

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## ADMINISTRATIVE DIVISION

### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1479/2017  
PERMIT APPLICATION NO. 2016/828/1

#### CATCHWORDS

Bayside Planning Scheme; Application pursuant to Section 77 of the *Planning and Environment Act 1987*; Residential Growth Zone 1 (RGZ1); Public Use Zone 4 (PUZ4); Design and Development Overlay (DDO12); Four to eight storeys mixed use building; Hampton Street Major Activity Centre; Precincts A1, E1 and E; Willis Street Precinct; Built form; Height; Setbacks; Building separation; Variations to requirements; Internal amenity; Car parking; Traffic; Removal of native vegetation; Landscaping.

|                              |   |
|------------------------------|---|
| <b>APPLICANT</b>             | Village @ Hampton Pty Ltd   |
| <b>RESPONSIBLE AUTHORITY</b> | Bayside City Council  |
| <b>REFERRAL AUTHORITY</b>    | Public Transport Victoria   |
| <b>RESPONDENTS</b>           | VicRoads - Metropolitan South East Region,<br>VicTrack, Director of Housing<br><br>Judy & Ian Bissland, Jan Stuart, Robert<br>Maclean, Shannon Trueman, Louise & Sarah<br>Scully, Anthony Batt & Hampton<br>Neighbourhood Association Inc., Marg Batt,<br>Michael Daly, David Osborn, John Balmer,<br>Trevor Loffel, Bruce Murchie, Karen<br>Murchie, Shirley Walker, Jim Hill, Anthony<br>& Judy Shepherd, Derek Barker, Bruce<br>Fickers, Caroline Heinze, John Dulfer &<br>Maureen Wilson, Gino De Biase, Rina<br>Leeuwenburg, Maree Campbell, Marjorie<br>Marris. |
| <b>SUBJECT LAND</b>          | 5A Railway Crescent, 2 – 6 Willis Street and<br>1 – 25 Koolkuna Lane, HAMPTON VIC 3188  |
| <b>WHERE HELD</b>            | Melbourne   |
| <b>BEFORE</b>                | J A Bennett, Presiding Senior Member<br>S J Axford, Member<br>K L Partenio, Member  |
| <b>HEARING TYPE</b>          | Hearing   |
| <b>DATES OF HEARING</b>      | 4 – 13 December 2017 (8 days)   |
| <b>DATE OF ORDER</b>         | 31 January 2018   |
| <b>CITATION</b>              | Village @ Hampton Pty Ltd v Bayside CC<br>[2018] VCAT 25  |

## ORDER

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
  - Prepared by: JAM Architects and ARM Architecture Pty Ltd
  - Drawing numbers: Sheets TP05 to TP19 inclusive
  - Dated: VCAT Issue dated 20/10/2017
- 2 In application P1479/2017 the decision of the Responsible Authority is set aside.
- 3 In planning permit application 2016/828/1 a permit is granted and directed to be issued for the land at 5A Railway Crescent, 2-6 Willis Street and 1-25 Koolkuna Lane, Hampton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - Use land for a shop in Residential Growth Zone Schedule 1.
  - Construct two or more dwellings on a lot in Residential Growth Zone Schedule 1.
  - Construct a building or construct or carry out works for a section 2 use in Residential Growth Zone Schedule 1.
  - Use land for shops and dwellings in Public Use Zone Schedule 4.
  - Construct a building or construct or carry out works in Public Use Zone Schedule 4.
  - Construct a building or construct or carry out works in Design and Development Overlay Schedule 12.
  - Reduction in the number of car parking spaces required under Clause 52.06-5.
  - Remove, destroy of lop vegetation pursuant to Clause 52.17.

J A Bennett  
**Presiding Senior Member**

S J Axford  
**Member**

K L Partenio  
**Member**

## APPEARANCES

For Village @ Hampton Pty Ltd

Mr Jeremy Gobbo, QC and Mr Andrew Walker Barrister instructed by Mr Mark Naughton of Planning & Property Partners Pty Ltd. They called evidence from the following witnesses:

- Mr Andrew Biacsi, Town Planner of Contour Consultants Aust Pty Ltd.
- Mr Robert Milner, Town Planner of 10 Consulting Group Pty Ltd.
- Mr Mark Sheppard of David Lock Associates (Australia) Pty Ltd.
- Mr Simon Howe, Arborist, Horticulturalist and Landscape Heritage Consultant of Landscape DEPT.
- Mr Rodriquez, Landscape Architect of rush/wright associates pty ltd.
- Ms Charmaine Dunstan, Traffic Engineer of Traffix Group Pty Ltd.
- Mr Stephen Hunt, Traffic Engineer of Ratio: Consultants Pty Ltd.

Mr Judd, Project Architect attended to explain the plans and the design philosophy.

Mr Ben Watson, of Pointilism Pty Ltd prepared photomontages but with the agreement of parties was not required to attend and answer questions.

For Bayside City Council

Mr Richard Attiwell QC and Mr Jason Kane, Barrister instructed by Bayside City Council.

For Respondents in order of appearance

Mr Scully for Louise & Sarah Scully; Mr Bruce Fickers, Caroline Heinze and Robert Maclean; Mr Jim Hill; Ms Judy Bissland; Mr Tony Batt for the Hampton Neighbourhood Association Inc; Ms Marg Batt; Mr Gino De Biase; Mr Tony Shepherd, Mr John Balmer; Ms Shirley Walker; Mr John Dulfer; Ms Rina Leeuwenburg, Ms Marjorie Marris; Mr Derek Barker; Mr Trevor Loffel; Ms Sue Kennedy for Committee of Management for Owners Corporation 643612.

Mr Barnaby Chessell, Barrister for VicTrack and DHHS.

## INFORMATION

|   |   |
|---|---|
| Description of proposal                 | Construction of a 4 to 7/8 storey building on the north eastern side of the railway line containing 7 retail tenancies, 186 dwellings and 250 carspaces. Construction of a new 105 space commuter car park on the south western side of the railway line (increase to total of 193 spaces), including the removal of six trees requiring a permit pursuant to the native vegetation provisions.   |
| 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                         | Bayside Planning Scheme   |
| Zone and overlays                       | Residential Growth Zone – Schedule 1 ( <b>RGZ1</b> ).<br>Public Use Zone – Schedule 4 ( <b>PUZ4</b> ).<br>Design and Development Overlay – Schedule 12 ( <b>DDO12</b> ).<br>Development Contributions Plan Overlay – Schedule 1 ( <b>DPO1</b> ).  |
| Permit requirements                     | Cl. 32.07 (Use land for a shop in RGZ1).<br>Cl. 32-07-5 (Construct two or more dwellings on a lot in RGZ1).<br>Cl. 32.07-7 (Construct a building or construct or carry out works for a section 2 use in RGZ1).<br>Cl. 36.01-1 (Use land for a shop and dwellings in PUZ4).<br>Cl. 36.01-4 (Construct a building or construct or carry out works in PUZ4).<br>Cl. 43.02-2 (Construct a building or construct or carry out works in DDO12).<br>Cl. 52.06-3 (reduce the number of car parking spaces required under Clause 52.06-5).<br>Cl. 52.17 (remove, destroy of lop vegetation). |
| Relevant scheme policies and provisions | Clauses 9, 10, 11, 15, 16, 18, 21.02, 21.03, 21.06, 21.07, 21.09, 21.11-4, 22.08, 32.07, 36.01, 52.06, 52.07, 52.17, 52.34, 55 & 65.  |

## Land description

The review site is in two parts, separated by the double track Sandringham train line. On the north east, or shopping centre side of the line, the review site comprises a number of lots along the railway line which have a combined area of approximately 6,870 square metres. The site is broadly rectangular in shape with a frontage to Willis Street of 42 metres, a frontage to Koolkuna Lane of 244 metres and a frontage to Railway Walk of 37 metres.

On the south west side of the railway line, the site comprises Vic Track land partly occupied by an 88 space commuter car space and an undeveloped but partly vegetated strip of land towards the northern end separating the railway line from the rear yards of dwellings fronting Orlando Street. Parts of the Vic Track land have been fenced and utilised under lease as part of the backyards of those dwellings. Vic Track has served notice to resume its land.

## Tribunal inspection

An accompanied inspection was undertaken on Monday afternoon, 4 December 2017.

## REASONS<sup>1</sup>

### WHAT IS PROPOSED AND WHY HAS IT BEEN OPPOSED?

- 1 One side sees this as a gross overdevelopment, and a form that is out of context with its “village setting”. It has been described as an “Ocean Liner”, a “Container Ship” or the “Great Wall of Hampton”. On the other hand, the Applicant submits it is a fine response to the site context and the directions set by the Bayside Planning Scheme, particularly local policy and the DDO12.
- 2 The application has two main components – one to the north east or shopping centre side of the Hampton train station and railway line, the other on the south west or Port Phillip Bay side of the train station and railway line.
- 3 The following two diagrams depict firstly, the two site components in the geographic context of the Hampton Major Activity Centre and secondly, the footprint and position of the new building, station forecourt, bus interchange and commuter car park.



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<sup>1</sup> We have considered the submissions of all the parties that appeared, all the written and oral evidence; all the exhibits tendered by the parties, and all the statements of grounds filed. We do not recite or refer to all of the contents of those documents in these reasons.

## Urban Design Response

### Streetscape, Character and Environment



- 4 In more detail, the application proposes on the north eastern part of the site to:
- Demolish the existing Department of Health and Human Services dwellings at the Willis Street end of the site.
  - Remove the existing 77 space commuter carpark and bus interchange adjacent Koolkuna Lane.
  - Remove vegetation in the vicinity of the dwellings and carpark.  
(No planning permits are required for demolition or removal of vegetation on the north east side of the railway line).
  - Construct a multi-storey building described as comprising Buildings A, B, C and D positioned over a two level podium which extends from near Willis Street to the Station Forecourt or Plaza. These buildings are described as having heights of between 4 and 8 storeys and with a maximum height of up to 26.1 metres. (We discuss differences in descriptions and calculations of heights in greater detail later in our reasons).
    - The buildings will contain 186 dwellings including 18 DHHS dwellings and four small office/home office dwellings, seven retail premises with a combined area of 939 square metres and 250 car

spaces at ground and mezzanine levels, 114 bicycle spaces and communal roof top terraces.

- Construct a Station Forecourt (Plaza).
- Construct a new bus interchange in Koolkuna Lane.
- Undertake associated roadworks and landscaping.

5 The application proposes on the south western part of the site to:

- Remove most of the vegetation on the undeveloped part of the land of which only six require a planning permit for removal.
- Extend the existing commuter car park to the northwest along the railway line behind 5 Railway Crescent and 52 to 72 Orlando Street to provide a total of 193 spaces. (The use and development of the land for a commuter car park does not require a planning permit and it is only the DDO12 which requires a permit for buildings and works).

6 Despite a favourable recommendation from Council staff, the Council decided to refuse the application on twenty-nine detailed grounds. In summary these include:

- The proposal being contradictory and inconsistent with Local planning policies and the DDO12 because of such matters as excessive height, lack of building separation, lack of permeability through the site, failing to provide a high level of architectural design, lack of innovative environmental design features and minimising overshadowing to proposed public open spaces.
- Unreasonable internal and external impacts on the amenity of existing and future residents.
- Inadequate on-site parking and unacceptable traffic impacts.
- Failing to avoid and minimise loss of native vegetation and demonstrate whether appropriate off-sets can be provided.
- Insufficient landscaping.

7 The amended, now substituted plans were reviewed by Council staff who recommended that Council reaffirm its grounds of refusal, although with some relatively minor changes to some of the detailed grounds.

8 Advertising of the application generated 156 objections and one letter of support. Twenty-five respondent parties attended or were represented at the hearing including the Hampton Neighbourhood Association Inc and Vic Track/DHSS. The issues raised by those opposing the proposal largely replicated those contained in Council's detailed grounds of refusal, although submissions from the nearest residential neighbours also highlighted specific adverse impacts on their properties and the amenity enjoyed by them.

- 9 The Applicant disagrees with these criticisms of the proposal. It submits that the site is an excellent candidate for redevelopment because of the strong strategic support in the Planning Scheme for such a proposal, the physical characteristics of the site including its large size, proximity to public transport, few sensitive interfaces or constraints, and absence of any unreasonable adverse amenity impacts. It is also submitted that the proposal achieves an exemplary design and that sites such as this are rare in Bayside and should not be underdeveloped.
- 10 Having now considered all the material presented at the hearing, all the written and oral evidence and undertaken an accompanied site inspection, we have concluded that the application, subject to conditional changes, is an acceptable development and one that on balance will result in a net community benefit. We will therefore set aside Council's decision to refuse the application and grant a conditional permit. These conditions include deletion of two levels of Building B and realignment of Koolkuna Lane. What follows are our reasons for that decision.

#### **SUBMISSIONS ON AMENDMENTS VC138 AND VC140**

- 11 Before setting out our reasons, we comment briefly about these two amendments which were gazetted on the second last day of the hearing (12 December 2017).
- 12 At the time, it was uncertain what implications the amendments would have on our assessment of the proposal we are considering. Parties asked that they be given until Friday 22 December 2017 to submit any comments about the amendments. The Tribunal's order dated 13 December 2017 provided parties with an opportunity to make submissions if they wished. Responses have been received from Bayside City Council, the Applicant and the Hampton Neighbourhood Association Inc.
- 13 Of the two amendments, Amendment VC140 concerns changes to the bushfire management provisions and it is submitted by parties that it has no relevance to this application. We agree.
- 14 Amendment VC138 concerns changes to the biodiversity and native vegetation provisions and has the potential to impact our consideration of the request to remove six trees pursuant to Clause 52.17.
- 15 The Amendment revises Clause 12 (Biodiversity) to implement the policy, objectives and strategies found in *Protecting Victoria's Environment – Biodiversity 2037* and refers to a new incorporated document, *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017).
- 16 Amendment VC138 also revises Clauses 52.16 (Native vegetation precinct plans) and 52.17 (Native vegetation) to implement biodiversity policy changes resulting from the native vegetation review, modifies application requirements and decisions guidelines, introduces transitional arrangements, modifies exemptions from the requirement to obtain a

planning permit to remove, destroy or lop native vegetation, references a new incorporated document, *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017) and makes changes to Clause 66.02-2 (Native vegetation – referral and notice provisions).

- 17 Submissions on the impacts of Amendment VC138 acknowledge that the operation of transitional provisions at Clause 52.17-6 means that the application does not need to be assessed against the *Guidelines for the removal, destruction or lopping of native vegetation* (2017).
- 18 However, Council submits that the *Guidelines for the removal, destruction or lopping of native vegetation* (2017) and the three step approach (avoid, minimise and offset) are a relevant consideration because Clause 12.01-2 does not contain transitional provisions. Council further submits that the Applicant has not demonstrated or provided evidence to show that no options exist to avoid native vegetation removal that will not undermine the objectives of the proposed use or development. Council notes that the land on which the commuter car park is to be located is very large and that there is ample space to provide additional commuter car parking whilst at the same time avoiding the removal of native vegetation. In summary, Council states that the removal of native vegetation is clearly inconsistent with both Clause 12 and the Guidelines and that the Tribunal should not support the removal of native vegetation.
- 19 The Hampton Neighbourhood Association Inc made a brief submission noting that respondent parties have had the benefit of reviewing the submission filed by Bayside City Council and support the Council's submission. The association states that the application must be assessed having regard to Clause 12 and the new *Guidelines for the removal, destruction or lopping of native vegetation*, and that the application should be refused in as much as it seeks removal of native vegetation for the commuter carpark.
- 20 The Applicant submits that Clause 52.17-6 includes transitional provisions and, that as such, Amendment VC138 has little or no effect on the merits of the application. Comment is made about the changes to Clause 12.01 and amendments to include references to *Protecting Victoria's Environment – Biodiversity 2037* and the *Guidelines for the removal, destruction or lopping of native vegetation* (2017). It is stated that a key theme within the updated documents is the identification and protection of 'important areas' of biodiversity and that the review site is not an 'important area' for biodiversity as demonstrated in the report prepared by Biosis in December 2016. That report found that there were no threatened species or vegetation communities on or within the area to be developed for the proposed commuter car park. The Applicant states that there is no net loss to biodiversity, that the review site is not an 'important area' for biodiversity where native vegetation is sought to be protected and that the changes

introduced by Amendment VC138 do not materially change the assessment of the application.

- 21 Later in our reasons we discuss the commuter carpark, including vegetation removal and future landscaping, and we have had regard to the above submissions in our assessment.

## **AMENDMENT VC142**

- 22 Amendment VC142 was gazetted on 16 January 2018. The explanatory report states that:

*The amendment includes a wide range of reforms across the VPP that generally remove permit triggers, expand permit exemptions for land uses and buildings and works, remove superfluous and outdated provisions, update references, improve and update definitions, clarify common points of confusion and improves the usability of the VPP.*

- 23 Very few of the provisions affect the matters under consideration in this proposal and we have not sought further comments from parties given the limited impact of the changes. Those changes that are of relevance and which we have taken into account are as follows:
- A permit is no longer required for loading bays pursuant to Clause 52.07. However, the decision guidelines at Clause 65.01 require consideration of the adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety issues. These matters were addressed at the hearing and we have included comment about the loading facilities in our reasons. We have, however deleted the reference to loading bays in what the permit allows.
  - The integrated public transport planning provisions, including referrals, previously included in Clause 52.36 have been relocated to Clause 66.02.11. There are no substantive changes to the provisions requiring additional comment or referrals.
  - In Clause 12. 01 the strategy which seeks to ensure that decision making takes into account the impacts of land use and development on Victoria's biodiversity has had the words 'high-value' deleted. The explanatory report states that this change has been made to make the reference consistent with changes introduced by Amendment VC138. We have previously recorded the submissions made by parties to Amendment VC138 and, in particular, the Applicant's comment that the area is not an 'important area' for biodiversity. Whilst there is no longer a distinction as to whether an area is of high value (or an important area) for biodiversity, we have had regard to the assessment by Biosis in determining whether the six or five trees within the commuter carpark should be allowed to be removed.

## WHAT DOES THE PLANNING SCHEME HAVE TO SAY ABOUT FUTURE USE AND DEVELOPMENT IN THIS PART OF THE HAMPTON ACTIVITY CENTRE?

### Planning controls and policies

- 24 When assessing planning permit applications, it is often easy to gloss over the higher level State planning policies and the broad directions set out in the metropolitan planning strategy. Despite Council refusing the application on twenty-nine detailed grounds, none specifically mention the metropolitan strategic framework or State planning policies despite Clause 2.04-2 stating that *it is important to refer to both frameworks when considering the requirements of the scheme.*
- 25 We therefore start our assessment by referencing the metropolitan planning strategy and relevant State planning policies. *Plan Melbourne 2017-2050 (Plan Melbourne)* is the strategic plan or framework for Melbourne and regional areas of Victoria. Plan Melbourne is projecting that Melbourne's population will increase from approximately 5 million people to approximately 8 million people over the next 32 years and that 1.6 million new dwellings will be required to house them.
- 26 Both Plan Melbourne and State policies such as those at Clause 11.06 are unambiguous that medium and higher density development should be focussed in established areas near services, jobs and public transport in order to support objectives concerning urban consolidation and housing choice. Facilitating new housing in such areas is aimed at creating a city of 20 minute neighbourhoods. There is also an intention that more intensive development be focussed in and around nominated activity centres and on the Principal Public Transport Network.
- 27 Hampton is identified as a Major Activity Centre (**MAC**) on page 53 of Plan Melbourne and policy 2.2.3 seeks to *support new housing in activity centres and other places that offer good access to jobs, services and public transport.*
- 28 State policy for activity centre at Clause 11.03-2 has the one objective to *encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses and are highly accessible to the community.*
- 29 Related strategies are to:
- Undertake strategic planning for the use and development of land in and around the activity centres.*
  - Give clear direction in relation to preferred locations for investment.*
  - Encourage a diversity of housing types at higher densities in and around activity centres.*

*Reduce the number of private motorised trips by concentrating activities that generate high numbers of (non-freight) trips in highly accessible activity centres.*

*Improve access by walking, cycling and public transport to services and facilities for local and regional populations.*

*Broaden the mix of uses in activity centres to include a range of services over longer hours appropriate to the type of centre and needs of the population served.*

*Provide a focus for business, shopping, working, leisure and community facilities.*

*Encourage economic activity and business synergies.*

*Locate significant new education, justice, community, administrative and health facilities that attract users from large geographic areas in or on the edge of Metropolitan Activity Centres or Major Activity Centres with good public transport.*

*Locate new small scale education, health and community facilities that meet local needs in or next to Neighbourhood Activity Centres.*

*Ensure Neighbourhood Activity Centres are located within convenient walking distance in the design of new subdivisions.*

*Improve the social, economic and environmental performance and amenity of activity centres.*

30 At the local policy level, Clause 21.03-1 identifies Hampton as one of four major activity centres in the municipality. Two of the key issues identified are that:

- *Activity Centres will play an increasingly important role in providing for future housing needs, particularly as opportunities diminish elsewhere due to neighbourhood character, heritage and environmental constraints.*
- *Enabling increasing diversity and density of dwellings in activity centres to provide for future housing needs.*

31 Clause 21.06-1.2 contains built environment and heritage policy for activity centres. A list of key issues, three objectives and related strategies are provided, along with how the policies are to be implemented, including through the guidance provided in Local Area Plans contained in Clause 21.11. Separate Design and Development Overlays (DDOs) have been introduced to give effect to the Local Area Plans in Clause 21.11 and Hampton has been included in DDO12.

32 Clause 21.11 provides more detailed policies for each of those areas or activity centres with Clause 21.11-4 relevant to Hampton Street, Hampton. Clause 21.11-4 identifies four precincts, including the Willis Street Precinct affecting that part of the review site on the north east side of the railway line, The Framework Plan at Map 1 to Clause 21.11-4 depicts six Built Form Precincts which form the basis of, and are replicated in, the Built Form Precincts in DDO12. The *Hampton Street Centre - Final Structure*

*Plan (November 2006)* is a reference document in both Clause 21.11-4 and DDO12.

- 33 Parties also made reference to and relied upon a more recent strategic planning document being the *Hampton Willis Street Precinct Urban Design Framework 2013 (UDF)*. The purpose of the UDF is stated as being:

*...to underpin appropriate planning for the Hampton Willis Street Precinct. The UDF will inform Bayside City Council's response to planning processes in the short term, and ongoing longer term planning for the precinct.*

- 34 In places it cross-references to the DDO12 provisions, such as those concerning heights in built form precincts, but it provides much more detail about pedestrian and vehicular networks, built form including articulation, upper level setbacks, cross-block set downs, residential interfaces, 9 metre minimum separation between building, retail sites and environmental amenity. It also includes comment about a number of strategic interfaces including to Koolkuna Lane and the Central Plaza (i.e. described as the Station Forecourt on the permit application plans). We note that it is not a reference or incorporated document in the planning scheme although considerable emphasis was placed on how closely the proposal matched the outcomes ought by the UDF.

- 35 As noted above, Hampton is within the area covered by DDO12. DDO12 includes five design objectives of which three are of particular relevance to this application:

*To ensure that the height of new development is compatible with the preferred future role and character of the Hampton Street Major Activity Centre.*

*To develop the centre in a way that conserves and enhances its valued urban character and heritage places.*

*To recognise the redevelopment potential of the Willis Street Precinct*

- 36 Although Council made reference to the fourth objective (*To maintain a strong landscape character with residential buildings set within vegetated front gardens and streetscapes in the residential precincts*) in relation to the commuter car park, we are not persuaded that it is of much relevance as its focus is on residential buildings, rather than other types of built form including at-grade car parking.

- 37 DDO12 also includes provisions dealing with mandatory and preferred building heights, setbacks, building frontages and roof decks. As depicted in the copy of Map 1 on the following page, the north eastern part of the review site is within Precincts A1 and E1 whilst the land south west of the railway is to be occupied by the commuter car park is in Precinct E.

- 38 Precinct A1 has a preferred maximum height of 18.5 metres (6 storeys), Precinct E1 a preferred maximum height of 11 metres (3 storeys) and Precinct E a mandatory maximum height of 11 metres (3 storeys).



Map 1: Hampton Street Major Activity Centre Built Form Precincts

39 Building setbacks relevant to this proposal are as follows:

*A building should not be set back from the front or side boundary except as follows:*

- *At third floor or above, buildings should be set back a minimum of 5 metres from the front street boundary and any street boundary adjacent to a Residential Zone.*

- *Where the site abuts a Heritage Overlay containing a heritage building set back from the front or side boundaries, new buildings should be set back to provide a transition in the front or side setbacks.*

*Minor buildings and works such as verandahs, architectural features, balconies, sunshades, screens, artworks and street furniture may be constructed within the setback areas specified in this schedule provided they are designed and located to the satisfaction of the responsible authority.*

40 Although the north eastern part of the review site does not directly abut the boundary of a property containing a dwelling and located in a Residential Zone, it is useful to record that DDO12 specifies that the minimum discretionary setbacks should be 3 metres at ground floor, 5 metres at first floor, 10 metres at second floor and 15 metres at third floor or above.

41 Variations to the requirements of the schedule (including preferred building heights) are possible but must:

- *Identify the design objectives, design requirements and outcomes to be achieved for the proposal as specified in this schedule.*
- *Include an assessment of how any departure from a preferred building height or building setback specified in this schedule assists in achieving the design objectives and built form outcomes to be achieved for the proposal as specified in this schedule.*
- *Demonstrate that the proposal will achieve the following outcomes (as appropriate):*
  - *A high standard of architectural design.*
  - *Innovative environmental design.*
  - *Minimal overshadowing of adjoining streets, public spaces and residential properties.*
  - *Minimal impact on the amenity of adjoining residential precincts.*
  - *Respect for places subject to the Heritage Overlay.*
  - *Transitions in scale to lower building forms.*

*An application to vary the requirements in this schedule should also identify (where relevant) whether the site has any particular characteristics or features that warrant the variation and an alternative design response.*

42 We discuss these variations later in our reasons in the context of whether the additional heights sought justify a departure from the preferred heights and setbacks set out for Precincts A1 and E1.

43 We emphasise that none of these DDO12 provisions as they affect that part of the review site where building height is in contention are mandatory

requirements and a building exceeding 18.5 metres or 6 storeys in A1 or 11 metres or 3 storeys in Precinct E1, or with smaller setbacks could still be approved.

- 44 The policy implies that for a building lower than the preferred heights, or which meets or exceeds the setbacks, it is not necessary to demonstrate such benefits. However, we consider that the list of benefits is relevant to any assessment of a new development. In one way or another they are benefits, or site responsive design outcomes, that are referred to in other policies in the Planning Scheme including those at Clauses 15.01, 15.02, 16.01, 21.02, 21.06 and 21.11. Those policies were referred to in submissions and they have informed our assessment.
- 45 In summary, we consider there is strong policy support for more intensive built form on land within the MAC and within the Willis Street Precinct in particular. Policy and the DDO12 provides support in this part of the activity centre for heights up to 18.5 metres or 6 storeys and states that higher buildings may be possible provided there is a demonstration of specified benefits.
- 46 There is an expectation that in future, buildings will be taller within the boundaries of the MAC compared to the neighbouring residential areas or in Precincts E and F which now have mandatory height limits. There is also an expectation that the tallest buildings within the Hampton MAC will be within the Willis Street Precinct.
- 47 In large measure, parties were in agreement that a building or buildings that did not exceed the preferred maximum heights in DDO12 would be, in principle and subject to other built form issues such as separation distances being satisfactorily dealt with, an acceptable outcome.
- 48 However, no matter what height and other controls affect land within the MAC, there is a need to consider the specific site context and all relevant State and local policies. These include those we have referred to in paragraphs 24 to 44 which guide us in determining whether this particular proposal provides an acceptable outcome as required by the decision guidelines at Clause 65 of the Bayside Planning Scheme.
- 49 Although some submissions were critical about the provision of additional dwellings and whether there is a need to provide more dwellings given the number that have or are being constructed in the locality, we do not accept that the proposal should be refused or scaled back because of what may seem to be oversupply in the number of dwellings. Policy as we have described earlier, is very clear that Melbourne requires a massive increase in the number of new dwellings to be constructed over the next 30 years or so. The housing market is such that there will be fluctuations in the supply and demand for housing at any given point in time, but there can be no question that over the medium to longer term there is a need to provide a significant number of additional dwellings, particularly on land within Major Activity Centres served by the Principal Public Transport Network.

- 50 There was also criticism about the mix and affordability of dwellings being provided, including the relatively small number of DHSS dwellings. We consider that an apartment style development with dwellings of different sizes does contribute to housing diversity in this part the municipality where the housing has historically comprised single dwellings on individual lots or modestly sized one and two storey villa unit and town house developments.
- 51 Mr Chessell made a submission on behalf of DHSS in support of the proposal and the provision of 18 dwellings to replace those that are to be demolished. He indicated that the 10% increase in the number of dwellings is consistent with DHSS policy which seeks to achieve such an increase when existing DHSS sites are being redeveloped. We consider that the provision of additional DHSS dwellings with modern facilities is a positive aspect of the proposal.
- 52 In our discussion so far we have not yet commented about the zoning of the land and we have done that deliberately because of the inclusion of the land in the Residential Growth Zone 1 (RGZ1) and the Public Use Zone 4 (PUZ4).
- 53 As the name implies, the RGZ1 is a residential zone where dwellings are an as-of-right use, and where one of the purposes is to provide housing at increased densities up to four storeys in height. Height should not exceed 13.5 metres although additional height is possible if land is affected by flooding or has a slope greater than 2.5 degrees. Building A is within the area zoned RGZ1 and we consider that a building up to 4 storeys in height, even if it exceeds the 11 metres preferred height in DDO12 Precinct E1, can be considered to be generally consistent with the outcome for the zone.
- 54 Approximately half of Building B is also in the RGZ1 and it clearly exceeds the 13.5 metres and four storeys height specified for the zone. However, the situation is somewhat muddled because Building B is within Precinct A1 in DDO12 where a 18.5 metres or 6 storey height is contemplated. Subject to the discussion later in our reasons about the height of Building B and the need to reduce it, we consider that a taller building transitioning to Building A is consistent with the RGZ1 purposes concerning housing at increased densities, encouraging a diversity of housing types offering good access to services and providing a transition in scale between areas of more intensive use and development and other residential areas.
- 55 We therefore would not reject that part of the development within RGZ1 on the basis that it is inconsistent with the zone purposes. We also note that the use of land for a shop can be as-of-right, although the associated condition concerning proximity to a Commercial or Mixed Use Zone, Road Zone Category 1 and maximum floor area is not met. A permit is therefore required for use of the RGZ1 land for a shop. However, we would not reject a shop in this location given it forms part of, and is at the end of, an integrated commercial frontage to Koolkuna Lane and opposite the Council car park which is zoned Commercial 1.

- 56 The PUZ4 is a far more open-ended zone with extremely limited provisions or guidance for decision makers. In effect, any transport related use can take place without a planning permit and a permit is not required to construct a building or construct out works for such transport related uses. Non-transport uses, which in this application includes dwellings and shops, do require a permit, as do buildings and works.

### **IS THE LAYOUT AND DESIGN AN ACCEPTABLE RESPONSE TO THE SITE CONTEXT?**

- 57 At the beginning of our reasons we listed the various elements or components of the proposal. The large built form along the north eastern side of the railway reserve has a single footprint but presents as four buildings or towers over a common podium element. For convenience these four “buildings” are described as Buildings A, B, C and D, although all parties understand they share a common footprint. Integral to the proposal is a station plaza or forecourt located at the south eastern end of Building D and outside the building footprint.

### **Is the proposed height of the building acceptable?**

- 58 The preferred heights in DD012 are expressed first in metres and then with the number of storeys expressed in brackets. At the hearing there was debate about whether Building B is of 7 or 8 storeys because it contains a mezzanine level.
- 59 Whilst we refer to storeys in these reasons, we consider it is useful to also refer to building heights in metres as well storeys, as the number of storeys will vary depending on floor to floor heights. It is also easier to understand and compare the visual impact of buildings, including reducing heights, by referring to metres.
- 60 The following diagrams depict the two long elevations of the development. One from the north east towards Koolkuna Lane and one from the south west towards Railway Crescent.

## Massing and Articulation

Amended Scheme



Koolkuna Lane Elevation

## Architectural Character

Railway Crescent



- 61 It was common ground between the Council and Respondents that the buildings are too tall. In essence there were two major arguments.
- 62 Firstly, they submit that the building will be visually dominant from within the precinct. It will be out of scale with the “village character” that they say is a prized attribute of Hampton. The protection of this character is a repeated theme in the Bayside Planning Scheme, and features in the first three objectives of DDO12.
- 63 The residents of 8 Willis Street submit that the outlook from their decks will be to an excessively tall eight-storey building plus roof deck, across a narrow lane. They say this will be entirely out of scale with their two storeys plus roof deck building.

- 64 They provided views from a simplified digital model (where the proposed building is represented by a 2D “billboard”) to illustrate the views they will be presented with.
- 65 The residents of Orlando Street and Railway Crescent submit that their outlook will be dominated by the length and height of the proposed development, that they submit will read as the one building. This will be totally out of scale with the character of their residential precinct which is covered by a Heritage Overlay so will likely remain as low scale individual houses into the future.
- 66 From longer distances the Respondents say the buildings will dominate the skyline. They fear the buildings will form a “wall” between the north and south sides of the Hampton Activity Centre, dividing the community.
- 67 From within the Willis Street precinct, both Council and Respondents submit that the buildings will loom over Koolkuna Lane and create a visually oppressive environment once the other side of the lane (the present Council car park) is developed.
- 68 They also say the additional height of Building D will add excessive shade to the new Plaza, a matter we will deal with separately.
- 69 The second key issue both Council and Respondents raise is the variation from DDO12, which sets a preferred height of 18.5 metres or six storeys for precinct A1 and 11 metres or three storeys for precinct E1. They submit that the proposal exceeds these preferred heights by a wide margin. They say the DDO12, based upon the Urban Design Framework of 2013 and the Structure Plan before that, is the result of a long process of careful strategic work, including extensive community consultation.
- 70 Each of the Respondents who appeared before us acknowledged that the site is suitable for intensive development, but all submitted that they had expected and would support a development that complied with the DDO12. They submit the extent to which the proposal exceeds the recommended heights makes a mockery of the Scheme and the effort that went into its preparation; and will not achieve the level of certainty in planning outcomes that is referred to in Plan Melbourne and that they say the community has a right to expect.
- 71 They accept that the DDO12 does include provision for variations to the preferred height but say the proposal does not offer the required benefits to the extent that would warrant the extra height that is sought. (We will return to this matter later.)
- 72 The Applicant submits that the building will have minimal impact upon its context. It is submitted that the proposed building is of seven stories, although recognising that Building B is technically eight because of the inclusion of a mezzanine level to be occupied by Small Office Home Office (**SOHO**) units.

- 73 They point to the seven stories of the Anchorage building now under construction at 10 Railway Walk and the existing six-storey building at 2-4 Willis Lane as providing a relevant context. Both of these developments are closer to the low scale retail strip of Hampton Street. They submit that in comparison, the subject site is relatively unencumbered until it approaches Willis Street, which for this reason is placed into a different precinct (E1).
- 74 The planning experts Mr Milner and Mr Biacsi point out that this is one of the few sites in Hampton that does not have a direct interface with heritage zoned land. They submit that given that there are no sensitive interfaces to Precinct A1, and that there are no direct amenity impacts on neighbouring properties, the potential to achieve state policy objectives of urban consolidation and sustainable development as set out in Plan Melbourne is sufficient reason to justify applying the discretionary controls to allow what they say is a relatively minor exceedance of the recommended height.
- 75 In addition, they submit that the proposed development will provide a range of other community benefits including achieving a well-designed Station Plaza, providing extensive active frontages to Koolkuna Lane, making a direct contribution to the upgrading of the railway station of \$1 million and integrating the eighteen new DHHS apartments into the overall development, while yielding an unspecified additional amount of funding to DHHS to achieve public housing elsewhere.
- 76 They say these factors meet the tests set out in DDO12 to allow a variation in the building heights.
- 77 Unsurprisingly the Council and the Respondents contest many of these benefits; and submit that they are not sufficient to justify any amount of extra height. They submit the level of exceedance is not minor.
- 78 Our starting point to assess these competing arguments is to establish exactly how much the proposal exceeds the preferred heights of DDO12. During the Tribunal hearing a variety of conflicting figures were cited for each building. In summary the opponents of the proposal submit they exceed the DDO12 by as much as 40% or 7.5 metres, whereas the Applicant states that the additional height amounts to only one storey or possibly two for Building B that they say is the result of the technical definition of a mezzanine level counting as a full storey.
- 79 The DDO12 sets preferred maximum heights measured in metres (m) followed by the number of stories in brackets. As we have noted, for Precinct A1, where the majority of the site is located, the preferred height is listed as 18.5 metres (6 storeys). The preferred height for Precinct E1 (the northern portion that has a direct relationship with lower scale residential development) is shown as 11 metres (3 storeys).
- 80 The definition of building height is provided at Clause 72 of the Bayside planning scheme and reads: "*Building Height: The vertical distance from natural ground level to the roof or parapet at any point.*"

81 Building height is not specifically defined in the DDO12, however what constitutes a storey is. The DDO12 states:

*For the purposes of this schedule, a ‘storey’ excludes a basement but includes an attic, mezzanine or built over car parking area.*

82 It then goes on to further define storey, attic, dormer window and then says:

*For the purpose of this schedule a ‘roof deck’ means an area designed and used as a private open space that is **located above the upper storey of a building**.*<sup>2</sup> (Our emphasis).

83 Later in the same section, under the heading “Roof Decks” it states:

*Roof decks and their associated structures should not exceed the Preferred Building Heights specified in the built form precinct provisions of this schedule.*

84 This leads us to the conclusion that the scheme is intending to include roof decks within the definition of building height although the lack of an explicit definition leaves some uncertainty, given the reference to “above the upper storey” and the fact that preferred heights is given in both metres and storeys.

85 We decided to draw up an assessment of each proposed building measuring the height in metres to three elements: to the top of the stairs associated with the roof deck; to the top of the parapet on the building face, and to the top of the roof surface (the structural height). This was done by scaling off the A1 drawings measuring from the natural ground level at the mid-point of each of the proposed buildings. Our assessment is summarized in the following table:

| Building/preferred height in (m) | To top of roof structure /% over 11 or 18.5 metres | To top of parapet / % over 11 or 18.5 metres | To top of stair structure associated with roof deck / % over 11 or 18.5 metres |
|----------------------------------|--|--|--|
| A /11m                           | 11.9 / 8%  | 13.2 / 20%                                   | 14.4 / 31%   |
| B/18.5m                          | 23.6 / 28%   | 24.9 / 35%                                   | 26.1 / 41%   |
| C/18.5m                          | 22.9 / 24%   | 24.2 / 31 %                                  | 25.4 / 37%   |
| D/18.5m                          | 22.6 / 22%   | 23.9 / 29%                                   | 25.4 / 37%   |

86 This assessment generally agrees with the figures put forward by Mrs Bissland except that we have measured from natural ground level. The measure to the top of the parapet generally agrees with the figures provided by the Applicant. It follows that if the roof decks were to be included in the assessment of building height, it would be difficult to regard the level of exceedence as minor.

<sup>2</sup> Schedule 12 to the Design and Development Overlay: 2.0 Building and Works: Meaning of Terms.

- 87 In considering the proposed roof decks, we observed that in each case the roof deck is set well back from the edge of the façade, greater than the setbacks set out in the schedule for a roof deck in a commercial zone. We also noted that the vertical structures associated with each roof deck: an access stair and a pergola / shade structure, is relatively small in area and even if visible would unlikely to be visually dominant. We also note these are grouped with the lift over run structure, a permitted form. Finally, we note that each roof deck is surrounded by an area of landscaping that would further conceal any activity on the roof.
- 88 As there are no direct impacts in the form of shadows or overlooking caused by the roof decks, we are satisfied they will result in an appropriate outcome even if they add to the level each building technically exceeds DDO12.
- 89 We then turn to the visual impacts of the built form not including the roof deck. It was generally common ground that there were no direct shadow or overlooking impacts into neighbouring residential development. However the residents at 8 Willis Street were concerned about the potential for direct views to their elevated private open space across the narrow lane, and the residents to the west of the railway line were similarly concerned that they could lose privacy.
- 90 However, in each case the distances involved are well beyond the accepted distance of 9m where privacy becomes a factor, although there is no doubt that the building will be quite visible. Hence it follows that the key issue is one of scale and visual bulk.
- 91 It is clear from our analysis that Building B is the tallest of the group in terms of both absolute height and the number of storeys. Even without counting the roof deck, it is in the order of 35% above the preferred height.
- 92 The remaining buildings in Precinct A1 then appear to step down slightly as the development approaches the station and Hampton Street. We find this curious as the context for each building becomes progressively lower in scale as the site approaches Precinct E1 and Willis Street.
- 93 In addition to the lower scale area of Precinct E1 and the existing two storey dwellings of 8 Willis Street and 10 Willis Street, we observe that the Council car park, also earmarked for development to a preferred height of six storeys, has a direct abuttal to the RGZ1 zone and thus is somewhat constrained to its north. Further, the UDF illustrates a four-storey frontage to Koolkuna Lane with a further two storeys set back.
- 94 We note that 8 Willis Street is approximately 13.5 metres from the nearest point of the proposed development, which approximately aligns with the entry to Building B. This is where the building extends to its maximum height. Given the occupants of 8 Willis Street will view the development from their upper level decks, we conclude they are likely to experience all the upper levels of the building with the exception of the roof decks.

- 95 We find that the context for Building B is less robust than for Buildings C and D and Building B is also furthest from the station.
- 96 On the review site, the UDF shows a five-level frontage to Koolkuna Land with a sixth level set back. The Applicant argues they effectively achieve this, with a five-level frontage and three further levels stepping back.
- 97 We note, however, that the expectation of the DDO12 is that the frontage to the lane should be one storey less than the recommended maximum of 18.5m (i.e. effectively 15m allowing for a 3m residential floor-to-floor space).
- 98 The proposed development is acknowledged to be well above this, because of the additional height caused by the Mezzanine level. We note that the active frontages to Buildings C and D become less commercial in Building B, it would seem in response to the different context.
- 99 We are also not persuaded that the longer distant views are necessarily irrelevant. The proposed development will provide a visual marker for the Hampton Village, particularly for pedestrians approaching from the north and for visitors arriving by train.
- 100 For these reasons we find that Building B is excessively tall and is likely to provide an inappropriate level of visual bulk.
- 101 Anticipating this may be a concern, the Applicant made an offer to remove the mezzanine level at the cost of the SOHO units. However, we find this would not be sufficient to make an appreciable difference. Instead we will require two complete levels to be removed, at levels three and four as notated on the architect's plans (storeys five and six where ground floor is storey 1, the mezzanine is storey 2, and so on.<sup>3</sup>) This will ensure that the setbacks of the upper levels will be retained and provide a more acceptable built form for its more sensitive context. It will reduce the height to approximately 17.5 metres (to top of roof structure), 19 metres to the top of the parapet and 20 metres to the top of the store structure. This last height more closely aligns with the definition and preferred height in DDO12 for a building which has the physically closest and most sensitive interface to the properties on the south side of Willis Street. The visual effect of removing two intermediate levels can be best appreciated by referring back to the two diagrams on page 20.
- 102 With respect to Buildings C and D, we accept that the context for these buildings is more robust with no close relationship to existing low scale residential development. In addition, we are persuaded that Building C has the most developed architectural form that in our view is well considered and likely to make a positive contribution to the developing character of the Hampton Village. We say this carries over to some extent into Building D, whereas Building B presents as a more conventional apartment building.

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<sup>3</sup> This numbering accords with the definitions included in 2.0 of the DDO12.

- 103 Buildings C and D are also closer to the station and the retail core of the Activity Centre. As such, we find it is appropriate to give more weight to the state level policy for these buildings.

**Are setbacks and building separation acceptable?**

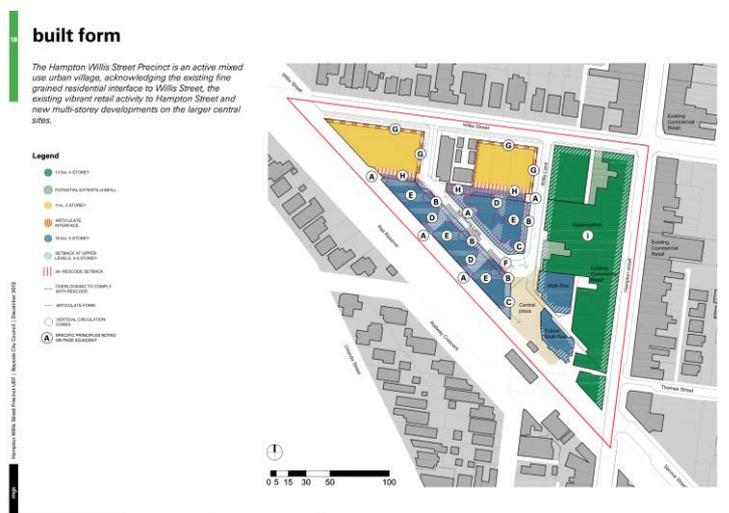
- 104 The proposed development is located wholly within the Willis Street Precinct as defined in DDO 12. This includes (amongst others) the following objective:

*“To ensure future development provides appropriate spatial separation and visual breaks between buildings.”*

- 105 There is little further direction regarding the need to provide visual breaks within the DDO, other than that policy which is directed to encouraging a high level of articulation of facades in order to reinforce a “human scale”. For example, under the heading “Building Frontages” it says (amongst other points):

*Provide articulated and well designed facades, fenestration, parapet treatments, other detailing and materials to provide interest at street level and reinforce the human scale.*

- 106 Council submitted that the DDO needs to be read in conjunction with the Urban Design Framework (UDF)<sup>4</sup>, which was published a short time after the DDO. Council submits that the UDF is intended to provide further guidance for the implementation of the Structure Plan and DDO; and was the result of extensive consultation with the community and stakeholders.



- 107 Council refers to the diagrams and notes at pages 18 and 19 of the UDF, which it submits support the need for greater visual breaks at upper levels and expresses a vision of a series of well-articulated medium grain buildings. Council submits that instead, the proposal presents as a single form that is excessively imposing because in addition to being too high the

<sup>4</sup> MGS Architects: The Hampton Willis Street Precinct Urban Design Framework, 2013

breaks provided are too few and too narrow to achieve the desired human scale. This point was also strongly supported by the Respondents, who produced diagrams to indicate that with gaps of only 6m, views through the gaps would be restricted to a very narrow view cone.

- 108 The Council, supported by the Respondents, submits that the UDF diagram and supporting notes indicate there should be gaps between all of the buildings including between buildings A and B, and that the gaps should be at least 9m wide.
- 109 Council further submits that the gaps should extend to ground level, effectively creating short lanes between each building.
- 110 The Applicant maintains that the gaps provided are sufficient to provide a level of articulation which it submits is augmented by the distinct architectural language provided to each of the four buildings. The Applicant states that the guidelines in the DDO12 are directed towards the upper levels of the building, whereas the proposal takes the gaps down to the mezzanine level. The Applicant also submits that the 9 metre guideline is a reference to the ResCode standard and is intended to apply where dwellings are directly addressing one another across the gap. In this case, all dwellings face north east or south west and only a small number of secondary rooms have windows facing the gap, appropriately protected by external screening.
- 111 The Applicant submits that a gap between Buildings A and B is not required because there are adequate step-downs between the building forms and as there are no dwellings addressing one another, there is no requirement of a gap for privacy reasons.
- 112 We are persuaded that the architectural articulation does play a positive role in distinguishing the individual buildings that make up the proposal. We also agree with the Applicant that the guidelines are directed towards achieving the visual articulation of the built form rather than creating “lanes”. Similarly, while we agree that sightlines through the gaps will be somewhat limited, we find that this is not the objective, but rather the achievement of an adequate degree of articulation that in this case is achieved by a combination of architectural differentiation and the relatively deep vertical breaks.
- 113 We find that the application of the ResCode standard of 9 metres is not relevant given that the dwellings all have primary outlooks to the north east and south west, and we are satisfied that the limited opportunities for overlooking are treated in an acceptable manner.
- 114 We find that there would be little additional value in extending the gaps to the ground level as this would be at the cost of disrupting the continuous retail edge as well as disrupting the parking arrangements. We find this would be an unacceptable outcome given that the policy is clearly directed to the upper levels of the building.

115 We are not persuaded of the need for an additional gap between buildings A and B. We note that the guideline in the DDO12 is somewhat ambiguous on this point but agree with the Applicant that the thrust of the guideline is towards a transition to the lower scale and that the reference to a 9 metre separation is not applicable as there are no dwellings addressing one another at this point. In any case, we are satisfied that with the reduced height we have required for Building B there is less need for further articulation at upper levels between these buildings.

**Is there justification to vary the requirements of DDO12?**

116 Whilst we have so far discussed the building heights from a generalised urban design perspective, the DDO12 includes specific provisions which must be met if there is to be a variation to the listed requirements including preferred building heights. We referred to these in paragraph 41 but make the following comments about each and whether there is sufficient justification to approve a development that does not meet the preferred heights and setbacks and other requirements.

Identify the design objectives, design requirements and outcomes to be achieved for the proposal as specified in this schedule

117 We received evidence from Mr Milner, who dealt with each objective individually and the outcomes achieved by the development.

Include an assessment of how any departure from a preferred building height or building setback specified in this schedule assists in achieving the design objectives and built form outcomes to be achieved for the proposal as specified in this schedule

118 This aspect has been dealt with earlier in our reasons.

Demonstrate that the proposal will achieve a high standard of architectural design

119 We accept the evidence of Mr Sheppard that the proposal does achieve a high standard of architectural design. The articulation and variation in material, colours and integration of vertical landscaping all contribute to our finding that this is a proposal that will achieve a high standard of architectural design. We note that the Office of the Victorian Government Architect in its review of the earlier proposal considered by Council, generally supported the architectural approach that “builds mass towards the Hampton Street end of the linear site”. The revised proposal maintains that approach to massing, and our recommended changes to Building B will further accentuate that approach.

Demonstrate that the proposal will achieve innovative environmental design

120 The application was accompanied by an ESD Sustainable Environmental Management Plan prepared by Umow Lai. It was based on an earlier set of plans and will need to be revised as required by permit condition.

- 121 The report notes that Bayside City Council promotes the use of the Sustainable Design Assessment in the Planning Process (SDAPP) framework and that it is proposed to introduce a new Clause 22.12 (Stormwater Management) into the Planning Scheme along with the use of the then recently adopted BESS assessment tool. (NB. There is an existing Stormwater Management policy at Clause 22.08).
- 122 Under BESS the development had a score of 52% where a score of 50% or more is considered best practice. The building also achieves a projected minimum 7 Star NatHERS rating.
- 123 Council officer's noted in their June 2017 report that a number of environmentally sustainable design initiatives have been included and that the recommendations of the Umow Lai ESD Sustainable Management Plan would be included as planning permit conditions, as well as some additional amendments to increase sustainable measures and improve environmental performance.
- 124 Although Council made reference to failing to introduce innovative environmental design features and internal and external amenity impacts including wind and microclimate considerations in the 29 grounds of refusal, no explanation was given as to why it had arrived at such a conclusion given the favourable report prepared by its professional staff.
- 125 Based on the information available to us, we consider that the proposal will achieve, and surpass, the standards sought by the environmental assessment tools used by Council, and that the permit conditions will result in an even higher level of environmental sustainability. It may not be world's best practice but we consider that it does include innovative design features.

Demonstrate that the proposal will achieve minimal overshadowing of adjoining streets, public spaces and residential properties

- 126 Except for the proposed station plaza which is discussed later, the proposed buildings do not create any unreasonable shadowing of adjoining streets, public spaces, and residential properties when assessed against the overshadowing criteria in the Planning Scheme. Shadow diagrams accompanying the application clearly demonstrate that there is no overshadowing to any residential properties in the 9am to 3pm equinox period.
- 127 There will be early morning shadowing of part of the railway line and commuter carpark. Because of the northwest-south east orientation of the building there is also minimal overshadowing of Koolkuna Lane except from about 2pm in the afternoon. We consider this is consistent with the outcome found along almost every street with a retail/commercial land use, such as along Hampton Street where one side or other of the street is in shade at sometimes during the day.

Demonstrate that the proposal will achieve minimal impact on the amenity of adjoining residential precincts

- 128 The potential for overlooking and loss of privacy is either required to be assessed in accordance with ResCode (Clause 55.04-6) in the RGZ1 or is a commonly used and accepted guideline in other zones and for taller buildings. The objective for overlooking in Clause 55.04-6 is:

*To limit views into existing secluded private open space and habitable room windows.*

- 129 The related standard B22 has a number of options but in essence requires screening to 1.7 metres above finished floor level if habitable room windows or secluded private open space are within 9 metres of the viewing point. Alternatives include the use of highlight windows with sill heights of at least 1.7 metres above finished floor level or off setting windows by at least 1.5 metres.
- 130 None of the closest residential properties in Willis Street have habitable room windows or secluded private open space within 9 metres of windows or balconies in the proposed development. We are therefore satisfied that the amenity of these dwellings will not be affected by unacceptable overlooking.
- 131 We have already commented about overshadowing impacts and the visual bulk impacts of Building B. Subject to a reduction in the height of Building B we consider that the proposal will have a minimal impact on the nearest adjoining residential precincts.

Demonstrate that the proposal will achieve respect for places subject to the Heritage Overlay

- 132 The nearest residential properties in a Heritage Overlay are south west of the railway line and the proposed commuter car park. We have already discussed the reason why we support Buildings A, C and D at the heights proposed and why Building B should be reduced in height.
- 133 Although all four buildings remain higher than the preferred maximum height for Precincts A1 and E1, the separation distance and intervening railway infrastructure between the proposed buildings and the nearest residential properties in the Heritage Overlay will not cause any loss to the heritage character of those properties.

Demonstrate that the proposal will transition in scale to lower building forms

- 134 Except for the properties along the southern side of Willis Street, we consider that the proposed buildings do provide for an appropriate transition to lower scale building forms.
- 135 Building A has a height in storeys and metres that is consistent with the provisions of the RGZ1. The upper levels of the building are set back from the street boundaries and the top level comprises a roof terrace which is set back 21.7 metres from Willis Street and 13.3 metres from Koolkuna Lane.

We consider this provides an appropriate scale transition along these interfaces.

- 136 We have already given our reasons why Building B needs to be reduced in height. The reduction in height will provide a transition both between Buildings A and C but also to the lower height buildings at 8 and 10 Willis Street.
- 137 Although not part of the proposal we are considering, DDO12 anticipates buildings of up three storeys and 11 metres on the VicTrack land now to be occupied by the commuter carpark. If that long-term built form vision is realised then a suitable transition will be provided between the Railway Crescent/Orlando Street dwellings and the building we are approving.

Identify (where relevant) whether the site has any particular characteristics or features that warrant the variation and an alternative design response

- 138 We have already discussed at some length why that part of the review site on the north western side of the railway line has physical and strategic support. To reiterate, the land is within a designated activity centre; is proximate to a railway station (with parts of the land virtually adjacent to the station) and has direct pedestrian links to the major shopping street of the Activity Centre.
- 139 In addition to these characteristics, we note that the site is made up of two parcels of state owned land that we were told is surplus to requirements.
- 140 The first parcel is the present at grade car park under the ownership of the Public Transport Authority, and will become available with the enlarging of the existing commuter car park to the west of the railway line.
- 141 The advantages of locating all commuter car parking to the west was questioned by both the Council and Respondents. They said there was still a need for commuter parking on the east side of the rail line and argued this should be provided as a basement level off the plaza.
- 142 Apart from conflicting with the plans for the plaza set out in the UDF, we note that concern was also expressed about the increased traffic that would result by the residential development, given that there are other sites in this precinct still to be developed.
- 143 We are not persuaded that retaining a commuter car park adjacent to the proposed plaza is practical: Even if this development were to be reduced to the DDO recommended scale, there would still be a significant traffic generation to deal with and the remaining site of the Council owned car park will generate yet more.
- 144 We were also persuaded by the traffic evidence that the consolidated car park to the west is practical and does have some advantages.
- 145 We were told that the development is to make a monetary contribution towards the upgrade of the railway station. Although the true value of this exchange was also questioned, we say that as Public Transport Authority is

supporting the application, we must accept on face value that an appropriate value is being achieved for the state.

- 146 The second parcel of land is the site presently owned by the Department of Health and Human Services (DHHS) and is presently occupied by sixteen single storey dwellings. The Department has entered into an agreement to exchange the land and dwellings in exchange for a slightly greater number of new apartments within the development, and we were informed, a monetary settlement of unspecified amount that would contribute towards achieving public housing on other sites.
- 147 Again the value of the exchange was questioned, particularly the value of exchanging sixteen semi-detached cottages with gardens for apartments that rely on balconies for outside space and some of which are closer to the rail lines than the cottages were.
- 148 Once again we note that Department as the land owner is supporting this application and we say we have no reason to question the value of the exchange that has been entered into. While we have some concern about the acoustic exposure of some of the apartments (given that public housing tenants may not be able to afford air conditioning), we accept that the disadvantages will be overcome by the advantages of proximity to the activity centre and we find we have no reason to question the overall value proposition of the exchange.
- 149 As a result, we accept that the redevelopment of both the former car park and the DHHS land is a significant contribution to strategic goals since it will see a more intensive use of former public land in the heart of the activity centre, that is presently under-utilised.
- 150 Hence, we find that the site does have the particular characteristic of comprising state owned land that is presently underdeveloped and we give this some weight in determining to allow development above the scale recommended in the DDO.

#### **Is there sufficient landscaping around and on Buildings A, B, C and D**

- 151 The proposal results in the loss of a number of trees on the site, with most being lost in the expansion of the car park to the south west of the railway line. This issue is dealt with elsewhere.
- 152 On the sites of Buildings A, B, C and D a smaller number of trees are to be lost mostly related to the gardens of the former DHHS housing. No submissions were made regarding this vegetation.
- 153 On the car park site there is a row of Peppercorn trees that are valued by the community and which Council and the Respondents argued should be retained.
- 154 We agree that these trees provide a high degree of amenity at present and from our site visit accept that while they may not have great Arboricultural value, they do make significant contribution to the amenity of the environment.

- 155 We were advised that it may be possible to keep two or three of these trees, possibly at the expense of access to the bicycle store.
- 156 However, we were persuaded by the landscape evidence that demonstrated to us that proposal for the proposed plaza is a highly integrated design with a mix of tree planting, hard paving and rough sawn timbers. We note the design accords quite closely to the layout shown in the UDF, which also does not seem to contemplate keeping the Peppercorn trees.
- 157 We find that retaining a small number of the Peppercorn trees would be at odds with the design of the plaza, and we are convinced that once developed, the new plaza design will provide a high level of amenity. Hence, we will not require retention of the Peppercorn trees.
- 158 In addition to the plaza design, the proposal for these buildings includes three additional landscape contributions.
- 159 Firstly, a number of street trees are proposed to the north end of Koolkuna Lane. Apart from issues of ensuring access to No 8 Willis Street which we deal with elsewhere, no submissions were made concerning the appropriateness of the proposed street tree planting. We find they are of an appropriate species and proportion to achieve the desired “urban lane” character that the UDF illustrates.
- 160 Secondly, all the buildings include a rooftop terrace for use by residents. Each terrace is designed with a central deck area with a 2m wide strip of edge planting of shrubs or small trees. We are convinced this will provide a high level of amenity for the residents, while the edge planting together with the setbacks from the edge will minimise any visual impact from the street.
- 161 Finally, the design includes significant areas of planting on structure, or “vertical gardens”. These are often arranged to coincide with the gaps between the buildings, and we find they make an important contribution to providing the desired visual breaks between buildings and were a factor in our decision considering the gaps between the buildings.
- 162 Some questions were raised by the Council and Respondents concerning the practicality of the planting on structure and the practicality of maintaining this planting over a considerable height. We were informed that a reticulation system will be installed, and that if necessary mid height planters can be installed if it is found to be necessary.
- 163 In addition, the buildings either directly abut the railway land or have only a minimal setback and would rely on access across the railway land for maintenance, including maintenance of the planting on structure during the critical establishment period.
- 164 Initially we were informed that access would be available, however later in the hearing we were told by the Applicant that VicTrack had advised that access would be limited to its approved contractors. There was some doubt about how this maintenance is therefore to be achieved.

- 165 We note, however, that the proposed conditions include a condition requiring the applicant to provide a detailed landscape and planting plan for the approval of the Responsible Authority. We will add to this condition a requirement that this plan must include an assessment by a suitably qualified consultant confirming the appropriateness of the proposed planting and irrigation plans for planting on structures, and evidence of an agreement with VicTrack indicating that an appropriate level of maintenance for the planting adjacent to railway land is provided for.
- 166 Submissions were made by Respondents for conditions for the protection of street trees on Willis Street and on the scout hall land. We support the protection of street trees from impacts by the building construction but do not find there is a need to include a condition to protect the trees on the scout hall land which are not affected by building works. Any impacts on trees by road works on Koolkuna Lane would be managed by Council as the road owner.

### **Is the Design of the Plaza satisfactory?**

- 167 Council says the plaza does not meet the vision set out in the Urban Design Framework. It is submitted that the proposed plaza is too narrow and constricted; will be overshadowed and overwhelmed by the proposed development and will not provide a community events space or focal point for pedestrians, as described in the UDF. Council notes that the Architects describe the space as a station forecourt and submits that this is indicative of the limited role it will play. It is also submitted that the loss of the row of established Peppercorn trees is a missed opportunity.
- 168 Council several times quoted the UDF as saying that the plaza should provide an opportunity for both individual and large gatherings and put this to witnesses, but later acknowledged the correct terminology from the UDF is “individual and larger gatherings”. In any case Council submits that the design of the plaza is not suitable as a focal point for the Hampton village.
- 169 Instead, it is submitted that it will be a congested pedestrian link that does not provide a satisfactory link towards Willis Lane and the Supermarket; it is submitted that the move of all commuter parking to the west of the rail line takes away much of its purpose. Council submitted that the UDF clearly describes a minimum clear dimension of 25m should be provided and say this is not achieved.
- 170 The community Respondents supported the Council’s position and were concerned that the design of the plaza would not support the extension of the “village character” that the community values so highly; the additional height of the proposal over the recommended maximum height set out in the UDF and now translated into the planning scheme through DDO12 adds to their feeling that the plaza is undersized and will not be an attractive environment for pedestrians.
- 171 The Applicant maintains that the proposed Plaza closely follows the arrangements described within the UDF and the DDO12. Mr Sheppard

tabled diagrams to show that the minimum dimensions are met or exceeded, and that due to the rake back of the upper storeys, the Plaza has an adequate level of direct sun through to 2pm. He says this covers the time when a public plaza is most likely to be used. He says the proposed building steps back progressively from the third level, in contrast to the diagram in the UDF that shows a five-storey façade hard to the plaza, with a sixth storey recessed: this would likely lead to a poorer outcome for direct sun access.

- 172 After questioning of these diagrams, Mr Sheppard later forwarded revised diagrams showing a reduced percentage of sun access after the overhang of the first floor is taken into account, but still at a level the Applicant maintains is adequate.
- 173 Mr Sheppard stated that the layout of the proposed Plaza is identical in shape to that proposed in the UDF, with paved pedestrian routes alongside the two building edges. The side adjacent to the proposed development sweeps past an active use that opens out to the plaza and leads to a pedestrian crossing that links to the bus interchange; while the path adjacent to the “Anchorage” development leads pedestrians north towards the Woolworths Supermarket.
- 174 A defined casual seating area is set within trees and landscape in the centre of the plaza as suggested in the UDF. The Landscape evidence is that the plaza is designed with a rich mix of paving, with the central casual seating area set on decorative timber decking that will provide a natural contrast to the pedestrian routes. Whilst two or three of the Peppercorn trees could be retained, this would not be compatible with the design of the Plaza and would also require the bicycle parking cages to be relocated.
- 175 We generally agree with the Applicant. We note that the dimensions shown in the UDF suggest the width should be measured from the face of the overhanging element and not the building face, which would lead to a dimension just under 25m when taking the setback of the Anchorage into account. Nevertheless, we regard the shape and dimensions of the Plaza as closely matching the diagrams set out in the UDF. We expect that the potential shadowing of the Plaza must have been a consideration when locating the Plaza in this position and hence we find that the outcome in terms of shadows and area is satisfactory.
- 176 We find that the pedestrian movements to both the bus interchange and north to the supermarket are adequately provided for and distinguished well by the use of contrasting paving. We note that the crossing of the lane and access way to the “Anchorage” parking lifts will require an appropriate treatment as described in the UDF; this is a matter the Council can address in the final approval of the Landscape Plans.
- 177 We find that the provision of a sculpted overhanging arch to provide some shelter to the entry to the retail outlet, and to help define it, is an effective outcome that will provide a local landmark at the pedestrian scale. This should encourage pedestrians to make use of the seating area. The area

under the overhang, while naturally always in shade, remains a useful area for the public with a degree of weather protection.

- 178 The stepping back of the façade from here is a positive feature that will improve somewhat solar access to the plaza. The revised shadow diagrams provided by Mr Sheppard convince us that the space will be largely in sun at the equinox between 11 am and 2pm, which we accept is the prime time for a public open space.
- 179 With respect to the Peppercorn trees, we acknowledge that these presently provide a high level of visual amenity to the area. However, we find that the proposed landscape treatment of the Plaza will result in a much-improved level of amenity for this space in the medium term, and we are not persuaded that we should compromise the design for the short term benefit of two or three established trees.
- 180 In any case, we find that the design and arrangement of the new plaza closely matches the arrangement shown and described in the UDF; whilst a larger plaza may be desirable, the strategic planning has not provided for it, and the aspirations for the plaza to be a focus for the community must be tempered somewhat by the reality of the space the UDF contemplates.

#### **IS THERE SUFFICIENT CAR PARKING FOR THE NEW DEVELOPMENT?**

- 181 The proposal has a statutory requirement under Clause 52.06 to provide 298 spaces. The proposed on-site provision of 250 spaces results in a shortfall of 48 spaces. The parking has been allocated to provide the statutory requirement of parking for residents, with the exception of a waiver being sought for 2 DHHS units, and a surplus of 8 parking spaces within 4 tandem sets proposed to be allocated to residents in addition to the standard requirement. A reduction in parking, 56 spaces, is sought from the residential visitor and shop parking requirement.
- 182 The reconfiguration and widening of Koolkuna Lane, utilising some of the land from the subject site includes the provision of six indented on-street parking spaces plus two additional indented parking spaces for a loading zone. Allowing for this new parking would reduce the statutory shortfall to 42 spaces, or 50 spaces due to the allocation of surplus parking to residents.
- 183 Based on empirical analyses of parking demands, both Ms Dunstan and Mr Hunt estimated that the short fall of parking during the critical weekday peak would be in the order of 18 spaces, which we accept as a reasonable estimate, allowing for the new on-street spaces. The empirical analysis was based on a rate for the shop floor area of 3.5 spaces/100 square metres which is equivalent to the Column B rate in Clause 52.06.
- 184 Both Ms Dunstan and Mr Hunt relied on a two day parking survey undertaken by Traffix Group in October 2017 to demonstrate that there was sufficient available public parking within the activity centre to the west of Hampton Street to accommodate the overflow parking. The ‘reduced’ parking survey area included the two car parks off Willis Lane and on-street

parking in Willis Street. The two car parks had 8 and 7 vacant spaces at the peak time, respectively, representing around 90% occupancy, whilst Willis Street had 27 vacant spaces, a 32% occupancy.

- 185 The reliability of this data was questioned by the Respondents who noted that the adjacent Anchorage apartment development has yet to reopen the gym facility on its site; which will rely on publicly available parking for its patrons, and that this parking is often highly utilised.
- 186 We accept the evidence that the parking associated with the Anchorage gym use will not peak during the peak time for retail customer demand, nevertheless there will be some reliance at that time.
- 187 We accept that precinct parking is the most efficient way of providing parking within an Activity Centre. However, the question remains as to whether it is equitable for one development to rely on half of the available parking in an area earmarked for significant growth, and for a site of this size, which could provide a car park of a reasonably large size that could be meaningfully integrated to become part of the overall publicly available parking in the precinct, noting the estimated daytime demand for approximately 40 spaces for the retail uses and for residential visitors.
- 188 It is noted that the UDF did not consider the provision of precinct parking for the activity on this site, however it did assume that the site would continue to contain commuter parking at ground level.
- 189 The allocation of car parking between residents and other users must also be considered. Council officers, in their initial assessment of the application supported the dispensation of parking requirements on grounds including that the Applicant had agreed to prepare a Green Travel Plan that incorporated, among other things, the provision of Myki cards and an on-site car share vehicle. Such plans can help to reduce traffic movements by private car, but without a corresponding reduction of residential car parking spaces are unlikely to reduce residential parking demands. In contrast, the proposal seeks to provide a surplus of residential parking spaces.
- 190 This site is located at a public transport interchange and within a major activity centre and hence is ideally located to support a development with a reduced residential parking supply and encourage sustainable travel options.
- 191 In the circumstances we are not persuaded that the allocation of parking is reasonable and conclude that a greater allocation is required for the retail use and for residential visitors.
- 192 There is an opportunity to increase the visitor parking by reallocation of some of the spare tandem parking spaces. However, more significantly, the removal of two levels of Building B, containing a total of 16 apartments, as discussed above to reduce the building height, will also potentially release up to 22 resident spaces.
- 193 We accept the evidence of Ms Dunstan that Column B rates are more appropriate in a major activity centre such as Hampton. We therefore adopt

the Column B parking rates for the shop floor area and residential visitors, noting that the residential visitor rate in Column B is zero, on the basis that it can share the customer parking in the activity centre. This translates to the following parking rates:

- 0.89 spaces/DHHS unit;
- 1 space/1-2 bedroom dwelling;
- 2 spaces/3+ bedroom dwelling;
- 1 space/100 square metres of net shop floor area for staff parking, rounded to the nearest number with a minimum of one space, for each tenancy;
- 2.5 spaces/100 square metres of net shop floor area, with no less than 24 spaces, for shop customers and residential visitors, which may be reduced by the number of any new on-street parking spaces created on Koolkuna Lane;
- Customer and visitor parking to be freely accessible during retail trading hours and but may be limited to authorised visitors after hours; and
- Information on the availability of customer/visitor parking must be provided at the car park entry.

194 We accept the evidence of Ms Dunstan that the layout of the car park is satisfactory subject to some modifications to ensure adequate turning, ramp grades and sight lines, which can be addressed by condition.

195 We agree that the provision of loading bays at each of the waste collection areas within the car park is not necessary and also agree that the provision on on-street loading, which sits within the current title boundary for the site, is appropriate to service the proposed retail along the Koolkuna Lane frontage. This loading zone is not height restricted and can also service the needs of the residences as well as the wider area.

#### **TRAFFIC ON KOOLKUNA LANE**

196 The development plans have adopted Council's preferred option for accommodating bus stops on the eastern side of Koolkuna Lane with access from its north-western end off Willis Street. The building has been set back to allow for the swept path of the bus turning into the lane from Willis Street and the design for the laneway includes a 1.2m naturestrip along the edge of the Scout Hall and a 3.0 metre footpath plus parking with treed kerb outstands along the new building edge.

197 With respect to access to 8 Willis Street, we acknowledge that the existing condition requires a 3-point turn to enter its basement car park when arriving via the north-western end of Koolkuna Lane. Whilst access may be available via the Council car park this is not the legal point of access and

cannot be guaranteed into the future noting that that car park is earmarked for future development.

- 198 The subject development is reconfiguring Koolkuna Lane and triggering the change to the bus route through the removal of the bus interchange in the subject site. Along with adding buses to the north-western end of Koolkuna Lane it will also add development traffic and whilst this increase may be considered to be low, it nevertheless will add conflict and hence impact safety. Traffic volumes are also expected to continue to increase as the full vision for the Hampton MAC is realised.
- 199 We are not persuaded by the evidence of the traffic experts that this access is a matter to be addressed at a later date, such as when the Scout Hall is redeveloped, as the solution appears to be to accommodate a wider sweeping left turn into the basement of 8 Willis Street<sup>5</sup>. This cannot be achieved by widening the lane on the Scout Hall side but would require relocating the proposed parking and tree outstands to the Scout Hall side. We are also not persuaded that the streetscape would be detrimentally affected by such a change, noting that the development has green walls proposed along this section of its façade and trees can be accommodated within a 3.0 metre footpath if desired.
- 200 At the south-eastern end of Koolkuna Lane the transition from a one-way lane into the two-way carriageway of Willis Lane has the potential for traffic conflict. We are satisfied that this, along with the need to ensure strengthened pedestrian pathways at this junction, in accordance with Clause 21.11-4, can be addressed during the detailed design stage, in consultation with Council.

## **THE COMMUTER CAR PARK**

### **What permissions are required?**

- 201 Whilst we understand and appreciate the strongly held views of residents living in Orlando Street and Railway Crescent who oppose the extension of the commuter car park and the loss of existing vegetation on the south west side of the railway line, it is important to record what permissions are required for the extension to the commuter car park and the limits on the discretion which we can exercise in relation to the commuter carpark.
- 202 Firstly, there is no permit required under PUZ4 to use or develop the land for a commuter car park. It would therefore be an error to refuse to allow the land to be used for a commuter car park because of, for example, the amenity impacts of cars parking on the land or the potential contamination of the type referred to by Orlando Street residents.
- 203 Secondly, only six of the 146 trees within the commuter carpark which are to be removed require a planning permit for removal. Ms Howe's evidence

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<sup>5</sup> Bayside CC Planning & Amenity Committee Meeting – 22 June 2017 Item 4.1 Appendix F Option 2

statement provides a detailed tree assessment of these trees, which he acknowledges is based on a report prepared by Galbraith and Associates. Whilst we agree with Council and residents that Mr Howe's evidence would have had more credibility if he had inspected the site himself, it does not change the fact that the vast majority of trees can be removed at any time without planning permission. To that extent the size, health and value of the trees is largely irrelevant given we cannot control their removal. We would be more concerned if permission was required to remove all or most of the vegetation.

- 204 Thirdly, the only permission required for the commuter carpark is for buildings and works pursuant to the DDO12. Council suggested that the works and removal of vegetation associated with the car park extension are inconsistent with and at odds with the objectives and provisions of DDO12. We disagree. The focus of the objectives and provisions is on the built form (height and setbacks). Although the commuter carpark is not within a Residential Zone, it is instructive that DDO12 does not require a permit to construct a building or construct or carry out works for a building with a building with a height of not more than 9 metres (or 10 metres on a sloping site. Whilst the exemption does not apply to the PUZ4, common sense would suggest that an at-grade car park would be even less likely to have a built form impact than a building up to 9 metres in height. To the extent that Council placed any reliance on the fourth design objective (*To maintain a strong landscape character with residential buildings set within vegetated front gardens and streetscapes in the residential precincts*), we are not persuaded that it is of much relevance as its focus is on residential buildings in a vegetated setting, rather than other types of built form including at-grade car parking.
- 205 Having regard to these limitations, our focus is on traffic impacts, whether more of the six trees requiring a permit for removal can be retained and the acceptability of future landscaping.

### **Traffic implications**

- 206 We note concerns raised by Council and objectors over the consolidation of the commuter parking to one side of the rail line. We find that any inconvenience by having to travel across the rail line is offset by the convenience of the consolidation of the parking areas. In relation to the length of the car parking we are not convinced by arguments that it will be too long a walk distance, noting that VicTrack has supported the plans and can provide access to the northern end of the platform should this concern be realised.
- 207 In relation to traffic impacts on Railway Crescent, we note that the traffic flow for the commuter car park is highly directional in peak periods and accept the evidence of the expert witnesses that there is sufficient capacity in the road network to absorb the increase in traffic. Whilst there will be a noticeable increase in traffic flow at peak commuter periods on Railway Crescent, we are not convinced that this will create any significant issue or

necessarily require loss of parking along one side given that traffic can egress Railway Crescent to both Small Street and Orlando Street. Council, as the road manager, is the appropriate body to monitor and make any necessary changes to the management of the road to maintain flow and amenity as required; and this could include for example restricting a couple of spaces during commuter peaks to provide passing opportunities or prohibiting right turns out of the car park, should a need arise.

- 208 The design of the commuter car park would be improved by the provision of a turning bay at the far end to ensure that vehicles can always turn and exit in a forward direction.
- 209 It is noted that the existing footbridge over the rail line does not provide for DDA access. This is a matter that VicTrack should review to ensure that future compliance with Federal law is not precluded by the subject proposal.

### **Loss of six trees requiring planning approval for removal**

- 210 The report prepared by Biosis in December 2016, states that that the removal of any Blackwood, Lightwood or Swamp Gum trees would require a permit for removal. Figure 5 attached to the report identified seven such trees (No 32, 36, 37, 40, 41, 141 and one unnumbered). Mr Galbraith's report also identified Trees 35 and 127 as indigenous Yellow Box.
- 211 Of these trees, the carpark layout has been designed to retain trees 127 and 141. According to Mr Galbraith Tree 141 has the highest worthiness of retention rating (WOR) of any tree (7) in his area.
- 212 The commuter car park plans indicate that Trees 32, 35, 36, 37, 40 and 41 are to be removed. Trees 40 and 41 are at the outer edge of carspaces, whilst Trees 32, 36 and 37 are more centrally located within proposed carspaces. Some or all of these could be retained but with the loss of approximately 8 spaces.
- 213 We have formed the view that it would be preferable to maximise the parking provision rather than retain these trees, noting the replacement landscaping as discussed below.

### **Replacement vegetation/landscaping**

- 214 A landscape proposal has been prepared by Rush Wright Associates Pty Ltd and Mr Rodriguez attended the hearing to explain the landscaping concept. Although Mr Rodriguez expanded upon tree species and other landscaping treatments in his evidence statement, as is a common occurrence, permit conditions require more detailed landscape plans to be prepared and approved by Council. Also required is a tree management plan.
- 215 Based on the 79 new canopy trees to be planted along with lower scale landscaping, we consider that in the longer term, the site will make a positive contribution to the landscape character of this part of the municipality. These tree species include a mixture of indigenous, native and

exotic consistent with the varied nature of vegetation already occurring on the site and in the neighbourhood.

- 216 As with all newly planted vegetation, it will take time to establish and reach a height where it begins to provide meaningful shade, screening and habitat. We consider that the landscaping that is proposed will ultimately provide a much-improved vegetated appearance and character to the site than currently exists.

### **Fencing along the rear of Orlando Street properties**

- 217 Land owners of the Orlando Street properties abutting the new commuter car parking made submissions regarding the loss of the existing fencing between their properties and the railway land. Many of these fences are much higher (3-3.5m) than a standard paling fence and residents expressed security and amenity concerns with the current proposal.
- 218 Mr Shepherd, in answer to a question from the Tribunal, advised that a 2.1m fence is typically adequate for safety and security. However, given the height of existing fencing and the concerns expressed by residents, we would encourage negotiations between the Public Transport Authority and land owners to determine an appropriate height for replacement fencing. We note that high solid fences may not be as appropriate in the future scenario when relocated closer to the houses and decks.
- 219 The permit conditions include a requirement for fencing to the full cost of the permit holder. It is to be provided to the satisfaction of the Public Transport Authority and the rail authority and we have added the Responsible Authority to this group.

### **CONCLUSION**

- 220 During the hearing Mr Gobbo made a number of suggestions as to how the proposal could be modified to deal with some of the specific concerns raised in submissions and by the Tribunal. As we indicated during the hearing, we have three primary options in deciding the application for review. The first is to affirm Council's decision and refuse the permit application. The second is to set aside Council's decision and issue a conditional permit, requiring changes to overcome the matters we have referred to earlier in our reasons. The third option is to issue an interim order providing the permit Applicant with the opportunity to prepare amended plans which can then be assessed by Council, parties and the Tribunal.
- 221 Having now undertaken our assessment, we have determined that the proposal should be approved but with conditional changes to, amongst other matters, reduce the height of Building B and modify the layout of the commuter car park.
- 222 Clause 10.04 of the Bayside Planning Scheme requires us to endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and

sustainable development. We consider that on balance the proposal does achieve a net community benefit.

- 223 However, achieving that net community benefit does not mean that the residents living near the site or using the facilities in the activity centre, including the train station and bus interchange, will not experience a very significant change.
- 224 Development of the review site for more intensive and taller built form will significantly change the existing scale and character of this part of the activity centre. Whilst we understand that such a level of change can be quite confronting, it is inevitable given the site's location in a Major Activity Centre, its inclusion within the Willis Street Precinct where intensification and additional height is specifically encouraged, its large size and where sensitive interfaces to lower scale residential areas are limited.
- 225 Both State and Local planning policy is unambiguous that activity centres and sites proximate to the PPTN are expected 'to do most of the heavy lifting' in accommodating Melbourne's burgeoning population and meeting the need more than a million new dwellings. Whilst the proposed buildings do exceed the preferred maximum heights specified in DDO12, we are satisfied that the additional height can be justified when assessed against the variations listed in eth DOO12 as well as all the other relevant policies in the Bayside Planning Scheme.
- 226 Although planning policies and other documents frequently ask for high quality urban design and architecture (sometimes even excellence or exemplary design), Clause 65 of the Planning Scheme seeks an acceptable outcome, not an ideal or perfect outcome. Whilst there can be differences of opinion about what constitutes an acceptable outcome, we consider that the buildings do represent a high quality design outcome for this site.

#### **What conditions should be included on the permit?**

- 227 The conditions in Appendix A are based on the revised conditions which were circulated and discussed at the end of the hearing. We have made a number of changes to reflect the comments made together with our assessment of what conditions are appropriate.

J A Bennett  
**Presiding Senior Member**

S J Axford  
**Member**

K L Partenio  
**Member**

## APPENDIX A

|                                |   |
|--------------------------------|---|
| <b>PERMIT APPLICATION NO:</b>  | 2016/828/1  |
| <b>LAND:</b>                   | 5A Railway Crescent, 2-6 Willis Street and 1-25 Koolkuna Lane, Hampton.   |
| <b>WHAT THE PERMIT ALLOWS:</b> | <p>Use land for a shop in Residential Growth Zone Schedule 1;</p> <p>Construct two or more dwellings on a lot in Residential Growth Zone Schedule 1;</p> <p>Construct a building or construct or carry out works for a section 2 use in Residential Growth Zone Schedule 1;</p> <p>Use land for a shop and dwellings in Public Use Zone Schedule 4;</p> <p>Construct a building or construct or carry out works in Public Use Zone Schedule 4;</p> <p>Construct a building or construct or carry out works in Design and Development Overlay Schedule 12;</p> <p>Reduction in the number of car parking spaces required under Clause 52.06-5; and</p> <p>Remove, destroy of lop vegetation pursuant to Clause 52.17</p> <p>in accordance with the endorsed plans.</p> |

## CONDITIONS

### Amended plans

- 1 Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans prepared by JAM Architects Pty Ltd and ARM Architecture Pty Ltd, VCAT Issue, dated 20/10/2017, Sheets TP05 to TP19.3 inclusive, but modified to show:
  - (a) Levels 3 and 4 of Building B deleted so that the maximum height of the building to the top of the stair structure associated with the roof deck does not exceed 20 metres RL;
  - (b) Details of shading devices for the rooftop garden;

- (c) Provision of storage requirements in accordance with Standard D20 at Clause 58 of the Bayside Planning Scheme for all dwellings;
- (d) Relocation of the proposed kerbside parking and tree outstands on Koolkuna Lane to the north of the Council car park and opposite the driveway access to 8 Willis Street, to the east side of Koolkuna Lane outside the scout hall, shifting the carriageway correspondingly further west;
- (e) Any modifications to the plans arising from the Landscape Plan in accordance with Condition 3 of this permit;
- (f) Any modifications to the plans arising from the Tree Management Plan (report) and Tree Protection Plan (drawing) in accordance with Condition 4 of this permit;
- (g) Any modifications to the plans arising from the Landscape Management Plan in accordance with Condition 6 of this permit;
- (h) Any modifications to the plans arising from the Ecology Report in accordance with Condition 8 of this permit;
- (i) Any modifications to the plans arising from the Waste Management Plan in accordance with Condition 19 of this permit;
- (j) Any modifications to the plans arising from the Sustainability Management Plan in accordance with Condition 22 of this permit;
- (k) Any modifications to the plans arising from the Wind Assessment Report in accordance with Condition 29 of this permit;
- (l) Any modifications to the plans arising from the Traffic and Car Parking Management Plan in accordance with Condition 32 of this permit;
- (m) Any modifications to the plans arising from an Accessibility Report in accordance with Condition 40 of this permit;
- (n) Any modifications to the plans arising from the Green Travel Plan in accordance with Condition 43 of this permit;
- (o) Any modifications to the plans arising from the Public Works Plan in accordance with Condition 44 of this permit;
- (p) Any modifications to the plans arising from the Public Lighting Plan in accordance with Condition 47 of this permit;
- (q) Any modifications to the plans arising from Melbourne Water Conditions 67-72 of this permit; and
- (r) A schedule of all proposed exterior decorations, materials, finishes and colours, including colour samples (3 copies in a form that can be endorsed and filed). A coloured elevation clearly identifying all materials proposed as listed in the materials and colour schedule must also be provided. All external glazing must be of a type that does not

reflect more than 20% of visible light when measured at an angle of incidence to the glass surface.

### **Secondary consent**

- 2 The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason (unless the Bayside Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority

### **Landscaping**

- 3 Prior to the endorsement of plans pursuant to Condition 1, a detailed landscape plan to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be generally in accordance with the landscape concept plan Rush/Wright Architects, Hampton Station Precinct, Landscape Design Proposal for Town Planning, Rev 4, 17 November 2017 and be drawn to scale with dimensions and three copies must be provided. The plan must show:
  - (a) A survey, including botanical names, of all existing trees to be retained on the site, including trees B141 and B127;
  - (b) A survey, including botanical names, of all existing vegetation to be removed from the site;
  - (c) A survey, including botanical names, of all existing trees on neighbouring properties where the Tree Protection Zones of such trees, calculated in accordance with AS4970-2009, fall partially within the subject site;
  - (d) A planting schedule of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;
  - (e) Landscaping and/or planting within all areas of the site not covered by buildings or hard surfaces;
  - (f) Details of surface finishes of pathways and driveways;
  - (g) The landscape plan should indigenous sandbelt vegetation and indigenous coastal vegetation; and
  - (h) The plan must include an assessment by a suitably qualified consultant confirming the appropriateness of the proposed planting and irrigation plans for planting on structures, and evidence of an agreement with VicTrack indicating that an appropriate level of maintenance for the planting adjacent to railway land is provided for.

### **Tree Management and Protection Plan**

- 4 Prior to the endorsement of plans pursuant to Condition 1, including any related demolition or removal of vegetation, a Tree Management Plan (report) and Tree Protection Plan (drawing), to the satisfaction of the

Responsible Authority, must be submitted to, and be endorsed by, the Responsible Authority.

The Tree Management Plan (report) must be specific to the site, be in accordance with Australian Standard: Protection of Trees on Development Sites AS4970-2009, be generally in accordance with the evidence statement of Mr Simon Howe in Tribunal proceeding P1479/2017, and include:

- (a) Details of Tree Protection Zones for all trees to be retained on the site and for all trees on neighbouring properties where any part of the Tree Protection Zone falls within the subject site;
- (b) Comment on methods to be utilised and instruction on how to deploy them;
- (c) Comment on when the protection measures are to be deployed;
- (d) Comment on when the protection measures can be modified;
- (e) Process that will be followed if any damage occurs to a tree;
- (f) Process that will be followed if construction works require alteration to protection measures outlined in report; and
- (g) Stages of development at which inspections will occur.

Any proposed alteration to the plan must be assessed by the site arborist and can only occur following the approval of the site arborist. Such approval must be noted and provided to the Responsible Authority within 28 working days of a written request.

Any damaged tree must be inspected by the site arborist without any delay and remedial actions undertaken. Such actions must be documented. If tree protection measures are proposed to be changed during the development, one plan for each stage of tree protection measures must be submitted.

The Tree Protection Plan must be drawn to scale and show the location of all tree protection measures to be utilised.

- 5 Before the occupation of the development the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.
- 6 Prior to the endorsement of plans pursuant to Condition 1 a Landscape Management Plan detailing the maintenance regime and management responsibilities for the Rooftop Gardens and Green Walls associated with the development must be prepared and submitted to the satisfaction of the Responsible Authority.

The Landscape Management Plan should include, but is not necessarily limited to, the following:

- (a) State the systems and products in the green roof and how they are designed to maintain the green roof;
- (b) Outline access to the green roofs;

- (c) Outline any management risks, and how these will be managed;
- (d) State the estimated annual maintenance budget;
- (e) Summarise the type of maintenance tasks required;
- (f) Outline the skills and certification required in the maintenance team to perform these tasks;
- (g) Outline communication requirements to Body Corporate / Owners / Users;
- (h) State when the management plan is due for review; and
- (i) Any setbacks of the southern façade to accommodate access for maintenance purposes.

If the Rooftop Garden and Green Walls falter or fail, details of an alternative treatment must be submitted to, and approved by, the Responsible Authority. The alternative treatment must be implemented within three months of approval at no cost to Council and to the satisfaction of the Responsible Authority.

### **Landscaping Maintenance**

- 7 The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

### **Ecology Report**

- 8 Prior to the endorsement of plans pursuant to Condition 1, an amended Ecology Report generally in accordance with the Ecology report, Biosis, 6/12/2016 to the satisfaction of the Responsible Authority must be submitted to and endorsed by the Responsible Authority focusing on the proposed removal of the Swamp Gum (*Eucalyptus ovata*) trees, identifying whether two or three of the Swamp Gum (*Eucalyptus ovata*) trees assessed to be removed for the development as follows:
  - (a) If only two Swamp Gum (*Eucalyptus ovata*) trees are considered to be lost the report must show that the third tree will remain viable post construction by means of an arboricultural report showing that the Tree Protection Zone (TPZ), as per AS4970, will be encroached by less than 10%; or
  - (b) If all three Swamp Gum (*Eucalyptus ovata*) trees are considered to be lost a revised Biodiversity Equivalence Units (BEU) calculation for offset planting must be submitted.

### **Street Trees**

- 9 Within Railway Crescent, there is to be no soil excavation with 3 metres of the street tree asset measured from the edge of the trunk at ground level.
- 10 Within Willis Lane Carpark, there is to be no soil excavation with 3 metres of the street tree asset measured from the edge of the trunk at ground level.

- 11 Within Willis Street between Koolkunna Lane and the western end of Willis street there is to be no soil excavation within 3 metres of street trees A102, A104 and A105 and the two trees adjacent to the site in the public park at the western termination of Willis Street.
- 12 A tree protection fence is required for the protection of a tree's canopy and root zone:
  - (a) Fencing is to be secured and maintained prior to demolition and until all site works are complete;
  - (b) Fencing must be installed to comply with AS 4970–2009, Protection of trees on development sites;
  - (c) Fencing should encompass the Tree Protection Zone (TPZ) for all street trees adjacent to the development;
  - (d) Fencing is to be constructed and secured so its positioning cannot be modified by site workers; and
  - (e) If applicable, prior to construction of the Council approved crossover, TPZ fencing may be reduced to the edge of the new crossover to facilitate works.
- 13 Installation of utility services within the TPZ:
  - (a) Any installation of services and drainage within the TPZ must be undertaken using root-sensitive, non-destructive techniques.

#### **Adherence to Tree Management and Protection Plans**

- 14 All protection measures identified in the Tree Management and Protection Plans must be implemented, and development works undertaken on the land must be undertaken in accordance with the Tree Management and Protection Plans, to the satisfaction of the Responsible Authority.

#### **Contact for Implementation of Tree Management and Protection Plans**

- 15 Before the development starts, including demolition or removal of vegetation, the name and contact details of the project arborist responsible for implementing the endorsed Tree Management Plan must be submitted to the Responsible Authority.

#### **Construction Management Plan**

- 16 Before the development commences, a Construction Management Plan prepared to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The 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) Management of any environmental hazards including, but not limited to,;
  - i contaminated soil and ground water,
  - 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;
- (i) The construction program;
- (j) Preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
- (k) Parking facilities for construction workers;
- (l) Measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;
- (m) An outline of requests to Council /Public authorities to occupy public footpaths or roads, or anticipated disruptions to local services;
- (n) 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;
- (o) 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;
- (p) Include details of bus movements throughout the precinct during the construction period;
- (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,
- v other relevant considerations, and
- vi any site-specific requirements;

During the construction:

- (r) Any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
- (s) 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;
- (t) Vehicle borne material must not accumulate on the roads abutting the land;
- (u) The cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
- (v) All litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

If required, the Construction Management Plan may be approved in stages. Construction of each stage must not commence until a Construction Management Plan has been endorsed for that stage, to the satisfaction of the Responsible Authority.

### **Ongoing Construction Management Plan**

- 17 The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Construction Hours and Noise**

- 18 Except with the prior written consent of the Responsible Authority, demolition or construction works must be carried out in accordance with EPA regulations.

## **Waste Management Plan**

- 19 Prior to the endorsement of plans pursuant to Condition 1, a Waste Management Plan generally in accordance with the Waste Management plan prepared by Leigh Design dated 10 November 2017 must be submitted to and endorsed by and to the satisfaction of the Responsible Authority but amended to detail all waste collection to occur within the basement and ground floor car park.

All to the satisfaction of the Responsible Authority.

- 20 The endorsed Waste Management Plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority. The Waste Management Plan can be implemented by any waste company that complies with the waste management plan to the satisfaction of the Responsible Authority. No alterations to the Waste Management Plan may occur without the written consent of the Responsible Authority.
- 21 All waste/recycling areas and stores are to be provided with ventilation in accordance with Australian Standard AS1668.

## **Environmentally Sustainable Development (ESD)**

- 22 Prior to the endorsement of plans pursuant to Condition 1, a Sustainability Management Plan must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the Sustainable Management Plan prepared by Umow Lai dated 1 December 2016 and include, but not be limited to the following:
- (a) Water Sensitive Urban Design (WSUD) initiatives to comply with the best practice performance objective set out in the Urban Stormwater Best Practice Environmental Management Guidelines, Victoria Stormwater Committee 1999;
  - (b) A STORM or MUSIC model report demonstrating Best Practice stormwater management to the satisfaction of the responsible authority;
  - (c) Complete Green Star self-assessment demonstrating the initiatives selected to achieve the 51 points committed in the summary report;
  - (d) Complete BESS report demonstrating the initiatives selected to achieve the 50% or greater standard committed to in the summary report;
  - (e) Address commercial areas through the provision of a Sustainable Design Scorecard report or equivalent;
  - (f) Preliminary building energy ratings to align with plans;
  - (g) Street lighting technology to be high efficiency T5 lineal fluorescent or LED luminaries with low upward light spill ratios designed to P4 public lighting standard at a six metres mounting height;

- (h) Single side dwellings deeper than 5 metres to be provided with mixed mode ventilation providing fresh air rates of at least 2.5 L/s/m<sup>2</sup> of air movement to each habitable room for residential or an increase of at least 100% on minimum rates set out in AS 1668.2-2002 for office and retail areas;
  - (i) Demonstration that stormwater detention volume requirements are in addition to stormwater retention; and
  - (j) Clearly state that in addition to producing a Building User's Guide that it will be provided to occupants.
- 23 All works must be undertaken in accordance with the endorsed Environmentally Sustainable Development (ESD) Management Plan to the satisfaction of the Responsible Authority. No alterations to the ESD Management Plan may occur without the written consent of the Responsible Authority.
- 24 Prior to the occupation of any dwelling approved under this permit, a report from the author of the Environmentally Sustainable Development (ESD) Management Plan report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Environmentally Sustainable Development (ESD) Management Plan have been implemented in accordance with the approved Plan.

### **Noise attenuation**

- 25 Before the use and development commences, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit.
- The acoustic report must make recommendations to limit the noise impacts in accordance with all relevant State legislation.
- 26 All works must be undertaken in accordance with the endorsed Acoustic Engineering Report to the satisfaction of the Responsible Authority. No alterations to the Acoustic Engineering Report may occur without the written consent of the Responsible Authority.
- 27 Noise emissions from the premises must comply with the requirements of the State Environment Protection Policies No.N-1 (Control of Noise from Commerce, Industry and Trade).
- 28 The provisions, recommendations and requirements of the endorsed Acoustic Engineering Report must be implemented and complied with to the satisfaction of the Responsible Authority.

## Wind

- 29 Prior to the endorsement of plans pursuant to Condition 1, a Wind Assessment Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority which ensure no unreasonable wind effects occur around and between buildings on and adjacent to the site. When approved, the Wind Assessment Report will be endorsed and will form part of this permit.
- 30 All works must be undertaken in accordance with the endorsed Wind Assessment Report to the satisfaction of the Responsible Authority. No alterations to the Wind Assessment Report may occur without the written consent of the Responsible Authority.
- 31 Prior to the occupation of any dwelling approved under this permit, a report from the author of the Wind Assessment Report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Wind Assessment Report have been implemented in accordance with the approved Plan.

## Traffic

- 32 The Traffic and Car Parking Management Plan referred to in Condition 1 must be prepared to the satisfaction of the Responsible Authority prior to the commencement of construction and comprise the following detail to the satisfaction of the Responsible Authority:
  - (a) Consistency with the other plans and reports referred to in this permit;
  - (b) Measures to protect pedestrian safety on thoroughfares providing pedestrian access into and within the centre;
  - (c) All car parking, aisles and ramps designed in accordance with Clause 52.06-9 of the Planning Scheme
  - (d) An increased size of the turning area at the southern end of the basement car park in accordance with the swept path diagrams in the Traffic Group drawing 23396-01 sheet 01/06.
  - (e) Provision of directional signage;
  - (f) Details of all access lane and parking area grades;
  - (g) Car parking allocated and sign posted/marked as follows:
    - i One space per one and two bed private dwellings,
    - ii Two spaces per three bed private dwellings,
    - iii One space each for 16 of the 18 DHHS dwelling,
    - iv One staff space for each 100 square metres of net shop floor space rounded to the nearest number, with a minimum of one space, for each shop tenancy,

- v 2.5 spaces for each 100 square metres of net shop floor with a minimum of 24 spaces, for shop customers and residential visitors, which may be reduced by the number of any new on-street parking spaces created on Koolkuna Lane,
  - vi All residential and staff spaces to be clearly marked as private, and
  - vii All residential visitor/customer parking spaces to be clearly marked as Visitor/Customer Parking;
- (h) Provision of an electronic sign or signs for the visitor/customer car park showing the number of car parking spaces available in the car park;
  - (i) Provision of an electronic sign or signs for the commuter car park, showing the number of car parking spaces available in the commuter car park;
  - (j) Provision of an area to facilitate cars turning around at the north-west corner of the commuter car park;
  - (k) Detailed layout plans of internal traffic and car parking arrangements including internal intersections, truck loading areas and shopping trolley storage; and
  - (l) The car parking spaces provided on the land must be solely associated with the development allowed by this permit and must not be subdivided or sold separately from the development for any reason without the written consent of the Responsible Authority.
- 33 Prior to the occupation of the development, the bicycle parking rack must be installed in a secure manner that accords with the specifications in Bicycle Victoria's Bicycle Parking Handbook, to the satisfaction of the Responsible Authority.
- 34 Prior to the occupation of the development, bicycle signage at least 300mm wide and 450mm high showing a white bicycle on a blue background must be erected directing cyclists to the location of the bicycle parking as required by Clause 52.34-5 of the Bayside Planning Scheme and to the satisfaction of the Responsible Authority.
- 35 Prior to the occupation of the development, an automatic system of external light must be installed and maintained around the entrance to the car park so that light operates automatically when a person or vehicle enters or leaves the land between dusk and dawn and no direct light emitted onto adjoining property to the satisfaction of the Responsible Authority.
- 36 Prior to the occupation of the development, the car park access roller shutter or tilt doors must be automatic and remote controlled and not impede access to parking spaces.
- 37 Access to the customer parking must be unrestricted during shop trading hours.

- 38 Prior to the occupation of the development, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel and footpath reinstated to the satisfaction of the Responsible Authority.
- 39 Prior to the occupation of the development, any power pole within 1 metre of a vehicle crossing is to be relocated to a point in front of the development over 1 metre from the proposed vehicle crossing, including the 1 metre splays on the crossing.

### **Accessibility**

- 40 Prior to the endorsement of plans pursuant to Condition 1, an Accessibility Report must be submitted to and approved by the Responsible Authority. The Accessibility Report must provide the following:
- (a) In order to create accessible, adaptable and visitable housing within the activity centre to ensure housing caters for all residents' needs, a minimum of 50% of all dwellings must comply with accessibility standards;
  - (b) The Informal Crossing identified between the Station Forecourt and Bus Interchange must have TGSI installations and preferably developed into a Formal Crossing, especially for people with a dual sensory loss, e.g. sight & hearing;
  - (c) Accessible Parking in VicTrack Commuter Carpark must include two spaces that area compliant accessible parking, all to be located at the eastern end of the carpark adjacent to the station entry;
  - (d) Priority is to be provided for all pedestrians at pedestrian crossings, e.g. signposted as such with "Walking Legs";
  - (e) Raised bus stops in accordance with Bus Stop Interchange design, e.g. level access, seating, shelter, TGSI layouts for people with sight loss, accessible timetables, arrivals and departure times plus all other access required criteria;
  - (f) Provision of Accessible wayfinding to all dwelling and facilities through accessible signage and area maps in common areas;
  - (g) Common areas of dwellings to be fully accessible, e.g. no steps, landings on both sides of doors including automatic doors, circulation spaces, carparks, compliant visual indicators on fully glazed doors, sidelights etc;
  - (h) Luminance Contrast treatments to be in all common areas for doorways; between vertical and horizontal surfaces inside and outside buildings for shore lining, all controls etc; and
  - (i) Clearance of shorelines – shore lines along buildings to be clear for a minimum of 1800mm to enable people with a disability to locate and safely enter facilities. All street furniture to be set out from the building lines by a minimum of 1800mm.

- 41 The recommendations of the Accessibility Report must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development.
- 42 Prior to the occupation of any dwelling approved under this permit, a report from the author of the Accessibility Report, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Accessibility Report have been implemented in accordance with the approved Report.

### **Green Travel Plan**

- 43 Prior to the endorsement of plans pursuant to Condition 1, 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 is to include details of the proposed design initiatives and sustainable management practices to reduce car usage and improve sustainable transport options (including walking, cycling, public transport and carpooling) available to residents and visitors. The Green Travel Plan should include, but not be limited to the following:
  - (a) Consider end of trip facilities such as showers, change rooms, secure storage and bicycle storage;
  - (b) Education and awareness initiatives and incentives for residents and visitors to encourage more sustainable modes of travel to/from the site;
  - (c) Management practices identifying sustainable transport alternatives;
  - (d) Consider the provision of electric vehicle charging facilities;
  - (e) Lobby areas of building to include real time information of train, tram and bus services;
  - (f) Details of bicycle spaces for visitors and residents;
  - (g) Allocation of parking for food and drink premises and restaurant tenancies to be provided within the on-site car park;
  - (h) Employee and resident packs (e.g. myki cards for new residents/workers); and
  - (i) Any other relevant matters.

When approved to the satisfaction of the Responsible Authority, the plan will be part of the documents endorsed as part of this planning permit. The Green Travel Plan must be implemented to the satisfaction of the Responsible Authority.

## **Public Works Plan**

- 44 Prior to the endorsement of plans pursuant to Condition 1, a Public Works Plan must be prepared and developed in collaboration with Council. It must be submitted and approved to the satisfaction of the Responsible Authority, showing:
- (a) Details of all works to the plaza in the eastern portion of the site, including any public art;
  - (b) Details of all works in the eastern portion of the site, including details of new hard paved areas, landscaping, tree planting, public furniture, lighting, connection to the existing pedestrian pathways;
  - (c) Details of all works to the public land adjacent to the development, along Willis Lane and Koolkuna Lane for the entire length of the streets;
  - (d) Details of the works to Willis Street and Koolkuna Lane, including details of street trees, the new kerb and channel specifications and treatment, re-sheeting of asphalt footpath and the location and layout of the new on-street car parking; and
  - (e) Details of the works to Willis Street and Koolkuna Lane and the public plaza, along the eastern edge of the building, improvements to pedestrian access, amenity and safety along the eastern edge of the building, any new lighting in the park and planting proposed in, including species selection and location of planting. The works in public plaza must include the planting of additional mature canopy trees at the interface with the subject site.

When approved, such plan will form part of the endorsed plans under this permit.

- 45 Prior to the occupation of the development, 10 bicycle parking rails must be installed on the footpath directly in front of the site to Council's standards.
- 46 Prior to the occupation of the each respective stage, all public works associated with that stage must be completed in accordance with the endorsed Public Works Plan to the satisfaction of the Responsible Authority. The cost of all works associated with the endorsed plan must be borne by the developer/owner of the land.

## **Lighting Plan**

- 47 Prior to the endorsement of plans pursuant to Condition 1, a Public Lighting Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Public Lighting Plan must demonstrate lighting of all public areas that abuts the site, including Koolkuna Land, Willis Lane, the public plaza and the commuter car park. When approved, the Public Lighting Plan will be endorsed and will form part of this permit. The Public Lighting Plan must provide for:

- (a) A lighting scheme designed for both public highway and new open public area/ within the curtilage of the property that complies with uniformity requirements as per standard AS1158.3.1;
  - (b) The control of light spillage into the windows of existing and proposed residences to comply with the requirements of AS 4282 – 1997, "Control of the obtrusive effects of outdoor lighting";
  - (c) The locations of any new light poles so as not to obstruct access into private garages/off and on street parking places;
  - (d) Lighting to all primary pedestrian access points to a residential property to satisfy at least level P4 as per AS 1158.3.1;
  - (e) A maintenance regime for the lighting scheme within the curtilage of the property;
  - (f) The use of energy efficient luminaries and/or solar lighting technologies to reduce carbon emission if possible; and
  - (g) Lighting of the commuter car park must be designed so as to avoid light spill into residential properties including residential properties fronting Orlando Street.
- 48 All public lighting must conform to AS1158, AS3771 and The Public Lighting Code September 2001 to the satisfaction of the Responsible Authority.
- 49 The provisions, recommendations and requirements of the endorsed Public Lighting Plan must be implemented and complied with at no cost to Council and to the satisfaction of the Responsible Authority.

### **Section 173 Agreements**

- 50 Before the commencement of the development, an agreement under Section 173 of the *Planning and Environment Act 1987* must be entered into between the owner and the Responsible Authority in a form satisfactory to the Responsible Authority including:
- (a) The owner must, at the Owner's own cost, develop the public plaza, Koolkuna Lane, Willis Street and Willis Lane and appropriate treatment to these areas be in accordance with plans submitted to and approved by Responsible Authority to the satisfaction of the Responsible Authority;
  - (b) The agreement must outline the responsibilities for maintenance of the public areas as shown on the plans;
  - (c) The lighting between the eastern building façade and Willis Lane must remain within the development site and be maintained to illuminate the public realm; and
  - (d) A requirement that the owner pay the costs of the Responsible Authority in relation to the agreement.

## **Easements**

- 51 Prior to the commencement of development, the owner must obtain the consent of all relevant servicing authorities for any buildings and works over any easements or underground services under the control of a public authority including sewers, drains, pipes, wires or cables and carriageway to the satisfaction of the Responsible Authority.

## **Hours of deliveries**

- 52 Unless otherwise approved in writing by the Responsible Authority, all deliveries for approved uses on site (including waste collection) must only take place between:
- (a) 6:00am to 8:00pm on Monday to Saturday; and
  - (b) 9:00am to 8:00pm on Sunday and Public Holidays.

## **Commercial Properties**

- 53 Ground floor commercial uses are not to be provided with obscure glazing or signage which prevents surveillance of the streetscapes without the prior written consent of the Responsible Authority.

## **Public Transport Victoria conditions**

Prior to Construction

### Staging Plan

- 54 Prior to the commencement of the development (including demolition) a staging plan for all building and works must be submitted and approved to the satisfaction of Public Transport Victoria. The staging plan must set out the timing and delivery of all building and works associated with the approved planning permit including car parking and landscaping. Once approved the staging plan must proceed in the order as detailed in the staging plan to the satisfaction of Public Transport Victoria.

### Bus Interchange

- 55 Unless otherwise agreed in writing with Public Transport Victoria, prior to construction commencing (including demolition) detailed construction / engineering plans and computations must be submitted to and approved by Public Transport Victoria for the bus interchange and all associated infrastructure including bus shelters. The plans must be compliant with *the Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002*.

Unless otherwise agreed in writing with Public Transport Victoria, prior to demolition of the existing bus interchange a construction control agreement as required by Public Transport Victoria must be in place to the satisfaction of Public Transport Victoria at the full cost to the permit holder for the construction the new bus interchange. The bus interchange must be constructed at the full cost to the permit holder prior to the closure of any

bus bays at the existing bus facility to the satisfaction of Public Transport Victoria.

#### Rail Corridor Protection

- 56 Prior to the commencement of the development (including demolition) detailed construction / engineering plans and computations for the works along the rail corridor shown on the endorsed plans must be submitted to and approved by VicTrack and Public Transport Victoria. The Plans must detail all works proposed within the rail environment, including excavation of the site adjacent to the railway corridor and any impact on the rail reserve. The plans must ensure compliance regarding building clearances to aerial power lines as per the applicable Victorian Electrical Safety Regulations, to the satisfaction of VicTrack and Public Transport Victoria.

#### Construction Management Plan

- 57 Unless otherwise agreed in writing with Public Transport Victoria, before the commencement of works, a Construction Management Plan must be submitted to Public Transport Victoria and VicTrack for approval. The Construction Management Plan must designate operating hours and include details of (but not be limited to) management proposals and actions to protect VicTrack assets, rail infrastructure and the operation of the public transport network during construction and must set out objectives, performance and monitoring requirements to the satisfaction of VicTrack & Public Transport Victoria. The Construction Management Plan must interface with any plan requested by the Responsible Authority.

#### Traffic / Pedestrian Management Plan

- 58 Unless otherwise agreed in writing with Public Transport Victoria, before the commencement of works, a Traffic / Pedestrian Movements & Communication Management Plan must be submitted to Public Transport Victoria which outlines how traffic and pedestrian movements will be managed throughout the construction of the development. The plan must include measures to mitigate impacts from the development to public transport, including trains and buses. The plan must also detail how access for passengers, including passengers with accessibility needs during construction will be maintained to and around Hampton Station for the period of the works outlined in this permit and how it will be communicated to passengers. The Plan must be prepared and implemented to the satisfaction of Public Transport Victoria. All traffic and pedestrian management and mitigation costs will be at the full cost of the permit holder. The Plan must interface with any plan requested by the Responsible Authority.

#### Landscaping

- 59 Unless otherwise agreed in writing with Public Transport Victoria, prior to construction commencing a landscape plan and schedule must be submitted and endorsed to the satisfaction of Public Transport Victoria including for the carpark, the bus interchange and the rail corridor where required by

Public Transport and VicTrack. When approved the plan will be endorsed and will then form part of the permit.

Unless otherwise agreed in writing with Public Transport Victoria, before the occupation of the development the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of Public Transport Victoria at the full cost to the permit holder.

#### General Conditions

- 60 Unless otherwise agreed in writing with VicTrack, permanent or temporary soil anchors must not be installed on railway land.
- 61 Any damage to public transport infrastructure as a consequence of the construction works must be rectified to the satisfaction of Public Transport Victoria and VicTrack, at the full cost of the permit holder.
- 62 The permit holder must take all reasonable steps to ensure that disruptions to train and bus operations are kept to a minimum during the construction of the development, and in compliance with the Rail and Tram Safety and Environmental requirements.
- 63 Building materials (including glass/ window/ balcony treatments) likely to have an effect on train driver operations along the rail corridor must be non-reflective and avoid using red or green colour schemes, to the satisfaction of the Rail Operator.
- 64 No lighting is to be erected that throws light onto the railway tracks or which interferes with the visibility of signals and the rail lines by train drivers, to the satisfaction of the Rail Operator.
- 65 No drainage, effluent, waste, soil or other materials must enter or be directed to railway land or stored or deposited on railway land.
- 66 Any wall which may be permitted to be located on the railway reserve boundary must be cleaned and finished using a graffiti resistant finish, or alternative measures used to prevent or reduce the potential of graffiti, to the satisfaction of Public Transport Victoria and the Rail Operator. Any fencing proposed along the railway reserve boundary must be constructed at the full cost to the permit holder to the satisfaction of Public Transport Victoria and the rail operator.

#### **Melbourne Water conditions**

- 67 Prior to Council endorsement, amended plans must be submitted to Melbourne Water for approval that demonstrate that Melbourne Water's finished floor level requirements have been met.
- 68 Finished floor levels of the ground floor must be constructed at a minimum of 8.8 metres to Australian Height Datum (AHD) which is 300mm above the applicable flood level for the property.

- 69 Entry apex to the proposed basement from Willis Street must be constructed at a minimum of 8.8 metres to Australian Height Datum (AHD) which is 300mm above the applicable flood level.
- 70 All openings, vents or other entry and exit points that may allow for entry of floodwaters to the basement must be set no lower than 8.8 metres to Australian Height Datum (AHD).
- 71 Basement must be tanked to at least 300mm above the applicable flood level of 8.5 metres to AHD.
- 72 Unless the consent of Melbourne Water is obtained, the proposed commuter car park must be constructed at natural surface levels and no earth filling will be permitted within the proposed car park.

### **Addressing**

- 73 A letterbox must be provided for each of the premises within the lobbies. The dimensions, placement and numbering must comply with the Australia Post – Letterbox Security and Specification as published on its website to the satisfaction of the Responsible Authority. Letterboxes must match the addressing, especially for 1st floor for the residential units, where units can be accessed from multiple lobbies.

### **Stormwater**

- 74 All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority.
- 75 Prior to the commencement of the development, a legal point of discharge is to be obtained, and where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge, must be submitted to and approved by the Responsible Authority.

### **Drainage**

- 76 All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority.
- 77 Before the development starts, the permit holder must apply to Council for the Legal Point of Discharge for the development from where storm-water is drained under gravity to the Council network.
- 78 Before the development, detailed plans indicating, but not limited to, the method of storm-water discharge to the nominated Legal Point of Discharge (and On-Site Detention System where applicable) must be submitted to and approved and to the satisfaction of the Responsible Authority.
- 79 The surface of all balconies and terraces are to be sloped to collect the stormwater run-off into stormwater drainage pipes that connect into the

underground drainage system of the development to the satisfaction of the Responsible Authority.

- 80 Subsurface water must be treated in accordance with Council's Policy for "Discharge of Pumped Subterranean Water Associated with Basements or Below Ground Structures.

### **City Assets and Projects**

- 81 Prior to any works, design plans and specifications of the civil works within the site associated with the development are to be prepared by a registered consulting engineer (who is listed on the Engineers Australia National Professional Engineer Register), and submitted to the Responsible Authority. Certification by the consulting engineer that the civil works have been completed in accordance with the design plans and specifications must be provided to the Responsible Authority.
- 82 Stormwater collected in either side of the railway line to be treated according to the best practice stormwater guidelines (via WSUD elements) and discharged to the Council drainage infrastructure in a controlled manner through onsite detention system. Two onsite detention systems, WSUD elements and legal point of discharges may be required.
- 83 Stormwater that could adversely affect any adjacent land must not be discharged from the subject site onto the surface of the adjacent land.
- 84 Stormwater from the south side of the development must be connected to the Council pit in front of 86 Orlando Street with an outfall drain to the satisfaction of the Responsible Authority.
- 85 The Applicant/Owner must prove that pre and post project conditions are same for 1 in 100 year storm event and there won't be any flooding issues due to the development. 2D flood mapping may be required.
- 86 The Applicant/Owner is responsible to meet all costs associated with reinstatement and/or alterations to Council or other Public Authority assets deemed necessary by such Authorities as a result of the development. The Applicant/Owner is responsible to obtain an "Asset Protection Permit" from Council at least 7 days prior to the commencement of any works on the land and obtain prior specific written approval for any works involving the alteration of Council or other Public Authority assets.
- 87 No building or works shall be constructed over any easement without the written consent of the relevant Authorities.
- 88 Council's existing stormwater pipe and pits within the road reserves must be protected at all times. Any proposal to alter the Council drainage assets in any way must be submitted to Council for approval and if approved by Council be undertaken at the expense of the Applicant.
- 89 All stormwater drains must be connected to a point of discharge to the satisfaction of the Responsible Authority.

- 90 Stormwater connection to the nominated point of discharge and stormwater on-site detention (if required) must be completed and approved to the satisfaction of the Responsible Authority prior to the occupation of the building.
- 91 As constructed civil drawings are to be provided to Council after the completion of civil works prior to the occupation of the building.
- 92 Stormwater that could adversely affect any adjacent land must not be discharged from the subject site onto the surface of the adjacent land.
- 93 The Applicant/Owner is responsible to meet all costs associated with reinstatement and/or alterations to Council or other Public Authority assets deemed necessary by such Authorities as a result of the development. The Applicant/Owner is responsible to obtain an "Asset Protection Permit" from Council at least 7 days prior to the commencement of any works on the land and obtain prior specific written approval for any works involving the alteration of Council or other Public Authority assets.

### **Environmental Audit**

- 94 Before the development starts (excluding any bore holes and excavation associated with an environmental site assessment) an environmental site assessment of the land by a suitably qualified environmental professional must be undertaken which provides the following information:
  - (a) The nature of the previous and existing land use/activities on the land;
  - (b) An assessment of the potential level and nature of contamination (if any) on the land; and
  - (c) Advice on whether the environmental condition of the land is suitable for proposed use/s and whether an environmental audit of all or part of the land is recommended having regard to the Contaminated Land General Practice Note June 2005, DSE.

If an environmental site assessment recommends an environmental audit of all or part of the land then:

- (d) Before the commencement of any use for sensitive purpose; or
- (e) Before any substantial buildings or works; or
- (f) Before the certification of a plan of subdivision

whichever is the earlier in respect of all or that part of the land as the case may be, the following must be provided to the Responsible Authority, either:

- (g) A certificate of Environmental Audit issued for the relevant land in accordance with Part IXD of the *Environment Protection Act 1970*; or
- (h) A statement of Environmental Audit issued for the relevant land in accordance with Part IXD of the *Environment Protection Act 1970* stating that the environmental conditions the relevant land are suitable for a sensitive use (with or without conditions on the use of the site).

If a Statement of Environmental Audit is provided rather than a Certificate of Environmental Audit and the Statement of Environmental Audit indicates that the environmental conditions of the relevant land are suitable for a sensitive use subject to conditions, the owner of the land must enter into an agreement with the Responsible Authority under section 173 of the *Planning and Environment Act 1987* before the construction of any building on the relevant land providing for the:

- (i) Implementation and ongoing compliance with all conditions in the Statement of Environmental Audit; and
- (j) The payment of the Responsible Authority's legal costs and expenses of drafting/reviewing and registering the agreement by the owner of the relevant land.

### **General**

- 95 Prior to the occupation of the development, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.
- 96 Prior to the occupation of the development all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land (including all existing and new buildings) must be underground to the satisfaction of the Responsible Authority.
- 97 Unless with the prior written consent of the Responsible Authority, any plumbing pipe, ducting and plant equipment must be concealed from external views. This does not include external guttering or associated rainwater down pipes.
- 98 As part of the ongoing consultant team, JAM Architects Pty Ltd and ARM Architecture Pty Ltd or an architectural firm 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.
- 99 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
- 100 Before the buildings is occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.

## **Drainage Development Contributions**

- 101 Prior to occupation of the development, the permit holder must pay a drainage levy in accordance with the amount specified under the Bayside Drainage Development Contributions Plan. The levy amount payable will be adjusted to include the Building Price Index applicable at the time of payment.
- 102 The levy payment shall be submitted to Council with the Bayside Drainage Contributions Levy Charge Sheet and it must include the Building Price Index applicable at the time of payment.

## **Permit Expiry**

- 103 This permit will expire if one of the following circumstances applies:
- (a) The development is not started within three years of the date of this permit;
  - (b) The development is not completed within five years of the date of this permit;
  - (c) The use is not started within five years of the date of this permit; or
  - (d) The use is discontinued for a period of two years or more.

In accordance with Section 69 of the *Planning and Environment Act 1987*, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

---End Conditions---