

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1604/2016
PERMIT APPLICATION NO. PLN15/1176

CATCHWORDS

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

APPLICANT	Caydon Cremorne No 2 Development Pty Ltd
RESPONSIBLE AUTHORITY	Yarra City Council
REFERRAL AUTHORITY	Melbourne Water, Public Transport Victoria, VicRoads
RESPONDENT OBJECTORS	Tony Hampton; Riseheath Pty Ltd; Michael Coffey and Owners Corporation PS 523454S; Barrie Williams
SUBJECT LAND	2-6 Gough Street CREMORNE VIC 3121
WHERE HELD	Melbourne
BEFORE	Laurie Hewet, Senior Member Presiding Ann Keddie, Member
HEARING TYPE	Hearing
DATE OF HEARING	31 July, 1, 2, 3 and 14 August 2017
DATE OF INTERIM ORDERS	4 September 2017, 21 November 2017, 14 December 2017
DATE OF ORDER	22 January 2018
CITATION	Caydon Cremorne No 2 Development Pty Ltd v Yarra CC [2018] VCAT 85

ORDER

Amend permit application

- 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: Fender Katalidis Architects, Lovell Chen Architects and Heritage Consultants, Oculus
- Drawing numbers and dates: TP003-TP04, TP096-TP115, TP130-155, TP166-TP185, TP201-TP204, TP231, TP251, TP271-TP273, TP301-TP303, TP400-TP406, TP500-TP502, TP600-TP605, dated 6 June 2017 and prepared by Fender Katsalidis Architects, TP00 and TP01, TP10 and TP30-TP32, revision 2, TP02-TP08, TP11-TP13, TP40-TP42 and TP60-TP61 and materials schedules (building 4, building 5 and new materials), dated October 2015 and prepared by Lovell Chen and LP01, LP02 and LP03, dated 5 June 2017 and prepared by Oculus.

- 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 amending the description of the proposed use and development to read:

Development of the land for buildings and works, including the construction of three buildings, use of the land as accommodation (dwellings and serviced apartments), function centre, shop and restaurant, food and drink premises (café), art gallery, reduction in the car parking requirements and construction and display of signs (relocation of Nylex and Victoria Bitter signs on top of silos B8 and B9)

Permit granted

- 3 In application P1604/2016 the decision of the responsible authority is set aside.
- 4 In planning permit application PLN15/1176 a permit is granted and directed to be issued for the land at 2-6 Gough Street, CREMORNE in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

Development of the land for buildings and works, including the construction of three buildings, use of the land as accommodation (dwellings and serviced apartments), function centre, shop and restaurant, food and drink premises (café), art gallery, reduction in the car parking requirements and construction and display of signs (relocation of Nylex and Victoria Bitter signs on top of silos B8 and B9).

Laurie Hewet
Senior Member
Presiding

Ann Keddie
Member

APPEARANCES

For applicant

Mr John Cicero of Best Hooper Solicitors

Mr Cicero called expert evidence from:

- Ms C Heggen, town planner
- Mr M O'Dwyer, urban designer
- Mr R Earl, landscape architect
- Mr T De Young, traffic engineer

Expert witness statements from Mr R Brown (acoustics), Mr S Toy (ESD) and Mr C Goss (Visualisations) were tabled but the witnesses were not called to give evidence

For responsible authority

Mr T Montebello of Maddocks Solicitors

For referral authority

No Appearance

For respondent objectors

Mr S McArdle of Norton Rose Fulbright appeared for Riseheath Pty Ltd

Mr McCardle called expert evidence from;

- Professor Mark Bury, architect

Mr Michael Coffey appeared on his own behalf and on behalf of Owners Corporation PS 523454S

Mr Tony Hampton appeared on his own behalf

Mr Barrie Williams appeared on his own behalf

INFORMATION

Description of proposal	<p>The proposal is for Stage 2 of a redevelopment of the former Richmond Maltings site at 2-6 Gough Street, Cremorne.</p> <p>The Stage 2 proposal includes the construction of a new 14 storey building above an existing two storey heritage building, the construction of a 15 storey building at the north-western end of the site connected to nine retained silos. The silos will be extended in height by a three storey extrusion, on top of which the existing Nylex sign will be relocated. The retained silos are to be used for a variety of uses including a restaurant, exhibition centre and art gallery.</p> <p>Centrally located silos are proposed to be partly demolished and the retained silos adapted for use as a seven storey hotel.</p> <p>Across the site, proposed uses include accommodation, offices, function centre, exhibition centre, retail shops, restaurant and food and drink premises (café).</p> <p>Works associated with the restoration of retained heritage buildings are proposed, as is a public realm improvement strategy including hard and soft landscape treatments and the creation of a publicly accessible north-facing plaza.</p>
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Yarra Planning Scheme

Zone and overlays

Clause 37.02: Comprehensive Development Zone (CDZ3).

Clause 36.04: Road Zone Category 1 (part of site) (RDZ1).

Clause 45.03: Environmental Audit Overlay (EAO).

Clause 45.07: City Link Project Overlay (CLPO).

Clause 43.01: Heritage Overlay (HO350). No permit is required under HO350 because the site is included on the Victorian Heritage Register. The Executive Director of Heritage Victoria has issued permits under section 74 of the *Heritage Act 1995* for the redevelopment of the site, subject to conditions, generally in accordance with the plans that are the subject of this Application for Review.

Clause 44.04: Land Subject to Inundation Overlay (LSIO).

Permit requirements

Clause 37.07 (CDZ3): A permit is required to use land for dwellings, residential hotel, retail premises, (food and drink premises, café, bakery/retail and restaurant), function centre, exhibition centre (heritage interpretation visitor centre) and art gallery. A permit is required to construct a building or construct or carry out works, and to reduce the car parking requirements.

Clause 36.04 (RDZ1): A permit is required to use land for dwellings and retail, and any other use that extends into the RDZ1 affected part of the site. A permit is required to construct a building or construct or carry out works.

Clause 44.04 (LSIO): A permit is required to construct a building or construct or carry out works.

Clause 52.05 (Advertising Signs): A permit is required to construct and display a sign (the relocation of the Nylex sign) and retained in-situ Victorian Bitter sign.

Land description

The review site forms part of the Cremorne precinct that is bounded by Hoddle Street to the west, City Link and the Yarra River to the south, Church Street to the east and Swan Street to the north.

The site is located in the south-west corner of the precinct at the intersection of Gough Street and Cremorne Street. The site is variously known as the Richmond Maltings site or the “Nylex Site”. The site was formerly used for industrial purposes (malting) originally established in the 1850’s. The total site currently comprises a range of heritage and non-heritage buildings including three groups of silos. A double-sided sky sign (the Nylex sign) is mounted on top of one of the group of silos.

The review site in this application constitutes Stage 2 of the overall redevelopment of the total site. Stage 2 occupies the central and north-western part of the site and is south of Gough Street, adjacent to City Link, the Yarra River and Hoddle Street. Stage 1 of the redevelopment was approved in 2016, and occupies the eastern part of the site with frontages to Gough Street and Cremorne Street. The permit for Stage 1 provides for two residential apartment towers, with a mix of shops, a supermarket and offices.

To the south of Stage 1 is an industrial building currently zoned Commercial 2 (17-21 Harcourt Parade). A permit exists for the site that allows a nine storey office building.

The total site (Stages 1 and 2) comprises two titles, has an irregular configuration with a frontage of 68.7m to Cremorne Street, 161m to Gough Street and 139.1m to Harcourt Parade. It has an area of 11,025m².

The north side of Gough Street comprises commercial buildings and to the north west, there are single-storey dwellings fronting Melrose Street.

A 10 storey building (the ERA Apartments) occupies the east side of Cremorne Street, on the corner of Bent Street. Commercial uses occupy the building’s three storey podium

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application to review the decision of the responsible authority to refuse permission for the Stage 2 development of the former Richmond Maltings site at 2-6 Gough Street, Cremorne, a site formerly used for industrial purposes (malting) originally established in the 1850s. The responsible authority issued a Notice of Refusal to Grant a Permit on eight grounds. Melbourne Water, which is a referral authority under the planning scheme, was an objector to the application and its grounds of objection were also included as grounds of refusal.
- 2 The application considered by the Council at the time of its decision to refuse the application, proposed:
 - The retention and reuse of an 1880's malt house, 1930's malt houses and 1952 concrete silos.
 - The demolition or partial demolition of a 1920's malt house, a 1952 drum malt house, silos constructed in 1962, a 1956 malt house and a 1939-40 barley house.
 - A 20 storey building along the site's southern boundary, another 20 storey building along the southern boundary toward the western end of the site and a seven storey building on the northern boundary toward the western end of the site.
 - Three basement levels of car parking and three podium levels of car parking.
 - A total of 399 apartments (1, 2 and 3 bedrooms) and 78 serviced apartments, office, retail, restaurant and café uses.
 - The dismantling of the existing Nylex sign as part of the silo demolition, and its repositioning on top of the proposed 20 storey building.
- 3 Following the Council's refusal of the application the permit applicant filed and served amended plans. At the commencement of the hearing, the amended plans were formally substituted for the application plans. In broad terms the substituted plans included the following changes to the original proposal:

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.

- The retention of nine of the 16 silos (the B9 silos), the extension of those silos with a three storey circular extrusion and the relocation of the Nylex sign on top of the extended silos.
 - Reduction in the number of apartments from 399 to 258.
 - Reduction in the number of hotel rooms (serviced apartments) from 78 to 43.
 - Reduction in the height of building B6 from 20 storeys to 14 storeys (66.45 to 46.65 metres).
 - New building B9 having a height of 15 storeys (50.95 metres) with the B9 silos being 11 storeys (52.49 metres).
 - Reduction in the number of car parking spaces from 385 to 239.
 - Introduction of new uses including an art gallery, commercial kitchen, function space, restaurant, resident wellness centre in the B9 silos, residential hotel in the B8 silos, and a heritage interpretation and visitor centre in the retained building B6.
 - Other consequential changes including reduction in bicycle parking and resident storage.
- 4 Works associated with the restoration of retained heritage buildings, a public realm improvement strategy including hard and soft landscape treatments and the creation of a publicly accessible north-facing plaza are also proposed.
- 5 The Council subsequently considered the amended plans and resolved that it supported the grant of a permit subject to the imposition of permit conditions. The conditions sought by the Council require further amendments including the deletion of one level from the new B9 building, and the deletion of ground floor retail area in building B9 and the dwellings above the retail area. The change to the ground floor of B9 and the dwellings above, relates to the Council's concern about the acceptability of the size, amenity and functionality of the internal public plaza at ground level abutting building B9.
- 6 The further changes sought by the Council are opposed by the permit applicant. The permit applicant also opposes a number of other permit conditions proposed by the Council including those relating to bicycle parking, provision of car share spaces and the requirement for a traffic and parking study.
- 7 Melbourne Water has also withdrawn its objection to the application subject to the imposition of permit conditions.
- 8 There are objectors to this proposal. They continue to oppose the grant of a permit notwithstanding an acknowledgement that the substituted plans address some of their concerns about the original application plans.

- 9 Broadly, the objectors regard the proposal as an overdevelopment and an unacceptable response to the policies and provisions of the planning scheme. In addition to specific concerns about detailed design aspects of the proposal, they submit the proposal deviates significantly from the design principles and the more detailed provisions of the Comprehensive Development Zone (CDZ3) that applies to the site. They submit that the intensity of development and the height and form of the proposed buildings are not respectful of the heritage and landmark status of the current buildings on the site, and has a range of unacceptable impacts on the Yarra River, the character and amenity of the locality generally. The objectors seek substantial changes to the proposal. These include reduced building heights to maintain the visual prominence of the silos specifically,
- 10 The review site is a significant site for a number of reasons. It is a large, disused, inner urban industrial site and its redevelopment presents opportunities to provide for a mix of employment generating uses, housing options and community resources.
- 11 Additionally however, the site is significant because it exhibits heritage attributes that are of State significance. It is a very prominent site and it is located at the edge of the Cremorne precinct nestled between Hoddle Street to the west, the Monash Freeway/City Link and the Yarra River to the south, Church Street to the east and Swan Street to the north. Cremorne exhibits a rich industrial and mixed-use heritage and character. Cremorne is proximate to the CBD. It has a constrained street network.
- 12 Relatively complex planning scheme policies and provisions affect the review site. These provisions reflect the significance of the site and the sensitivity of the issues surrounding its redevelopment. The planning scheme encourages the site's redevelopment for a mix of uses that generate local employment and housing opportunities. The planning scheme also seeks to ensure that development contributes positively to the urban fabric and public domain, protects the heritage of the site, and maintains the landmark status of the site including the Nylex sign and the visually and historically significant silos.
- 13 Having considered the submissions and the evidence and having inspected the review site and the surrounding area generally, the principal issues in this case can be categorised as follows:
- What is the site's physical and strategic context?
 - Does the proposal provide an acceptable response to the site's landmark status and to broader urban design considerations?
 - Is the design and functionality of the public plaza acceptable and does the proposal provide acceptable integration with the surrounding area?
- 14 The proposal is acceptable with respect to each of these issues. The reasons for reaching this conclusion are detailed below but in broad terms, the combination of proposed uses together with the height, scale and form of

development is consistent with the purpose of CDZ3, and also responds successfully to the broader policy framework as it applies to the site².

- 15 The further changes sought by the Council to the substituted plans are not necessary to achieve an acceptable outcome. The deletion of one level from the B9 building makes no appreciable difference to the visual prominence of that building. The retained silos and the Nylex sign will continue to be viewed and appreciated as significant landmark features. The public plaza is a functional, useable and accessible resource that will provide benefits to the wider community.
- 16 With respect to the concerns raised by the objectors in addition to those raised by the Council, those concerns do not warrant either a refusal of the application or significant changes to it. The height of buildings, the scale and intensity of the development and the mix of uses are acceptable having regard to the outcomes contemplated by the planning scheme's policies and provisions for the redevelopment of this significant site.

PRELIMINARY MATTERS

- 17 Following the conclusion of the hearing in this matter, it was necessary for Orders to be issued on 4 September, 21 November and 14 December 2017 providing the parties with the opportunity to make submissions about the following events that may affect our consideration of the issues in this case:
 - Amendment VC139 to all planning schemes was introduced on 29 August 2017. The amendment changed Clause 15 of the State Planning Policy Framework. The Amendment (among other things) removed reference to a variety of documents including the Guidelines for Higher Density Residential Development (2005) and the Activity Centre Guidelines (2005), and introduced references to Urban Design Guidelines for Victoria and Apartment Design Guidelines for Victoria.
 - The Tribunal became aware that a fire had occurred on the review site and it was understood that some of the heritage buildings incurred significant damage.
- 18 Submissions have been received from the parties in relation to each of these matters. The findings with respect to these matters follow.

² There is an issue in this case about which the Members of the Tribunal disagree. The disagreement does not extend to whether a permit should be issued or not. Both Members agree a permit should issue. The disagreement concerns the height of building B9. The disagreement has been resolved in accordance with S. 66 *Victorian Civil and Administrative Act 1988* which states that:

If for the purposes of any particular proceeding the Tribunal is constituted by 2 or 4 members and the opinions of those members on a question before them are equally divided, the question must be decided according to the opinion of the presiding member.

Amendment VC139

- 19 Amendment VC139 was introduced to support the design and assessment of apartment developments by introducing *Apartment Design Guidelines for Victoria* (Department of Environment, Land Water and Planning, 2017). The amendment also introduced *Urban Design Guidelines for Victoria* (Department of Environment, Land Water and Planning, 2017). Consequential amendments to relevant clauses of planning schemes also occurred to give effect to the introduction of the Guidelines and to remove reference to redundant clauses and documents.
- 20 The Council submits that the amendments to the planning scheme reinforce its submissions made with respect to the appropriateness of the public plaza. The Council submits that the design guidelines and State Policy at Clause 15 emphasise the importance of enhancing the public realm by creating a desirable balance of sunlight and shade, and enhancing the visual and social experience of the user.
- 21 The Council also relies on those aspects of the *Apartment Design Guidelines* that call for site responsive designs as a means of providing solar access to communal outdoor spaces, and minimising overshadowing of those spaces from surrounding buildings. The location of communal open spaces to achieve winter sun is encouraged. The Council refers to State Policy at Clause 15.01-6 Healthy Neighbourhoods that encourages healthy and active living and community well-being.
- 22 The Council reiterates its position that the proposed public plaza has a constrained configuration and is limited in its utility, especially within its “U” shaped component of building B9, an area that is narrow and largely in shadow.
- 23 The Council submits that the objectives of the Apartment Guidelines and the Design Guidelines increase the policy support for its proposed permit condition 1(x) that requires the ground level retail area of building B9 and the dwellings above it, be deleted.
- 24 Amendment VC136 introduced Clause 58 of the planning scheme in April 2017. Clause 58 applies to an application to construct or extend an apartment development and contains objectives, standards and decision guidelines with respect to the various components of an apartment development. Clause 58 does not however apply to an application for a planning permit lodged before the approval date of Amendment VC136. The application before us therefore is exempt from the provisions of Clause 58.
- 25 The *Apartment Design Guidelines* are intended to provide guidance on the interpretation of the standards incorporated in Clause 58. While Clause 16.01-1 identifies the *Guidelines* as a policy guideline that must be considered as relevant, the document has very limited relevance in circumstances where Clause 58 does not apply.

- 26 In relation to the *Urban Design Guidelines*, these in conjunction with Clause 15 of the planning scheme provide high-level design principles that in various formats have constituted part of planning schemes for many years. Some new elements have been introduced and others have been reworded. Clause 15.01-6 Healthy Neighbourhoods specifically encourages neighbourhoods that foster community interaction and make it easy for people of all ages and abilities to live healthy lifestyles and engage in regular physical activity by providing:
- Connected walking networks and cycling networks.
 - Streets with direct, safe and convenient access to destinations.
 - Conveniently located public spaces for active recreation and leisure.
 - Accessibly located public transport stops.
 - Amenities and protection to support physical activity in all weathers.
- 27 The applicant provided a detailed assessment of the proposal against the various elements of the *Urban Design Guidelines* and the Healthy Neighbourhood policy. The applicant submits that the proposal demonstrates consistency with these provisions.
- 28 The assessment of the proposal has regard to the *Urban Design Guidelines* and to the relevant provisions of the planning scheme as they now exist.

The fire

- 29 The applicant provided a written submission outlining the implications for the Tribunal's consideration of the application resulting from the fire at the review site. The applicant responded as follows:

Since the fire the focus of the client has been to respond to emergency order served upon it by the Municipal Building Surveyor of the City of Yarra. Our client is currently on site and working through the requirements of the emergency order.

In addition, Heritage Victoria has attended the site with the client to assess "first hand" the extent of the damage that has occurred to the existing B6 Building.

Our client is due to complete the works as set out in the emergency order, on or before 19 December 2017. Lovell Chen have been retained to liaise with Heritage Victoria to resolve on a way forward for repairs/reconstruction or demolition of part or all of those parts of building B6 that remain standing.

- 30 The applicant submits that the Tribunal should continue to consider the matter on the basis of the plans currently before us. Any subsequent changes to building B6 resulting from discussions with Heritage Victoria, and consequent revisions to the proposal could be addressed by way of secondary consent or by application under Section 72 of the *Planning and Environment Act 1987*.

- 31 The Council did not make a further submission on this matter.
- 32 Submissions have been received from objectors. They submit that the damage and possible loss of building B6 has a major impact on the site's heritage planning. They submit further consideration of the application ought to be postponed pending confirmation of Heritage Victoria's requirements.
- 33 Solicitors acting for Riseheath, one of the objectors, submits that a decision on the application should not be made until such time as it has reliable factual material before it concerning the changes to the physical context, and a revised development proposal has been prepared (if necessary) based on the changed context.
- 34 Riseheath further submits that the adaptive reuse of building B6 and its relationship with the ground plane public space were positive aspects of the proposal. Riseheath submits the loss of those benefits affects the balancing exercise the Tribunal must undertake and the Tribunal should not approach the balancing exercise as though building B6 remained an extant building comprising original fabric.
- 35 The appropriate course of action is to proceed with the consideration of this proposal based on the plans currently before us. Issues about the retention or removal of building B6 because of the fire damage will need to be resolved by the applicant, the relevant building authorities and Heritage Victoria. We have no jurisdiction about these matters.
- 36 There is no prejudice to any party flowing from our consideration of the proposal in its current form. The configuration of the proposed 14 storey building above the fire damaged B6 building has not changed. Whether there needs to be changes to the envelope and configuration of that building, and of the fire damaged heritage building, procedures are available under the *Planning and Environment Act 1987* to allow for the consideration of those changes, if they are found to be necessary.
- 37 Whether the consideration of those changes (if any) occurs by way of secondary consent or by some other mechanism (section 72 or 87A) is to be determined at the appropriate time, and will be influenced by the nature and magnitude of any changes considered necessary.

WHAT IS THE SITE'S PHYSICAL AND STRATEGIC CONTEXT?

- 38 This proposal is for Stage 2 of the redevelopment of the review site. Stage 1 of the redevelopment was the subject of an eleven day hearing before the Tribunal in January and February 2016³. The same Members in that case constituted the Tribunal as in the present case.

³ *Caydon Cremorne No.1 Development Pty Ltd v Yarra CC* [2016] VCAT 423 (interim decision) and *Caydon Cremorne No.1 Development Pty Ltd v Yarra CC* [2016] VCAT 1177 (final decision). The Tribunal issued an interim decision in that proceeding providing the applicant with the opportunity to submit amended plans to address concerns the Tribunal had with aspects of the

- 39 Stage 1 occupies the eastern part of the site with frontages to Gough Street and Cremorne Street. The permit for Stage 1 provides for two residential apartment towers, with a mix of shops, a supermarket and offices. Broadly, the permit issued for Stage 1, provides for the following:
- A 15 storey tower (50.65 metres) located near the site’s southern boundary.
 - A 13 storey tower (41.65 metres) located toward the site’s northern boundary.
 - Demolition of Building B3 (for which no permit is required) except for a modified façade facing Gough Street to provide a “heritage gateway” to the public spaces on the site.
 - 226 car parking spaces, with 40 spaces quarantined for Stage 2.
 - 225 apartments (including six home offices), public spaces and connecting pedestrian lanes.
 - Dwellings being 50% one bedroom, 41% two bedroom and 6% three bedroom apartments.
- 40 The Tribunal in that case provided a comprehensive analysis of the relevant planning scheme provisions and the policy framework as it applied to the review site as a whole. The Tribunal also provided a thorough analysis of the review site’s physical context. With the exception of those matters we refer to throughout these reasons, the review site’s physical and strategic context is largely unchanged from that applying at the time that the Tribunal made its decision on Stage 1⁴.
- 41 For this reason, it is appropriate that we adopt the analyses undertaken in the Stage 1 decision, and it is not necessary for us to repeat that in any detail in this decision. We do however find the following summary of the policy framework provided by us in the Stage 1 decision to continue to be a useful reference point for our deliberations in this case:
- Increased supply of housing in existing urban areas.
 - Provision of new housing in or close to activity centres and employment corridors and at other strategic redevelopment sites that offer good access to services and transport.
 - The design of energy efficient buildings.
 - Improved housing choice, better use of existing infrastructure and improved energy efficiency of housing.

Stage 1 proposal. The applicant took advantage of the opportunity provided and submitted amended plans. A permit for Stage 1 was subsequently issued.

⁴ Refer in particular to paragraphs 14-19 of the Interim decision dated 18 March 2016 for a discussion about the site context, and paragraphs 20-36 for a discussion about the zone, overlay and policy provisions of the planning scheme.

- High quality urban design and architecture that reflects the particular characteristics, aspirations and cultural identity of the community.
- Protection of the environmental, cultural or heritage significance of the locality from development that would diminish the significance of the place.
- Maintenance and enhancement of the natural landscape character of the Yarra River corridor in which the topography, waterway, banks and tree canopy are dominant features providing a highly valued, secluded, natural environment for the enjoyment of the public
- Promotion of sustainable personal transport and the provision of an adequate supply of car parking that is appropriately located and designed.
- Retention of the City of Yarra’s existing urban framework and identity as a low-rise urban form with pockets of higher development.
- Creation of a safe and engaging public environment where pedestrian activity and interactions are encouraged.
- Fostering the existing eclectic mix of commercial, industrial and residential land uses in Cremorne.
- Redevelopment of the review site as a strategic redevelopment site in a manner that contributes positively to the urban fabric and public domain and protects the heritage of the site.
- Maintenance of the prominence of the landmark Nylex sign and the visually and historically significant silos.
- Ensuring new residential developments close to sources of noise, fumes and air emissions are designed to minimise these impacts⁵.

42 The Council in its submission to us adopted the policy framework analysis contained in the Stage 1 decision, but also provided a detailed summary of the myriad of policies contained in the planning scheme (and some which are not) that are to varying degrees relevant to our consideration. We have examined that summary and we are content to continue to rely on our Stage 1 analysis.

43 In the Stage 1 decision, we also examined in detail the provisions of the CDZ3 and the Incorporated Document that applies to the review site. We provided the following concise summary of the Incorporated Document:

There is an Incorporated Document in the planning scheme relating to the site titled “Planning and Design Principles for the Richmond Malting Site, Cremorne – November 2007”. The Incorporated Document comprises a plan that identifies existing buildings and Council recommended building heights and setbacks across the site. The part of the site affected by this application shows heights at RL17

⁵ [2016] VCAT 423 Paragraphs 35-36

at the Gough Street and Cremorne Street edges (for setback distances of 10m and 6m respectively) and a height of RL38 for a greater part of the balance of the site, inside those setbacks. Arrows representing pedestrian access and circulation are also shown. A 5.00m wide pedestrian lane runs north/south off Gough Street is also shown. It follows the footprint of Building 4 immediately adjacent to the western boundary of the review site. The lane takes a dramatic right angle turn to the west, before heading south again, linking with an east/west lane providing access to the balance of the site that is not part of this application. A “public plaza” is shown in the centre of the total site and a further “public plaza” further to the west. Recommended building heights are shown at the western end of the site ranging from RL16 to RL38⁶.

- 44 We commented that the development plan in the Incorporated Document is no more detailed than that contained in the above description and we emphasised the wide discretion available in the consideration of applications for buildings and works that are not generally in accordance with the development plan or for variations to the plan that are “not minor”⁷.
- 45 It is self-evident that Stage 2 of the proposal is located on a different part of the review site than Stage 1. Stage 2 occupies a larger component of the total site in the central and western part of the site. That part of the site contains heritage buildings including the Nylex sign and the silos, structures that were not part of our consideration of the Stage 1 proposal. It also has different abutments and interfaces to those we considered in Stage 1. The scale and form of development in Stage 2 also differs from that of Stage 1, and the Stage 2 development has impacts within and beyond the site that are different to those we considered in Stage 1. By adopting our earlier analysis of the site’s physical and strategic context, we emphasise that we must apply those matters in a manner that is responsive to the current proposal’s development and its impacts.
- 46 In addition to the matters we have already discussed, there have been some changes to the planning scheme and policy framework subsequent to our Stage 1 decision. It is appropriate that those changes that have an influence on our decision in this case be recorded:
- Plan Melbourne 2017-2050: Metropolitan Planning Strategy⁸ was introduced into planning schemes via Amendment VC134 on 31 March 2017. Plan Melbourne is the overarching strategic planning document that sets the preferred direction of development in metropolitan Melbourne. It is a document that outlines the future growth that is to be accommodated within the existing boundaries of the metropolitan area over the next 35 years. At Clause 9 of the planning scheme, planning and responsible authorities (and therefore

⁶ [2016] VCAT 423 Paragraph 22.

⁷ [2016] VCAT 423 Paragraphs 21-31

⁸ Department of Environment Land Water and Planning, 2017.

on review the Tribunal) must consider and apply the strategy. Not all the principles underpinning the vision and policy directions encompassed within Plan Melbourne are necessarily new and in many respects build on policies that have formed part of planning schemes for many years. The vision and policy directions of Plan Melbourne have however been formulated in the context of updated and contemporary information and need to be applied having regard to that information. In particular we note that:

- Swan Street Richmond is identified as a Major Activity Centre under Plan Melbourne.
- There is emphasis on improving access to jobs and locating jobs closer to where people live. Major activity centres are identified as playing a significant role in ensuring employment growth occurs outside the central city.
- Improved access to housing choices close to jobs, services and public transport is encouraged.
- New housing and mixed use developments are directed to urban renewal precincts and sites across Melbourne.
- Design excellence is encouraged together with the creation of communities that enable interaction and make it easy for people of all ages and abilities to live healthy lifestyles.
- With respect to heritage related matters, the Executive Director of Heritage Victoria has granted permits subject to conditions, for the development of the site generally in accordance with the proposal that is currently before us in this Application for Review. Heritage matters are not before us in this application. We are nevertheless required to proceed in our assessment of the issues in dispute in this case on the basis that the Applicant has demonstrated that the proposal has met those requirements of the Heritage Act about which the Executive Director must be satisfied.
- Amendment GC48 introduced on 24 February 2017 new and/or amended overlay controls to provide a consistent approach to the management of development within the Yarra River Corridor between Richmond and Warrandyte to reduce encroachment and protect its landscape and environmental qualities. The new overlay controls do not apply to the review site. Amendment VC134 amended the State Planning Policy Framework (SPPF) at Clause 12.05-2, introducing objectives, strategies and policy guidelines aimed at maintaining and enhancing the natural landscape character of the Yarra River corridor.

47 The task of the decision maker in this case is to integrate the array of policies and planning scheme provisions that apply to this site, to balance competing objectives and to arrive at a decision in favour of net community

benefit and sustainable development⁹. We were confronted with a similar task in our consideration of the Stage 1 application. We outlined in that decision the approach to be taken in carrying out the balancing exercise. The same approach must be adopted in this case. In the Stage 1 decision we said:

The Victorian planning system is to a large extent a performance based system, i.e. a system in which applications are assessed having regard to outcomes encouraged by the planning scheme, rather than being assessed against a set of rules and regulations.....¹⁰

.....the planning regime as it applies to the review site recognises it as a strategic redevelopment site and also seeks to reconcile that status with the site's varied development constraints. The inclusion of the recommended building heights in the Incorporated Document constitutes an important element in the reconciling of the planning scheme's competing policies and objectives with the site's attributes and constraints¹¹.

- 48 We concluded that in Stage 1 the proposal before us was generally acceptable notwithstanding that the building heights in the Incorporated Document were being exceeded. We did conclude that further amendments were required before we were prepared to grant a permit. A number of changes to the Stage 1 application plans were identified during the course of the hearing, which the applicant was prepared to accept, while a series of additional changes were identified that remained in dispute. We provided the applicant with the opportunity to prepare amended plans to incorporate those further changes we decided were necessary. These changes included a reduction in the height of the southern tower, a realignment of the north-south lane, a reduction in the provision of car parking, and provision of a greater diversity of apartment types and sizes to better achieve housing diversity objectives.
- 49 The applicant accepted the opportunity to prepare amended plans and we subsequently issued a permit for the proposal in accordance with those plans, but with further changes, we required by way of permit conditions. Significantly we concluded that while the reduced tower heights remained in excess of the maximum heights specified in the Incorporated Document (38 metres)¹² there were good policy reasons for allowing departures from the quantifiable standards in the Incorporated Document.

⁹ Yarra Planning Scheme Clause 10.04.

¹⁰ [2016] VCAT 423 Paragraph 56

¹¹ [2016] VCAT 423 Paragraph 61

¹² The height of the southern tower was reduced to 50.60 metres and the height of the northern tower reduced to a maximum of 41.65 metres.

DOES THE PROPOSAL PROVIDE AN ACCEPTABLE RESPONSE TO THE SITE'S LANDMARK STATUS AND TO BROADER URBAN DESIGN CONSIDERATIONS?

The Council's position

- 50 Subject to relatively minor changes to the proposal, the Council is content that this proposal is an acceptable response to the policies and planning scheme provisions that apply to the site.
- 51 The Council has however proposed a permit condition requiring the deletion of one level from building B9.
- 52 As proposed in the substituted plans, building B9 has a height of 15 storeys (50.95 metres) and is juxtaposed with the retained B9 silos that have a three storey circular extrusion raising their height to 52.49 metres. The Nylex sign is to be sited on top of the extended silos.
- 53 The Council submits that its condition requiring a deletion of one level is justified because it regards the provision of a tall structure on this part of the site as being inconsistent with the purpose of the CDZ3 which is to retain the visual dominance and preservation of views of the landmark Nylex sign and associated silos. The Council emphasises that the recommended building height shown in the Incorporated Document for the western end of the site is RL38¹³. Reference is also made to the associated Design Principles that seek to:
- Maintain a low rise edge to the Gough Street residential interface to the north.
 - Provide tall development at the eastern end of the site consistent with the built forms adjacent to the east.
 - Retain the visual prominence and landmark qualities of the Nylex sign and clock and the 1960's silos which support this heritage feature.
- 54 The Council submits that the planning regime for the site is based on the silos and the Nylex sign retaining their visual dominance by ensuring that development adjacent to the silos is lower than the height of the silos¹⁴. The Council acknowledges that by extending the height of the silos, there is scope for additional height in the western part of the site above the RL 38 specified in the Incorporated Document. It is the Council's submission

¹³ In the Stage 1 decision, we commented on the use of RL's as a measure of maximum height in the Incorporated Document. We noted that the application plans in that application referenced the various RL heights as being measured from the corner of Gough Street and Cremorne Street. We proceeded on the basis that this was an accurate depiction of the RL's nominated in the Incorporated Document. There were no submissions to the contrary on this point. We have adopted the same approach in this case and proceeded on the basis that the RL's are generally consistent across the site with the AHD's where they are referenced in the plans. For this reason, we have simply noted heights in metres.

¹⁴ In addition to the purposes of the CDZ3 and the Design Principles, the Council relies on local policies at Clause 21.05-1 Built Form, 21.08-2 Neighbourhood – Burnley, Cremorne, South Richmond, 22.03 Landmarks and tall structures,

however that the difference in height between the extended silos and building B9 is not sufficient to enable the B9 silos to retain their visual prominence. The Council submits that building B9 and the silos will be viewed as having effectively the same height and the visual prominence and landmark qualities of the silos will be reduced as a consequence. This impact is compounded by the juxtaposition of building B9 and the silos.

- 55 The Council submits the benefit of deleting one level is that it will reveal more of the B9 silos especially when viewed from the south-west and from the south along Punt Road. The Council acknowledges that the Nylex sign at its new position will continue to be prominent but the reduction in height of building B9 by one level will allow the whole of the sign including its supporting structure to remain in full view from all vantage points.

The objector's position

- 56 In contrast to the Council's position, the objectors submit that this proposal is not an acceptable response to the policies and planning scheme provisions applying to the site. In broad terms, they agree with the rationale underpinning the changes sought by the Council in relation to the height of building B9, but they submit these changes do not go far enough and more fundamental and substantial changes are necessary. In particular they submit the proposal does not respond to the design principles encompassed within the CDZ3 and consequently, the proposal exhibits a range of unacceptable impacts including:

- A lack of integration with the surrounding community because of the failure to provide two publically accessible plazas.
- A failure to achieve a transition from the lower scale and fine grained pattern of development in Cremorne.
- The reduction in the visual prominence of the landmark silos and the Nylex sign primarily because of the height, siting and massing of the B9 building.
- Increased overshadowing of the Yarra River.

- 57 The objectors submit that a development that meets the design principles of CDZ3 is a development that complies with the quantifiable standards of CDZ3, in particular with respect to building heights and setbacks, and the provision of the accessible and integrated public spaces.

- 58 Reference is also made to the local policy at Clause 22.03 Landmarks and Tall Structures. The objective of the policy is to *maintain the prominence of Yarra's valued landmarks and landmark signs*. The policy identifies a series of landmark buildings around which new buildings are encouraged to be designed to ensure the landmarks remain as the principal built reference. The policy also identifies a series of landmark signs including Nylex sign (Harcourt Parade, Cremorne). In relation to these signs, the policy states that development should protect views to those landmark signs

- 59 Riseheath relies on the evidence of Professor Bury in support of its submission. Professor Bury's evidence constitutes an architectural critique of the proposal and his criticisms are largely predicated on his view that the proposal does not meet community expectations about the development of the site. Professor Bury was cross-examined and questioned by the Tribunal about how community expectations are to be determined. Ultimately, Professor Bury commented that reference to the provisions of the CDZ3 is an important determinant, although he also acknowledged the wide discretion available to approve a development that varies from the quantifiable provisions of the zone.
- 60 Professor Bury is critical of the proposal conceptually, concluding that it fails to build on the heritage and landmark status of the site, and ultimately dominates it.
- 61 Professor Bury's specific criticisms can be distilled to two key elements:
- There is inadequate public access to and use of the site.
 - The scale and scope of development on the site is excessive and the heritage and landmark status of the site is overwhelmed.
- 62 Riseheath submits that the extrusion of the silos should be deleted because the extrusions undermine their landmark qualities. It is their submission that building B9 should then be reduced in height by a comparable amount (3 storeys). Riseheath submits that the key views of the silos and the Nylex sign are obtained from the west (e.g. Gosch's Paddock, Morell Bridge and the Main Yarra Trail) and from the south and east. Riseheath submits that with the reductions in height proposed the key views will be maintained.

The Tribunal's findings

- 63 It is clear from all the evidence and submissions presented to us that the landmark status of the site is derived from the heritage significance of the site including the Nylex sign and the supporting silos, and the general broader recognition by Melbournians of the highly visible Nylex sign sited at an elevated position above the silos.
- 64 The maintenance of the Richmond Maltings site's landmark status raises both heritage and broader planning policy and urban design considerations.
- 65 The heritage significance of the site is reflected in its inclusion on the Victorian Heritage Register. Because of the site's inclusion on the Register, heritage matters are not before us in this application. The Executive Director of Heritage Victoria has issued permits for this proposal, including the totality of the additional built form, demolition of some heritage fabric and adaptive reuse of retained heritage fabric.
- 66 The impact of the proposal on the landmark status of the site that derives from its heritage significance has therefore been resolved and is not a matter for our consideration.

67 With respect to the policy and urban design considerations, the planning scheme provisions relating to the protection of landmarks constitute one aspect of the totality of the planning regime applicable to this site. The impact of the proposal on the status of the landmark silos and the Nylex sign must be assessed having regard to the totality of the applicable planning scheme provisions and policies. These include of course those provisions that encourage the development of this site for a mix of uses that generate local employment and housing opportunities.

68 The balancing exercise required to be carried out must also focus on the achievement of an acceptable outcome. In relation to the notion of acceptable outcomes, clause 65 of the Planning Scheme states that:

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause

69 There is a long line of decisions of this Tribunal and higher jurisdictions that have applied this principle to the determination of planning disputes. The principle of acceptable v ideal planning outcomes was considered in a decision of Osborn J in *Knox CC v Tulcany*, in which His Honour commented that:

The planning scheme does not require an ideal outcome as a prerequisite to a permit. If it did, very few, if any, permits for development would ever be granted and there would be difficult differences of opinion as to whether the outcomes were in fact ideal. The Tribunal is entitled to grant a permit where it is satisfied that the permit will result in a reasonably acceptable outcome having regard to the matters relevant to its decision under the planning controls¹⁵.

70 The Supreme Court has considered the meaning of “acceptable outcomes” within the terms of clause 65 in *Rozen v Macedon Ranges SC*¹⁶. After referring to the provisions of what is now clause 10.04¹⁷ and clause 65, Osborn J said:

[171] The test of acceptable outcomes stated in the clause is informed by the notions of net community benefit and sustainable development. An outcome may be acceptable despite some negative characteristics. An outcome may be acceptable because on balance it results in net community benefit despite achieving some only of potentially relevant planning objectives and impeding or running contrary to the achievement of others.

[172] The weight to be given to the various considerations which may be relevant on the one hand, and to particular facts bearing on those considerations on the other hand, is not fixed by the

¹⁵ (2004) 18 VPR 229, 234

¹⁶ [2010] VSC 583

¹⁷ At the time of the *Rozen* decision, the provisions equivalent to clause 10.04 were included in clause 11.02 of the SPPF contained in all Victorian Planning Schemes.

planning scheme but is essentially a matter for the decision maker.¹⁸

[173] Furthermore, the potential complexity of issues raised by a particular application renders the question of what would be the optimal form of development for use in a particular case fundamentally difficult of resolution and one on which different minds might reasonably differ.

- 71 In the present case, the proposal advances those purposes and objectives of the planning scheme encouraging the redevelopment of the site in a manner that also retains to an acceptable degree the features of the site that contribute to its landmark status.
- 72 The site in its existing condition comprises an eclectic collection of buildings that vary in height, material and form, all of which contribute in varying degrees to the recognition and appreciation of the site as a prominent landmark. These buildings include the visually prominent silos and Nylex sign, but also less prominent and modest two and three storey warehouse and industrial buildings.
- 73 Importantly the proposal retains and incorporates adaptive reuse of many of the most prominent buildings including some of the silos, as well as several of the less visually prominent but no less important buildings on the site. The retention and reuse of these buildings successfully maintains the grain and diverse mix of the existing built form. The provision of the new buildings enable the proposal to achieve its potential to provide for housing and employment opportunities in a manner that contributes to the eclectic character of the site's existing built form.
- 74 Views to the landmark Nylex sign are protected by extending the height of the silos on which it is currently sited, and locating the sign on top of the extruded silos. This outcome is consistent with the local policy at Clause 22.03 to protect views to nominated landmark signs.
- 75 The reduction in the height of building B9 sought by the Council has no appreciable benefit to the way in which the site is viewed as a landmark. The degree to which the silos and the Nylex sign would be more visually exposed by deleting one level is of no consequence.
- 76 The more significant changes sought by the objectors would have the benefit of reducing the overall scale of development on the site, and increasing the visual exposure of the retained B9 silos when viewed from a number of external vantage points. These changes could be regarded as advancing the relevant Council policies that encourage the retention of the landmark status of the Nylex sign and the silos and better achieving a transition from the lower scale and fine grained pattern of development in Cremorne. That would be achieved by adversely affecting the achievement of other policy objectives for the site.

¹⁸ *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; (1985) 162 CLR 24, 41]

- 77 An acceptable and balanced outcome for the site has been achieved by this proposal because the views to the Nylex sign are protected as discussed above, and the existing silos that contribute most significantly to the site's landmark status have been retained.
- 78 While the prominence of the silos will be affected by the introduction of the new buildings, a diminution of their prominence is an inevitable outcome consequent on the redevelopment of the site. From the objector's perspective, an acceptable level of reduced prominence is achieved by lower built forms on the site more akin to the heights specified in the Incorporated Document.
- 79 The issue to be decided therefore is one of degrees, that is, does an acceptable outcome for this site necessitate compliance with the heights specified in the Incorporated Document, or can an acceptable outcome be achieved by higher buildings as proposed?
- 80 Based on the visual material and evidence presented in this case, the buildings proposed in the application, at the height proposed, do not prevent the most significant structures on the site, notably the silos, from continuing to be viewed and appreciated for their historic origins and landmark status. They will be viewed as part of a contemporary redevelopment of a redundant industrial site incorporating housing and other uses, which retains and adapts the use of those structures. The degree to which those structures will continue to be visible is consistent with a balanced application of all relevant planning scheme provisions and policies.
- 81 A further consideration influencing the decision about the acceptability of the proposal is the architectural quality of the proposal as a whole and building B9 specifically. This is a seductive, sophisticated and subtle design. The inventive conversion and conservation of the retained heritage elements and restrained and elegant use of a limited palette of materials will undoubtedly result in buildings of distinction. The differentiation of the different elements on the site by way of form and finish has the potential to enhance Cremorne and indeed the City of Yarra.
- 82 One of the purposes of CDZ3 is to achieve a transition from the lower scale and fine grained pattern of development in Cremorne. The height of the new buildings in particular is a factor that contributes to an assessment of the proposal's acceptability in relation to that zone purpose. It is however, a consideration that is appropriately undertaken having regard to the Incorporated Document that identifies a higher built form on that part of the site on which building B9 is located (38m). The objectors submit the building should be contained to this height.
- 83 For reasons previously discussed, a restriction of the building B9 height to 38m is not supported having regard to the broad sweep of policy considerations applying to this site.

- 84 An acceptable response to the CDZ3 purpose calling for a transition from the lower scale surrounding area is not just a matter of building height. Well-designed buildings at a height greater than 38m are capable of responding in an acceptable manner to that purpose. The design and architectural merit of this proposal have been discussed above. For this reason, combined with the successful arrangements for public access to the site discussed in the following section of these reasons, the proposal does achieve an acceptable response to the CDZ3 purpose.

IS THE DESIGN AND FUNCTIONALITY OF THE PUBLIC PLAZA ACCEPTABLE AND DOES THE PROPOSAL PROVIDE ACCEPTABLE INTEGRATION WITH THE SURROUNDING AREA?

- 85 The proposal incorporates the provision of public access to the site from Gough Street and at ground level, public spaces are created incorporating both hard and soft landscape treatments.
- 86 The Council's submission with respect to the acceptability of the public plaza's functionality and acceptability is predicated on the proposition that the area of the public plaza has been reduced from that depicted in the Incorporated Document. Secondly the area and configuration of the plaza is "tight" and of limited utility. Consequently the Council submits that the ground level retail area of 139m² located adjacent to building B9, and the 13 levels of apartments above that space, should be removed to increase the area available to the public and to provide greater sunlight into the plaza.
- 87 The objectors broadly agree with the Council submissions on this point, although Professor Bury's criticisms extend to a concern about a lack of effective integration, interaction and social cohesion with the local community. It is Professor Bury's evidence that the publicly accessible parts of the site fail to provide for meaningful public engagement because they will be perceived as semi private spaces attached to private uses.
- 88 In relation to Professor Bury's criticisms specifically, the applicant has devoted considerable effort in creating opportunities for access to the site from the local (and wider) community. All public spaces are at ground level and there is unhindered access from Gough Street. The retention of heritage fabric and the adaptive reuse of buildings including the heritage interpretation centre, does allow for community connection to a site that has hitherto been largely isolated from the community.
- 89 The applicant, through Ms Heggen's evidence, argues that the two new open spaces to either side of the B8 silos/hotel building respond positively to the special arrangement across site. In particular, the removal of the existing built form along Gough Street in front of buildings B8 and B5 results in a pleasant open space, sunlit year-round and proximate to the proposed restaurant, café and bakery. These spaces have the potential to satisfy the intent of the relevant design principles. They are directly opposite the dwellings which line Melrose Street and would also be attractive to residents living in Stage 1. It would be a welcoming space,

particularly if the enhancements to Gough Street are undertaken. The undercroft to the B8 hotel could provide a pleasant shaded area in hotter weather. The proposed somewhat heavy-handed concrete silo shaped seating and planters is not a landscape treatment that will enhance these open areas, but the drawings before us are conceptual and matters of design detail like this can be resolved subsequently.

- 90 In summary, the proposed open space will be attractive to and provide amenity for residents of the wider Cremorne area and beyond. Providing a retail area directly facing what is a narrow public plaza that has the potential to activate it and provide evidence of the ‘public’ function of the open space, in a way that a residential interface would not.

OTHER MATTERS

The proposal’s impact on the Yarra River

- 91 The Council submits that a further benefit of its proposed deletion of one level from building B9 is that the shadow impacts on the Yarra River would be reduced.
- 92 The Council acknowledges that the Design and Development Overlay (DDO1) that was introduced by the Minister for Planning by Amendment GC48 on 24 February 2017, does not apply to the review site. The Council submits however that Clause 12.05-2 which is State Policy relating to the Yarra River is relevant, and supports the Council’s contention that building B9 is too high. The objective of Clause 12.05-2 is:
- Maintain and enhance the natural landscape character of the Yarra River corridor in which the topography, waterway, banks and tree canopy are dominant features providing a highly valued, secluded, natural environment for the enjoyment of the public.
- 93 The Council relies in particular on the Strategy that seeks to avoid *overshadowing of the river, its banks and adjacent public open space to ensure that the amenity of the public realm is maintained year round.*
- 94 The objectors also identify the impact of the proposal on the Yarra River and in particular the increased overshadowing resulting from the height of the proposed buildings.
- 95 The State policy is a relevant consideration but it is a high-level policy applying to the Yarra River corridor as a whole. The corridor extends over a substantial distance and within the corridor there are undoubtedly localities that exhibit a natural landscape character in which the topography, waterway, banks and tree canopy are dominant features, providing a highly valued, secluded, natural environment for the enjoyment of the public. The part of the corridor adjacent to the review site is not one of those localities. This part of the corridor adjacent to the review site exhibits a highly

urbanised physical context, which apart from the Richmond Maltings site is also affected by City Link that sits between the review site and the river.

- 96 The review site is also a strategic redevelopment site on which the planning scheme encourages significant levels of development.
- 97 Like all policy, Clause 12.05-2 must be applied having regard to the circumstances and context of each site. In this case, the level of additional overshadowing associated with the proposal is acceptable. This conclusion is based on the shadow impact analysis presented for both the September equinox and the winter solstice, for both the proposal and for the proposal with one level deleted, as required by the Council. The analysis demonstrates that for the winter solstice at 11.00 am about 50% of the river is in sun, with the shadow retreating from that time on. The river is largely clear of shadow from about 1.00pm at the winter solstice. The deletion of one level has no significant benefit on this impact.
- 98 In the Stage 1 decision the Tribunal commented with respect to the impact of the Stage 1 development on the river, in the following terms:
- Any consideration of the proposal's impact on the River, and in particular the application of Clause 12.05-2 must have regard to the very robust, urban and industrial character of the River's northern edge, comprising the Monash Freeway and remnant industrial buildings, and the planning scheme provisions that provide for the redevelopment of these sites incorporating substantial built forms.
- Whilst we have concluded that the height of the southern tower is not acceptable for the reasons outlined above, the additional overshadowing of the Yarra River is not an inconsequential consideration. The shadow impact of the tower is not such that we would require the height of the tower to be lowered only because of that impact. However, we do observe that the cumulative impacts of Stages 2 and 3 and the development of other sites along Cremorne's river edge, is a matter that will require careful consideration and must be addressed if policy protecting the amenity of the Yarra River is to be given effect¹⁹.
- 99 There is some significance in the fact that since the Stage 1 decision, DDO1 has been applied to land abutting the review site but not the review site. DDO1 contains a range of mandatory building height and setback controls and controls prohibiting development from casting additional shadows beyond identified Setback Reference Lines at nominated times of the year, depending on a site's location within the corridor.
- 100 Because DDO1 does not apply to the review site, the assessment of the shadow impact must proceed on the basis of a contextual analysis informed by the existing physical characteristics of the site and the development outcomes encouraged for the review site by the planning scheme.

¹⁹ [2016] VCAT 423 Paragraph 68

- 101 The shadow impacts discussed above represent an impact that is acceptable and consistent with the level and scale of development encouraged for this significant strategic redevelopment site.

Traffic and car parking

- 102 The Council does not oppose the proposal on the basis of the traffic or car parking considerations. Objectors however do raise significant concerns about the proposal and the extent to which existing congestion in Cremorne's constrained street network will be exacerbated by the proposal.
- 103 The consideration of traffic and car parking impacts consumed a large amount of the hearing in the Stage 1 application. The Tribunal's findings in that case are conveniently summarised as follows:

There is a wide range of initiatives needed to address the traffic congestion issues in Cremorne. Most of these initiatives are beyond the control of the applicant in this case, and are the responsibility of the Council and VicRoads. Limitations on the provision of car parking is however one component of a wider strategy necessary to address traffic congestion generally and, in Cremorne specifically, that does fall within the ambit of the applicant's responsibility.

Notwithstanding our reservations about the Council's lack of detailed policy analysis and development on this issue, the existing levels of congestion in Cremorne calls for an approach that at least begins the process of reducing the reliance on car dependency and encouraging increased use of alternative transport methods. The review site is one site where this approach can be usefully employed²⁰.

- 104 The Tribunal required amended plans for Stage 1 providing for a reduced provision of car parking, generally in line with the evidence led by the Council in that case, and which is based on a car parking demand management model.
- 105 In the current case, the applicant has adopted a similar approach to that approved in Stage 1. Mr De Young's evidence on these issues confirms to our satisfaction the acceptability of that approach in terms of the provision of parking management for Stage 2.

MEMBER KEDDIE'S OPINION ABOUT THE HEIGHT OF BUILDING B9

- 106 My concern about building heights stems not from a heritage perspective, but from the urban design consequences of the proposal. Maximum heights of 38.55 metres and 50.80 metres (excluding the lift overrun) were granted in the Stage 1 permit, for reasons explained in that decision. Stage 3 drawings submitted to the Tribunal propose a height of 38.95 metres for that stage, including the rooftop plant screen.
- 107 As discussed in the Tribunal decision for Stage 1, the Hansen document which established the rationale for the Design Principles gave weight to the

²⁰ [2016] VCAT 423 Paragraph 86

existing 10 storey ERA apartments, because they affected the transition to the lower built form beyond. Another determinative factor was the maintenance of wider views to the 1960s silos and Nylex sign. A height of 38 metres was suggested at the eastern end of the site. The Tribunal retains the view²¹ that Council's inclusion of the recommended building heights in the Incorporated Document constitutes an important element in the reconciling of the planning scheme's competing policies and objectives with the site's manifest attributes and constraints.

- 108 The Design Principles also envisage a substantial building envelope at the western end of the site, also nominated as having a height of 38 metres. CDZ3 seeks to retain the visual dominance and preservation of views of both the sign and the silos. It seeks a high-quality response, one that is respectful of the scale and form of buildings on the site. The applicant proposes a height of 50.87 metres for building B9. The extrusion of the remaining silos to raise the height of the Nylex sign by approximately 9 metre is a clever way to allow its prominence to remain whilst incorporating higher built form around it, and Heritage Victoria has approved this device.
- 109 Riseheath says that the entire extrusion should be deleted and the height of building B9 should be reduced by the same amount. It considers that the extension of the silos undermines their integrity and, as a consequence, their landmark qualities. It argues that preserving and enhancing the landmark qualities of the site benefits Melbourne more broadly. Other objectors support this view.
- 110 So, what height will allow the Nylex sign and remaining silos supporting it to maintain their prominence and reinforce the landmark qualities as required by the planning scheme? My conclusion is that, at its proposed height, building B9 does not, because its height and footprint combine to generate a substantial building mass. That this site is one where the built form will have a visual impact on many Melburnians is both a design constraint and an opportunity. The proposed design of building B9 ignores the former whilst exploiting the latter. When viewed from the south and west, where future built form is unlikely to obstruct views of the site, the height and bulk of B9 is unacceptable. It is these more distant views, as well as those gained when travelling north or south along Punt Road, in which the visual prominence of the sign will be diminished. The Design Principles not only seek to retain the visual prominence and landmark qualities of the Nylex clock and supporting silos but also seek new buildings that reinforce these landmark qualities.
- 111 Council asserts that in terms of height, the removal of one level of building B9 will render the proposal acceptable. The applicant demonstrated by way of additional photomontages, amongst other submissions, that the effect of

²¹ [2016] VCAT 423 Paragraph 61

lowering the new portion of building B9 by one level is marginal, and I agree.

- 112 Whilst the applicant seeks a height equal to that of the elliptical tower that forms part of the approved Stage 1 development, I have concluded that such a height, in this location, is unacceptable. I accept that there are a number of quite different design options available. For example, a building of the same height with a substantially reduced footprint might be one that would be acceptable. However, we are required to assess the merits of the particular proposal before us.
- 113 Building B9 comes within 3.4 metres of the western side of the extruded silos. The proposed erosion of the south-east corner of the building above Level 3 to reveal the south-west corner of the silos assists in maintaining their legibility. However, whilst the adroit use of materials and finishes separates the various components of the site, in most views from the west and south the large footprint and overall massing of building B9 instead results in a visual bulk that detracts from the silos and their role supporting the sign.
- 114 There would also be an unacceptable impact when viewed from the north-west. The public open space of Gosch's Paddock is framed by the emerging form to the east along Punt Road between Swan Street and the Yarra of between four and six storeys. To the west, the curvaceous form of the soccer stadium also sits around this level. From this area of the public realm, and when travelling along City Link, building B9 would become the landmark, rather than the sign and supporting silos identified in the planning scheme, due not only to its location but also because of its sinuous, shining exterior. In doing so, it would unacceptably diminish the status of one of Yarra's designated landmarks.
- 115 Whilst not determinative, a reduction in the height of building B9 will result in a consequential reduction of shadow on the river. Noting the exclusion of this particular site from the restrictions on overshadowing set out in DDO1, a lower height will nevertheless have a positive benefit in protecting the amenity of the Yarra River, taking into account the cumulative effect of the three Stages of development and the policy support in the planning scheme for the minimisation of its overshadowing. Council suggested that the exclusion from DDO1 may have been based on a height limit of 38 metres already being in place for the site. Mr Hampton calculated that at the winter solstice for every 3 metres of height a shadow of up to 5.5 metres is thrown, and up to 2.3 metres at the equinox. A 9.0 metre reduction in height will have an appreciable effect on the overshadowing of the Yarra River.
- 116 The Design Principles do not nominate a height for building B6. At the time the analysis underlying them was undertaken, it was quite probably not envisaged that the pressure for increased housing would be such as to warrant an addition to the existing heritage building such as the one

proposed. Times have changed. The opportunity to add further units to the development, and as a consequence increased height, is understandable and legitimate. I note, however, that the destruction by fire of parts of the host building since the hearing provides the opportunity for the applicant to consider a lower building in this location that achieves the same yield.

CONCLUSION

- 117 It follows from the above reasons that the decision of the responsible authority is set aside and a permit issued.
- 118 In deciding the conditions to be included on the permit, a set of draft conditions have been circulated by the Council, and these were the subject of discussions between the Council and the Applicant during the course of the hearing. There is no dispute between the Council and the Applicant with respect to most of the conditions. There are some conditions that remain in dispute, apart from the issues that have been ventilated in these Reasons. The objectors have been provided with the opportunity to comment on the circulated conditions and submissions were received from them. The objectors also made submissions about additional conditions they consider necessary.
- 119 It is not necessary to provide a detailed explanation of the conditions that have been imposed other than to record that they reflect the submissions and evidence of the parties in addition to the matters which arise from these reasons.

Laurie Hewet
Senior Member
Presiding

Ann Keddie
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	PLN15/1176
LAND:	2-6 Gough Street CREMORNE VIC 3121

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

Development of the land for buildings and works, including the construction of three buildings, use of the land as accommodation (dwellings and serviced apartments), function centre, shop and restaurant, food and drink premises (café), art gallery, reduction in the car parking requirements and construction and display of signs (relocation of Nylex and Victoria Bitter signs on top of silos B8 and B9).

CONDITIONS:

- 1 Before the 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 this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the substituted plans, TP003-TP04, TP096-TP115, TP130-155, TP166-TP185, TP201-TP204, TP231, TP251, TP271-TP273, TP301-TP303, TP400-TP406, TP500-TP502, TP600-TP605, dated 6 June 2017 and prepared by Fender Katsalidis Architects, TP00 and TP01, TP10 and TP30-TP32, revision 2, TP02-TP08, TP11-TP13, TP40-TP42 and TP60-TP61 and materials schedules (building 4, building 5 and new materials), dated October 2015 and prepared by Lovell Chen and LP01, LP02 and LP03, dated 5 June 2017 and prepared by Oculus but modified to show:

Land use

- (a) 'hotel' shown as 'residential hotel';
- (b) the 'bar' on top of building B9 (inside and outside areas) shown as a 'restaurant';
- (c) deletion of the exhibition centre (heritage interpretation visitor centre – B6) and venue (B9) uses with these areas shown as vacant;

- (d) the bakery/retail as a ‘food and drinks premises (café)’;
- (e) a notation stating which uses would use the kitchen area within the B9 silos;

Built form

- (f) a complete set of detailed elevation drawings of all buildings clearly showing windows, doors, balconies and the like;
- (g) no works within the Road Zone, Category 1;
- (h) deletion of the servery window facing Gough Street along the northern end of B4 (may be replaced with a window that does not function as a servery);
- (i) consistency between the floor and elevation plans of B4 and B5;
- (j) deletion of all openings in the wall along the western boundary of B9 and treatment of this interface to avoid its presentation as a blank wall;
- (k) external, operable, vertical screening to the level 10-12 western windows of building B6;
- (l) the south setback of level 13, building B6;
- (m) details of the fire booster cupboards and treatments;
- (n) screening to habitable room windows, balcony or terrace to address internal overlooking, where necessary, to the satisfaction of the responsible authority;
- (o) at least 25% of the smaller units capable of amalgamation into larger 2 or 3 bedroom apartments; floor, section and elevation plans to correlate;
- (p) maximum floor to ceiling heights of 2.7m in living rooms and bedrooms;
- (q) a general signage plan, directing pedestrians to each residential entry;
- (r) a schedule of external colours and materials, including samples, coloured elevations and perspectives. The façades of all buildings proposing the use of glass must be confirmed as meeting the relevant EPA standards for glare;
- (s) detailed plans showing the interface between the retained/modified heritage fabric and the ground level open space areas;
- (t) treatment of all lower level walls with a graffiti-proof finish;
- (u) B9 – level 3 and above set back a minimum 4.5m from the western boundary
- (v) B9 – levels 1 to 11 – deletion of the bedroom south of the wintergarden and extension of the adjacent living/dining/kitchen area;

- (w) details of dining and living room furnishing for four adults for the two-bedroom dwellings
- (x) other than the connecting bridges new building B9 segment is to be set back a minimum of 3.4m from the retained B9 silos;
- (y) B4 and B5 windows as openable;
- (z) maximised area of operability for wintergarden facades (above balustrade height);
- (aa) A staging plan if the development is proposed to be undertaken in Stages.

Signage

- (bb) details of the relocated signs (Victoria Bitter and Nylex), including:
 - i dimensions;
 - ii the colour, materiality and lettering style;
 - iii the type and level of illumination; and
 - iv confirmation that the Nylex sign will be turned on.

Car parking/bicycle parking

- (cc) car parking provision as per the project area summary on page TP004 but not exceeding 236 car parking spaces;
- (dd) ramp grades and lengths dimensioned;
- (ee) kerbs, barriers, wheel stops and structural elements shown in the car parking areas;
- (ff) the location and dimensions of supporting columns within all car park areas. The car parking spaces must meet diagram 1 of clause 52.06-9 of the Yarra Planning Scheme;
- (gg) sectional drawings of the ramps and access ways, demonstrating a minimum headroom clearance of 2.2m, with the exception being a minimum 2.5m height clearance above disabled car parking spaces;
- (hh) details of car park security (e.g. roller doors, intercoms, swipe card readers, etc.);
- (ii) 1 in 20 scale cross-sectional drawings of the development's vehicular entrances, showing the actual reduced levels (not interpolated levels from the application drawings) of the road profile, the lip of the channel, the invert of the channel, the top of kerb and the existing building line. The existing road profiles of Gough Street (from the kerb line to the centre line of the road) and the access ways inside the property must be accurately drawn. The cross-section must demonstrate that vehicles can traverse the new vehicle crossing and ramp without scraping or bottoming out, using a B99 design vehicle;

- (jj) underside clearance of over-bonnet storage cages;
- (kk) all bicycle parking spaces located to the satisfaction of the responsible authority;
- (ll) bicycle signage as per clause 52.34-5 of the Yarra Planning Scheme;
- (mm) details of bicycle storage/parking systems to the satisfaction of the responsible authority;
- (nn) at least 25% of the provided bicycle parking accessible at ground level (i.e. not hanging systems);
- (oo) an overall provision of 300 bicycle parking spaces including provision for non residential use;
- (pp) all resident and staff bicycle parking spaces secured behind lockable gates;
- (qq) a convex mirror adjacent to the vehicular exit;
- (rr) dimensions of parallel car parking spaces;
- (ss) the width of the aisle between the west row of parking spaces and the face of the column in basements 1-4
- (tt) the length of the loading bay, with a minimum overhead clearance of 4.5m;
- (uu) dimensions of column depths and dimensions;
- (vv) dimension of blind aisle extensions;
- (ww) number of car parking spaces, storage cages and bicycle parking spaces to correlate between the project area summary and the plans;
- (xx) at least 5 car share spaces provided on site.

General

- (yy) a lighting plan addressing entries and public spaces within the development;
- (zz) a circulation and public access plan, detailing all fixed elements (including seats) to ensure clear and unfettered public movement is provided through the open space areas;
- (aaa) changes (as necessary) as per the endorsed Acoustic Report, Wind Report, Sustainable Management Plan, Shared Zone Management Plan and Waste Management Plan.

Landscaping

- (bbb) a landscape plan which shows:
 - i street tree species for Gough Street to be – *Hymenosporum flavum*, 100L size or a suitable alternative

- ii the type, location, quantity, pot size, height at maturity and botanical names of all proposed plants. Species within the landscape buffer must be shade tolerant and must provide clear visual links with the pedestrian link (low level shrubs/plants);
- iii the location of all areas to be covered by lawn, paving or other surface materials;
- iv the specification of works to be undertaken prior to planting;
- v details of the watering and maintenance regime;
- vi garden bed dimensions;
- vii areas of paving and proposed materials;
- viii the location of proposed tree planting – distances from buildings and other infrastructure, planting proposed over the basement levels or under the overhanging built form;
- ix a clear definition of terraced spaces, retaining walls, seating elements and other structures independent of paving treatments;
- x water sensitive urban design [WSUD] features;
- xi a clear delineation of public/private interface;
- xii cross-sections of open space areas are required, confirming which areas are raised or sunken;
- xiii simplification of the ground level paving and lawn treatments (not too busy with larger lawn areas);
- xiv proposed treatments to unused roof areas;
- xv the location of street trees with no loss of on street car parking (excluding for the new crossover).

General

- 2 The development and uses as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.
- 3 After the relocation of the Nylex sign, the sign must be turned on to the satisfaction of the responsible authority.
- 4 As part of the ongoing consultant team, Fender Katsalidis Architects and Lovell Chen or an architectural firm(s) to the satisfaction of the responsible authority must be engaged to:
 - (a) oversee design and construction of the development; and
 - (b) ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the responsible authority.
- 5 Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the responsible authority.

- 6 Before any Stage of the development is occupied, or by such later date as approved in writing by the responsible authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the responsible authority.
- 7 All screening and other measures to prevent overlooking as shown on the endorsed plans must be maintained to the satisfaction of the responsible authority.
- 8 Before any Stage of the development is occupied, or by such later date as approved in writing by the responsible authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the responsible authority.
- 9 All buildings and works must be maintained in good order and appearance to the satisfaction of the responsible authority.
- 10 All pipes except down pipes, fixtures, fittings and vents servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the responsible authority.
- 11 Before any Stage of the development is occupied, or by such later date as approved in writing by the responsible authority, any wall located on a boundary facing public property must be treated with a graffiti-proof finish to the satisfaction of the responsible authority.
- 12 Before any Stage of the development is occupied, or by such later date as approved in writing by the responsible authority, external lighting capable of illuminating access to the basement car park, pedestrian walkway, laneway and dwelling entrances must be provided. Lighting must be:
 - (a) located;
 - (b) directed;
 - (c) shielded; and
 - (d) of limited intensity,all to the satisfaction of the responsible authority.
- 13 The use and development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
- 14 The use and development must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).

General Use Conditions

- 15 The amenity of the area must not be detrimentally affected by the uses, including through:
 - (a) the transport of materials, goods or commodities to or from land;
 - (b) the appearance of any buildings, works or materials;

- (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; or
 - (d) the presence of vermin;
- to the satisfaction of the responsible authority.

Dwellings

- 16 The wellness centre located in B9 must only be used by dwelling residents and employees of any business conducted in the development.

Shop/Bakery

- 17 Except with the written consent of the responsible authority the Shop/Bakery must only operate between the hours of 7am to 8pm, any day.

B5 café

- 18 Except with the written consent of the responsible authority no more than 84 patrons are permitted in the B5 café at any one time.
- 19 Except with the written consent of the responsible authority the B5 café must only operate between the hours of 7am to 8pm, any day.

B5 restaurant

- 20 Except with the written consent of the responsible authority no more than 195 patrons are permitted in the B5 restaurant at any one time.
- 21 Except with the written consent of the responsible authority the B5 restaurant must only operate between the hours of 7am to 11pm, any day.

B9 restaurants

- 22 Except with the written consent of the responsible authority no more than 100 patrons are permitted in the B9 restaurants at any one time.
- 23 Except with the written consent of the responsible authority the B9 restaurants must only operate between the hours of 7am to 1.00am, any day.

Function centre

- 24 Except with the written consent of the responsible authority no more than 100 patrons are permitted in the function centre at any one time.
- 25 Except with the written consent of the responsible authority the function centre must only operate between the hours of 8am to 11pm, any day.

Art gallery

- 26 Except with the written consent of the responsible authority no more than 50 patrons are permitted in the art gallery at any one time.
- 27 Except with the written consent of the responsible authority the art gallery must only operate between the hours of 8am to 6pm, any day.

Victorian Bitter and Nylex signs

- 28 The location and details of the VB and Nylex signs, including the supporting structure, as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.
- 29 The signs must not include any flashing or intermittent light.
- 30 External sign lighting must be designed, baffled and located to the satisfaction of the responsible authority.
- 31 The signage component of this permit will expire if the signs are not erected within six years of the date of this permit. The responsible authority may extend the period referred to if a request is made in writing before the signage component of the permit expires or within six months afterwards for commencement or twelve months afterwards for completion.

Structural report requirement

- 32 Before the demolition starts, a structural report to the satisfaction of the responsible authority must be submitted to, and approved by, the responsible authority. When approved, the structural report will be endorsed and will form part of this permit. The structural report must be prepared by a suitably qualified structural engineer and demonstrate the means by which the retained portions of the buildings on-site will be supported during demolition and construction works to ensure their retention.
- 33 The provisions, recommendations and requirements of the endorsed structural report must be implemented and complied with to the satisfaction of the responsible authority.

Public Art Management Plan

- 34 Before the development is occupied, a Public Art Management Plan to the satisfaction of the responsible authority must be submitted to, and approved by, the responsible authority. When approved, the Public Art Management Plan will be endorsed and will then form part of this permit. The Public Art Management Plan must include, but not be limited to:
 - (a) details of the commissioned artist(s);
 - (b) description of art work, including:
 - i materials;
 - ii colours;
 - iii dimensions;
 - iv content;
 - v special features (e.g. lighting);
 - (c) details of the installation process; and

- (d) details of art work maintenance schedule.
- 35 Before the final Stage of the development is occupied, buildings or by such later date as approved in writing by the responsible authority, the approved public art must be completed or security to the satisfaction of the responsible authority provided to secure its completion. Once completed, the public art must be maintained in accordance with the endorsed Public Art Management Plan to the satisfaction of the responsible authority.

Public realm

- 36 Any damaged roads, footpaths and other road related infrastructure adjacent to the development site as a result of the construction works, including trenching and excavation for utility service connections, must be reconstructed to Council's satisfaction and at the Permit holder's expense.
- 37 Before the development is occupied, or by such later date as approved in writing by the responsible authority, the footpaths along the Gough and Cremorne Street frontages of the site must be reconstructed:
- (a) at the permit holder's cost; and
 - (b) to the satisfaction of the responsible authority.
- The cross-fall of the reconstructed footpaths must be no steeper than 1 in 40.
- 38 Before the development is occupied, or by such later date as approved in writing by the responsible authority, the road pavements outside the Gough and Cremorne Street frontages of the site must be profiled and re-sheeted:
- (a) at the permit holder's cost; and
 - (b) to the satisfaction of the responsible authority.
- The cross-fall of the reconstructed footpaths must be no steeper than 1 in 40. Any isolated areas of pavement failure will require full depth road pavement reconstruction.
- 39 Before the development is occupied, or by such later date as approved in writing by the responsible authority, any redundant vehicular crossing must be demolished and re-instated as standard footpath and kerb and channel:
- (a) at the permit holder's cost; and
 - (b) to the satisfaction of the responsible authority.
- 40 Before the buildings are occupied, or by such later date as approved in writing by the responsible authority, any new vehicle crossings must be constructed:
- (a) in accordance with any requirements or conditions imposed by Council;
 - (b) at the permit holder's cost; and
 - (c) to the satisfaction of the responsible authority.

- 41 Except with the prior written consent of the responsible authority, Council assets must not be altered in any way. All public works require the consent of the responsible authority prior to any works being undertaken.
- 42 Pit lids and levels must be readjusted to match the surface of the footpath, to the satisfaction of the responsible authority.
- 43 Trees in the road reserves must be provided with structural soils to protect road pavements from damage by roots. The preferred tree cut size is 1.5m x 1.5m.
- 44 The layout of the street trees in Gough Street must show parking spaces between trees.
- 45 All street tree planting works must be carried out by the Council's tree planting contractor. Once tree locations are finalised, a cost to the owner will be determined and the owner is then responsible for payment to Council.
- 46 Subject to obtaining the consent of the responsible authority and any other relevant road authority, all of the proposed network improvements set out in the GTA consultants report dated 18 July 2017 must be the subject of detailed plans and specifications prepared by the owner and then approved by the responsible authority. All works must be carried out in accordance with the approved plans and at the owner's cost in each and every respect.

Public Access Management

- 47 Before the development starts or at some later time approved by the responsible authority, a Public Access Management Plan must be prepared by the owner and approved by the responsible authority. The Public Access Management Plan must show all areas to be to be accessible by the public and must provide for the ongoing management and maintenance to the satisfaction of the responsible authority of all publicly accessible areas.
- 48 Once approved, the provisions, recommendations and requirements of the approved Public Access Management Plan must be implemented to the satisfaction of the responsible authority.

Wind Assessment Report

- 49 Before the plans required by Condition No. 1 of this permit are endorsed, an amended Wind Assessment Report to the satisfaction of the responsible authority must be submitted to, and approved by, the responsible authority. When approved, the amended Wind Assessment Report will be endorsed and will form part of this permit. The amended Wind Assessment Report must be generally in accordance with the Wind Assessment Report prepared by Vipac and dated 18 March 2016, but modified to:
 - (a) reflect the decision plans submitted for endorsement;
 - (b) include wind tunnel modelling to verify the results of the preliminary assessment;

- (c) show details of the type, size and density of foliage of trees used to mitigate wind impacts; and
 - (d) confirm that the northern B5 café outdoor seating area would fulfil the sitting criteria.
- 50 The provisions, recommendations and requirements of the endorsed Wind Assessment Report must be implemented and complied with to the satisfaction of the responsible authority.

Acoustic report

- 51 Before the plans required by Condition No. 1 of this permit are endorsed, an amended Acoustic Report to the satisfaction of the responsible authority must be submitted to, and approved by, the responsible authority. When approved, the amended Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the Acoustic Report prepared by Renzo Tonin and Associates, dated 12 February 2016 and include an assessment of how the requirements of the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade, No. N-1), the State Environment Protection Policy (Control of Music Noise from Public Premises No. N-2) and relevant Australian Standards will be met and must:
- (a) be amended to reflect the decision plans;
 - (b) prescribe the form of acoustic treatment to protect all dwelling occupants and nearby occupants from noise generated from the mechanical plant equipment and ventilation mechanisms installed or constructed as part of the development (including the lift, residential air conditioner units and commercial plant and equipment);
 - (c) prescribe the form of acoustic treatment to protect all dwelling occupants within the development from noise associated with City Link;
 - (d) include an assessment of the remaining land uses on the balance of the site and the impact on the proposed dwellings (unless the land uses on the balance of the site have ceased). The acoustic report must make recommendations to limit the noise impacts in accordance with the State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade) No. N-1 (SEPP N-1), State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2) or any other requirement to the satisfaction of the responsible authority;
 - (e) include an assessment of the impact of the following on the proposed dwellings; car park entrance door, the car park itself, any non-residential land uses, common residential areas, structure-borne noise through the pool and supermarket and shop services. Treatments must be provided to achieve a reasonable level of amenity for residents and

must make recommendations to limit the noise impacts in accordance with the State Environment Protection Policy (Control of noise from industry, commerce and trade) No. N-1 (SEPP N-1), State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2) or any other requirement to the satisfaction of the responsible authority;

- (f) address the impact of the restaurants, food and drinks premises (cafes), shops, function centre, exhibition centre, art gallery and venue on residents on and off the site; and
 - (g) demonstrate compliance with the requirements of Schedule 3 to the Comprehensive Development Zone of the Yarra Planning Scheme to ensure that new development or refurbished / converted buildings for new residential and other noise sensitive uses, located on the southern part of the site directly adjacent to City Link, include appropriate acoustic measures as outlined in AS 3671 – 1999 “Acoustics – Road Traffic Noise Intrusion – Building Siting and Construction” to attenuate noise levels internally within the building.
- 52 The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the responsible authority.
- 53 On the completion of any works required by the endorsed Acoustic Report and before the residential use commences of any Stage of the of the development, an updated Acoustic Report prepared by a suitably qualified acoustic consultant to the satisfaction of the responsible authority must be submitted to the responsible authority demonstrating by measurement that the required level of noise attenuation has been achieved. The report must:
- (a) confirm compliance with relevant conditions of this permit; and
 - (b) provide measurement data taken from inside the dwellings of the development demonstrating compliance with State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade) No. N-1 (SEPP N-1), State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2) or any other relevant requirement.
- 54 The recommendations and any works contained in the approved Acoustic Report must be implemented and completed and where there are recommendations of an ongoing nature must be maintained all to the satisfaction of the responsible authority.

Residential Hotel Management Plan

- 55 Before the residential hotel use starts, a Residential Hotel Management Plan must be submitted to, and approved by the responsible authority. When approved, the Residential Hotel Management Plan will be endorsed and will

then form part of the permit. The Residential Hotel Management Plan must detail the following:

- (a) procedures, and standards for guests to minimise amenity and parking impacts in the neighbourhood.
- (b) measures to be taken by the operator to ensure that residential hotel guests and visitors do not cause nuisance or annoyance to persons beyond the land;
- (c) establishment of a line of communication with adjoining owners and occupiers aimed at identifying and addressing amenity concerns;
- (d) an outline of all house rules intended to be used to manage residents and guests including:
 - i guest behaviour;
 - ii noise;
 - iii alcohol consumption; and
 - iv methods of eviction if house rules are broken;
- (e) details of eviction process in the event house rules are broken;
- (f) standards for property maintenance, health and cleanliness; and
- (g) security against thefts and break-ins, including security of guests' belongings.

Sustainable Management Plan

56 Before the development starts, an amended Sustainable Management Plan to the satisfaction of the responsible authority must be submitted to, and approved by, the responsible authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this permit. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by Simpson Kotzman dated 12 February 2016, but modified to show/reflect/demonstrate:

- (a) the decision plans;
- (b) the changes required as per condition 1 (where relevant);
- (c) a minimum 100% STORM score for each building;
- (d) a minimum 4 star green star rating for each building;
- (e) glazing as either clear or tinted blue with a VLT of 0.6 or higher;
- (f) demonstration that all exposed north, east and west facing dwellings will achieve cooling loads no higher than 30MJ/m²/pa;
- (g) daylight modelling for the western level 1 and 2 B9 dwellings, demonstrating BESS compliance to the satisfaction of the responsible authority;

- (h) provision of a mechanical supply fresh air system to all single aspect dwellings to supply rates 50% above the minimum requirements in AS1668;
 - (i) additional ventilation is provided to single aspect dwellings to supply rates 50% above the minimum requirements in AS1668;
 - (j) commitment to install extraction fans in all kitchens (not re-circulating ranges);
 - (k) include detail on waste and recycling;
 - (l) detail hot water system(s) for dwellings;
 - (m) nominate the showerhead flowrate and WELS efficiency;
 - (n) include solar photovoltaic system(s) to contribute to common area electricity consumption;
 - (o) consider FSC accredited timber.
- 57 The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the responsible authority.

Waste Management Plan

- 58 Before the development starts, an amended Waste Management Plan to the satisfaction of the responsible authority must be submitted to, and approved by, the responsible authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by RB Waste Consulting Service and dated 20 November 2015, but modified to:
- (a) reflect the decision plans;
 - (b) be written as a standalone document;
 - (c) be written regardless if a private or Council collection;
 - (d) address both rubbish and recycling for all uses (including hard and green waste);
 - (e) include bin room details (for all tenants, residential, commercial, retail, supermarket, etc). The bin room(s) must be of an appropriate size for their intended use;
 - (f) confirm weekly collection for the residential component. However, more than weekly collection may be considered with appropriate justification;
 - (g) confirm a minimum number of collections for all users, however, more than weekly collection may be considered with appropriate justification;

- (h) details of the waste sorting system for the bin chute. Alternatively, a double chute must be provided;
- (i) confirm the path of access for residents, property manager and collection vehicle (including turning templates or swept path diagrams);
- (j) include information to tenants, owners corporation, property manager (information pack details); and
- (k) include a commitment that the Building Manager/Owners Corporation will organise a preoccupation site meeting with Council's Waste Management Coordinator at least 30 days prior to occupation and demonstrate implementation of the endorsed Waste Management Plan.

59 The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the responsible authority.

Landscaping

60 Before the development is occupied, or such later date as is approved by the responsible authority, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the responsible authority, unless security to the satisfaction of the responsible authority is provided for its completion.

61 The landscaping shown on the endorsed plans must be maintained by:

- (a) implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan;
 - (b) not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose; and
 - (c) replacing any dead, diseased, dying or damaged plants;
- all to the satisfaction of the responsible authority.

Car parking

62 Before the development starts, a Car Park Management Plan prepared to the satisfaction of the responsible authority must be submitted to, and approved by, the responsible authority. When approved, the Car Park Management Plan will be endorsed and will then form part of this permit. The Car Park Management Plan must address, but not be limited to, the following:

- (a) the use of the 40 car parking spaces from Stage 1 (planning permit PLN15/0355);
- (b) the provision of a maximum of 236 car spaces;
- (c) the number and location of car parking spaces allocated to each tenancy;

- (d) the number and location of any car spaces allocated to each dwelling and each commercial tenancy.
 - (e) management details for residential loading/unloading when moving;
 - (f) the management of visitor car parking spaces and security arrangements for occupants of the development, including details on how residential visitors are to access car parking;
 - (g) details of way-finding, cleaning and security of end of trip bicycle facilities;
 - (h) any policing arrangements and formal agreements;
 - (i) a schedule of all proposed signage including directional arrows and signage, informative signs indicating location of disabled bays and bicycle parking, exits, restrictions, pay parking system etc;
 - (j) the collection of waste and garbage including the separate collection of organic waste and recyclables, which must be in accordance with the endorsed Waste Management Plan (refer to Condition No. 57 of this permit);
 - (k) how the residential hotel drop off area would be managed;
 - (l) details regarding the management of loading and unloading of goods and materials;
 - (m) at least five car share spaces to be provided on site.
- 63 The provisions, recommendations and requirements of the endorsed Car Park Management Plan must be implemented and complied with to the satisfaction of the responsible authority.
- 64 Before the development is occupied, the area set aside on the endorsed plans for the car parking spaces, access lanes, driveways and associated works must be:
- (a) constructed and available for use in accordance with the endorsed plans;
 - (b) formed to such levels and drained so that they can be used in accordance with the endorsed plans;
 - (c) treated with an all-weather seal or some other durable surface; and
 - (d) line-marked or provided with some adequate means of showing the car parking spaces.

to the satisfaction of the responsible authority.

Traffic, roads and footpaths

- 65 Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the owner's expense after seeking approval from the relevant authority.

- 66 Before the development starts, the permit holder must pay a bank guarantee to the value of \$50,000 to the City of Yarra for traffic, car parking, road improvements and associated studies in the Cremorne area.

The bank guarantee may be drawn down by Council and used for the proposed works and study by the responsible authority for traffic/road/car parking improvements in the Cremorne area, in consultation with the permit holder. The bank guarantee will be returned to the permit holder if the traffic/road/car parking improvements are not commenced by the relevant authorities before the final Stage of the development is occupied.

Green Travel Plan

- 67 Before the development is occupied, a Green Travel Plan to the satisfaction of the responsible authority must be submitted to, and approved by, the responsible authority. When approved, the Green Travel plan will be endorsed and will form part of this permit. The Green Travel Plan must include, but not be limited to, the following:

- (a) a description of the location in the context of alternative modes of transport;
- (b) the provision of real time passenger information displays for nearby stops within each residential lobby;
- (c) employee / resident welcome packs (e.g. provision of Myki);
- (d) a designated 'manager' or 'champion' responsible for co-ordination and implementation;
- (e) details of bicycle parking and bicycle routes;
- (f) details of Green Travel Plan funding and management responsibilities; and
- (g) include provisions to be updated not less than every five years.

- 68 The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the responsible authority.

Construction

- 69 Before the development starts, a Construction Management Plan to the satisfaction of the responsible authority must be submitted to, and approved by, the responsible authority. When approved, the Construction Management Plan will be endorsed and will form part of this permit. The Construction Management Plan must provide for:

- (a) a pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure;
- (b) works necessary to protect road and other infrastructure;
- (c) remediation of any damage to road and other infrastructure;

- (d) containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land;
- (e) facilities for vehicle washing, which must be located on the land;
- (f) the location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street;
- (g) site security;
- (h) a lighting plan which must include:
 - i details if any existing public lighting assets require temporary disconnection, alternative lighting must be provided to maintain adequate lighting levels. A temporary lighting scheme can only be approved by Council and relevant power authority;
 - ii confirmation that existing public lighting would only be disconnected once temporary alternative lighting scheme becomes operational;
 - iii confirmation that the temporary lighting scheme will remain operational until a permanent lighting scheme is reinstated.
- (i) management of any environmental hazards including, but not limited to:
 - i contaminated soil;
 - ii materials and waste;
 - iii dust;
 - iv stormwater contamination from run-off and wash-waters;
 - v sediment from the land on roads;
 - vi washing of concrete trucks and other vehicles and machinery; and
 - vii spillage from refuelling cranes and other vehicles and machinery;
- (j) the construction program;
- (k) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
- (l) parking facilities for construction workers;
- (m) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;
- (n) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;

- (o) an emergency contact that is available for 24 hours per day for residents and the responsible authority in the event of relevant queries or problems experienced;
- (p) the provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads;
- (q) a Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the responsible authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
 - i using lower noise work practice and equipment;
 - ii the suitability of the land for the use of an electric crane;
 - iii silencing all mechanical plant by the best practical means using current technology;
 - iv fitting pneumatic tools with an effective silencer; and
 - v other relevant considerations.

70 During the construction:

- (a) any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
- (b) stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the stormwater drainage system;
- (c) vehicle borne material must not accumulate on the roads abutting the land;
- (d) the cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
- (e) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

71 Before the development is occupied, or by such later date as approved in writing by the responsible authority, any redundant vehicular crossing must be demolished and re-instated as standard footpath and kerb and channel:

- (a) at the permit holder's cost; and
- (b) to the satisfaction of the responsible authority.

- 72 Before the development is occupied, or by such later date as approved in writing by the responsible authority, any new vehicle crossings must be constructed:
- (a) in accordance with any requirements or conditions imposed by Council;
 - (b) at the permit holder's cost; and
 - (c) to the satisfaction of the responsible authority.
- 73 No parking restriction signs must be removed, adjusted, changed or relocated without approval or authorisation from the responsible authority.
- 74 Except with the prior written consent of the responsible authority, demolition or construction works must not be carried out:
- (a) before 7 am or after 6 pm, Monday-Friday (excluding public holidays);
 - (b) before 9 am or after 3 pm, Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday); or
 - (c) at any time on Sundays, ANZAC Day, Christmas Day and Good Friday.

Public lighting plan

- 75 Before the development starts, a Public Lighting Plan must be submitted to and approved by the responsible authority. When approved, the Public Lighting Plan will be endorsed and will form part of this permit. The Public Lighting Plan must:
- (a) confirm that all primary pedestrian access to a residential/ multi-purpose development will be lit by public lighting installations at least to lighting level P4 as specified in the Australian Standard AS 1125.3.1:2005 Lighting for roads and public spaces - Pedestrian area (Category P) lighting - Performance and design requirements;
 - (b) confirm that any new poles and luminaires required for the development will be sourced from CitiPower/Jemena standard energy efficient luminaires list and comply with relevant CitiPower/Jemena technical requirements;
 - (c) confirm that light spillage into the windows of any existing and proposed residences will be avoided or minimised and must comply with the requirements of Australian Standard AS 4282 – 1997 Control of the obtrusive effects of outdoor lighting;
 - (d) confirm that the locations of any new light poles will not obstruct vehicular access into private property;
 - (e) include a commitment that the permit holder will ensure (by contacting relevant power authority) that the existing or proposed

power supply conforms to “No Go Zone” requirements from the relevant power authority;

- (f) confirm that the supply and installation of any additional or upgraded lighting, electrical hardware and poles will be funded by the permit holder.

- 76 The provisions, recommendations and requirements of the endorsed Public Lighting Plan must be implemented and complied with to the satisfaction of the responsible authority.

VicRoads Conditions

- 77 VicRoads prohibits the construction of building/s or the carrying out of works within the Road Zone Category 1 (i.e. Punt Road and Harcourt Parade).
- 78 VicRoads prohibits vehicular, pedestrian or cycling access to the site along Harcourt Parade.
- 79 The luminance of the advertising sign/s (including The Victoria Bitter and Nylex signs) must be such it does not give a veiling of luminance to the driver, of greater than 0.25cdm², throughout the driver’s approach to the advertising sign/s.
- 80 Before the development starts, a truck wheel wash must be installed at the property boundary to enable all mud and other tyre borne debris from vehicles to be removed prior to exiting land.
- 81 The truck wheel wash must be maintained in good order during the construction phase of the development and may be removed at the end of the construction phase of the development with the prior approval of the Council.

CityLink Conditions

- 82 There should be no interruption to traffic flow on CityLink assets.
- 83 CityLink assets should not be exposed to any waste generated from the project.
- 84 New buildings should not cause any adverse impacts on the users of CityLink (e.g. reflective glare from the buildings).

PTV Conditions

- 85 Before the development starts, or at any other time agreed to in writing with Public Transport Victoria, amended plans to the satisfaction of Public Transport Victoria 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 three copies must be provided. The plans must be generally in accordance with the plans submitted with the application but modified to show:

- (a) The design details and the location of the bike share station;
- (b) Consideration must be given to the integration between the bike share station and public access, and connection to existing shared paths within the vicinity of the site.

86 The bike share station is to be design and constructed to the satisfaction of Public Transport Victoria and the responsible authority and at no cost to Public Transport Victoria before the development is occupied.

Expiry

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

- (a) the development is not started within three years of the issued date of this permit;
- (b) the development is not completed within six years of the issued date of this permit;
- (c) the uses are not commenced within nine years from the date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

- End of conditions -