

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## ADMINISTRATIVE DIVISION

### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1248/2018 &  
P1249/2018  
PERMIT APPLICATION NO. 1146/2017

### CATCHWORDS

Port Phillip Planning Scheme; sections 80 and 149 of the *Planning and Environment Act 1987*; subdivision permit for the subdivision of a major apartment building; development approval already granted; already a requirement that certain number of the approved apartments must not have any on-site parking; contentious condition 3(d) of subdivision permit in relation to Council's desire to be able to specify how the on-site car parking is to be allocated on a unit-by-unit basis.

<b>APPLICANT</b>	SM253 Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Port Phillip City Council
<b>REFERRAL AUTHORITY</b>	Vic Roads - Metropolitan North West Region
<b>SUBJECT LAND</b>	253-273 Normanby Road SOUTH MELBOURNE VIC 3205
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Philip Martin, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	5 October and 1 November 2018
<b>DATE OF ORDER</b>	7 December 2018
<b>CITATION</b>	SM253 Pty Ltd v Port Phillip CC [2018] VCAT 459 [2018] VCAT 1965

### ORDER

#### **P1248/2018 – Application for Declaration**

- 1 By consent of the parties, leave is granted for this Application to be withdrawn.

#### **P1249/2018 – Conditions Appeal**

- 2 The decision of the Responsible Authority is varied.
- 3 The Tribunal directs that Permit No. No. PA1146/2017 must contain the conditions set out in the permit issued by the Responsible Authority on 30 April 2018, with the following modifications:



- Condition 3(d) is deleted.
- 4 The Responsible Authority is directed to issue an updated permit in accordance with this order.

**Philip Martin**  
**Member**

### **APPEARANCES**

For applicant	Mr Stuart Morris QC and Mr Roshan Chaile , both of Counsel, by direct brief.  They called expert traffic engineering evidence from Mr Jason Walsh of the Traffix Group.
For responsible authority	Ms Tania Cincotta of Best Hooper Lawyers



## INFORMATION

Nature of proceeding	Application under section 149A of the <i>Planning and Environment Act 1987</i> . Application under section 80 of the <i>Planning and Environment Act 1987</i> – to review the conditions contained in the permit.
Planning scheme	Port Phillip Planning Scheme
Zone and overlays	Capital City Zone Schedule 1 Design and Development Overlay Schedule 30 Parking Overlay
Relevant scheme policies and provisions	See Clause 22.05, Amendment GC81 and Clause 65.
Land description	The subject land is a development site in Fisherman’s Bend, not far from the Melbourne CBD.



## REASONS<sup>1</sup>

### WHAT DOES THIS APPLICATION INVOLVE?

#### Context

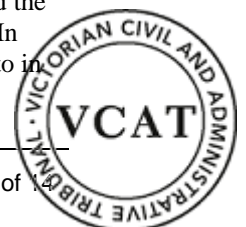
- 1 The land at 253-273 Normanby Road in South Melbourne has the benefit of a development permit No. PA170223 dated 5 December 2017 (Development Permit), which was approved by the Minister for Planning. This permit approved the following:
  - Staged development including demolition of the existing building, the construction of a multi-storey building, use of land for accommodation, and to create or alter access to a road in a Road Zone Category 1, in accordance with endorsed plans.
- 2 This Development Permit was issued following a consent position reached by the parties in the VCAT proceeding P1604/2017.
- 3 Currently no endorsed plans have been prepared, in relation to the Development Permit. Condition 15 of the Development Permit provides as follows:
  - The number of car parking spaces for dwellings must not exceed 0.83 car spaces per dwelling.
- 4 The overall project is very large in scale, providing for some hundreds of both apartments and on-site car parking spaces, together with other mixed uses. The project will proceed over two stages.
- 5 With respect to the proposed subdivision of the review site, a planning permit application No. PA1146/2017 (Subdivision Permit) was granted to subdivide the subject land into 2,084 lots and common property, over five stages. An appeal against a RA 'request for further information' was the subject of the Tribunal proceedings No. 239/2018 and the associated Tribunal decision dated 26 March 2018.

#### Condition 3(d) of Subdivision Permit

- 6 Amongst various other conditions, Condition 3 of the Subdivision Permit reads as follows (with my highlighting).
  - Prior to the issue of the Statement of Compliance for any stage of the subdivision, the Applicant must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority. The agreement must be in a form to the satisfaction of the Responsible Authority, and the Applicant must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable cost and expense (including legal expenses) incidental to the

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



preparation, registration and enforcement of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:

- a The carpark lots (appended with the letter C) must only be sold to the owner or purchaser of a lot containing a hotel room, retail space or a dwelling;
- b The store lots (appended with the letter S) must only be sold to the owner or purchaser of a lot containing a dwelling;
- c The carpark lots must only be leased to the occupier of a lot containing a hotel room, retail space or a dwelling;
- d No more than one carpark lot may be owned or leased in conjunction with any lot containing a dwelling unless a planning permit has issued to exceed the maximum car spaces set out in the Schedule 1 of the Parking Overlay;
- e No more than one car space per 100sqm of retail/commercial floor area (including the residential hotel) may be owned or leased in conjunction with such a lot; and
- f It shall pay the Responsible Authority's Solicitor/client costs in respect to the preparation and registration of the agreement.

The agreement will be registered on Title in accordance with Section 181 of the Act. A dealing number must be provided to the Responsible Authority.

- 7 The developer of the project does not object to most aspects of this condition 3, but strongly objects to the proposed sub-clause 3(d) highlighted above. This dispute about Condition 3(d) goes to how the on-site car parking shall be allocated – should there be a ‘global’ approach taken to same, or is Council entitled to manage the car parking allocation process through Condition 3(d) more on a dwell-by-dwelling basis.
- 8 Two proceedings have been initiated at the Tribunal, which are related. The first is P1249/2018, which is a more conventional ‘conditions appeal’ in relation to condition 3(d).
- 9 The other is the proceeding P1248/2018, which is a s 149A Application for Review under *the Planning and Environment Act 1987*. With this proceeding, the applicant seeks the following Declarations:
  - (a) That the Parking Overlay – Schedule 1 does not apply to an application to subdivide land, and did not apply to the application for the Subdivision Permit.
  - (b) If the Parking Overlay Schedule 1 does apply to an application to subdivide land, the Parking Overlay Schedule 1 only includes requirements in relation to car parking provision by a combination of rates and measures for specified uses, but does not include any requirements in relation to car parking allocation;



- (c) That the inclusion of condition 3(d) in the Subdivision Permit is beyond power.

### **Tribunal hearing process and summary of findings**

- 10 In practice, both of these proceedings were scheduled to be dealt with together at a Short Cases List hearing before me on 5 October 2018.
- 11 There was some discussion at the beginning of the hearing about certain preliminary matters, notably the fact that new Amendment GC81 planning controls for the Fisherman's Bend area in question were in fact being gazetted on the same day as the hearing i.e. 5 October 2018.
- 12 Although there was initially some dispute about the best course of action, after some discussion, Mr Morris for the applicant indicated that his client would not actively oppose an adjournment of the hearing, providing that a fresh date could be obtained relatively promptly. In this regard, the parties requested that at least half a day be allocated, but preferably a full day.
- 13 Pleasingly, I was able to obtain a new date which (by Tribunal standards) was shortly thereafter, being 1 November 2018. This would be on the basis that the combined proceedings would no longer form part of the Tribunal's Short Cases List stream of work, but would revert to being treated as an ordinary planning proceeding.
- 14 In the lead up to the fresh hearing, Council circulated fresh 'grounds' and also circulated a proposed revised version of the contentious Condition 3(d). The revised wording would be as follows:
- No more than two car park lots may be owned or leased in conjunction with any lot containing a three or more bedroom dwelling and not more than one car park lot may be owned or leased in conjunction with any lot containing a one or two bedroom dwelling. The number of car park lots allocated to dwellings must not exceed the total of 0.83 car spaces per dwelling specified in condition 15 of Planning Permit PA170233...
- 15 For the avoidance of any doubt, in my findings below, when I refer to 'Condition 3(d)', I mean the updated version of this condition which the parties discussed at this fresh hearing, after the gazettal of Amendment GC81.
- 16 When the matter then resumed before me on 1 November 2018, the same advocates appeared and this time the hearing proceeded in the usual way. By this stage, the parties had agreed that the P1248/2018 Application for Declaration proceeding would be withdrawn. Hence my focus was simply the P1249/2018 conditions appeal.
- 17 As part of the proceeding, I heard expert traffic engineering evidence from Mr Walsh, who was called by the applicant. This fresh hearing took into account the revised form of the relevant planning controls, as updated by Amendment GC81.



- 18 In addition, I acknowledged to the parties that in the lead up to this fresh hearing, Council had sent in to me its updated grounds and also an updated version of its preferred condition 3(d). This further information was taken into account by both myself and the parties in the running of the fresh hearing.
- 19 The first part of my reasons below sets out the relevant case law and additional information about the Parking Overlay.
- 20 The final section of my reasons sets out my findings. The gist of these findings is that I find Condition 3(d) to be excessive and unreasonable, such that I made orders above requiring that it be deleted from the re-issued permit. Having made this finding, it not necessary for me to consider whether or not Condition 3(d) might be ultra vires.
- 21 My detailed reasons follow.

### **TEST UNDER *DOMUS DESIGN* LEADING DECISION**

- 22 Justice Gillard’s leading decision of *Melbourne Water Corporation v Domus Design Pty Ltd* [2007] VSC 114 sets out the following useful test when considering the validity of a contested permit condition:

In order to determine the validity of a condition imposed in a planning matter where the power to impose a condition is expressed in general terms, the Tribunal is required to undertake the following step by step process:

- (i) Identify and state the terms of the proposed condition;
- (ii) Consider and determine the relevant planning policy by considering all relevant legislation dealing with the topic, which would not necessarily be confined to planning legislation and schemes;
- (iii) Consider and determine whether the condition was reasonably capable of being related to the implementation of planning policy.

- 23 Also see the significant case of *271 William Street Pty Ltd v City of Melbourne* [1975] VR 156 at 162.

### **KEY ASPECTS OF UPDATED VERSION OF SCHEDULE 1 TO PARKING OVERLAY**

- 24 One planning control which featured strongly in the discussion at the fresh hearing was the updated (i.e. post-GC81) version of the Schedule to the Parking Overlay. It seems worth summarizing the key aspects to that updated control, as follows.
- 25 Clause 1.0 of this Schedule has the heading “*Parking objectives to be achieved*”. These objectives have been expanded and now provide as follows:



To identify appropriate car parking rates for various uses in the Fisherman’s Bend Urban Renewal Area.

To provide for the future adaptation of car parking to other uses and innovations in transport technology.

To encourage alternative forms of parking to be provided including car share and consolidated precinct based parking.

26 Going down to clause 3.0 of this Schedule it has the heading “*Number of carparking spaces required*”. The first paragraph under this heading reads as follows (the two words shown in italics were already highlighted in this text):

If a use is specified in the table below, the maximum number of car spaces to be provided for the use is calculated by multiplying the *rate* specified for the use by the accompanying *measure*.

27 There is then a table underneath which has the heading “*Table 1: maximum car parking spaces*”. The first listed use in this table is “*Dwelling*”. It sets the following rates in relation to different sized dwellings – a dwelling with one or two bedrooms has a parking rate of ‘0.5 per dwelling’, whereas a dwelling with three or more bedrooms has a parking rate of ‘1 per dwelling’.

28 A relevant change has occurred here, compared to the situation before the recent gazettal of Amendment GC81. That is, applying this same table as it existed prior to GC81, the parking rate for “*Dwelling*” was ‘1 space per dwelling’.

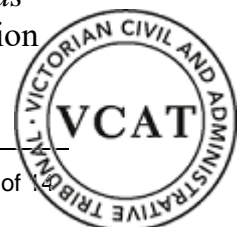
29 Out of completeness, I note that during the hearing there was also some passing discussion of the exhibited version of this table, which was discussed at the Panel hearing of this amendment (but, in the final result, not taken up in this form). That is to say, this table as discussed at the Panel hearing set a rate of ‘0.5 spaces per dwelling’, but this was not accepted in the final gazetted version of this Amendment.

## **SUMMARY OF THE POSITION OF THE PARTIES**

### **Case put by Council**

30 Council argues that the relevant policy framework supports the retention of Condition 3(d). It points to the general support in the Planning Scheme and in Plan Melbourne 2017-2050 for a shift to more sustainable forms of transport. It also placed emphasis that one of the Clause 62.05 considerations for subdivision applications is “*the provision of off-street parking*”.

31 Council highlights that at Clause 22.05-3, it is policy (under the heading “*Subdivision of proposed residential/commercial buildings*”) to “*Ensure that the subdivision allocates the car parking, including visitor spaces as shown on the development plan approval*”. Council argues that Condition 3(d) is an example of such ‘allocation’.





32 It relies on the fact that Amendment CG81 includes the aim in Clause 21.04-7 for the option to be left open for existing on-site car parking spaces to be adaptable and to potentially be able to in the future transition to reuse for other purposes, on the assumption that demand for on-site car parking reduces over time. Council also points to Strategy 1.4 under Objective 1, as set out below:

To ensure that the subdivision of land is appropriate in terms of its location, preferred land use and requirements for car parking provision:

...

1.4 Ensure that within the Fishermans Bend Urban Renewal Area car parking spaces are retained in single ownership to enable future adaptation.

- 33 Council expressed concern that if Condition 3(d) is deleted, and any one dwelling could have a more generous allocation of on-site car parking, this might in practice make it more difficult in the future to convert such car parking spaces into other uses.
- 34 As part of this emphasis on the applicable policy framework, Council submits that the strategic planning aim under this framework and the Parking Overlay is to limit the number of on-site parking spaces per dwelling, not merely to limit such spaces on a more global basis. At [49] of Council's written submission it is stated that "*The provision of a maximum rates for each dwelling for Fishermans Bend in the PO1 is clearly to limit car parking for dwellings within this Urban Renewal Area*".
- 35 Similarly if one reads [52] of the Council written submission, it is clear that Council takes the view that it is inherently a poor planning outcome if any one dwelling owner is allowed to accumulate multiple on-site car parking spaces.
- 36 Above and beyond the 'policy' position, Council argued that Condition 3(d) would assist with the subdivision approval being consistent with Condition 15 of the Development Permit. It expressed concern that dwelling owners allowed to have a second, third or fourth on-site parking spaces might enter into a lease or licence enabling a third party to use these additional spaces. Council argued that as any such third party is not a party to the Section 173 Agreement, the third party would not be aware of the relevant obligations that would apply.
- 37 Otherwise, Council generally submitted that it would be fair and equitable, and would allow for an adequate level of flexibility, for every second one/two bedroom dwelling to be able to have one on-site parking space and for each dwelling with three or more dwellings to have one on-site parking space.



### Case put by the applicant

- 38 As an initial challenge, the applicant queried whether it is valid for Council to be able to make any reference to the contents of the Parking Overlay, when there is no permit trigger under that control vis-a-vis the Subdivision Permit from which Condition 3(d) comes. Relying on this point, the applicant's case at its highest is that Condition 3(d) is ultra vires.
- 39 The applicant in the alternative argues that Condition 3(d) is unreasonable and mis-guided, having regard to the test under *Domus Design*.
- 40 The applicant highlighted that under Condition 15 of the Development Permit, it is already required to ensure that the number of car parking spaces for dwellings does not exceed 0.83 car spaces per dwelling. Hence the applicant argued that this Condition 15 requirement already mandates the situation where the project has to make a contribution to 'mode shift' away from car use.
- 41 The applicant does not accept that there is any credible 'policy' case for Condition 3(d) being retained. In essence, it argues that the sustainable transport aim here is for there to be less traffic congestion being generated on Fishermans Bend public roads. Following this line of thinking, the applicant relies on the expert evidence of Mr Walsh that in practice it is a better traffic outcome to have less 'primary/frontline' cars being parked on-site and more second or third cars which Mr Walsh considers will be used less frequently.
- 42 In this regard, Mr Walsh also relied on certain parking rates set out in the NSW Maritime and Road Services (formerly RTA) Guide to Traffic Generation Developments document. The gist of Mr Walsh's position here is that these rates in his view reinforce his main position that additional cars in a household generate traffic at a lower rate compared to a household that has a single primary vehicle. Mr Walsh also referred to a survey he had done which he considered to reinforce this position. However I consider this survey can be given only limited weight, given the modest size of the number of people surveyed (40), plus the fact that the survey group were staff from Mr Walsh's own firm (of which he is a director).
- 43 Mr Walsh also referred to certain 2016 ABS data information, which indicates that for the suburb of South Melbourne, 16% of one/two bedroom apartments involve a second car and 35% of three bedroom apartments involve three or more cars. Relying on this information, Mr Walsh opined that there is a legitimate market demand for flexibility with how on-site car parking spaces are allocated for any one apartment.
- 44 In terms of the operation of the table in Section 3.0 of the Parking Overlay, a key part of the applicant's case is that the table does no more or less than setting out a mathematical formula for the allocation of car spaces on an overall or global basis, for any one project. The applicant argues that the use of the word "*calculated*" in the text under the heading "*Number of car*



*parking spaces required*” reinforces that the table is meant to be applied in a broad mathematical manner.

- 45 Following this approach, the requirement that every second one/two bedroom dwelling can have one on-site car parking space and every dwelling with three or more dwellings can have one on-site car space:
- Merely sets out these ratios for the purposes of any overall car parking assessment for the whole project.
  - Was never intended to be applied on a dwelling-by-dwelling basis.
- 46 Otherwise the applicant argued that the deletion of Condition 3(d) would not in any credible way undermine the allocation and day to day operation of the on-site car parking spaces, or undermine the capacity for at least some of these spaces to in the future potentially transition to a different form of use.
- 47 Finally, the applicant relied on the following aspects of the Panel Report for Amendment C133 to the Melbourne Planning Scheme. Relevant text from that report was set out at pages 14-15 of the applicant’s written submission. The applicant relied on the first quoted paragraph including the statement that “*In some areas of Melbourne, a car is not needed...*”. Ditto in relation to the second quoted paragraph commenting that “*We have no doubt that dwellings without access to a car space will find a market in the areas nominated, as is evidenced by the current practice of granting permits for reductions*”. The applicant further relied on the third quoted paragraph, which I have set out below”

It was submitted in the hearing that Council expects that the parking limit will be applied to development in total with different numbers of spaces attached to different dwellings or sold separately. We think that there is a benefit of marketing residential properties exclusive of the cost of car parking, leaving the buyer to decide how many spaces they require. This provides greater housing choice.

## **FINDINGS OF THE TRIBUNAL**

- 48 Having regard to the test set out by the *Domus Design* decision, for the reasons set out below, my finding is that condition 3(d) is unreasonable and must be deleted.
- 49 First, I consider it a significant factor that the Development Permit already includes condition 15, which requires that the number of car parking spaces for dwellings must not exceed 0.83 car spaces per dwelling. Accordingly, I agree with the applicant that condition 15 already creates a situation where this project is making a significant contribution towards ‘mode shift’ and more sustainable transport patterns.
- 50 Second, whilst this is far from a ‘black and white’ issue, I can see a healthy dollop of common sense in Mr Walsh’s expert opinion that a second or third car for any one household is, on average, likely to be used less

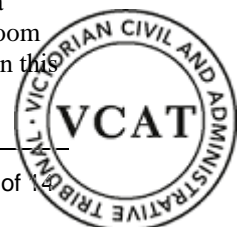


frequently on public roads than having two or three households which each simply have one primary vehicle.

- 51 Third, it is a positive factor for the applicant's case that it has been able to (through Mr Walsh) rely on 2016 census information which does indicate that for this South Melbourne location, there is some not insignificant extent of demand by one/two-bedroom apartment occupiers for a second car space and by occupants of an apartment of three bedrooms or more for a third carparking space.
- 52 Fourth, on the one hand, I acknowledge that there is clearly planning policy support per se for more sustainable forms of transport and 'mode shift' away from private vehicle usage. However on the other side of the ledger, I am not seeing express/prescriptive policy support for the particular position that Council is taking here i.e. that on-site car parking should be controlled on a unit-by-unit basis. In other words, the relevant planning policy support which Council is seeking to rely on is in my view more higher level policy statements, rather than policy which goes to the more micro level of carparking management involved with the contentious condition 3(d).
- 53 Fifth, in relation to the operation of the table in Section 2.0 Parking Overlay, I acknowledge that the use of the word "*calculated*" in the text underneath that table does lend itself to the applicant's preferred position that the table simply sets out an overall mathematical formula, rather than being intended to be applied on a unit-by-unit basis. This finding is reinforced by the following point. With the latest version of this table, in relation to each one or two-bedroom unit, the relevant parking rate is 0.5 (i.e. one on-site parking space for every two such units). The very fact that the applicable parking rate here has been reduced to a level below 'one on-site parking space per unit' is itself points to the need for the table to be applied on a more wholistic basis.<sup>2</sup>
- 54 Sixth, I accept that the relevant extracts from the Amendment C133 Panel Report which the applicant relies on are favourable for its case here. Notably, I agree that where the applicant's preferred position here would potentially result in there being more one/two-bedroom units which are offered for sale without any carparking space, this situation would have a strategic planning benefit in presumably making such apartments more affordable and offering more housing choice. This is in the situation where (despite the Melbourne housing market having somewhat cooled recently) there are still significant 'affordable housing' pressures at play.
- 55 Finally, subject to my relevant comments in the conclusion below, I am struggling to give any major weight to Council's inherent concern that it is

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<sup>2</sup> To elaborate on this issue a little further, I make the following point. Council's preferred position here is that the table should be applied on a unit-by-unit basis. However, if one applies this approach, for a one/two-bedroom dwelling, each such dwelling can only be allocated 0.5 of a carparking space. In the real world it is obviously impractical/impossible for a one/two-bedroom dwelling to have half a car space build for it. This counts against Council's line of thinking on this issue.



inherently a poor planning outcome for any one owner to be allowed to accumulate more than one on-site carparking spaces (which Council referred to as an ‘over-supply’ situation), and/or that such a person with multiple parking spaces might start privately start leasing out some of these spaces.

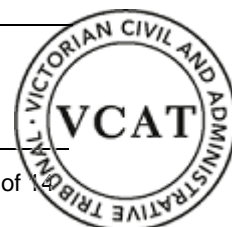
- 56 Given the growing market demand for car park-free housing with developments such as The Commons and Nightingale 1<sup>3</sup>, it seems to me to be a subjective matter whether it is automatically a poor planning outcome for any one dwelling owner to be able to accumulate more than one on-site car parking space for a one/two bedroom dwelling and more than two such spaces for a dwelling with three bedrooms or more, where in practice this increases the number of other dwellings offered to the public in the same project which are car space-free (this is an evolving area of the property market).
- 57 In terms of the possibility of on-site carparking spaces being leased or licensed out to a third party by any one owner, whilst I acknowledge this concern, I can only give it limited weight due to the inherent uncertainty/speculation involved.
- 58 In relation to any other argument raised by Council which I have not specifically addressed above, I regard same to be so peripheral as to carry no material weight in my findings.

## FINAL COMMENTS AND CONCLUSION

- 59 I will finish with a couple of final comments, then a summary of my specific findings.
- 60 For the removal of any doubt, the Tribunal is conscious of the significant strategic planning support in the Planning Schemes and in Plan Melbourne 2017/2050 for there to be a shift to more sustainable transport patterns, including a ‘mode shift’ away from private vehicle use. However, there still needs to be a reasonable balance, in terms of:
- Developers (within reasonable limits) having some flexibility with how on-site car parking is dealt with in their housing projects.
  - Recognising that (whilst coming off a very low base) there is a significant and growing trend in the housing market for some buyers to prefer to buy a well-located unit/apartment which does not have an on-site car space, particularly if such a unit/apartment is more affordable.
- 61 My other final comment is that my findings in this decision should not be taken as my endorsement of abandoning any role for permit conditions in how on-site car parking is allocated for larger unit/apartment projects.

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<sup>3</sup> Noting that the Nightingale 1 building has won design awards and that I understand the ‘expression of interest’ program to be an owner in this building was vastly over-subscribed.



- 62 During the cross-examination of Mr Walsh by Council, I acknowledge that Mr Walsh conceded that:
- It is common with larger unit/apartment projects for there to be a permit condition (operating at a global level) providing some guidance for how the on-site car parking spaces are to be spread over one bedroom compared to two bedroom compared to three bedroom dwellings.
  - As part of his numerous previous appearances before the Tribunal, Mr Walsh has previously given evidence supporting this type of condition.
- 63 Provided that it is done sensibly and at a global level rather than on a unit-by-unit basis, consistent with this evidence from Mr Walsh, I see a continuing useful role per se for the type of permit condition discussed in the first bullet point above. All stakeholders in the planning system just need to keep in mind that there is a growing demand for well-located units/apartments that have no on-site car parking allocated.
- 64 To summarise my specific findings, whilst there have been legitimate arguments both ways, I conclude that Condition 3(d) was well-intended but is excessive/unreasonable in terms of Council's desire to influence the proposed carparking arrangements here at a unit-by-unit basis.
- 65 I also acknowledge the strategic desire with the new planning controls post amendment GC81 that new projects such as this, in this location, preserve the option of carparking areas being able to be potentially converted at a future time into other uses, if demand for on-site carparking reduces over time. Whilst I can see merit per se in this aim, my finding is that the deletion of condition 3(d) should have no particular practical effect on this aim and that it is still reasonable that such deletion occur.

**Philip Martin**  
**Member**

