

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO.P445/2016
PERMIT APPLICATION NO.1227/2015

CATCHWORDS

Section 79 *Planning and Environment Act* 1987 – built form – car parking - traffic – major promotion sign – seriously entertained planning proposal – public realm - off site impacts – Wind impacts - Heritage

APPLICANT	Drekoncile Pty Ltd
RESPONSIBLE AUTHORITY	Port Phillip City Council
REFERRAL AUTHORITY	Vic Roads – Metropolitan North West Region
RESPONDENTS	Trevor Westmore, John & Ana Ristevski, Ian Hoyle, JJ & DE Caldicott, Kaye O'Connor, Daniel Ischia, Keagan Werner-Gibblings & Liesl Ischia, Owners Corporation Committee 1 St Kilda Road, Joanne King, David Webb, Susan Tuma, Gerard Minogue, Michael Sabey, Elizabeth Schmidt, David Brand, Pace Development Group Pty Ltd, Shane Purss & Others, Fifty Eight High Seas Pty Ltd
SUBJECT LAND	8-12 Punt Road & 3-7 Wellington Street ST KILDA, VIC 3182
WHERE HELD	Melbourne
BEFORE	Jeanette G Rickards, Senior Member Peter Gray, Member
HEARING TYPE	Hearing
DATE OF HEARING	20 - 24 June 2016
DATE OF ORDER	19 August 2016
CITATION	Drekoncile Pty Ltd v Port Phillip CC [2016] VCAT 1396

ORDER

1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act* 1998, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

- Prepared by: Plus Architecture
- Drawing numbers: TP001 Rev 1, TP093 – TP108 Rev 3, TP110 – TP114 Rev 3, TP125 – 129, TP200 – TP203 Rev 3, TP220 - TP221 Rev 3, Shadow Analysis Rev 3, Development Schedule Rev 4.
- Dated: 18 May 2016

2 Pursuant to section 60 of the *Victorian Civil and Administrative Tribunal Act* 1998, the following person is joined as a party to the proceeding:

Fifty Eight High Seas Pty Ltd

3 The decision of the Responsible Authority is set aside.

4 In permit application 1227/2015 a permit is granted and directed to be issued for the land at 8-12 Punt Road & 3-7 Wellington Street ST KILDA, VIC 3182 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

- *Buildings and works associated with a mixed use development (including basement car parking);*
- *Use of land for the purposes of dwellings;*
- *Reduction in the number of car parking spaces required by the Planning Scheme; and*
- *Display of a Major Promotional Sign.*

Jeanette G Rickards
Senior Member
Presiding Member

Peter Gray
Member

APPEARANCES

For Applicant

Mr C Canavan QC and Mr B Chessell, Barristers instructed by Tisher Liner FC Law

They called the following witnesses:

- Mr A Biacsi, Town Planner of Contour Town Planners
- Mr M Sheppard, Urban Design of David Lock & Associates
- Ms C Dunstan, Traffic Engineer of Traffix Group
- Mr J Walsh, Traffic Engineer of Traffix Group
- Mr R Shamier, Lighting Engineer of Electrolight Australia Pty Ltd
- Dr Z Xu, Wind Engineer of Vipac Engineers & Scientists
- The witness reports of Mr Beeston and Mr Choong were accepted without the need to call the witnesses

For Responsible Authority

Mr D Scally, Solicitor, Best Hooper

He called the following witness:

- Mr J Kiriakidis, Traffic Engineer of GTA Consultants

For Referral Authority

No appearance

For Respondents

Mr J Livingston, Town Planner, James Livingston Planning on behalf of Pace Development Group Pty Ltd

Mr T Westmore in person

Mr J Ristevski in person and on behalf of Ana Ristevski

Mr D Webb in person

Ms A Bourjau on behalf of Owners Corporation Committee 1 St Kilda Road, Mr J Caldicott, Ms S Tuma and Mr G Minogue

Mr D Ischia in person and on behalf of Keagan Werner-Gibbins & Liesl Ischia

Mr N Fong on behalf of Fifty Eight High Seas Pty Ltd
Ms K O'Connor in person and on behalf of Mr I Hoyle
Ms J King in person
Mr M Sabey in person and on behalf of Mr G Minogue
Mr D Brand in person
Mr Wools, Mr J Lefers & Mr T Kennett on behalf of
Shane Purss & Others
Ms S Tuma and Mr J Caldicott were present during the
hearing but did not present a submission to the Tribunal

INFORMATION

Description of Proposal

To develop the land with a mixed use development constructed over two separate towers: a 26 storey tower (the western tower), at the corner of St Kilda Road/Punt Road/Wellington Street and a 10 storey tower to its east (the eastern tower).

Nature of Proceeding

Application under Section 77 of the *Planning and Environment Act* 1987 – to review the refusal to grant a permit.

Zone and Overlays

Commercial 1 Zone (clause 34.01)

Design and Development Overlay Schedule 13 – Shrine Vista

Permit Requirements

Clause 34.01-1 – use land for the purpose of accommodation (dwellings)

Clause 34.01-1 – to construct a building construct and carry out works

Clause 34.01-9 – advertising signs within the Commercial 1 Zone – Category 1 – Commercial Areas (clause 52.05)

Clause 52.06 – reduce car parking requirements

Clause 52.07 – loading and unloading vehicles

Relevant Scheme, policies and provisions

Clauses 11, 15, 16, 17, 18, 21.03, 21.04, 21.05, 21.06, 22.04, 22.06, 22.12, 22.13 and 65

Land Description

The subject site comprises a number of titles being for land at:

- 1/8 – 12 Punt Road and 8-12 Punt Road;
- 3 Wellington Street; and
- 7 Wellington Street.

1/8-12 Punt Road and 8-12 Punt Road is located on the east side of Punt Road between Nelson Street to the north and Wellington Street to the south. This site is rectangular with a frontage to Punt Road of approximately 13.7m, a maximum depth of approximately 28.8m and an area of approximately 412m². It accommodates a two storey brick building that is constructed to each boundary and used for commercial purposes. An electronic promotional sign is located at the front elevation of the building facing Punt Road (west). Vehicular access to the site is provided via an existing crossover to Punt Road.

3 Wellington Street is located at the northeast corner of the junction of Punt Road and Wellington Street. This site is L-shaped and wraps around the south (side) boundary and east (rear) boundary of the Title to 1/8-12 Punt Road and 8-12 Punt Road. It has a frontage to Wellington Street of approximately 26.8m, an abuttal to Punt Road of approximately 15.3m, an abuttal to Nelson Street of 12.5m and an area of 937m². It accommodates a four storey building that is constructed to each boundary and used for commercial purposes. Vehicular access to the site is provided via an existing double crossover to Nelson Street. Two promotional signs are located on the roof of the building, one of which is located adjacent to the Wellington Street/Punt Road junction and oriented to the southwest, whilst the other is located adjacent to the Nelson Street boundary and oriented to the northwest.

7 Wellington Street abuts the east boundary of 3 Wellington Street. It has a frontage to Wellington Street of approximately 23.6m, a depth of approximately 39.5m, an abuttal to Nelson Street of approximately 24.6m and an area of approximately 957m². This site accommodates an older style two storey apartment building that is setback 7m from Wellington Street, with parking provided within the

front setback that is accessed via a crossover to Wellington Street. A double storey infill development is located at the rear of the site, abutting Nelson Street and which is provided with vehicle access from Nelson Street.

In overall terms, the site has an abuttal to Punt Road of approximately 30m, an abuttal to Wellington Street of approximately 65m, an abuttal to Nelson Street of approximately 37m and an area of 2336m².¹

Tribunal Inspection

Tuesday 21 June 2016 accompanied by representatives of the parties

Cases Referred To

Australian Aluminium Shopfitters and Glazing Company Pty Ltd v City of Fitzroy (P82/1162) [1982]; *Lyndale and Black Pty Ltd and I O Black v MMBW* (P82/1729 and P82/1730) [1983]; *O'Connell Street Developments Pty Ltd v Yarra CC* [2003] VCAT 448; *Pace Developments v Port Phillip CC* (includes Summary) (Red dot) [2012] VCAT 1277; *Drekoncile Pty Ltd v Port Phillip CC* [2009] VCAT 2633; *Octopus Media Pty Ltd v Port Phillip CC* [2005] VCAT 2786; *oOh! Media Pty Ltd v Port Phillip CC* [2016] VCAT 480 (30 March 2016)

¹ Extract from Council Delegate Report 18 March 2016

REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 Port Phillip City Council (the Council) failed to determine to grant a permit within the prescribed time for the development of land at 8-12 Punt Road and 3-7 Wellington Street, St Kilda. The subject land is located in St Kilda Junction.
- 2 Following the lodging of the application for review the Council indicated on 18 March 2016 that it would have refused the application based on a number of grounds. These grounds relate to issues around the Shrine of Remembrance vista; environmentally sustainable land use and development; built form; urban design; the physical context of the site; amenity impacts; impacts from the major promotional sign on traffic safety; impacts from wind; bicycle parking and the Council's strategic vision, encapsulated in proposed Amendment C122 to the Port Phillip Planning Scheme.
- 3 Following the service of amended plans which have now been substituted the Council also raised a further ground relating to unreasonable traffic safety risks.
- 4 As a result of the now substituted plans the Shrine Trustees indicated they no longer objected to the proposal. Vic Roads also indicated they no longer objected to the proposal but sought to have conditions placed on any permit that may issue.
- 5 The Council during its submissions to the Tribunal indicated its main concerns related to the height, the scale and the intensity of the proposed development, having regard to the site and planning policy context.
- 6 A number of resident objectors from nearby properties also made submissions opposing the proposed development. Their concerns reflected a number of the concerns raised by the Council, as well as:
 - Overshadowing generally and more specifically to the forecourt of 2-12 St Kilda Road (*Icon*) and 11-15 Wellington Street;
 - impact on the landmark status of *Icon*;
 - overdevelopment;
 - traffic and parking impacts to the surrounding area;
 - wind impacts;
 - lighting impacts from the LED promotional signs;

² We have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. We do not recite or refer to all of the contents of those documents in these reasons.

WHAT IS PROPOSED?

7 Mr Biacsi described the proposal as follows:

The proposal provides for the mixed use development of the land with a 26 storey building (at the corner of St Kilda Road/Punt Road and Wellington Street) together with a 10 storey building to the east.

...reference to the buildings as the 'Western building' being the 26 storey tower and the 'Eastern building' being the 10 storey building, notwithstanding the first five storeys of the buildings establish a continuous podium that wraps around the perimeter of the review site as it addressed Punt Road, Wellington Street and Nelson Street.

The mixed use development contains a total of 203 apartments, above 7 basement levels containing a total of 397 car spaces.

At ground level, the building contains retail tenancies, a central pedestrian spine, lobbies, services and access to car parking.

Levels 01-04 of the development are occupied by Office floor space and associated amenities together with a gymnasium at the north-west corner of Levels 03 and 04.

Above Level 04, the buildings are occupied by residential apartments, comprising a mix of studio, one, two and three bedroom apartments. A communal lounge and outdoor terrace complete with pool is contained at Level 09 of the eastern building, accessed from the Western building via a 43m² sky bridge. A secondary communal outdoor terrace is proposed at Level 05, alongside the pedestrian link between the two buildings.

The overall maximum height of the Western building as measured to the top of the roof plant parapet is 95.59m (108.59AHD) as nominated on the south elevation. The Western building presents a defined edge to the western and southern boundaries and is setback from the northern boundary with 14-16 Punt Road a minimum of 3.09m from Level 03 and above.

The Eastern building has a maximum building height of approx. 42.7m as measured to the roof plant parapet (56.32AHD as nominated on Section A from 13.62AHD NGL). The Eastern building presents a five storey podium to Wellington Street with the upper storeys (Level 05 and above) setback 6.7m from Wellington Street. The Eastern building is built to the northern boundary with Nelson Street and has setbacks of between 2.8m and 9.9m from the eastern boundary (at Levels 01-05) increasing to a minimum of 9.7m for levels 05-09.

The proposal incorporates an Integrated Digital Façade (IDF), also referred to within my statement as Major Promotion Signs. The IDF is to be located on the face of the third and fourth storeys and integrated into the design of the building. The amended plans prepared by Plus Architecture depict the proposed curved face of the IDF and its extent relative to adjoining land.

Part of the IDF is positioned adjacent to Nelson Street and part of the IDF is positioned adjacent to St Kilda Road and Wellington Street, in the same general location as the current major promotion signs currently on the review site albeit with a different height, width and total area.

MODIFIED PLANS TENDERED DURING THE HEARING

- 8 In response to concern raised by the Tribunal and some of the respondents Mr Canavan tabled an amended ground floor layout (TP100 Revision 5) on the final day of the hearing. The plan shows the provision of a lightwell to the neighbouring property at 14 Punt Road with the proposed building setback 3m from level 01 and above in the form of a Revision 4 and Revision 5 response.
- 9 Although these plans were not substituted they represent a genuine attempt to respond to submissions and evidence put to us at the hearing. We emphasise we are assessing the proposal on the basis of the substituted plans, but we do later refer to these plans to the extent that they seek to address shortcomings discussed at the hearing.

PLANNING SCHEME PROVISIONS

- 10 The review site is located within the Commercial 1 Zone (clause 34.01) (CZ1) and affected by Design and Development Overlay Schedule 13 (clause 43.02) (DDO13) in the Port Phillip Planning Scheme.
- 11 A permit is required under clause 34.01 to 'use land for the purposes of accommodation if any frontage at ground floor level exceeds 2m', as well as 'to construct a building or construct or carry out works'. Under the provisions of clause 34.01-7 third parties are exempt from notice and review rights regarding the construction of a building and to construct or carry out works.
- 12 Whilst raised very late in the hearing, Mr Canavan highlighted that as there are no third party rights under CZ1 regarding built form, the resident objectors could not rely on submissions in relation to built form. Having not raised this issue at the outset, and being fully aware of the issues raised by the resident objectors, we do not consider that we should totally reject the residents' submissions in this respect. In our view we have been informed by the submissions of the nearby residents.
- 13 Under clause 34.01-9 a permit is required for advertising signs in accordance with clause 52.05 of the planning scheme. This zone for the purposes of advertising signs is in Category 1 - Commercial areas with minimal limitations.
- 14 A permit is required under DDO13 'to construct a building or to construct or carry out works'. The height of buildings or works must be in compliance with the shrine vista height control formula as described in the

Shrine of Remembrance Vista Controls April 2014. The Shrine Trustees advised that the amended plans conform to the Shrine Vista Control and therefore formally withdrew their objection.

- 15 In relation to vehicles. A permit is required under clause 52.06 to reduce the number of car parking spaces required. 347 car spaces are proposed and 546 are required under the planning scheme provisions. Under clause 52.34, 95 bicycle spaces are required. 113 are being provided. A waiver of 19 visitor car spaces is being sought. Under clause 52.07 a loading area for the retail tenancies of a minimum of 27.4m² with a height clearance of 4m is required. The residential and office components of the proposal do not generate a requirement for on-site loading.
- 16 St Kilda Junction (St Kilda Road South and Wellington Street, St Kilda Business 2 zone) is designated under clause 21.04 as a 'Moderate Residential Growth Area' where 'the location of development and level of intensification will vary across centres depending on the streetscape and heritage character, and lot size'. In this area under clause 21.06 there is 'support for commercial (office) as the primary use, with opportunities for retail showrooms/restricted retail uses at street level and residential uses above'.
- 17 The site meets the clause 16.01-3 tests as being a '*strategic redevelopment site*', although it is not specifically identified as such in the planning scheme. In this respect we consider it meets the tests as it is in close proximity and in easy walking distance, being opposite the Fitzroy/Acland Streets Major Activity Centre, on part of the Principal Public Transport Network, close to employment corridors and able to provide 10 or more dwelling units.
- 18 The Council adopted the *St Kilda Road South Urban Design and Land Use Framework Plan* on 24 November 2015 and resolved to seek to prepare Amendment C122 to introduce the controls into the planning scheme. The Council also resolved to request the Minister for Planning to introduce interim controls via Amendment C121. The amendments also seek to introduce Design and Development Overlay Schedule 27 under which the site is identified in sub precincts '2F' and '3A'.

Amendment C122

- 19 The residents relied heavily on the provisions contained in Amendment C122. The amendment is however in its infancy and despite one of the residents receiving a letter from the Department³ advising that 'VCAT must give some weight to the provisions proposed by Amendment C122 as they form a '*seriously entertained planning proposal*' of Council' this is unfortunate and incorrect advice.

³ Letter from Department of Environment, Land, Water & Planning to Ms A Ristevski dated 18 May 2016

- 20 The Council on 29 May 2016 was authorised by the Minister for Planning to prepare the amendment which is to be subject to formal exhibition. The Minister for Planning in authorising the Council to prepare the amendment did so subject to conditions with changes to the amendment to be submitted to the Minister for approval prior to exhibition. The Minister also indicated he had decided not to exercise the power under section 20(4) of the Act to adopt and approve as an interim Amendment C121⁴.
- 21 At the time of the hearing the amendment had not gone on exhibition. The amendment proposes :
- Rezone 3-7 Wellington Street to Mixed Use Zone.
 - Apply a Design and Development Overlay 27-3B to the site and in respect to the subject site, the draft DDO control contemplates:
 - A street wall height of 10m (2 storeys).
 - A building height of 35m (10 storeys).
 - Include the St Kilda Road South Urban Design and Land Use Framework (November 2015) as a reference document.
 - Make amendments to clauses 21.04 and clause 21.06 to update the strategic role of St Kilda south and Wellington Street. Along the north side of Wellington Street, the draft amendments to clause 21.06 seek to reinforce a change in strategic direction for the area from office/commercial to a mixed-use residential.⁵
- 22 The amendment arises, as noted in the Council Officer's report⁶, 'due to pressures for residential development south of the St Kilda Junction, including within the established commercial strip along Wellington Street. This has resulted in the development of higher scale building forms in the Precinct (generally ranging from 8 up to 26 storeys) and a notable shift towards residential land in Wellington Street'.
- 23 There are numerous decisions relating to when an amendment to a planning scheme becomes a '*seriously entertained planning proposal*'. Under section 60 of the *Planning and Environment Act 1987* (PE Act) a Council can consider:
- Any amendment to the planning scheme which has been adopted by a planning authority but not, as at the date on which the application is considered, approved by the Minister or a planning authority;
- 24 Similarly under section 84B of the PE Act the Tribunal:
- Must (where appropriate) have regard to any amendment to a planning scheme which has been adopted by the planning authority but not, as

⁴ Letter Minister for Planning to Port Phillip CC dated 29 May 2016.

⁵ Submission on behalf of the Responsible Authority [88] 20 June 2016

⁶ City of Port Phillip Delegate Report 18 March 2016 [11]

at the date on which the application for review is determined, approved by the Minister or the planning authority;

- 25 Whilst being a consideration, the determinative factor is the amount of weight placed on the particular amendment, and what weight to be applied really comes down to where in the amendment process the proposed amendment sits.
- 26 *Australian Aluminium Shopfitters and Glazing Company Pty Ltd v City of Fitzroy*⁷ and *Lyndale and Black Pty Ltd and I O Black v MMBW*⁸ are two leading cases that set out the parameters for consideration and the relevant parts of these cases were succinctly summarised in the Tribunal decision in *O'Connell Street Developments Pty Ltd v Yarra CC*⁹ where the Tribunal stated:
29. The following passages of *Lyndale & Black* are relevant.

At page 75

“For many years the courts have held that the existence of a “seriously entertained planning proposal” is an important circumstance to be taken into account in the exercise of planning discretion.

At page 477

“The true position is that a proposed change to the operative planning controls is a relevant consideration to be taken into account, whether or not the planning proposal is in the form of an adopted amendment to a planning scheme. However, the weight that should be given to such a planning proposal will vary according to a number of factors. Some of these factors are:

- (a) The form of the planning proposal – a formal planning scheme amendment will be given much more weight than a planning proposal of a less formal nature.
- (b) The stage which the planning proposal has reached in the planning process – greater weight will be given to a planning proposal which has reached an advanced stage in the planning process than to a proposal of an embryonic nature.
- (c) The seriousness with which the responsible authority or State Government is pursuing the implementation of the planning proposal.
- (d) Whether the grant of a permit would impair the objectives of the planning proposal and not merely be inconsistent with the strict letter of the planning proposal.
- (e) The nature of the development or use for which a permit is sought – for example: a planning proposal will generally have greater

⁷ (P82/1162) [1982]

⁸ (P82/1729 and P82/1730) [1983]

⁹ [2003] VCAT 448

weight when a permit is sought to develop vacant land or to subdivide land than when a permit is sought to use an existing building especially for temporary purposes.

This list is not intended to be an exclusive list of relevant factors that may determine the weight that should be given to a planning proposal.”

- 27 In relation Amendment C122 we do not place any weight on the amendment, as in our view it is only at its embryonic stage; has not been approved in a form by the Minister for exhibition; put out for formal consultation; has not been assessed by an independent Planning Panel; and no recommendations have been made to the Minister for Planning regarding the form of the proposed amendment.

URBAN DESIGN

- 28 The Council, whilst considering the site is suitable for redevelopment, submits the context of the site and its constraints need to be considered in determining what the appropriate scale of development is. The Council, certainly in its delegate report and in one of its grounds, relied heavily on the proposed Amendment C122, which we have indicated above, does not carry any weight in our consideration. At present ‘there is a notable absence of any framework or structure plan for the St Kilda Junction area’.

Site context

- 29 Mr Shepherd and Mr Biacsi both highlighted the strategic context of the site, the existing and evolving built form character of the area, as well as the physical characteristics of the site being a large consolidated piece of land (2350m²) on a key corner within St Kilda Junction, benefitted by three road abutments (Punt Road, Wellington Street and Nelson Street) and only one direct abuttal to a residential building (*Allure*).
- 30 As described by Mr Shepherd ‘the site terminates the vista along Fitzroy Street (looking north-east), and partially terminates the vista along St Kilda Road (looking south-east) and Punt Road (looking south)’.
- 31 We agree with Mr Shepherd that ‘the site’s zoning, proximity to activity centres and public transport accessibility make it a strong candidate for urban consolidation’.
- 32 The site sits next to the residential building of *Allure* at 9 storeys in Wellington Street to the east. Further to the east in Wellington Street there are single and double storey detached dwellings with predominantly commercial and mixed use development on the northern side closer to St Kilda Junction. Nelson Street to the immediate north of the site was described as a ‘utilitarian ‘back of house’ street that provides vehicular access to properties’, although it was highlighted to us that there are residential properties that front this street. Further north is the sunken

portion of Dandenong Road with Albert Street on its northern side. To the south and opposite the site, on the corner of Wellington Street and St Kilda Road is the recently constructed (2015) *Icon* residential building of 18 storeys. To the west is Punt Road/St Kilda Road, Fitzroy Street and the Albert Park Lake Reserve. To the north-west of the site is 14 Punt Road, a 3 storey commercial building with a shop top billboard advertising sign. The property has a specific heritage overlay (HO232).

Built form

- 33 We agree with Mr Biacsi that the ‘area is already supportive of development significantly greater in height than the Council’s vision’ identified in Amendment C122 as 35m. We note the existing developments of the *Icon* building at 2-12 St Kilda Road, immediately across Wellington Street at 18 storeys, the *Marquise* building to the north at 20 storeys, the former *Cadbury Schweppes* building in St Kilda Road to the north at 20 storeys and the *STK* development at 3-5 St Kilda Road on the western side, further to the south, approved by the Minister for Planning at 26 storeys.
- 34 Clause 21.05 seeks to achieve high quality development that respects the scale of nearby areas, whilst providing a transition to lower- rise development.
- 35 Given the larger built forms referred to above, in what we would consider to be within the precinct context of St Kilda Junction, we believe that the Junction with its large expanse of open area is capable of accommodating a taller form of development on this prominent site. Mr Sheppard referred to the building being a ‘marker’ that is creating the opportunity to mark the junction through taller, high quality development. As a ‘marker’ he considered the building on the subject site could be taller than the typical building heights in the area.
- 36 In opposing the proposed height of 26 storeys and identifying that there is already a ‘marker’ at a height of 18 storeys, we were taken to the Tribunal decision in relation to the *Icon* building, where the Tribunal stated:
- The building will have landmark qualities not just because of its contemporary design, but also because of its height. We do not regard this as inappropriate given the context. The building will clearly ‘mark’ St Kilda Junction while the contemporary design will contribute positively to the visual experience and set a high benchmark for future development. The context allows for a bold response.¹⁰
- 37 We agree with the Tribunal that the contemporary design and height at the time of consideration resulted in the building clearly ‘marking St Kilda Junction’. We do not however consider that this prevents our consideration of a 26 storey building on the subject site. The *Icon* building does set a high

¹⁰ *Pace Developments v Port Phillip CC* (includes Summary) (Red dot) [2012] VCAT 1277 at [55]

bench mark for future development, particularly on the subject site, and in this respect we consider the construction of the western tower sheer to the corner of Punt Road and Wellington Street reinforces the pattern of higher development set by the *Icon* building. In design terms the western tower presents as a slender glass form which, although contemporary, does not in any way interfere with the contemporary design of the *Icon* building. In our view the *Icon* building will still maintain its prominent marker qualities because the proposal is a very simple and sophisticated architectural composition that does not compete with the architecture of the *Icon* building.

- 38 We do not consider it necessary, as submitted by some residents, that a building of a similar height to *Icon* with a degree of upper level setbacks and increased articulation would necessarily be an acceptable outcome on the subject site. We say this because the subject site is over twice the size of the site on which *Icon* is built. The subject site is bounded on three sides by roads, whereas *Icon* has only two road frontages, and in our view, the subject site could be considered to be more prominent within the Junction.
- 39 We consider the height of the eastern tower at 43.5m (13 storeys) provides a good transition towards the 10 storey *Allure* residential building to its immediate east. The podium height of the eastern portion of the building reflects the street wall height of the abutting *Allure* building in Wellington Street maintaining a consistent edge to this part of Wellington Street. The 6.7m setback of the eastern tower from Wellington Street will also ensure that a consistent edge is maintained to Wellington Street.
- 40 More will be said later regarding the relationship of the building to 14 Punt Road but in relation to the height of the western podium this matches the height of 14 Punt Road providing a solid presentation to Punt Road.
- 41 The tower elements of the proposal are well separated at a minimum of 9.005m increasing to between 13.37m and 14.410m to the north and south.
- 42 In reaching a conclusion that the built form of the proposed building in this prominent location in St Kilda Junction provides an appropriate street wall/podium height to Punt Road and Wellington Street responds to the built form to its eastern and northern interfaces and we have taken into account, in particular objective 1.1 and design suggestion 1.1.2 as well as objective 2.1 and design suggestion 2.1.1 in the *Guidelines for Higher Density Residential Development* (2004).

Public realm and off site amenity impacts

- 43 Commercial and retail activity is proposed at the ground level as well as the residential entry in Wellington Street and this will provide activation at street level¹¹.

¹¹ Clauses 21.05 and 22.06 Port Phillip Planning Scheme

- 44 At the ground floor interface with Wellington Street it is proposed to provide a public 'art walk'. Under clause 22.06 an Urban Art contribution is encouraged. It is proposed to incorporate an 'art walk' that is to be incorporated into the ground floor interface to Wellington Street.
- 45 Clause 22.06-3 encourages large sites to be developed in a manner that provides permeability through the block rather than just public access around the perimeter. In this respect there is a pedestrian walkway provided from Wellington Street through to Nelson Street. This was questioned by the resident objectors as to whether it would provide an acceptable thoroughfare. To the north and near the corner of Nelson Street and Punt Road pedestrian/bicycle access is provided under the Junction and to the public transport network. The pathway also provides access to bicycle parking for staff of the retail component, as well as residents of the development on the ground floor. With retail proposed on either side of the pathway to the Wellington Street frontage, as well as to the north eastern side of the pathway on the Nelson Street frontage, we expect this pathway to be frequently used and provides for a good mid-site thoroughfare.

Overshadowing

- 46 Additional overshadowing will occur to the southern side of Wellington Street, as well as to the north facing dwellings in the *Icon* building between 9am and 3pm at the equinox. Shadowing will also occur to the western facing dwellings in the *Allure* building.
- 47 Mr Livingston for the owner and operator of the *Icon* café on the southeast corner of Wellington Street and St Kilda Road expressed concern that the extent of overshadowing 'will impact on enjoyment of the public realm and further diminish the entry to Wellington Street'.
- 48 Mr Webb and Ms Tuma highlighted the issue of shadowing on the north face of the *Icon* building and in particular the impact the shadowing will have on their apartment on Level 6 of the *Icon* building. Mr Webb undertook an assessment of the north facing dwellings in the *Icon* building that would be overshadowed and for what period of time.
- 49 Mr Sheppard provided an assessment of the overshadowing to the north-facing dwellings in the *Icon* building, concluding that most north-facing dwellings will receive approximately 4 hours of direct sunlight between 9am and 3pm at the equinox. Mr Webb's assessment appears to confirm the view of Mr Sheppard.
- 50 Whilst Mr Webb highlighted the area is now more residential than commercial, we note the area is zoned Commercial and that in such an area the amenity expectations are not as high, as for an area specifically zoned Residential. This is due largely to the mixed nature of development that could occur in such an area, compared to a more restricted development in a residential area. Specifically zoned Residential areas bring higher

expectations regarding amenity impacts. Even in planning terms a Mixed Use Zone, whilst allowing residential development, promotes a number of other uses that would be prohibited in a residential area.

- 51 The assessment of shadowing from a 10 storey building, whilst not showing architectural features or variations, provides a guide which indicates what could be expected in terms of shadowing from a built form of that height. It would certainly not impact on the levels of the *Icon* building above 10 storeys but would still have a similar impact on the levels below and for the same period of time between 9am and 3pm at the equinox.
- 52 The equinox is used as a specific reference in shadowing impacts in residential development below 5 levels where an assessment is undertaken pursuant to Clause 55 of the planning scheme. This clause is also referred to in design suggestion 2.6.2 of the *Guidelines for Higher Density Residential Development* which is to 'maintain sunlight and daylight access to adjoining private open spaces of dwellings in accordance with Clause 55 of the Planning Scheme'. Clause 55 provides in relation to overshadowing of open space that an assessment of hours of sunlight is between 9am and 3pm on 22 September. This is deemed to be an appropriate time for assessment with an acknowledgement that for a period of the year there will be a better outcome and for a period, a worse outcome.
- 53 We consider that the width of Wellington Street allows for access to daylight to all north facing windows in the *Icon* building. We acknowledge that north facing windows will be overshadowed for a period of at least 4 hours at the equinox with most impact being on a large number of north facing windows between 12pm and 2pm. Given the zoning of the land, and the emerging built form character of the area we do not consider the impact to be unreasonable.
- 54 Shadowing will also have an impact on the *Allure* building to the east but like the *Icon* building, we consider there is sufficient separation between the built form of the eastern tower to allow access to daylight to the west facing windows of this building with the most impact of shadows occurring between 2pm and 3pm.
- 55 Mr Sheppard did not 'consider Wellington Street to be sufficiently important from a pedestrian perspective to protect its solar access' and we concur with Mr Sheppard's assessment of the southern side of Wellington Street as not being identified as an important pedestrian access. We agree with him that even a 10 storey building on the subject site would overshadow the southern footpath at the equinoxes. This also means that the outdoor area of the café will be impacted to a certain extent, but would be so impacted, whether the building on the subject site is the proposed 26 storeys or 10 storeys.

Overlooking

- 56 Setbacks are proposed from the eastern tower to the residential *Allure* building to the east of the subject site of 5.6m at the podium levels to between 9.7m to 13.7m at Levels 05 – 07 of the eastern tower.
- 57 At the podium levels the setback matches the setback of the west facing bedroom windows in the *Allure* building. The wider setback will provide for, as described by Mr Sheppard, ‘escaping’ oblique living room views to the north, as well as to the south.
- 58 We accept Mr Biacsi’s recommendation that ‘any office floor area occurring within 9m of a direct view of a window or terrace belonging to the *Allure* apartments should be screened from view’.

CAR PARKING/TRAFFIC

- 59 A total of 397 car parking spaces are proposed to be provided within a seven level basement. The allocation proposed is set out in Mr Walsh’s statement as follows:
- 82 car spaces for the 102 one-bedroom apartments (0.8 spaces per apartment)
 - 73 car spaces for the 73 two-bedroom apartments (1 space per apartment)
 - 50 spaces to the 28 three-plus bedroom apartments (1.79 spaces per apartment)
 - 10 spaces to the retail uses (1 space per 100 square metres for staff)
 - 12 spaces to residential visitors (0.06 spaces per apartment); and
 - 170 spaces to the office use (2.5 spaces per 100 square metres).
- 60 A total of seven motorcycle spaces are to be provided on-site on each basement level. A total of 113 bicycle spaces are proposed on-site for residents and staff at ground level and basement, with an additional 40 visitor bicycle spaces shown on the ground floor plan, being 10 spaces within the site boundary and a further 30 spaces within the Wellington Street verge.

Car Parking

- 61 Given the location and proximity to public transport options Mr Walsh considered the office and retail car parking, as well as the proposed resident car parking appropriate. In relation to residential visitor car parking Mr Walsh considered this would be satisfied during the peak daytime demand but will fall short of accommodating the anticipated peak evening demands. We agree with Mr Walsh that there could be a loss of one car space to

- accommodate two disability designed access spaces relating to the office use.
- 62 Mr Kiriakidis, for similar reasons to Mr Walsh agreed, the number of retail and resident car spaces provided onsite was appropriate. Mr Kiriakidis also agreed, the peak evening resident visitor parking may not be accommodated onsite.
- 63 On-street parking in the surrounding area is predominantly short-term with some spaces subject to ticketing, particularly during business hours. Both Mr Walsh and Mr Kiriakidis referred to the existing uses on the subject site. Mr Kiriakidis expected that there would be an increase in the on-street short term parking demand in the order of 26 car spaces for daytime peak and 7 car spaces for evening peak periods. As such he considered there would be a demand to extend into and use the residentially zoned areas for parking.
- 64 Mr Walsh submitted the proposed development ‘will generate an off-site parking demand for up to 29 spaces during business hours and 37 spaces during evenings and on weekends’. Mr Walsh however considered there is already an existing reliance on on-street parking and he expected that the proposed development would be unlikely to generate any greater reliance on on-street parking during business hours, but may generate additional demands associated with residential visitor parking in the evening and on weekends. He considered the reduction in car parking proposed was appropriate.
- 65 Mr Kiriakidis assessed the number of available on-street spaces as being confined to the eastern side of St Kilda Road, whereas Mr Walsh considered on-street spaces on the western side of St Kilda Road, as well as the eastern side. We agree with Mr Kiriakidis that it is unlikely, given the distance across St Kilda Junction, that parking will occur on the western side of St Kilda Road and there is therefore a real expectation that there will be an increase in on-street parking extending into the residentially zoned areas. We also note that parking along Punt Road is no longer permitted.
- 66 We consider a balance is required regarding the number of car parking spaces provided on the subject site to accommodate the proposed uses, as well as the provision for some visitor spaces, having regard to the policy provisions that ‘aim to reduce non-essential car travel where there is an alternative transport choice, as a means to reduce issues associated with contested and congested road space’,¹² and ‘allow for a reduction in the required number of on-site parking spaces where the provision of sustainable transport facilities/initiatives can reduce the demand for parking through increased use of alternative modes of transport: walking, cycling, and public transport’.

¹² Clauses 18.02, 21.03-2

- 67 The proposed development is to be located in a commercial area, in part of one of the busiest intersections in Melbourne. Council policies already acknowledge the difficulty in providing on-street parking for residents and visitors within the St Kilda area. The Junction is well served by public transport which provides excellent access to the commercial areas along St Kilda Road, as well as to the Central Business District (CBD). We agree with Mr Walsh that the site satisfies the criteria of the Port Phillip Sustainable Parking Policy.
- 68 A reduction in the number of car spaces provided would, in our view, achieve greater use of public transport by increasing densities, and maximising the use of existing infrastructure. We heard from several residents, some of whom indicated they either rode a bicycle, used public transport or walked to various nearby locations or into the CBD.
- 69 We acknowledge the nearby residential areas are well restricted in relation to on-street parking with restrictions already imposed for short term parking, and the management of these restrictions are a matter for the Council. Such restrictions address issues of an influx of visitor parking for major events and any new development is not provided with a resident permit for parking on the street.
- 70 Both Mr Kiriakidis and Mr Walsh considered that an increase in on-site short term car parking could be provided with the sharing of spaces between the offices, residential visitors and retail staff with the aim to lessen further impacts into the residential areas. We agree that this could be achieved by a reduction in the number of allocated resident car spaces. We also note that within the vicinity of the subject site there are located three car share pods and these are becoming common for inner urban usage.
- 71 We have considered the recommendations put forward by the expert witnesses in relation to the car parking layout and access arrangements and have adopted some recommendations, but not others, accepting that there is sufficient space provided for doors to open and the 200mm encroachment of columns is not considered an issue that warrants changes.

Traffic

- 72 It was acknowledged by both Mr Kiriakidis and Mr Walsh that St Kilda Junction is complex and to a certain extent requires a high level of driver concentration. The intersection provides access to a large range of intersecting roads and streets including Punt Road, St Kilda Road, Fitzroy Street, Princes Highway, Wellington Street and Nelson Street. In our view, whilst appearing complex, the intersection with the various road accesses is well controlled by signals and does not require drivers to make numerous decisions once an initial pathway is decided.
- 73 Mr Kiriakidis expressed concern regarding the increase in left turn movements from Punt Road into Nelson Street generated by the proposal

with the weekday am peak increasing by 154 vehicle movements and the weekday pm increasing by 77 vehicle movements. Mr Walsh expected an additional 101 vehicles would enter Nelson Street from Punt Road in the am and 42 vehicle movements in the pm. Nelson Street is a local road that runs one way west to east and carries approximately 435 vehicles per weekday.

- 74 Mr Kiriakidis submitted the increased number of vehicles turning left into Nelson Street would increase the probability of an adverse event, a rear end collision, as there is no defined left turn into Nelson Street and traffic heading in a southerly direction in the left or kerbside lane are more likely to be considering a left turn into Wellington Street. Mr Kiriakidis recommended that some alternative vehicle access should be provided with only egress onto Nelson Street.
- 75 Mr Walsh was of the view that the left turn into Nelson Street was already facilitated by the formation of the existing left turn lane into Wellington Street. Whilst Mr Walsh identified 1 incident in 5 years and Mr Kiriakidis 2 over a period of 6.5 years, Mr Walsh also highlighted that there are more than 30 left turns from Punt Road for its length from Alexandra Avenue to St Kilda Junction and the majority of these turns are not dissimilar to Nelson Street with no signal or road signage to indicate a left turn. Vehicles travelling in a southerly direction along Punt Road on a daily basis accommodate such turns. Mr Walsh also indicated the left lane was widened at Nelson Street to accommodate the left turn at the signalled intersection at Wellington Street and this provided room for a vehicle to go around a left turning vehicle into Nelson Street.
- 76 On balance we consider that the additional level of traffic likely to be generated by the proposal entering Nelson Street can be readily accommodated and in our view, given the existing left turn into Wellington Street, a predicted increase by Mr Kiriakidis of 154 vehicles in the am on top of 435 vehicles already using Nelson Street with an estimated capacity referred to by Mr Kiriakidis of 1,155 vehicles per day will not generate an increase in adverse impacts at this intersection. We agree with Mr Walsh that the lower order Nelson Street is preferable for access, as it is already used for access and garbage collection. Wellington Street is two way and a higher functioning street frequently used by pedestrians. The Council has also indicated it wishes to highlight Wellington Street as part of the bicycle network and in this respect, we consider, the provision of vehicle access to and from the site is preferably located in Nelson Street, not Wellington Street as submitted by Mr Kiriakidis.
- 77 Vehicles exiting the development will be required to proceed east along Nelson Street and then proceed either in an easterly or westerly direction along Wellington Street or in a northerly direction along Upton Street. Several of the residents raised issues regarding the intersection of

Nelson/Wellington and Upton Streets. This intersection has recently been upgraded by the Council.

- 78 Mr Walsh anticipates an additional 53 vehicle movements in the am and 112 in the pm from the development and based on the current vehicle movements at this intersection, he expects an increase to approximately 123 vehicle movements in the am and 182 vehicles in the pm. Mr Kiriakidis did not specifically address this issue in his statement of evidence.
- 79 The residents expressed concern at the potential number of vehicles that would use Nelson Street, the 'curve' at its eastern end and the access onto Wellington Street/Upton Street. Unlike the residents, we do not consider there will be a large volume of vehicles from the proposed development using Nelson Street/Wellington Street and Upton Street and in this respect we accept the anticipated vehicle numbers presented by Mr Walsh. The issues pointed out to us by the residents regarding the breaking up of the kerb from large vehicles, and the illegal turning, are all current issues and we do not consider that the additional traffic generated by the proposal will necessarily mean that these issues will worsen. These are all matters to be dealt with by the Council and are not an outcome of the proposed development.
- 80 We acknowledge that there are residential properties that have frontages to Nelson Street, with Nelson Street having a direct abuttal to the Queens Way/Dandenong Road underpass. This is not a quiet suburban area but a commercial or mixed use area that contains some residential development. Vehicles only travel one way in Nelson Street, with vehicles travelling along Nelson Street to a certain extent restricted by the short term on-street parking that occurs on both sides of the street. The anticipated peak vehicle movements occurring along Nelson Street, whilst increasing in the am and pm will be well within the expected capacity of this local road, with only the pm peak likely to have any impact, if any, on the remainder of Nelson Street. Having also heard from residents that they walk, cycle or use public transport our expectation is that future residents will adopt the same habits and may not rely heavily on vehicle usage, often a reason why they seek to live in such an area. We do not consider the amount of traffic generated by the development to be an issue that would warrant refusal of the development.
- 81 Nelson Street is not an 'access place', but a local road. It is no different to any number of local one way roads that allow for vehicle and pedestrian access to residential or commercial buildings, as well as larger trucks for waste collection and deliveries. There is always an issue of safety in the use of any road by vehicles and pedestrians and Nelson Street is no different. There is nothing different about Nelson Street that would lead us to conclude that additional traffic generated by the proposed development will cause unreasonable impacts to the use of this street. At present pedestrians

and bicycle users of Nelson Street encounter vehicles and trucks, the proposal will not alter this situation.

Bicycle parking

82 Under the provisions of clause 52.34, 41 resident bicycle spaces, 22 office bicycle spaces, 3 retail bicycle spaces and 29 visitor bicycle spaces are required. The proposed number of 113 bicycle spaces is well above the overall number required. However 30 visitor bicycle spaces are proposed to be located on Council land in the verge on the Wellington Street frontage. Mr Walsh submitted that it was not necessary to provide 30 on-street bicycle spaces and we would agree. 10 bicycle hoops could be located on the verge rather than the 15 rails shown on the plans but we do not consider this number is necessary. The ability to locate bicycle spaces on the verge is a matter for the Council.

Waste collection and Loading Bay

83 Access to the loading bay is from Nelson Street, a separate entrance from the ramp to the car park is provided. Under the provisions of clause 52.07 of the planning scheme a loading bay is required with an area of a minimum of 27.4m² with a height clearance of 4m for the retail tenancies. There is no requirement for the provision of a loading bay for the proposed residential or office uses. Waste collection for the whole development however will be able to utilise the loading bay area.

84 A swept path analysis for an 8.8m Medium Rigid Vehicle was provided by Mr Walsh which indicated such a vehicle could enter and exit the loading bay area in a forward direction. Mr Walsh did however agree that the access could be widened into and out of the loading bay area to 7m and this would accommodate the turning movement of a truck exiting the loading bay area, particularly if a vehicle is parked in the parking area directly opposite the entry/exit.

85 We take no issue with the loading bay/waste collection area. There is sufficient room for a vehicle to access the area and if for some reason there is already a vehicle in the loading bay area there is an ability for a vehicle to prop, if necessary, at the entry to allow traffic to move past either, into the car park, or to proceed along Nelson Street. We therefore do not consider that queuing will be a significant problem.

86 We note loading/unloading is currently occurring in Nelson and Wellington Streets.

WIND

87 Wind impacts were raised by a number of residents particularly on the north facing dwellings in the *Icon* building.

- 88 Mr Ischia, one of the residents raised a number of issues around the wind modelling undertaken by Dr Xu, in particular relating to the 'validity of the report input data; the accuracy of the report results, including the model inadequacies; and the effect that the proposed development has on surrounding areas.
- 89 Mr Ischia submitted there is 'no consideration for the effect of the outdoor living areas of surrounding residential areas at altitude'. He referred to the communal balcony directly opposite on Level 05 of the *Icon* building and the private balconies of both the *Icon* and *Allure* buildings. Mr Ischia was critical of the assessment in that no assessment was undertaken in relation to the wind impacts likely to be experienced on the balconies of the *Icon* building from the proposed development.
- 90 Impacts of wind on neighbouring properties is not highlighted in the planning scheme, rather the planning scheme seeks to ensure developments minimise detrimental impacts on neighbouring properties from overshadowing, privacy or visual bulk; as well as the environmental performance of solar panels¹³. New developments are however encouraged to enhance the amenity, comfort, safety and visual amenity of the public realm¹⁴.
- 91 The assessment undertaken by Dr Xu has focused on likely wind impacts to pedestrians in the public realm, as well as an assessment of likely impact on the communal outdoor area of the proposed development. He indicated the Australian Standard does not require an assessment of wind impacts at various levels of adjacent buildings. Dr Xu also considered that occupants of the proposed building, as well as the nearby buildings, are unlikely to find acceptable wind conditions on balconies at all times unless they are fully enclosed.
- 92 Whilst Mr Ischia called into question some matters raised in Dr Xu's evidence Dr Xu provided a response to these issue and we accept his explanations including that the wind speed data from Melbourne International Airport Wind Station is the only data that covers a 30 year period and in this respect the longer the records the more accurate the climate model. Dr Xu's selection of Terrain Category 3 rather than, as suggested by Mr Ischia, Terrain Category 2, is due to the different categories in close proximity to the site with the near exposure to the western approach being suburban housing, whilst the far exposure is water surface.
- 93 Dr Xu conducted a wind tunnel test on the proposed development and although Dr Xu accepted Mr Ischia's criticism that the model did not include the STK building further to the south, Dr Xu explained, this building is located close to the edge of the proxy model and would be

¹³ Clause 21.05 Port Phillip Planning Scheme

¹⁴ Ibid at 21.05-3

unlikely to significantly affect the test results. It may provide a greater level of shelter and reduce wind impacts.

- 94 The use of gust wind speeds is accepted, although Dr Xu provided a copy of the Mean wind speeds he measured and indicated the proposal would comply with all applicable criteria in this respect. The assessment of gust wind speeds also incorporates an assessment of turbulence.
- 95 Dr Xu has based his assessment of specific locations on walking, standing, walking and sitting and fast walking. We accept Dr Xu's assessment of the apartment balconies and level 05 roof top terrace, based on pedestrian walking criteria, on the basis that they are not public areas and their use is optional. Dr Xu found the 'proposed design and no landscaping [resulted in] some exceedances of the required walking criterion for the north, west and southerly winds, however the design met the criterion with the recommended wind control measures'. The wind control measures recommended by Dr Xu include a cut out section with corner trees or box planters at 2m in height on the south western corner and sliding doors at two points in the pedestrian walkway through the building. To the north west corner he recommended an area across the corner be cut out and on the roof top terrace two areas of pergola with 50% porosity and some landscaping. We accept Dr Xu's recommendations should be incorporated into the final design.

MAJOR PROMOTIONAL SIGNS

- 96 An Integrated Digital Façade (IDF) or Major Promotion sign is proposed to be located on the northern, western and southern faces of the 'western' building at Levels 03 and 04. The total active display (illuminated) area of the proposed IDF is 717m². The IDF will replace two existing static signs (one approved to be converted to a digital sign) and an animated digital sign¹⁵.
- 97 'The IDF is illuminated using LEDs installed within the front face and is broken up into three primary faces (Face 1, Face 2 and Face 3) which are in turn broken down each into several smaller zones. The brightness (luminance) of each zone will be controlled separately to provide upper and lower thresholds as required and the IDF will also be automatically controlled via local light sensors to adjust to ambient lighting conditions'¹⁶.
- 98 The three primary faces are:
Face 1 - located on the south side of Nelson Street. Due to its curved nature it will face traffic travelling southbound along Punt Road, traffic travelling south-eastbound along St Kilda Road and traffic travelling eastbound along Queens Road.

¹⁵ *Drekoncile Pty Ltd v Port Phillip CC* [2009] VCAT 2633; *Octopus Media Pty Ltd v Port Phillip CC* [2005] VCAT 2786; *oOh! Media Pty Ltd v Port Phillip CC* [2016] VCAT 480

¹⁶ Extract from Report of Ryan Shamier

Face 2 - located predominantly on the east side of Punt Road, with a small face located on the north side of Wellington Street. Due to its curved nature it will face traffic travelling south-eastbound along St Kilda Road (Punt Road face visible only) and north-eastbound along Fitzroy Street.

Face 3 - located on the northern side of the building, will be partially hidden as it will sit behind the existing sign on top of 14 Punt Road. This face will not contain any advertising but will be lit with a colour.

99 Mr Shamier in his statement notes there are no Victorian Guidelines but has assessed the impact of the IDF based on three design guidelines and standards:

- The VicRoads Advertising Policy for *Advertising On, Over and Adjacent to VicRoads declared Road Reserves*;
- AS 4282-1997 *Control of the Obtrusive Effects of Outdoor Lighting*¹⁷;
- *Transport Corridor Outdoor Advertising & Signage Guidelines 2015 Draft Document*¹⁸.

100 Under the provisions of clause 52.05-3 'the impact of any illumination on the amenity of nearby residents and the amenity of the area' and the effect on streetscapes, buildings and view corridors are to be considered as well as the impact on road safety. Likewise the City of Port Phillip Outdoor Advertising Guidelines also requires consideration of any loss of amenity.

Lighting

101 The south face of Face 2 will be clearly visible to the residents in the *Icon* building. A number of the residents in this building are currently exposed to the existing advertising on top of the existing building. They indicated they were aware of the existing sign when they purchased their dwellings and considered the single colour, non flashing light to be non-intrusive. They expressed concern regarding the proposed IDF and anticipate it will be a multi-coloured continuously flashing light or having a 'constant flicker'.

102 Ms Bourjau representing the Owners Corporation of 1 St Kilda Road, located to the south west of the junction and subject site expressed concern regarding the 'constant flicker' with the changes to the images in relation to the advertising on Face 2. This was also an issue for the residents in the

¹⁷ Mr Shamier notes 'AS 4282-1997 specifically excludes internally illuminated advertising signs/displays in Section 1.1 Scope (b) the Draft Transport Corridor Outdoor Advertising and Signage Guideline (2015) in NSW references AS4282 and requires compliance to this standard. In the absence of any other applicable Australian Standard AS4282 has been adopted for the purposes of this report'.

¹⁸ Mr Shamier notes 'The Draft Transport Corridor Outdoor Advertising and Signage Guideline (2015) reflects the latest position for roadside digital media in NSW as jointly agreed by Outdoor Media Association (OMA) and Transport for NSW (TfNSW). The NSW Planning and Environment have confirmed that the Draft Standard is to be used to assess all applications in NSW from 11th December 2014. The Transport Corridor Outdoor Advertising & Signage Guidelines apply to installations within New South Wales only, as such this is not a strict requirement for the installation but has been provided for information as a basis for comparison in the absence of any Victorian Guidelines'.

Marquise, 635 St Kilda Road (Mr & Mrs Caldicott) and at 1 Albert Street (Mr Minogue) who will observe Face 1.

- 103 Ms Bourjau referred to overseas studies which she submitted indicate ‘LED video billboards’ are a bright light source from which residents have no control and as such, may promote annoyance and stress to residents living nearby. In particular, she considered, the constant changes to the images will be a particular annoyance.
- 104 It is proposed to regulate the level of light spill in accordance with the Australian Standard AS4282-1997, pre curfew during the hours of 6am to 11pm which allows for a higher lighting level, and curfew during the hours of 11pm and 6am which allows for a lower lighting level.
- 105 Mr Shamier concluded that light spill from the proposed IDF will not materially affect the level of amenity of the nearby residents. Based on the provisions in Australian Standard AS4282 Mr Shamier indicated ‘the maximum illuminance in the vertical plane for adjacent residential properties is limited to 25 lux at the property boundary (pre curfew) and 4 lx at habitable windows (curfew[ed]). Under the standard, a value of less than 25 lux between 6am and 11pm and 4 lx between 11pm and 6am is deemed to not affect the visual amenity of local residents’.
- 106 Mr Shamier expressed the view that the residents in the *Icon* building are currently experiencing a higher lux level from the existing sign and this lighting level is not controlled, as proposed with the IDF, so that there is no reduction in the level of luminance between 11pm to 6am. The introduction of the IDF will improve this situation for those residents.
- 107 We conclude from the evidence of Mr Shamier that if the controlling of the lighting of the IDF will improve what the residents of the *Icon* building will experience, then the residents located a further distance away at 1 St Kilda Road, the *Marquise* building, 1 Albert Street or even the nearby *Allure* building will similarly experience an improvement in the level of light spill at night.

Traffic safety

- 108 Road safety issues around the prominence of the IDF were raised.
- 109 VicRoads an original objector to the proposed IDF have withdrawn their objection indicating they would not oppose the granting of a permit having considered the lighting report prepared by Electrolight Australia Pty Ltd (Mr Shamier) and the traffic report prepared by Traffix Group (Ms Dunstan), provided the following conditions were applied:
1. Before the installation of the signs commences, Figures 1 and 3 in the Traffix Group report, and the lighting report submitted by Electrolight Australia Pty Ltd, received by VicRoads 6 June 2016, Reference 1621, Revision B, dated 1 June 2016 must be submitted to and approved by Council. The plans must be in

accordance with Figure 1 and Figure 3, in the Traffix Group report. When approved by Council, the plans and lighting report must be endorsed by the Responsible Authority and will then form part of the permit.

2. The signs must at all times operate in accordance with the requirements of the lighting report submitted by Electrolight Australia Pty Ltd, Reference 1621, Revision B, received by VicRoads on 6 June 2016.
3. In accordance with the endorsed plans, the following requirements on the respective signage zones as shown on Figure 3, page 10 received by VicRoads on 6 June 2016 and will form part of the Planning Permit as follows:
 - i. FACE 1: Text and images must be 'fully contained within the sign face area', and must not intrude into the adjoining Zone.
 - ii Zone 1.1: Advertisement (text or images), must be fully contained within the sign face area, and not intrude into the abutting sign faces (sign face 1 and 3).
 - iii FACE 3: No advertising permitted on this sign face, only a 'linking band' or a 'block' colour. The background block colour must not be command colours similar to traffic signals, red/amber/green.
 - iv Zone 2.22: Only a logo or 'stand alone' image is permitted on this sign face and must be fully contained within the sign face area, without any 'distortion' (e.g. not wrap around signage).
 - v FACE 2: Advertising permitted as a standard sign, however must not protrude beyond the area into an adjoining sign face area.
4. To enable the signs described in condition 3 above to be readily absorbed, given the quantity of sign faces viewed, the following requirements must be satisfied:
 - (a) No smaller letter height than 250mm (capital letter).
 - (b) No more than 8 words in 'each' advertisement.
 - (c) Typeface must only be in bold sans serif font. The use of scripts or cursive fonts is prohibited.
 - (d) There must be sufficient line spacing 'between wording' to ensure there is no 'stacking' effect, which would impact on it being easily comprehended.
5. The transition from one advertisement to another must be instantaneous for all electronic sign faces (and included zones).
6. No advertisement may be displayed for less than **30** seconds.

7. A delay of 15 seconds between the change over on each face (and included zones) being viewed is required (refer condition 3).
 8. In relation to the images displayed on the respective signs:
 - (a) Sequences of images giving the illusion of continuous movement must not be displayed.
 - (b) Images capable of being mistaken for traffic signals or traffic control devices because they, for example contain red, amber or green circles, octagons, crosses or triangles must not be displayed.
 - (c) Images and text capable of being mistaken as an instruction to road users must not be displayed.
 - (d) Flashing background. Flashing text or flashing images must not be displayed.
 9. The signs must not dazzle or distract road users due to its colouring.
 10. In the event of an attack by a computer hacker 'or' similar resulting in unauthorised display of visual images or any other display malfunction, the electronic signs are shut down and cease any form of visual output until malfunction is repaired.
- 110 Mr Shamier in relation to the impact on road users in terms of safety from glare concluded they would not be materially affected, applying AS4282 and submitting the IDF will comply with the maximum veiling luminance of 0.25 cd/m² as described in *VicRoads Advertising Policy for Advertising On, Over and Adjacent to VicRoads declared Road Reserves*.
- 111 Ms Dunstan provided expert evidence from a traffic engineer's perspective regarding the possible impact on the safety of road users. She concluded there are no traffic engineering reasons to reject the IDF. The elevated location of the IDF will not obstruct a driver's line of sight to any traffic control device or traffic sign. In locations where the IDF may background traffic signals, the driver will have already made a decision and the IDF will not have an impact. Some drivers coming from different locations may experience more than 1 to 2 images, given the dwell time of 30 seconds and the image changes 15 seconds apart on the two faces, but given the likely slower speed of the traffic, as well as the driver's decision having been made, this will not result in a safety issue.
- 112 Ms Dunstan based her conclusions on the decision guidelines in clause 52.05-3 and VicRoads Ten Point Safety Checklist
- 113 We agree with the submissions made that the Junction has been changing over time and there are more people living within, or in close proximity to, the Junction and as such, are constantly exposed to the lights of advertising signage in and around the Junction. Existing signage in the Junction is already prominent and appears to be part of the Junction's culture. This is

the nature of such a highly exposed road junction and residents in and around this location are fully aware of the nature of the area when they come to live in this location¹⁹.

- 114 The integration of the IDF into the façade of the building and the replacement of three existing signs on the subject site will in our view be an improvement. We take note of VicRoads' position and conclude, based on the evidence of Mr Shamier and Ms Dunstan, the amenity of residents in and around the Junction will not be unreasonably affected as a result of the IDF. In some respects, particularly for the residents of the *Icon* building, the control of luminance over different periods of the day will likely result in an improvement. We do not consider the image changes 15 seconds apart and the dwell time of 30 seconds equate to flashing lights. No moving images are permitted. As Ms Dunstan noted drivers have a 30% to 50% spare capacity to give their attention to other objects not related to driving and driver's attention would be similarly distracted even if there are no advertising signs with driver's distraction tending to self-regulate in terms of different road environments and levels of driving demand.

RELATIONSHIP TO 14 PUNT ROAD

- 115 14 Punt Road has its own Heritage Overlay HO232. The significance of 14 Punt Road is provided in the City of Port Phillip Heritage Review (1998):

The former shops and residential building at 14-15 Punt Road, Windsor was built in 1905 for C. Peacoulakes. It is aesthetically important (Criterion E). This importance rests on its unusual façade treatment consisting of suspended pilasters capped by figures of cherubs and other ornamentation. The building's cultural value hinges also on its prominent position at St Kilda Junction and on its capacity to recall a time when this intersection was an important civic space.

- 116 Mr Fong, a director of the company that owns 14 Punt Road, submitted the proposed building 'will overwhelm our building, the sheer bulk of the project will dwarf 14-16 Punt Road, from a distance it will almost disappear'.
- 117 On the northern boundary the proposed building is shown as abutting the southern boundary of 14 Punt Road with a slight offset towards the rear from the ground floor to Level 02. The proposed building is then set off approximately 3m from this boundary from Level 03 upwards. The western boundary of the proposed building is setback approximately 2m from the rear eastern boundary of 14 Punt Road. This setback incorporates the pedestrian pathway through the building from Wellington Street to Nelson Street.
- 118 Mr Fong submitted the proposed building should be set off the entire southern boundary from the ground floor providing an appropriate

¹⁹ *oOh! Media Pty Ltd v Port Phillip CC* [2016] VCAT 480 (30 March 2016)

separation to ensure 14 Punt Road was not read as part of the development but rather to 'stand alone as an "icon" to the "Old" St Kilda Junction'.

- 119 It was not until we were provided with photographs of the southern elevation of the building, and heard from Mr Purss, an occupier of the building, that it became apparent there are several windows located within the southern elevation that, as submitted by Mr Purss, provide access to daylight. Mr Purss sought to have the building setback to allow for light to penetrate the existing windows on levels 1 and 2. We acknowledge that the windows along the southern elevation of 14 Punt Road have existed long before the current building on the subject site and the more onerous regulations we are required to consider today. Some consideration should therefore be given to the amenity of these windows.
- 120 As a result of the photographic information we were provided with an amended ground floor layout (TP100 Revision 5). The plans shows the creation of a 3m lightwell that would now commence from the ground floor and extend upwards. We consider this 3m setback as shown in tendered plans will provide for sufficient daylight to the windows on the southern elevation and it will also achieve separation of the built form requested by Mr Fong. Although Mr Fong indicated it would be difficult to redevelop 14 Punt Road and that he had no intention of doing this in the near future, we consider the creation of a 3m separation provides for an equitable outcome. We say this particularly as 14 Punt Road has an excellent northern aspect and as such we would expect that any redevelopment of that site would take advantage of this northern aspect rather than relying upon its southern aspect.
- 121 A condition of the permit will require amendments in accordance with the tendered plan TP100 Revision 5.

WHAT CONDITIONS ARE APPROPRIATE?

- 122 Draft conditions were provided for discussion at the conclusion of the hearing. We have considered the submissions regarding the conditions and have adopted a number of the recommendations made by the expert witnesses during the giving of their evidence. We have added, deleted or reworded conditions where we have considered it appropriate.

CONCLUSION

- 123 For the reasons explained above, the decision of the Responsible Authority is set aside. A permit is issued subject to conditions.

Jeanette G Rickards
Senior Member
Presiding Member

Peter Gray
Member

APPENDIX A

PERMIT APPLICATION NO:	1227/2015
LAND:	1/8-12 Punt Road, Windsor 8-12 Punt Road, Windsor 3-7 Wellington Street, St Kilda
WHAT THE PERMIT ALLOWS:	<ul style="list-style-type: none"> • <i>Buildings and works associated with a mixed use development (including basement car parking);</i> • <i>Use of land for the purposes of dwellings;</i> <i>Reduction in the number of car parking spaces required by the Planning Scheme; and</i> • <i>Display of a Major Promotional Sign</i> in accordance with the endorsed plans.

CONDITIONS

Amended Plans

1. Before the development starts, two (2) complete sets of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with plans TP01 – TP221 prepared by Plus Architecture in respect of Job No. 11597 all dated 20 May 2016, as well as the plan titled “Integrated Digital Façade” (TP105 Rev 3), but modified to show, to the satisfaction of the Responsible Authority:
 - (a) Any modifications required pursuant to the Wind Assessment Report (condition **6**);
 - (b) Any modifications required pursuant to the Sustainability Management Plan (condition **10**);
 - (c) Modifications to the ground floor layout to improve pedestrian connectivity between the lift lobby, loading dock and bin storage area situated to the west of the walkway;
 - (d) Modifications to the height of the building at its interface to the eastern part of the building at 14 Punt Road, St Kilda, generally in accordance with the “Proposed Revision 5 Section” as shown

on TP230, Revision 5, and in plan in TP100 Rev 5 showing “lower ceiling to accommodate light well to neighbouring building” in blue highlight;

- (e) The provision of glazing to the bike rack areas within the internal walkway;
- (f) The reduction in the extent of the loading dock doorway interface to the internal walkway by increasing the floor area of the retail premises situated at the northern end of the walkway;
- (g) An increase in the width of the lower level canopy to Punt Road and Wellington Street so that it extends to a point 750mm from the kerb;
- (h) The upper floor level of Basement 1 should be set at RL9.9 or at another level which ensures compliance with AS2890.1:2004;
- (i) Modifications to the access ramp to demonstrate compliance with the gradients specified in Design Standard 3 of clause 52.06;
- (j) The addition of void spaces at the termination of the access ramp at the ground level to achieve appropriate clearances;
- (k) The provision of at least two disabled car spaces;
- (l) An increase in the width of the loading bay entrance to 7.0 metres;
- (m) Any office floor area occurring within 9m of a direct view of a window or terrace belonging to the *Allure* apartments to be screened from view.
- (n) A schedule of materials and finishes.

No Alterations

2. The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority, unless the Port Phillip Planning Scheme exempts the need for a permit.

Satisfactory continuation

3. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Architectural Oversight

4. Except with the consent of the Responsible Authority, Plus Architects (or another architectural consultancy to the satisfaction of the Responsible Authority) must be retained to complete and provide architectural oversight during construction of the detailed design as

shown in the endorsed plans and endorsed schedule of materials to the satisfaction of Responsible Authority.

Walls on or facing the boundary

5. Prior to the occupation of the building(s) allowed by this permit, all walls on or facing the boundary and/or the laneway must be cleaned and finished to a uniform standard. Unpainted or unrendered masonry walls must have all excess mortar removed from the joints and face and all joints must be tooled or pointed to the satisfaction of the Responsible Authority. Painted or rendered or bagged walls must be finished to a uniform standard to the satisfaction of the Responsible Authority.

Wind Assessment

6. Before the development starts (other than demolition or works to remediate contaminated land), a Wind Assessment Report must be submitted to and approved by the Responsible Authority. The wind assessment report must be generally in accordance with the report prepared by Vipac dated 2 June 2016 and must identify all measures necessary to ensure compliance with the applicable criteria. When the Wind Assessment Report is approved, it will become an endorsed plan forming part of this Permit.

Landscape Plan

7. Before the development starts (other than demolition or works to remediate contaminated land), a detailed Landscape Plan must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When the Landscape Plan is approved, it will become an endorsed plan forming part of this Permit.

Completion of Landscaping

8. The landscaping as shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority before the occupation of the development and/or the commencement of the use or at such later date as is approved by the Responsible Authority in writing.

Landscaping Maintenance

9. The landscaping as shown the endorsed Landscape Plan must be in accordance with the landscaping plan to the satisfaction of the Responsible Authority.

Sustainable Management Plan

10. Before the development starts (other than demolition or works to remediate contaminated land) a Sustainable Management Plan that outlines proposed sustainable design initiatives must be submitted to and approved by the Responsible Authority. Upon approval the Plan

will be endorsed as part of the planning permit and the project must incorporate the sustainable design initiatives listed.

Implementation of Sustainable Design Initiatives

11. Prior to the occupation of any building approved under this permit, a report from the author of the Sustainable Management Plan, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the satisfaction of the Responsible Authority. The report must confirm that all measures specified in the Sustainable Management Plan report have been implemented in accordance with the approved Plan.

Street trees

12. The authorised buildings and works must minimise any damage to the existing street tree(s) to the satisfaction of the Responsible authority. Prior to the commencement of buildings and works, root pruning of street tree(s) must be carried out to the satisfaction of the Responsible Authority.

Replacement of street trees

13. If damaged or destroyed as a result of the development, existing street tree(s) must be replaced by new tree(s) of which the species, maturity and location must be to the satisfaction of Council's Street tree coordinator. The new tree(s) must be planted and maintained for a period of twelve (12) months to the satisfaction of the Street Tree Coordinator at no expense to the Council.

Waste Management

14. Before the development starts (other than demolition or works to remediate contaminated land), a Waste Management Plan must be prepared by a Waste Management Engineer or Waste Management Planner to the satisfaction of the Responsible Authority and endorsed as part of this permit. The Waste Management Plan must be generally in accordance with the plan prepared by Leigh Design dated 13 November 2016 but modified to reflect the endorsed plans.

Once submitted and approved, the Waste Management Plan must be carried out to the satisfaction of the Responsible Authority.

Signs not Altered

15. The location of the sign(s) (including the size, nature, panels, position and construction) shown on the endorsed plan must not be altered without the prior written consent of the Responsible Authority.

Sign Structure not Altered

16. The location and details of the supporting structure shown on the endorsed plan must not be altered without the prior written consent of the Responsible Authority.

No Flashing Light

17. The sign(s) must not contain any flashing, intermittent or changing colour light.

No External Illumination

18. The sign must not be illuminated by external lights except with the written consent of the Responsible Authority.

Sign Lighting

19. The lighting permitted by this permit must comply with Australian Standard 4282 "Control of the obtrusive effects of outdoor lighting".

Signs within Land Boundary

20. The sign(s) must be located wholly within the boundary of the land.

Removal of Existing Advertising Signs

21. Existing advertising signs on the land must be removed prior to the display of the advertising sign(s) approved under this Permit:

Expiry Date for Major Promotion Signs

22. This permit as it relates to signage expires 25 years from the date of issue.

Minimum Clearance for Advertising Sign

23. The clearance from the footpath to the underside of the sign must be a minimum of 2.7 metres.

VicRoads Conditions

24. Before the installation of the signs commences, Figures 1 and 3, in the Traffix Group report, and the lighting report submitted by Electrolight Australia Pty Ltd, received by VicRoads 6 June 2016, Reference 1621, Revision B, dated 1 June 2016 must be submitted to and approved by Council. The plans must be in accordance with Figure 1 and Figure 3, in the Traffix Group report. When approved by Council, the plans and lighting report must be endorsed by the Responsible Authority and will then form part of the permit.
25. The signs must at all times operate in accordance with the requirements of the lighting report submitted by Electrolight Australia Pty Ltd, Reference 1621, Revision B, received by VicRoads on 6 June 2016 and dated 1 June 2016.

26. In accordance with the endorsed plans, the following requirements on the respective signage zones as shown on Figure 3, page 10 received by VicRoads on 6 June 2016 and will form part of the Planning Permit as follows:

- (a) FACE 1: Text and images must be 'fully contained within the sign face area, and must not intrude into the adjoining Zone.
- (b) Zone 1.1: Advertisement (text or images), must be fully contained within the sign face area, and not intrude into the abutting sign faces (sign faces 1 and 3).
- (c) FACE 3: No advertising permitted on this sign face, only a 'linking band' or a 'block' colour. The background block colour must not be command colours similar to traffic signals, red/amber/green.
- (d) Zone 2.22: Only a logo or 'stand alone' image is permitted on this sign face, and must be fully contained within the sign face area, without any 'distortion' (e.g. not wrap around signage).
- (e) FACE 2: Advertising permitted as a standard sign, however must not protrude beyond the area into an adjoining sign face area.

27. To enable the signs described in condition 3 above to be readily absorbed, given the quantity of sign faces viewed, the following requirements must be satisfied:

- (a) No smaller letter height than 250mm (capital letter).
- (b) No more than 8 words in 'each' advertisement.
- (c) Typeface must only be in bold sans serif font. The use of scripts or cursive fonts is prohibited.
- (d) There must be sufficient line spacing 'between wording' to ensure there is no 'stacking' effect, which would impact on it being easily comprehended.

28. The transition from one advertisement to another must be instantaneous for all electronic sign faces (and included zones).

29. No advertisement may be displayed for less than 30 seconds.

30. A delay of 15 seconds between the change over on each face (and included zones) being viewed is required (refer condition 24).

31. In relation to the images displayed on the respective signs:

- (a) Sequences of images giving the illusion of continuous movement must not be displayed.
- (b) Images capable of being mistaken for traffic signals or traffic control devices because they, for example contain red, amber or

green circles, octagons, crosses or triangles must not be displayed.

- (c) Images and text capable of being mistaken as an instruction to road users must not be displayed.
 - (d) Flashing background, flashing text or flashing images must not be displayed.
32. The signs must not dazzle or distract road users due to colouring.
33. In the event of an attack by a computer hacker 'or similar' resulting in unauthorised display of visual images or any other display malfunction, the electronic signs are to shut down and cease any form of visual output until malfunction is repaired.

Urban Art Plan

34. Before the occupation of the development allowed by this permit, an urban art plan in accordance with Council's Urban Art Strategy must be submitted to, be to the satisfaction of, and approved by the Responsible Authority. Urban art in accordance with the approved plan must be installed prior to the occupation of the building to the satisfaction of the Responsible Authority.

Water Sensitive Urban Design

35. Before the development starts (other than demolition or works to remediate contaminated land) a Water Sensitive Urban Design Report that outlines proposed water sensitive urban design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority.

When approved, the Report will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed.

Incorporation of Water Sensitive Urban Design Initiatives

36. Before the occupation of the development approved under this permit, the project must incorporate the water sensitive urban design initiatives listed in the endorsed Water Sensitive Urban Design Report to the satisfaction of the Responsible Authority, and thereafter maintained to the satisfaction of the Responsible Authority.

Maintenance Manual for Water Sensitive Urban Design Initiatives

37. Before the development starts (other than demolition or works to remediate contaminated land) a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority.

The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:

- (a) inspection frequency;
- (b) cleanout procedures;
- (c) as installed design details/diagrams including a sketch of how the system operates.

The WSUD Maintenance Manual may form part of a broader Maintenance Program that covers other aspects of maintenance such as a Building User's Guide or a Building Maintenance Guide.

Site Management Water Sensitive Urban Design

38. The developer must ensure to the satisfaction of the Responsible Authority that:

- (a) No water containing oil, foam, grease, scum or litter will be discharged to the stormwater drainage system from the site;
- (b) All stored wastes are kept in designated areas or covered containers that prevent escape into the stormwater system;
- (c) The amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads is minimised when vehicles are leaving the site;
- (d) No mud, dirt, sand, soil, clay or stones are washed into, or are allowed to enter the stormwater drainage system;
- (e) The site is developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants in accordance with currently accepted best practice.

Car and Bicycle Parking Layout

39. Before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and bicycles and access lanes as shown on the endorsed plans must be:

- (a) Constructed;
- (b) Properly formed to such levels that they may be used in accordance with the plans;
- (c) Surfaced with an all-weather surface or seal coat (as appropriate);
- (d) Drained and maintained;
- (e) Line marked to indicate each car space, visitor space, bicycle space, loading bay and/or access lane; and

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

All to the satisfaction of the Responsible Authority.

Parking and Loading Areas Must Be Available

- 40. Car and bicycle parking and loading areas and access lanes must be developed and kept available for those purposes at all times and must not be used for any other purpose such as storage to the satisfaction of the Responsible Authority.

Lighting

- 41. External lighting of the areas set aside for car parking, access lanes and driveways must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.

Direction Sign

- 42. Before the occupation of the development allowed by this permit a sign containing details and of a size to the satisfaction of the Responsible Authority must be displayed directing drivers to the area(s) set aside for car parking. The sign must be located and maintained to the satisfaction of the Responsible Authority.

Vehicle Crossings

- 43. Before the occupation of the development allowed by this permit, vehicle crossings must be constructed in accordance with Council's current Vehicle Crossing Guidelines and standard drawings to the satisfaction of the Responsible Authority.

Vehicle Crossings – Removal

- 44. Before the occupation of the development allowed by this permit, all disused or redundant vehicle crossings must be removed and the area re-instated with footpath, nature strip and kerb and channel at the cost of the applicant/owner and to the satisfaction of the Responsible Authority.

Applicant to Pay for Reinstatement

- 45. Before the occupation of the development allowed by this permit, the applicant/owner must do the following things to the satisfaction of the Responsible Authority:
 - (a) Pay the costs of all alterations/reinstatement of Council and Public Authority assets necessary and required by such Authorities for the development.
 - (b) Obtain the prior written approval of the Council or other relevant Authority for such alterations/reinstatement.

- (c) Comply with conditions (if any) required by the Council or other relevant Authorities in respect of alterations/reinstatement.

Public Services

46. Before the occupation of the development allowed by this permit, any modification to existing infrastructure and services within the road reservation (including, but not restricted to, electricity supply, telecommunications services, gas supply, water supply, sewerage services and stormwater drainage) necessary to provide the required access to the site, must be undertaken by the applicant/owner to the satisfaction of the relevant authority and the Responsible Authority. All costs associated with any such modifications must be borne by the applicant/owner.

Car Parking Allocation

47. Prior to the occupation of the development a car parking management plan must be submitted to and approved by the Responsible Authority. That plan should show the allocation of spaces within the basement car park between the various uses that comprise the development, and must (unless otherwise approved by the Responsible Authority) provide:

- not less than 205 spaces for residents;
- not less than 170 spaces for office;
- not less than 10 spaces for retail; and
- not less than 10 spaces for residential visitors.

Visitor Car Parking

48. The number and location of visitor car parking spaces as shown on the endorsed plans may only be altered with the written consent of the Responsible Authority. Prior to the occupation of the building, all visitor car parking spaces must be line marked and designated as visitor car parking to the satisfaction of the Responsible Authority and must be designated as common property on any plan of subdivision.

Loading/Unloading

49. The loading and unloading of goods from vehicles must only be carried out on the subject land and must be conducted in a manner which does not cause any interference with the circulation and parking of vehicles on the land to the satisfaction of the Responsible Authority.

Piping and ducting

50. All piping and ducting (excluding down pipes, guttering and rainwater heads) must be concealed to the satisfaction of the Responsible Authority.

No equipment or services

51. Any plant, equipment or domestic services visible from a street (other than a lane) or public park must be located and visually screened to the satisfaction of the Responsible Authority.

Construction Management Plan

52. Prior to the commencement of any site works including demolition and excavation, the owner must submit a Construction Management Plan to the Responsible Authority for approval. No works including demolition and excavation are permitted to occur until the Plan has been approved in writing by the Responsible Authority. Once approved, the Construction Management Plan will be endorsed to form part of this permit and must be implemented to the satisfaction of the Responsible Authority. The Plan must be to the satisfaction of the Responsible Authority and must provide details of the following:

- (a) Delivery and unloading points and expected frequency;
- (b) A liaison officer for contact by owners / residents and the Responsible Authority in the event of relevant queries or problems experienced;
- (c) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
- (d) Hours for construction activity;
- (e) Measures to control noise, dust, water and sediment laden runoff;
- (f) Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
- (g) Any construction lighting to be baffled to minimise intrusion on adjoining lots.

Time for starting and completion

53. This permit will expire if one of the following circumstances applies:

- (a) The development is not started within three (3) years of the date of this permit.
- (b) The development is not completed within five (5) years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing:

- (a) before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet started; and

- (b) within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

--- End of Conditions ---

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1270/2019
PERMIT APPLICATION NO. 1227/2015/B

CATCHWORDS

Application under 87A of the *Planning and Environment Act 1987*. Port Phillip Planning Scheme. Amendment to permit. Car parking reduction. Height and built form. Amenity.

APPLICANT	LAS Group Developments Pty Ltd
RESPONSIBLE AUTHORITY	Port Phillip City Council
RESPONDENTS	Kaye O'Connor, Michael Sabey, Daniel Ischia & Others
SUBJECT LAND	8-12 Punt Road and 3-7 Wellington Street ST KILDA VIC 3182
WHERE HELD	Melbourne
BEFORE	Cindy Wilson, Presiding Member Lorina Nervegna, Member
HEARING TYPE	Hearing
DATE OF HEARING	27, 28 & 29 November and 10 & 11 December 2019
DATE OF ORDER	21 February 2020
CITATION	LAS Group Developments Pty Ltd v Port Phillip CC [2020] VCAT 198

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the section 87A application is amended by substituting for the application plans, the following plans filed with the Tribunal:
 - Prepared by Plus Architecture and KPDO
 - Plan numbers TP096-TP107; TP110-TP114; TP125-TP129; TP200-TP203; and TP220-TP222
 - Dated 9 October 2019 and marked Revision 5.
- 2 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the section 87A application is amended



to include a change to condition 56 of Planning Permit 1227/2015/B to read:

This permit will expire if one of the following circumstances applies;

- a) The development is not started within two (2) years from 12 February 2019.
 - b) The development is not completed within five (5) years from 12 February 2019.
- 3 The application is allowed.
 - 4 The responsible authority is directed to amend planning permit 1227/2015/B in accordance with the changes included in Appendix A.
 - 5 The responsible authority is directed to amend the permit and issue an amended permit to the owner of the subject land pursuant to section 91 of the *Planning and Environment Act 1987*.

Cindy Wilson
Presiding Member

Lorina Nervegna,
Member

APPEARANCES

For LAS Group Developments Pty Ltd Ms Juliet Forsyth SC and Ms Emma Pepler of Counsel

They called the following witnesses:

- Mr Kel Twite, town planner of SJB Planning
- Associate Professor Andrew Hutson, architect
- Mr Jason Walsh, traffic engineer of Traffix Group
- Mr Brett Young, traffic engineer of Ratio

The evidence (photomontages) of Mr Ben Watson of Pointilism was tendered. Mr Watson was not called to give oral evidence.

For Port Phillip City Council Mr John Rantino and Ms Kierra Parker, solicitors of Maddocks



For Kaye O'Connor

Ms Kaye O'Connor

She called the following witness:

Mr David Brand, architect

For Michael Sabey

Mr Michael Sabey

For Daniel Ischia & Others

Mr Daniel Ischia

INFORMATION

Description of proposal

An amendment to an existing planning permit, amongst other things, to:

- Increase the number of apartments;
- Reconfigure apartment layouts;
- Change the mix of apartment types;
- Reduce the number of car parking spaces;
- Reduce the storage provision associated with apartments;
- Increase the provision for bicycle and motor bike parking;
- Provide five car share spaces;
- Alter building envelope with reduction in basement size and increased void between the two towers;
- Reduction in retail space; and
- Increase in height of the two towers.

Nature of proceeding

Application under section 87A of the *Planning and Environment Act 1987* – to amend a planning permit.

Planning scheme

Port Phillip Planning Scheme

Zone and overlays

Commercial 1 Zone

Mixed Use Zone

Design and Development Overlay, Schedule 13

Design and Development Overlay, Schedule 34

Design and Development Overlay, Schedule 35



Land description	The review site is an irregular shaped parcel of land with frontage to Punt Road, Wellington Street and Nelson Street, St Kilda. The land has an approximate site area of 2,336 square metres.
Tribunal inspection	An inspection of the site and surrounds, accompanied by representatives of the parties, took place on 29 November 2019. It included views from the Icon building at 2 St Kilda Road and traversing the pedestrian underpass below St Kilda Road.



REASONS¹

WHAT IS THE PROCEEDING ABOUT?

- 1 Planning permit 1227/2015 was issued on 25 August 2016 at the direction of the Tribunal.² The permit allows a mixed use development comprising two towers, one of 26 storeys and the other of 10 storeys containing dwellings, retail and office space and display of a major promotional sign at 8-12 Punt Road and 3-7 Wellington Street, St Kilda. Two amendments to this permit have subsequently been approved.
- 2 This application to the Tribunal is to amend the permit to increase the number of dwellings, reconfigure the layout, change the built form envelope, reduce the number of car spaces, reduce the retail floor space, reduce storage and provide additional bicycle spaces.
- 3 Council opposes the amendments for reasons relating to inadequate car parking, inappropriate location of bicycle parking, insufficient storage and a poor design response for four apartments.
- 4 The respondents oppose the amendments sought. They raise concerns about unacceptable changes to the building mass and height, wind impacts, inadequate clarity on the façade treatment, insufficient car parking, amenity for neighbours and future residents, poor provision for bicycles, storage and loading.
- 5 The applicant submits the changes sought to the planning permit are appropriate and should be permitted.
- 6 The Tribunal must decide whether the permit should be amended. Having considered the submissions, evidence and the provisions of the Port Phillip Planning Scheme and having inspected the site and surrounds, we have decided to allow the application, subject to changes. Our reasons follow.

BACKGROUND

- 7 The original approval by the Tribunal allowed a mixed use development comprising a 26 storey tower on the western part of the site and a 10 storey tower on the eastern side of the site. The layout includes a six level podium containing retail spaces at ground level, offices and a gym on the next five levels with 203 residential apartments in the towers above. Seven levels of basement were included providing 397 car spaces. The approval allowed a waiver of car parking with 54 of the spaces relating to the residential component (26 to apartments and 28 relating to residential visitor parking). Plans were endorsed on 4 December 2017.
- 8 Two amendments to the planning permit have been approved.

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

² *Drekoncile Pty Ltd v Port Phillip CC* [2016] VCAT 1396



- 9 The first amendment allowed alterations to the architectural expression of the development, deletion of office floorspace, reduction in car parking provision and reconfiguration of the layout. This amendment request was made under s87A of the *Planning and Environment Act 1987*. It was approved by direction of the Tribunal on 7 June 2018 following an agreed settlement at a compulsory conference. The amendment added permit conditions that required approval of a façade treatment.
- 10 The second amendment was considered by Council under s72 of the *Planning and Environment Act 1987* and included minor changes to basement layouts. Council approved the amended permit dated 12 February 2019 and endorsed plans pursuant to this amended permit on 14 February 2019. It is this permit and these plans that are sought to be amended in this proceeding.

WHAT IS APPROVED?

- 11 The current permit and endorsed plans allow for the following:
- Two towers, one of 26 storeys and the other of 10 storeys.
 - A built form that includes a six level podium.
 - Ground floor that contains 749 square metres of retail floor space.
 - Five levels of podium containing apartments, a pool and gym with car parking at each level, accessed via car lifts.
 - Apartments in the two towers above the podium level.
 - A total of 200 dwellings, comprising 29 x 3+bedrooms, 125 x 2-bedroom and 46 x 1-bedroom.
 - Four levels of basement.
 - A total of 242 car spaces and 180 bicycle parking spaces.
 - Storage of 2,170 cubic metres.
- 12 Pedestrian access is shown off Wellington Street and vehicle access off Nelson Street. The façade treatment that includes the artist strategy, as required by condition 3 of the permit, is also endorsed.

WHAT IS PROPOSED?

- 13 The amendment to the permit now sought (based on the plans substituted in this Order and referred to as Revision 5 plans in this decision) comprise the following:
- Increased building height by 600mm for the 26 storey tower and 400mm for the 10 storey tower.
 - Reduced podium to three levels.



- Internal alterations to the layout, number and location of apartments providing a total of 256 comprising 25 x 3+bedroom, 132 x 2-bedroom and 99 x 1-bedroom.
 - At ground level, retail space reduced to 523 square metres, increased lobby area and bicycle parking.
 - Altered façade to reflect changed layout of balconies and windows..
 - Reduced basement sizes, car parking deleted from podium levels, a total of 194 car spaces (including 5 car share spaces), 5 motor cycle spaces and 262 bicycle spaces.
- 14 Changes to permit conditions are also sought.
- 15 At the start of the hearing, the applicant advised it accepted the recommendations of its expert witnesses in relation to a number of matters. These recommendations relate to storage, balcony sizes, bicycle parking, expiry conditions, clearances, gradients, parking allocation and external detail.
- 16 After the first three days of hearing, the Tribunal gave leave for the applicant to file and serve plans that addressed issues raised in relation to storage and bicycle parking. Revision 6 plans dated 4 December 2019 were circulated showing the following:
- Additional storage
 - Additional bicycle and motorbike parking
 - Relocation of some bicycle parking from basement to ground level and associated reduction in retail area from 523 to 480 square metres.
 - Altered basement layout.
 - Increased lift core to service the upper level apartments with associated external changes to tower roof plans.

PHYSICAL CONTEXT

- 17 The review site comprises an area of approximately 2,336 square metres with approximate frontages of 29 metres to Punt Road, 37 metres to Nelson Street and 61 metres to Wellington Street. The land is currently occupied by three buildings varying in height between two and four storeys and three major promotional signs.
- 18 The review site is on a key corner at St Kilda junction. The complex and broad road network that makes up the junction is located to the south-west with the Junction Oval and Albert Park Lake further west.





Figure 1 Site context (Source Melways online)

- 19 To the south, on the opposite side of Wellington Street is an 18 storey residential building known as the Icon building. To the south-east is a two storey commercial development with residential development further east.
- 20 To the east of the review site is a nine storey apartment building.
- 21 Adjoining to the immediate northwest, at 14 Punt Road, there is a three storey Victorian building used for backpacker accommodation with a major promotion sign above.
- 22 To the north, on the other side of Nelson Street, is Queens Way/Princes Highway which passes under Punt Road.
- 23 Various tram routes and bus services are nearby and the Windsor railway station is approximately 950 metres to the north-east. A pedestrian underpass is located at the western end of Nelson Road providing access to the western side of St Kilda Road.



Figure 2 Aerial view (source Nearmaps as contained in evidence of Mr Twite)

AMBIT OF DISCRETION

- 24 This is an application to amend a planning permit made under section 87A of the *Planning and Environment Act 1987*. This section of the Act provides

a broad scope specifying that ‘*the Tribunal may cancel or amend a permit that has been issued at its direction if it considers it appropriate to do so.*’

- 25 In this proceeding the role of the Tribunal is to consider the planning merits of the amendments sought and not revisit the proposal in its entirety.
- 26 Respondents submitted that, taken together, the amendments proposed would result in a transformation of the permit. We do not agree. We say the changes proposed can be correctly considered as amendments to the existing permit given the built form will remain similar to the approved scheme, a mixed use development continues to be proposed and access arrangements are relatively unchanged. Although there is an increased parking waiver sought, the original permit and the currently approved plans both provide for some parking waiver. We say the proposed changes are not such that they transform the permission granted.
- 27 We accept that the existing permit creates accrued rights to develop the land in a manner that remains within the limits of the rights allowed under the permit. The permit allows buildings and works associated with a mixed use development with endorsed plans showing, amongst other things, two towers. We think the decision of the Tribunal in *Alker Development Pty Ltd v Stonnington CC*³ is pertinent to this case whereby it was found that
- In most cases, the accrued right will not be constrained to a precise height because a permit will usually require a development to be “generally in accordance with” specified plans. This means that the accrued right includes a right to develop to a height that is generally in accordance with the height shown on these plans, but not more than this. However, this right of “general accordance” arises under the permit and is part of the accrued right represented by the permit.
- 28 This is of particular relevance given a mandatory height control exists on part of the land that was not in place when the permit was issued.

KEY ISSUES

- 29 Arising from the submissions and evidence, the key issues to address in this proceeding are:
- Parking waiver
 - Bicycle parking provision
 - Building height
 - Built form including changes to the lower levels
 - Amenity

³ (Red Dot) [2018] VCAT 1120 [2019] VCAT 1140 at paragraph 53.



PARKING WAIVER

What is currently approved?

30 The current permit allows for a reduction in car parking with the endorsed plans showing the provision of 242 car spaces over five podium levels and four basements levels. A permit condition requires allocation of not less than 225 spaces for residents (with tandem spaces allocated to the same dwelling), not less than 7 spaces for retail and not less than 10 spaces for residential visitors.

31 The following table summarises the provision of parking as approved.

Use	Parking requirement	Parking provision	Statutory reduction
46 x 1-bedroom and 125 x 2-bedroom dwellings (total 171) 3 and 4 bedroom dwellings (29)	229 ⁴	225 in total (with 16 spaces in 8 tandem pairs)	4
Residential visitors	40	10	30
Retail floor space (749 square metres)	26	7	19
Total	295	242	53

32 The current permit allows a waiver that is less than the original permit. The original permit allowed a waiver of 149 car spaces of which 54 related to the residential component.

What is proposed?

33 The amendments seek a reduction of the number of car spaces from 242 to 194 and the introduction of 5 car share spaces. The allocation of car spaces is shown as:

- Seven car spaces for retail;
- 182 car spaces for residents that includes 24 tandem spaces; and
- Five car share spaces.

⁴ Based on 1 space for 1 and 2 bedroom dwellings and 2 spaces for 3 and 4 bedroom dwellings.

- 34 There is no requirement for residential visitor parking to be provided. This is a change from the requirements that applied when the original permit was granted.⁵
- 35 The following table sets out a summary of what is proposed.

Use	Parking requirement	Parking provision	Statutory reduction
99 x 1-bedroom and 132 x 2-bedroom dwellings (total 231) 3 bedroom dwellings (25)	231 50	182 (with 48 spaces in 24 tandem pairs)	99
Residential visitors	0	0	0
Retail floor space (523 square metres)	18	7	11
Total	299	189	110

What do the Planning Scheme and policies say about car parking?

- 36 The purpose of clause 52.06 is:

To ensure that car parking is provided in accordance with the Municipal Planning Strategy and the Planning Policy Framework.

To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.

To support sustainable transport alternatives to the motor car.

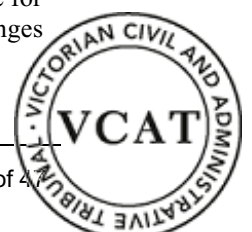
To promote the efficient use of car parking spaces through the consolidation of car parking facilities.

To ensure that car parking does not adversely affect the amenity of the locality.

To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

- 37 Clause 52.06-7 specifies that an application to reduce the number of car spaces required must be accompanied by a car parking demand assessment. This assessment is to address specified matters including the availability of public transport, the convenience of pedestrian and cyclist access, the

⁵ At the time the original permit was granted, the Planning Scheme set a requirement of 1 space for residential visitors per 5 dwellings. Amendment VC148, gazetted 31 July 2018, included changes to clause 52.06 that results in no requirement for visitor car parking where the dwellings are located within the Principal Public Transport Network Area. This includes the review site.



provision of bicycle parking, anticipated car ownership rates and any empirical study.

- 38 Before granting a permit to reduce the number of car spaces, consideration must be given to a number of matters. These include the car parking demand assessment, local policy, the availability of car parking in the locality, impact of fewer car spaces on local amenity and access to alternative transport modes.
- 39 The objective relating to car parking in State policy⁶ seeks to ensure there is an adequate supply of car parking with strategies that refer to consideration of other modes of access including public transport, road capacity, the potential for demand management of car parking and protecting the amenity of residential precincts from the effects of road congestion created by on-street parking.
- 40 The Planning Policy Framework supports increased diversity and density of development along the Principal Public Transport Network (PPTN) to maximise the use of existing public transport infrastructure and supports increased use of sustainable personal transport of walking and cycling.⁷
- 41 The Municipal Strategic Statement (MSS) places significant emphasis on sustainability with encouragement for significant housing growth in areas with greatest accessibility to public transport and services and supports the use of public transport, cycling and walking above private car travel.⁸ There is an aim to reduce non-essential car travel where there is an alternative transport choice to reduce road congestion and a commitment to sustainable transport initiatives that reduce dependence on cars.⁹
- 42 The MSS includes a specific objective to reduce the impact of vehicles on local areas.¹⁰ Strategies to achieve this objective include requiring new development to be self-sufficient in onsite parking and also allowing for a reduction in the parking spaces where the provision of sustainable transport facilities/initiatives can reduce the demand for parking through increased use of walking, cycling and public transport.
- 43 Policy on sustainable transport¹¹ seeks to facilitate the use of sustainable transport modes in preference to private vehicle use and to ensure new development supports the prioritisation of sustainable transport.
- 44 Strategies that apply to the St Kilda South Precinct¹² repeat the aim for new development to be self-sufficient in on-site car parking and specify rates of parking for dwellings that are the same as required at clause 52.06 of the Planning Scheme.

⁶ At clause 18.02-4S.

⁷ At clauses 18.02-1R and 18.03-2R.

⁸ At clauses 21.01-2, 21.01-3, 21.03-2,

⁹ At clause 21.03-2.

¹⁰ At clause 21.03-2.

¹¹ At clause 21.03-2.

¹² At clause 21.06-6.



- 45 Relevant decision guidelines in the Commercial 1 Zone (C1Z), the Mixed Use Zone (MUZ) and at clause 65.01 refer to the consideration of car parking, the effect of traffic to be generated on roads and the amenity of the area.
- 46 Other documents relevant to our findings on car parking include:
- Car Share Policy 2016-2021, adopted by Council on 17 October 2018. The document encourages the expansion of car share across the municipality to reduce the number of privately owned vehicles and create a shift to sustainable travel choices.
 - Move, Connect, Live Integrated Transport Strategy 2018-2028, adopted by Council on 20 September 2018, provides a long term plan for a well-connected transportation future for the municipality. It identifies that resident and worker populations are increasing and continued reliance on private car for transport will compromise a road network with limited capacity for increased on-street parking and vehicle movement in addition to increasing greenhouse gas emissions. Sustainable transport choices such as walking, cycling and public transport are identified as important to address these issues.
 - Sustainable Transport Strategy - A Connected and Liveable City, December 2014. The Council vision in this document is ‘for a connected and liveable city where residents, visitors and workers can live and travel car free by improving the accessibility and range of sustainable travel choices across our city.’ In relation to parking management, this document seeks new development to be self-sufficient in meeting parking needs with the exception of encouraging reduced or no parking developments for sites very close to public transport and shopping strips.¹³
 - Sustainable Transport Policy and Parking Rates, March 2007 (STP) is a reference document in the Planning Scheme.¹⁴ This document sets out the Council’s preference for promoting sustainable transport modes, a reduced reliance on the use of private cars and associated drop in need for private car ownership and parking. Reduced parking rates are specified for residential development (0-0.8 spaces for 1 and 2 bedroom dwellings and 1 space per 3 bedroom dwelling) subject to compliance with conditions.

What do the parties say, in summary?

- 47 Council says the proposed development would not provide an adequate number of car parking spaces for residents noting a significant failure in meeting the parking rates set in clause 52.06 and in policy.

¹³ At page 24.

¹⁴ At clause 21.07.



- 48 Council accepts that the site has locational attributes that allows for application of the reduced rate of 0.8 car spaces per 1 and 2 bedroom dwellings, as provided for in the STP, but says even applying that rate will result in a significant shortfall. Council points out that the Australian Bureau of Statistics (ABS) data supports the view that there would still be a shortfall of 36 car spaces to meet demand and that there are considerable numbers of occupiers of 1 and 2 bedroom apartments in St Kilda who do have car.
- 49 Respondents say the site can accommodate sufficient car parking to meet the standards set in clause 52.06 and in policy and failure to do so will result in negative impacts on local parking for existing residents and visitors. Particular concern is raised about:
- Currently there is insufficient on-street parking to meet the demand of residents and local businesses, particularly in evenings when there are no restrictions. The waiver of car spaces will significantly increase demand for on-street parking.
 - Lack of consideration of regular and numerous events that generate demand for on-street parking.
 - The fact that the site is not within 200 metres of an activity centre or within 400 metres of a supermarket, noting the nearest supermarket is small at 1200 square metres.
 - The disconnection of the site from the St Kilda activity centre created by the multi-lane St Kilda junction.
 - Walking distance to tram stop 30, where the majority of the tram and bus services are accessed, is 292 metres from the proposed entrance to the development and requires passing through the underpass with associated safety issues.
 - Limited parking may influence the demographics of future occupants with particular concern about short-term stays.
 - Viability of the 5 car share spaces proposed and their long term provision.
 - Inadequate loading provision.
- 50 In support of the waiver of car spaces sought, the applicant submits:
- The clause 52.06 rate applies across Melbourne and needs to be applied having regard to the context of each site and proposal.
 - The car parking demand assessment is only one part of the exercise of discretion. Clause 52.06 draws a distinction between the likely demand and whether it is appropriate to allow the supply of fewer spaces.



- The proposal is supported by State and local planning policy and other planning documents which are increasingly seeking to respond to the urban traffic challenge by encouraging means of travel that do not involve private car ownership and use.
- The location of the site supports the provision of apartments without car parking by reason of its proximity to the CBD, open space, schools, activity centre conveniences and its excellent public transport access.
- The proposal has adequately provided for car share spaces and bicycle spaces that will provide suitable alternative transport options for residents who do not own a car.
- There is a market for apartments without car parking spaces.

51 There is common ground in the evidence of Mr Walsh and Mr Young that:

- Five car spaces will provide appropriately for retail staff.
- The site is well located to take advantage of the access to transport alternatives including public transport, bicycle lanes and footpath network.
- ABS data suggests there is an existing demand for apartments with no parking space.
- On-street parking in the vicinity of the site is sufficiently protected to discourage future residents without an onsite car space to own a motor vehicle.
- There is suitable short term parking available in close proximity of the site for residential visitors and retail customers of the development.
- The provision of car share spaces will support apartments without a car parking space.
- Subject to some changes that can be achieved by permit condition, the design of the car park is appropriate.
- There is generous provision for bicycle parking.
- Provision for loading and waste collection are acceptable.
- There is no requirement to provide visitor car parking.
- Traffic generation associated with the development will be less than associated with the approved scheme.

Tribunal findings

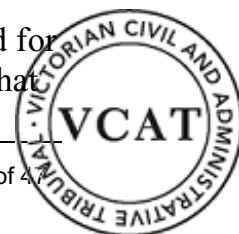
52 Direct comparison of the car parking waiver approved and proposed is difficult. If considering overall spaces provided, the original permit allowed a waiver of 149 spaces, the current permit allows waiver of 52 spaces and what is proposed is a waiver of 110 spaces.



- 53 The comparison in terms of numbers is not especially helpful due to changes in the requirement for resident visitor car parking, the alterations to the configuration and numbers of apartments, the change in use that originally included office floor space and the flexibility sought in allocation of spaces.
- 54 The key question is whether the car parking now proposed is acceptable.
- 55 Clause 52.02-7 sets out the matters that must be considered before granting a permit to reduce the number of car spaces required by the Planning Scheme. This clause effectively requires a two-step process. First an assessment of the likely demand for parking spaces and secondly, whether it is appropriate to allow fewer spaces to be provided.
- 56 Before setting out our findings we acknowledge that the car parking proposed for the 3 bedroom dwellings meets the required standard and there is no requirement to provide residential visitor car parking. Subject to some design changes recommended in the evidence of both traffic engineers, we are satisfied that the loading area is satisfactory, noting that it is similar to that shown on the current scheme.

Car parking demand

- 57 In considering the matters pertaining to an assessment of the car parking demand we find as follows:
- It is likely that customers of the retail floor space will include staff and residents of the building, residents of nearby apartments and staff and customers of surrounding commercial businesses. Multi-purpose trips within the locality are likely and we agree with Mr Young this will reduce the parking demand associated with the retail tenancies.
 - There is excellent access to a range of public transport with multiple tram and bus options close by and a train station approximately 950 metres to the east. The ready availability of public transport supports a reduced need for a private vehicle and associated car space.
 - Although we agree with respondents that the broad and vehicle dominated St Kilda junction has challenges, we nevertheless find the site conveniently located for pedestrian and cyclist access. The site is proximate to a wide range of services and facilities that are within walkable distance that allows access without the need for a private vehicle trip.
 - The proposal provides generous bicycle parking and end of trip facilities for cyclists in a manner that will encourage cycling as a mode of transport. Although we have reservations about the convenience of bicycle parking, we consider this can be addressed by permit condition, an issue we address later in this decision.
 - Based on the 2016 ABS data for St Kilda there is a market demand for 1 and 2 two bedroom dwellings with no parking. The data shows that



37% of 1 bedroom occupants and 21% of 2 bedroom occupants have no car.

- We accept the evidence of Mr Young and Mr Walsh that the retail staff parking demand is likely to be 5 car spaces, based on empirical studies that show staff parking demand is typically 1 space per 100 square metres of floor area.
- There will be a demand for customer parking associated with the retail floor space. Mr Young estimates that to be up to 13 spaces although says that much of this demand can be expected to be absorbed in multi-purpose trips.

Should a reduced number of car spaces be allowed?

- 58 If considering just the number of dwellings compared to the number of car spaces, the extent of waiver is significant with 182 car spaces for 256 apartments. The practical requirement for tandem car spaces to be allocated to single dwellings effectively means there will be 99 apartments with no car parking space. This compares with the approved plans that allows for every apartment to be allocated at least one car space.
- 59 We agree with submissions that the amendment sought results in a significantly greater waiver of parking for apartments compared to the current permit, although less so when compared with the original permit which allowed 20 apartments with no car space.
- 60 Before assessing the residential car space provision proposed, we provide our findings on the car parking associated with the retail space.
- 61 The plans show the provision of 7 car spaces for retail. Applying the Planning Scheme standard would require provision of 18 spaces. We are satisfied that an acceptable provision to meet demand for staff parking is 5 car spaces. We base this on application of an empirical generation rate of 1 car space per 100 square metres of floor area provided in the evidence of both traffic engineers and consistent with the rate applied by the Tribunal in *Drekoncile Pty Ltd*. The absence of onsite parking for retail customers is acceptable for reasons relating to multi-purpose trips in an activity centre, the accessibility of the site by public transport and the availability of short term car parking nearby. Also relevant is that neither the original nor current approval for development of the site provide onsite customer parking. This proposal, with a reduced retail floor area, will reduce reliance on on-street parking for customers compared to the approved scheme.

Demand for car parking

- 62 The ABS data suggests there is a market for apartments without a car space. As set out earlier, in St Kilda the data shows 37% of 1-bedroom occupants and 21% of 2 bedroom occupants have no car. Applying those percentages to the proposal would mean 37 of the 99 x 1 bedroom apartments and 28 of the 132 x 2-bedroom apartments would require no car space. Conversely if



means that there would be 166 apartments that require a car space. With 132 spaces provided for the 1 and 2 bedroom apartments, this would mean a shortfall in demand of 34 car spaces based on projecting the ABS data.

- 63 We accept that the proposed number of dwellings that will be without a car space is greater than the likely demand. However, we consider there is strong strategic support in the Planning Policy Framework, especially in local policy, for suppression of parking demand in this location where there is excellent access to public transport and to an activity centre. The reduced provision of car parking is supported in the policies that seek to address traffic congestion, limit greenhouse emissions and encourage a modal shift to more sustainable transport options. Sustainable transport policy¹⁵ specifically refers to the high rate of private vehicle ownership in the municipality and the commitment of Council to reduce the dependence on cars.
- 64 In some circumstances, we would say that limiting supply of car parking is inappropriate due to negative impacts that might arise on the surrounding area. We do not think that will occur here for two reasons. First, around the review site the parking restrictions in the surrounding area effectively confine on-street parking to short term only. Of the 211 car spaces in the vicinity of the site¹⁶ there are only three unrestricted long term parking spaces (with the remainder a mixture of 1/4P, 1P, 2P and 4P during weekdays and Saturdays or resident permit parking). Future residents of the development without a car space will be unlikely to find long term parking in the near vicinity of the site. We consider this will discourage car ownership and limits the potential impact of the parking dispensation sought. Secondly, future residents will not be eligible for resident/visitor parking permits and thus will not increase competition for the limited supply of these spaces.
- 65 It could be inappropriate to suppress parking demand where there were limited options for means other than a car to provide access to services, employment, shops and facilities. Such circumstances do not apply to this site. The location allows excellent access to employment, entertainment and leisure options, activity centre services and schools via walking, cycling and public transport. The public transport options are multiple allowing access to a range of destinations and include five tram routes and three bus routes close by. The Windsor railway station is approximately 950 metres to the east. We agree with Mr Young that not having a car in this location does not mean you cannot live well.

Local planning policy

- 66 The local policy for the St Kilda Road South precinct (at clause 21.06-6) repeats the residential parking rates as clause 52.06. We agree with the applicant that this is curious since it conflicts with the sustainable transport

¹⁵ At 21.03-2.

¹⁶ As referred to in the evidence of Mr Walsh dated 15 November 2019.



policy that allows for reduced parking, the lower parking rates contained in the STP, with much of the policy emphasis on reducing reliance on private motor vehicles and the background report¹⁷ prepared to inform Amendment C122 (which introduced the policy and which recommended a lower ‘sustainable rate’ for dwellings in the mixed use and commercial zones). In any event, the car parking rates referenced in policy are a consideration, not a mandatory requirement.

- 67 Policy on sustainable transport at clause 21.03-2 allows for
- ... a reduction in the required number of on-site parking spaces where the provision of sustainable transport facilities / initiatives can reduce the demand for parking through increased use of alternative modes of transport: walking, cycling, and public transport.
- 68 The STP, an incorporated document in the Planning Scheme, allows consideration of reduced parking rates. It sets an upper rate of 0.8 spaces and a lower rate of between 0 and 0.8 spaces per 1 and 2-bedroom dwellings. This provides a useful guide to exercise discretion but cannot be considered as containing mandatory criteria (despite reference to ‘necessary conditions’ for application of reduced rates).
- 69 Based on the provision of 132 car spaces for 231 x 1 and 2 bedroom apartments, the rate of parking achieved is 0.52 spaces per apartment. If all apartments are included, the rate of parking is 0.71 per apartment. We think this latter rate is not useful to our assessment since it includes the tandem car spaces allocated to 3 bedroom apartments that, in practical terms, must be allocated to single apartments.
- 70 Assessing the proposal against the ‘necessary conditions’ for application of the reduced rates (both the upper limit rate of 0.8 spaces for 1 or 2-bedroom dwelling and the lower rate of between 0 and 0.8), the proposal performs well as follows:
- The site is in a commercial zone and in close proximity to the St Kilda activity centre.
 - The site is proximate to a fixed rail tramline.
 - There is strict control of public parking nearby.
 - There will be no resident parking permits granted to future owners/occupants.
 - There is provision for motorbike parking.
 - The 99 1-bedroom apartments could reasonably be regarded as small.
 - Five car share vehicles are to be provided on site for use by residents.

¹⁷ St Kilda Road South Precinct Transport and Parking Capacity and Demand Study, Stage 2 Final Report, Revision 2 dated 5 June 2015 prepared by Ratio.



- The apartments are located within a mixed use development and in proximity to an employment precinct.
- The generous provision of bicycle parking and end of trip facilities for retail staff contributes to sustainable transport infrastructure.
- The applicant is prepared to accept a condition requiring a Green Travel Plan that would facilitate provision of information to new residents of the alternative transport options in the area.

71 The nearest supermarket is approximately 600 metres to the south-west, on the northern side of Fitzroy Street. Although we acknowledge this is beyond the 400 metres referred to in the criteria for allowing a reduced parking rate, we consider it is in reasonable proximity. We are satisfied that its size is sufficient to supply daily needs.

72 The high degree of compliance with the criteria set for application of a reduced rate of car parking per dwelling in the STP supports allowing apartments with no car parking. Combined with the clear direction in local policy and documents adopted by Council¹⁸ to reduce private vehicle travel and encourage a sustainable transport system that prioritises walking cycling and public transport, we think there is considerable support in local policy for a reduced parking provision.

73 Self-sufficiency in meeting parking needs is sought in policy and adopted documents. The concept of self-sufficiency suggests that car parking provided should meet the anticipated demand in full. This approach is inconsistent with the strong emphasis in policy on encouraging modal shifts and a commitment to sustainable transport initiatives that reduce dependence on cars. We consider there is support for suppressing demand in this location and this is acknowledged in the Sustainable Transport Strategy¹⁹ that says:

Ensure new developments are self-sufficient in meeting their parking needs – with the exception of encouraging reduced parking or no car parking development for sites very close to public transport stops and shopping strips.

74 We also place some credence on the applicant’s submission that, if approved, the proposal will be self-sufficient in parking, as the future residents who reside in apartments without car parking will do so without a car.

Availability of alternative car parking

75 We have referred to the constrained nature of on-street parking nearby whereby the time restrictions create a strong disincentive for future residents to contemplate parking on-street. We are satisfied that the approval of a development with reduced car parking will not unreasonably

¹⁸ As set out in paragraphs 37-48 of this decision.

¹⁹ At page 24.



impact on-street parking availability. We note that if Council considers it necessary, the parking restrictions in the area could be extended to evenings and Sundays.

- 76 We are satisfied that the time restrictions on nearby on-street parking provide appropriately for the short term parking demands of residential visitors and retail customers.

Local traffic management

- 77 Less car parking on-site will mean less vehicle trips to and from the review site. In turn, this will result in a lower volume of traffic movements in the road network. This is an outcome supported by local policy that refers to an aim of Council ‘... to reduce non-essential car travel where there is an alternative transport choice, as a means to reduce issues associated with contested and congested road space.’²⁰ It also accords with the Move, Connect, Live Integrated Transport Strategy 2018-2028 that identifies the negative impacts of increased private car trips and seeks to achieve a target of maintaining the current levels of congestion to 2028 with approximately the same number of private vehicle trip numbers as in 2016.²¹

Alternative transport modes

- 78 The proximity of the site to transport modes other than private vehicle is excellent. As previously referred to, there are multiple public transport options nearby, the site is within walking distance of many services and facilities and connected to a number of bicycle routes. This provides future residents accessibility without the need for a car.
- 79 In finding the car parking waiver sought acceptable, we have placed weight on the generous provision for bicycle parking proposed that supports an alternative mode of transport to and from the land. We address bicycle parking separately.
- 80 We acknowledge the physical characteristics of the St Kilda junction that creates a barrier to pedestrians and cyclists. Our site visit included using the subway under the junction and we recognise the shortfalls in the signage and safety of this space. These are existing issues and do not, in our view, warrant rejection of the amendments sought in relation to additional apartments and altered car parking waiver. We note there are upgrade works proposed for the St Kilda Road bicycle paths and the issues associated with accessibility and safety at the junction are the subject of review.²²

²⁰ At clause 21.03-2.

²¹ At pages 22 & 23.

²² Including the St Kilda Junction Accessibility and Personal Safety Audit Report dated April 2019 referred to by respondents.



- 81 The proposed amendments include the provision of 5 car share spaces within the development. This provides a convenient mode of transport to and from the site other than by a privately owned car.
- 82 Council has an adopted Car Share Policy (CSP).²³ The CSP supports the provision of car share vehicles within developments to reduce the need for car parking and car ownership for that development, to lessen the impact of cars in the locality and to supplement the network of on-street car share vehicles. The CSP says the provision of car share vehicles within a development is supported by Council along with a reduction in the number of car parking spaces provided on-site. It refers to the need to provide public access to the car share vehicle and sets out guidance on the location and design of the spaces.
- 83 Mr Young says that it is proposed that 2 of the 5 car share vehicles would be available publicly (subject to membership) with all 5 spaces available for the residents of the development. Access to the car share spaces for persons not resident in the development, would be via a limited time frame electronic access arrangement. It is his evidence that discussions with GoGet, who operate a number of existing car share spaces nearby, indicate that the provision of 5 car spaces to the 99 dwellings without a car space would be sufficient to meet demands.
- 84 The inclusion of the car share spaces is important to our support for a car park waiver for this amended proposal. We think the provision ensures occupants of the development without a car (and without a car space) can conveniently access a vehicle when the need arises. In terms of viability, it is relevant that Council's Strategic Transport Planner indicated that 99 apartments without car parking would support 5 car share spaces.
- 85 We think it is appropriate to include a permit condition that requires a management plan for the car share and that at least 2 of the spaces be available to persons other than residents of the development.
- 86 The approved scheme shows 4 motorbike parking spaces and the amendment shows 5. The 5 shown exceeds the rate sought in policy.²⁴ The revision 6 plans show an additional 7 motorbike spaces. We think 12 motorbike spaces is a positive contribution to supporting transport modes alternative to a private car and consider this should be required as a permit condition.

Conclusion on parking waiver

- 87 The applicant referred to a number of Tribunal decisions²⁵ that have supported the waiver of car parking especially where the sites have been well located for transport options other than a private vehicle. It is our view

²³ Adopted 17 October 2018.

²⁴ At clause 21.06-6 that specifies one motorbike parking space per 100 car spaces).

²⁵ Including *Frydman v Port Phillip CC (Red Dot)* [2012] VCAT 1838; *Yurtov v Port Phillip CC* [2015] VCAT 1514; and *Ronge v Moreland CC (Red Dot)* [2017] VCAT 550.



that these decisions reflect the shift in the Planning Policy Framework to support reduced reliance on private cars use and that means allowing development where people have the *'ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home.'*²⁶

- 88 We consider the review site is well placed to fulfil the aspirations of the 20 minute access for everyday needs via means other than a private car. In the circumstances of this case, we find a reduced provision of car parking as proposed is acceptable for the reasons set out above.

BICYCLE PARKING PROVISION

- 89 The proposal incorporates 262 bicycle spaces with 76 spaces at ground floor and 186 across four basement levels. The spaces are provided in a mix of vertical and horizontal rail with 20% of spaces horizontal.
- 90 A shower, lockers and bicycle workshop are shown on the ground floor.
- 91 This varies from the currently endorsed plans which show 180 bicycle spaces over four basement levels and no end of trip facilities.

In summary what do the parties say about bicycle parking?

- 92 Council takes no issue with the number of bicycle spaces but raises the following concerns:
- Location of majority of bicycle parking in the basement is not convenient or accessible. Rather the spaces in the lower basement levels should be relocated to either basement level 1 or preferably the ground level.
 - Some visitor bicycle parking should be located at ground level in an easily accessible location proximate to Wellington Street.
 - Where practical, resident bicycle spaces should be in a central location with a secure compound.
 - All bicycle spaces must be installed in accordance with the relevant standard.
- 93 Respondents submit the bicycle parking is a poor design that fails to create easy access for both residents and visitor and is inadequate to create and inspire a transition to more sustainable transport. Particular features criticised are:
- The ramps to the basement are not appropriate for use by cyclists due to steep gradient and safety issues sharing with cars.
 - Location of parking is haphazard and out of the way with 71% located in basement levels.

²⁶ At clause 15.01-4R and various references in Plan Melbourne 2017-2030.



- Safe access to the basement parking is via small sized lifts with a single bicycle occupying approximately 45 % of the lift space.
- Unclear how visitors on bicycles will gain access to the site.
- 78% of the bike racks are hanging style which are difficult for some people to access.
- No provision for Ebikes.

94 Whilst acknowledging the bicycle paths in the area, respondents raise concerns about the danger for cyclists in the immediate vicinity of the site.

95 The applicant says the proposal provides plentiful, secure and easily accessible bicycle parking with good lift access and end of trip facilities.

Tribunal findings

96 The overall number of bicycle spaces is generous and exceeds the standard set in the Planning Scheme.²⁷ We think the generous provision of bicycle spaces will encourage cycling as a mode of transport as sought in the Planning Scheme and is appropriate where there will be multiple dwellings with no car space and where the location allows good bicycle access to various destinations.

97 The site is located in an area where there are many bike paths linking to the broader network. Wellington Street is designated as an ‘on road bicycle route’²⁸ and St Kilda Road provides bicycle paths to central Melbourne. Although we acknowledge that safety for cyclists in the vicinity of the St Kilda junction is not ideal, we are not persuaded that this is a basis for discouraging a development that provides well for cyclists. In reaching that view we have had regard to the upgrade works being undertaken by the State Government for the St Kilda Road bicycle paths.²⁹

98 The provision of end of trip facilities for bicycle riders, although not required by the Planning Scheme, supports the use of bicycles as a mode of transport for employees associated with the retail spaces and the residential use and is a positive outcome.

99 Although power points for recharging of Ebikes could be placed in bicycle parking areas, security of batteries may be an issue. We agree with Mr Young that Ebikes generally include a removable battery that can be taken to the apartment for recharging.

100 Based on the evidence of Mr Walsh we are satisfied that the gradients and two way design of the ramps will allow cyclists to safely use ramps to access bicycle spaces in the basement.

²⁷ Clause 52.34 require provision of 80 bicycle parking spaces for the amended proposal.

²⁸ As referred to in the Sustainable Transport Framework Plan referred to in clause 22.03 of the Planning Scheme.

²⁹ Referred to in the applicant’s submission: <https://roadprojects.vic.gov.au/projects/st-kilda-road-bike-lanes> and referred to in the oral evidence of Mr Young.



- 101 We agree with submissions that the bicycle parking layout presents with limited convenience for some bicycle spaces and that additional spaces at ground level, especially for visitors is required. We think this can be achieved. We have reached that view having regard to the Revision 6 plans that shows a layout with secure, accessible and convenient bicycle parking that includes:
- An additional 62 spaces at ground level which limits the need to use the lifts (a total of 138 spaces at ground level which is 50% of the bicycle spaces provided).
 - An increased number of horizontal spaces at ground level from 9 to 60, noting the 22% horizontal spaces proposed exceeds the 20% standard required.
 - The provision of 10 well located visitor spaces adjacent to the Wellington Street entry.
- 102 Subject to changes that reflect the above layout, we are satisfied that the bicycle facilities proposed are appropriate. We acknowledge the changes required will alter the ground floor and basement layouts and potentially the size and number of basements. We will refer to the Revision 6 plans in requiring this change.

BUILDING HEIGHT

What is currently approved?

- 103 The current approval allows for a 26 storey west tower and a 10 storey east tower. The west tower is 90.92 metres high at the south (Wellington Street) elevation taken from the highest point of the stepped in roof crown/top of plant (AHD 104.025) to the natural ground level of the footpath (AHD 13.110). The east tower is 40.33 metres high at the south (Wellington Street) elevation taken from the highest point of the roof plant (AHD 54.400) to the natural ground level of the footpath (AHD 14.070).

What is proposed?

- 104 The applicant is seeking to increase the heights of the west and east towers (to the top of plant screening) by a maximum of 0.6 metres and 0.4 metres respectively.³⁰
- 105 Apart from the height increase sought, the plant layout at the uppermost level of the east tower (level 12 on revision 5 plans) has increased in size.

In summary, what do the parties say?

- 106 The respondents raise concerns about the increased mass and height and lack of detail of roof top plant, screens and solar panels. Concerns are also expressed about an overshadowing increase to the southern footpath of

³⁰ There are slight variations in the increased height proposed depending which level of plant is assessed.



Wellington Street as well as to the Icon apartments as a result of the increased height and potential impacts on the Shrine Vista.

- 107 The respondents say the substantially changed planning regime that has occurred since the original permit was granted means that any increase outside the endorsed building line is unacceptable. They refer to Amendment C122 that has applied:
- DDO35 to the eastern part of the site with a 10 storey or 35.5 metre mandatory maximum height with an allowable exceedance of up to 4 metres for architectural features such as building services, including enclosed stairwells.
 - DDO34 to the western part of the site with a discretionary maximum height of 16 storeys or 56.5 metres.
- 108 Council raises no concern with the additional height proposed.
- 109 The applicant submits that the increase is ‘negligible in context of the proposal’.
- 110 Mr Twite’s evidence is that the increase in height ‘is generally in accordance with the endorsed plans’. Mr Twite provided overshadowing drawings (prepared by Plus Architects).³¹ In his opinion there is no discernible difference between the two shadow conditions, other than a small reduction of overshadowing where the podium has been lowered. Mr Twite’s evidence is that the Shrine Vista would not be affected by the increase in mass of the east tower due to the location of the vista viewline.

Tribunal findings

- 111 We are satisfied that the height increases proposed in revision 5 plans are acceptable for the following reasons:
- The height increase is minimal in context of accrued rights. We find that the difference between the approved and proposed height would not be discernible from the public realm in near and longer-range views. We agree with Mr Twite that the change is ‘generally in accordance’ with the approved plans.
 - The increase sought does not offend the new DDO34 or DDO35 significantly more than currently approved endorsed plans, noting that the original proposal approved in *Drekoncile* is higher again.
 - The visibility of the upper levels of both the west and east tower are minimal and we not concerned about a further additional mass that will be produced on the east tower from the screening to a non-trafficable roof maintenance access area on the north at level 12.
 - Council and Mr Twite have advised the amendments comply with the Shrine Vista Controls.

³¹ At Attachment 3 of Mr Twite’s evidence



- The additional overshadowing is barely discernible and will not cause any appreciable additional off-site amenity impacts to the Wellington Street footpath or the Icon building compared to what would occur from the approved plans. Due to the lowering of the break in the podium, there is a reduction in shadow where an increased space width between the towers will occur. The result will be to reduce shadow to Wellington Street, the public realm and the Icon building façade.

BUILT FORM, INCLUDING CHANGES TO LOWER LEVELS

What is currently approved?

- 112 The approved endorsed plans show a six storey podium connecting the two towers. Except for the ground level, the podium contains some sleeved carparking at each level in addition to communal facilities and apartments. The endorsed plans also include a reference to an approved façade strategy.
- 113 The podium is contiguous in built from across the first six storeys (up to level 5) and the tower forms emerge from this level up.

What is proposed?

- 114 The revision 5 plans seek to modify the podium by creating a break in the built form at the fourth storey (level 3) thereby reducing the podium to three storeys. At this level, a 9.26 metre wide break between the two towers appears as a non trafficable roof maintenance area with a circular void/skylight to the levels below. This gap between the two towers is three storeys lower than in the endorsed plans.
- 115 There are changes to the exterior of the building to reflect the altered internal layout that results in altered placement of windows and balconies. Additional detail of external materials is shown on the elevations.

What do the parties say, in summary?

- 116 The respondents are concerned the new tower/podium configuration will increase mass, alter the presentation of the building and is inconsistent with the previously endorsed plans.
- 117 Mr Ischia submits the lowering of the podium and inclusion of built form cut-outs warrants a new wind report. He says the changes to the podium will result in the loss of the continuous wall height to the detriment of the design.
- 118 Mr Sabey submits that the site is exposed on St Kilda Hill from the bay and Albert Park Lake and that any further building modifications could result in adverse off site wind impacts. Mr Sabey suggested inclusion of a permit condition requiring placement of a plaque to explain the artist's inspiration and strategy.



- 119 Ms O'Connor submits that the amendments fail to recognise the Integrated Art as required by the endorsed 'façade concept artists report' that includes the artist statement of Robert Owen. She says in the absence of a detailed external materials schedule or updated perspectives, it is unclear how the urban art will be appropriately accommodated.
- 120 The written evidence of Mr Brand is that there has been inadequate progress in the design work to achieve the façade strategy required for the development. He says the development is very low quality architecture and inappropriate for the significant marker site at the top of St Kilda Road. He is concerned that the urban artwork is insufficiently developed.
- 121 Professor Hutson evidence is that the proposed changes retain the architectural integrity and high standard of the proposal. He recommends that a revised materials schedule be required by way of a permit condition where balconies and soffit details have changed.
- 122 The applicant submits that the lowering of the podium should be seen as a neutral or even positive change (due to marginally less overshadowing). The applicant submits changes to the façade are minor and the previously endorsed façade strategy is maintained.
- 123 The applicant says that the proposed revised glazing colour to a blue glass is a result of ESD input and advice from Mr Talacko to enhance the energy efficiency of the façade. The repositioning of windows and balconies on the façade are as a consequence of the revised internal layout. Mr Twite states that this application does not seek to change the approved endorsed plan street wall heights, ground floor frontages or front setbacks.

Tribunal findings

- 124 We find that the proposed changes to the podium acceptable and agree with the evidence of Professor Hutson that the architecture will remain consistent with the endorsed plans. The consequential changes to window and balcony arrangements, in our view, can be accommodated within the existing architectural language.
- 125 We find that the reduction of the podium height and massing is acceptable and could be seen as a positive change in that a lesser mass is proposed closer to the ground levels of the adjoining public realm. In reality, the arrangement of the curvilinear façade will mean that the lowering of the podium will not be obvious from many vantage points in the public realm except for locations directly in front of the tower breaks. A positive aspect is the improved proven daylight penetration to the centre of the building without adverse impacts on the integrity of the external appearance.
- 126 The façade strategy that includes the artists statement is endorsed and is not proposed to be amended in this proceeding. We will not require the placement of a plaque explaining the inspiration for the artwork. It is our view that this should be at the discretion of the artist and Council and can



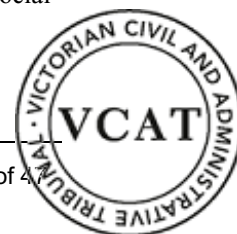
be achieved as part of the amended plans that will be required by condition 1 of the permit, noting the applicant did not oppose the concept.

- 127 We agree with Professor Hutson that a revised schedule of external materials should be provided, and we will require it by way of a permit condition. We also agree with Professor Hutson that the architectural integrity and merit of the proposal is preserved with the proposed changes.
- 128 We place very limited weight on Mr Brand's evidence. We cannot conclude his evidence is 'impartial' or 'dispassionate' as required in the VCAT practice note relating to expert evidence.³² We reach that view given he was a respondent opposing the proposal in the original Tribunal proceeding and has publicly criticised the development in his role as a Port Phillip Councillor.³³ Although we accept he has expertise as an architect, we find he does not provide an independent opinion on the matters we need to decide.
- 129 We acknowledge concerns about wind impacts. We think much of the material raised by the respondents are criticisms of the original proposal and to the wind assessment report approved by Council under the current permit. These matters are not before us.
- 130 We are satisfied that the potential wind impacts arising from the amendments proposed will be appropriately considered and addressed. We reach this view based:
- An assessment undertaken by Vipac³⁴ that reached the conclusion that the proposed design changes are not expected to adversely affect the adjacent wind environment compared to the original design tested in the tunnel.
 - A permit condition that will require Council to approve and endorse an updated version of the wind assessment for the amended plans. This condition requires implementation of any modifications required to ensure acceptable wind conditions to the satisfaction of Council.
- 131 We accept that the blue tinted glazing was a recommendation from Mr Talacko and that it is warranted for achieving acceptable energy efficiency levels. We note that the applicant is now committed to the following:
- Australian Excellence ESD: Green Buildings Council of Australia Benchmarking of a 5-Star *GreenStar* Design and As Built v 1.2
 - Achievement of Best Practice Water Sensitive Urban Design
 - High efficiency building thermal envelope reflected by an average 7-Star *NatHERS* rating

³² Practice Note-PNVCAT2 Expert Evidence.

³³ The applicant provided two pages (dated 9 October 2016 & 20 September 2016) taken from social media where Mr Brand, as a Councillor for Port Phillip, criticised the design of the original development for the review site.

³⁴ Letter from Vipac Engineers and Scientists Limited dated 12 November 2019.



132 We find these ESD commitments are acceptable and in fact exceed the policy requirement in the planning scheme. The permit conditions will address these matters.

AMENITY

133 Council says the amended plans raise some amenity concerns. These include:

- Reduced provision for storage resulting in 56 apartments with no storage cage.
- Poor interface with the backpackers accommodation at 14 Punt Road resulting in compromised amenity due to overlooking to and from apartments 101, 102, 210 and 202.

134 Respondents raise the following concerns regarding amenity:

- Inadequate lifts for the west tower with only two serving 165 apartments.
- Poor connectivity between the two buildings arising from the reduced podium levels and the limited access this will provide to the pool and gym located in the western tower. The uncovered walkway on level 4 is criticised.
- Poor design of some apartments that creates long, hallways wasting space that could be better allocated to living area.
- Inadequate storage.
- Inappropriate dwelling mix with 53 additional 1 bedroom apartments, some with poor amenity.

135 The Tribunal queried the layouts of some apartments that appeared to provide sub optimal internal amenity. These included:

- Apartments 312, 412 and 512 do not appear to allow for enough room for a dining area.
- Apartments 614 and 714 are both 53 square metre 1 bedroom apartments that appear to have about 10 square metres devoted to a long corridor. This arrangement is occurring to a lesser degree but similarly in apartments 214, 303, 403, 503 and 603.
- Apartment 113 and 213 have south facing balconies of 7 square metres, which could be viewed as unacceptable in size.
- The penthouse layout of the west tower that shows that the dwellings on the uppermost floor (level 26) would have no lift access and be accessible only by stair from the level below.

- 136 During the hearing³⁵, the applicant circulated detailed ‘marked up’ apartment layouts in response to concerns expressed by Council, respondents and the Tribunal. These mark ups show layout for a number of apartments demonstrating living and bedroom widths as well as alternative layout options where minor internal reconfiguration could increase balcony widths and areas in question.
- 137 It is the evidence of Mr Twite that, on balance, the amenity of the proposed apartments is improved where possible and made no worse than the endorsed conditions. He says the external storage is inadequate and storage should be provided to each apartment. He says the long hallways may create a perception of space. In regard to the interface with 14 Punt Road, Mr Twite’s evidence is that the extent of overlooking is acceptable due to the small aperture of the existing window, the lesser sensitivity of the land use to overlooking and the location of the site in a commercial zone where high density housing is encouraged and amenity expectations tempered.
- 138 We set out our findings on these amenity issues in turn. Before doing so we note that the provisions of clause 58 of the Planning Scheme³⁶ that relate to apartment developments do not apply. There were conflicting submissions as to whether the Apartment Guidelines for Victoria³⁷ are relevant. Even if these guidelines are not relevant, we consider the amenity for future residents is a relevant consideration in our assessment of the proposed plan changes. All parties and Mr Twite’s evidence addressed the internal amenity of the amended plans.

Storage

- 139 We agree with submissions that the reduction in external storage as presented in the amended plans is unacceptable. We consider the provision of adequate storage facilities for apartments is an important component of onsite amenity for future occupants. The approved plans provide external storage for each apartment.
- 140 The revision 6 plans show a revised layout that includes provision for additional external storage in the basement levels and at levels 1-3. We are satisfied that these plans demonstrate that each apartment can be provided with external storage (with a minimum of 3 cubic metres per apartment). We will include a permit condition that requires provision of at least 3 cubic metres of external storage per apartment to be located and designed to the satisfaction of Council.

Interface with 14 Punt Road

- 141 The three storey southern wall of the backpackers accommodation on 14 Punt Road contains one habitable room window facing the review site. This

³⁵ Day 4, 10 December 2019

³⁶ Due to transitional provisions contained at clauses 32.04-6 and 34.01-4.

³⁷ Department of Environment, Land, Water and Planning 2017 referred to in clause 15.01-2S.

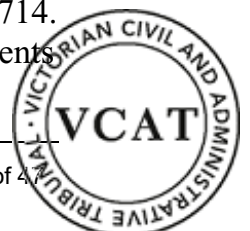


window is at first floor level and is to a shared bedroom containing three beds.

- 142 The proposed layout shows four apartments at levels 1 and 2 (apartments 101, 102, 202 and 220) facing 14 Punt Road setback 4.5 metres to the balconies and 6.5 metres to the apartment walls. This varies from the endorsed plans that show a setback of 3.1 metres at these levels but with no apartments (or windows and balconies) facing north.
- 143 We are satisfied the interface to 14 Punt Road is acceptable. It increases the building separation to 4.5 metres which is an improved response to daylight for the bedroom windows and to equitable development opportunities.
- 144 Although screening could be provided to apartments 110 and 220 (102 and 202 are at a higher level and sufficient distance to limit views), we think the impacts on privacy are acceptable. We say this given the bedroom of the backpackers accommodation is a shared room where internal privacy is compromised, the use of blinds can manage the privacy of both the existing and new windows and the reasonable amenity expectations in the context of the Commercial 1 zoning of both sites.

Layout of apartments

- 145 A direct comparison of the endorsed plans with the amended plans in terms of apartment layout is limited due the alterations to apartment numbers and sizes. Importantly, we are satisfied that the amended plans provide apartment layouts that will achieve acceptable amenity in terms of outlook, daylight, functional spaces, balcony space and access to communal facilities for future occupants, subject to changes we set out below.
- 146 Balcony sizes are adequate for the associated apartment size. There are three exceptions where increases in balcony size is required to ensure the amended plans do not result in a worse outcome compared to the approved plans. We are satisfied that a permit condition can address this issue through minor adjustments internal to the building envelope. This includes an increase size of balcony for apartments 113, 213 and 2602.
- 147 Our concerns about the capacity for apartments 312, 412 and 512 to accommodate a dining table can be addressed with an alteration to the kitchen layout that provides a galley rather than an L-shape design. This can be required by permit condition that refers to the marked up layouts provided at the hearing.
- 148 We find a design for a 1-bedroom, 53 square metre apartment that includes 10 square metres for hallway represents poor use of limited floor space. Notwithstanding, we accept in the case of five of the apartments (215, 303, 403, 503 and 603) the overall design is acceptable. The living room in each of these apartments provides a useable and functional space.
- 149 We cannot reach the same conclusion in relation to apartments 614 and 714. The living room (excluding the dining and kitchen area) in these apartments



has a width of 2.9 metres and provides a varying depth down to 2.5 metres (due to the curvilinear external wall). In some circumstances this limited size might be made balanced by larger dimensions elsewhere in the apartment or be made more functional by a different furniture placement compared to that shown on the plans. That is not the case here. We find these two apartments have compromised functionality. They represent a reduced level of internal amenity for 1 bedroom apartments compared to 1-bedroom apartments on the approved plans. We will require the plans to be modified to delete these apartments with a condition of permit allowing a redesign of the space to be absorbed in the nearby apartments or to provide for studio style apartments to the satisfaction of Council.

Connectivity and lift access

- 150 The endorsed plans that include the six level podium provide pedestrian connection between the towers at levels 4 and 5. The amended proposal that reduces the podium levels shows an uncovered walkway at level 4 but no connection at level 5.
- 151 We find the layout as proposed provides an acceptable level of connectivity. Although it removes one level of connection between the towers, this will not unreasonably compromise the amenity of occupants or make access to the multiple communal facilities difficult.
- 152 Provision of lifts including capacity is dealt with under other regulations. It is not a matter dealt with by the Planning Scheme.

Penthouse layout

- 153 The Tribunal questioned the revised penthouse layout of the west tower that shows that the dwellings on the uppermost floor (level 26) would have no lift access. The endorsed plans show this uppermost level as two 'cold shell' apartment spaces accessed from the lower level showing internal stairs and ample room for the provision of private lifts.
- 154 The applicant submitted a revised layout during the hearing showing that lift access to level 26 could be provided (revision 6 plans). These plans showed that such provision would result in encroachment of the lift overrun outside of the endorsed plans roof outline at the roof plant level. We do not require this change. It was not part of the amendments sought and we do not consider the lift access as essential for the amenity of future residents.

Dwelling mix

- 155 The dwelling numbers and mix has changed. We find that the additional 56 apartments proposed will contribute to housing availability in an area with excellent locational attributes and is a positive outcome compared to the approved proposal. We are satisfied that the mix of dwelling sizes (99 x 1-



bedroom, 132 x 2-bedroom and 25 x 3-bedroom) provides a diversity of dwelling sizes, as sought in the Planning Scheme.³⁸

PERMIT CONDITIONS

156 We have had regard to submissions and evidence in relation to permit conditions. The conditions attached in Appendix A to this decision reflect our findings.

157 The current permit contains the following condition relating to expiry:

This permit will expire if one of the following circumstances applies:

- (a) The development is not started within two (2) years from the date this permit is amended.
- (b) The development is not completed within five (5) years from the date this permit is amended.

158 There were submissions made on the correct interpretation of this condition.

159 At the hearing, the parties agreed that an appropriate wording of the condition would be:

This permit will expire if one of the following circumstances applies:

- (a) The development is not started within two (2) years from the 12 February 2019.
- (b) The development is not completed within five (5) years from the 12 February 2019.

160 The applicant sought to amend the application for review to allow this change. After hearing from the parties, including a submission from Council that no further notice of the application is required as a result of the amendment sought, we allowed the section 87A application to be amended.

161 It is our view that it is appropriate to change the expiry condition to the wording agreed to by parties, as referred to above. We find this is an appropriate planning outcome. It clarifies the condition to make its meaning unambiguous and provides certainty.

CONCLUSION

162 For the reasons set out in this decision, will allow the application and amend the permit.

Cindy Wilson
Presiding Member

Lorina Nervegna
Member

³⁸ Including at 16.01-3S and 21.04-1.



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	227/2015/A
LAND:	8-12 Punt Road and 3-7 Wellington Street ST KILDA VIC 3182

WHAT THE PERMIT ALLOWS

Buildings and works associated with a mixed use development (including basement car parking); use of land for the purposes of dwellings; reduction in the number of car spaces required by the Planning Scheme; and display of a major promotional sign in accordance with the endorsed plans.

CONDITIONS:

Amended Plans

- 1 Before the development starts, two (2) complete sets of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with plans prepared K.P.D.O Architecture and Interior Design and Plus Architecture dated 9 October 2019 (all Revision 5) TP096 – TP107; TP110-TP114; TP125-TP129; TP200-TP203; TP220-TP222 and the Façade Concept Artists Report endorsed on 14 February 2019, but modified to show, to the satisfaction of the Responsible Authority;
 - (a) Spandrel detail general in accordance with drawing nos SK01 - SK09 dated 11 April 2018.
 - (b) Details of the balcony walls and soffits to be painted, and the colours that they are to be painted, to give effect to the Façade Concept Artists Report.
 - (c) The balcony of Apartment 2602 be increased to 12sqm and the balcony of apartments 113 and 213 be increased to 8 sqm.
 - (d) Deletion of apartments 614 and 714 and associated redesign to include the resulting space in nearby apartments or to provide studio-style apartments to the satisfaction of the Responsible Authority.
 - (e) Altered layout of apartments 312, 412 and 512 to replace the L-shaped kitchen with a galley design and revised laundry location to create a larger dining areas generally in accordance with the layout shown on page 4 of the document dated 6 December 2019 entitled ‘One Wellington Apartment Assessment Queries plus Responses’.



- (f) Provision of external storage to each apartment of a minimum of 3 cubic metres per apartment.
- (g) The loading area increased to 4.0m clearance.
- (h) The loading area graded at a maximum grade of 1:16.
- (i) A schedule of external materials, finishes and colours.
- (j) Additional traffic and parking information which demonstrates that the layout is generally in accordance with Clause 52.06 of the planning scheme or the relevant Australian standard/s, or otherwise to the satisfaction of the Responsible Authority.
- (k) Section diagrams of over bonnet storage demonstrating that adequate space beneath the storage is provided for a vehicle to park safe.
- (l) A swept path for parking spaces with over bonnet storage accessible in a forward direction.
- (m) All bicycle parking space design to comply with the Australian Standards AS2890.3- 2015.
- (n) The addition of 10 bicycle spaces for visitor parking, immediately adjacent to the Wellington Road pedestrian entrance.
- (o) The relocation of 59 bicycle parking spaces from the lower basement levels to the ground floor (providing a total of 138 bicycle spaces at ground level including the 10 spaces referred to in condition 1(n) of this permit) generally in accordance with plans prepared K.P.D.O Architecture and Interior Design and Plus Architecture TP097, TP098, TP099 and TP100; all Revision 6.
- (p) A total of 12 motor scooter/motor bicycle parking spaces
- (q) Any consequential changes to give effect to the above conditions.

No Alterations

- 2 The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority, unless the Port Phillip Planning Scheme exempts the need for a permit.

Façade Strategy

- 3 Unless with the consent of the Responsible Authority, Robert Owen (or another artist, urban design expert or architect to the satisfaction of the Responsible Authority) must be consulted with during the preparation of the amended plans referred to in condition 1(b), to the satisfaction of the Responsible Authority.



Satisfactory continuation

- 4 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Architectural Oversight

- 5 Except with the consent of the Responsible Authority, K.P.D.O Architecture and Interior Design and/or Plus Architects (or another architectural consultancy to the satisfaction of the Responsible Authority) must be retained to complete and provide architectural oversight during construction of the detailed design as shown in the endorsed plans and endorsed schedule of materials to the satisfaction of Responsible Authority.

Walls on or facing the boundary

- 6 Prior to the occupation of the building(s) allowed by this permit, all walls on or facing the boundary and/or the laneway must be cleaned and finished to a uniform standard. Unpainted or unrendered masonry walls must have all excess mortar removed from the joints and face and all joints must be tooled or pointed to the satisfaction of the Responsible Authority. Painted or rendered or bagged walls must be finished to a uniform standard to the satisfaction of the Responsible Authority.

Wind Assessment

- 7 Concurrent with the endorsement of plans, a suitably qualified person must undertake a comprehensive wind tunnel test of the entire development and a wind climate assessment report must be submitted to the satisfaction of the Responsible Authority. Any modifications required to the development in order to ensure acceptable wind conditions must be submitted to and approved by the Responsible Authority as part of the plans for endorsement. The design details of any wind mitigation works must receive the endorsement of the owners wind climate expert, preferencing the use of architectural features and planting to resolve any issues identified, to the satisfaction of the Responsible Authority. When the Wind Assessment Report is approved, it will become an endorsed plan forming part of this Permit.

Landscape Plan

- 8 Before the development starts (other than demolition or works to remediate contaminated land), a detailed Landscape Plan must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When the Landscape Plan is approved, it will become an endorsed plan forming part of this Permit.

Completion of Landscaping

- 9 The landscaping as shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority before



the occupation of the development and/or the commencement of the use or at such later date as is approved by the Responsible Authority in writing.

Landscaping Maintenance

- 10 The landscaping as shown the endorsed Landscape Plan must be in accordance with the landscaping plan to the satisfaction of the Responsible Authority.

Sustainable Management Plan

- 11 Concurrent with the endorsement of plans under Condition 1 of this permit, a Sustainable Management Plan that outlines be submitted to and approved by the Responsible Authority. Upon approval the Plan will be endorsed as part of the planning permit and the project must incorporate the sustainable design initiatives listed. The plan must show commitment in achieving the following:
 - Australian Excellence ESD- Green Star Benchmarking- 5 Star Green Star Design and As Built v 1.2
 - Achievement of Best Practice Water Sensitive Urban Design
 - High Efficiency Building thermal envelope reflected by average 7-star NatHERS rating.

Implementation of Sustainable Design Initiatives

- 12 Prior to the occupation of any building approved under this permit, a report from the author of the Sustainable Management Plan, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the satisfaction of the Responsible Authority. The report must confirm that all measures specified in the Sustainable Management Plan report have been implemented in accordance with the approved Plan.

Street trees

- 13 The authorised buildings and works must minimise any damage to the existing street tree(s) to the satisfaction of the Responsible authority. Prior to the commencement of buildings and works, root pruning of street tree(s) must be carried out to the satisfaction of the Responsible Authority.

Replacement of street trees

- 14 If damaged or destroyed as a result of the development, existing street tree(s) must be replaced by new tree(s) of which the species, maturity and location must be to the satisfaction of Council's Street tree coordinator. The new tree(s) must be planted and maintained for a period of twelve (12) months to the satisfaction of the Street Tree Coordinator at no expense to the Council.



Waste Management

- 15 Before the development starts (other than demolition or works to remediate contaminated land), a Waste Management Plan must be prepared by a Waste Management Engineer or Waste Management Planner to the satisfaction of the Responsible Authority and endorsed as part of this permit. The Waste Management Plan must be generally in accordance with the plan prepared by Leigh Design dated 1 December 2017 but modified to reflect the endorsed plans.

Signs not Altered

- 16 The location of the sign(s) (including the size, nature, panels, position and construction) shown on the endorsed plan must not be altered without the prior written consent of the Responsible Authority.

Sign Structure not Altered

- 17 The location and details of the supporting structure shown on the endorsed plan must not be altered without the prior written consent of the Responsible Authority.

No Flashing Light

- 18 The sign(s) must not contain any flashing, intermittent or changing colour light.

No External Illumination

- 19 The sign must not be illuminated by external lights except with the written consent of the Responsible Authority.

Sign Lighting

- 20 The lighting permitted by this permit must comply with Australian Standard 4282 "Control of the obtrusive effects of outdoor lighting".

Signs within Land Boundary

- 21 The sign(s) must be located wholly within the boundary of the land.

Removal of Existing Advertising Signs

- 22 Existing advertising signs on the land must be removed prior to the display of the advertising sign(s) approved under this Permit:

Expiry Date for Major Promotion Signs

- 23 This permit as it relates to signage expires 25 years from the date of issue.

Minimum Clearance for Advertising Sign

- 24 The clearance from the footpath to the underside of the sign must be a minimum of 2.7 metres.



Vicroads Conditions

- 25 Before the installation of the signs commences, Figures 1 and 3, in the Traffix Group report, and the lighting report submitted by Electrolight Australia Pty Ltd, received by VicRoads 6 June 2016, Reference 1621, Revision B, dated 1 June 2016 must be submitted to and approved by Council. The plans must be in accordance with Figure 1 and Figure 3, in the Traffix Group report. When approved by Council, the plans and lighting report must be endorsed by the Responsible Authority and will then form part of the permit.
- 26 The signs must at all times operate in accordance with the requirements of the lighting report submitted by Electrolight Australia Pty Ltd, Reference 1621, Revision B, received by VicRoads on 6 June 2016 and dated 1 June 2016.
- 27 In accordance with the endorsed plans, the following requirements on the respective signage zones as shown on Figure 3, page 10 received by VicRoads on 6 June 2016 and will form part of the Planning Permit as follows:
- (a) FACE 1: Text and images must be ‘fully contained within the sign face area, and must not intrude into the adjoining Zone.
 - (b) Zone 1.1: Advertisement (text or images), must be fully contained within the sign face area, and not intrude into the abutting sign faces (sign faces 1 and 3).
 - (c) FACE 3: No advertising permitted on this sign face, only a ‘linking band’ or a ‘block’ colour. The background block colour must not be command colours similar to traffic signals, red/amber/green.
 - (d) Zone 2.22: Only a logo or ‘stand alone’ image is permitted on this sign face, and must be fully contained within the sign face area, without any ‘distortion’ (e.g. not wrap around signage).
 - (e) FACE 2: Advertising permitted as a standard sign, however must not protrude beyond the area into an adjoining sign face area.
- 28 To enable the signs described in condition 3 above to be readily absorbed, given the quantity of sign faces viewed, the following requirements must be satisfied:
- (a) No smaller letter height than 250mm (capital letter).
 - (b) No more than 8 words in ‘each’ advertisement.
 - (c) Typeface must only be in bold sans serif font. The use of scripts or cursive fonts is prohibited.
 - (d) There must be sufficient line spacing ‘between wording’ to ensure there is no ‘stacking’ effect, which would impact on it being easily comprehended.



- 29 The transition from one advertisement to another must be instantaneous for all electronic sign faces (and included zones).
- 30 No advertisement may be displayed for less than 30 seconds.
- 31 A delay of 15 seconds between the change over on each face (and included zones) being viewed is required (refer condition 24).
- 32 In relation to the images displayed on the respective signs:
- (a) Sequences of images giving the illusion of continuous movement must not be displayed.
 - (b) Images capable of being mistaken for traffic signals or traffic control devices because they, for example contain red, amber or green circles, octagons, crosses or triangles must not be displayed.
 - (c) Images and text capable of being mistaken as an instruction to road users must not be displayed.
 - (d) Flashing background, flashing text or flashing images must not be displayed.
- 33 The signs must not dazzle or distract road users due to colouring.
- 34 In the event of an attack by a computer hacker ‘or similar’ resulting in unauthorised display of visual images or any other display malfunction, the electronic signs are to shut down and cease any form of visual output until malfunction is repaired.
- 35 Prior to the commencement of the development, the owner of the land must enter into an agreement with the Department of Environment, Land, Water and Planning (DELWP) pursuant to Section 138A (11) of the *Land Act 1958* for the elements of the approved development that project more than 300mm beyond the land’s Punt Road boundary (i.e. the canopies, fixed shading devices, balcony framing etc), to indemnify the Crown in relation to any claim or liability arising from the projections within the Punt Road Reserve. This condition does not apply where written confirmation is obtained from DELWP that the above agreement is not required.
- 36 Separate consent may be required from VicRoads (the Roads Corporation) under the Road Management Act 2004 for buildings and works undertaken the title boundary within a Road Zone Category 1 (i.e. Punt Road). Please contact VicRoads prior to commencing any works.

Urban Art Plan

- 37 Before the occupation of the development allowed by this permit, an urban art plan in accordance with Council’s Urban Art Strategy must be submitted to, be to the satisfaction of, and approved by the Responsible Authority. This must illustrate Urban Art to both the Nelson Street and Wellington Street facades. Urban Art in accordance with the approved plan must be installed prior to the occupation of the building to the satisfaction of the Responsible Authority.



Water Sensitive Urban Design

- 38 Before the development starts (other than demolition or works to remediate contaminated land) a Water Sensitive Urban Design Report that outlines proposed water sensitive urban design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority.

When approved, the Report will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed.

Incorporation of Water Sensitive Urban Design Initiatives

- 39 Before the occupation of the development approved under this permit, the project must incorporate the water sensitive urban design initiatives listed in the endorsed Water Sensitive Urban Design Report to the satisfaction of the Responsible Authority, and thereafter maintained to the satisfaction of the Responsible Authority.

Maintenance Manual for Water Sensitive Urban Design Initiatives

- 40 Before the development starts (other than demolition or works to remediate contaminated land) a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority.

The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:

- (a) inspection frequency;
- (b) cleanout procedures;
- (c) as installed design details/diagrams including a sketch of how the system operates.

The WSUD Maintenance Manual may form part of a broader Maintenance Program that covers other aspects of maintenance such as a Building User's Guide or a Building Maintenance Guide.

Site Management Water Sensitive Urban Design

- 41 During construction, to the satisfaction of the Responsible Authority:
- (a) No water containing oil, foam, grease, scum or litter will be discharged to the stormwater drainage system from the site;
 - (b) All stored wastes are kept in designated areas or covered containers that prevent escape into the stormwater system;
 - (c) The amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads is minimised when vehicles are leaving the site;



- (d) No mud, dirt, sand, soil, clay or stones are washed into, or are allowed to enter the stormwater drainage system;
- (e) The site is developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants in accordance with currently accepted best practice.

Car and Bicycle Parking Layout

42 Before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and bicycles and access lanes as shown on the endorsed plans must be:

- (a) Constructed;
- (b) Properly formed to such levels that they may be used in accordance with the plans;
- (c) Surfaced with an all-weather surface or seal coat (as appropriate);
- (d) Drained and maintained;
- (e) Line marked to indicate each car space, visitor space, bicycle space, loading bay and/or access lane; and
- (f) Clearly marked to show the direction of traffic along access lanes and driveways;

All to the satisfaction of the Responsible Authority.

Parking and Loading Areas Must Be Available

43 Car and bicycle parking and loading areas and access lanes must be developed and kept available for those purposes at all times and must not be used for any other purpose such as storage to the satisfaction of the Responsible Authority.

Lighting

44 External lighting of the areas set aside for car parking, access lanes and driveways must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.

Direction Sign

45 Before the occupation of the development allowed by this permit a sign containing details and of a size to the satisfaction of the Responsible Authority must be displayed directing drivers to the area(s) set aside for car parking. The sign must be located and maintained to the satisfaction of the Responsible Authority.



Vehicle Crossings

- 46 Before the occupation of the development allowed by this permit, vehicle crossings must be constructed in accordance with Council's current Vehicle Crossing Guidelines and standard drawings to the satisfaction of the Responsible Authority.

Vehicle Crossings- Removal

- 47 Before the occupation of the development allowed by this permit, all disused or redundant vehicle crossings must be removed and the area reinstated with footpath, nature strip and kerb and channel at the cost of the applicant/owner and to the satisfaction of the Responsible Authority.

Applicant to Pay for Reinstatement

- 48 Before the occupation of the development allowed by this permit, the applicant/owner must do the following things to the satisfaction of the Responsible Authority:
- (a) Pay the costs of all alterations/reinstatement of Council and Public Authority assets necessary and required by such Authorities for the development.
 - (b) Obtain the prior written approval of the Council or other relevant Authority for such alterations/reinstatement.
 - (c) Comply with conditions (if any) required by the Council or other relevant Authorities in respect of alterations/reinstatement.

Public Services

- 49 Before the occupation of the development allowed by this permit, any modification to existing infrastructure and services within the road reservation (including, but not restricted to, electricity supply, telecommunications services, gas supply, water supply, sewerage services and stormwater drainage) necessary to provide the required access to the site, must be undertaken by the applicant/owner to the satisfaction of the relevant authority and the Responsible Authority. All costs associated with any such modifications must be borne by the applicant/owner.

Car Parking Allocation

- 50 Prior to the occupation of the development, a car parking management plan must be submitted to and approved by the Responsible Authority. That plan should show the allocation of spaces within the basement car park between the various uses that comprise the development, and must (unless otherwise approved by the Responsible Authority) provide:
- not less than 184 spaces for residents (with tandem spaces allocated to the same dwelling);
 - not less than 5 spaces for retail; and



- not less than 5 car share spaces.

Share Car Allocation/Operation by Owners' Corporation

51 Before the occupation of the development approved under this permit, five cars must be maintained and operated as a car share arrangement by or on behalf of the Owners' Corporation and must be made available including by residents at all times. At least two cars in the car share scheme must be made available to members of the car share scheme (ie not restricted to residents of the subject site). A Share Car Management Plan to the satisfaction of the Responsible Authority is to be submitted to the Responsible Authority setting out how the share cars are to be made available including by residents at all times and the methods of reservation, management, maintenance and replacement of vehicles as necessary. When satisfactory to the Responsible Authority, the Share Car Management Plan will be endorsed and form part of this permit. The operation of the car share scheme must be in accordance with the Share Car Management Plan.

Green Travel Plan

52 Prior to the occupation of the development, a Green Travel Plan (GTP) prepared by a suitably qualified person to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the GTP will be endorsed and will then form part of the permit. The GTP must encourage the use of non-private vehicle transport models by the occupiers of the land by addressing at a minimum:

- Providing occupants and future occupants of the development with materials/literature relating to the car share arrangements required by condition 51;
- describe the location in the context of alternative modes of transport;
- the provision of real time passenger information displays for nearby stops within the residential lobby;
- employee and resident green transport welcome packs (e.g. provision of Met Cards/Myki);
- a designated 'manager' or 'champion' responsible for co-ordination and implementation of the GTP;
- details of bicycle parking, end of trip facilities available and bicycle routes;
- details of GTP funding and management responsibilities; and
- include provisions to be updated not less than every five years.

Loading/Unloading

53 The loading and unloading of goods from vehicles must only be carried out on the subject land and must be conducted in a manner which does not



cause any interference with the circulation and parking of vehicles on the land to the satisfaction of the Responsible Authority.

Piping and ducting

- 54 All piping and ducting (excluding down pipes, guttering and rainwater heads) must be concealed to the satisfaction of the Responsible Authority.

No equipment or services

- 55 Any plant, equipment or domestic services visible from a street (other than a lane) or public park must be located and/or visually screened to the satisfaction of the Responsible Authority.

Construction Management Plan

- 56 Prior to the commencement of any site works including demolition and excavation, the owner must submit a Construction Management Plan to the Responsible Authority for approval. No works including demolition and excavation are permitted to occur until the Plan has been approved in writing by the Responsible Authority. Once approved, the Construction Management Plan will be endorsed to form part of this permit and must be implemented to the satisfaction of the Responsible Authority. The Plan must be to the satisfaction of the Responsible Authority and must provide details of the following:

- (a) Delivery and unloading points and expected frequency;
- (b) A liaison officer for contact by owners / residents and the Responsible Authority in the event of relevant queries or problems experienced;
- (c) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
- (d) Hours for construction activity;
- (e) Measures to control noise, dust, water and sediment laden runoff;
- (f) Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
- (g) Any construction lighting to be baffled to minimise intrusion on adjoining lots.

Time for starting and completion

- 57 This permit will expire if one of the following circumstances applies:
- (a) The development is not started within two (2) years from 12 February 2019.
 - (b) The development is not completed within five (5) years from 12 February 2019.



The Responsible Authority may extend the periods referred to if a request is made in writing:

- (a) before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet started; and
- (b) within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

- End of conditions -

