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I have read and acknowledge how Council will use and disclose my personal information.

Name: *

Maugan Bastone

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Please indicate which meeting you would like to make a submission to by selecting the appropriate button: * Council meeting

Date of meeting: *

Tuesday 28 April 2020

Agenda item title: *

6.2 Ministerial Planning Referral TPMR-2019-20, 600 Lonsdale Street, Melbourne

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

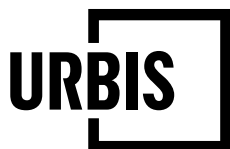
Please refer to included letter.

Alternatively you may attach your written submission by uploading your file here:



[fmc_submission__tpmr201920__28_april_2020__final.pdf](#) 1.46 MB

• PDF



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28 April 2020

The Future Melbourne Committee
City of Melbourne
90-130 Swanston Street
Melbourne VIC 3000

Dear Councillors,

TPMR-2019-20 - FMC SUBMISSION TO AGENDA ITEM 6.2 600 LONSDALE STREET, MELBOURNE

Urbis continue to act on behalf of the permit applicant, 600 Lonsdale St Pty Ltd AMF 600 Lonsdale St Partnership, in relation to the above Ministerial referral application.

This submission has the principal aim of responding to Condition 1 a. b. and c., as detailed in Council's Officer Recommendation. The conditions in question require:

- a. *The changes shown in the discussion plans dated 05 March 2020 but amended to show:
 - i. *The green façade continuing to the ground level*
 - ii. *The office entrance glazing aligned with the glazing line east of the office entrance**
- b. *The 78.65 metre street wall along King Street to be a maximum length of 25 metres when measured from the corner of south east corner of the Site.*
- c. *Beyond a length of 25 metres the King Street street wall to be a maximum height of 40 metres, except for levels 5 to 9 which are setback back from the northern boundary by 3.57 metres.*

This submission will:

- Discuss the strategic justification and permissibility for the proposed street wall length
- Detail the impact on floor space as a result of the requirements of Condition 1 b) and c)
- Discuss the need for flexible wording of Condition 1 a) i. and ii.
- Reiterate the public benefits that the project provides
- Propose alternate wording or deletion of the abovementioned conditions.

STREET WALL LENGTH

Condition 1. b. requires the street wall along King Street to be a maximum length of 25 metres when measured from the south east corner of the site. Condition 1 a. stipulates a maximum height of 40 metres beyond a length of 25 metres for the King Street street wall.

The following sections outline the impact that a reduced street wall has on floor area, while discussing the permissibility and strategic justification of the street wall as proposed.

PERMISSIBILITY

The proposed street wall length has been informed by legal advice prepared by Minter Ellison to determine its permissibility under DDO10. This advice determined that the street wall length outlined in DDO10 is a discretionary design requirement that can be varied.

The Responsible Authority are therefore able to contemplate the proposed street wall length.

Please refer to the appended legal advice by Minter Ellison for further detail.

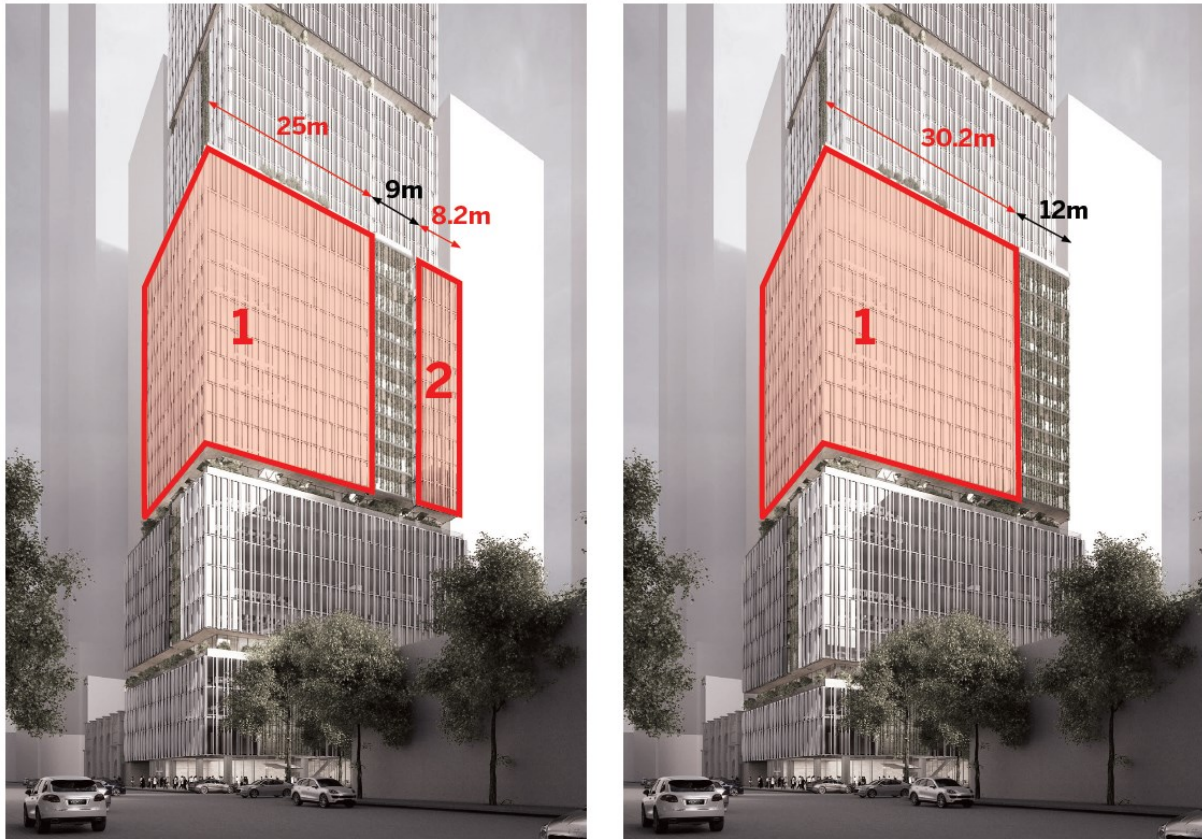
STRATEGIC JUSTIFICATION

We note that the applicant has responded to previous feedback from both City of Melbourne and the Department regarding the street wall length by increasing the landscaped reveal on King Street to 12 metres and shifting this reveal to the north end of the frontage. This creates a defined 30.2-metre-wide volume at the corner of King and Lonsdale Street (please see Figure 2 overleaf).

We contend that the proposed street wall articulation appropriately responds to the built form outcomes of Design and Development Overlay 10 (DDO10), including providing better internal and external amenity. Specifically, the proposed street wall length:

- Responds to the prominence of King Street.
- Provides a clearly defined corner volume of vertical character.
- Creates additional separation at the sensitive residential interface to the west by allowing floor area to be redistributed (please see Figure 3 overleaf).
- Maintains continuous and legible landscaped amenity spaces, reinforcing the articulation strategy.
- Provides a commercially viable and attractive office floor plate (discussed further in Section 1.3).

Figure 1 – Comparison of originally lodged vs currently amended street wall articulation



Source: SOM

IMPACT ON FLOOR AREA

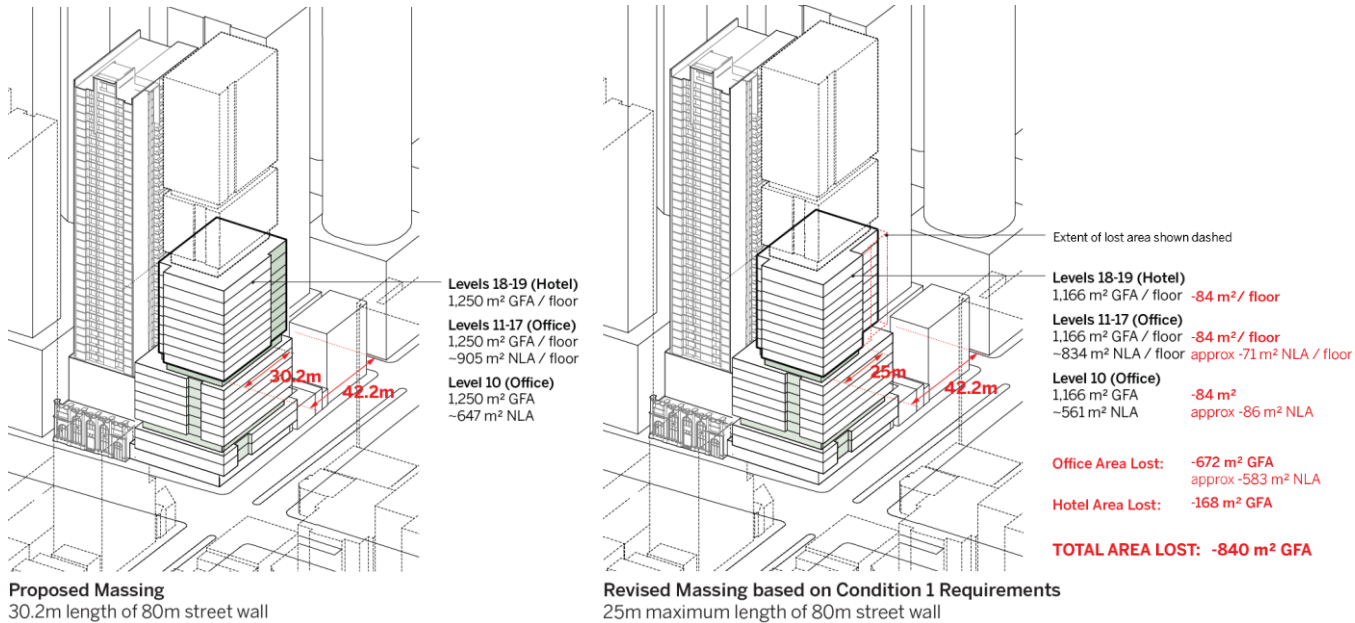
Council's officer assessment provides an approximate total floor area reduction of 650 square metres, based on the implementation of the recommended street wall length of 25 metres. On the assumption that this is Gross Floor Area (GFA), we note that this does not account for balconies which, if covered, should be included in GFA calculations (based on the definition of GFA within the Planning Scheme).

Council's floor area loss calculation also does not account for resultant floor area lost to Level 10.

Based on the above inclusions, a reduced 25 metre street wall would create a total GFA loss of 840 square metres. This comprises 672 square metres of office GFA and 168 square metres of Hotel GFA. The impact per level is shown in Figure 1 overleaf.

The Officer Report notes that *'the only option for the proposal to regain the loss in floor area would be to add an additional level to the tower element of the proposal whilst also providing compliant setbacks.'* It is important to understand that the increased setbacks required from this additional height further reduce the floor area that can be achieved at each level above 80 metres and prevent the ability to regain the area lost in full. Furthermore, the floor area added would be hotel use, rather than office.

Figure 2 – Proposed street wall vs 25 metre street wall



Source: SOM

CREATING A VIABLE AND ATTRACTIVE OFFICE FLOOR PLATE

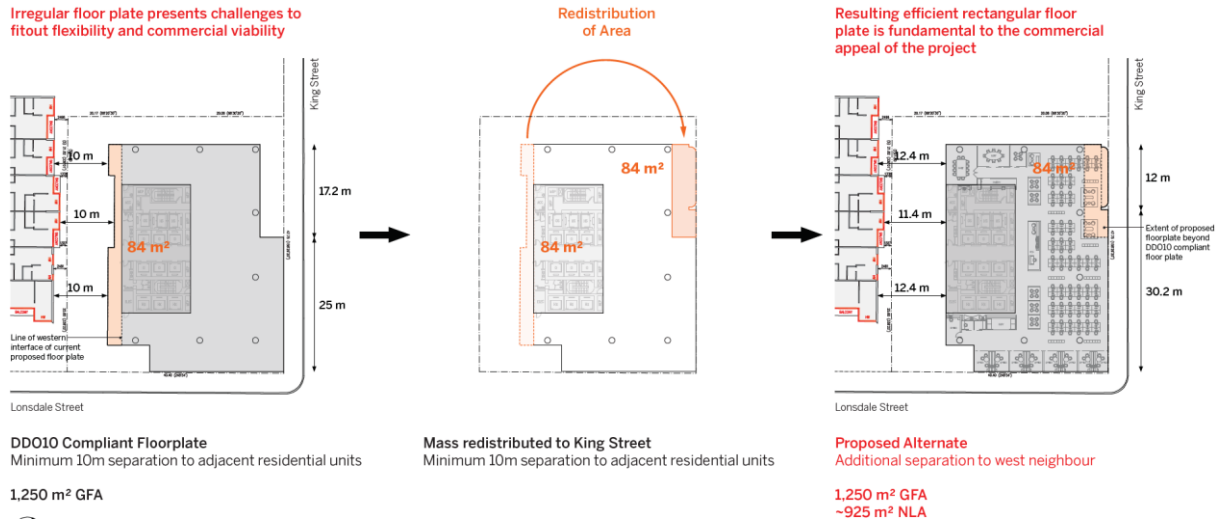
In order to attract and satisfy a wide range of desirable office tenants, a CBD floor plate should ideally provide a minimum 1,000m² NLA. This is supported by the 'PCA Guide to Office Building Quality' that calls for A Grade office floor plates to be at least 1,000m² NLA.

Should a floor plate offering be slightly below 1,000m² NLA, it is essential that an adequately sized, rectilinear floor plate be provided, able to adapt and reconfigure with the evolving needs of the businesses it supports.

For these reasons, the redistributed floor area is significantly more usable and attractive to potential office tenants, with much improved flexibility of use and access to light and views.

Alterations to the floor plate as a result of Condition 1 requirements will therefore impact the commercial viability of the proposal. This will have a direct impact on the ongoing success of the building and ability to service the market.

Figure 3 – Redistributed floor area



Source: SOM

BEING AN EQUITABLE NEIGHBOUR

The redistribution of the floor area from the west to the east (King St) was driven by the obvious need to be an ‘equitable neighbour’, driven by the insufficient tower setbacks permitted to the residential building to the west (Melbourne One Apartments at no. 618 Lonsdale Street).

As demonstrated by Figure 3 above, the redistribution of the floorplate not only results in the ability to provide a commercially viable floorplate, it provides much needed additional relief by way of setbacks to the west. A DDO10 compliant floorplate would result in a poorer outcome for the existing residents of the neighbouring residential building. A balance has been struck in this instance to provide an appropriate outcome for both sites.

CONDITION 1. a. i. and ii.

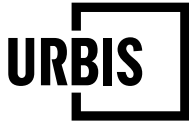
Conditions 1 a. i. and ii require:

- i. The green façade continuing to the ground level
- ii. The office entrance glazing aligned with the glazing line east of the office entrance

The key issues with the two conditions are that they do not allow any flexibility or discretion to these elements.

In relation to Condition 1. a. i., we note:

- Landscaping at ground level presents many challenges as it directly interfaces with the public and is at the lowest point of the building.
- This location raises questions on viability, maintenance and security.
- It is therefore crucial that any condition which requires an extension to the green elements of the façade is worded so that any extension can be appropriately investigated to ensure that it is viable and can be maintained.



In relation to Condition 1. a. ii., we note:

- While we understand that Council have imposed this condition to enhance the safety/security of the area, we believe that a small recess can be implemented while not impacting safety or security.
- A recess of up to a metre would allow the feature ‘urban living room’ to be unimpeded by outward opening doors required as part of the building’s fire egress strategy, which will maximise the use of this area and provide a ‘cleaner’ architectural outcome.
- A recess will also more clearly define the office entry and provide a higher level of articulation and human scale at ground level.
- The materiality and location of this entrance, being primarily glazed and located towards the corner of the development at the intersection of two main streets, will allow sufficient sight lines to this area and an appropriate amount of visibility to ensure safety and security even if a small recess is provided.

Proposed alternate wording to these conditions has been provided in Section 4 for your consideration.

BENEFITS OF THE PROPOSAL

In addition to providing an exceptional piece of architecture to the City, the proposal offers substantial economic benefits to Melbourne and greater Victoria which are important to note, particularly given the current economic climate. The estimated figures for the proposal include:

- \$200 million construction cost that will add stimulus to a slowing construction sector. We note that this includes a range of other fees that sit outside of the ‘estimated cost of development’ figure provided at the initial planning stage.
- 1000+ direct and indirect jobs – created during the project lifecycle including construction
- 1500+ office workers accommodated in the development at completion
- 150+ ongoing jobs created by hotel and building management functions

In summary, this project has the capacity to provide **\$589 million in total benefits** to Victoria per year when operational and **\$115.4 million in benefits** during construction per year.

Please refer to the table below for further detail.

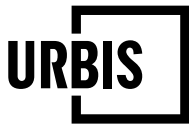
Table 1 – Economic Stimulus

Construction Phase Employment¹	Direct Benefits	Indirect Benefits	Total Benefits
Victoria	216	584	800
Gross Value Added (GVA)²			
Victoria	29.0	86.4	115.4

1. Full-time equivalent (FTE) jobs for the equivalent of one year of employment during construction.

2. Annual benefits measures in constant \$M 2020 dollar value excluding GST.

Source: REMPLAN; Urbis



Operation Phase – Office & Hotel³	Direct Benefits	Indirect Benefits	Total Benefits
On-going Annual Employment (at capacity)¹			
Victoria	1,650	2,512	4,162
On-going Annual GVA (at capacity)²			
Operation			
Victoria	208.7	390.2	598.9

1. Full-time equivalent (FTE) jobs for the equivalent of one year of employment during operation.

2. Annual benefits measures in constant \$M 2020 dollar value excluding GST

3. Based on proposed development.

Source: REMPLAN; Urbis

Any loss in floor area, or the resultant irregular shaped floor plan caused by the proposed conditions, is likely to have a significant impact on this financial contribution.

ALTERNATE CONDITIONS

In consideration of the above discussion, the applicant is opposed to the inclusion of Condition 1. b. and c. and the wording of Condition 1. a. i. and ii. Proposed alternate conditions include:

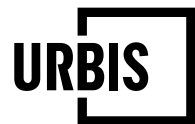
- a. The changes shown in the discussion plans dated 05 March 2020 but amended to show:
 - i. The green ~~element of the façade being appropriately integrated with continuing to the ground level~~
 - ii. The office entrance glazing ~~recessed no greater than 1 metre aligned from with the glazing line east of the office entrance~~
- ~~b. The 78.65 metre street wall along King Street to be a maximum length of 25 metres when measured from the corner of south east corner of the Site. DELETED.~~
- ~~c. Beyond a length of 25 metres the King Street street wall to be a maximum height of 40 metres, except for levels 5 to 9 which are setback back from the northern boundary by 3.57 metres. DELETED.~~

CONCLUSION

This submission has provided a response to Council's Condition 1 requirements for the proposed development at 600 Lonsdale Street, Melbourne. The abovementioned conditions in their current form will diminish the architectural quality building and severely impact the commercial viability of the proposal.

As noted previously, the proposal has been designed to carefully balance many competing objectives to create a fair, equitable and viable design outcome. In its current form, the proposal appropriately responds to truly unique site constraints and opportunities.

Given the particularities of the site, the approval of a street wall that exceeds 25 metres will not create a precedent for other buildings to follow suit without strong justification and high level of design rigour, as is the case with 600 Lonsdale Street.



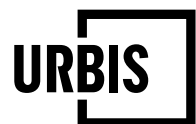
In these uncertain times, we hope that Council can use their discretion to enable the project to continue in a viable form and strongly consider the recommended alternate conditions outlined in this submission.

We look forward to your review of this significant proposal. If you have any questions or if you would like to discuss this further, please don't hesitate to contact me on my details below.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Maugan Bastone". The signature is written in a cursive style with a large initial "M" and a long horizontal stroke extending to the right.

Maugan Bastone
Director
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mbastone@urbis.com.au



APPENDIX A

LEGAL ADVICE FROM MINTER ELLISON

MinterEllison

26 April 2019

Fiona Feeney
Associate Director
Urbis
Level 12
120 Collins Street
MELBOURNE VIC 3000

Dear Fiona

600 Lonsdale Street, Melbourne (Subject Land)

We refer to the Subject Land and to your email dated 9 April 2019 requesting advice in respect of the interpretation of Schedule 10 of the Design and Development Overlay (DDO10) under the Melbourne Planning Scheme, as it relates to a proposed development of the Subject Land.

We are instructed that a dispute has arisen between yourselves, City of Melbourne (Council) and DELWP about whether or not a permit can be granted for a street wall as part of the proposed development which has a width greater than 25 metres.

For the reasons which follow, we consider that it can.

Advice

1. The starting point in considering any requirements under DDO10 is the parent clause at clause 43.02.
2. It relevantly provides that:

A permit may be granted to construct the building or construct or carry out works which are not in accordance with any requirements in the schedule to this overlay, unless the schedule specifies otherwise.

3. Accordingly, any controls in a DDO are discretionary, unless the schedule specifies that they are mandatory.
4. In relation to DDO10, clause 2.3 states:

Buildings and works:

- *must meet the Design Objectives specified in this schedule;*
- *must satisfy the Built Form Outcomes specified for each relevant Design Element in Table 3 to this schedule; and*
- *should meet the Preferred Requirement specified for each relevant Design Element in Table 3 to this Schedule.*

An application to vary the Preferred Requirement for any Design Element specified in Table 3 to this schedule must document how the development will achieve the relevant Design Objectives and Built Form Outcomes.



An application which does not meet the Preferred Requirement, must be considered under the Modified Requirement for each relevant Design Element.

A permit must not be granted or amended (unless the amendment does not increase the extent of non-compliance) for buildings and works that do not meet the Modified Requirement for any relevant Design Element specified in Table 3 to this schedule.

5. It then goes on at Table 3 to set out the following:

Design Element	Preferred Requirement (Figure 3)	Modified Requirement (Figure 3)	Built Form Outcomes
Street wall height	Up to 20 metres	The street wall height must be no greater than: <ul style="list-style-type: none"> ▪ 40 metres; or ▪ 80 metres where it: <ul style="list-style-type: none"> ▪ defines a street corner where at least one street is a main street and the 80 metre high street wall should not extend more than 25 metres along each street frontage, and/or ▪ fronts a public space including any road reserve wider than 80 metres. 	Street wall height is scaled to ensure: <ul style="list-style-type: none"> ▪ a human scale. ▪ an appropriate level of street enclosure having regard to the width of the street with lower street wall heights to narrower streets. ▪ consistency with the prevalent parapet height of adjoining buildings. ▪ height that respects the scale of adjoining heritage places. ▪ adequate opportunity for daylight, sunlight and skyviews in the street. ▪ definition of main street corners and/or public space where there are no significant impacts on the amenity of public spaces. ▪ maintenance of the prevailing street wall height and vertical rhythm on the street.

6. Figure 3, which is referenced in Table 3, contains three diagrams, headed 'Preferred Requirement', 'Modified Requirement (building to one boundary)' and 'Modified Requirement (building to corner or public space)'. In relation to the diagram entitled 'Modified Requirement (building to corner or public space)', which is relevant in these circumstances, the street wall of 25 metres is headed 'max'.
7. Read together, what emerges from the above are the following principles:
- compliance with the Design Objective is mandatory;
 - compliance with the Built Form Outcomes is also mandatory;
 - compliance with the Preferred Requirement is discretionary;
 - however if an application does not comply with the Preferred Requirement, then compliance with the Modified Requirements, is mandatory.
8. The use of the word 'should' in the mandatory provision of the Modified Requirements creates, in our opinion, a discretion as to whether or not this requirement must be complied with. Moreover, the fact that there remains a requirement for mandatory compliance with the Built Form Outcomes provides an understandable decision making process and does not lead to an absurd outcome.
9. The only complication arises from the wording in Figure 3.
10. In relation to this we firstly note that there is no text in Schedule 10 which describes the purpose of Figure 3, there is, however, text requiring compliance with Table 3. We also note that Figure 3 does not state whether 'max' is a preferred maximum, or an absolute maximum.

11. We consider the alternatives for resolving the tension between the words of in the Modified requirements and Figure 3 are:
 - (a) Figure 3 takes primacy, and the words in the Modified Requirements help explain Figure 3; or
 - (b) the words in Modified Requirements take primacy and Figure 3 helps explain the words.
12. If it is the former, then the words in the Modified Requirement explain that the 'max' in the Figure 3 is not a mandatory requirement.
13. If it is the latter, then the words make it clear that the control is discretionary and the Figure, by not describing 'max' as mandatory or discretionary, does not displace this.
14. We note that our interpretation, that the street wall control is discretionary, is consistent not only with the plain wording of the clause, but is also consistent with the VCAT decision in *Metro Pol Investment Pty Ltd v Melbourne CC* [2019] VCAT 128 at para 75-78, which specifically considered this issue and held:

77. I need to now make a finding about whether the maximum 25 metres street wall width is mandatory or preferred. As I have stated, the Council contends it is mandatory. The authors of DDO10 decided to not specify all the modified requirements as, in fact, requirements or mandatory provisions. They employed the word 'should' when referring to the 25 metres long width. They employed the word 'must' elsewhere in the modified requirement. I therefore find the authors' intended that this part of the mandatory requirement is a preferred requirement.

78. Hence, the street wall modified requirement is met.

We trust the above provides assistance. Please contact us with any queries.

Yours faithfully

MinterEllison



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OUR REF: JKC