

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P1955/2017  
PERMIT APPLICATION NO.1126/2016

<b>APPLICANT</b>	HEC Grace Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Port Phillip City Council
<b>REFERRAL AUTHORITY</b>	Daivd MacGowan, John Tabart, Owners Corporation Plan 501271, Karen Baynes, George and Maureen Swinburne, Vic Roads - Metropolitan North West Region,
<b>RESPONDENT</b>	Melbourne Water
<b>SUBJECT LAND</b>	1-13 Cobden Street SOUTH MELBOURNE VIC 3205
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Nicholas Hadjigeorgiou, Member
<b>HEARING TYPE</b>	Compulsory conference
<b>DATE OF HEARING</b>	23 November 2017
<b>DATE OF ORDER</b>	15 January 2018

**ORDER**

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & 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: Hayball Pty Ltd
  - Drawing numbers: VCAT Plans
  - Dated: 24 October 2017
- 2 The decision of the Responsible Authority is set aside.
- 3 In permit application 1126/2016 a permit is granted and directed to be issued for the land at 1-13 Cobden Street, South Melbourne in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
  - Use and development of a 19 storey mixed use building containing dwellings and retail premises, and;

- a reduction in car parking and
- a waiver of loading bay requirements.

4 The hearing scheduled to commence on 22 January 2018 for 4 days is vacated.

Nicholas Hadjigeorgiou  
**Member**

## **APPEARANCES:**

For Applicant	Mr Phil Bisset, solicitor, Minter Ellison, assisted by Taryn Sobel, Planner- Urbis, Eugene Chieng, Architect- Hayball, C.J.Wu and Daniel Chen, both of Holder East.
For Responsible Authority	Aidan Robinson and Grant Logan, Town Planners
For Respondents	John Tabart for himself and Daivd MacGowan, George Swinburne for himself and on behalf of Maureen Swinburne and the Owners Corporation Plan 501271, Karen Baynes in person,

## **REASONS**

- 1 This order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 2 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
  - the responsible authority is of the opinion that the permit or amended permit is appropriate having regard to the matters it is required to consider under section 60 of the Act, including the balanced application of the strategies and policies of the relevant planning scheme and is otherwise in conformity with the provisions of the planning scheme and the *Planning and Environment Act* 1987;
  - the proposed orders will not result in any change to the proposed use or development which would materially affect any person other than the parties to the proceeding.
- 3 Based on the information available to the Tribunal, I consider it is appropriate to make these orders.

**Nicholas Hadjigeorgiou**  
**Member**

**APPENDIX A**

<b>VCAT REFERENCE NO:</b>	P1955/2017
<b>PERMIT APPLICATION NO:</b>	1126/2016
<b>LAND:</b>	1-13 Cobden Street SOUTH MELBOURNE VIC 3205
<b>WHAT THE PERMIT ALLOWS:</b>	
<ul style="list-style-type: none"> <li>• Use and development of a 19 storey mixed use building containing dwellings and retail premises, and;</li> <li>• a reduction in car parking and</li> <li>• a waiver of loading bay requirements</li> </ul> <p>in accordance with the endorsed plans.</p>	

**CONDITIONS**

**Amended Plans Required**

- 1 Before the development commences, amended plans and elevation drawings to scale and fully dimensioned 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 and an electronic copy must be provided. The plans must be generally in accordance with the plans identified as those drawn by Hayball Pty Ltd and dated 24 October 2017 but modified to show:
  - a) Any changes required by Melbourne Water conditions.
  - b) 10% of all dwellings to have bathrooms which are capable of being configured for accessibility.
  - c) No more than 23% of all dwellings to have one bedroom .
  - d) The relocation of the accessible car parking space on Level B1 proximate to the lift core.
  - e) The setback of Levels 12 -18 from the Kingsway boundary increased from 5 metres to 7 metres.
  - f) Deletion of reference to the ‘indicative future park/plaza’ and associated shared truck turning area.
  - g) All external glazing and the plant enclosure to be no more than 20% reflectivity.
  - h) Modifications to the communal rooftop terrace to show:

- i. Accessible bathroom and shower facilities included in the designated amenities area (i.e. no bar or kitchen)
  - ii. Accessibility ramps.
  - iii. Appropriately baffled bollard lighting.
  - iv. Deletion of BBQ facilities and spa.
  - v. A setback of 1.5 metres from the parapet edge.
- i) The podium height on Kings Place, Palmerston Crescent and Cobden Street reduced by one level of the building (Level 6 to Level 5).
  - j) The podium height on Kings Way reduced by one level of the building (Level 13 to Level 12).
  - k) The location of the FCR room and end of trip facilities swapped.
  - l) From Level 12 and above (above Kings Way podium) further articulation through materiality, texture or form work which could be used to show differentiation in the tower.
  - m) Clarification on the extent and reflectivity of glazing.
  - n) An alteration to the materials to accentuate the curvature form of the building.
  - o) Details of the size and height of the roof terrace structures
  - p) The substation and waste room elevation to Cobden Street to be incorporated into the overall design of the building.
  - q) A section detailing the heights of the loading bay area.
  - r) At least 10% of all dwellings to have a minimum of three bedrooms.
  - s) The detail and location of external storage for each dwelling.
  - t) An additional 33 resident bike spaces within the building.
  - u) An additional 6 motorbike/scooter spaces.
  - v) An additional 13 visitor car spaces.
  - w) Any changes required by the Sustainable Management Plan at Condition 3.
  - x) Any changes required by the Water Sensitive Urban Design Reports at Conditions 4 and 5.
  - y) Any changes required by condition 7 (Landscape Plan).
  - z) Any changes required by condition 10 (Waste Management Plan).
  - aa) All plant, equipment and domestic services (including air conditioning, heating units, hotwater systems, etc.) which are to be located externally.
  - bb) All plan and elevation drawings fully dimensioned, including natural ground level, floor levels, and incremental and total wall and building heights and lengths, with heights to be expressed to Australian Height Datum (AHD) and/or reduced levels.

- cc) Urban Art to be included in accordance with Council's Urban Art Strategy and must be clearly indicated on the drawings, as per Condition 11.

### **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.

### **Sustainable Management Plan**

- 3 Before the endorsement of plans under condition 1, an amended Sustainable Management Plan that outlines proposed sustainable design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. When approved, the Plan will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed

### **Water Sensitive Urban Design**

- 4 Before the endorsement of plans under condition 1, an amended 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. The report must demonstrate how the development meets the water quality performance objectives as set out in the Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) or as amended.

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.

### **Maintenance Manual for Water Sensitive Urban Design Initiatives**

- 5 Before the endorsement of plans under condition 1, 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 Builder' User's Guide or a Building Maintenance Guide.

### **Vehicle Crossing**

- 6 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.

All redundant crossings must be removed and the footpath, nature strip kerb and road reinstated as necessary at the cost of the applicant/owner and to the satisfaction of the Responsible Authority.

### **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. The Landscape Plan must incorporate:
- a) A survey plan, including botanical names, of all existing vegetation/trees to be retained;
  - b) Buildings and vegetation (including botanical names) on neighbouring properties within 3m of the boundary;
  - c) Significant trees greater than 1.5m in circumference, 1m above ground;
  - d) All street trees and/or other trees on Council land;
  - e) A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways;
  - f) Landscaping and planting within all open space areas of the site;
  - g) Water sensitive urban design;
  - h) Details of access to podium level landscape areas.
  - i) Details of levels on the ground floor landscape areas.

All species selected must be to the satisfaction of the Responsible Authority.

### **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 maintained, and any dead, diseased or damaged plant replaced in accordance with the landscaping plan to the satisfaction of the Responsible Authority.

## **Waste Management**

10 Before the development starts (other than demolition or works to remediate contaminated land), an amended Waste Management Plan based on the draft “Best Practice Guidelines for Kerbside Recycling at Multi-Occupancy Residential Developments (Sustainability Victoria June 2006) 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 Plan must include reference to the following:

- a) The estimated garbage and recycling generation volumes for the whole development.
- b) The garbage and recycling equipment to be used and the collection service requirements, including the frequency of collection.
- c) The location of, proximity, screening of and space allocated both to the garbage and recycling storage areas and collection points.
- d) The path of access for both users and collection vehicles.
- e) How noise, odour and litter will be managed and minimised.
- f) Approved facilities for washing bins and storage areas.
- g) Who is responsible for each stage of the waste management process.
- h) How tenants and residents will be regularly informed of the waste management arrangements.

Once submitted and approved, the waste management plan must be carried out to the satisfaction of the Responsible Authority.

## **Urban Art Plan**

11 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. The value of the urban art must be at least 0.5% of the total building cost of the development to the satisfaction of 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.

## **Noise Attenuation for Apartments**

12 The building must be designed and constructed to achieve the following noise levels:

- a) Not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am.



- b) Not greater than 40dB(A) for living areas, assessed LAeq,16h from 6am to 10pm

Noise levels should be assessed in unfurnished rooms with a finished floor and the windows closed. The noise influence area should be measured from the closest part of the building to the noise source.

### **Green Transport Plan**

13 Before the development starts (other than demolition or works to remediate contaminated land), a green travel plan to the satisfaction of the Responsible Authority, prepared by a suitably qualified professional, must be submitted to and approved by the Responsible Authority. The green travel plan must provide detailed advice regarding how traffic movements and staff parking will be managed and ensure an alternative, non-private vehicle transport modes will be encouraged. The plan should also identify specific opportunities for the provision of more sustainable transport options and encouragement of their use. The plan must include but not be limited to:

- a) Tram, train and bus timetables be installed in prominent locations in lifts and public areas (on noticeboards, etc);
- b) Bicycle parking areas to be installed in well secured and prominent locations;
- c) Install signs in prominent locations advising of the location of existing and proposed share car schemes, bicycle parking facilities for residents and visitor, tram stops, taxi ranks, railway stations, bus stops and bicycle paths.
- d) Ensure that access to the on-site parking is restricted and controlled.
- e) Funding by the applicant of the purchase of a bicycle as part of the sale for each of the apartments.
- f) Establishment of a car-pooling database for residents
- g) Establishment of seed funding for the Owners Corporation to allocate for the purchase of public transport fares and on-line shopping deliveries.
- h) Specific targets to guide the plans ongoing implementation;
- i) Identify persons responsible for the implementation of actions;
- j) Estimate timescales and costs for each action;
- k) Include a plan for monitoring and review of the Travel Plan on an annual basis for at least three years.

### **Car Parking Allocation**

14 Without the further written consent of the Responsible Authority car parking for the approved development must be allocated on any Plan of Subdivision as follows:

- a) Two (2) car space for each dwelling with three bedrooms;
- b) One (1) car space for each dwelling with two bedrooms;
- c) Twenty three (23) spaces allocated to visitors
- d) Ten (10) spaces for the retail uses

All to the satisfaction of the Responsible Authority.

## **Number of Dwellings**

- 15 Without the further written consent of the Responsible Authority, no more than 231 dwellings may be constructed on the land.

## **Rooftop Terrace**

- 16 The rooftop terrace must not be used by residents between 10pm and 7am.
- 17 No amplified music to be played or external lighting other than the bollard lighting shown on the endorsed plans to be operated on the roof terrace.

## **Section 173 Agreement**

- 18 Before the development starts (other than demolition or works to remediate contaminated land), the applicant must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority.

The agreement must be in a form to the satisfaction of the Responsible Authority, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expense (including legal expenses) incidental to the preparation, registration and enforcement of the agreement.

The agreement must contain covenants to be registered on the Title of the property so as to run with the land pursuant to Section 181 of the Section 173 of the Planning and Environment Act 1987, and must provide for the following:

- a) That any Vendor Statement pursuant to Section 32 of the Sale of Land Act 1962 with respect to the subject properties must advise that in the event that a public space or public park is proposed by Council at the intersection of the northern corner of Cobden Street with Kings Place, that the vehicle access and loading bay access to the development maybe restricted to right in from Cobden Street and left out onto Cobden Street only. This provision is not intended to prevent any owner or occupier of an apartment or tenancy within the approved development from objecting to any such proposed public park or plaza being created by the Council or otherwise.

The agreement will be registered on Title in accordance with Section 181 of the Planning and Environment Act 1987. A dealing number must be provided to the Responsible Authority.

## **Alteration/Reinstatement of Council or Public Authority Assets**

- 19 Before the occupation of the development allowed by this permit, the Applicant/ Owner shall 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 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 reinstatement.

### **Walls on or facing the Boundary**

- 20 Prior to the occupation of the building(s) allowed by this permit, all new walls on or facing the boundary of adjoining properties 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.

### **Piping and Ducting**

- 21 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**

- 22 No plant, equipment or domestic services (including any associated screening devices) or architectural features, other than those shown on the endorsed plan are permitted, except where they would not be visible from the primary street frontage (other than a lane) or public park without the written consent of the Responsible Authority.

### **Privacy Screens Must Be Installed**

- 23 Privacy screens as required in accordance with the endorsed plans must be installed prior to occupation of the building to the satisfaction of the Responsible Authority and maintained thereafter to the satisfaction of the Responsible Authority.

### **Lighting Baffled**

- 24 All lighting of external areas both during construction and after completion must be suitably baffled so as not to cause nuisance or annoyance to nearby properties or roads, to the satisfaction of the Responsible Authority and all illuminated advertising lighting on cranes must be turned off between the hours of 10pm and 7am.

### **Services to be underground**

- 25 All basic services to the property including water, electricity, gas, sewerage, telephone and telecommunications (whether by means of a line

or cable) must be installed underground and located in a position approved by the responsible authority.

### **Loading/Unloading**

- 26 The loading and unloading of goods from vehicles must only be carried out on the subject land within the designated loading bay, as detailed on the endorsed plans, 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.

### **SEPP N-1**

- 27 All air conditioning and plant must be screened and baffled and/or insulated to minimise noise and vibration to ensure compliance with noise limits determined in accordance with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 to the satisfaction of the Responsible Authority.

### **Car Parking Stacker Maintenance and Provision**

- 28 The mechanical car stackers are to be maintained in a good working order and be permanently available for the parking of vehicles in accordance with their purpose, to the satisfaction of the Responsible Authority.

### **Parking Areas must be available**

- 29 Car parking areas and access lanes must be kept available for those purposes at all times and must not be used for any other

### **Melbourne Water Conditions**

- 30 The retail premises, with the exception of the areas marked 'retail sacrificial flood zone' must be constructed with finished floor levels set no lower than 2.7 metres to Australian Height Datum.
- 31 The lift area at ground floor must be constructed with finished floor levels set no lower than 3.0 metres to Australian Height Datum (AHD).
- 32 The entry/exit driveway of the basement carpark must incorporate a flood proof apex set no lower than 2.7 metres to Australian Height Datum (AHD) which is 300mm above the applicable flood level of 2.4 metres to AHD.
- 33 The entry/exit driveway of the basement carpark must incorporate a flood barrier to protect the basement from flooding to a level no lower than 3.0 metres to Australian Height Datum. The flood barrier must be to the satisfaction of Melbourne Water and the Responsible Authority and must be of a non-mechanical and self-closing design.
- 34 The substation, switch room and fire control room must be constructed with finished floor levels set no lower than 3.0 metres to AHD.
- 35 Prior to the issue of an Occupancy Permit, a Flood Risk Management Plan prepared by an accredited risk management professional must be prepared to the satisfaction and approval of Melbourne Water and the Responsible Authority. The Flood Risk Management Plan must be

binding to successors in title to provide for ongoing effective management of flood risks. The Flood Risk Management Plan is to include, but not be limited to:

- a) Site Specific Flood Risks;
- b) General Principles of Operation of the Flood Barrier;
- c) An Operational Risk Assessment;
- d) Flood Barrier Rise Times; and'
- e) Maintenance and Reporting Schedule.

- 36 Prior to the issue of an Occupancy Permit, the owner of the Land must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987 with the Responsible Authority and Melbourne Water Corporation. All costs associated with the setting up of the agreement must be borne by the permit holder.

The agreement must be registered on the title of the Land and must provide, to the satisfaction of the Responsible Authority and Melbourne Water, for:

- a) Prospective and future owners of the Land to be informed that the Land is subject to inundation;
- b) Identify the use of the Flood Barrier and the ongoing maintenance requirements for the life of the structure; and
- c) The implementation of a Flood Risk Management Plan which has been approved by the Responsible Authority and Melbourne Water Corporation.

- 37 Prior to the issue of an Occupancy Permit, a maintenance plan for the flood barrier must be submitted to Melbourne Water and the Responsible Authority. The maintenance plan must be treated the same as any other essential services with mandatory annual reporting and maintenance checks.

- 38 Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.

- 39 All electrical and plumbing fittings must be to the standards of the Relevant Authority for areas subject to inundation, for all services contained within the ground floor.

- 40 Flood resistant materials must be used for the construction of floor levels and walls below the applicable flood level

### **Time for Starting and Completion**

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

- a) The development is not started within four years of the date of this permit.

- b) The development is not completed within four years of the date of commencement of works.
- c) The use is not commenced within two (2) years of the completion of the development.

The Responsible Authority may extend the periods referred to if a request is made in writing before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet started; and 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 ---**