential properties.

65 We have already addressed in our analysis above the potential off-site amenity impacts in terms of daylight access, overshadowing, visual bulk and loss of outlook.

66 In terms of overlooking, the proposal intends to add opaque film to the inside of the existing east facing windows. We are concerned by the use of opaque film to address overlooking, as it is not a fixed form of screening, in that it can easily be removed. If we were of a mind to direct the grant of a planning permit for the proposal, we would have required an alternative screening treatment to the ground level, level 1 and 2 east facing windows, being those windows within 9.0 metres of the residential property on the eastern side of the laneway. We have included the ground floor windows in this assessment, as at the eastern elevation the ground floor sits well above natural ground level, due to the protruding basement level.

67 One of the key disputes between the parties is whether the proposal will cause unreasonable acoustic impacts on nearby residential properties, primarily as a result of car and truck movements next to, and in, the rear laneway. We had the benefit of acoustic evidence from two experts, though only one of these experts actually modelled the likely noise impact on the nearby sensitive receivers, being the windows of nearby dwellings.

68 We are persuaded by the evidence of Mr Delaire that the noise emanating from the proposal will comply with the relevant noise limits that apply to the review site. We make this finding for the following reasons:

a Mr Delaire has taken the conservative approach of modelling the noise from the maximum use of the site by both vehicles and small trucks (small rigid vehicles or SRV) all occurring within a 30 minute period.

b Mr Delaire has then modelled the combined effect of these noises from both on site and within the immediately adjacent portion of the laneway occurring simultaneously. While Mr Delaire has undertaken this task, it is also his evidence that the vehicle movements on the laneway are excluded from an assessment under the Noise Protocol.

c This modelling has revealed that the proposed use of the land will generate a combined average noise level (Leq) of 47dB at the window to the dwelling on the eastern side of the laneway directly opposite the review site. This compares favourably to a noise limit of 50dB under the Environment Reference Standard, and 49dB that applies under the Noise Protocol.

d Mr Delaire measured existing traffic noise in the laneway, and found that ambient noise levels in the laneway are consistently at levels of 53 to 56 dB Leq, which are higher than the noise levels modelled to be caused by vehicle movements immediately adjacent to the review site, that are associated with the proposed use and development of the review site.

e We are not persuaded by the submissions of Mr Bennett that Lmax levels should be used rather than noises averaged out over a period, as the proposed land use will not operate into the night period, and so a sleep disturbance assessment is not relevant to this proposal.

f The residents near to the review site live in a neighbourhood at the direct interface to land in the Commercial 1 Zone, and a laneway that serves properties in the Commercial 1 Zone. As access directly from St Kilda Road to these properties is discouraged, it is a reasonable expectation that commercial vehicles will utilise the laneway, and will be heard from nearby residential properties.

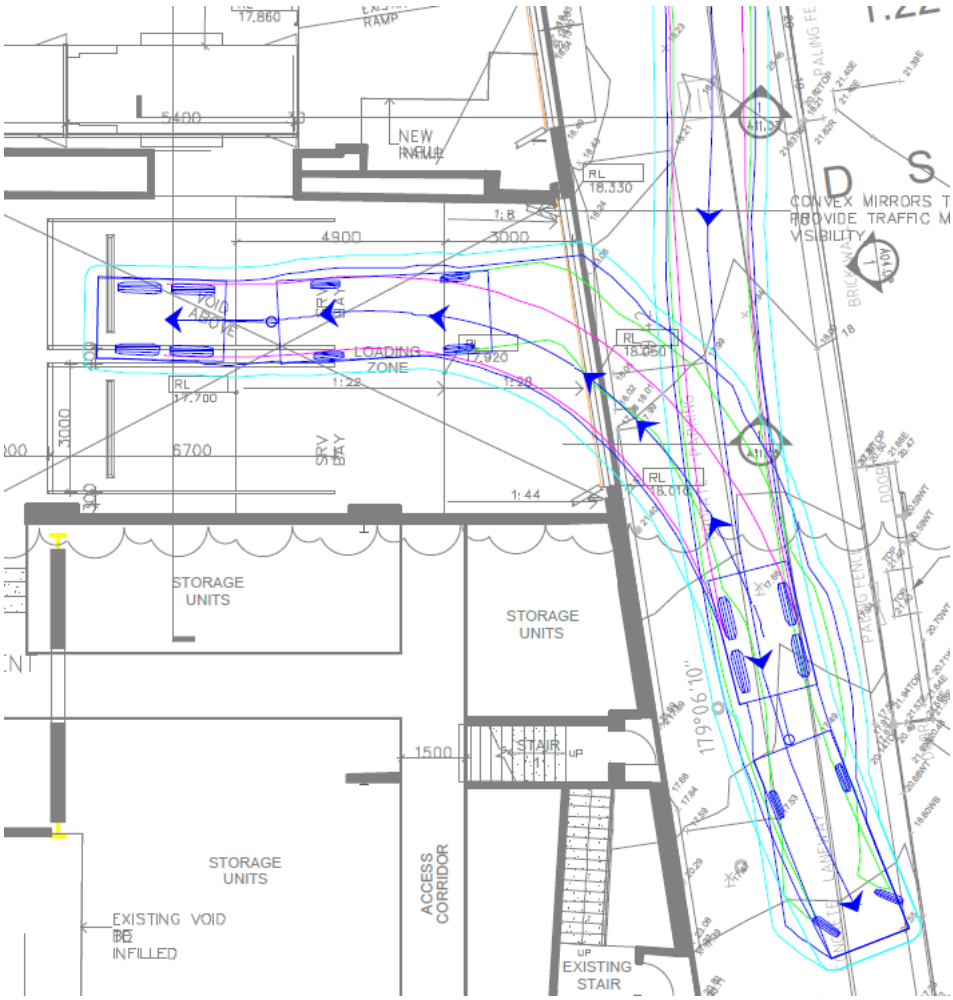
69 Despite this technical compliance with the relevant noise limits, Mr Buskens submits that the proposal will present a range of acoustic impacts, and that the technical assessment does not consider the 'real life' implications on the amenity of his dwelling on the opposite side of the laneway from the review site. Mr Buskens submits that the impacted rooms includes a child's bedroom, and that the noises from vehicles will impact both sleeping, and other uses of his dwelling.

70 We appreciate the detailed submissions of Mr Buskens, and agree that there is a further assessment to be undertaken, beyond the analysis of whether the proposal complies with the relevant noise limits. The provisions of the Port Phillip Planning Scheme also require us to consider whether the proposal will result in an unreasonable amenity impact by way of noise. Due to the nature of the technical assessment undertaken by the acoustic experts, we

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understand that there will likely be additional noises that will have an impact on residential amenity. These noises include the following.

71 Firstly, due to the nature of the layout of the proposed loading bay, and its location off a laneway, small trucks and cars with trailers which seek to access the review site need to perform a fairly tight and precise turn in the laneway, to reverse into the loading bay. The requirement to reverse while in the laneway in order to utilise the proposed loading bay means that reversing beepers will be heard in the laneway. Mr Delaire acknowledges that the noise assessment required under the relevant legislation does not require the inclusion of the noise from reversing beepers, and so his assessment has not taken this noise into account. The fairly tight and precise reversing manoeuvre required in the laneway may result in vehicles taking some time to manoeuvre from the laneway onto the loading bay on the review site, with resulting noise impacts. As one example, the tight and precise reversing manoeuvre required for a car and trailer to enter the review site is depicted below.



Extract from Sheet 07 of Appendix E of the evidence statement of Mr Furness

72 Secondly, due to the nature of the proposed land use, there will be small trucks and trailers operated by inexperienced drivers of such vehicles (including those small trucks and trailers that have been hired for the day), trying to manoeuvre onto the review site from the adjacent laneway. This will likely result in multiple manoeuvres to perform the tight reversing turn from the laneway into the loading bay. As was agreed to by Mr Delaire, his acoustic assessment assumed vehicles entered the loading bay on their first attempt, and that any delay in vehicles moving from the laneway to the loading bay will result in higher average noise levels being experienced in the laneway, and adjacent residential properties. The precise movements required to enter the loading bay may also result in instructions being shouted to drivers within the laneway, in multiple reversing attempts being used with reversing beepers each time, and in some cases drivers potentially giving up on accessing the provided loading bay.

73 All of that may be acceptable in some contexts. In the context of the laneway that abuts the review site, the proposed loading bay is located directly opposite a residential dwelling, which has one habitable room window that directly faces onto the edge of the laneway, and another habitable room window that is sited a small setback behind a paling fence. As a result, this is a context that is sensitive to the noise impacts associated with traffic movements in the laneway.

74 Ms Acreman asks that we compare the likely amenity impacts, with the level of traffic movements that would have occurred when the existing three storey office building on the review site was in operation. While that is a reasonable request, we assume that the office building would have had far less truck movements to the basement car park, as opposed to that now proposed in the rear laneway. Further, the entry to the basement car park is located to the far north of the site's frontage to the rear laneway, and so does not direct traffic past the sensitive interface presented by the habitable room windows in Mr Busken's dwelling. In contrast the loading bay now proposed for the review site causes truck movements to occur very close to these windows.

75 For the reasons set out above, we find that this particular land use, with this particular loading bay design, has the potential to cause unreasonable noise impacts to the nearest dwelling. We make that finding despite the fact that noise from commercial vehicles should be a reasonable expectation in this neighbourhood. However, for the reasons set out above the design of this loading bay in this context exacerbates the potential for noise impacts from commercial vehicles, to the most sensitive interface to the review site.

76 In a context where a proposed use and development brings substantial benefits to be considered on a net community benefit analysis, that may be sufficient to outweigh the disbenefit associated with the likely noise impacts we have described above. However, for the purposes of this part of our assessment, it is sufficient to identify that we find, for the reasons set out above, that the extent of amenity impact caused by way of noise to the

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dwelling that sits opposite the review site is a disbenefit associated with the proposal.

IS THE PROPOSED SIGNAGE APPROPRIATE?

77 The Council's written submission describes the proposed signage in the following manner.

- One (1) internally illuminated business identification sign measuring 1.53m x 11.05m with a total display area of 16.9m2 to be affixed to the front wall of Level 4.
- One (1) internally illuminated business identification sign measuring 2.165m x 3.4m with a total display area of 7.4m2 displaying Storage King logo affixed above the primary entrance to St Kilda Road.
- One (1) internally illuminated business identification sign measuring 0.705m x 4.085m with a total display area of 2.9m2 displaying the words Storage King to be located above the primary entrance to St Kilda Road.
- One (1) internally illuminated business identification sign measuring 1.02m x 1.6m with a total display area of 1.6m2 displaying the "Storage King" logo to be located within the lobby beside primary pedestrian entrance.
- Two (2) internally illuminated direction signs with total display areas of 0.55m2 each reading Parking and Loading respectively, located above the rear vehicle entry points.

78 The Council makes the following submissions in relation to the proposed signage.

171. The proposed signage is acceptable in the C1Z and St Kilda Road South area.

172. The signage responds appropriately to the strategies in the signage policy at clause 15.01-1L- 01 because:

172.1. The signs are well proportioned, suitably located and responsive to the character of the area;

172.2. The signage is located below the skyline, and does not obstruct any views to major architectural features on either the existing or proposed sections of the building frontage;

172.3. While it is illuminated, the proposed signage does not include animation or flashing lights.

172.4. The locations of the signs on the building are broadly consistent with Diagram 1.

172.5. The signage has a clear and concise theme and is orientated away from the nearby sensitive residential interfaces.

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173. The internally illuminated signs proposed at the rear of the building identify the parking and loading areas are unlikely to cause unacceptable amenity impacts for nearby residents, particularly if the illumination is limited to the hours of operation.

79 None of the parties made any submissions opposing the proposed signage on the review site. We consider the signage that is to face St Kilda Road to be proportional for a commercial use of this nature, and a site of this scale. We also consider the proposal to be an appropriate response to the policy at Clause 15.01-1L-01 of the Port Phillip Planning Scheme, and adopt the submissions at paragraph 172 of the Council's written submissions as our reasons for this finding.

80 In relation to the two proposed internally illuminated signs that will face the rear laneway, we consider that these are relatively small in size, and therefore appropriate to perform their function of identifying the car park entry and the loading bay respectively. If we were of a mind to direct the grant of a planning permit, we would have applied a permit condition requiring these internally illuminated signs to be switched off when the site closes each evening. This would be appropriate given that the rear of the site interfaces with a residential area.

DOES THE PROPOSAL APPROPRIATELY PROVIDE FOR CAR PARKING AND TRAFFIC MOVEMENTS?

Relevant Provisions

81 Clause 18.02-4L-02 of the Port Phillip Planning scheme provides strategies for loading facilities including:

> Support development that enables loading and unloading:
>
> - To occur wholly within the site boundaries and obscured from view from the primary streetscape.
> - To be accessible from the rear of a building and/or near an area of low pedestrian activity and separate from parking areas.
> - To accommodate building occupants moving in and out of the building as well as tradespeople working onsite.
>
> Avoid loading facilities and waste management that require vehicles to reverse off-site.
>
> Support loading facilities that are screened from view of the street when not in use.

82 Clause 34.01-2 requires that:

> A use must not detrimentally affect the amenity of the neighbourhood, including through the:
>
> - Transport of materials, goods or commodities to or from the land.

83 Clause 52.06-3 of the Port Phillip Planning Scheme requires 10% of the site area be set aside for car parking. This is being met and as such, a planning permit is not required for a reduction of car parking.

84 The proposed change in use triggers the requirement for a car parking plan under Clause 52.06-8, with Clause 52.06-9 setting out the design standards for car parking, and Clause 52.06-10 the decision guidelines. Those considered of relevance to this decision are as follows:

85 Design standard 1 – Accessways:

> Provide a passing area at the entrance at least 6.1 metres wide and 7 metres long if the accessway serves ten or more car parking spaces and is either more than 50 metres long
>
> Have a corner splay or area at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage, to provide a clear view of pedestrians on the footpath of the frontage road.

86 The note to Table 2 in Design standard 2 - Car parking spaces:

> Some dimensions in Table 2 vary from those shown in the Australian Standard AS2890.1-2004 (off street). The dimensions shown in Table 2 allocate more space to aisle widths and less to marked spaces to provide improved operation and access. The dimensions in Table 2 are to be used in preference to the Australian Standard AS2890.1-2004 (off street) except for disabled spaces which must achieve Australian Standard AS2890.6-2009 (disabled).

[Australian Standard AS/NZS 2890.1:2004 is an incorporated document].

87 Design Standard 3: Gradients requires:

> Accessway grades must not be steeper than 1:10 (10 per cent) within 5 metres of the frontage to ensure safety for pedestrians and vehicles.

88 Relevant decision guidelines include:

- The role and function of nearby roads and the ease and safety with which vehicles gain access to the site.
- The ease and safety with which vehicles access and circulate within the parking area.
- The measures proposed to enhance the security of people using the parking area particularly at night.
- The measures proposed to enhance the security of people using the parking area particularly at night.
- The amenity of the locality and any increased noise or disturbance to dwellings and the amenity of pedestrians.
- The type and size of vehicle likely to use the parking area.

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- Whether the layout of car parking spaces and access lanes is consistent with the specific standards or an appropriate variation.

Traffic movements

89 The review site is well served by public transport however the nature of the use, the bulkiness of the goods being stored on site, and very low staffing (two effective full-time) will result in its use being low.

90 The proposal includes a small car park (seven car parking spaces) on site as well as a separate loading dock with two bays. Access to the loading dock will require reverse-in movements from the laneway and the draft loading management plan indicates trucks will be limited to small rigid vehicles (6.4 metres in length). A turning bay will be provided in the car park to enable vehicles using the car park forward entry and exit via the rear laneway.

91 The width of the laneway, varying between 5.0 metres to 5.6 metres for most of its length before narrowing to 2.7 metres, is below the current standards for a two-way laneway. Its width is compromised by:

a adjacent walls/fences;

b electricity supply poles and road signage poles within the pavement; and,

c a narrowing of the lane to 2.7 metres in width at its southern end with a high fence and electricity pole on one side and wall on the other.

92 Entry to the southern end of the laneway from Somerset Street is extremely tight and suitable for only very small cars, if at all. The exit turn from the laneway to Somerset Street is also tight with very limited sight lines to pedestrians and traffic on Somerset Street, making it only suitable for cars. Somerset Street only allows one way traffic (heading east away from St Kilda Road), has a 4 metre to 4.5 metre wide pavement in a 6 metre to 7 metre wide road reserve and parking is allowed on one side. The parking results in the available carriageway being less than the legally required 3 metres unless the cars are parked on the narrow footpath. As a result of this physical context at the southern end of the laneway, it is proposed, and indeed anticipated, that all traffic associated with the proposed use and development on the review site will enter and exit the laneway from its northern end, being the intersection with Alma Road. Traffic counts provided to the Tribunal indicate that other existing users of the laneway also heavily favour entering and exiting from Alma Road.

93 At the northern entry of the laneway, the laneway's width is insufficient for two vehicles to pass. This requires vehicles to wait on Alma Road to allow exiting vehicles to depart the laneway. Convex mirrors are in place due to restricted sight lines and the absence of a pedestrian sight line splay on the southwest corner.

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94 The applicant called expert traffic evidence from Mr Furness and Mr De Young. Both experts considered that the laneway can accommodate the traffic generated by the proposal, noting that the proposed use and development of the land for self-storage would generate slightly less traffic than the currently permitted use and development associated with a three storey office building supplied with a 58 space car park, and with less traffic in commuter peak periods.

95 However, the use will attract some small rigid trucks that would not have been generated by the existing use and development of the land. The loading management plan limits trucks to a maximum of four movements (two trucks) in any hour. Despite this truck capacity permitted by the proposed loading bay, Mr De Young advised that on average the use is estimated to attract three or four trucks per day, based on unit check in and check out data from other self-storage facilities. We do note however the absence of any traffic survey that identifies the actual number of truck movements associated with existing self-storage facilities, that could be applied to this proposal.

96 Swept path diagrams show that in the laneway directly outside the review site a car and a small rigid vehicle can pass, but this relies on clearance lines tight against the building/fence lines with no consideration to the drain pipes outside the building line and poles within the pavement. As a result, in addition to aforementioned inability for two vehicles to pass at the northern end of the laneway, there will also be other parts of the laneway where a car could not pass a small rigid vehicle.

97 Both traffic experts agreed that trucks should be limited to small rigid vehicles. They supported the use of the loading dock also by cars towing trailers subject to being able to book both loading bays for the towing vehicle, but they could not advise what length of trailer could be accommodated. They noted that it is a constrained environment and vehicles may need to slow or stop close to the kerb to allow another vehicle to pass.

98 Mr De Young advised that the buffer between loading dock bookings needs to be sufficient to avoid a truck arriving whilst either the dock was occupied, or a truck was departing the laneway. He could not say what time would be suitable and considered that this could be determined during the approval of the loading management plan by the Council.

99 This laneway is both narrow and primarily reliant on vehicles entering and exiting via its northern end, that is to Alma Road. Notwithstanding that, this laneway is expected to accommodate the traffic associated with the commercial and residential uses that abut it. Adding trucks and trailers, particularly trucks whose drivers may be both less familiar with the environment as well as the vehicle itself when using a hired truck or trailer, into such an environment is not desirable. It will add significant conflict and delays to a laneway environment that was clearly not designed for

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small truck traffic, and as we explore below, extend those conflicts and delays onto Alma Road.

100 The impacts on Alma Road have not been assessed. Cars and trucks would need to wait on Alma Road for other vehicles to exit. This will be compounded by an increase in the use of the laneway by trucks, as vehicles are unlikely to turn into the laneway if they see a truck travelling north on the lane. This is due to the difficulty in passing within the laneway environment, which will become well known to regular users both from the review site as well as other sites that rely on the laneway for access.

101 Whilst Alma Road is not an arterial road, it is a major council road and on-street parking restricts the traffic lanes to one in each direction. Traffic waiting on Alma Road will obstruct through traffic close to the St Kilda Road intersection. Clearly this is an undesirable outcome, that spreads the impacts of this proposal beyond the immediately surrounding community, and broadens the community disbenefit associated with the traffic impacts of the proposal.

102 In relation to access to the review site by trailers, we are not persuaded that the layout of the loading and its grades are suitable for such a vehicle, noting also the difficulties posed by the narrow laneway. Cars towing trailers will have a similar traffic impact to the trucks, if not greater due to their longer length and articulation making it harder to pull straight close to a kerb to let another vehicle to pass.

103 Overall the truck and trailer traffic is likely to adversely impact the safety and amenity of the neighbourhood. We find this on its own is not determinative, but rather is a weighty consideration in the net community benefit assessment.

Car Park Layout

104 Concern was expressed from respondents as to the adequacy of the car parking layout for loading activities. The sizes of car parking spaces are generally consistent with the design standard, with the exception of the requirement for a disabled bay.

105 While wider bays would provide for ease of access, the standards allow for the full opening of doors and the length of bays is considered suitable for access. While we acknowledge that more space would provide greater amenity for users, we are satisfied that the car park would function adequately.

106 In relation to the provision of a bay suitable for disabled access, we are not convinced that a new public disabled parking space could be provided or that the loading dock would be deemed suitable given its grade, the requirement to book a bay and its restricted opening hours. Nor are we convinced that existing disabled bays in the area are a suitable alternative given the distance and need to transport goods.

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107 In relation to grade lines and corner splays for site lines, we consider that the existing car park entry grade is acceptable as it is both an existing condition and the entry is being widened which will improve usability and visibility conditions.

Loading dock layout

108 The location and design of the loading dock is aligned with all of the strategies of Clause 18.02-4L-02, which we have set out earlier in these reasons. Further, given the estimated volume of trucks and proposed loading management plan requiring bays to be pre-booked, we are satisfied that the provision of two loading bays would be sufficient.

109 Concern was raised by the respondents regarding the grade and dimensions of the new loading dock entry, particularly given the need for trucks and trailers to reverse down the ramp while turning on full lock from the narrow laneway. Given the lack of guidance on loading dock design in the Port Phillip Planning Scheme, the Australian Standard for Parking facilities part 2: Off-street commercial vehicle facilities (AS2890.2) would be a suitable reference document. Compliance to the standard could have been addressed through an amended plan condition should we have determined to support the application.

IS A NET COMMUNITY BENEFIT ACHIEVED?

110 We return to where we started and our ultimate task as a decision maker to determine whether a proposal will achieve a net community benefit, as guided by Clause 71.02-3 of the Port Phillip Planning Scheme, as set out below.

> **Integrated decision making**
>
> 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.
>
> 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…

111 An assessment of whether a proposal achieves a net community benefit requires one to weigh the relevant benefits and disbenefits. The mere presence of disbenefits of a proposal is not necessarily an indication of an inappropriate proposal, as there is rarely such a thing as a perfect or ideal proposal, and even if there was, that is not the bar that the Port Phillip

Planning Scheme sets in order for a planning permit to be granted. Instead, it is recognised that even a very good proposal may comprise some disbenefits, and that the relevant objective is to achieve a net community benefit.

112 As we have set out above, we consider that the proposal comprises a number of weighty disbenefits, namely:

a The proposed land use fails to provide sufficient activation of the street and pedestrian activity in St Kilda Road, and is a use that fails to provide the housing, retail and office floorspace that is encouraged in this locality. Indeed, the proposed land use with its distinct lack of engagement and activity to St Kilda Road, is the antithesis of the type of land use that is encouraged by planning policy for this specific location.

b For a large site in a Commercial 1 Zone, the proposal fails to provide a level of employment that would be anticipated. At the equivalent of just two full time staff, the proposal fails to capitalise on the employment potential offered by a large site in a Commercial 1 Zone. This lack of employment is a missed economic opportunity, as well as a missed opportunity to have workers as pedestrians contributing to a vibrant activity centre.

c The proposal will cause noise impacts that will impact the amenity of adjacent residential properties. For the reasons set out above we find that the proposed land use and the design and location of the proposed loading bay will exacerbate and concentrate the potential noise impacts from the movement of vehicles in the laneway, to the most sensitive residential interface along that laneway.

d The proposal will increase conflict in the rear laneway, by adding large vehicles to a narrow space, and requiring awkward and tight manoeuvres to access the loading bay. Further, the movements to access the loading bay will be undertaken by some drivers who will likely be hiring vehicles, and thus unfamiliar with the precise movements required to reverse into the loading bay. For the reasons set out above we find the resultant impacts on the laneway environment to be a significant disbenefit.

e The proposal will add truck movements to the intersection of Alma Road and the laneway, in a manner which will cause regular blockages to through traffic along Alma Road. Further, the intention to add regular truck traffic to a laneway that has clearly not been designed for such regular truck movements, will cause a level of disruption that can be considered to be a disbenefit to the surrounding community that relies on the laneway for access.

f The proposal will require the removal of three public car parking spaces in the laneway, which we are informed by the local residents

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are the only unrestricted car parking spaces in this area. While we understand that the proposal provides sufficient car parking on the review site, nonetheless the reduction of publicly accessible car parking is a disbenefit for this community.

113 We have found it difficult to quantify meaningful benefits associated with this proposal, to weigh against these disbenefits. We asked Mr McBride-Burgess to identify the benefits associated with the proposal. Orally he identified the following:

a The adaptive re-use of an existing building that has been vacant for some time.

b The primary vehicular access to the rear continues the primacy of the footpath to St Kilda Road.

c It is the evidence of Mr McBride-Burgess that the proposal will not cause an unreasonable amenity impact.

d The provision of storage facilities proximate to intensive housing.

e The proposal responds to the scale of built form that is encouraged in this locality.

f The proposal introduces interest to a building that is not there presently, including through the erection and display of new signage.

g The creation of employment on the review site.

114 In response to these benefits identified by Mr McBride-Burgess we note the following:

a We acknowledge that the review site has been vacant for some time, and the proposal will bring life and activity to this otherwise vacant building. We are not persuaded that this is a weighty benefit for two reasons. Firstly, as described above, the proposed land use will fail to bring pedestrian activity and activation of St Kilda Road, contrary to the intent of planning policy for this locality. Indeed, the frontage of the site to St Kilda Road will be largely dormant of activity, in a manner similar to the currently vacant building. Secondly, planning seeks to take a long term view at achieving the appropriate use and/or development for an important site along a famous boulevard such as this, and we consider it likely that if the site remains vacant, a more appropriate land use and development will eventuate, one that is supported by the policies found in the Port Phillip Planning Scheme.

b The requirement to have all vehicular access off the rear laneway, and not directly off St Kilda Road, is one that would apply to any proposed land use and development on the review site. It is not something that is uniquely attributable to this proposal.

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c We do not agree with the evidence of Mr McBride-Burgess that the proposal will not cause an unreasonable amenity impact, for the reasons set out earlier in this assessment.

d While we acknowledge that some of the local resident population will gain a benefit from the proximity to a self-storage facility, we consider this to be a benefit of a relatively low weight.

e We also do not consider a significant benefit arises from the addition of two setback levels to the review site, in a manner that brings a future built form on the review site closer to the preferred maximum height limit in this precinct.

f While the proposal would bring a fresh appearance to the existing building, it also brings a land use that fails to meaningfully engage with the St Kilda Road public realm at street level, for the reasons set out earlier.

g We actually consider the fact that a site of this size in a Commercial 1 Zone is to only support the equivalent of two full time employment positions, to be a weighty disbenefit.

115 Further, the proposal clearly fails to provide some of the more weighty benefits that are common in these times. The proposal does not seek to add to much needed housing supply, and does not add any real or meaningful economic activity, to a stretch of St Kilda Road that would benefit from such an injection.

116 The applicant in their closing submissions also set out a series of benefits of the proposal, but we do not consider that they add substantially to those identified by Mr McBride-Burgess. The applicant identifies the proposed reduction in traffic in the laneway as a benefit, when compared to what would occur should the existing three storey office building on the land be occupied. We are not persuaded by this submission, as it is the evidence of Mr Furness that the level of traffic proposed from the review site, is very similar to that which would have previously occurred. The key difference however is the likely increase in truck movements within the laneway for the proposed land use, which could not be framed as a benefit of the proposal. The applicant also refers to the increased surveillance of the rear laneway that would occur if a permit issued. While this is a benefit, it is of marginal proportions in the context where we have not been informed of any instances of inappropriate activity currently occurring in the rear laneway.

117 For these reasons we find that the disbenefits that have been identified are far more weighty and impactful than the purported benefits associated with the proposal. For the reasons set out above we find that the proposal will fail to achieve a net community benefit, and therefore is not worthy of the grant of a planning permit, in accordance with the guidance provided by the Port Phillip Planning Scheme.

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CONCLUSION

118 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

Michael Deidun
Presiding Member

Kate Partenio
Member