



Town Planning  
Development Advice  
Strategic Management

20 October 2024

The Presiding Member  
State Commission Assessment Panel  
State Planning Commission  
Via the Plan SA Portal

Dear Ms Thomas & Members,

### **REPRESENTATION IN RELATION TO DEVELOPMENT APPLICATION 24029287**

I refer to the abovementioned Development Application that seeks planning consent for the construction of a multi-level mixed use development comprising commercial tenancies, serviced apartments and dwellings, together with the refurbishment and adaptive reuse of the former Buckingham Arms Hotel (a Local Heritage Place), and the removal of regulated and significant trees on land at Walkerville Terrace, Gilberton.

#### **1. WALKERVILLE RESIDENTS ASSOCIATION**

I am engaged by and make this representation on behalf of the Walkerville Residents Association Incorporated (*the WRA*). The WRA is a community-based organisation formed in June 2002 to reflect promote the community's views and expectations in relation to development and heritage matters within the Town of Walkerville. The WRA has the following purposes:

- ***To promote, advance, retain and improve, and to resist any diminution of the 'village' character of Walkerville***
- ***To oppose development that is inconsistent with that objective.***
- ***To preserve and enhance historically and environmentally significant buildings, reserves, sites, spaces, flora and fauna.***
- ***To promote, encourage and reinforce observation by the Corporation of the Town of Walkerville of its statutory, regulatory, or other obligations to its residents and electors; in particular those of open, consultative and responsive government and development in accordance with their needs, aspirations and desires.***
- ***To do all things lawful that are necessary or ancillary to these objectives.***

My instructions in relation to this matter are provided by Mr Mike Duigan, Chairperson of the WRA. For reasons I outline below, this proposal is inappropriate and does not warrant planning consent. I am of the view that it is a gross over development of the land that would have serious planning externalities on the immediate and wider locality arising from its excessive scale and intensity.

As provided for I seek the opportunity to appear before and address the State Commission Assessment Panel (*the Panel*) further to the matters I raise in this representation. Given the complex nature of this proposal, the many issues arising and the representative nature of the WRA, I ask that additional time is provided for my address. I suggest that in the order of 15 minutes may be required.

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## 2. SUMMARY OF CONCERNS

As will be borne out through my assessment below, the following concerns are held:

- the proposal represents a quantum of development that is manifestly excessive and beyond the capacity of the land and surrounding locality;
- as a result of this over development, there will be unacceptable and otherwise avoidable planning impacts with respect to character and amenity;
- this proposal is not *contextual* in its design approach, drawing nothing from the surrounding locality, resulting in a building form which is hostile to local character;
- failure to provide key design elements such as a meaningful podium set back to tower elements will result in an oppressive public realm outcome;
- in so far as the Code does provide for a more intensive form of development on this land, it is to be *medium rise* and *medium density* in nature;
- what is proposed is *high rise* and *high density*, far beyond that which was envisaged for this land at the time of the Code Amendment in 2022;
- the excessive number of dwellings proposed will manifest itself in a variety of ways not the least of which being traffic congestion in the adjacent road network;
- dwelling layouts are designed to minimum amenity standards sought by the Code, with poor acoustic and visual separation between them;
- overlooking and privacy strategies are not sufficiently resolved, with nearby residential properties likely to be impact;
- the scale of the proposal at 10 levels and 31.85 metres substantively exceeds the maximum of 6 levels and 24.5 metres provided for by the Code;
- given the potential for adverse off-site impacts in relation to character and amenity, the full 30% uplift may not reasonably be justified in the circumstance;
- this significant site uplift should not be viewed as an automatic development right and is premised on *broader community benefit* being achieved;
- floor-to-floor construction zones remain ambitious, if not unachievable leading to yet further exceedances of building height;
- the proposal fails to provide a broader visual impact assessment, with the imagery provided by the Applicant more localised in its framing;
- impact on the visual setting of nearby residential areas (within which are a high concentration of heritage places) needs to be properly considered;
- future use of the local heritage place remains uncertain, with the renovations proposed to be undertaken only in the final stage of the project; and
- there is a real prospect of this failing to occur as per the experience of the former Methodist Church on Wellington Square as part of the Chanel 9 development.

### 3. BACKGROUND

This is the second development application lodged for this land, the previous having been refused planning consent by the Panel in March 2024 for reasons including that this proposal did not demonstrate a high quality of design, dominated the local heritage place, did not contribute positively to the public realm due to its scale and massing, and was considered to be an over development of the land.

I understand that this decision of the Panel is currently under appeal to the Environment Resources and Development Court with proceedings placed on hold until the outcome of this second application. I am also mindful of an application lodged for 29, three level townhouses together with the adaptive reuse of the hotel as a residential flat building and restaurant, a decision on which is yet to be made.

It should also be remembered that that the land on which this development is proposed was rezoned relatively recently following extensive analysis, research and engagement with the local community (1 Walkerville Terrace, Gilberton Code Amendment approved by the Minister for Planning on 9 May 2022). The community made extensive submissions in relation to this Code Amendment calling for moderation and restraint.

The resultant policy framework, while providing for a scale and form of development well beyond that which many in the community thought reasonable, was accepted with the reassurance that clearly expressed policy would be observed by the planning authority when it came to the assessment and determination of future development proposal/s particularly with respect to building height and density.

I draw your attention to narrative included in the Code Amendment document prepared by planning consultants for the Designated Entity which dealt with residential density and building height in clear and unambiguous terms. In so far as significant development site provisions may provide for some additional uplift with respect to building height, they need to be applied cautiously according to the circumstance.

The community had a clear expectation that this policy framework would provide for an appropriate mixed use, medium density, medium rise development of between 3 and 6 storeys on this strategic gateway site located within a low scale, high amenity locality with a valued historic character. The retention, adaptation and appropriate reuse of the historic Buckingham Arms Hotel was also a strongly supported.

It therefore comes with great disappointment and concern to the WRA that this new proposed development now under consideration by the Panel proposes a scale, form and intensity of development which continues to be far beyond that provided for by the Code, with 'bonus' height policies misinterpreted and applied in an excessive, and we say unjustified manner that would result in a clear and unacceptable aberration.

The community has a reasonable expectation that the policy arising from this recent Code Amendment process will be observed and that to the extent that departure from clearly expressed policy is contemplated, that the ramifications are carefully considered by the planning authority not the least of which being maintenance of community confidence in the integrity of the planning system.

Developments so this nature have a profound impact on the character, amenity and function of established localities such as this. If the community is to embrace this more intensive form of residential living in limited strategic locations, then the quality and function of this development should be of a high standard. While an improvement on the previous proposal, serious concerns continue to be held.



#### 4. CONTEXT

The locality in which this development is proposed is characterised by low scale development, typically residential in nature of one and two storeys with a high concentration of heritage and character buildings, with limited non-residential use most notably the Buckingham Arms Hotel together with a number of small scale office and consulting type premises typically in converted dwellings.

This pattern of development provides for residential neighbourhoods that enjoy a high level of amenity, derived from not only historic and character building stock, but from quiet tree lined residential streets with low levels of through traffic. The obvious exception to this experience is of course the three major roads that pass through the locality being Robe Terrace/Park Terrace, Northcote Terrace and Walkerville Terrace.

I am of the view that the planning report submitted provides an inadequate description of the locality. I also suggest that the extent of locality shown at Figure 9 in this report is insufficient for reasons not the least of which being the extent to which the proposed development will be visible from and have an impact surrounding residential areas. I ask that the Panel carefully consider this proposal in a wider context.

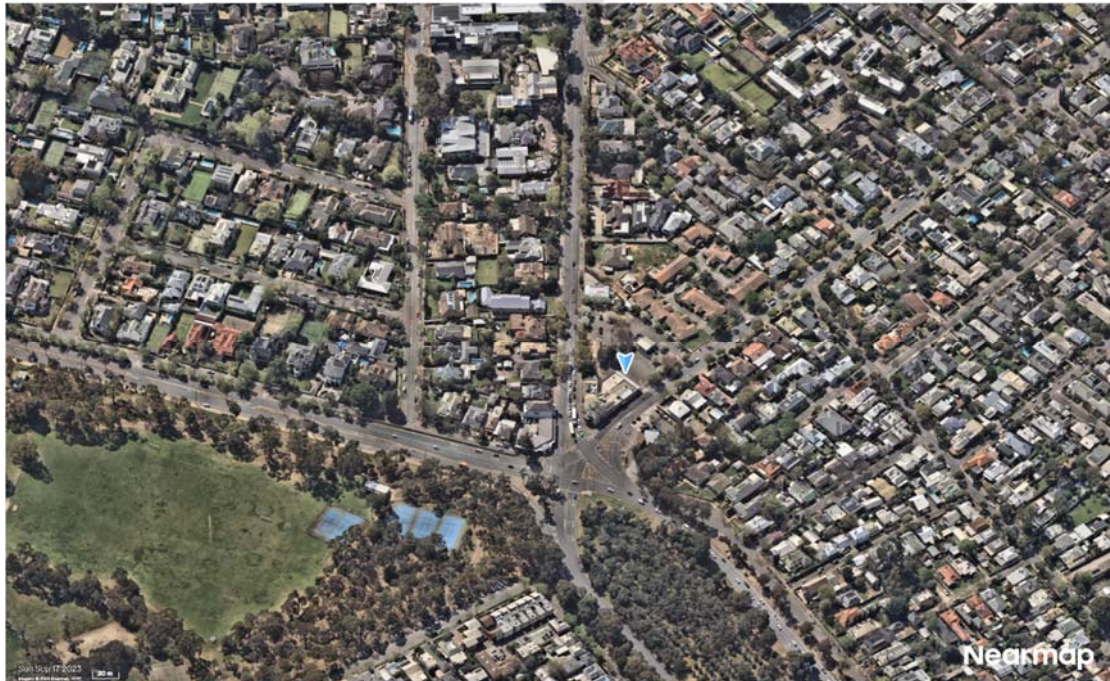


FIGURE 1 – NEARMAP IMAGE 17 SEPTEMBER 2023

It is also appropriate to acknowledge the topography in this wide locality which rises up to the north quite substantially, with residential properties further afield having distant views to the south and east. This aspect contributes significantly to the amenity of these residential properties, and ought to be properly considered when assessing the visual impact of development.

I would encourage Panel members to visit this wider locality and ascertain the extent to which the proposed development may be visible from these residential neighbourhoods and the likely impact arising. In addition, it would be helpful if the Applicant were to provide a broader visual impact assessment showing the proposed development in its wider context.

## 5. CODE POLICY

The land on which this development is proposed is located within the Urban Corridor (Living) Zone of the Planning & Design Code. The land is also subject to various policy Overlays including that in relation to affordable housing, design, heritage adjacency, local heritage place, major urban transport routes, noise and air emissions, regulated and significant trees, and traffic generating development.

The Technical Numerical Variations (TNV) identified for this land are:

- Maximum Building Height (Metres) (Maximum building height is 24.5m)
- Maximum Building Height (Levels) (Maximum building height is 6 levels)
- Minimum Primary Street Setback (Minimum primary street setback is 0m)
- Interface Height (Development should be constructed within a building envelope provided by a 45 degree plane, measured 3m above natural ground at the boundary of an allotment)

It is also necessary to have regard to General Development policies of the Code in relation to matters including design, interface between land uses, site contamination, transport access and parking, and waste management. Can I say that as this land is located within the design overlay, particular attention should be given to policy provisions that relate to design quality and performance.

Where relevant, I reproduce certain provisions of the Code for your reference.

It is also appropriate assessment practice to have regard to planning policies applicable for adjoining land, which in this instance is the Established Neighbourhood Zone. This is particularly necessary given the dramatically lower scale of development found within and provided for by the Established Neighbourhood Zone, being 9 metres and 2 levels.

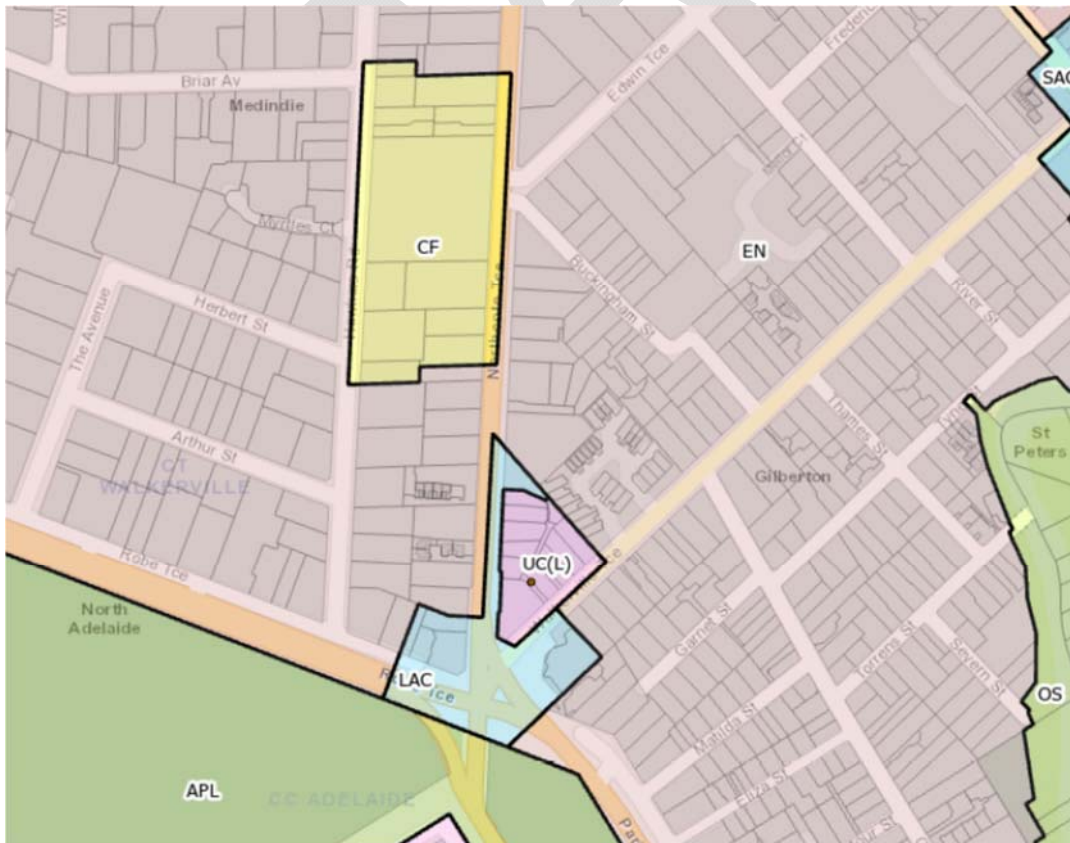


FIGURE 2 – ZONE MAP PLANNING & DESIGN CODE

## 6. ASSESSMENT CONSIDERATIONS

The following matters are most relevant in the assessment of this proposal.

### 6.1 Use

Desired Outcomes (DO) for the Urban Corridor (Living) Zone are:

- DO 1 A mixed use area with a strong residential focus that provides a diverse range of medium density housing options primarily in multi-level medium rise buildings supported by compatible non-residential land uses oriented towards a primary road corridor (e.g., a State maintained road or a road with similar attributes), high frequency public transport route, activity centre or significant open space.
- DO 2 Non-residential activities that enhance convenient day to day living for nearby residents and encourage small group and intimate social gatherings that is contextually appropriate to a compact residential amenity.

The following Performance Outcomes (PO) and Designated Performance Features (DPF) are then expressed in relation to land use.

- PO 1.1 A vibrant mix of land uses adding to the vitality of the area and extend activities outside shop hours including restaurants, educational, community and cultural facilities and visitor and residential accommodation.

DPF 1.1 Development comprises one or more of the following:

- a) Advertisement
- b) Child care facility
- c) Consulting Room
- d) Dwelling
- e) Educational Facility
- f) Office
- g) Retirement Facility
- h) Shop
- i) Student Accommodation
- j) Supported Accommodation
- k) Tourist Accommodation

- PO 1.2 A range of small to medium scale non-residential uses, services and facilities such as shops, offices and consulting rooms that meet the day to day needs for the local community.

- PO 1.3 Development of diverse medium density accommodation options either as part of a mixed use development or wholly residential development.

It is clear that the Code provides for *compatible non-residential land uses* (DO 1) and that these non-residential activities should *enhance convenient day to day living for nearby residents and encourage small group and intimate social gatherings that is contextually appropriate* (DO 2), including restaurants (PO 1.1) and that are to be small to medium scale (PO 1.2).

In total, some 1257 square metres is to be assigned to future restaurants, bars and cafes (including the former Buckingham Arms Hotel). While each tenancy may be less than 500 square metres in floor area, the size of hospitality offerings proposed is substantively greater than that which is *contextually appropriate* and may not reasonably be described as small to medium scale.

The quantum of floor area proposed for restaurants would on my estimation be greater than that which is provided within the Walkerville Town Centre itself and is more akin to the scale of hospitality that one might find in locations such as Melbourne Street and O'Connell Street, North Adelaide. There is a very real risk that these tenancies will be put to other uses out of commercial necessity.



## 6.2 Density

With respect to residential density, it is necessary to address what is meant in DO1 where it refers to *medium density accommodation*. To assist in this regard, I refer to the meanings provided at Part 8 – Administrative Terms & Definitions of the Code where it provides a measure of 35 to 70 dwellings per hectare in relation to *medium net residential density*.

Given that 130 dwellings are proposed (not including 57 tourist accommodation units and the area devoted to non-residential uses) on a site of some 6200 square metres, this would be equivalent to approximately 208 dwellings per hectare which is substantively greater than the measure for medium net residential density and within the meaning provided for *high net residential density* being more than 70 dwellings per hectare.

The author of the planning report, which is not clear, seeks to dismiss the meanings provided by the Code for *net residential density* and suggests that they have no work to do in the assessment of this proposal. I disagree. My interpretation and understanding in this regard accords with the explanation provided in the Code Amendment by the planning consultant for the Designated Entity:

### Density

A key objective of the draft Code Amendment is to facilitate opportunities for medium density residential development, which will seamlessly integrate with surrounding residential areas (which comprises low-medium density housing) and takes advantage of the Affected Area's location and proximity to public transport, services and open space.

Part 8 of the Planning and Design Code (Version 2021.14 – 23 September 2021) quantifies medium density as meaning '35 to 70 dwelling units per hectare'.

Based on a site area of approximately 6,200sqm, 'medium density' development within the Affected Area would enable delivery of approximately 22 to 44 dwelling units.

It is anticipated that the Affected Area could potentially accommodate more than a 'medium density' form of development, provided it is appropriately serviced and integrated within the locality. However, to ensure consistency with surrounding areas, and to deliver a balanced density outcome across the Affected Area, a medium density range (in the order of 35-70 dwellings per hectare) is considered to be the most appropriate policy outcome for the draft Code Amendment.

FIGURE 3 – EXTRACT FROM THE 2022 CODE AMENDMENT – PAGE 38

The dwelling yield anticipated by the Code Amendment was clear in this regard.

If I am wrong in this regard and the *net residential density* meanings are not applicable to the assessment of this proposal, then that which is proposed may not reasonably be characterised as *medium density accommodation*, particularly if the tourist association units were to be included and that portion of the site occupied by non-residential uses excluded.

The residential density proposed is approaching 3 times that otherwise provided for.

## 6.2 Height

With respect to building height PO 3.1 references the Technical Numerical Variation (TNV) with respect to the maximum building height in this location being 24.5 metres and 6 levels, or positively responds to the local context having regard to the site's frontage, depth and is adjacent a primary road corridor, reflective of the 'bonus' height provided for by PO 5.1 that be claimed on *significant development sites*.

PO 3.1 Building height is consistent with the form expressed in the Maximum Building Height (Levels) Technical and Numeric Variation layer and the Maximum Building Height (Metres) Technical and Numeric Variation layer or positively responds to the local context including the site's frontage, depth, and adjacent primary road corridor (e.g., a State maintained road or a road with similar attributes) or street width.

PO 5.1 Consolidation of significant development sites (a site with a frontage over 25m to a primary road corridor (e.g., a State maintained road or a road with similar attributes) and over 2500m<sup>2</sup> in area, which may include one or more allotments) to achieve increased development yield provided that off-site impacts can be managed and broader community benefit is achieved in terms of design quality, community services, affordable housing provision, or sustainability features.

DPF 5.1 Development on significant development sites up to 30% above the maximum building height specified in DTS/DPF 3.1 (rounded to the nearest whole number) where it:

- a) incorporates the retention, conservation and reuse of a building which is a listed heritage place or an existing built form and context that positively contributes to the character of the local area
- b) includes more than 15% of dwellings as affordable housing or
- c) includes at least:
  - i. three of the following:
    - A. high quality open space that is universally accessible and is directly connected to, and well integrated with, public realm areas of the street
    - B. high quality, safe and secure, universally accessible pedestrian linkages that connect through the development site
    - C. active uses are located on the public street frontages of the building, with any above ground car parking located behind
    - D. a range of dwelling types that includes at least 10% of 3+ bedroom apartments
    - E. a child care centre.
  - ii. three of the following:
    - A. a communal useable garden integrated with the design of the building that covers the majority of a rooftop area supported by services that ensure ongoing maintenance;
    - B. living landscaped vertical surfaces of at least 50m<sup>2</sup> supported by services that ensure ongoing maintenance;
    - C. passive heating and cooling design elements including solar shading integrated into the building;
    - D. higher amenity through provision of private open space in excess of minimum requirements by 25% for at least 50% of dwellings.

I understand that the Applicant seeks to claim the full 30% uplift on the basis of the development incorporating the retention, conservation and reuse of the local heritage place, noting that this element of the proposal is the last to be pursued and vulnerable of being excised from the preceding stages via a variation application, in a manner similar to that which occurred with the former Methodist Church.

There is a very real risk that the development uplift may be granted by the planning authority, significantly benefiting the proponent to the substantive development only then be faced with the prospect of the works and reuse of the hotel to be significantly delayed or not proceeded with, which is certainly not in the public interest. This would be a most regrettable outcome, and not unprecedented.



I also consider it necessary to reflect on whether the grant of this addition 30% building height uplift will result in an outcome that *positively contributes to the character of the local area* being the second part of the DPF. Adaptive reuse of the heritage place alone does not unlock this potential height bonus, and there needs to be careful consideration with respect to context.

It is also questionable whether six of the subsequent quality criteria are satisfied.

In any event I think it inappropriate to apply the full 30% uplift to the vertical measurement alone and disregard the other component of the TNV with respect to building levels which I say is equally if not of greater importance in the assessment of this proposal at this early stage particularly given that the structural design of this building has not been settled.

The author of the Code Amendment also reflected on this consideration.

The application of this policy may arguably result in the ability to achieve heights of up to 8 storeys, and up to 32 metres, however this would still need to be considered in the context of the other policy within the Code, and importantly, the 'Interface Heights' Technical and Numeric Variation being applied to the Affected Area (as outlined in detail within Section 4.3.8).

Given the irregular shape of the site and policies that protect surrounding residential areas from impacts of building massing (which require recessed upper-level setbacks from residential interfaces), it is considered that any built form above 6 storeys would need to be limited in scale and carefully designed noting that any increase in development yield must be justified (ie. where off-site impacts can be managed and broader community benefit is achieved in terms of design quality, community services, affordable housing provisions or sustainability features).

FIGURE 3 – EXTRACT FROM THE 2022 CODE AMENDMENT – PAGE 41

I am of the view that some caution should be exercised by the planning authority in this regard when assessing height. I say that between 6 to 8 levels may be possible for development on this site. 10 levels is clearly not justified given the quantum of departure from clearly expressed planning policy, and that there can be no certainly in any event that the building may not exceed 32 metres.

I say this on the basis of the rather ambitious floor to floor measurement of 3 metres presented on the architectural drawings. While I accept that that suitable floor to ceiling heights for habitable rooms and ducting for services may be provided within a dimension of 2.7 metres, it is doubt whether the remaining 300 mm provided for will be sufficient for slab thickness.

In my experience, it will be necessary to revise the design to provide for 3.2 metres floor to floor which if applied would increase the overall height of the building to 33.65 metres (or thereabouts) noting of course that this dimension does not include roof mounted plant and equipment screening that adds a further 1.75 metres to the effective height or 35.4 metres in total to the highest point.

The proposed building would then be 45% greater in height than the TNV.

### 6.3 Form

The Urban Corridor (Living) Zone provides the following in relation to built form.

PO 2.1 Buildings positively contribute to a continuous framing of the primary road corridor (e.g., a State maintained road or a road with similar attributes) and public realm, and provide visual relief from building scale and massing from the ground level public realm.

DPF 2.1 Buildings:

- a) include a clearly defined podium or street wall with a maximum building height of 2 building levels or 8m in height
- b) have levels above the defined podium or street wall setback a minimum of 2m from that wall.

This call for a podium is reinforced by PO 14.3 under the heading Design.

PO 14.3 Development of 5 or more building levels, or 21m or more in height (as measured from natural ground level and excluding roof-mounted mechanical plant and equipment) is designed to minimise the impacts of wind through measures such as:

- a) a podium at the base of a tall tower and aligned with the street to deflect wind away from the street
- b) substantial verandahs around a building to deflect downward travelling wind flows over pedestrian areas
- c) the placement of buildings and use of setbacks to deflect the wind at ground level avoiding tall shear elevations that create windy conditions at street level

While I take no exception with the set back of buildings at ground and first floor level to street frontages (zero lot line provided for in this zone) it is apparent that the design proposed fails to provide a clearly defined podium up to 2 levels, and a set back of not less than 2 metres for levels above. By comparison the proposed building projects straight up to level 7 on the boundary, with only levels above set back.

The resultant building form does not provide the visual relief sought by PO 2.1 and results in a massive and overpowering facade to the public realm and exacerbates the bulk of the building when viewed from surrounding land. This in my view is a significant failing in the proposed design and one which I am sure the Government Architect will provide detailed advice on.

Surely on a significant development site such as this, clearly expressed policy should be satisfied to soften the edge of such a massive building on the public realm. While expressed as a DPF, it is nonetheless clear and informative as to the form of building envisaged in this location which is not within the Adelaide CBD, but in an otherwise low scale locality characterised predominantly by residential and character buildings.

PO 3.2 Buildings designed to achieve optimal height and floor space yields, and maintain traditional main street form.

In so far as the proposal has sought to optimise height and floor space yields, it could not be reasonably be said that the design maintains a *traditional main street form*, which on my interpretation is one to two storeys in this locality, with any additional height set back from the street alignment. This provision only serves to reinforce the call for a podium by PO 2.1 above.

PO 4.2 Buildings on an allotment fronting a road that is not the primary road corridor (e.g., a State maintained road or a road with similar attributes) and where land on the opposite side of the road is within a neighbourhood-type zone, provides an orderly transition to the built form scale envisaged in the adjacent zone to complement the streetscape character.

In so far as Walkerville Terrace is not a primary road corridor (albeit having similar characteristics) the proposed development should provide an orderly transition to the opposite side of the road which is within a neighbourhood-type zone which envisages up to 2 level development. A 10 level building within 21 metres of low scale residential opposite may not be reasonably be described as an *orderly transition*.

## 6.4 Design

As this site is within the Design Overlay, the following provisions are relevant.

DO 1 Development positively contributes to the liveability, durability and sustainability of the built environment through high-quality design.

PO 1.1 Medium to high rise buildings and state significant development demonstrate high quality design.

This call for a high quality of design is reinforced by the following General Development policies under the heading Design.

DO 1 Development is:

- a) contextual - by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributing to the character of the locality
- b) durable - fit for purpose, adaptable and long lasting
- c) inclusive - by integrating landscape design to optimise pedestrian and cyclist usability, privacy and equitable access and promoting the provision of quality spaces integrated with the public realm that can be used for access and recreation and help optimise security and safety both internally and within the public realm, for occupants and visitors
- d) sustainable - by integrating sustainable techniques into the design and siting of development and landscaping to improve community health, urban heat, water management, environmental performance, biodiversity and local amenity and to minimise energy consumption

PO 1.1 Buildings reinforce corners through changes in setback, articulation, materials, colour and massing (including height, width, bulk, roof form and slope).

PO 1.2 Where zero or minor setbacks are desirable, development provides shelter over footpaths (in the form of verandahs, awnings, canopies and the like, with adequate lighting) to positively contribute to the walkability, comfort and safety of the public realm.

PO 1.3 Building elevations facing the primary street (other than ancillary buildings) are designed and detailed to convey purpose, identify main access points and complement the streetscape.

PO 1.4 Plant, exhaust and intake vents and other technical equipment are integrated into the building design to minimise visibility from the public realm and negative impacts on residential amenity by:

- a) positioning plant and equipment discretely, in unobtrusive locations as viewed from public roads and spaces
- b) screening rooftop plant and equipment from view
- c) when located on the roof of non-residential development, locating the plant and equipment as far as practicable from adjacent sensitive land uses.

DPF 1.4 Development does not incorporate any structures that protrude beyond the roofline.

PO 12.1 Buildings positively contribute to the character of the local area by responding to local context.

PO 12.3 Buildings are designed to reduce visual mass by breaking up building elevations into distinct elements.

It is apparent to me that the design of this development is far from contextual.

Acknowledging that the Code does provide for a greater scale and more intensive form of development on this site than that surrounding, the design has little regard to the context in which it is proposed, being low scale and predominately residential in nature with a high concentration of heritage and character buildings

The proposal may not reasonably be characterised as *considering, recognising and carefully responding to its built environment, and positively contributing to the character of the locality* as called for by the policies outlined above. Far from contributing, the proposal will significantly detract from existing local character.

Once again, the Code seeks a podium for buildings 5 levels or more.

PO 14.3 Development of 5 or more building levels, or 21m or more in height (as measured from natural ground level and excluding roof-mounted mechanical plant and equipment) is designed to minimise the impacts of wind through measures such as:

- a) a podium at the base of a tall tower and aligned with the street to deflect wind away from the street
- b) substantial verandahs around a building to deflect downward travelling wind flows over pedestrian areas
- c) the placement of buildings and use of setbacks to deflect the wind at ground level
- d) avoiding tall shear elevations that create windy conditions at street level

Although an improvement on the design previously presented for the development of this site, the current proposal still falls short of the outcomes sought by these policies that were carefully composed and calibrated as a result of a relatively recent Code Amendment process, and therefore should be observed.

While the provision of a podium in the manner called for by policy may reduce the quantum of development that may otherwise be possible, this is a contemplated and necessary trade off enshrined within the policy framework of the Code, the author of which seeking to balance the interests and expectations of all.

Surely at a minimum, this important design consideration should be observed.

In terms of a contextual analysis, that which is provided is limited in its extent with no assessment of the broader visual impacts that the scale and form of the proposed development will have on surrounding residential areas. A development of this scale and form warrants a detailed and thorough visual impact assessment.

The level of impact arising from development of significantly greater scale than that which surrounds it is clearly evident from the experience of the development being undertaken at 88 O'Connell Street which has profoundly impacted the near and wider character of the surrounding low scale residential area.

## 6.5 Heritage

The following Code policies speak to heritage considerations.

Heritage Adjacency Overlay

- DO 1 Development adjacent to State and Local Heritage Places maintains the heritage and cultural values of those Places.
- PO 1.1 Development adjacent to a State or Local Heritage Place does not dominate, encroach on or unduly impact on the setting of the Place.



## Local Heritage Place Overlay

- DO 1 Development maintains the heritage and cultural values of Local Heritage Places through conservation, ongoing use and adaptive reuse.
- PO 1.1 The form of new buildings and structures maintains the heritage values of the Local Heritage Place.
- PO 1.3 Design and architectural detailing (including but not limited to roof pitch and form, openings, chimneys and verandahs) maintains the heritage values of the Local Heritage Place
- PO 1.4 Development is consistent with boundary setbacks and setting
- PO 1.7 Development of a Local Heritage Place retains features contributing to its heritage value.

Although I am not expert in the field of heritage impact assessment, I am of the view that the sheer bulk and scale, if not the siting position of the proposed development will certainly dominate the local heritage place to such an extent that would usurp its current role as the dominant landmark building in this locality.

While I acknowledge the siting arrangement of new development relative to the herbage place is an improvement on that previously presented for this site, it is clear to me that the former Buckingham Arms hotel will be engulfed by the proposed development in a manner that is contrary to policy and public expectation.

I note that the heritage impact statement provided in support of this development is by the same architectural firm that has designed this building, which does not instil confidence that it is an independent and objective assessment, notwithstanding the credentials of the author.

Even this report acknowledges that *'the site of the former Buckingham Arms Hotel is adjacent to and in close proximity to other Local Heritage Places and is set in a context rich with historic buildings. The immediate residential area surrounding the site is characterised by large established gardens and significant trees'*.

Yes, there has been more recent development in the locality including additions and alterations to the Hotel itself, it has not been of the scale and magnitude now proposed. To suggest that this is justification for departure from clearly articulated policies with respect to heritage adjacency, is inappropriate in my view.

I find the response provided by the author of this report with respect to PO 1.1 for the Heritage Adjacency Overlay to be wholly in adequate and dismissive. Yes, the design has taken some cues from the heritage building, but its scale and massing will clearly dominate this original building contrary to this clearly expressed policy.

It would make a mockery of the planning policy framework if suitable regard were not given to this context, with a development of the nature proposed surely having an impact beyond the bounds of its site into the adjoining zones which are characterised by low density, low scale residential dwellings from the late 1800s and early 1900s.

I would also encourage the Panel to consider the impact that the proposal will have on heritage places further afield from the immediate locality, which presently and historically have enjoyed vistas to the east and the western face of the Adelaide Hills. It is my expectation that such vistas will be compromised by this development.

The application documents provide no analysis with respect to the visual arising from the scale and form of the proposed development when experienced from the surrounding area. In the absence of such analysis, we can only expect a profound visual impact on the historic pattern and form development in this area.

I also find it somewhat paradoxical that the very element that is relied upon to justify significantly over height development (the adaptive reuse of the heritage place) is the very last stage of this development, with no confidence that it will occur in the manner presented, if at all given the substantial costs involved.

The experience of the former Channel 9 Studios development on Tynte Street (Wellington Square) North Adelaide is a useful case study to reflect on. As with this current application, the Channel 9 proposal identified the conservation and adaptive reuse of the former Methodist Church (a State Heritage Place) as the final stage.

The proponent in that instance, excised the heritage place from the balance of the development undertaken in the earlier stages of the program according to the approval granted, only to result in the property changing hands numerous times in the subsequent decade and the building falling into further despair and neglect.

## 6.6 Privacy

The Code expresses the following in relation to privacy.

PO 10.1 Development mitigates direct overlooking from upper level windows to habitable rooms and private open spaces of adjoining residential uses.

PO 10.2 Development mitigates direct overlooking from balconies, terraces and decks to habitable rooms and private open space of adjoining residential uses.

PO 16.1 Development mitigates direct overlooking of habitable rooms and private open spaces of adjacent residential uses in neighbourhood-type zones through measures such as:

- a) appropriate site layout and building orientation
- b) off-setting the location of balconies and windows of habitable rooms or areas with those of other buildings so that views are oblique rather than direct to avoid direct line of sight
- c) building setbacks from boundaries (including building boundary to boundary where appropriate) that interrupt views or that provide a spatial separation between balconies or windows of habitable rooms
- d) screening devices that are integrated into the building design and have minimal negative effect on residents' or neighbours' amenity.

I find the approach to privacy protection presented by the Applicant to be unconvincing.

In so far as design sections provided in the drawing package in retain to ground floor apartments, no detail is presented with respect to measures to be adopted to mitigate overlooking from habitable room windows and balconies at the upper levels of this development into low scale residential development nearby

It would be naive to think that overlooking ceases to be an issue beyond the immediate environs of a development of this scale. Experience shows that development of this nature result in incidental overlooking and therefore loss of the privacy on existing residential development for a considerable distance.

Residents in the surrounding area will, in my expectation, experience a loss of privacy.

## 6.7 Noise

I note that this land is within the Noise & Air Emissions Overlay

DO 1 Community health and amenity is protected from adverse impacts of noise and air emissions.

PO 1.1 Sensitive receivers adjoining high noise and/or air pollution sources are designed and sited to shield sensitive receivers from the emission source using measures such as:

- a) placing buildings containing non-sensitive receivers (such as retail and commercial) between the emission source and sensitive receivers
- b) within individual buildings, placing rooms more sensitive to air quality and noise impacts (such as living rooms and bedrooms) further away from the emission source
- c) providing appropriate separation or erecting noise attenuation barriers, provided the requirements for safety, urban design and access can be met
- d) the use of building design elements such as podiums and jutting, deep or enclosed balconies (including with solid balustrades).

I find the Acoustic Design Report by VIPAC to be inadequate for the following reasons:

- the assessment has been undertaken on the basis of a 9, not a 10 storey building
- the assessment underestimates the number of patrons within hospitality venues;
- assumptions with respect to the playing of amplified music and other noise sources from hospitality venues including exhaust ventilation are somewhat understated;
- there has been no testing of background noise levels in the locality;
- findings with respect to expected noise levels are predicted based on a range of assumptions with respect to plant and equipment; and
- the report makes a clear qualification that '*mechanical services located within the building envelope or in the basement level have not been included in the modelling*'

## 6.8 Shadowing

The Code provides the following guidance in relation to shadowing.

PO 3.1 Overshadowing of habitable room windows of adjacent residential land uses in: (a) a neighbourhood-type zone is minimised to maintain access to direct winter sunlight.

DPF 3.1 North-facing windows of habitable rooms of adjacent residential land uses in a neighbourhood-type zone receive at least 3 hours of direct sunlight between 9.00am and 3.00pm on 21 June.

PO 3.2 Overshadowing of the primary area of private open space or communal open space of adjacent residential land uses in: (a) a neighbourhood-type zone is minimised to maintain access to direct winter sunlight.

DPF 3.2 Development maintains 2 hours of direct sunlight between 9.00 am and 3.00 pm on 21 June to adjacent residential land uses in a neighbourhood-type zone in accordance with the following:

- a) for ground level private open space, the smaller of the following:
  - i. half the existing ground level open space or
  - ii. 35m<sup>2</sup> of the existing ground level open space (with at least one of the area's dimensions measuring 2.5m)

- b) for ground level communal open space, at least half of the existing ground level open space.

With respect to overshadowing of nearby residential properties, the Applicant asserts that shadow arising from the proposed development is within the assessment parameters provided for by the Code. While this may be the case, the solar access currently enjoyed by these residents will regrettably diminish, nonetheless.

This to my mind is contrary to the express call by DPF 5.1 that development should contribute positively to the character of the local area and therefore the basis to claim bonus height otherwise provided for by this provision. Bonus height may not be claimed solely on the basis of reuse of the heritage place.

This increase in shadowing is one of the many symptoms of over development.

## 6.9 Traffic & Parking

This land is within the Traffic Generating Development Overlay.

- DO 1 Safe and efficient operation of Urban Transport Routes and Major Urban Transport Routes for all road users.
- PO 1.1 Development designed to minimise its potential impact on the safety, efficiency and functional performance of the State Maintained Road network.
- PO 1.2 Access points sited and designed to accommodate the type and volume of traffic likely to be generated by development.
- PO 1.3 Sufficient accessible on-site queuing provided to meet the needs of the development so that queues do not impact on the State Maintained Road network.

Given that this development comprises more than 50 dwellings and takes access from a State Maintained Road, I understand that it is to be referred to the Commissioner of Highways with the ability to provide technical assessment and direction to the relevant authority.

The following policies with respect to traffic and parking are relevant.

- DO 1 A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.
- PO 1.1 Development is integrated with the existing transport system and designed to minimise its potential impact on the functional performance of the transport system.
- PO 1.4 Development is sited and designed so that loading, unloading and turning of all traffic avoids interrupting the operation of and queuing on public roads and pedestrian paths.
- PO 3.1 Safe and convenient access minimises impact or interruption on the operation of public roads.
- PO 3.3 Access points are sited and designed to accommodate the type and volume of traffic likely to be generated by the development or land use.
- PO 3.4 Access points are sited and designed to minimise any adverse impacts on neighbouring properties.
- PO 3.5 Access points are located so as not to interfere with street trees, existing street furniture (including directional signs, lighting, seating and weather shelters) or infrastructure services to maintain the appearance of the streetscape, preserve local amenity and minimise disruption to utility infrastructure assets.



PO 5.1 Sufficient on-site vehicle parking and specifically marked accessible car parking places are provided to meet the needs of the development or land use having regard to factors that may support a reduced on-site rate such as:

- a) availability of on-street car parking
- b) shared use of other parking areas
- c) in relation to a mixed-use development, where the hours of operation of commercial activities complement the residential use of the site, the provision of vehicle parking may be shared
- d) the adaptive reuse of a State or Local Heritage Place.

The Traffic & Parking Report prepared by CIRQA provides a comprehensive assessment of the proposed development with respect to traffic and parking. While I do not take issue with their findings, I make the following observations with respect to likely patterns of behaviour by motorists entering and leaving the proposed development.

While it has been assumed that motorists exiting this development in the morning peak hour seeking to travel to the City will utilise a left turn out onto Northcote Terrace, I expect that due to the traffic congestion experienced in this location, a proportion of motorists may seek to turn right onto Walkerville Terrace.

While the report states that right turn out onto Walkerville Terrace will not be permitted, the design does not appear to restrict this manoeuvre. Congestion experienced at the exit to Northcote Terrace and therefore delay will, in my expectation, lead to frustration on the part of motorists leading this right turn exit.

Similarly, a proportion of motorists existing for the morning commute to the City may choose to turn left onto Walkerville Terrace, to avoid the congestion and delay at the Northcote Terrace exit, only then to perform a series of left turns through residential streets (Buckingham Street & James Street) to then travel south along Northcote.

While considered by CIRQA in their report, they rationalise this increase as being acceptable as it will be within the 'design capacity' of these streets. Increase in commuter traffic through these nearby residential streets is not desirable in so far as it will diminish not only function and safety, but as importantly residential amenity.

It is also appropriate in my view to consider the likelihood of motorists exiting left onto Walkerville Terrace in the morning peak hour and then performing a U-turn manoeuvre to travel south towards the City. This increase in traffic and less than desirable U-turns will invariably impact Walkerville Terrace residents seeking to exit their properties.

As it stands, Walkerville Terrace residents have difficulty performing a reverse manoeuvre to exit their properties and enter the carriageway, and that the above scenario will only exacerbate this experience. It must be remembered that Walkerville Terrace is one lane either way and is constrained with on street parking and a bike lane.

I believe that a broader traffic assessment of the local area is warranted.

With respect to parking, I accept that the proposal satisfies the quantitative measures identified by the Code. That said, from a practical perspective the likely demand for parking is expected to be greater than that predicted, and this may lead to an increase in on-street parking along Walkerville Terrace and nearby residential streets.

I note that the assessment with respect to parking demand arising from non-residential use has been undertaken based on the minimum rate of 3 spaces per 100 m<sup>2</sup> of gross leasable area, whereas the Code provides a range for assessment being between 3 and 5 spaces per 100 m<sup>2</sup>.

While several bus routes do pass by the site, I would not describe this location as highly accessible by public transport and that this will place pressure on available parking resources both on site and in nearby streets. This has certainly been the experience in locations such as Bowden.

I therefore consider it necessary to survey the availability and capacity of on-street parking in this location given the pressure that nearby uses already place on such, including Wilderness School. There is also a tendency for commuters to park in nearby residential streets and then walk, ride or catch a bus into the City.

Given the heartfelt concern in the community with respect to traffic and parking impacts, I think it appropriate in the circumstance that a peer review be undertaken of the traffic and parking report provide by the Applicant. This review should I believe have regard to the extent of impact arising from the proposed development.

## 5.9 Trees & Landscaping

The removal of mature trees within established areas is always lamentable. That said, I accept that the removal of trees from the land is an inevitable consequence given the type of development which the Code provides for in this location. That said, there should be a meaningful commitment to providing suitable replacement trees.

Of the remaining street trees, in particular those along Northcote Terrace care should be taken to ensure that construction activities (including the excavation associated with the double basement adjacent) does not compromise their long term health (most likely) and that an appropriate replacement strategy is in place.

The Code seeks the following in relation to new landscaping.

PO 3.1 Soft landscaping and tree planting is incorporated to:

- a) minimise heat absorption and reflection
- b) maximise shade and shelter
- c) maximise stormwater infiltration
- d) enhance the appearance of land and streetscapes
- e) contribute to biodiversity.

PO 13.1 Development facing a street provides a well landscaped area that contains a deep soil space to accommodate a tree of a species and size adequate to provide shade, contribute to tree canopy targets and soften the appearance of buildings.

PO 13.2 Deep soil zones are provided to retain existing vegetation or provide areas that can accommodate new deep root vegetation, including tall trees with large canopies to provide shade and soften the appearance of multi-storey buildings.

PO 13.4 Unless separated by a public road or reserve, development sites adjacent to any zone that has a primary purpose of accommodating low-rise residential development incorporate a deep soil zone along the common boundary to enable medium to large trees to be retained or established to assist in screening new buildings of 3 or more building levels in height.

DPF 13.4 Building elements of 3 or more building levels in height are set back at least 6m from a zone boundary in which a deep soil zone area is incorporated.

On my review, the proposal provides limited deep soil planting zones for trees as sought by the Code. This is of course a function of the intensive nature of this development and the provision of the double basement over most of the site. The deep soil planting proposed are generally limited to the northern interface.

Such an arrangement limits the ability to provide a meaningful landscape outcome and while the Landscape Architect have done their best given the limited space available, this site will be characterised by built form and hard paved surfaces with effectively not opportunity for tree canopy and/or stormwater infiltration.

### 6.11 Seriously at Variance

It is of course necessary address the issue of *seriously at variance*. As the Panel will be aware, Section 107 of the Planning, Development & Infrastructure Act makes it clear that development must not be granted planning consent if it is, in the opinion of the relevant authority, seriously at variance with the Planning & Design Code.

In contemplating whether to depart from clearly expressed planning policy, I think it appropriate that the Panel reflect on the guidance provided by relevant decision of the Court including that in *Town of Gawler v Impact Investment Corporation Pty Ltd [2007] SASC 356*, the relevant test I need not set out in full given your familiarity.

I ask you to reflect on the clear language used by the Code with respect to the scale and intensity of development envisaged in this location, the specific guidance provided in relation to height and density, the number and extent of departures from these key policy measures, and implications arising given the underlying character of the locality.

The intent of the policy was clarified in the Code Amendment where it explained that medium density was considered to be the most appropriate outcome, and that if any built form above 6 storeys was proposed it would need to be limited in scale and carefully design to manage off site impacts and achieve community benefit.

If not *seriously at variance*, the proposal departs significantly and inappropriately from important provisions of the Code, including that in relation to height and density. While the Applicant may seek to rationalise these departures individually, collectively they will contribute to the over development of this land.

## 7. CONCLUSION

For the reasons set out above, I conclude the proposed development is not in sufficient conformity with the relevant provisions of the Code to warrant approval and ought therefore to be declined planning consent. The proposal as presented is considered to be an over development of the land.

Yours faithfully

**PHILLIP BRUNNING & ASSOCIATES PTY LTD**



**PHILLIP BRUNNING RPIA**

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