

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## ADMINISTRATIVE DIVISION

### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1360/2018  
PERMIT APPLICATION NO. 231/2017

<b>APPLICANT</b>	I & S Investments Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Port Phillip City Council
<b>REFERRAL AUTHORITY</b>	Transport for Victoria, Melbourne Water
<b>RESPONDENT</b>	S Thomas
<b>SUBJECT LAND</b>	11-29 Eastern Road, South Melbourne
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Bill Sibonis, Member
<b>HEARING TYPE</b>	Compulsory Conference
<b>DATE OF HEARING</b>	16 October, 2018
<b>DATE OF ORDER</b>	23 November, 2018

### ORDER

- 1 Pursuant to Section 78(2)(b)(ii) of the *Victorian Civil and Administrative Tribunal Act 1998*, M Forde and Z Loo are struck out as parties to this proceeding.
- 2 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:	Rothe Lowman
Drawing numbers:	TP10.00, TP00.01 - TP00.03, TP01.00, TP01.01 - TP01.14, TP01.018, TP02.01 - TP02.04, TP03.01, TP03.02
Revision:	A
Dated:	09.10.18
- 3 In application no. P1360/2018, the decision of the Responsible Authority is set aside.
- 4 In permit application no. 231/2017 a permit is granted and directed to be issued for the land at 11-29 Eastern Road, South Melbourne, in accordance with the endorsed plans and on the conditions set out in the Appendix. The permit allows:



- Use of the site for a food and drinks premises (café);
- the construction of a building and the construction and carrying out of works in the Commercial 2 Zone;
- the construction of a building and the construction and carrying out of works in the Design and Development Overlay (DDO8);
- the construction of a building and the construction and carrying out of works in the Special Building Overlay (SBO1);
- a reduction of the standard car parking requirement under Clause 52.06

in accordance with the endorsed plans.

- 5 The hearing listed to commence at **10.00am** on **10 December, 2018** is vacated. No attendance is necessary.

Bill Sibonis  
**Member**



## REMARKS

- 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:
  - a the responsible authority is of the opinion that the permit is appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987* ('the Act'), including the balanced application of the strategies and policies of the Port Phillip Planning Scheme ('the Planning Scheme') and is otherwise in conformity with the provisions of the Planning Scheme and the Act;
  - b 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.
- 4 In making these orders, the following corrections have been made:
  - the numbering of the set of conditions agreed to by parties present at the Compulsory Conference repeated No. 28. This has been corrected in the conditions detailed in the Appendix
  - the words "*The uses is not commenced*" in Condition No. 41 (formerly Condition No. 40) have been replaced with the words "*The use is not commenced*".

Bill Sibonis  
**Member**



## APPENDIX – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	
<b>LAND</b>	

### WHAT THE PERMIT ALLOWS

- Use of the site for a food and drinks premises (café);
- the construction of a building and the construction and carrying out of works in the Commercial 2 Zone;
- the construction of a building and the construction and carrying out of works in the Design and Development Overlay (DDO8);
- the construction of a building and the construction and carrying out of works in the Special Building Overlay (SBO1);
- a reduction of the standard car parking requirement under Clause 52.06 in accordance with the endorsed plans.

### CONDITIONS

#### Amended Plans Required

- 1 Before the use or development starts, 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 and an electronic copy must be provided. The plans must be generally in accordance with the plans submitted for the Compulsory Conference, identified as TP10.00, TP00.01 - TP00.03, TP01.00, TP01.01 - TP01.14, TP01.018, TP02.01 - TP02.04, TP03.01, TP03.02, Revision A, drawn by Rothe Lowman and dated 9.10.18 but modified to show:
  - (a) A reduction in the height of the service level (level 10) to 3.5 metres above finished floor level.
  - (b) A modification of the façade treatment of the service level (level 10) to the satisfaction of the responsible authority.
  - (c) A modified ground level treatment to the café fronting Dorcas Street in accordance with Plan TP01.04 Rev B.
  - (d) A reduction in the floor plan of levels 7, 8 and 9 so that the southern portion of the building is generally in accordance with the red dotted line shown on Plans TP01.11 – TP01.13 Rev C.
  - (e) The removal of the accessible tram stop on Eastern Road.



- (f) The vehicular exit on Victoria Street designed to restrict a righthand exit to Victoria Street including details of appropriate signage.
- (g) Design measures to provide a 300mm clearance envelope for exiting vehicles from the footpath on Victoria Street.
- (h) Details of vertical clearance diagrams along ramps between all levels demonstrating vertical clearance provided across all ramps.
- (i) A headroom clearance of 2.5m to be provided within the accessible car bays.
- (j) Plan no TP01.04 amended to show correct lengths of ramp grades.
- (k) Specifications of bicycle racks including details of make and model.
- (l) Motorcycle bays relocated closer to wall.
- (m) Installation of a warning light or similar system to reduce potential conflict between access/egress from carpark and service vehicle exiting loading bay area.
- (n) Swept path diagrams demonstrating a service vehicle accessing loading bay area whilst vehicles are parking on-street.
- (o) The bin area to show details of the 18 bins that are detailed in the Waste Management Plan
- (p) A full schedule of materials, finishes and paint colours, including colour samples (colour samples in a form that is able to be endorsed and held on file), must be submitted to, be to the satisfaction of and approved by the Responsible Authority.
- (q) Details of the proposed location of Urban Art.
- (r) Landscape Plan as per condition 13.
- (s) Any changes in accordance with the recommendations of the Sustainable Management Plan at condition 5.
- (t) Any changes in accordance with the recommendations of the Water Sensitive Urban Design Report at condition 7.
- (u) Any changes in accordance with the recommendations of the Wind assessment at condition 39.

All of the details required above are to be to the satisfaction of the Responsible Authority.

#### **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.



### **No Change to External Finishes**

- 3 All external materials, finishes and colours as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

### **Use of Service Area**

- 4 The services area shown on Level 10 must be used for the purposes of plant, services and associated equipment.

### **Sustainable Management Plan**

- 5 Before the plans required by Condition No. 1 of this permit are endorsed, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority. Amendments to the SMP must be incorporated into plan changes required under Condition 1. The report must be generally in accordance with the SMP prepared by Aurecon submitted with the application but updated to address the following:
- (a) Provide a drawing which illustrates the area inputs provided in the STORM report and the connected treatments.
  - (b) Provide evidence (acoustic report) that indicates how 2 points as indicated in Green Star summary will be achieved.
  - (c) Correct inconstancy in the SMP in relation to energy where the report indicates NABERS Energy Commitment Agreement pathway but the Green Star indicates a Prescriptive pathway.
  - (d) Provide a clear commitment to a 5 star NABERS 5 star rating with evidence to demonstrate how this would be achieved.
  - (e) Provide evidence that indicate how 5 points in the water category will be achieved.
  - (f) Provide evidence (STORM or MUSIC report) that indicate how Clause 22.12 Water Sensitive Urban Design requirements will be met.
  - (g) Provide a Maintenance Manual for Water Sensitive Urban Design Initiatives.
  - (h) Provide evidence (Green Star Ecological Value Calculator) and notations on drawings that that indicates how 1 point in this category will be achieved.
  - (i) Provide information on emissions and how the points will be achieved in report and drawings.

### **Implementation of Sustainable Design Initiatives**

- 6 Before the occupation of the development 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 and recommendations specified in the Ecologically Sustainable Design report have been implemented and/or incorporated in accordance with the approved report to the satisfaction of the Responsible Authority.

### **Water Sensitive Urban Design**

- 7 Before the plans required by Condition No. 1 of this permit are endorsed, 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. 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.

### **Incorporation of Water Sensitive Urban Design initiatives**

- 8 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 (Stormwater Management)**

- 9 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.

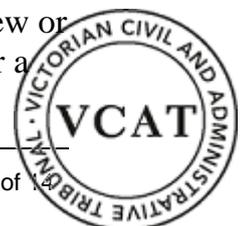
The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:

- inspection frequency
- cleanout procedures
- 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.

### **Walls on or Facing the Boundary**

- 10 Before the occupation of the development allowed by this permit, all new or extended walls on or facing the boundary of adjoining properties and/or a



laneway must be cleaned and finished to a uniform standard to the satisfaction of the Responsible Authority. Unpainted or unrendered masonry walls must have all excess mortar removed from the joints and face and all joints must be tooled or pointed also 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.

#### **Urban Art Plan**

- 11 Before the development starts (other than demolition or works to remediate contaminated land), 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, which is to include the urban art proposed at ground level adjacent to the reception/lobby 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.

#### **Waste Management Plan**

- 12 Before the plans required by Condition No. 1 of this permit are endorsed, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan must be generally in accordance with the Waste Management Plan submitted with the application prepared by Leigh Design dated 2 February 2017.

#### **Landscape Plan**

- 13 Before the plans required by Condition No. 1 of this permit are endorsed, an amended 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 be generally in accordance with the Landscape submitted with the application prepared by Tract dated 19.01.2017 but modified to show the changes to the Dorcas Street frontage in accordance with Condition 1(c).

#### **Completion of Landscaping**

- 14 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**

- 15 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.



### **Ongoing Involvement of the Architect**

- 16 The owner of the land must retain Rothe Lowman to complete the design and provide architectural oversight of the delivery of the detailed design as shown in the endorsed plans and endorsed schedule of materials and finishes during construction unless with the prior written approval of the Responsible Authority.

### **Melbourne Water Condition**

- 17 The finished floor levels for all ground floor areas shown on the plans must not be reduced unless with the prior written consent of Melbourne Water.
- 18 The entry / exit driveway(s) of the basement car park must incorporate flood proof apexes no lower than 3.0m AHD, which is 600mm above the applicable flood level of 2.4m AHD.
- 19 All doors, windows, vents and openings to the basement carpark must be set no lower than 3.0m AHD.
- 20 The basement carpark must be fully tanked to at least 3.0m AHD and flood resistant materials are recommended to be used for the construction of areas of the building below the flood level.
- 21 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.
- 22 Any new lift must be programmed at all times to idle at the level of the ground floor (or above) as a precautionary measure to ensure the safety of users, and should include cut out mechanisms, alarms, and inspection and maintenance regimes to ensure compliance during emergency events.
- 23 All open space within the eastern setback must be set at the existing natural surface level

### **End Melbourne Water Conditions**

### **Piping, Ducting, Service Units**

- 24 All service pipes/service units (excluding down pipes, guttering and rainwater heads) must be concealed from view from the public realm and any screening devices suitably integrated into the design of the building to the satisfaction of the Responsible Authority.

### **No Equipment and Services**

- 25 No equipment, services and/or exhausts other than those shown on the endorsed plan must be erected on external walls or above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.



### **Car and Bicycle Parking**

- 26 Before the use or occupation of the development starts, the internal 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 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, bicycle space, loading bay and/or access lane; and
  - (f) Clearly marked to show the direction of traffic along access land and driveways. All to the satisfaction of the Responsible Authority.

### **Car Parking Allocation**

- 27 The following car parking allocation for this development must not be altered without the written consent of the Responsible Authority:
- Not less than 2.12 car spaces per 100sqm of net leasable floor area for the offices.
  - Not less than 3 car spaces for employees of the Café tenancies.
  - All of the spaces must be independently accessible and none of the spaces are permitted to be leased to anyone not working on the premises.

### **Parking and loading areas must be available**

- 28 Car and bicycle parking and loading areas and access lanes must be kept available for those purposes at all times and must not be used for any other purpose such as storage.

### **Car Parking for Disabled Persons**

- 29 Before the occupation of the development allowed by this permit, a minimum of 6 car space must be provided for the exclusive use of disabled persons. The car space must be provided as close as practicable to the front entrance of the building and must be clearly marked with a sign to indicate that it must only be utilised by disabled persons. The minimum dimensions of the car space must be 3.2 metres wide by 4.9 metres long to the satisfaction of the Responsible Authority.

### **Car Parking – Free of Charge**

- 30 The areas set aside for car parking, shown on the endorsed plans, must be made available for use free of charge to employees and visitors at all times when the use is in operation and must not be used for any other purpose to the satisfaction of the Responsible Authority.



### **Loading and Unloading**

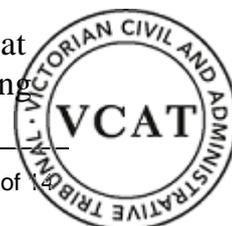
- 31 The loading and unloading of goods from vehicles must only be carried out on the subject land within the designated loading bay, as detailed on the endorsed plans, and must be conducted in a manner which does not cause any interference with the circulation and parking of vehicles on the land to the satisfaction of the Responsible Authority.

### **Green Transport Plan**

- 32 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) Establishment of a car-pooling database for employees of the development.
  - (f) Specific targets to guide the plans ongoing implementation;
  - (g) Identify persons responsible for the implementation of actions;
  - (h) Estimate timescales and costs for each action;
  - (i) Include a plan for monitoring and review of the Travel Plan on an annual basis for at least three years.

### **Vehicle Crossings**

- 33 Prior to the occupation of the building approved under this permit, vehicle crossings must be constructed in accordance with Council's current Vehicle Crossing Guidelines and standard drawings to provide pedestrian priority, to the satisfaction of the Responsible Authority. The following requirements also apply to the satisfaction of the Responsible Authority:
- (a) Standard vehicular crossings must be constructed and/or widened at right angles to the road to suit the proposed driveways incorporating



bluestone pitchers or suitably shaped and coloured concrete kerb and channel to match the existing laneway or kerb and guttering (as appropriate),

- (b) Any redundant crossing (or part thereof) must be removed and the footpath and kerb reconstructed incorporating bluestone pitchers or suitably shaped and coloured concrete kerb and channel to match existing kerb and guttering (as appropriate) to specifications to the satisfaction of the Responsible Authority and at no cost to the Responsible Authority. Any new car space(s) created along the street frontage of the site as a result of the removal of the crossing must be line marked to the satisfaction of the responsible authority. Any surplus bluestone pitchers must be returned to Councils depot, at cost to the applicant or owner.
- (c) Any proposed vehicular crossing must have satisfactory clearance of any side-entry pit, power or telecommunications pole, manhole cover or marker, or street tree. Any relocation, alteration or replacement required must be in accordance with the requirements of the relevant Authority and must be at the applicant's expense.

#### **Applicant to Pay for Reinstatement of Footpaths/Crossings**

- 34 Prior to the completion of the development 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.

#### **Line Marking**

- 35 Prior to the completion of the development the Applicant/Owner must provide the following line marking to the satisfaction of the Responsible Authority:
- Pavement Marking as well as "GIVE WAY" signage at the intersection of Victoria Street and Dorcas Street.
  - Signage associated with reconfiguration of parking bays along Dorcas Street.
  - Two-way directional arrows at north eastern end of Victoria Street, location to be confirmed by Council.
  - One-way directional arrow and signage at location to be confirmed by Council along Victoria Street.



## **SEPP N1**

- 36 All air conditioning and refrigeration 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.

### **Storage of Goods**

- 37 Without the further written consent of the Responsible Authority no goods are permitted to be stored or left exposed outside the building so as to be visible from any public area.

### **Lighting**

- 38 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.

### **Satisfactory Continuation**

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

### **Wind Assessment**

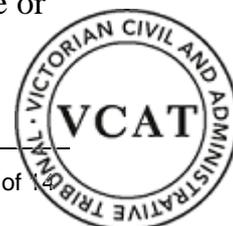
- 40 Before the plans required by Condition No. 1 of this permit are endorsed, an amended Wind Impact Assessment, generally in accordance with the one prepared by Vipac dated 24 February 2017 must be provided for the written endorsement of the Responsible Authority. Any modifications required to the 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 owner's wind climate experts, preferencing the use of architectural features and planting to resolve any issues identified, to the satisfaction of the Responsible Authority.

### **Time for starting and completion**

- 41 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.
  - (c) The use is not commenced within two (2) years of the date of 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** –

