

**Referral 42: VCAT Call-in P508/2024
102-108 Humffray Street South, Bakery Hill
Priority Projects Standing Advisory Committee Report**

Planning and Environment Act 1987

7 November 2024

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Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report pursuant to section 25 of the PE Act

Referral 42: VCAT Call-in P508/2024

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7 November 2024



David Merrett, Chair



Andrew Hutson, Member

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Glossary and abbreviations

Applicant	Humffray Development Partnership Pty Ltd
Bakery Hill URP	Bakery Hill Urban Renewal Plan 2019
CBD	Ballarat Central Business District
CBD Action Plan	CBD Strategy Action Plan 2017
CBD Strategy	Making Ballarat Central – the CBD Strategy 2010
Committee	Priority Projects Standing Advisory Committee
Corangamite CMA	Corangamite Catchment Management Authority
Council	Ballarat City Council
D	Document
land	102-108 Humffray Street South, Bakery Hill
NOD	Notice of Decision to Grant a Permit
Planning Scheme	Ballarat Planning Scheme
VCAT	Victorian Civil and Administrative Tribunal

Overview

Referral summary

Referral land	102-108 Humffray Street South, Bakery Hill
VCAT call-in	Referral 42: VCAT Call-in P508/2024
Brief description	The proposed use and development of two buildings (a residential mixed-use building and a commercial building) with associated open space areas, reduction of carparking requirements and a liquor licence
Applicant	Humffray Development Partnership Pty Ltd
Planning Authority	Ballarat City Council
Objections	3 joint objectors

Committee process

The Committee	David Merrett (Chair) and Andrew Hutson
Supported by	Gabrielle Trowse
Directions Hearing	In person at Planning Panels Victoria and online on Wednesday 14 August 2024
Committee Hearing	In person at Ballarat Town Hall and online on 25 and 26 September 2024
Site inspections	Unaccompanied, 25 and 26 September 2024
Parties to the Hearing	<p>Humffray Development Partnership Pty Ltd (Applicant) represented by Kim Piskuric of Harwood Andrews, calling the following expert evidence:</p> <ul style="list-style-type: none"> - Craig Czarny of Hansen Partnership in Urban Design - Valentine Gnanakone of One Mile Grid in Traffic/Car parking <p>Ballarat City Council (Council) represented by Jason Kane of Counsel John Simpson, Stuart Kelly and Robert Skogland (joint objectors) represented by John Simpson and Stuart Kelly</p>
Citation	Priority Projects Standing Advisory Committee Referral 42 [2024] PPV
Date of this report	7 November 2024

Executive summary

Overview of proposal

Planning for activity centres in Victoria seeks significant infill and development to accommodate new residents with increased access to employment opportunities.

The former Robert Sims Building Supplies site at 102-108 Humffray Street South, Bakery Hill (the land), consisting of over an acre of land in the Ballarat Central Business District (CBD) and in a recognised urban renewal area, has significant capacity to accommodate a mixed-use development. Humffray Development Partnership Pty Ltd seek to construct a mixed-use development on the land consisting of one commercial building seven storeys tall and a residential building consisting of eight storeys.

Planning Permit Application PLP/2022/818 was assessed by Ballarat City Council (Council) Officers who recommended Council issue a Notice of Decision to Grant a Permit (NOD). Council supported this recommendation.

Three joint objectors sought to review the planning permit application at the Victorian Civil and Administrative Tribunal (VCAT), with Hearing dates set down in January 2025. The Minister for Planning determined to call-in the application and referred this to the Priority Projects Standing Advisory Committee (the Committee) for its advice, in accordance with its Terms of Reference.

The Minister for Planning considered the proposal raises a major issue of policy, and determination of the proceeding may have a substantial effect on the achievement of planning objectives.

The key issues before the Committee that required determination related to:

- compliance with State and local policy
- whether the height and design of the two buildings is appropriate, in particular the impact of the commercial building on the adjoining residential heritage precinct on Humffray Street South
- whether a reduction or zero allocation of onsite parking is appropriate
- how access to the residential building parking should be managed.

Reasons for findings

The Committee finds the permit application is strategically supported by state and local planning policy that guides significant infill development into activity centres and, in this case, an area that has been identified for urban renewal.

The Ballarat Planning Scheme and the Making Ballarat Central – the CBD Strategy Plan 2010 (CBD Strategy) contain policy to increase the number of residents in the CBD and the number of jobs. The land has good access to the services and facilities of the CBD and reasonable access to public transport.

A key feature of the land is the 17 metre high brick chimney that was associated with the original steam powered timber mill. Its retention as a feature of new public open space between the buildings is an excellent outcome. The land benefits from no direct abutments to sensitive uses although the heritage residential precinct on the opposite side of Humffray Street South is an

adjoining sensitive interface. With three road frontages, the land has a high degree of flexibility as a development site in an urban renewal area.

The Committee acknowledges that some viewlines from the CBD atop the Yarrowee escarpment will be impacted but these viewlines are distant and taken from areas where they would not be readily discernible by the casual observer. These viewlines are not protected by the Planning Scheme.

The most significant environmental constraint is flooding. While not reflected in planning controls, it is a well-known local constraint whose impact should have been recognised earlier in the design process. As a result, the Corangamite Catchment Management Authority (Corangamite CMA) objected to the vehicle access off Bradbys Lane as it would be subject to flood depths greater than 300 millimetres. The Applicant responded, and Council supported the removal of parking for the residential building. The Committee does not support this and has recommended vehicle access at Porter Street across the open space courtyard as an acceptable, but not ideal, outcome.

The Committee considers the adjoining heritage precincts, including the residential precinct on Humffray Street South, will not be impacted significantly by the proposal. The Committee supports the intent of Council and the Applicant to setback upper levels of the commercial building along Humffray Street South to avoid a sense of enclosure, reduce overshadowing impacts to residential properties and to create a sense of entry to the CBD. This, however, does not address the residential precinct equitably and the Committee has recommended the upper-level setback occur for the full length of the Humffray Street South frontage.

While there will be increased traffic movements along Humffray Street South, it would be within the capacity of the overall function of the street.

Overall, the Committee considers the proposal can be supported and will result in an acceptable outcome for the land. It will provide a diversity of housing typologies that is currently limited in Ballarat and employment opportunities for new residents. The proposal has planning merit and would result in a net community benefit for the Bayside and wider community.

Recommendations to the Minister for Planning

- 1. Approve and grant Planning Permit PLP/2022/818 subject to conditions shown in Appendix F.**

1 Introduction

1.1 Terms of Reference and letter of referral

The Committee was appointed by the Minister for Planning (Minister) on 14 June 2020. The purpose of the Committee is set out in its (amended) Terms of Reference dated 9 September 2023:

... provide timely advice to the Minister for Planning on projects referred by the Development Facilitation Program (DFP), or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes¹.

The Minister's letter of referral was dated 18 July 2024, and this is the Committee's Referral 42. Specifically, the Minister noted:

- the project was referred by the Development Facilitation Program
- the proceedings raised a major issue of policy, and the determination of the proceeding may have a substantial effect on the achievement or development of planning objectives.

The Committee is to provide advice to the Minister on whether a planning permit should be issued, and if so, the appropriate permit conditions that should be imposed.

The Referral was listed to be heard at the VCAT starting on 20 January 2025. VCAT Proceeding P508/2024 involved Planning Permit Application PLP/2022/818 which proposes to use and develop the land for two buildings (a residential, mixed-use building and a commercial building) with associated open space areas, reduction of carparking requirements, and a liquor license.

The members of the Committee that considered Referral 42 are:

- Mr David Merrett, Chair
- Mr Andrew Hutson, Member.

The Committee was assisted by Ms Gabrielle Trowse, Project Officer from the Office of Planning Panels Victoria.

1.2 Process

(i) Directions Hearing

Upon receipt of the letter of referral from the Minister and the subsequent VCAT file, the Committee wrote to all parties to the VCAT proceedings on 24 July 2024 advising of the referral and inviting them to attend a Directions Hearing at Planning Panels Victoria on 14 August 2024².

In its letter to parties, the Committee directed that all parties seeking to be heard provide a summary of the key issues they intended to rely upon at the Hearing before the Directions Hearing. All parties seeking to be heard complied with that Direction. After reviewing the key issues, the Committee summarised the key issues at the Directions Hearing being (but not exclusively):

- compliance with relevant planning controls and policy

¹ D1

² D4

- built form including height, scale and form of the two proposed buildings
- carparking and access including the amount of parking provided and the level of reduction proposed
- amenity impacts including overshadowing, overlooking, and vehicle noise impacts to the residential area to the south
- flooding including its impact on proposed access to the residential building and what suitable alternatives there may be.

The Committee was reconstituted following the Directions Hearing on 17 September 2024 with David Merrett replacing Sarah Raso as the Chair of the Committee.

(ii) Site inspections

The Committee had an unaccompanied site inspection on Day 1 before the start of the Hearing and following the close of the Hearing on Day 2.

1.3 Compliance with Directions

Direction 7 required the Applicant to:

- provide a concept sketch it intends to rely on to show the relocated access arrangement to the residential building car park to address proposed permit conditions 1(b), (c) and (d)
- confirm whether updated shadow diagrams and/or updated elevations or renders have been prepared because of proposed permit condition 1(a).

The Applicant confirmed it did not wish to substitute the application plans with this material but provided the plans to comply with the Direction and assist the Committee in its deliberations.

1.4 Procedural issues

At the start of Day 2, Council advised the Committee that Amendment C215ball was approved that day. Amendment C215ball introduced the new Municipal Planning Strategy at Clause 02 and local policies within the Planning Policy Framework at Clauses 11 to 19. In its submission on Day 1, Council referred to policy contained in Clause 21 and 22 of the Local Planning Policy Framework in place at the time. The Applicant and the joint objectors also referred to these provisions that were current at the time.

At the conclusion of the Hearing, the Committee directed Council to respond to the new policy framework by 7 October 2024. The Committee allowed the Applicant and joint objectors to respond to this by 10 October 2024.

This report addresses the new policy framework in Chapter 3.

1.5 The Committee's approach

The Committee has complied with and reported on all relevant matters in accordance with its Terms of Reference, in particular clauses 11, 15, 18, 20 and 21.

The letter of referral advises the *proceeding raises a major issue of policy and the determination of the proceeding may have a substantial effect on the achievement of development of planning objectives*. The Committee is to advise the Minister for Planning on whether a permit should issue and with what permit conditions.

The Committee considered all relevant written submissions and material in relation to the permit including:

- original application reports and plans
- Council Officers reports that recommended Council issue a Notice of Decision to Grant a permit of 10 April 2024
- expert evidence from Humffray Development Partnership Pty Ltd (the Applicant)
- submissions made to the Hearing.

Clause 20 of the Terms of Reference of the Committee require it to provide a 'concise written report' to the Minister for Planning. This report is concise in that it focuses on the key determinative issues only and does not seek to deal with every matter raised through the original objections, the submissions of parties at the Hearing and the evidence provided in support. All submissions and materials have been considered by the Committee in reaching its conclusions, regardless of whether they are mentioned in the report.

The Committee deals with the key issues under the following headings:

- the proposal
- strategic planning context
- built form and urban design
 - heritage
 - impact on viewlines
 - building height and urban design
 - overlooking and overshadowing
 - other amenity impacts
- traffic, parking and access
- the planning permit.

2 The proposal

2.1 The land

The land is located at 102-108 Humffray Street South, Bakery Hill in Ballarat. The land comprises two lots and has an area of 4,214 square metres. 102 Humffray Street South comprises most of the land, with 108 Humffray Street South accommodating a dwelling. Figures 1 and 2 contain a locality map and aerial view of the land.

Figure 1 Locality map



Source: Planning Property Report

The land is irregular in shape and has street frontages to:

- Humffray Street South of 61.16 metres that forms the south-east boundary
- Porter Street of 48.34 metres that forms the north-east boundary
- Bradbys Lane of 81.005 metres that forms the western boundary.

Land to the immediate south-west contains a service station at 110 Humffray Street South.

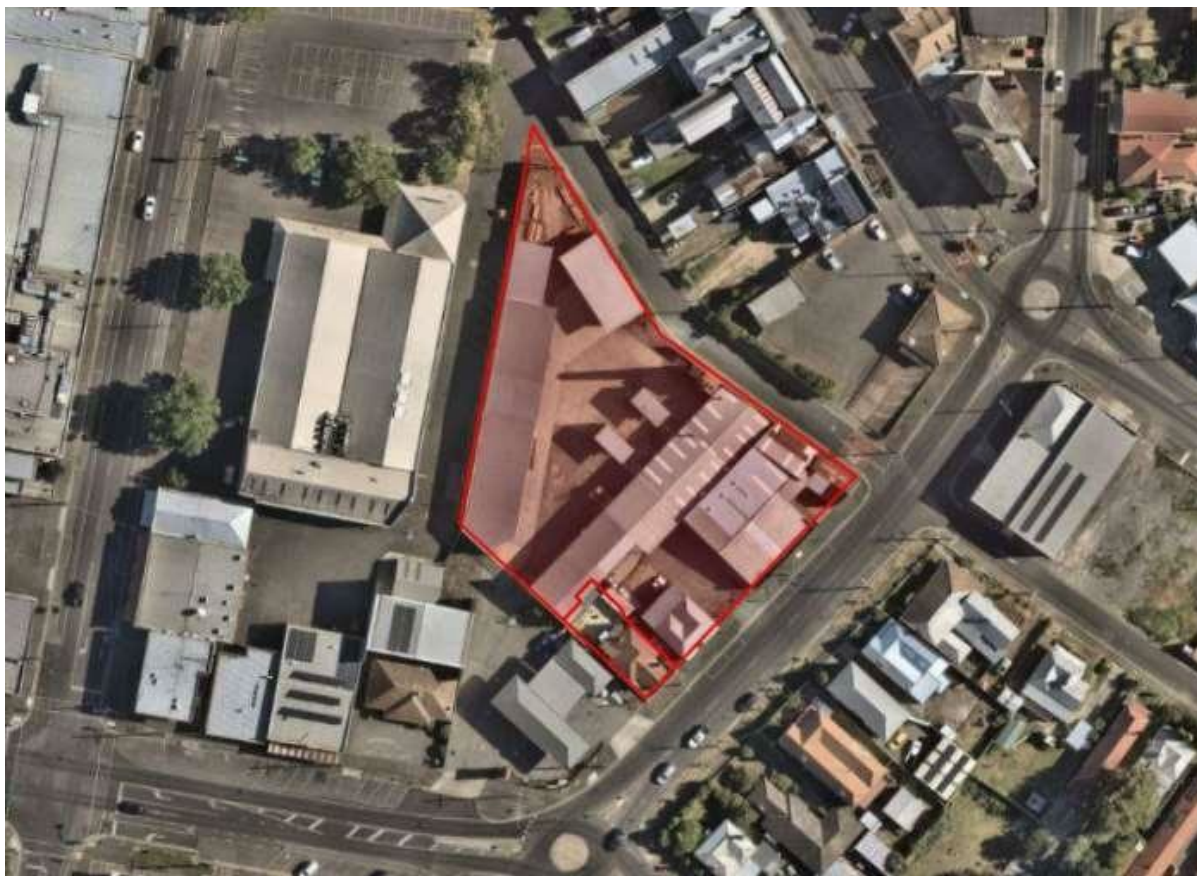
The land is contained in the Commercial 1 Zone and does not have any planning overlay controls.

The land accommodates a timber sales yard known as Robert Sim Building Supplies. This use has operated from the land for many years.

The land comprises several brick and metal buildings, a single storey dwelling at its western boundary next to the service station and a 17 metre high brick chimney (Figure 3) that is a remnant of Ballarat's first steam powered timber mill established on the land in 1860.

The land has a significant fall from south (Humffray Street South) to north-west (Bradbys Lane) of around 7 metres.

Figure 2 Aerial view of the land



Source: Council submission page 4

The land sits at the edge of the CBD and the Bakery Hill Urban Renewal Plan 2019 (Bakery Hill URP) area. Land to the south-east on the opposite side of Humffray Street South is a residential area in the General Residential Zone and with the Heritage Overlay applied as a precinct control (HO188). There is a mix of contributory and non-contributory dwellings in this precinct.

Immediately opposite the land is:

- 101-103 Humffray Street South that accommodates a single storey dwelling with pitched roof and vehicle access from Porter Street (refer to Figure 4)
- 105 Humffray Street South that accommodates a single storey weather board dwelling (refer to Figure 4)
- 107 Humffray Street South that accommodates a double storey dwelling with vehicle access leading to a rear garage (refer to Figure 5)
- 109 Humffray Street South that accommodates a single storey weather board cottage with pitched roof from which a business operates (refer to Figure 5)
- 111 and 113 Humffray Street South that accommodates detached dwellings with pitched roofs.

With three street frontages the land has a direct abuttal to the service station and can be described as an 'island' or 'peninsula' site.

Land to the east contains a commercial building with rear carpark that takes its access off Porter Street. Land to the north accommodates a 'Cheap as Chips' retail shop with large at grade car park. Loading bay access is taken off Bradbys Lane. Properties along Eastwood Street back onto the land and Bradbys Lane.

Figure 3 Remnant chimney



Source: Committee photo

Figure 4 101-105 Humffray Street South



Source: Committee photo

Figure 5 107-109 Humffray Street South



Source: Committee photo

2.2 The proposal

The proposal is to demolish all buildings except for the old chimney.

The application plans show the proposal is to construct:

- an eight storey residential building to the rear on lower land comprising:
 - retail tenancies fronting Porter Street and Bradbys Lane at ground level
 - vehicle access to ground and Level 1 parking from Bradbys Lane
 - Level 1 apartments to the north-east with parking and storage to the south-west
 - 26 car spaces
 - Levels 2-7 consisting of apartments
 - a total of 74 apartments (24 x 1 bedroom, 48 x 2 bedroom and 2 x 3 bedroom)
 - a maximum height of 28.9 metres stepping down to Porter Street at 25.89 metres
 - materials consist of red brick, roughcast and patterned concrete tilt panel, clear and fluted glazing with white and red metal finishes.
- a seven storey commercial building on the Humffray Street South frontage comprising:
 - Ground floor with food and beverage, office, end of trip and storage facilities
 - vehicle access to a double basement (and loading dock) from Humffray Street South at the southern boundary

- 76 car spaces
- a mezzanine level comprising office tenancy and shared services/amenities
- Levels 1-6 consist of open plan office format around a central lift core
- maximum height of 32 metres stepping down to 29.5 metres to Porter Street
- varied setbacks and landscaping
- materials consist of red oxide concrete, framed glazing, black and red metal finishes, clear and fluted glazing
- office floorspace is 7821.2 square metres and the café floorspace is 183.4 square metres.
- a 920 square metre landscaped communal open space that retains the chimney with seating, barbeques and covered areas, and links the two buildings.

Renders of the application plans from Humffray Street South and Porter Street are shown in Figures 6 and 7 respectively.

Figure 6 Application plans render from corner of Humffray Street South and Porter Street



Source: Application file

Figure 7 Application plans render from Porter Street



Source: Application file

2.3 Council decision

Following public notice, the permit application received 56 objections and 11 submissions of support. Informal amended plans were submitted by the Applicant in May 2023 following a mediation meeting in March 2023. Changes focused on façade materials, glazing, floor levels of the residential building to address flood levels and minor internal changes to the commercial building.

The informal plans were provided to the objectors, but no objections were withdrawn.

The Applicant then submitted amended plans on 25 January 2024. The key change was setting back the top three levels of the northern half of the commercial building to create a 3-4 storey street wall. These plans were supported by a covering letter from Niche Planning Studio which now forms the basis of Condition 1 of the Notice of Decision to Grant a Permit (NOD). Figures 8 and 9 contain two renders from Humffray Street South.

Both sets of plans (May 2023 and January 2024) were not formally submitted as amended and substituted plans.

A submitter to the permit application was the Corangamite CMA. The land is not affected by flooding overlay controls, but the rear area along Bradbys Lane is known to flood so Council provided a section 52 notice to the Corangamite CMA. The Corangamite CMA objected as it considered the application plans did not meet the following flood safety criteria:

- Depth of floodwater must be no greater than or equal to 0.3 metres.
- Velocity must be no greater than or equal to 3.0 metres/second.
- The product of depth multiplied by velocity must be no greater than or equal to 0.3 metres squared per second.

The Corangamite CMA considered:

- Bradbys Lane would be the subject of flood depths up to 0.74 metres

- the residential building would be the subject of flood depths up to 0.43 metre.

Figure 8 Alternate plan render from corner of Humffray Street South and Porter Street



Source: Document 21a

It also required the floor level of the residential building to be 0.3 metres above the flood level and requested a flood impact assessment report and flood risk management plan, which is the subject of Condition 15 of the Planning Permit.

Figure 9 Alternate plan render from Humffray Street South



Source: Document 21b

Council's Planning Delegated Committee meeting determined to give notice to grant the permit application on 10 April 2024 that required, amongst others, amended plans under Condition 1 to change the:

- commercial building as outlined in the 25 January 2024 Niche Planning Studio letter and attached plans (refer to Condition 1(a))
- residential building to delete vehicle access off Bradbys Lane, delete all parking proposed for the residential building (refer to Condition 1(a), (b), (c) and (d)).

Other Condition 1 requirements addressed minor changes, but part (h) required any changes to the plans arising from the flood impact assessment and flood risk management plan required by Condition 15.

3 Strategic planning context

3.1 Background

The Committee had regard to:

- Council Officers' reports of 10 April 2024
- Urban design evidence of Mr Czarny for the Applicant as it relates to urban design and planning policy
- relevant submissions, including post-Hearing responses to the new policy framework that was introduced during the Hearing by Amendment C215ball.

The key issues to be resolved are:

- whether the application is supported by State and local planning policy
- how the proposal will deliver on key policy imperatives.

3.2 Planning context

This chapter identifies planning context relevant to Amendment C215ball.

Table 1 Planning context

	Relevant references
Victorian planning objectives	- section 4 of the Planning and Environment (PE) Act
Municipal Planning Strategy	- Clause 02.03-1 Settlement - Clause 02.03-5 Built Environment and Heritage - Clause 02.03-6 Housing - Clause 02.03-8 Transport - Clause 02.04 Strategic Framework, Housing Framework, Regionally Significant Precincts, Activity Centres, Transport and Infrastructure plans
Planning Policy Framework	- Clauses 11.01 (Settlement), 11.01-1R (Settlement – Central Highlands) and 11.01-1L (Settlement) - Clause 11.02-1S (Supply of urban land) - Clauses 11.03-1S (Activity centres), 11.03-1L (Activity centres) and 11.03-1L-1 (Ballarat CBD) - Clause 13.03-1S (Floodplain management) - Clause 15.01-1S (Urban design), 15.01-1L (Urban design) and 15.01-2S (Building design) - Clauses 16.01-1S (Housing supply), 16.01-1L (Location of residential development) and 16.01-2S (Housing affordability) - Clauses 17.01-1S (Diversified economy) and 17.01-1R (Diversified economy – Central Highlands) - Clause 17.01-2S (Business) - Clause 18.01-1S (Land use and transport integration) and 18.01-2L (Transport system – Ballarat)

Other planning strategies and policies	- Plan Melbourne Direction 4, Policies 4.1, 4.2 - Central Highlands Regional Growth Plan
Planning scheme provisions	- Commercial 1 Zone

Table 2 Planning permit triggers

Provisions	Permit trigger
Clause 34.01-1	To construct a building or construct or carry out works
Clause 34.01-4	Use of the land for accommodation where the ground floor frontage exceeds a width of two metres
Clause 52.06-3	To reduce and waive car parking requirement

3.3 Evidence and submissions

(i) Applicant

The Applicant noted the framework plans contained in the Clause 02.04 of the Municipal Planning Strategy confirmed the land was part of the CBD as an urban renewal area and as a regionally significant precinct, in a 'convenience living area' and within an area with access to frequent public transport.

In its submission, the Applicant submitted "*there is strong policy support for a mixed-use higher density proposal on the Land. The Council officer's report and Mr Czarny's evidence also supports this view.*" The Applicant noted the land was not affected by any planning overlays and the mixed-use proposal was consistent with the following purpose of the Commercial 1 Zone:

- create vibrant mixed-use commercial centres for retail, office, business, entertainment and community uses.
- provide for residential uses at densities complementary to the role and scale of the commercial centre.

Other aspects of State and regional policy the Applicant referred to in support of the proposal were to:

- focus investment and growth in places of state significance, which include Ballarat (Clause 11.01-1S)
- support urban consolidation particularly in the CBD and seek to make the CBD a primary focus for commercial, retail and service activity (Clause 11.01-1R)
- encourage the concentration of major residential and commercial developments into activity centres (Clause 11.03-1S)
- facilitate well-located, integrated and diverse housing that meets community needs (Clause 16.01-1S).

The Applicant considered this high-level policy is translated into the Municipal Planning Strategy and local policy in Clause 11 to 19 in the following ways:

- manage urban growth by encouraging a compact settlement and supporting a pattern of growth that reinforces the '10-minute City' (Clause 02.03-1)
- support land consolidation, master planning and other mechanisms to support redevelopment potential of urban renewal precincts (Clause 11.01-1L)

- design development to promote surveillance of the public realm and encourage opportunities for social interaction at the interface between the private and public realms in activity centres (Clause 15.01-1L)
- facilitate residential infill development of a larger scale and higher density within convenience living areas that are within 200 metres of high frequency public transport (Clause 16.01-1L)
- develop land in convenience living corridors to support a high frequency public transport network (Clause 18.01-2L).

The position of the Applicant was supported by the urban design evidence of Mr Czarny who stated³:

There can be little doubt that this part of Bakery Hill appears today is a tired and largely forgotten precinct in dire need of investment and activation. The proposed development and design meet the relevant CBD strategy's Precinct Objectives as it resoundingly 'encourages higher density residential development and other appropriate uses within close proximity to the CBD and improve the architectural quality and streetscape environment of the precincts that form entry points to the CBD.'

(ii) Council

Council's submission generally supported the Applicant's submission on relevant policy. Reflecting on Ballarat's mining history, Council submitted⁴:

Ballarat is embarking on another "rush". However, this time is not a "gold rush" but a "population rush". It is anticipated that Ballarat will have a population of around 160,000 by 2040. It is not surprising therefore that Ballarat is one of *Australia's fastest growing inland centres*.

To accommodate the increase in population, Ballarat must grow. Like the growth associated with the Gold Rush, the urban character and streetscapes of Ballarat must change and evolve. The status quo cannot remain. Change is inevitable. Ballarat must provide not only housing opportunities but a diversity in housing to accommodate this population growth. Ballarat must also grow its commercial office space to provide employment and economic opportunities for its present and future residents. As the Planning Scheme acknowledges *Ballarat is also a significant source of jobs for regional Victoria*.

Council referred to the adopted Bakery Hill URP which considered Bakery Hill would host an additional 600 jobs and accommodate 5000 new residents by 2050. Specifically, it refers to this land as key redevelopment site within the Peel Street Redevelopment Area of the Bakery Hill URP.

Council referred to several approved developments in the CBD where approved building heights were greater than those contained the Making Ballarat Central – the CBD Strategy 2010 (CBD Strategy). These include 222 Mair Street which was approved at 4 and 6 storeys (CBD Strategy shows 4 storeys), 107 Doveton Street approved at 6 storeys (CBD Strategy shows 4 storeys) and 31 Field Street approved at 6 storeys (CBD Strategy shows 3 storeys). Council considered its approach to height has evolved over time.

In response to a Committee question, Council acknowledged the Bakery Hill URP required a strategic plan for the area and planning controls to guide built form, including height. It referred to Amendment C243ball for Bridge Mall which included height controls administered by the Design and Development Overlay as an example that work had commenced.

³ D19, paragraph 25

⁴ D27, paragraphs 30 and 31

Both Council and Applicant agreed with Mr Czarny that, without adequate guidance in the planning scheme for built form, that a 'first principles' approach to the development of the land should be adopted.

(iii) Joint objectors

The joint objectors were more concerned with the design and scale of the proposal and generally accepted the land could accommodate a mixed-use development.

3.4 Discussion

The Committee notes that all parties considered the land could accommodate a mixed-use proposal, but the joint objectors differed in regard to what this built form should look like and the height of it. Built form and urban design issues are addressed in Chapter 4.

The Committee agrees with Council and the Applicant that there is strong state and local policy that supports significant infill development in this part of the CBD. The land is in an area identified for urban renewal and, acknowledging the size of the land, it has considerable potential as a development site.

At the request of the Committee, Council informed it had started its implementation of the Bakery Hill URP and that development should not be paused to await the completion of further strategic work. Planning is not static and there will inevitably be examples where development proposals will occur before new statutory controls are in place. New controls are contemplated but the Committee cannot presume their form. What is not in doubt is that the land is part of the CBD in an urban renewal area and, although the land is at its periphery, it presents as a large single site with three street frontages that has obvious development potential. The lack of any planning controls apart from the Commercial 1 Zone, and its significant size, is an indication this land has the potential to contain a significant development. It is within walking distance of the Ballarat Railway Station, bus interchange, several supermarkets and services and facilities of the CBD. It is an ideal site for a mixed-use infill development.

The Committee accepts the mixed-use redevelopment of the land is consistent with the purpose of the Commercial 1 Zone and local planning policy contained in Clauses 11 to 19 of the Planning Policy Framework.

In principle, all parties accepted the development potential of the land and as a commercial and residential development the Committee considers the development is strategically justified and well supported by State and local planning policy.

3.5 Findings

The Committee finds:

- The proposal is supported by, and implements, the relevant sections of the Planning Policy Framework.
- The proposal is well founded and strategically justified.
- The land is appropriately zoned to provide for a mixed-use redevelopment of the land at an appropriate scale and intensity.
- There is no planning reason to preclude the issue of the planning permit subject to other design considerations in Chapters 4 and 5.

4 Built form and urban design

4.1 Background

The Committee had regard to, amongst other matters:

- Council Officer report of 10 April 2024
- CBD Strategy and its Action Plan
- Bakery Hill URP
- Council's NOD of 16 April 2024
- urban design evidence of Mr Czarny of Hansen for the Applicant
- relevant submissions.

The key issues to be resolved are:

- heritage
- viewlines and urban design
- built form and amenity
 - overlooking and overshadowing
 - waste collection
 - liquor licence.

4.2 Heritage

(i) The issues

The specific issues are whether the:

- land has any heritage values.
- proposal will impact on nearby heritage values.

(ii) Background

The land is not affected by the Heritage Overlay but is adjacent to the following two heritage precinct controls:

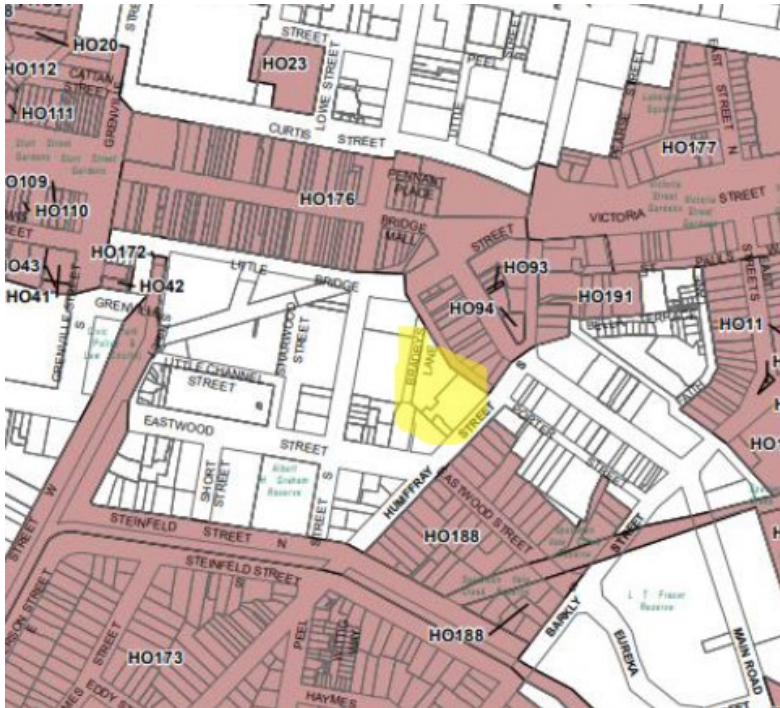
- Heritage Overlay HO176 (Bridge Mall and Bakery Hill heritage precinct) to the north-east on the opposite side of Porter Street. Properties fronting Main Road have rear yards and car parking areas back onto Porter Street, opposite the land.
- Heritage Overlay HO188 (Barkly Street and Humffray Street South heritage precinct) to the south-east on the opposite side of Humffray Street South. The dwellings fronting this street are a mix of single and double storeys and contributory and non-contributory built form. The Statement of Significance described the precinct as "*predominately intact residential area of the late 19th and 20th century and interwar era dwellings*" and architecturally, aesthetically and historically significant at a local level⁵.

With three road frontages there is no direct abuttal to a Heritage Overlay.

Figure 10 shows the application of the Heritage Overlay around the land.

⁵ D30, page 90

Figure 10 Heritage Overlay map



Source: Extract from Planning Scheme map 23HO

(iii) Evidence and submissions

All parties accepted the retention of the old chimney, without heritage protection, in the redevelopment of the land was an excellent outcome.

In its opening submission, the joint objectors considered:

The excessive height, scale, form and appearance of the two buildings would obstruct and detract from views across Ballarat especially in Bakery Hill which have been identified as important in terms of Heritage. One example being the raising of the Eureka flag on Bakery Hill, the site of several 'monster meetings' of miners in the lead up to the Eureka Stockade rebellion. Therefore, the two buildings will diminish the Heritage values of this site and quite a few adjacent Heritage Overlays.

The joint objectors considered the proposal was excessively tall and was within the important CBD Yarrowee escarpment viewlines from the Lydiard Street and Dana Street intersection which is sought to be protected by Council. They considered the proposal would appear as a large mass in the middle-distance obscuring views of the Fire Station Tower and the former Free Library building to the east.

The submission cited the heritage significance of HO188 opposite the site and that the proposal would substantially detract from the significance of this precinct – especially the houses on the east side of Humffray Street South opposite the land⁶.

Mr Czarny's evidence was that⁷:

This visual context is an important factor and one that requires appraisal at both a strategic (long and middle distant views) and local (streetscape and close range) level. Having regard to key 'panoramic' views identified (in Council's CBD study), redevelopment on the

⁶ D25 page 15

⁷ D19, paragraph 19

site will be exposed within the long Dana Street ‘view corridor’ (from the elevated Dana and Lydiard Street junction) with aspect towards Mount Warrenheip and wider landscape and an urban middle-ground comprising St Paul’s Anglican Church and Ballarat Fire Station Towers.

Mr Czarny considered that *“invisibility was not sought, rather a judicious balancing of any new profile within a skyline context of other built and natural features.”* He considered the proposal had due regard to these matters.

Council submitted⁸:

The proposed built forms will not unreasonably interfere with any important views or vistas of the Ballarat CBD, the Eureka flag, historic buildings or Mount Warrenheip. It is noted there are no built form controls or specific policies within the Ballarat Planning Scheme that seek to protect particular views across the subject site.

(iv) Discussion

The Heritage Overlay for HO176 and HO188 includes land that may affect the heritage fabric of those listings. This is referred to as the ‘heritage curtilage’ and allows Council to assess each permit application on its merit. The land is located outside of their curtilage so it will have no impact on the heritage significance of these two listings.

The Committee acknowledges there are no heritage controls that apply to the land. Yet the retention of the old chimney is an excellent outcome and would be a positive aspect of the design and provide a visual link to the history of the land.

The design profile adjacent to the HO176 to the north will not impact on the intrinsic heritage characteristics. The proposal could be viewed from within Main Street to the north but would appear in part only over sections of the existing buildings. Views to the land are through vacant land are not significant given the likelihood of future infill development in this area.

The height and scale of the proposed built form facing Humffray Street South is opposite the HO188 precinct and represents the land’s most sensitive interface. The width of the street provides a buffer between the land and the heritage precinct to the east. Part of the heritage character of the precinct resides in the architectural language and residential scale of the housing to the east. Given the separation of the land from the heritage precinct to the east, the proposal would not directly impact the heritage values of the HO188.

(v) Findings

The Committee finds:

- The retention of the old chimney is an appropriate response to the heritage values of the land.
- The proposal would not impact on the intrinsic heritage values of HO176 and HO188 because the land is outside of their heritage curtilage.

4.3 Impact on viewlines

(i) The issue

The issue is whether the proposal has an acceptable impact on existing landmark sites and skyline views.

⁸ D27, paragraph 55h

(ii) Background

The Ballarat Skyline and Views Study (February 2021) has been adopted by Council but has not been implemented in the Planning Scheme. The intersection of Dana Street and Lydiard Street is identified as Panoramic View 4. It nominates three major landmark heritage buildings -Town Hall, Post Office and Railway Station. The towers of the Ballarat East Fire Station are also important landmarks. Guidance for view management includes:

- Retain the viewer's ability to recognise and appreciate the view over the treed expanse of Ballarat East and the viewer's focus on Mount Warrenheip.
- New development in the middle ground should not disrupt the relationship between the significant buildings on the edge of the escarpment and the framed view of the panorama.

The CBD Strategy refers to earlier versions of this viewline.

(iii) Evidence and submissions

Mr Czarny considered the design had regard to its visual context including panoramic views as identified in the CBD Strategy. He accepted development on the land would be visually exposed within:

- the long Dana Street 'view corridor' towards Mount Warrenheip
- St Paul's Anglican Church viewline
- Fire Station Towers viewline
- Victoria and Humffray Street South roundabout over heritage fabric and similarly from within the Main Road streetscape.

However, Mr Czarny stated "*invisibility is not sought, rather a judicious balancing of any new profile within a skyline context of other built and natural features.*" He considered the proposal had due regard to these matters.

The joint objectors considered "*the excessive height and scale of the buildings will obstruct and detract from skyline views across Ballarat*".

Council submitted "*the proposed built forms will not unreasonably interfere with any important views or vistas of the Ballarat CBD, the Eureka flag, historic buildings or Mount Warrenheip.*"

(iv) Discussion

Council, the Applicant and joint objector submissions all addressed the impact of the height and scale of the proposal to the skyline and select views within Ballarat.

The Ballarat Skyline and Views Study highlighted important viewlines, with specific references to the viewpoint from the intersection of Dana and Lydiard Streets looking east. The proposed built form is within the view cone from this location but without a long cross-sectional analysis through the viewpoint and landmark features beyond it was not possible for the Committee to determine the exact visual impact, apart from it being a distant panoramic view. Mitigating factors for the visibility of the proposal from this vantage point and others within Ballarat are that the land is in a geographically low area and is significantly distant from landmark features, viewlines and the centre of the CBD above the Yarrowee escarpment. The Committee considers the visual impact of the proposal on the heritage characteristics of landmark features would be minimal. The Committee agrees with Mr Czarny that the test should not be invisibility and notably this is not the

approach taken for viewline management in the adopted Ballarat Skyline and Views Study. The Committee notes however this has not been introduced into the planning scheme as policy yet and little statutory weight is afforded to it.

The Committee considers as distant views, they cannot be instantly appreciated by the casual observer. The key consideration is to ensure views of key historic built forms are not completely obscured and height does not raise above the hinterland landscape defined by Mount Warrenheip. The Committee is satisfied this has been avoided.

(v) Findings

The Committee finds:

- The proposal would not significantly impact long distance viewlines considered important, but not part of the planning scheme, from landmarks and features within Ballarat CBD and broader areas.
- The proposal has an acceptable impact on the long distant viewlines from the Yarrowee escarpment.

4.4 Building height and urban design

(i) The issue

The issue is what is an acceptable building height and built form transition for the land.

(ii) Evidence and submissions

Mr Czarny acknowledged the CBD Strategy, its Action Plan and the Bakery Hill URP nominated 3-4 storeys for the land, but he considered, particularly that the CBD Strategy was an old document, and the building heights were not introduced into the Planning Scheme. Without either preferred or mandatory heights in the Planning Scheme, Mr Czarny considered a proper assessment of the potential of the large site should be done on a 'first principles' basis that considered the large size of the land, its immediate and broader physical context and state and local planning policy that anticipates considerable growth in the CBD location.

Mr Czarny referred to the application urban design assessment prepared by Blades in November 2022 that supported the permit application, and he considered it took an appropriate 'first principles' approach to the planning for the land. He supported the proposal and stated that in his opinion the height, scale and form of the proposed built form was acceptable having regard to the strategic and physical context of the subject land.

Mr Czarny considered the proposal:

- represented a sensitive outcome in response to the land's opportunities, constraints, adjacencies and the wider Ballarat townscape
- responded well to the streetscapes of Humffray Street South and Porter Street
- offered clear architectural distinction between the commercial and residential forms, a modulated elevation to Humffray Street South that avoided a shear façade and gave some corner articulation with Porter Street.

Mr Czarny accepted the interface with the residential precinct to the south-east of Humffray Street South was the most sensitive interface. He noted that the aspect from the front gardens and the Humffray Street South streetscape opposite the land are relevant at the CBD edge, and he

supported Condition 1(a) that seeks a part reduction in the street profile with greater upper-level setbacks for the commercial building. He was satisfied that this change mitigated visual bulk from across the 20 metre wide street. During the Hearing Mr Czarny agreed that the setback of the north-east portion of the elevation would offer a transition in scale to the residential character to the south-east and that the conditions of interface sensitivity could also apply to the southern section of the proposed elevation. However, Mr Czarny did not support the same set-back for the southern section of the elevation, as the design modified through condition 1(a) offered an important visual breakdown of the overall elevation within the streetscape. Mr Czarny also agreed that there could be other ways of designing the elevation to achieve an alternative and acceptable visual breakdown.

Mr Czarny considered the proposal was a superior outcome to the street-based townhouse proposition for the land in the Bakery Hill URP *“as it maximises frontage and address with a new contributory open space as a complement to the urban core.”*

The joint objectors submitted⁹:

- The building heights are excessive and in conflict with Council’s currently adopted CBD strategy documents for the area.
- Approval of the development will set a precedent for similar inappropriate buildings throughout the Ballarat CBD.

The joint objectors relied on the adopted CBD Strategy (2010) and its Action Plan (2017) and the Bakery Hill URP (2019), all of which indicated the land should be developed with 3-4 storey buildings. They noted the CBD Action Plan had strategies to *“limit the height of buildings at the edges of the CBD area to three storeys to ensure a transitional scale to adjoining residential neighbourhoods”* and *“four storeys within mixed business/residential areas peripheral to the Heritage Overlay areas.”* Figure 11 contains an excerpt of the CBD Strategy that indicates 3-4 storeys for the land.

The joint objectors referred to the Urban Design Guidelines for Victoria 2017 which is a policy document in Clause 11.03-1S (activity centres). It submitted Section 5.1 of the Urban Design Guidelines for Victoria 2017 sought to:

- set back upper levels of tall buildings or use a podium and tower form to create a pedestrian scale at street level
- provide for a transition in scale from larger buildings to adjacent areas of smaller scale built form
- create a transition from large development sites to adjacent residential neighbourhoods using scale, built form and uses.

The joint objectors noted one of the decision guidelines of the Commercial 1 Zone was to consider *“the interface with adjoining zones, especially the relationship with residential areas.”*

The joint objectors submitted the Humffray Street South width was defined by the width of the road at 17 metres, not the road reserve (20 metres) and a ratio of 1:1.9 resulted. They considered this indicated the proposal was excessively tall.

⁹ D25, page 1

Figure 11 Excerpt from CBD Strategy



Source: Joint objector submission, paragraph 8

Council reflected upon Ballarat's history and the need to facilitate future growth¹⁰:

To accommodate the increase in population, Ballarat must grow. Like the growth associated with the Gold Rush, the urban character and streetscapes of Ballarat must change and evolve. The status quo cannot remain. Change is inevitable. Ballarat must provide not only housing opportunities but a diversity in housing to accommodate this population growth. Ballarat must also grow its commercial office space to provide employment and economic opportunities for its present and future residents. As the Planning Scheme acknowledges *Ballarat is also a significant source of jobs for regional Victoria.*

Council submitted a significant focus of this growth will be in the Bakery Hill URP area which is anticipated to accommodate 5,000 new residents and provide an additional 600 jobs. To accommodate this growth *"there will be higher and more robust built forms integrating with the existing infill, historical built forms and residential neighbourhoods."* It submitted the land *"provides an opportunity to better define the edge of Ballarat CBD ... where built form elements can be carefully crafted to be recessive in the context of the overall development scheme."*

Council accepted there were 3-4 storey building heights in the CBD Strategy and the Bakery Hill URP nominated for the land but noted they were not proposed to be mandatory and were not part of any planning scheme control. Council supported Mr Czarny's 'first principles' assessment for the land.

Council considered the impact on the residential properties fronting Humffray Street South was minimised under the Condition 1 requirements, as the commercial building has a street wall height (13.5 metres) to street width (20 metres) ratio of less than 1:1 with recessive built form above the podium. Specifically, the planning permit required a reduction in the original street profile with greater upper-level setbacks to the north-east to further manage the visibility of the

¹⁰ D27, paragraph 31

proposal from the public and private realms and ensured an effective transition in scale between the new built form and the prevailing building stock along Humffray Street South. Council submitted this would define the corner with Porter Street and the urban entry to the CBD.

The Applicant supported the evidence of Mr Czarny and noted the:

- design response would result in a built form that would respect and greatly enhance its local context
- commercial building had been carefully modulated and comprised two distinct masses separated by a glazed recess (with the commercial building mass further recessed by the condition 1(a) changes)
- residential building is located to the rear of the land and separates the southern and northern arms of the building with a glazed recess with setbacks along the Porter Street frontage
- commercial building fronting Humffray Street South has upper-level setbacks to ensure an appropriate transition in the scale of the built form to its residential interface and to ensure views along Humffray Street to the spire of St Paul's Anglican Church are protected.

(iii) Discussion

The Committee notes the CBD Strategy, its Action Plan and the Bakery Hill URP, all containing indicative building heights for the land, have been adopted by Council. However, there are no preferred or mandatory building heights in the Planning Scheme. Given the dates of these documents (pre-2019) Council did not inform the Committee there was any intention to introduce these to the Planning Scheme. Council accepted that a broader structure plan for Bakery Hill as recommended in the Bakery Hill URP would address building height.

During the Hearing, Council informed the Committee that Amendment C243ball for Bridge Mall in the Bakery Hill URP area included building heights of up to 15 metres (4 storeys) in an area where there were many heritage constraints. The CBD Strategy recommended 3 storeys. This indicates Council's approach to building height is being continually refined and with the expectation of a structure plan that addresses building height as recommended in the Bakery Hill URP area, the Committee considers:

- little weight should be given to the 3-4 storeys across the land, as this is not reflected in the Planning Scheme
- in the absence of statutory controls, Mr Czarny's 'first principles' approach is an appropriate methodology to define built form for the land.

The Committee accepts that the interfaces of the land with the lower scale and residential areas to the north-east and south-east are locations of prime urban design sensitivity. The Committee supports the intent of Condition 1(a) of the planning permit to reduce built form at this interface with upper levels setback above the podium of the commercial building to create a street wall to road width ratio of less than 1:1.

The street wall to road width ratio of 1:1 raised by the joint objectors refers to the road width not the road *reserve* width, which distorts the ratio. Condition 1(a) results in the street wall height at the north-east elevation is 13.5 metres above natural ground and in a road reserve width of 20 metres a ratio of less than 1:1 is achieved. This ratio has been used most effectively when there is the potential for expectations of similar scaled developments on both sides of a street. However,

in principle, the Committee agrees it has a useful application for this proposal as it addresses the need to transition built form at the interface with a residential zone of lower scaled built form character.

However, the conditions, scale and residential character of Humffray Street South is consistent between Eastwood and Porter streets opposite the land and, apart from defining an entry to the CBD, there was no reason given why built form transition at this interface should not apply for the length of the proposed elevation. Building height has an impact along its full exposure to Humffray Street South and residential properties opposite the land should be addressed the same manner. The Committee supports the same podium/tower urban design treatment along all the land's frontage to Humffray Street South.

The interface with Porter Street is acceptable as the proposal would present to the rear of commercial lots that front Main Road and this is the greatest exposure to the courtyard open space set around the old chimney. From the public realm of Main Road, it would be visible but would not significantly impact visual amenity.

(iv) Findings

The Committee finds:

- The site has the capacity to accommodate building height in excess of 3-4 storeys.
- There are no height controls in the Planning Scheme that confirm 3-4 storeys is suitable for the land.
- To date Council has not introduced height controls into the planning scheme and a 'first principles' approach to site design is appropriate.
- The land is sufficiently large to accommodate the commercial building at a height of 7 storeys and the residential building at a height of 8 storeys.
- The need to setback upper levels of the commercial building from Humffray Street South above a 13.5 metre high podium is in part an acceptable built form transition response to this sensitive interface.
- The upper level setback above the podium should continue for the full Humffray Street South frontage.

(v) Recommendation

The Committee recommends:

Amend Condition 1a of Planning Permit PLP 2022/818, as shown in Appendix F, to:

Modifications to the form of the office building generally in accordance with the letter from Niche Planning Studio dated 25/01/2024 and accompanying concept plans and renderings and to continue the same upper level setback, architectural treatment and podium landscaping the full length of the Humffray Street South frontage.

4.5 Overlooking and overshadowing

(i) The issue

The issue is whether the proposal has an unacceptable overshadowing and overlooking impact on the residential properties on Humffray Street South.

(ii) Evidence and submissions

The joint objectors were concerned the commercial building would have an unacceptable impact on the residential properties along the east side of Humffray Street South. They submitted *“this is clearly shown by the revised Shadow Analysis diagrams indicating that houses on the opposite side of Humffray Street South will have most of their yards in shadow for almost the entire afternoon in winter.”* The reference was to the solstice (mid-winter) overshadowing diagrams contained in Document 11.

Council considered a street wall height to road width ratio of *“around 1:1 ... will ensure that the building will avoid unreasonable enclosure or over shadowing of the public realm.”* Council submitted that the *“objectors amenity expectations must be tempered, particularly in this circumstance where the Ballarat Planning Scheme encourages substantial and intensive built form.”*

The Applicant noted the relevant decision guideline in the Commercial 1 Zone required the consideration to adjoining land and in this case the properties on the east side of Humffray Street South do not adjoin the land. The Applicant referred to the equinox (22 September) overshadowing diagrams contained in Document 10 and that *“the changes to the commercial building envelope required by condition 1(a) are likely to result in reduced shadow, particularly to the northern properties.”*

The joint objectors were concerned the commercial building would overlook the residential properties *“resulting inevitably in the unpleasant feeling that every movement at the front of their houses is being viewed by possibly hundreds of eyes.”*

The Applicant submitted *“given the width of Humffray Street South of approximately 20 metres, there will not be any unreasonable overlooking from the proposal into these front yards.”* The Applicant supported Mr Czarny’s observation that the front yards would not be considered as secluded private open space.

(iii) Discussion

The Committee considers the context of the residential properties along Humffray Street South is an important consideration. These properties:

- do not adjoin the land
- are located opposite the CBD
- are located on a busy inner Ballarat street
- are separated from the land by a 20 metre wide road reserve
- have small front yards that in most cases are exposed to the street with low front fencing
- all have rear yards which would be considered secluded private open space.

The Committee accepts that 109 Humffray Street South does have a high front fence that does afford some additional privacy from the street, but it does not consider front yards should be considered as secluded private open space.

The shadow diagrams referred to by the joint objectors are of the winter solstice on 22 June. The solstice represents the maximum overshadowing affect, but the Committee notes the Victorian

planning system uses the equinox on 22 September¹¹ as a reasonable basis to consider overshadowing. The equinox overshadowing diagrams in Document 10 indicate the:

- front yards are impacted at 2pm and 3pm, not earlier or later
- rear yards remain free of shadow impacts.

The Committee considers the proposal will not have unreasonable overshadowing impacts on the Humffray Street South residential properties.

The Committee accepts there is potential for overlooking the residential properties from the commercial building. However, it is separated by a 20 metre wide road reserve and there is no potential to overlook rear yards as secluded private open space. On this basis, the Committee considers the proposal will not have unreasonable overlooking impacts to the residential properties. The Committee notes this is a commercial building so this potential distant overlooking is likely to be mostly restricted to daytime work hours.

(iv) Finding

The Panel finds the proposal will have acceptable overshadowing and overlooking impacts into the Humffray Street South residential properties.

4.6 Other amenity impacts

(i) The issue

The issue is whether waste collection and the liquor licence would result in unreasonable amenity impacts.

(ii) Submissions

The joint objectors were concerned the serving of liquor will result in undesirable behaviour and waste collection will be frequent and noisy.

The Applicant considered waste collection will be infrequent and is governed by a permit condition that requires a waste management plan. The liquor licence is associated with a café or restaurant that faces into the land orientated away from the residential interface. Accordingly, the expectations of undesirable behaviour are not borne out.

(iii) Discussion

The Committee notes the liquor licence is not associated with a pub or nightclub where there may be undesirable behaviour. A restaurant or café is a relatively benign use and its orientation in the development away from Humffray Street South will limit any potential for amenity impacts. The hours of operation, 7am to 11pm 7 days a week, are acceptable in this CBD location.

Waste collection is proposed in the loading bay that is part of the vehicle access off Humffray Street South. The Committee is satisfied that this is an appropriate location, and its management will be addressed in the Waste Management Plan.

¹¹ Clause 55.04-5 of the Ballarat Planning Scheme

(iv) Findings

The Committee finds:

- The café/restaurant liquor licence is associated with a benign use and is unlikely to generate adverse amenity impacts.
- Waste collection will be managed appropriately by the Waste Management Plan.

5 Traffic, parking and access

5.1 The issues

The issues are whether the proposal:

- will result in an unreasonable increase in traffic on the local road network
- has an adequate level of onsite car parking
- has safe and efficient access to onsite car parking.

5.2 Background

Tables 3 and 4 summarise onsite parking provision for the commercial and residential buildings.

The application plans propose to reduce 268 spaces across the land comprising:

- 204 car spaces from the statutory requirement in the commercial building, with 76 spaces provided
- 64 car spaces from the statutory requirement in the residential building, with 30 spaces provided.

Table 3 Carparking assessment for the commercial building

Use	Floor area	Required	Provided	Reduction
Office	7,821.2sqm	273	76	197
Cafe	183.4sqm	7	0	7
Total		280	76	204

Source: One Mil Grid Traffic Report for permit application, page 24

Table 4 Car parking assessment for the residential building

Bedrooms	Number	Required	Provided	Reduction
1	24	24	0	24
2	48	48	26	22
3	2	4	4	0
Visitors	14	14	0	14
Cafe	109.3sqm	4	0	4
Total		94	30	64

Source: One Mil Grid Traffic Report for permit application, page 24

The Corangamite CMA, in response to a section 52 notice of the proposal, objected to the access to the residential building car park off Bradbys Lane due to the depth of flooding being over 300 millimetres. Figure 12 contains the flood mapping from the CMA's online portal that shows the depth of flooding to the rear of the land.

The NOD addressed this Corangamite CMA response and required amended plans through conditions:

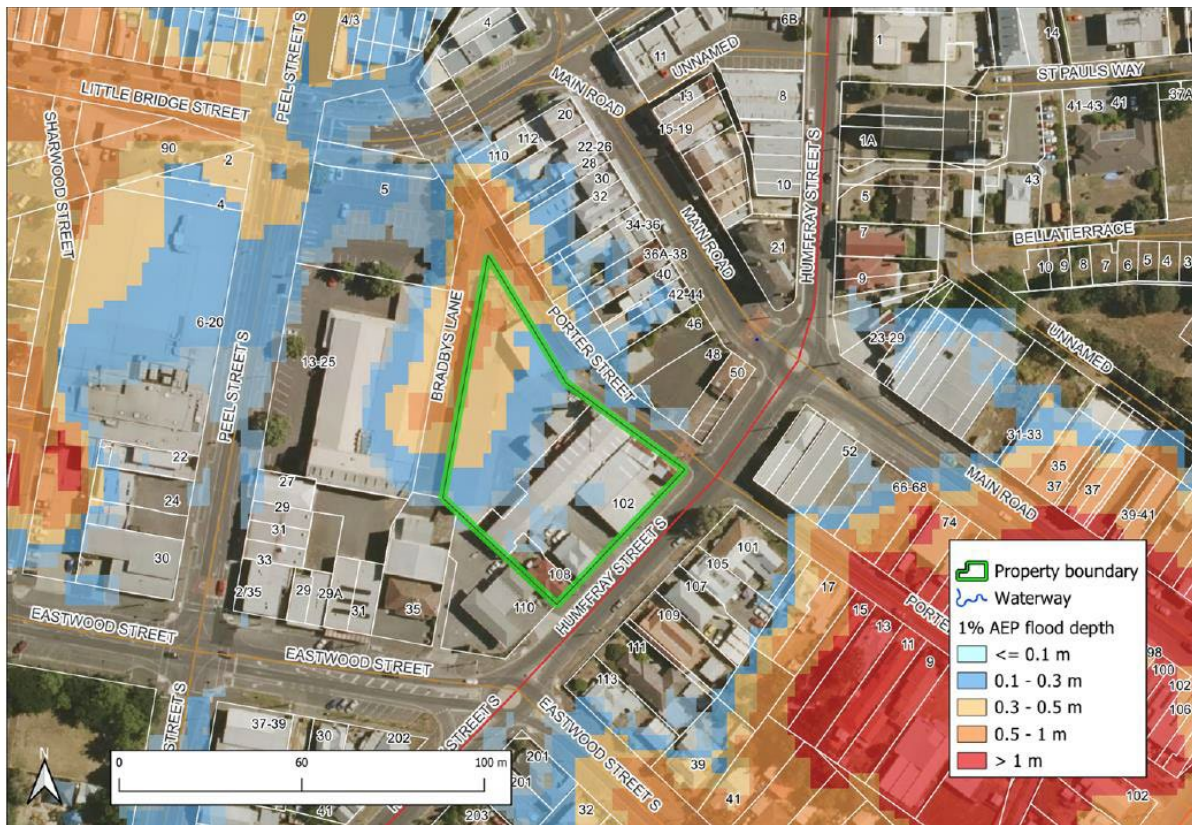
- 1(b) to delete the vehicle access point off Bradbys Lane
- 1(c) to note no access to the residential building off Bradbys Lane

- 1(d) to delete all parking in the residential building.

As a result of these condition 1 requirements, the waiver for parking would increase from 268 spaces to 298 spaces.

There are no statutory controls that reflect the flooding of the land but the Corangamite CMA-managed online portal shows, in Figure 12, the extent of flooding which is a well-known local constraint.

Figure 12 Corangamite CMA flood information



Source: D36, Figure 1 page 10

5.3 Traffic

(i) Evidence and submissions

One of the joint objector's concerns was the proposal would increase traffic along Humffray Street South so much that *"this amount of vehicle pollution will be extremely detrimental to our health and wellbeing."*

The Applicant relied on the evidence of Mr Gnanakone, who concluded *"the level of traffic generated can be suitably accommodated by the surrounding road network."* Mr Gnanakone found the proposal would generate an additional 52 vehicle movements to Humffray Street South, or one vehicle movement every minute. He considered *"this level of traffic generation to be low and although the development will increase traffic volumes along Humffray Street South and Porter Street, my review of the nearby intersections has identified that there is more than sufficient capacity to accommodate these movements."* This assessment was based upon the

provision of parking in the residential building. It would be less of an issue if onsite parking was reduced further.

Council submitted *“the anticipated traffic associated with the proposal is more than reasonable and can be easily accommodated by the surrounding road network.”*

(ii) Discussion

The Committee acknowledges the concerns expressed by the joint submitter but does not agree the impact on the surrounding road network will be unreasonable.

Humffray Street South is already a busy local street, forms the eastern edge of the CBD and conveys traffic into the CBD from Ballarat’s south and Buninyong. The addition of one vehicle movement per minute to this street is not unreasonable and there is adequate capacity to accommodate this low or modest increase.

(iii) Finding

The Committee finds the increased traffic generated by the proposal will result in a reasonable impact to surrounding street network, which has the capacity to accommodate this low to moderate increase.

5.4 Parking

(i) Evidence and submissions

The joint objectors, commenting on the residential building, considered¹²:

While the 28 car spaces which are shown on these plans are far below the 90 spaces required under Clause 52.06- 5, we submit that any permit granted for this building must require parking spaces for the residents – either here or elsewhere on the site.

The joint objectors were concerned the VCAT cases referred to in the Officer’s report all relate to inner Melbourne examples where there is excellent public transport or local public parking areas. In comparison, they considered Ballarat had limited public transport based around bus services. The joint objectors submitted there were no viable off street local public parking areas where residents or employees could park.

Council submitted that full car parking dispensation for the residential building and the reduction of parking for the commercial uses are supported, because¹³:

- The non-provision/reduction of car parking will encourage staff/residents to use alternative sustainable transport modes.
- There is a significant provision of on-site bicycle parking (and end of trip facilities) which will encourage staff to cycle to work.
- The proposal has been supported by a Traffic Impact Assessment Report.
- The availability of public transport, electric scooters and car share facilities.
- The site’s location within the CBD.
- Adopting a ‘centre based’ approach is the most equitable solution to assess the car parking dispensation.

¹² D31, paragraph 49

¹³ D27, paragraph 64

- The Planning Scheme’s encouragement of the use of sustainable transport to reduce car dependency.

Mr Gnanakone referred to the Ballarat Integrated Transport Strategy to support a waiver of parking. This strategy aims to provide a more sustainable transport network that reduced the dependence on personal motor vehicles. He noted the land was within a one minute walk to the Route 20 bus service, 5 minutes to the Bridge Mall bus interchange with access to up to another 15 services and 14 minutes to the Ballarat Railway Station. Mr Gnanakone noted the residential building provided an oversupply of bicycle parking facilities to serve residents and visitors. Overall, Mr Gnanakone submitted that *“the reduction in all car parking associated with the residential component is acceptable noting that the same principles apply in relation to car parking suppression and supporting sustainable transport policies examined within the Transport Impact Assessment and importantly by Council as part of their (sic) consideration of the application.”*

The Applicant concluded the full waiver of parking was appropriate and, in the circumstances, those seeking to purchase an apartment would do so in full knowledge that no parking was available.

(ii) Discussion

The Committee accepts that a reduction in parking can be justified given the context of the land, its access to public transport and broad policy support for a modal transport shift in favour of public transport from the private motor vehicle. In this regard, the Committee supports the reduction of parking in the commercial building by 204 spaces and in the residential building by 64 spaces.

The land is part of the CBD and is within walking distance of the services and facilities it offers, including public transport that is limited to bus services and V-line railway service. Apart from that public transport options are limited to Uber, taxi and scooter services.

However, there are other circumstances that err against the full waiver of parking for the residential building, as follows:

- The full waiver is not being driven by a strategic approach to policy; it is driven by circumstances that should have been foreseen as the flooding of the area is well known albeit not reflected in statutory controls.
- Comparing the access to public transport of this land to that in the inner Melbourne examples referred to is not helpful. They are quite different, and the Committee considers there are no equivalent areas in Ballarat to that of inner Melbourne for public transport access.
- The local examples referred to support a zero provision of parking for commercial developments, not residential, that are more central within the CBD and have access to other off street parking facilities for those workers.
- Mr Gnanakone could not refer the Committee to off street parking facilities within walking distance of the land where spaces could be leased by residents.
- Mr Gnanakone was not aware of any other regional proposal where the full waiver of parking for a residential building was supported.
- The land sits at the periphery of the CBD and adjoins a residential area. The potential of street parking within this residential area does not seem to have been considered, apart from Council and the Applicant stating that it could be addressed post development if it becomes an issue.

- The Ballarat Integrated Transport Strategy does not canvass the potential of zero parking developments.

Overall, this land is not within a context where zero provision of parking for the residential building should be supported.

(iii) Finding

The Committee finds:

- A reduction in parking of 204 spaces in the commercial building and 64 spaces in the residential building is appropriate.
- A zero provision of parking the residential building is not appropriate.

5.5 Access to the residential building

(i) Evidence and submissions

The joint objectors submitted¹⁴:

We believe that the Council has overreacted to the potential of flooding – given that the plans were not for basement car parking but for ground level parking and that this could still be achieved by avoiding access via Bradby's Lane as shown in the recent concept plans provided by the applicant.

Council and the Applicant supported the deletion of vehicle access to the residential building from Bradbys Lane and all car spaces in it. The NOD conditions 1(b), (c), and (d) reflect this. The Committee has found in section 5.4 that a full waiver of parking for the residential building cannot be supported, so the issue is whether there are alternative access options to the car park.

While not a formal position of the Applicant, it prepared Document 17 that showed access across the open space courtyard from Porter Street, which is shown in Figure 13. This alternate access results in the loss of 2 car spaces, leaving a total of 28 spaces.

Mr Gnanakone concluded *“that this provides for a suitable alternative to removing access altogether and noting that only 28 car spaces will be provided (30 originally shown minus the 2 for the passing area) the level of traffic generated will be low.”*

At the Hearing, the Applicant explored another option that allocated 28 car spaces within the commercial building for exclusive use by the residents. This reduced the number of car spaces available to the commercial users from 76 spaces to 48 and increased the overall carparking reduction to 268 spaces, from 296. This would be administered by a Car Parking Management Plan permit condition¹⁵.

Mr Czarny did not support access across the open space courtyard as this would impact the integrity of it.

(ii) Discussion

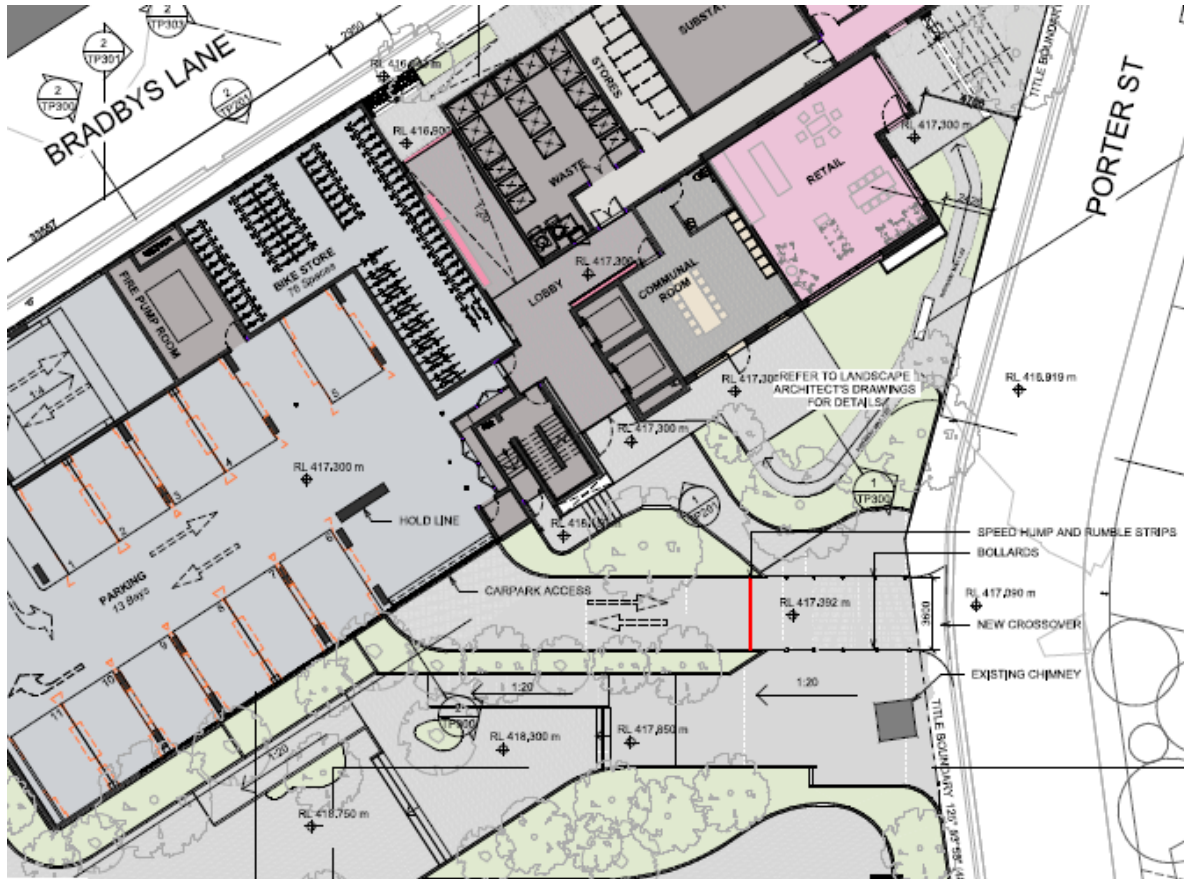
The late acknowledgement of the impact of flooding has significantly impacted the design of the proposal.

¹⁴ D31, paragraph 49

¹⁵ D34

While the Corangamite CMA is not a recommending referral authority under section 55 of the PE Act, as the floodplain manager its advice is an important consideration the Committee has given regard to. As such, the Committee agrees that access to the carpark from Bradbys Lane is not possible and should not be supported.

Figure 13 Access to parking from Porter Street



Source: D17

Of the two alternate access options put by the Applicant, the Committee does not support residents using spaces in the commercial building. This would lead to an even larger reduction in parking for the commercial building which the Committee does not support for the reasons already explored in section 5.4. The Committee was advised there would be two separate entities constructing the commercial and residential buildings and there seemed to be an imperative to keep these as mutually exclusive developments.

The only other alternative access is therefore across open space courtyard from Porter Street. This is not ideal but presents as the only way for the proposal to move forward. The Committee notes Mr Czarny's concern with this approach but the only other alternative would be to completely review the development concept, an option the Committee contemplated. For reasons set out in this Report, the Committee does not consider the proposal is so flawed that a permit should not issue, and the proposal is an acceptable planning outcome.

Figure 13 shows a narrow 3.6 metre wide single lane access across the courtyard next to the old chimney. The Committee considers it is critical this new access is carefully planned and does not detract too much from the role of the courtyard as an open space transition between the two buildings that creates a feature out of the old chimney.

In regard to the NOD, the Committee proposes to:

- Delete condition 1 (d)
- Add a new condition 1 requirement that provides for the residential building vehicle access off Porter Street.

(iii) Finding

The Committee finds:

- The vehicle access off Bradbys Lane should be deleted.
- Providing carparking in the commercial building for the residents of the residential building is not appropriate.
- Vehicle access to the residential building should be provided across the open space courtyard.

(iv) Recommendations

The Committee recommends:

Delete Condition 1(d) of Planning Permit PLP/2022/818, as shown in Appendix F.

Insert a new Condition 1(d) of Planning Permit PLP/2022/818, as shown in Appendix F, to show:

Vehicle access to the residential building car park is to be provided off Porter Street at a location that is not the subject to flood depths greater than 300mm.

6 The planning permit

(i) Relevant considerations

Clause 71.02-3 of the Planning Scheme requires a responsible authority considering a permit application to take an integrated approach, and to balance competing objectives in favour of net community benefit and sustainable development.

Clause 65 of the Planning Scheme states:

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.

Clause 65.01 requires the Responsible Authority to consider, as appropriate:

- the Planning Policy Framework
- the purpose of the zone, overlay or other provision
- the orderly planning of the area
- the effect on the amenity of the area
- the degree of flood hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

Other matters to be taken into account include:

- objections
- comments of the Corangamite CMA
- other matters a Responsible Authority must and may take into account under section 60 of the PE Act, including the Victorian planning objectives and the economic, social and environmental impacts of the proposed use and development
- adopted government policy.

(ii) Discussion

Council's Part A submission provided a helpful summary of the permit triggers, application requirements and referral requirements for the proposal under the Planning Scheme. It also provided a summary of referral authority comments and responses, and a chronology of the Permit Application. The Panel has been assisted by these in its deliberations.

The issues and impacts required to be considered in the decision guidelines have been discussed at length in the issue-specific chapters of this Report. In essence the Panel considers:

- The joint objectors rely on content that is not contained in the planning scheme.
- There is strong local and state policy that supports significant infill development in the CBD.
- The impact of flooding on the land has diminished the urban design integrity of the proposal, but not to a sufficient degree that would warrant the Committee recommending a permit not be granted.

The Committee notes there are aspects of the permit conditions that are inconsistent with the Department of Transport and Planning's guidance in the Practitioners Guide and Writing Planning Permits. Appendix F does not make corrections in this regard. The Committee recommends the permit condition drafting be reviewed against these two documents.

On balance, the Panel considers that a permit should be granted.

(iii) Recommendation

The Panel recommends:

Issue Ballarat Planning Permit PLP/2022/818 (VCAT Ref P508/2024) for the use and development of the land for two buildings (a residential and a commercial building with associated open space areas, reduction of carparking requirements and a liquor licence subject to the permit conditions contained in Appendix F.

Appendix A Terms of Reference

Version 2: Amended June 2023

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

Name

1. The Standing Advisory Committee is to be known as the 'Priority Projects Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
 - a. statutory and strategic land use planning
 - b. land development and property economics
 - c. urban design and architecture
 - d. heritage
 - e. civil engineering and transport planning
 - f. social impacts
 - g. environmental planning
 - h. planning law.
3. The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Development Facilitation Program (DFP), or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

Background

5. The Victorian Government is committed to streamlining the assessment and determination of projects that inject investment into the Victorian economy, keep people in jobs and create homes for people. The planning system is an important part of supporting investment and economic growth in Victoria.
6. The DFP focusses on new development projects in priority sectors and/or projects that are in the planning system that face undue delays. These can include (but are not limited to) housing, mixed use, retail, employment, tourism, industrial and other opportunities.

Method

7. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
8. The referral letter must specify:
 - a. the specific issues the Minister for Planning seeks advice about
 - b. the mechanism of intervention being considered (for example, but not limited to, draft planning scheme amendment, call-in from the Victorian Civil and Administrative Tribunal, planning permit application)
 - c. whether submissions are to be considered by the Committee, and if so, how many are being referred, and
 - d. how the costs of the Committee will be met.

9. The letter of referral will be a public document.
10. In making a referral, the Minister for Planning or delegate must, either:
 - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes, or
 - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
11. The Committee may inform itself in anyway it sees fit, but must consider:
 - a. The referral letter from the Minister for Planning
 - b. referred submissions
 - c. the comments of any referral authority
 - d. the views of the project proponent
 - e. the views of the relevant Council and
 - f. the relevant planning scheme.
12. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority, or government agency.
13. The Department of Transport and Planning (DTP) will be responsible for any further notification required. New submissions, if required, will be collected by DTP.
14. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
15. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
16. The Committee may:
 - a. assess any matter 'on the papers'
 - b. conduct discussions, forums, or video conferences when there is a quorum of:
 - i. a Chair or Deputy Chair, and
 - ii. at least one other member.
17. The Committee may apply to vary these Terms of Reference in any way it sees fit.

Submissions are public documents

18. The Committee must retain a library of any written submissions or other supporting documentation provided to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
19. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.

Outcomes

20. The Committee must produce a concise written report to the Minister for Planning providing the following:
 - a. a short description of the project
 - b. a short summary and assessment of issues raised in submissions
 - c. a draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral

- d. any other relevant matters raised during the Committee process
- e. its recommendations and reasons for its recommendations
- f. a list of persons or authorities/agencies who made submissions considered by the Committee and
- g. a list of persons consulted or heard, including via video conference.

Timing

- 21. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
 - a. the date of receipt of referral, if no further submissions or information are to be sought, or
 - b. receipt of the final submission of material or final day of any public process in respect of a referral.

Fee

- 22. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.
- 23. The costs of the Committee will be met by each relevant proponent.



Sonya Kilkenny MP
Minister for Planning

Date: 9/9/2023

Appendix B Letter of Referral



The Hon Sonya Kilkenny MP

Minister for Planning
Minister for the Suburbs

1 Spring Street
Melbourne, Victoria 3000 Australia

Ref: BMIN-1-24-2763

Ms Kathy Mitchell AM
Chair (Lead)
Priority Projects Standing Advisory Committee
Planning Panels Victoria
planning.panels@delwp.vic.gov.au

Dear Ms Mitchell

I refer to the Victorian Civil and Administrative Tribunal (VCAT) application P508/2024, which relates to the use and development of the land for two buildings (a residential mixed-use building and a commercial building) with associated open space areas, reduction of carparking requirements, and a liquor licence at 102-108 Humffray Street South, Bakery Hill. The project was referred to me by the Development Facilitation Program (DFP).

I advise that I have decided to call in the proceeding from VCAT under Clause 58(2)(a) of Schedule 1 to the *Victorian Civil and Administrative Tribunal Act 1998* as I consider that the proceeding raises a major issue of policy, and the determination of the proceeding may have a substantial effect on the achievement or development of planning objectives. I have also decided to refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether a planning permit should be issued, and if so, the appropriate permit conditions that should be imposed.

On 22 May 2024, one objector representing three parties filed a joint submission to VCAT under section 82(1) of the *Planning and Environment Act 1987* against the Ballarat City Council's decision to issue a Notice of Decision to Grant a Permit. The matters raised by the objectors relate to overshadowing, overlooking, noise and odour from vehicle traffic, reduction in car parking, and the height, scale and form of the buildings.

The VCAT hearing was scheduled to commence on 20 January 2025.



The cost of the advisory committee will be met by the proponent, Hygge Property.

Yours sincerely



The Hon Sonya Kilkenny MP
Minister for Planning

Date: / / 18/7/2024



Appendix C Parties to VCAT Proceeding P508/2024

Party	Role
Humffray Development Partnership	Applicant
Ballarat City Council	Responsible Authority
John Simpson on behalf of the joint objectors	Joint Applicant

Appendix D Parties to the Hearing

Submitter	Represented by
Humffray Development Partnership Pty Ltd (Applicant)	Kim Piskuric of Harwood Andrews, who called expert evidence on: <ul style="list-style-type: none">- urban design from Craig Czarny of Hansen Partnership- traffic and parking from Valentine Gnanakone of One Mile Grid
City of Ballarat	Jason Kane of Counsel
John Simpson, Stuart Kelly and Robert Skogland (joint objectors)	John Simpson and Stuart Kelly

Appendix E Document list

No	Date	Description	Presented by
2023			
1	9 Sep	Terms of Reference	Minister for Planning
2024			
2	18 Jul	Letter of Referral	Minister for Planning
3	23 Jul	Referred materials – see Appendix to this list	Department of Transport and Planning
4	24 Jul	Directions Hearing notification	Planning Panels Victoria (PPV)
5	7 Aug	Summary of key issues	Joint objectors
6	8 Aug	Summary of key issues	City of Ballarat (Council)
7	9 Aug	Summary of key issues	Humffray Development Partnership Pty Ltd (Applicant)
8	15 Aug	Directions and Hearing Timetable	PPV
9	21 Aug	Proposed residential carpark access	Applicant
10	21 Aug	Revised shadow diagrams - Equinox	Applicant
11	21 Aug	Revised shadow diagrams - June solstice	Applicant
12	21 Aug	Ballarat Strategy 2040	Council
13	21 Aug	Making Ballarat Central - CBD Action Plan 2017-21	Council
14	21 Aug	Bakery Hill Urban Renewal Plan - Parts 1 and 2	Council
15	21 Aug	Bakery Hill Urban Renewal Plan - Parts 3, 4 and 5	Council
16	21 Aug	Ballarat Integrated Transport Action Plan	Council
17	27 Aug	Further plans showing revised access arrangement and modifications to proposed built form	Applicant
18	9 Sep	Letter clarifying position and revised plans	Applicant
19	11 Sep	Expert witness report of Craig Czarny (urban design)	Applicant
20	11 Sep	Expert witness report of Valentine Gnanakone (traffic and car parking)	Applicant

No	Date	Description	Presented by
21	11 Sep	Revised building renders: a) View 1 b) View 2 c) View 3	Applicant
22	11 Sep	Revised north and south elevations	Applicant
23	11 Sep	Revised east and west elevations	Applicant
24	10 Sep	Version 2 Hearing timetable	PPV
25	19 Sep	Submission, enclosing attachments	Joint objectors
26	20 Sep	Submission, enclosing attachments: a) Cloonan v Ballarat CC [2024] VCAT 747 b) Graham v Stonnington CC (includes Summary) (Red Dot) [2010] VCAT 1224	Applicant
27	20 Sep	Submission	Council
28	25 Sep	Ballarat Housing Strategy 2041	Council
29	25 Sep	Ballarat Skyline and Views Study	Council
30	25 Sep	Statements of Significance HO183-HO188 PART A	Council
31	25 Sep	Amended submission on behalf of John Simpson	Joint objectors
32	25 Sep	Images	Joint objectors
33	26 Sep	Response to Committee questions	Council
34	30 Sep	Proposed car parking management plan condition	Applicant
35	30 Sep	Committee directions on documents to be provided by Council	PPV
36	3 Oct	Response to Committee requests	Council
37	3 Oct	Response to Council further information	Joint objectors
38	9 Oct	Response to Council further information	Applicant

Appendix to Document List – Referred materials for Document 3

No	Description
3.01	Application for Planning Permit (4 November 2022)
3.02	Corangamite CMA comments on permit application (29 June 2023)
3.03	Notice of Decision to Grant a Permit - PLP-2022-818 (16 April 2024)
3.04	Permit Conditions - PLP-2022-818 (16 April 2024)
3.05	Objector List
3.06	Objection - Ballarat Heritage Watch (Stuart Kelly)
3.07	Objection - John & Liping Simpson
3.08	Objection - Robert Skoglund (22 February 2023)

No	Description
3.09	Application for Review (9 May 2024)
3.10	VCAT Order - P508 2024 John Edward Simpson, Stuart Kelly & Others v Ballarat City Council (22 May 2024)
3.11	P508-2024 Parties List
3.12	Council - Information from Decision Makers (17 June 2024)
3.13	Attachment 1 - P508_2024 - 102 & 108 Humffray Street South Bakery Hill – NOD
3.14	Attachment 2 - P508_2024 - 102 & 108 Humffray Street South Bakery Hill - Planning Property Report
3.15	Attachment 3 - P508_2024 - 102 & 108 Humffray Street South Bakery Hill - List of persons given notice
3.16	Attachment 4 - P508_2024 - 102 & 108 Humffray Street South Bakery Hill – Objectors
3.17	Attachment 5 - P508_2024 - 102 & 108 Humffray Street South Bakery Hill - Referral to DTP
3.18	Attachment 6 - P508_2024 - 102 & 108 Humffray Street South Bakery Hill - Cultural Heritage Advice
3.19	Attachment 7 - Amended Plans (24 May 2023)
3.20	Attachment 7 - Applicant Response to Submissions Letter
3.21	Attachment 7 - Building renders (25 January 2024)
3.22	Attachment 7 - Central Wind Assessment
3.23	Attachment 7 - CHMP Process List
3.24	Attachment 7 - Combined Render Plans
3.25	Attachment 7 - Cultural Heritage Advice
3.26	Attachment 7 - Design Review Panel Signed
3.27	Attachment 7 - ESD Report
3.28	Attachment 7 - Exterior Design Photos
3.29	Attachment 7 - Geoenvironmental Response (7 June 2023)
3.30	Attachment 7 - Landscape Concept
3.31	Attachment 7 - Servicing Report
3.32	Attachment 7 - Storm Water Strategy
3.33	Attachment 7 - Survey Plan
3.34	Attachment 7 - Title
3.35	Attachment 7 - Traffic Report
3.36	Attachment 7 - Urban Context Report
3.37	Attachment 7 - Waste Management
3.38	Attachment 8 - P508_2024 - 102 & 108 Humffray Street South Bakery Hill - Council Report (10 April 2024)

No	Description
3.39	Statement of Grounds (Planning) - Humffray Development Partnership Pty Ltd (19 June 2024)
3.40	DTP referral response (1 July 2024)

Appendix F Committee preferred version of the planning permit

[Tracked Added](#)

~~Tracked Deleted~~

The Responsible Authority has decided to grant a permit. The permit has NOT been issued.

ADDRESS OF THE LAND:

CP163090, Lot 1 TP383764

102 Humffray Street South, BAKERY HILL VIC 3350

108 Humffray Street South, BAKERY HILL VIC 3350

WHAT WILL THE PERMIT ALLOW:

Use and development of the land for two buildings (a residential mixed-use building and a commercial building) with associated open space areas, reduction of carparking requirements, and a liquor license.

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

1. Amended Plans Required

Before the use and/or development starts, amended plans must be submitted to and approved in writing by the Responsible Authority. When approved, the plans will be endorsed and will form part of the permit. The plans must be drawn to scale with dimensions and emailed to planninginfo@ballarat.vic.gov.au with the planning reference number. The plans must be generally in accordance with the development plans dated 24/05/2023 prepared by 6 Degrees Architects but modified to show:

- (a) Modifications to the form of the office building generally in accordance with the letter from Niche Studio dated 25/01/2024 and accompanying concept plans and renderings [and to continue the same upper-level setback the full length, architectural treatment and podium landscaping of the Humffray Street South frontage.](#)
- (b) The vehicle access point to the residential building off Bradbys Lane deleted and the north-western wall of the building finished to a standard to match the remainder of the building. This includes the use of a variety of materials and finishes and/or public artwork.
- (c) Notes included on the plans confirming no vehicle access will be provided onto Bradbys Lane from the residential building.
- ~~(d) The deletion of all car parking spaces within the residential building and the re-use of the space for purposes ancillary to the approved dwellings.~~
- (e) [Vehicle access to the residential building car park is to be provided off Porter Street at a location that is not the subject of flood depths greater than 300mm.](#)
- (f) Annotation of permanent balcony screening measures to comply with the requirements of Clause 58.04-2 (Internal views - Standard D15) of the Ballarat Planning Scheme.

- (g) Annotation of all site services and demonstration of compliance with Clause 58.06-2 (Site Services - Standard D23) of the Ballarat Planning Scheme.
- (h) Material MF03 to be correctly labelled in the Materials Schedule on Drawing No. TP201.
- (i) Any changes as required by the Flood Impact Assessment and Flood Risk Management Plan as required by Condition 15.
- (j) Landscape works in accordance with Condition 2.
- (k) Any changes required in accordance with the Sustainability Management Plan required by Condition 6.
- (l) Red line plan/s updated as necessary to be consistent with the amended plans required above.

2. Landscape Plan

Prior to the commencement of the development hereby permitted, a landscape plan must be submitted to and approved in writing by the Responsible Authority. When approved the plan will form part of the permit.

The landscape plan must include:

- (a) a survey (including botanical names) of all existing vegetation to be retained and/or removed.
- (b) details of surface finishes of pathways, driveways and public areas.
- (c) a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, size at planting, sizes at maturity, and quantities of each plant.
- (d) Details in accordance with (c) above for all levels where landscaping will be provided.
- (e) Demonstration of compliance with the objectives of Clause 58.03-5 (Landscaping - Standard D10) of the Ballarat Planning Scheme.

All landscaping works must be carried out in accordance with the approved landscape plan and Council's Landscape Design Manual (August 2012)

3. Completion and Maintenance of Landscaping Works

Prior to the first occupation of either building hereby approved all landscape works for that building must be completed to the satisfaction of the Responsible Authority. The landscape works for publicly accessible areas must be completed within three months of the completion of the final building hereby approved. All landscaping shown on the approved landscape plan must be maintained to the satisfaction of the Responsible Authority for 18 months from the practical completion of the landscape works. During this period, any dead, diseased or damaged plants or landscaped areas are to be repaired or replaced during the period of maintenance and must not be deferred until the completion of the maintenance period.

4. No Changes

The use and the development hereby approved as shown on the endorsed plans and/or described in endorsed documents shall not be altered or modified without the prior written consent of the Responsible Authority, unless the alteration(s) and/or modification(s) comply with an exemption

contained in the Ballarat Planning Scheme and do not result in non-compliance with any mandatory requirements.

5. Amenity

The use and development hereby approved must be managed so that the amenity of the area is not detrimentally affected, through the:

- (a) transport of materials, goods or commodities to or from the land;
- (b) appearance of any building, works or materials;
- (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
- (d) presence of vermin or otherwise.

In the event of any nuisance being caused to the neighbourhood by activities related to the use and development the Responsible Authority may direct, in writing, such actions or works, as deemed appropriate, to eliminate or mitigate such nuisance be undertaken.

6. Sustainability Management Plan

Prior to the commencement of the development hereby approved, the applicant must submit to and have approved in writing by the Responsible Authority, an amended Sustainability Management Plan in accordance with the amended built form of the office building as per Condition 1 of this permit.

7. Construction Management Plan

Prior to the commencement of the buildings and works hereby approved, a Construction Management Plan must be submitted to and approved in writing by the Responsible Authority. The Plan must detail:

- (a) Hours of demolition and construction works to accord with Local Laws;
- (b) Management of surrounding streets to ensure all are kept free of parked or standing vehicles or any other obstruction, including building materials, equipment, etc. to maintain free vehicle passage to abutting and adjacent benefitting properties at all times, unless with the written consent of the Responsible Authority;
- (c) Methods to contain asbestos, dust, dirt and mud within the site and the method and frequency of clean up procedures, including the management of on-site waste storage construction bins and vehicle washing;
- (d) Management of parking of construction machinery and workers vehicles to prevent adverse impacts to nearby properties;
- (e) Management of heavy vehicles, site deliveries and unloading and lifting points and expected frequencies and traffic management in the vicinity of the site to ensure routes to and from the land minimise disruption to nearby residential properties;
- (f) The measures to minimise disruption to pedestrian movements along adjacent footpaths;

- (g) Measures to minimise noise and other amenity impacts from mechanical equipment, including idling trucks and construction activities, especially outside of daytime hours where this is permitted;
- (h) The provision of adequate environmental awareness training for all on-site contractors and sub-contractors; and
- (i) A liaison officer for contact by the public and the Responsible Authority in the event of relevant queries or problems experienced.

All works on the land must be undertaken in accordance with the endorsed Construction Management Plan to the satisfaction of the Responsible Authority.

8. Sale and Consumption of Liquor – Hours

Without the prior written consent of the Responsible Authority, the sale and consumption of liquor shall only occur within the licensed area between the following hours:

- 7am – 11pm Monday – Sunday

9. Section 173 Agreement – OSD/WSUD (Sub)

If for the purpose of meeting On-Site Stormwater Detention (OSD) and/or Water Sensitive Urban Design (WSUD) requirements rainwater tanks and/or rain gardens are proposed, and if rainwater tanks and/or rain gardens are approved for such use by the Responsible Authority, then;

Prior to the first occupation of the development an Agreement pursuant to Section 173 of the *Planning and Environment Act 1987* shall be entered into between the owner and the Responsible Authority. The Agreement shall be prepared and registered on the Certificate of Title of the subject lots, requiring the owner to install and maintain rainwater tanks and/or rain gardens as a designated OSD/WSUD system in a condition and to a standard that ensures its correct operation and otherwise to the satisfaction of the Responsible Authority.

Prior to the first occupation of the development, an application must be made to the Register of Titles to register the Section 173 agreement on the titles to the lots under Section 181 of the *Planning and Environment Act 1987*. The Responsible Authority will not allow the first occupation of the development until the agreement has been registered at the titles office and a dealing number assigned confirming that the agreement has been registered.

The Responsible Authority may release the owner from these obligations and/or vary requirements upon the written request of the owner. The Responsible Authority must be satisfied that the release and/or variation of the agreement will result in a better planning outcome or that the agreement is no longer required.

All costs associated with the preparation, signing, lodgement, registration, amending and ending of the Agreement must be borne by the owner, including all notification costs and legal fees.

10. Internal Access Ways and Car Parking

Prior to the first occupation of the development, the areas set aside for the parking of vehicles and access lanes as shown on the approved plans must to the satisfaction of the Responsible Authority be constructed and properly formed to such levels that they can be used in accordance with the plans;

- (a) Drained;
- (b) Line-marked to indicate each car space and all access lanes;

- (c) Clearly marked to show the direction of traffic along access lanes and driveways.

Car spaces and access lanes must be maintained and kept available for these purposes at all times.

11. Directional Sign

Signage to the satisfaction of the Responsible Authority must be provided directing drivers to the area(s) set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority. The area of each sign must not exceed 0.3 square metres.

12. Engineering Plans and Construction

Prior to the commencement of works on site engineering plans and specifications must be submitted to and approved in writing by the Responsible Authority. The engineering plans must accord with the Infrastructure Design Manual and Council's Standard Cross-sections. All engineering works must be constructed in accordance with the approved plans and completed to a standard satisfactory to the Responsible Authority prior to the first occupation of the development hereby approved.

At the completion of the works one set of 'as constructed' civil plans shall be submitted to the Responsible Authority.

The engineering plans include, but are not limited to:

- (a) Footpaths to be constructed around the perimeter of the site; and
- (b) Infill kerb and channel (including pavement details) where required for all frontages of the subject site.

13. Drainage Plans and Construction (Use)

Prior to the commencement of works on site (whichever occurs first), drainage, stormwater detention and stormwater treatment plans & computations must be submitted to and approved by the Responsible Authority. The drainage, stormwater detention and stormwater treatment plans and computations must accord with the Infrastructure Design Manual and Melbourne Water's WSUD Guidelines. All drainage works must be constructed in accordance with the approved plans and shall be completed to a standard satisfactory to the Responsible Authority prior to the first occupation of the development.

Stormwater from all roofs, gutters, downpipes and paved areas shall be drained to a legal point of discharge to the satisfaction of the Responsible Authority. The Legal Point of Discharge (LPOD) is to the existing drainage pit in Bradbys Lane.

The whole of the subject land, including landscaped and paved areas, must be graded and drained to the satisfaction of the City of Ballarat as the Responsible Drainage Authority to prevent the discharge of water from the subject land across any road or footpath or onto adjoining lands.

Any raingardens and rainwater tanks forming part of the approved drainage plans/system must be installed and maintained in good operational condition in perpetuity to the satisfaction of the Responsible Authority.

At the completion of the works 'as constructed' civil plans shall be submitted to the Responsible Authority by a suitably experienced and qualified engineer.

Any proposed discharge of stormwater requiring a direct and/or modified existing connection to a designated waterway (as defined by the *Water Act 1989*) will require approval by the relevant Catchment Management Authority.

14. Drainage Easements

All easements deemed necessary to protect existing or future drainage lines within the development site and the nominated point of discharge shall be created to the satisfaction of the Responsible Authority.

15. Flood Levels (Use)

Prior to the commencement of the development hereby permitted, the following must be submitted to the Responsible Authority and the relevant Floodplain Management Authority for review and approval:

- (a) A Flood Impact Assessment Report prepared by a suitably qualified and experienced Engineer; and
- (b) A Flood Risk Management Plan informed by the submitted Flood Impact Assessment Report.

The Flood Impact Assessment Report and Flood Risk Management Plan, inclusive of contoured plans with A.H.D levels, shall detail flooding on the subject site and surrounding land for storm events up to and including the 1% Annual Exceedance Probability event. The reports shall detail both pre and post development conditions, shall demonstrate that the subject site and any access and egress paths are free from flooding, that no adjoining properties are adversely affected and that the function of overland flow paths is in accordance with the relevant flood safety criteria. The reports must also consider:

- (a) Required design intensities;
- (b) AEP of major and minor storm events;
- (c) Model selection in line with ARR2019; and
- (d) Modelling technique in line with ARR2019.

All recommendations and actions identified in the reports must be implemented to a standard satisfactory to the Responsible Authority and the relevant Floodplain Management Authority prior to any Certificate of Occupancy being issued.

16. Earthwork Volumes in Flood-Liable Areas

Prior to the commencement of the development hereby permitted, earthwork volume calculations, which are to the satisfaction of the Catchment Management Authority must be submitted to and approved in writing by the Responsible Authority. When approved, the calculations will form part of the permit. The calculations must demonstrate that the volume of filling does not exceed the volume of cutting. Earthworks carried out on site must accord with the calculations.

17. Minimum Floor and Basement Entry Levels

The applicable flood level for this property is 416.89m AHD as specified by the Corangamite CMA in its letter dated 29th June 2023 (Reference Corangamite CMA-F-2023-00625).

The finished floor levels of the occupied buildings must be a minimum of 300mm above the applicable flood level for the property, which is 417.19m AHD.

The basement entry/entries must be designed so the apex of any entry ramp is a minimum of 200mm above the applicable flood level for the property, which is 417.09m AHD.

18. Vehicle Access – Use/Development

Prior to the first occupation of the development hereby approved, vehicle access to the site must be constructed in accordance with plans and specifications set under an approved Vehicle Crossing Permit to the satisfaction of the Responsible Authority.

Note: The construction or altering of a vehicle crossing, footpath and/or any other works or alterations within a road reserve or any other Council asset may require either a Crossover Permit (which includes a driveway and new crossover), a Road Opening Permit (i.e. opening up a road for installation of infrastructure), Asset Protection Permit (Temporary Crossing Permit i.e. providing for temporary site access) or other approval to be obtained from the City of Ballarat. This Planning Permit does not constitute such approval. Failure to obtain an appropriate permit or damaging Council infrastructure, including footpaths, kerbs, drains, street trees, nature strips etc or failing to remove redundant crossings and reinstate the kerb, drain, footpath, nature strip or other part of the road is a breach of the Ballarat City Council Community Local Laws (10 Penalty Units). For further information, please contact Council's Asset Protection Officer in relation to Road Opening or Asset Protection permits and Council's Infrastructure Planning & Development Unit via Council's Customer Service Officers and the Arborist relating to Street trees.

19. Sediment on Roadways

No material shall be deposited on any road external to the site by any means including construction vehicles or associated plant entering or leaving the land subject to this permit. Any material deposited on the road shall be removed by mechanical or manual means to the satisfaction of the Responsible Authority as soon as practicable.

Note 1: Depositing such material on Responsible Authority's Roads is an offence under the Environment Protection (Resource Efficiency) Act 1970 and penalties may apply.

Note 2: Any costs associated with a clean-up of road surfaces borne by the Responsible Authority must be met by the permit holder.

20. Undercarriage Cleansing

An undercarriage cleansing device shall be installed on the site and maintained until the completion of construction works to the satisfaction of the Responsible Authority to ensure that material is not deposited on any road from construction vehicles or plant associated with buildings and/or works undertaken on the site.

Note 1: Depositing such material on Responsible Authority's roads is an offence under the Environment Protection Act 1970 and penalties may apply.

Note 2: Any costs associated with a clean-up of road surfaces borne by the Responsible Authority must be met by the permit holder.

21. Sediment Control Measures

Prior to the commencement of the development, hereby approved a Sediment Control Plan detailing sediment control measures during construction must be submitted to and approved in writing by the Responsible Authority. Control measures should be consistent with the EPA (Environment Protection Authority) publication 480 'Environment Guidelines for Major Construction Sites'. When approved the Sediment Control Plan shall form part of this permit. All sediment control measures shall be undertaken and remain in place until the completion of site works to the satisfaction of the Responsible Authority.

22. Disposal Plan

Prior to the commencement of the development hereby approved, a Waste Disposal and Management Plan shall be submitted to and approved in writing by the Responsible Authority. The plan must detail:

- (a) Where all building rubble and materials including soil is to be removed to off site. Note all materials must be taken to approved waste receiving sites or recycling centres. Site soil may be contaminated and should be disposed of to an authorised facility in accordance with EPA regulations.
- (b) Provision for materials recycling and collection during site construction.

All necessary approvals shall be gained prior to materials being handled and disposed of in accordance with the Disposal Plan to the satisfaction of the Responsible Authority.

Note: Section 3.13 of the Ballarat City Council Community Local Law requires the submission of a Waste Management Plan prior to the commencement of any building demolition work creating more than 2m³ of waste material. Failure to provide a Waste Management Plan is a breach of the Ballarat City Council Community Local Law (10 penalty Units).

23. Fees for Checking Engineering Plans

Prior to the commencement of the development hereby approved, a fee for checking engineering plans shall be paid to the Responsible Authority, pursuant to Section 43(2)(a)(iv) of the Subdivision Act 1988 and Clause 9 of the Subdivision (Fees) Interim Regulations 2012. The fee shall be in accordance with the Infrastructure Design Manual and must be approved in writing by the Responsible Authority prior to payment.

24. Supervision Fee

Prior to the commencement of the development hereby approved, a supervision fee shall be paid to the Responsible Authority pursuant to Section 17(2)(b) of the Subdivision Act 1988 and Clause 8 of the Subdivision (Fees) Interim Regulations 2012. The fee shall be in accordance with the Infrastructure Design Manual and must be approved in writing by the Responsible Authority prior to payment.

25. Guarantee of Works

Prior to the commencement of the development hereby approved, or unless otherwise agreed in writing by the Responsible Authority, the landowner must provide a Guarantee of Work (bond) to the Responsible Authority in accordance with the Infrastructure Design Manual. The guarantee should be based on the same price Bill of Quantities used to calculate the plan checking and supervision fees and must be approved in writing by the Responsible Authority prior to lodgement.

The guarantee shall be released at the termination of the Defects Liability Period, subject to the completion of all defect rectification works to the satisfaction of the Responsible Authority.

26. Central Highlands Region Water Auth Ref:22/17863

- (a) Any plan lodged for certification will be referred to the Central Highlands Region Water Corporation pursuant to section 8(1)(a) of the Subdivision Act 1988.
- (b) Reticulated sewerage facilities must be provided to each lot by the owner of the land (or applicant, in anticipation of becoming the owner) to the satisfaction of the Central Highlands Region Water Corporation. This will include the construction of works and the payment of major works contributions by the applicant.
- (c) A reticulated water supply must be provided to each lot by the owner of the land (or applicant, in anticipation of becoming the owner) to the satisfaction of the Central Highlands Region Water Corporation. This will include the construction of works and the payment of major works contributions by the applicant.
- (d) The owner will provide easements to the satisfaction of the Central Highlands Region Water Authority, which will include easements for pipelines or ancillary purposes in favour of the Central Highlands Region Water Corporation, over all existing and proposed sewerage facilities within the proposal.
- (e) If the land is developed in stages, the above conditions will apply to any subsequent stage of the subdivision.

27. Powercor Australia Ltd Ref:308653899

- (a) The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR).

Note: Where electrical works are required to achieve VSIR compliance, a registered electrical contractor must be engaged to undertake such works.

- (b) Any buildings must comply with the clearances required by the Electricity Safety (Installations) Regulations.
- (c) Any construction work must comply with the Energy Safe Victoria's "No Go Zone" rules.

Notes: To apply for a permit to work go to our website:

<https://customer.portal.powercor.com.au/mysupply/CIAWQuickCalculator> and apply online through the No Go Zone Assessment.

28. Land contamination

Prior to the commencement of the use or buildings and works associated with the use (or the certification or issue of a statement of compliance under the Subdivision Act 1988) the permit holder must provide:

A Preliminary Site Investigation Report that must:

- (1) Be prepared by a suitably qualified environmental professional to the satisfaction of the Planning/Responsible authority.
- (2) Be undertaken in accordance with Schedule B2 of the National Environment Protection (Assessment of Site Contamination Measure) 1999.

- (3) Not contain a disclaimer limiting the use of the report by the planning/responsible authority.
- (4) Make an unequivocal statement that either:
 - a. The site is not likely to be contaminated to a level which would pose a significant risk to the environment or human health under the proposed use/development scenario. No further assessment is required, or,
 - b. The site is contaminated, or there is likelihood of contamination, that would pose a risk to the proposed use/development scenario. There is sufficient information to derive a risk-based remediation or management strategy, or,
 - c. The site is contaminated, or there is likelihood of contamination, that would pose a risk to the proposed use/development scenario. The site requires further investigation in accordance with Part B below.

OR

An environmental auditor appointed under the Environment Protection Act 2017 must conduct a preliminary risk screen assessment in accordance with Part 8.3 of that Act, that is scoped according to the proposed use/development and issue a preliminary risk screen assessment statement for the land in accordance with s. 205 of the Environment Protection Act 2017. Should the preliminary risk screen assessment identify the need for an environmental audit, the permit holder must provide:

- (1) An environmental audit statement under Part 8.3, Division 3 of the Environment Protection Act 2017 which states that the site is suitable for the use and development allowed by this permit; or
 - (2) An environmental audit statement under Part 8.3, Division 3 of the Environment Protection Act 2017 which states that the site is suitable for the use and development allowed by this permit if the recommendations made in the statement are complied with. All the recommendations of the environmental audit statement must be complied with to the satisfaction of the responsible authority, prior to commencement of use of the site. Written confirmation of compliance must be provided by a suitably qualified environmental consultant or other suitable person acceptable to the responsible authority.
- 29.** Prior to the first occupation of the development hereby permitted, the owner shall enter into an agreement with the Responsible Authority pursuant to section 173 of the Planning and Environment Act 1987 that considers prohibiting residential car parking permits for occupants/owners of the residential dwellings.

This must be to the satisfaction of the Responsible Authority.

This may be waived if a suitable alternative is established with the permit holder.

30. Permit Expiry – Use and Development

Development and use of land expires if:

- (a) The development or any stage of it does not start within two (2) years of the date of this permit; or

- (b) The development or any stage of it is not completed within five (5) years of the date of this permit; or
- (c) The permitted required uses do not start within two (2) years after the completion of the development; or
- (d) The use is discontinued for a period of two years.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards (for a request to extend the time to commence the development) or twelve months after the permit expires (for a request to extend the time to complete the development).

31. Notes:

Tobacco Act 1887

An application for, and assessment of, outdoor drinking and dining compliance under the Victorian *Tobacco Act 1987* must be made with Council's Environmental Health Unit prior to its construction and use. Detailed floor and elevation plans will form the basis of that assessment and must be submitted for initial approval. A schedule of fixtures fittings and materials used for the fit out is also required.

Any proposed alteration to food or liquor licensed premises for the purpose of facilitating the consumption of tobacco products must be designed in accordance with requirements of the Smoke Free Guide: Licensed Premises and Outdoor Dining or Drinking Areas.

Building Approvals

This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained. The works hereby approved must accord with the requirements of the Building Act 1993, Building Regulations 2018 and Building Code of Australia 2019.

Food Act 1984

An application for, and assessment of, food premises construction compliance under the Victorian Food Act 1984 must be made with Council's Environmental Health Unit prior to its construction and use. Detailed floor and elevation plans will form the basis of that assessment and must be submitted for initial approval. A schedule of fixtures, fittings and materials used for the fit out is also required.

Any proposed alteration to a food premises must be designed in accordance with requirements of the Food Standards (FSANZ) Code and Australian Standard 4674.

Works within Road Reserve

The construction or altering of a vehicle crossing, footpath and/or any other works or alterations within a road reserve or any other Council asset may require either a Crossover Permit (which includes a driveway and new crossover), a Road Opening Permit (i.e. opening up a road for installation of infrastructure), Asset Protection Permit (Temporary Crossing Permit i.e. providing for temporary site access) or other approval to be obtained from the City of Ballarat. This Planning Permit does not constitute such approval. Failure to obtain an appropriate permit or damaging Council infrastructure, including footpaths, kerbs, drains, street trees, nature strips etc or failing to remove redundant crossings and reinstate the kerb, drain, footpath, nature strip or other part of

the road is a breach of the Ballarat City Council Community Local Laws (10 Penalty Units). For further information, please contact Council's Asset Protection Officer in relation to Road Opening or Asset Protection permits and Council's Infrastructure Planning & Development Unit via Council's Customer Service Officers and the Arborist relating to Street trees.

Containment of Refuse and Disposal of Builders' Rubbish

Under the provisions of the Ballarat City Council Community Local Law 2017 an on-site facility for containment of all builders' refuse is required to be provided on any land where any building work within the meaning of the *Building Act 1993* is being carried out. The local law contains specific provisions about the type and location of refuse containment facilities and the emptying and removal of such facilities.

Heritage Note

Under the terms of the *Heritage Act 2017* there is blanket protection for all historical archaeological sites in Victoria, including sites that are not included in the Victorian Heritage Register or Heritage Inventory. Section 123 of the Act stipulates that it is an offence to knowingly or negligently disturb any historical archaeological site unless consent has been obtained from the Executive Director, Heritage Victoria. Penalties apply.

If historical archaeological remains, including artefacts, are uncovered at any time during works, it is necessary for all activities to cease and for the City of Ballarat and Heritage Victoria to be notified immediately. In this case, a program of archaeological investigations and recording may be required in consultation with Heritage Victoria.