

RED DOT DECISION SUMMARY

The practice of VCAT is to designate cases of interest as 'Red Dot Decisions'. A summary is published and the reasons why the decision is of interest or significance are identified. The full text of the decision follows. This Red Dot Summary does not form part of the decision or reasons for decision.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NOS. VCAT REFERENCE NOS.
P73/2013, P74/2013, P398/2013, P401/2013,
P611/2013, P625/2013
PERMIT APPLICATION NOS 1225056, 1225057,
1225059 AND 1225060.

IN THE MATTERS OF

Green, Gaud and Others v Hobsons Bay CC
and NP Developments Pty Ltd

BEFORE

Jeanette G. Rickards, Presiding Senior Member
S. R. Cimino, Member

NATURE OF CASES	Applications under Sections 77, 80 and 82 of the Planning and Environment Act 1987
REASONS WHY DECISION IS OF INTEREST OR SIGNIFICANCE	
LAW – issue of interpretation or application	Appropriateness of conditions requiring Development Contributions in the absence of a Development Contributions Overlay, Section 62 Planning and Environment Act 1987
APPLICATION – significant, interesting or unusual use or development; application of policy, provision or principle; or circumstances	Redevelopment individual lots within the former Port Phillip Woollen Mills area, Williamstown, strategic redevelopment area, considerations of affordable housing, need for development contributions, consideration of location opposite a Major Hazard Facility, demolition of Oriental Hotel.

SUMMARY

- 1 We find that the subject lots are within a strategic redevelopment area where housing at increased density is encouraged. Such development accords with policy, the purpose of the zone and the DDO11. No master plan is required under the planning scheme for a permit to be granted for the redevelopment of the 3 lots.
- 2 We are satisfied that the proposals will not prejudice the continued operation of the BAE shipyards and Mobil Tank Farm. We also find that the shipyards and Tank Farm will not pose an unacceptable level of risk to future residents.
- 3 We find the demolition of the Oriental Hotel acceptable. The building is in poor condition. Much of the building must be demolished. We conclude that the remnant building is not of sufficient value to be worthy of retention.

- 4 We also find that the form and detail of all four of the proposed developments to be acceptable having regard to the physical and strategic context as well as the zoning and DDO11. They represent an acceptable form of infill development.
- 5 Subject to some minor changes, we find that the proposals will not result in unreasonable impacts on the amenity of the area, nor will they have an adverse impact on tourism.
- 6 The proposed dwellings provide future residents with satisfactory amenity.
- 7 We grant permits for all four development proposals. In doing so, we find the imposition of conditions requiring things such as the provision of at least 10 per cent of affordable housing and a development contribution levy, integrated art plan to be inappropriate and, in some instances, unlawful. Conditions to this effect are not included in the permits.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NOS. P73/2013, P74/2013,
P398/2013, P401/2013, P611/2013, P625/2013
PERMIT APPLICATION NOS 1225056, 1225057,
1225059 AND 1225060

(MAJOR CASES)

CATCHWORDS

Section 77 Planning and Environment Act 1987 – Section 80 Planning and Environment Act 1987 – Section 82 Planning and Environment Act 1987 - dwellings – apartment buildings and townhouses - former Port Phillip Woollen Mills Area - Mixed Use Zone – Heritage Overlay – Design and Development Overlay Schedule 11 - demolition of heritage building (Oriental Hotel) – context – need for a master plan - noise impacts – risk assessment – land adjacent to Major Hazard Facility - traffic impacts – waiver of car parking – sustainable development - impact on tourism – affordable housing – integrated art – need for Development Contributions

SUBJECT LAND

**Lot 1, Stage 1A, 3-39 Nelson Place,
Williamstown**

APPLICATION NO P74/2013

APPLICANT

Val Green and Others

RESPONSIBLE AUTHORITY

Hobsons Bay City Council

RESPONDENT

NP Development Pty Ltd

OTHER PARTY

BAE Systems Australia Ltd

APPLICATION NO P398/2013

APPLICANT

NP Development Pty Ltd

RESPONSIBLE AUTHORITY

Hobsons Bay City Council

RESPONDENTS

Michael Virant, Charmian Gaud, Giles Black, Amadeo Bugeja, Maria Muratore, Elizabeth McKeag, Christopher John Wood, Clare Upfold, Anthony & Val Green, Gerard Drew, Barbara Witcombe, Amanda Thornton, Suzanne Orange, Alison & David Brideson, Ralph M Nicolson, Kristine Nicholson, Marilyn Moore, BAE Systems Australia Ltd

SUBJECT LAND Lot 2, Stage 1A, 3-39 Nelson Place,
Williamstown

APPLICATION NO P625/2013

APPLICANT NP Development Pty Ltd

RESPONSIBLE AUTHORITY Hobsons Bay City Council

RESPONDENTS Michael Virant, Rosa McKenna, Giles Black,
William Korevaar, Clare Upfold, Christopher
Wood, Bryce Denseley, Suzanne Orange,
Godfrey Edward Moase, Barbara Whitcombe,
Patricia Klemm, Philip Harold Lethlean, Alison
and David Brideson, Amadeo Bugeja,
Charmian Gaud, Maria Muratore, Elizabeth
McKeag, Val and Tony Green, Alexander
Tyrell, Krystyna Tyrrell, Elaine Peck, Andrew
Singer, Kristine and Ralph Nicholson, Helen
Younes, Carol Challis, Paige Tyrell, Jennifer
Peck, Jackie Hosking, Rae Szuch, Ralph
Humphries, Kylie Wetherall, Bruno Demasi,
Dr Raymond and Mrs Alison Timms, Marilyn
Ann Moore, Andrew Kovack, Mary LoBianco
and Others, Janja Dzomba, Robyn Lah, Norma
S Roberts, and Joan Lynn, BAE Systems
Australia Ltd.

SUBJECT LAND Lot 3, Stage 1A, 3-39 Nelson Place,
Williamstown

APPLICATION NO P73/2013

APPLICANT Charmian Gaud and Others (Save
Williamstown Inc.)

RESPONSIBLE AUTHORITY Hobsons Bay City Council

RESPONDENT NP Development Pty Ltd

OTHER PARTY BAE Systems Australia Ltd

APPLICATION NO P401/2013

APPLICANT NP Development Pty Ltd

RESPONSIBLE AUTHORITY Hobsons Bay City Council

RESPONDENTS Charmian Gaud, Michael Virant, Alison &
David Brideson, Ralph Humphries, Joan Lynn,
Janet Saker, Christopher John Wood, Clare
Upfold, Anthony & Val Green, Amadeo
Bugeja, Maria Muratore, Ralph Nicholson,
Kristine Nicholson, Suzanne Orange, Amanda
Thornton, Alison & David Brideson, BAE
Systems Australia Ltd

APPLICATION NO P611/2013

APPLICANT NP Development Pty Ltd

RESPONSIBLE AUTHORITY Hobsons Bay City Council

RESPONDENTS Michael Virant, Rosa McKenna, Giles Black,
William Korevaar, Clare Upfold, Christopher
Word, Bryce Denseley, Suzanne Orange,
Godfrey Edward Moase, Barbara Whitcombe,
Patricia Klemm, Philip Harold Lethlean, Alison
and David Brideson, Amadeo Bugeja,
Charmian Gaud, Maria Muratore, Elizabeth
McKeag, Val and Tony Green, Alexander
Tyrell, Krystyna Tyrrell, Elaine Peck, Andrew
Singer, Kristine and Ralph Nicholson, Helen
Younes, Carol Challis, Paige Tyrell, Jennifer
Peck, Jackie Hosking, BAE Systems Australia
Ltd

HEARING DETAILS

WHERE HELD	55 King Street, MELBOURNE, VIC 3000
BEFORE	Jeanette G. Rickards, Presiding Senior Member S. R. Cimino, Member
HEARING TYPE	Hearing
DATE OF HEARING	24, 25, 26, 27 and 28 June 2013 1, 2, 3, 4 and 5 July 2013 14, 15, 16 and 17 October 2013
DATE OF ORDER	10 December 2013
CITATION	

ORDER

Applications P74/2013 and P398/2013

- 1 With respect to permit application no 1225057, the responsible authority's decision is varied.
- 2 A permit is granted and directed to be issued for land at Lot 1 of Stage 1A, 3-39 Nelson Place, Williamstown. The permit allows:

Construction of seven dwellings and reduction in car parking required under Clause 52.06 of the Hobsons Bay Planning Scheme generally in accordance with the endorsed plans.
- 3 The permit must include the conditions set out in Appendix A to this order.

Application P625/2013

- 4 With respect to permit application no 1225056, the responsible authority's decision is set aside.
- 5 A permit is granted and directed to be issued for land at Lot 2 of Stage 1A, 3-39 Nelson Place, Williamstown. The permit allows:

Demolition of buildings and works within the Heritage Overlay; use and construction of commercial tenancies (Shop/Food and Drink Premises); construction of multi- dwellings; construction of buildings and works (landscaping and road works); reduction in car parking requirements at Clause 52.06 of the Hobsons Bay Planning Scheme and waiver of loading/unloading requirements at Clause 52.07 of the Hobsons Bay Planning Scheme, generally in accordance with the endorsed plans.
- 6 The permit must include the conditions set out in Appendix B to this order.

Application Nos P73/2013 and P401/2013

- 7 With respect to permit application no 1225059, the responsible authority's decision is varied.
- 8 A permit is granted and directed to be issued for land at Lot 3 of Stage 1A, 3-39 Nelson Place, Williamstown. The permit allows:
- Construction of twelve dwellings and reduction in car parking required under Clause 52.06 of the Hobsons Bay Planning Scheme generally in accordance with the endorsed plans
- 9 The permit must include the conditions set out in Appendix C to this order.

Application No. P611/2013

- 10 With respect to permit application no 1225060, the responsible authority's decision is set aside.
- 11 A permit is granted and directed to be issued for land at Lot 3 of Stage 1A, 3-39 Nelson Place, Williamstown. The permit allows:
- Construction of an apartment building containing not more than 51 dwellings and reduction in car parking required under Clause 52.06 of the Hobsons Bay planning Scheme generally in accordance with the endorsed plans.
- 12 The permit must include the conditions set out in Appendix D to this order.

Jeanette G Rickards
Presiding Senior Member

S.R. Cimino
Member

APPEARANCES

For NP Development Pty Ltd

Mr A Finanzio, SC, with Mr A Walker, Barristers, instructed by Planning & Property Partners Pty Ltd.

Witnesses

Mr A De Bruyen, Architect, SJB.

Mr A Clarke, Town Planner, Matrix Planning Pty Ltd.

Mr M Sheldon, Structural Engineer, Aurecon.

Mr B Raworth, Conservation Consultant, B Raworth and Associates.

Mr P Lovell, Heritage Consultant, Lovell Chen.

Mr M Sheppard, Urban Designer, David Lock and Associates.

Mr R Burton, Acoustic Consultant, Burton Acoustic Group.

Mr G Weston, Social Planner, Public Place Pty Ltd.

Mr T DeYoung, Traffic Engineer, GTA Consultants.

For Responsible Authority

Mr G Testro, Solicitor.

Witnesses

Ms H Lardner, Architect, HLCD Pty Ltd.

Mr J Spano, Structural Engineer, BHS Consultants.

Mr R McGauran, Architect, MGS Architects.

Ms C Dunstan, Traffic Engineer, Traffix Group.

For Save Williamstown Inc

Mr M Bartley, Ms B Woodgate, Ms K Diamontopoulos, Solicitors, HWL Ebsworth Lawyers, Mr G E Moase and Mr McKinnon.

Witnesses

Mr M. G Taylor, Heritage Consultant, Michael Taylor Architect and Heritage Consultant Pty Ltd.

Mr S Phillips, Social Planner, Kershaw Phillips Consulting.

Mr T Halls, Structural Engineer, Klopfer
Dobos.

Mr I F Thomas, Engineer/Risk Consultant, I.F.
Thomas and Associates.

For Charmian Gaud & Others Ms C Gaud.

For V and T Green Mrs V Green and Mr T Green.

For BAE Systems Australia
Ltd Mr N Tweedie, Barrister, instructed by Allens
Linklater.

For Ms Janja Dzomba Ms J Dzomba.

INFORMATION

Description of Proposal

Lot 1 Stage 1A

Construction of 7, 3 storey dwellings and reduction in parking.

Lot 2, Stage 1A

Demolition of existing building; construction of 6 storey building for 83 apartments and 2 commercial tenancies; construction of road works and landscaping; reduction in parking and waiver of loading bay.

Lot 3, Stage 1 A – Option A

Construction of 4 storey building containing 51 apartments and reduction in car parking.

Lot 3, Stage 1A, Option B

Construction of 12 dwellings and reduction in car parking.

Nature of Proceeding

P611/2013 and P625/2013

Applications under Section 77 of the *Planning and Environment Act* 1987.

P398/2013 and P401/2013

Applications under Section 80 of the *Planning and Environment Act* 1987.

P73/2013 and P74/2013

Applications under Section 82 of the *Planning and Environment Act* 1987.

Zone and Overlays

Mixed Use Zone [MUZ]

Heritage Overlay Schedule 8 [HO8]

Heritage Overlay Schedule 211 [HO211]

Design and Development Overlay Schedule 11 [DDO11]

Environmental Audit Overlay [EAO]

Permit Requirements

Clause 31.02: Use of land for a purpose in Section 2 of the land use table to Clause 32.04

Clause 32.04 -6: Construction of more than one dwelling on a lot.

Clause 43.01-1: Demolition of buildings in HO.

Clause 43.01-1: Construction of buildings and works

	<p>in HO.</p> <p>Clause 43.02-2: Construction of Buildings and Works in DDO11.</p> <p>Clause 52.06-1: Reduction of car parking.</p> <p>Clause 52.07: Waiver of loading bay provision.</p>
Other relevant planning scheme provisions	<p>Clauses 10.04, 11, 13.01, 13.04, 15, 15.01, 15.02, 15.03, 16, 17, 18.01, 18.02, 20, 21.01, 21.02, 21.03, 21.05, 21.06, 21.08, 21.09, 22.01, 32.04, 43.01, 43.02, 52.06, 52.07, 52.34 and 65.</p>
Land Description	<p><u>Lot 1, Stage 1A</u></p> <p>Rectangular site, comprising vacant land fronting the east side of Ann Street with an overall area of 1117 square metres. Lot 2, occupied by the Oriental Hotel, is directly to the north, the former Telegraph Hotel, directly south and relatively new townhouse development to the west on the opposite side of Ann Street.</p> <p><u>Lot 2, Stage 2A</u></p> <p>Rectangular site on the corner of Nelson Place and Ann Street with an area of about 1490 square metres. A 3 storey vacant building, known as the Oriental Hotel, occupies the corner section of the site. Vacant land, comprising Lots 1 and 3, exists immediately to the east and south; BAE shipyards to the north, and residential development directly west.</p> <p><u>Lot 3, Stage 3A</u></p> <p>Rectangular site, comprising vacant land fronting the south side of Nelson Place with an overall area of about 1272 square metres. The Oriental Hotel building exists to the west, BAE shipyards and Mobil Tank Farm to the north and vacant land to the south.</p>
Cases referred to	<p><i>Harrod Hughes & Associates Pty Ltd v The Mayor, Councillors and Ratepayers of the City of Melbourne</i>, 8 AATR 85.</p> <p><i>National Trust of Australia (Vic) v Australian Temperance & General Mutual Life Assurance Society Ltd</i> (1976) VR 592</p> <p><i>Shell Company of Australia v Hobsons Bay CC & Ors</i>(includes Summary Red Dot) [2012] VCAT 1184 at [16]</p> <p><i>Merri Merri Developments Pty Ltd v Darebin CC</i></p>

[2010] VCAT 1045

Curry v Melton SC (2000) 111LGERA 30;

Cameron Manor Pty Ltd v Mornington Peninsula SC
(Red Dot) [2007] VCAT 1822;

Naprelac v Baw Baw SC (Red Dot) [2005] VCAT 956

Cameron Manor Pty Ltd v Mornington Peninsula SC
(Red Dot) [2007] VCAT 1822 at [24]

Tribunal inspection

The Tribunal conducted an inspection of all three properties and the area accompanied by the parties on 25 June 2013.

REASONS

What are these proceedings about?

- 8 NP Development Pty Ltd [NPD] lodged four applications for planning permits with Hobsons Bay City Council seeking permits for housing developments on three neighbouring lots within the former Port Phillip Woollen Mills [PPWM] land in Williamstown. The proposals involve apartment buildings and townhouse developments ranging in height from three to six storeys. The Council decided to approve two applications, both involving the construction of townhouses on vacant land. However, it refused the other two, both of which involve the construction of apartment buildings.
- 9 There are six applications before the Tribunal. NPD has lodged applications against the Council's decisions to refuse permits for the two apartment buildings while objectors have lodged applications to review the Council's decisions to approve the townhouse developments. NPD has also lodged applications to review conditions imposed by the Council with respect to the townhouse applications.
- 10 These cases raise a range of policy, strategic, design and amenity issues. In some instances, the issues raised are relevant to the consideration of all of the permit applications, while others relate to specific aspects of the individual proposals.
- 11 The issues which are common to all applications are:
 - Is the redevelopment of these sites for residential purposes appropriate given the context?
 - Should there be a master plan in place before any land in the former PPWM area is redeveloped?
 - Do the Mobil Tank Farm and ships delivering fuel pose unacceptable risk to future residents?
 - Will future residents be subject to unreasonable noise impacts?
 - Can the road network accommodate traffic generated by the proposed developments?
 - How much parking should be provided?
 - Will the proposed developments have an adverse impact on tourism?
 - Is the requirement for the provision of affordable housing appropriate?
 - Is a Development Contributions Levy appropriate?
 - Should an Integrated Art Plan be required?
 - Should an area be set aside for community use?

- To what extent should improvements to the local road network and footpaths be required?
- 12 In dealing with issues that are specific to a particular proposal, it is practical to firstly deal with the issues associated with Lot 2. This is because it is centrally located between the other two lots and our decision with respect to the demolition of the hotel and replacement building has some bearing on our consideration of issues such as the interface with development proposals on adjoining lots. Specific issues relevant to the use and development of Lot 2 are:
- Should demolition of the Oriental Hotel be allowed?
 - Is the proposed building acceptable in terms of its response to the context?
 - Will the proposed apartments provide satisfactory amenity to future residents?
 - Will the proposal result in unreasonable impacts on the amenity of the area?
- 13 The specific issue relating to Lot 1 is:
- Does the built form present an acceptable relationship with the Telegraph Hotel and the neighbourhood character?
- 14 There are two applications for the redevelopment of Lot 3, one for an apartment building (Option A), the other for a townhouse development (Option B). The specific issue relating to both options is:
- Is the proposed building acceptable in terms of its response to the context having regard to heritage and neighbourhood character?
- 15 Each option also raises other matters which we also deal with separately.

Summary of decision

- 16 Having considered the submissions and evidence, the details of the individual proposals and relevant matters under the planning scheme and legislation, we conclude that all four proposals are generally acceptable.
- 17 We find that the subject lots are within a strategic redevelopment area where housing at increased density is encouraged. Such development accords with policy, the purpose of the zone and the DDO11. No master plan is required under the planning scheme for a permit to be granted for the redevelopment of the 3 lots.
- 18 We are satisfied that the proposals will not prejudice the continued operation of the BAE shipyards and Mobil Tank Farm. We also find that the shipyards and Tank Farm will not pose an unacceptable level of risk to future residents.

- 19 We find the demolition of the Oriental Hotel acceptable. The building is in poor condition. Much of the building must be demolished. We conclude that the remnant building is not of sufficient value to be worthy of retention.
- 20 We also find that the form and detail of all four of the proposed developments to be acceptable having regard to the physical and strategic context as well as the zoning and DDO11. They represent an acceptable form of infill development.
- 21 Subject to some minor changes, we find that the proposals will not result in unreasonable impacts on the amenity of the area, nor will they have an adverse impact on tourism.
- 22 The proposed dwellings provide future residents with satisfactory amenity.
- 23 We grant permits for all four development proposals. In doing so, we find the imposition of conditions requiring things such as the provision of at least 10 per cent of affordable housing and a development contribution levy, integrated art plan to be inappropriate and, in some instances, unlawful. Conditions to this effect are not included in the permits.

Background

The locality

- 24 The three development sites are located within the former Port Phillip Woollen Mills [PPWM] industrial area, Williamstown. The PPWM properties are part of a larger former industrial area that extends along Nelson Place between Ann Street and Kanowna Street, both sides of Aitken Street between Ann Street and Kanowna Street and along Kanowna Street, down to Cecil Street. This industrial area is identified as 'precinct 20' in the *Hobsons Bay Industrial Land Management Strategy 2008*. PPWM properties have been acquired by the permit applicant who now proposes to redevelop the area for housing
- 25 The three lots that are the subject of the proposals under review are located around the northwest corner of the industrial area, fronting Nelson Place and Ann Street. They also have abuttal to two new roads to be constructed as part of the overall redevelopment of the area; Waterline Place, which runs parallel to Nelson Place, and Merchant Lane which creates a 'T' intersection with Waterline Place at its northern end.
- 26 The area to the north is industrial, occupied by the BAE shipyards and the Mobil Tank Farm. Vacant land, also to be redeveloped by NPD, exists immediately to the east with the former Prince of Wales hotel, now known as the 'Titanic' theatre restaurant, located further east on the corner of Nelson Place and Kanowna Street. The area to the south and west is predominantly residential, comprising both older single storey period homes and newer medium density developments ranging in height from 2 to 3 storeys.

- 27 Contextually, the land is located about 1.5 kilometres from the Williamstown activity centre, about 400m to 600m from the Williamstown railway station and within walking distance of Point Gellibrand National Park. A bus service runs along Nelson Place.

Lot 1

- 28 Lot 1 comprises vacant land fronting the east side of Ann Street, between the extant Oriental Hotel and former Telegraph Hotel building¹. Waterline Place and Merchant Lane, run along the northern and eastern boundaries of this lot respectively. Lot 1 is rectangular, with a frontage of about 37.4 metres, depth of 29.9 metres and overall area of about 1117 square metres. The site is vacant land set on relatively flat terrain.

The proposal for Lot 1

- 29 The proposal for this lot involves the construction of seven, three-storey townhouses. Five townhouses front Ann Street while the other two are oriented to Waterline Place².
- 30 The internal layouts of the Ann Street townhouses vary, with some providing main living areas at ground level with bedrooms above, while others have a reverse layout. Double garages, some with a studio space above, accessed from Merchant Lane are provided for the Ann Street townhouses. The Waterline Place townhouses provide for three bedrooms, open plan living areas and a double garage. The building has a maximum height of about 10.3 metres measured at the northwest corner.
- 31 The Council issued a Notice of Decision to Grant a Permit for this proposal subject to conditions. Ms Green and her co-applicants have lodged an application to review the Council's decision while NPD lodged an application to review several conditions.

Lot 2

- 32 Lot 2 is located on the northwest corner of Nelson Place and Ann Street. The lot is rectangular with frontages of about 46.2 metres and 32.2 metres to Nelson Street and Ann Street respectively³. This lot also has an abuttal with the proposed Waterline Place. The lot has an area of about 1490 square metres. The Oriental Hotel building occupies part of this lot with the area to the east of the hotel comprising vacant land.

The proposal for Lot 2

- 33 The proposal is to demolish the Oriental Hotel and construct a six-storey building containing 2 commercial tenancies and 83 apartment style dwellings over basement car parking.

¹ The Telegraph Hotel building is used as a dwelling.

² Townhouses 1 and 2

³ These dimensions taken from section 3.3 of the 'design response' as dimensions are not specified on the ground floor plans.

- 34 There are two commercial tenancies at ground level adjacent to Ann Street with three single bedroom apartments along the Nelson Place frontage. The balance of the ground floor level provides space for car parking, services as well as bicycle and waste storage. A further 80 apartments are provided in the upper levels of the building. The apartments provide for either one or two bedrooms with open plan living areas. Open space is provided in the form of balconies, while on site parking is provided mainly within the basement, with some spaces at ground and first floor levels. The building has a height of about 19.5 metres.
- 35 The Council refused this proposal. NPD lodged an application to review the Council's decision.

Lot 3

- 36 Lot 3 is located on the south side of Nelson Place, immediately to the east of Lot 2. This lot is rectangular, with a frontage of 39.5 metres to Nelson Place and overall area of about 1272 square metres. It also has a secondary frontage to the north side of the proposed Waterline Place. The land is relatively flat and vacant.

The proposals for Lot 3.

- 37 There are two development proposals for Lot 3, each of which is the subject of a separate permit application.
- 38 Option A involves the construction of a 4-storey apartment building over basement. Fifty-one apartments are proposed. Nine apartments and car parking are at ground level with a further 14 apartments on each of the levels above. Car parking and storage areas are within the basement. Access to car parking is from Waterline Place. The overall height of the building is about 15 metres.
- 39 The Council refused this proposal. NPD lodged an application to review the Council's decision.
- 40 Option B involves the construction of 12 townhouses. Six townhouses front Nelson Place while the others front onto the north side of Waterline Place. Townhouses typically provide for a double garage and living area at ground level, with living areas and bedrooms within the two levels above. Four townhouses provide a fourth level comprising an open plan area. Open space is in the form of balconies. A central 5.8 metre wide access way separates the two banks to townhouses. The overall height of the townhouses measures about 13 metres.
- 41 The Council issued a Notice of Decision to Grant a Permit for this proposal subject to conditions. Ms Gaud and her co-applicants have lodged an application to review the Council's decision while NPD lodged an application against several conditions.

Planning Scheme

- 42 Under the Hobsons Bay Planning Scheme, the subject land is within the Mixed Use Zone [MUZ]. Under the zone provisions, the use of land for dwelling is 'as of right', that is, no permit is required. However, a permit is required for the construction of more dwelling on a lot as well as the use for commercial tenancies.
- 43 The land is also affected by overlay controls.
- 44 The Design and Development Overlay [DDO] applies to the whole of the land with the provisions set out in Schedule 11 [DDO11] being applicable. Under the DDO, a permit is required to construct buildings and works. In deciding whether to grant a permit, the DDO requires consideration be given to a range of matters including planning policy, the design objectives set out in the applicable schedule as well as various aspects of the design including the bulk and form of buildings, landscaping and layout and appearance of car parking. DDO11 sets out design objectives to achieve as well as provisions with respect to building height and control of noise.
- 45 The Heritage Overlay [HO] also applies to the land. There are two applicable schedules under this overlay. HO211 applies to the land occupied by the Oriental Hotel while HO8 applies to the wider area known as the 'Government Survey Heritage Precinct'. The provisions of the HO require a permit for the demolition of existing buildings and the construction of new buildings and works. Amongst other things, matters to consider under the decision guidelines under the HO include planning policy, the applicable statement that sets out the significance of the heritage place and the impact that demolition and construction of buildings and works will have on the significance and appearance of the heritage place.
- 46 No permit is required under the Environmental Audit Overlay [EAO]. However, the provisions of this overlay say that before a sensitive use, which includes residential, commences, either a certificate of environmental audit or statement from an auditor must be issued. We were not presented with any material to demonstrate that works cannot be undertaken to render the environmental conditions of the land suitable for the intended use.
- 47 Other relevant provisions are at Clauses 52.06 (car parking), 52.07 (loading), 52.35 (bicycle parking) as well as the general decision guidelines at Clause 65. Amongst other things, the decision guidelines require us to consider planning policy, purpose of the zone and overlays, orderly planning and amenity.
- 48 Although Ms Gaud asserts that a Cultural Heritage Management Plan is required, given the nature of the sites and the material before us, we are unable to come to the conclusion that such a plan is required.
- 49 There is a raft of policy provision applicable to the consideration of these proposals. We will refer to them, as appropriate, in these reasons.

Consideration of the issues

50 As indicated earlier, there are a number of issues common to all applications. In this section, we discuss those issues and our findings.

Is the redevelopment of these sites for residential purposes appropriate given the context?

- 51 To consider the merits of these proposals to redevelop land within the former PPWM area, it is appropriate to consider the physical and strategic context that applies.
- 52 The PPWM area comprises largely disused industrial land with many properties being vacant land or industrial buildings. The area is well located, in reasonably close proximity to the Williamstown activity centre, public transport and regional open space facilities. The area is clearly ripe for urban renewal⁴.
- 53 The three ‘lots’ that are the subject of the permit applications are within this area and present redevelopment opportunities for housing. All three lots are relatively large, with areas ranging from about 1100 to just under 1500 square metres. Lots 1 and 3 comprise large, vacant parcels of flat land, relatively free of unmanageable constraints. All three lots have attributes that render them suitable for redevelopment, particularly their size, availability of service infrastructure and proximity to various facilities and services.
- 54 However, we acknowledge that the subject properties are not free of constraints. For example, all three lots are within the Heritage Overlay. The Oriental Hotel exists on Lot 2. If it is determined that the hotel cannot be demolished, this constrains the development potential and form of new buildings on that lot. Being former industrial land, the lots may have contamination that needs to be dealt with before residential use can commence. The lots are also in proximity to large industrial uses, namely the BAE shipyards and Mobil Tank Farm. Ultimately, the question here is not whether, the three lots are subject to constraints, but rather, whether the proposals represent an appropriate response to the context, the site’s attributes and factors such as those to which we refer. On our assessment, subject to the design response dealing with constraints in an acceptable way, these three lots clearly provide opportunity for new housing development.
- 55 State policy at Clause 16 provides clear support for the provision of additional housing within established urban areas, particularly those in close proximity to fixed rail public transport and activity centres. State policy also encourages housing development that adds to choice, affordability and makes more effective use of existing infrastructure.

⁴ We note that the Former Port Phillip Woollen Mills Advisory Committee concluded that ‘the subject site and the immediate area are in urgent need of urban renewal’ (see page 63 Advisory Committee report)

- 56 At the local level, the MSS, at Clause 21.07, encourages the provision of a range of dwelling types to suit the diverse needs of the community. Strategies to achieve this outcome include providing for a mix of housing types and sizes, supporting medium and higher density where it can be accommodated having regard to infrastructure capacity and neighbourhood character and encouraging higher densities in proximity to reliable public transport. The MSS also seeks to manage the transition of former industrial areas identified as ‘Strategic Redevelopment Areas’ carefully, by amongst other things, the consideration of issues such as contamination, physical and social infrastructure provision, traffic management, character and on-going viability of existing industries. The preparation of an Outline Development Plan (master plan) is envisaged to allow for the integration of such areas with their surrounds and adjacent streets.
- 57 Under the *Hobsons Bay Industrial Land Management Strategy 2008*, the PPWM land is located within Precinct 20. Under the strategy, the land is identified as a ‘Strategic Redevelopment Area’. In relation to this area, the strategy says:
- Proximity to the Williamstown Activity centre and foreshore would make the site an extremely desirable location for residential living. This is also consistent with the State Government’s State Planning Policies which encourage higher residential development in Activity Centres. A residential outcome within this precinct would also improve the overall amenity of the area, and is the Council’s preferred option.
- 58 Through Amendment C75 to the Hobsons Bay Planning Scheme, the land was rezoned to Residential 1 in April 2010. The Minister for Planning subsequently appointed an Advisory Committee to review the planning controls applicable to the PPWM area with respect to *‘the planning and built form/urban design opportunities for the subject land (part Precinct 20 to the south of Nelson Place)’*. In relation to this area, the Committee noted:
- ...at the state and metropolitan level, the principles of Melbourne 2030 encourage residential intensification within established residential areas to encourage more effective use of existing infrastructure including public transport, social and community facilities, activity centres and other services that improve the liveability of the city.
- The Committee accepts that the proposal is consistent with this direction as it is located near an Activity Centre, within proximity of public transport and proposes development within the Council designated development area. A key strategic objective of sustainable development within Melbourne is to encourage a greater proportion of new dwellings at strategic redevelopment sites within established metropolitan urban areas, to reduce pressure for urban expansion.
-

The Committee therefore considers that state and local policy bring expectations of denser development of the review land. However, this expectation needs to be tempered by acknowledging the other policy constraints within the precinct including a working shipyard and other industries.

- 59 Following the Advisory Committee report, Amendment C86 to the planning scheme was approved. The Amendment rezoned the PPWM area to Mixed Use, albeit that a change in zoning was not recommended by the Committee. The Amendment also saw the introduction of DDO11 which sets out design objectives to be achieved as well as parameters for development with respect to matters such as building height, setbacks, parking and noise control. The design objectives under DDO11 include:

To encourage comprehensive urban renewal which delivers increased housing diversity, affordability and density within Williamstown.

To create a residential area which is contemporary in design and provides a transition from surrounding 19th Century residential areas.

- 60 It is apparent that extensive strategic work has been undertaken with respect to this area. It is identified as an area for urban renewal. It is identified as an area where residential outcomes such as increased housing diversity, affordability and density is specifically sought. It is also an area where contemporary development is envisaged. Further, the Mixed Use Zoning and DDO provisions are the ‘statutory tools’ in the planning scheme to facilitate the outcome envisaged by policy. The purpose of the zone not only facilitates the implementation of policy, but also the provision of housing at higher densities. It is clear that a residential outcome is contemplated and supported by policy and the zone.
- 61 In coming to this view, we take into account the Council’s position, namely, that it supports the use and development of two of the three lots, Lots 1 and 3, for some form of residential development. Further, we note that the Council is not opposed to the redevelopment of Lot 2 for residential use *per se*. Rather, its opposition to the redevelopment of Lot 2 relates to the proposed demolition of the Oriental Hotel and the form of the replacement development.
- 62 Accordingly, the redevelopment of these three lots for residential purposes, accords with the thrust of state and local policy. It also accords with the purpose of the Mixed Use zone which include providing for housing at higher densities in this location. It also facilitates outcomes envisaged under DDO11.
- 63 Ultimately, the issues in this case revolve around whether these proposals respond, in a balanced way, to other aspects of planning policy which seek to facilitate acceptable outcomes with respect to other aspects of policy including heritage, urban design, transport and amenity. We will discuss these policies as we consider specific issues.

Should there be a master plan in place before any land is redeveloped?

- 64 Ms Gaud, Ms Green and SWG all submit that before any permits are granted within this area, a master plan to guide development should be in place. They argue that without such a master plan, development will be *ad hoc*, with limited opportunity to properly co-ordinate the provision of services and facilities for the former PPWM area as a whole.
- 65 Given the nature of the former PPWM area, we agree that it would be advantageous for the redevelopment or ‘renewal’ of this area to be guided by an overall plan. Such a plan would enable the myriad of interrelated and complex issues relating to the renewal of this area to be dealt with in a co-ordinated way. A plan of this type would not simply deal with the form of development, but also identifies the type of services and infrastructure to be provided and how they would be provided. In this regard, we note that at Clause 21.03-2, the MSS requires ‘*the preparation of an Outline Development Plan (i.e. master plan) for Strategic Redevelopment Areas*’.
- 66 Clearly, there is no Outline Development Plan [ODP] master plan for the former PPWM area. The general direction for development is set out in policy. The extent to which there is specific guidance about what should happen in this area is set out in the provisions relating to the zoning of the land, which guides land use, and the DDO and HO which set out requirements with respect to new development and heritage.
- 67 The Advisory Committee was presented with a plan to be implemented under the Development Plan Overlay [DPO]. That plan suggested that about 451 new dwellings would be provided as part of the NPD’s overall proposal to redevelop the former PPWM area⁵. However, in its report, the Committee made it clear that it was ‘*not making a recommendation on any plans but providing advice to the Minister for a package of planning controls*’. The report makes it clear that the Committee did not consider a specific proposal⁶. Ultimately, the Committee concluded that the application of a DPO, as proposed by NPD, would not be appropriate because of the lack of ‘certainty’ in the plan presented and as such, it would not be appropriate to warrant exclusion of third parties as under the DPO, third party rights do not apply⁷.
- 68 Ultimately, the Committee concluded that the DDO is the appropriate mechanism to control development in this area. In doing so, the provisions of the DDO11, either as recommended by the Advisory Committee or as approved by the Minister and now in the planning scheme, do not require the preparation and or adoption of a master plan. Rather, the provisions of DDO11 set out design objectives to be met, as well as guidance with respect to matters such as building height, noise and application requirements. While the MSS suggests that an ODP be in place in Strategic

⁵ See Former Port Phillip Woollen Mills Advisory Committee Report, 10 May 2011, page 23.

⁶ See Former Port Phillip Woollen Mills Advisory Committee Report, 10 May 2011, page 32

⁷ Former Port Phillip Woollen Mills Advisory Committee report, page 144

Redevelopment Areas, there is no statutory requirement for such a plan to be in place either in the zone provisions or DDO11.

- 69 This may well have been different if an overlay control, such as a DPO, were in place. For example, the purpose of the DPO includes:

To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.

- 70 The provisions of the DPO then say:

A permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority.

- 71 Effectively, this requires the provision of a form of development or master plan for the area before a permit is granted. A similar requirement is set out in the Incorporated Plan Overlay [IPO]. These types of overlay are applied when the adoption of a master plan is a necessary precursor to development of individual sites within a given strategic area. These overlays are the 'implementation tool' to give statutory effect to the MSS policy which seeks ODP's for Strategic Redevelopment Areas.

- 72 While we accept that the MSS suggests a requirement for an ODP for Strategic Redevelopment Areas, the absence of such a master plan is not fatal as it is not required by the provisions of the scheme that trigger the need for a permit. While a master plan which provides overall guidelines for the area would be of assistance, we note the views of the Supreme Court in the case of *Harrod Hughes & Associates Pty Ltd v The Mayor, Councillors and Ratepayers of the City of Melbourne*, 8 AATR 85, Justice Gobbo stated (at page 90):

In my view it would be an abdication of the discretion that properly resides in an experienced Tribunal.....if it were to decline to exercise its discretion to grant a permit because to do so would be to create a forerunner or a "first of its kind" permit. If that approach would be adopted it would mean that Tribunals would never decide any case having a landmark quality because it could no doubt similarly be contended that it would be a case that should lend itself to more detailed guidelines so that the Tribunal would not make a forerunner decision and therefore make itself into a planning authority

- 73 Ultimately, we are satisfied that the policies in the scheme, the provisions for the zone and overlays that apply as well as the decision guidelines provide sufficient basis on which decisions can be made with respect to all the permit applications. The absence of a master plan is not a basis to refuse the permit applications.

Do the Mobil Tank farm and ships delivering fuel pose unacceptable risk to future residents?

- 74 Clause 2 of DDO11 specifies the design objective *‘to protect state-significant operations of the Williamstown Shipyard Site, the Gellibrand Tank Farm and the Port Of Melbourne’*.
- 75 The Council advises that the applications were referred to BAE, Mobil, WorkSafe, the Environment Protection Authority (EPA), Public Transport Victoria (PTV) and the Port of Melbourne Authority. Mr Testro summarises the responses received in his submission as follows:

24. No comments were received from BAE, Mobil or WorkSafe.
25. EPA responded by a letter dated 15 January 2013 indicating that it is not a statutory referral authority but offered comments. Those comments were limited to noise and the use of permit conditions to implement the EAO [Environmental Audit Overlay]. The EPA indicated that it has *“no objection to the issue of a permit”*, *“nor does it will to attach conditions to any permit that may issue”*.
26. PTV replied by way of letter dated 7 December 2012 (a copy of which is attached to its statement of grounds). It responded that it did not object to the grant of permits subject to the imposition of conditions specified by it. Those conditions have been carried forward into draft conditions or the conditions in the Notice of Decision.

However it should be noted that the only proposal which triggered a Scheme referral to Public Transport Victoria is in relation to the Oriental Hotel redevelopment, it proposing 60 or more dwellings so as to trigger the Clause 52.36 Planning Scheme referral. In the case of the other three proposals, the notification to PTV was merely a section 52 Planning and Environment Act notification which brought a lesser status for PTV’s response in relation to those three Applications.

27. The Department of Defence responded although the Department is keen to ensure the long term viability of its facility at 60 Nelson Place Williamstown is not compromised by *“inappropriate development of surrounding areas”* where, in the past, land use conflict led to complaints and representations to have Defence activities modified or curtailed, the Department expressed the view that the proposal *“is of low risk/impact to Defence”* and that consequently *“Defence has no objection to the proposal”*.
28. Port of Melbourne Authority responded by separate letters in relation to the various Permit Applications indicating that it took the view that *“the proposal is generally in accordance with Schedule 11 of the Design and Development Overlay within Hobsons Bay Planning Scheme. PoMC would like to advise that*

it won't provide any comment on the nature of this particular development application".

76 Ms Gaud submits that:

‘If the Buncefield experience were to be repeated at PT Gellibrand then all of Lots 1, 2 and 3 would be likely to be impacted. Significantly it is not only the petrochemical tanks with bunds which do have recognised buffer distances but other major hazards need individualised attention to properly determine by risk analysis just what is a reasonable buffer’.

77 In Ms Gaud’s view, whilst there may be a low probability of a major incident, the consequences of such an incident, particularly to nearby residents, could be high. In her view, residents are not capable of organising themselves in an emergency, in comparison to workers who fall under WorkSafe requirements.

78 The incident to which Ms Gaud refers to relates to an explosion at the Buncefield oil depot in Hertfordshire, on December 11 2005, leading to Europe's biggest peacetime fire. The outcome of the incident lead to extensive changes to a number of safety practices and land use planning considerations around major hazard facilities⁸. Ms Gaud refers in particular to the PADHI⁹ document to support her submission that a detailed risk assessment should be undertaken in relation to possible outcomes and likely impacts on the subject proposals, if an incident did occur a PT. Gellibrand.

79 Ms Gaud also provides a copy of a risk assessment undertaken in relation to PT. Gellibrand by Quantarisk Pty Ltd in April 1992 on behalf of the then Department of Labour (now Occupational Health and Safety Authority) believed to be a forerunner of WorkSafe. The report concludes:

The existing installations and associated materials handling do not meet the currently applied Occupational Health and Safety Authority risk criteria guidelines for either the individual or societal risk measures of cumulative risk of fatality’.

80 Ms Gaud and SWG submit two relevant clauses within the Hobsons Bay Planning Scheme for our consideration in determining the applications. They are one of the decision guidelines in clause 65 and the requirement for a risk assessment under clause 52.10.

81 The relevant decision guideline in clause 65 requires consideration, as appropriate, to:

The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

⁸ UK Health and Safety Executive – Planning Advice for Developments near Hazardous Installations (PADHI)

⁹ *ibid*

- 82 Clause 52.10 relates to uses with adverse amenity potential and, in particular, the design and location of industries and warehouses that may cause offence or unacceptable risk to neighbourhoods.
- 83 The proposed developments are for dwellings within the Mixed Use zone. Clause 52.10 therefore has no application to what is being proposed. No use is proposed that would have an adverse amenity impact. We are unable to impose requirements under different clauses of the planning scheme if those clauses are not relevant to the exercise of our discretion¹⁰.
- 84 SWG relies on the evidence of Mr Thomas who expresses the view that there should be a risk assessment relating to the whole of the PPWM site, not just in relation to the three lots. Mr Thomas is critical of the WorkSafe ‘Outer Planning Advisory Area’, suggesting that the United Kingdom PADHI should be used as a basis for considering where housing is constructed. PADHI refers to 400m buffer which he says extends approximately one third of the way into Lot 3. On this basis, he considers no housing should be permitted within this area.
- 85 In *Shell Company of Australia v Hobsons Bay CC & Ors*¹¹ the Tribunal stated:
- While the quantitative risk assessment (QRA) in Shell’s Safety Case and the summary of the United Kingdom’s Land use planning advice contained useful information about risk near the Newport Terminal, WorkSafe’s guidance advice was the most persuasive. WorkSafe’s guidance advice has been informed by the work done in the UK and unlike Shell’s QRA which had been prepared to guide Shell’s operations, it has been prepared specifically to guide land use planning for the local context using the experience and expertise of Victoria’s statutory authority for regulating Major Hazard Facilities.
- 86 The subject sites fall outside the ‘Outer Planning Advisory Area’ of the WorkSafe ‘Land Use Advisory Note’¹². They are, therefore, suitable for residential development. DDO11 adopts an advisory area extending beyond the 300 metre buffer set within the WorkSafe Advisory Note. Lots 1, 2 and 3, the subject of these applications, are well outside the advisory area of DDO11 as well as the 300m buffer distance.
- 87 Whilst Ms Gaud and SWG refer to the need to consider the whole of the PPWM site in relation to the major hazard facilities, we note the Advisory Committee considered the extension of the Buncefield incident to the larger tank farm is not so applicable to the PT. Gellibrand site. We note *‘The Buncefield research suggests that a similar explosion may generate a side-on pressure in the range of 5 to 8kPa at the NPD land. These pressures are generally described as causing damage varying from minor structural*

¹⁰ *National Trust of Australia (Vic) v Australian Temperance & General Mutual Life Assurance Society Ltd* (1976) VR 592

¹¹ (includes Summary Red Dot) [2012] VCAT 1184 at [16]

¹² September 2010, Annex Map 2: Gellibrand Tank Farm, Williamstown

*damage to partial demolition*¹³. In this respect, DDO11 requires consideration of *'whether the buildings located within the WorkSafe Outer Planning Advisory Area can withstand overpressure of up to 6kPa'*.

- 88 The Advisory Committee indicated it relies upon the views of WorkSafe *'the government agency that has responsibility for MHF's'*. The Advisory Committee concluded it *'therefore supports a reduced level of development within the WorkSafe 'outer area' being the eastern edge of the NPD site based on the information put to it on the potential impacts of an event at the Mobil PGTF'*.
- 89 It is significant that Lots 1, 2 and 3 do not fall within the 300m buffer area referred to by WorkSafe. Further, all lots are a considerable distance from the advisory area indicated in DDO11. Mobil or WorkSafe do not oppose the proposals on Lots 1, 2 and 3, nor has the Port of Melbourne raised any issues.
- 90 Given the above and the provisions of DDO11, we have doubts that the issues raised in relation to risk are matters for our consideration given the nature of the statutory controls in place. We note that the objectives of DDO11 include:

To discourage development in the WorkSafe Planning Advisory Areas that attracts or accommodates significant numbers of people and which cannot respond to an emergency.

- 91 The DDO11 provisions are clearly directed to considering proposals within the WorkSafe Advisory areas. The subject sites are outside these areas.
- 92 However, in any event, we have not been persuaded by the submissions and evidence that permits should not be granted due to risk associated with the MHF.

Will future residents be subject to unreasonable noise impacts?

- 93 Ms Gaud submits *'the plans fail to provide sufficient acoustic protection to prevent residents being complainants to the EPA against the shipyards and Mobil, thus jeopardising the continuance of important state and nationally significant industries'*.
- 94 Following the first part of the hearing, BAE requested that it be joined as a party to the applications. It was submitted by BAE, and accepted by the Tribunal upon BAE's joinder, that it had not received notice of the applications. Of concern to BAE is the imposition on it of requirements to comply with SEPP N-1¹⁴ in the event that new residents within the developments complain about noise emanating from the BAE site

¹³ Former Port Phillip Woollen Mills Report of the Advisory Committee – 10 May 2011

¹⁴ State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1)

- 95 Having been joined as a party, BAE reached agreement with the Council and NPD in relation to the wording of a condition regarding noise to be placed on any permits to issue. The agreed to condition provides:
- Each dwelling must be designed, constructed and maintained to ensure that it is protected from existing lawful industrial noise so that lawful noise levels received at the dwelling comply with:
- (a) the requirements of State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1). Where the nature of the dwelling is such that it is not practical or reasonable to undertake an outdoor measurement of the industrial noise level, the measurement point for a noise sensitive area must be indoors in accordance with SEPP N-1 Schedule A1, 4, The indoor adjustment shall be in accordance with SEPP N-1; and
 - (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.
- 96 Mr Burton is the only acoustic consultant to give evidence. Mr Burton observes in his report:
- The closest BAE buildings are either administration or storage/maintenance in nature and form near continuous barriers to a height of 3 levels. Existing three level townhouses are located on the western side of the intersection of Nelson Place and Ann Street, the Titanic restaurant is located at the corner of Nelson Place and Kanowna Street, the Mobil berth storage and transfer facility is located to the east and northeast of BAE Systems.
- 97 In relation to SEPP N-1, Mr Burton concludes, based on noise readings undertaken, that the noise levels from BAE at ground level are in compliance with SEPP N-1. Based on this and the assumption that there is only 1dB(A) variation between the existing residential properties on the western side of Ann Street and the eastern end of Lot 3, compliance will continue at least up to level 3 for the developments at Lots 1, 2 and 3.
- 98 Mr Burton makes various recommendations regarding glazing to the development proposals for Lots 1, 2 and 3 to be the equivalent of double glazing, with balconies facing Nelson Place to have solid balustrades and the use of solid timber or glass doors with acoustic seals. He also indicates that further attenuation measures could be undertaken for the development on Lot 3, if required.
- 99 Ms Gaud is sceptical of the agreed condition with BAE and submits there could be complaints from the residents regarding BAE's operations to the detriment of BAE.
- 100 We accept Mr Burton's evidence that, at present, BAE operations comply with the requirements of SEPP N-1 and that continued compliance is required. We find that the agreed condition appropriately requires the NPD

to ensure the SEPP N-1 levels are continued to be met at the buildings and that internal noise in accordance with DDO11 is to be 45dB.

- 101 Clause 5 of DDO11 requires that *'habitable rooms of new dwellings adjacent to high levels of external noise should be designed to limit internal noise levels to a maximum of 45 dB in accordance with relevant Australian Standards for acoustic control'*. The agreed acoustic condition requires pre-completion verification testing for dwellings, pre-occupation verification testing for dwellings and that these must be documented and submitted to the Council.
- 102 Ms Gaud submits that the agreed condition should contain additional requirements as follows:
- Each dwelling must be designed, constructed and maintained with *no balconies and no windows or doors of habitable rooms, which open to the outside of the building ...*
 - The requirements of SEPP N-1 applies *only in dwellings which have [with] no balconies and no windows or doors of habitable rooms which open to the outside of the building and no outdoor measurement of the industrial noise level can be taken...*
 - *The rating of glass required in external glazing;*
 - Reference apart from Williamstown Shipyard to *the Titanic Theatre Restaurant at 1 Nelson Place, Mobil MHF, ships on Port of Melbourne pier ...*
 - A section 173 agreement that the *external glazing will not be interfered with and if replaced at any time glass of the same acoustic rating be installed.*
- 103 Ms Gaud further submits the condition does not assist the operation of the 'Titanic' theatre restaurant. She states that since removal of buildings and fencing on the site generally, nearby residents raise concerns that that they can now hear noise from the foghorns and other noise devices emanating from the theatre restaurant during its simulation of the sinking of the Titanic. Ms Green, a resident in nearby Cecil Street, observes that she is now hearing an increased amount of noise from the industrial operations of Mobil and BAE.
- 104 SEPP N-1 relates to the control of noise from commerce, industry and trade. As the theatre restaurant has been surrounded by the industrial operation of the Port Phillip Woollen Mills, which sat between it and the nearby residents, it would seem there has been no issue with regard to noise emanating from its premises.
- 105 Mr Tweedie, on behalf of BAE, suggests the condition could include the reference to commercial noise. We note that Mr Burton concludes, as a result of testing, that the Titanic Ship Horn generates between 82dB(A) and

78dB(A) outside the dwellings on Lots 1, 2 and 3. In comparison, the BAE Shift Siren generates between 85dB(A) and 83dB(A) outside the dwellings.

- 106 If, therefore, the proposed dwellings on Lots 1, 2 and 3 are built with acoustic measures to ensure BAE continues to meet SEPP N-1 requirements and an internal noise 45dB(A) for apartments is achieved, we find it probable that noise generated from the operation of the Titanic theatre restaurant, being slightly less than the BAE shift siren, will be sufficiently masked to ensure the residents of the proposed dwellings on Lots 1, 2 and 3 will not be impacted.
- 107 We do not consider that acoustic conditions should be as specific as requested by Ms Gaud, nor do we consider there needs to be a specific reference to the use of double-glazing on windows as requested by Ms Green. We consider that the condition allows for all of these measures to be incorporated, as appropriate, together with other and newer types of treatment to protect residents from unreasonable noise.
- 108 We would, however adopt the wording of the condition, as suggested by Mr Tweedie, which refers to the 'existing lawful industrial noise' and to the 'existing lawful commercial noise'.

Can the road network accommodate traffic generated by the proposed developments?

- 109 The Council and the objectors express concerns about the impacts associated with increased traffic. They say that the proposed developments will result in unreasonable traffic impacts in the local area, congested roads and make emergency evacuation of the area difficult in the event that a catastrophic event occurs at the nearby Tank Farm. In particular, the objectors submit that the traffic impact should be assessed on a cumulative basis, that is, taking into account the redevelopment of the area as a whole.
- 110 We have before us 4 proposals for the redevelopment of three properties. As such, what we are required to do is to assess the traffic impacts associated with those proposals. Whether or not the traffic associated with those developments can be accommodated within the road network, which includes both existing and proposed roads, is the matter before us.
- 111 We had the benefit of expert evidence from two experienced traffic engineers, Ms Dunstan for the Council and Mr De Young for NPD. Both experts come to the same conclusion, that is, the traffic generated by the proposed developments can be accommodated.
- 112 We were not presented with any evidence to support an alternative conclusion. We have not been presented with any evidence to support the Council's view that the proposals will result in unreasonable impacts on Melbourne Road in the vicinity of the Newport Shopping Centre or any other part of Williamstown.

113 Based on the evidence and our experience, we find that the road network can accommodate the traffic generated by the proposed developments.

How much parking should be provided?

114 On application of the requirements of the table at Clause 52.06, Ms Dunstan and Mr De Young agree that the proposals present a shortfall of up to 28 visitor car spaces, 23 resident car spaces and 10 -12 for the commercial tenancies.

115 The Council is of the view that all required resident car spaces should be provided on site. NPD submits that the resident parking provision should be reduced for the apartment buildings as they include a number of smaller studio and one bedroom apartments.

116 Under Clause 52.06, one car space is required for each studio, one and two-bedroom dwelling. The apartment building on Lot 2 includes 83 dwellings, with one or two bedrooms. A total of 66 car spaces are proposed for the residents of that building. This leaves a shortfall of 17 spaces for residents, or 17 dwellings without a car space.

117 In the apartment building option for Lot 3, 51 dwellings one and two bedroom apartments are proposed. A total of 45 spaces are proposed for the residents of that development, leaving a shortfall of 6 spaces, or 6 dwellings without a car space.

118 No visitor parking is proposed, while on site parking for staff only is proposed for the commercial tenancies.

119 There are three issues to consider. Firstly, whether it is reasonable to have dwellings without a dedicated car space for residents. Secondly, whether it is appropriate to rely on on-street parking resources for visitors. Thirdly, whether the provision for staff parking only associated with the commercial tenancies is acceptable.

120 The objecting residents submit car parking within Nelson Place and Ann Street is well utilised by existing residents, local businesses including BAE, tourists and restaurant patrons. As such, they assert that there is a limited capacity for existing parking resources to cater for additional resident parking from the proposed developments. They support the Council's view that all required resident parking should be provided on-site. They express concern that the occupants of apartments for which car parking is not provided, will seek 'Resident Parking Permits' to allow them to park in nearby streets. They say this will increase parking demand in an area where there is pressure for on street spaces.

121 In Hobsons Bay, 'Resident Parking Permits' are issued to residents who live in a street that has timed parking restrictions. A vehicle displaying a resident parking permit is allowed to park in any permitted parking space within the section of the street specified on the permit and within the next nearest street. One visitor permit per household is also issued to residents

living in time restricted streets. A 'Ticket Machine Permit' can also be issued to residents to use at the Ticket Machine areas in Nelson Place and the Esplanade, Williamstown allowing the holders to park for free within the allocated time restrictions.

- 122 Parking in Nelson Place is generally controlled by short term (2P) and long-term (P) ticketed parking. Ann Street has a mix of unrestricted and short term parking which generally applies during business hours (9am – 5pm Mon – Fri). Parking in Cecil Street is 2P, Aitken Street 1P – 2P, Hanmer Street 4P – P and Kanowna Street 1P at the northern end during business hours, but otherwise unrestricted. Any new resident occupying a dwelling within one of the proposed developments is eligible to apply for a Resident Parking Permit, a Visitor Permit as well as a Ticket Machine Permit. Mr De Young suggests that the Council could change the requirements for these permits in line with the policies of a number of other municipalities where the residents of new development are not eligible for such permits. Ultimately, that is a matter for the Council as to how to manage on-street parking.
- 123 In relation to parking for residents of the proposed townhouse developments, we accept that the provision of two spaces per dwelling meets the requirements of Clause 52.06.
- 124 In relation to the apartment buildings, Mr De Young expresses the view that, having regard to ABS data, it is reasonable to require 1 space for each two bedroom apartment, 0.8 spaces for each one bedroom apartment, and 0.4 spaces for each studio. Applying these rates, the 66 spaces available within the apartment building for Lot 2 would be sufficient, as would the 45 spaces available in the apartment building option for Lot 3. Effectively, 23 apartments of the 134 proposed in these two developments, would not have a dedicated car space.
- 125 Ms Dunstan expresses the view that it is not reasonable to allow such a reduction. Ms Dunstan says a cautious approach should be taken on relying on ABS data as the effect of smaller dwellings within public housing development is unclear, particularly as those residents are less likely to be able to afford a vehicle. She says the inclusion of public housing or other aged person units within the sample would result in a lower demand figure. Ms Dunstan also rejects the assertion that there is good access to public transport. She expresses the view that while the railway station is within walking distance, the frequency of services is below that in inner Melbourne where dispensation of parking is more likely to be supported. Further, she notes that the supermarket and activity centre on Ferguson Street are 1-1.5 km away, thus making it more likely that residents would rely on car transport.
- 126 In relation to the applicability of the census data, Mr De Young and Ms Dunstan were given the opportunity to 'hot tub' or hold discussions before they gave evidence on this issue. On reviewing that evidence, what seemed

clear to us was that the data could be manipulated, depending on which information was included in the sample. However, in our view, the approach taken by Mr De Young, which seeks to exclude areas further away from the railway station, is more practical. In any event, the difficulty with the data is that it does not give clarity as to whether dwellings in the sample areas have access to an on-site car parking space.

- 127 We think that piece of information is quite important. Essentially, we find there is merit in the argument that if a car space is provided with an apartment, it is more likely that a future resident occupying such an apartment will own a car. However, if a car space is not provided, this is a factor that a future resident would take into account before purchasing or renting an apartment. In other words, it is more likely that a person who does not require a car will occupy an apartment without a car space.
- 128 However, as Ms Dunstan points out, in this area, Hobsons Bay policy would not prevent a resident without a car space from seeking a permit from the Council. We think, however, that it is unlikely that every apartment without a car space would be occupied by a resident seeking such a permit. Ultimately, this is a matter for the Council to manage. If such demand occurs it can be managed, if the Council wishes, by adopting the same approach as other municipalities who restrict the availability of such permits to residents of new developments where permission for reduced parking is granted.
- 129 There is strong policy support for sustainable development. Reducing dependency on cars contributes to the achievement of the outcome envisaged. We accept that by not providing car spaces for at least some apartments, this will have two effects. Firstly, the price of such dwelling will be less than those with a car space and, as such, be more affordable. Secondly, these dwellings provide a product that is suited to residents who do not own or want a car and are willing to rely on proximity to facilities and services, public transport (train, bus and taxi) and other modes of travel, such as walking and cycling. We note NPD agrees to a condition requiring the provision of a car share space as part of stage 1A of the development. This effectively allows for the provision of a car for hire, when and if required by a resident.
- 130 The three lots are approximately 1.5 km from the Williamstown Major Activity Centre (Ferguson Street) and between 400-600 metres from the Williamstown railway station. A bus stop is located outside the site on Ann Street. This bus service travels from Williamstown to Sunshine via Newport and Altona Gate Shopping Centre. Much was said of the public transport services with Ms Dunstan expressing the view that the site was not well supported by public transport with bus services being reduced at weekends and the need from train passengers to change at Newport to continue on to the CBD.

- 131 We disagree with Ms Dunstan and find that the area is well served by public transport. All three sites are within easy walking distance of the Williamstown railway station. A bus service runs along Ann Street. We accept that commuters may need to change trains, from time to time, to go to the CBD. However, during peak hours and for most times during the day, direct access to the CBD is available. We also accept that bus services are limited during the off peak periods and that, overall, the public transport services do not provide the same level of accessibility as other inner urban areas. However, it would be incorrect to say that they are poor. In our view, they are better than in many locations across Melbourne. We agree with Mr DeYoung, that it is reasonable to anticipate that some residents would be attracted to the proposed dwellings because of the proximity to fixed rail public transport and bus services, both of which are within walking distance.
- 132 Accordingly, we find that the proposed car parking provision for residents in all four proposals to be acceptable. To the extent that permission is sought to reduce the parking for residents, we find it is reasonable to do so.
- 133 Applying the requirements of Clause 52.06, the visitor parking demand generated by these proposals varies from 20 to 28, depending on which development option for Lot 3 is pursued. However, we note Ms Dunstan recommends the application of rates varying between 0.06 to 0.1 spaces per apartment given the scale and location of the proposed development. This equates to a visitor parking demand ranging from 8 to 14 spaces, again depending on which option for Lot 3 is pursued.
- 134 Ms Dunstan and Mr De Young generally agree that about 28 new on street car parking spaces will be provided within the NPD land arising from the new roads and removal of redundant crossovers and loading bays etc. While there is a dispute between Ms Dunstan and Mr De Young about the number of additional spaces that could be achieved through the efficient management of existing resources (e.g. through line marking), more cars can be accommodated within existing streets. Further, we note Mr De Young's evidence demonstrates the availability of on-street resources in the wider area. Given the above, we are satisfied that for these proposals, it is reasonable to waive the visitor parking requirement.
- 135 In relation to the commercial tenancies, we accept that the provision of two car parking spaces for the commercial tenancies is appropriate given the small size of the tenancies and their context. Ultimately, if a new use generating more car parking than a typical retail use is proposed, a new permit will be required under Clause 52.06 of the planning scheme to allow such use to commence with a reduced car parking provision.
- 136 We have also reviewed the car parking layout, both with respect to suggested changes and review of conditions. In general, we find the car parking layouts to be acceptable and, where necessary, we incorporate conditions to implement changes.

Will the proposed development have an adverse impact on tourism?

- 137 Tourism is important as it that generates economic activity and jobs. Policies within both the State and Local sections of the planning scheme encourage and support tourism as an element of economic development. The port area of Williamstown is one of Melbourne’s tourist destinations, attracting both local and international visitors.
- 138 The objectors assert that the proposed developments will have an adverse impact on tourism. The Oriental Hotel is identified in one submission¹⁵ as a tourist asset that forms part of the local history that attracts tourists to the area. Concerns are raised in other submissions that increased traffic and parking will also deter tourists from visiting Williamstown.
- 139 We are unable to conclude that the proposal will have adverse impacts on tourism. For reasons that we set out later, we find that the demolition of the Oriental Hotel is acceptable. The extent to which the hotel is to be demolished means that very little heritage fabric would be retained thus substantially compromising its heritage significance.
- 140 For reasons set out earlier, we find that the traffic and parking impacts of this proposal are acceptable. We do not accept that there will be an unacceptable impact on local tourism. Visitors to Williamstown will still be able to enjoy the port, Nelson Place and experience the heritage assets that are worthy of retention. The Britannia Hotel, which has been retained and renovated by NPD, is an example.

Should a condition requiring a Section 173 agreement be included on any permits?

- 141 The Council and respondent objectors submit that in the event that permits are granted, such permit should contain a conditions requiring NPD to enter into an agreement under Section 173 of the *Planning and Environment Act* 1987 with respect to a number of matters. The condition put forward by the Council requires the owner of the land to provide for :
- 10% of dwellings for ‘affordable housing’;
 - an infrastructure levy of \$900 per dwelling;
 - the provision of an area of 200sqm for community use;
 - an integrated art plan with art work to comprise 1% of the total project budget, and
 - improvements to the local road network and footpaths within and surrounding the site.
- 142 Ms Gaud, Ms Green and the SWG support such a condition. NPD opposes the condition submitting it is invalid and contrary to the provisions of section 62 (5) and (6) of the *Planning and Environment Act* 1987 (the PE

¹⁵ Submission by C Challis – read by Ms Green

Act). NPD also opposes the inclusion of most of these requirements, but has agreed to some.

143 We set out our findings with respect to each of the above matters.

Legislation

144 The matters which may be included as conditions on permits are set out in Section 62 of the PE Act. Sections 62(5) and (6) of the PE Act are as follows:

- (5) In deciding to grant a permit, the responsible authority may –
 - (a) include a condition required to implement an approved development contributions plan; or
 - (b) include a condition requiring specified works, services or facilities to be provided or paid for in accordance with an agreement under section 173; or
 - (c) include a condition that specified works, services or facilities that the responsible authority considers necessary to be provided on to the land or other land as a result of the grant of the permit be –
 - (i) provided by the applicant; or
 - (ii) paid for wholly by the applicant; or
 - (iii) provided or paid for partly by the applicant where the remaining cost is to be met by any Minister, public authority or municipal council providing the works, services or facilities.
- (6) The responsible authority must not include in a permit a condition requiring a person to pay an amount for or provide works, services or facilities except –
 - (a) in accordance with sub-section (5) or section 46N; or
 - (b) a condition that a planning scheme required to be included as referred to in sub-section (1)(a); or
 - (c) a condition that a referral authority requires to be included as referred to in sub-section (1)(a).

Is the requirement for the provision of affordable housing appropriate?

145 The Council submits that it is appropriate to include a requirement in the agreement that before commencing any work on the site, the owner must enter into an Agreement which provides for:

Not less than 10% if the dwellings approved for Stage 1A to be made available for affordable housing. For the purpose of this condition affordable housing means:

Not for profit housing that is owned and managed by community organisations and/or state owned public housing; and/or low cost housing options which ensure that the

households in the lower 40% of the income distribution scale do not pay more than 30% of their income on housing payments (e.g. mortgage and rent payments).

- 146 The definition of ‘affordable housing’ contained in the condition corresponds to the definition in the Council’s Affordable Housing Policy Statement¹⁶. The Council is of the view that having regard to the number of dwellings proposed over the whole of the former PPWM area, there exists an opportunity for affordable housing to be provided in line with the policy statement to:

Encourage at least 10% inclusion of affordable housing for low income households in all redevelopment sites identified in the Industrial Land Management Strategy as well as key redevelopment sites across the municipality.

- 147 The Council relies on Dr Scott Phillips’ evidence that there is a need for affordable housing due to higher property prices and rents in Williamstown. Dr Phillips is critical of NPD’s Social Impact Assessment (SIA)¹⁷, undertaken as part of the application. He says that the SIA does not accord with the Council’s SIA Assessment guidance document, does not employ best practice methodologies, relies only on statistics rather than stakeholder input, and focuses only on Stage 1A rather than the whole redevelopment of the former PPWM site.
- 148 We note that on receipt of NPD’s SIA, the Council did not ask for further information or for community consultation to be carried out. We understand that extensive community consultation was undertaken at the time of the former PPWM Advisory Committee’s considerations.
- 149 NPD submits the validity of the affordable housing requirement is far from certain and the Council is somewhat misguided. NPD submits ‘housing affordability’ issues in Williamstown are driven by the lack of housing stock which serves the needs of lower income earners. It is the lack of diversity that is the problem.
- 150 NPD relies on the evidence of Mr Weston who concludes that whilst the area is in proximity to the CBD, there is an existing lack of housing diversity. He says improving diversity assists in improving affordability.
- 151 Under the four proposals, 60 to 70 per cent of the dwellings comprise one bedroom dwellings with approximately 22-26 per cent two bedroom dwellings. The balance of the dwellings are larger townhouses. Mr Weston notes 2011 Census data indicates:

.....existing housing in Williamstown is comprised primarily of detached housing (64 per cent) and dwellings with two or more bedrooms (94.3 per cent). Dwellings with three or more bedrooms

¹⁶ Improved Housing Choices for Residents on Low Incomes (Affordable Housing) Policy Statement – adopted by Hobsons Bay city Council /02/11

¹⁷ Nelson Place Village Stage 1A Social Impact Assessment – Urbis – September 2012

comprised 66.7 per cent of all dwellings in Williamstown at the time of the last Census’.

- 152 Mr Weston further notes that to buy or rent a one-bedroom apartment would be 56 per cent and 40 per cent less expensive compared to buying or renting a two-bedroom detached dwelling in this locality. We interpret this to mean that smaller housing units, like those proposed in the apartment buildings, are more ‘affordable’ compared to other housing forms found in the locality.
- 153 Planning policy aspires to an outcome to achieve the provision of affordable housing¹⁸. However, without any specific reference within the planning scheme, in terms of a statutory control, it is difficult to see how such a requirement can be incorporated into these development proposals .
- 154 We agree with NPD’s submission that such requirements through a planning permit process is a cumbersome way of attempting to achieve a social housing objective and *‘invites as many problems as it purports to solve’*. Such an objective is, in our view, the responsibility of the State Government.
- 155 The wording of the condition is vague and uncertain and we agree with NPD’s submission that this is *‘no doubt mirroring the complexities associated with attempt to implement the objectives of the condition itself’*.
- 156 We agree with Mr Weston’s comments that *‘at present there is little to no government funding available to support social housing providers’* and *‘it would be rare for State Government or community housing providers to want to acquire housing on the open market’* tending to *‘prefer to develop their own housing stock’*.
- 157 The condition effectively requires part of each development to be set aside for ‘social housing’ to be run by not for profit housing associations or government. We were not advised of any ‘not for profit’ housing group, or state department, that supports the condition. We agree with NPD’s submission that, generally, these groups tend to develop their own housing to facilitate appropriate management. It is unclear from the material presented to us if there is any housing authority who would agree to purchase the 10 per cent of dwellings set aside for ‘social housing’ or even accept management of them.
- 158 We envisage difficulties in a Body Corporate situation, where one of these groups own a low proportion of dwellings. How will those dwellings be managed and what is the relationship with the owners of other dwellings under the wider Body Corporate?
- 159 The Council is not a housing authority, nor does it demonstrate any ability to be able to act in such a capacity. The question is therefore, if social housing is required, who will manage it?

¹⁸ See Clauses 16 and 21.07

160 It is unclear as whether the expectation is for NPD to provide the ‘affordable housing’ component at no charge. In *Merri Merri Developments v Darebin City Council*¹⁹, the Tribunal was confronted with a similar requirement. The Tribunal discussed what is meant by affordable housing. It came to the conclusion that:

We think that affordable housing generally means housing that is available at low cost so as to be affordable, whether for purchase or rental, by people of modest means. In that connection the studio/bed-sitting room accommodation in this proposal (particularly that to which no car parking space attaches) could be considered to be affordable housing. It is housing intended to be provided by a private developer and put on the market at what must be, at least comparatively, a low price.

161 In relation to the acquisition and management of housing of the type we think the condition in question intends to facilitate, the Tribunal in *Merri Merri* observed:

Whilst it might not be an exclusive definition, we would take public housing to mean housing provided by the government or a public authority such as the Ministry of Housing or the present day successor of the Housing Commission. If that is what is intended here, we must observe that there is no evidence that the relevant Minister or department has any interest in acquiring responsibility for the management, control, letting or sale of 14 or 15 dwellings in this proposed development. Indeed, the condition appears with no background or context, and no indication as to who is to be responsible, not only for those things, but for the cost of acquiring the units concerned. To put it mildly, there would be legal complications if what this condition contemplates is compulsory acquisition without just compensation.

162 We consider a condition requiring the provision of ‘affordable housing’ to be impractical and, as envisaged by the Tribunal in *Merri Merri*, fraught with legal complications. It would be difficult for NPD to comply with such a condition unless a ‘not for profit’ group or government department agrees to accept dwellings.

163 It is not an appropriate condition.

164 We agree with NPD that whilst not putting the specific label of ‘affordable housing’ on some of the proposed dwellings, the studio or one-bedroom dwellings will command a lower and therefore more affordable price in the market place compared to other larger apartments or town houses in Williamstown. We regard the provision of this form of housing to meet the intent of planning policy that encourages provision of affordable housing.

Is a Development Contribution Levy appropriate?

165 The Council also requires that the agreement provide:

¹⁹ (red dot) [2010] VCAT 1045

The owner is to provide an infrastructure levy of \$900 per dwelling based on the increased demand for services resulting from the projected increase in population growth as a result of the development. The levy is to be paid in stages upon issue of an occupancy permit for each stage of residential development.

- 166 The Council submits one of the decision guidelines of DDO11 is to consider *'the need for contributions to infrastructure improvements arising from the development'*. It is said the development for the whole of the PPWM area, not just Stage 1A, will substantially increase the number of residents accessing existing services. The Council submits that it is on this basis that the former PPWM Advisory Committee recommendation of a \$900 per dwelling levy, as set out in the version of DDO11 submitted to the Minster, be adopted.
- 167 The figure of \$900 was suggested by Mr Panazzo, a witness on behalf of Nelson Place Village Pty Ltd before the Advisory Committee. We understand from the Advisory Committee report, that this figure was dependent on a Development Contributions Overlay applying to the whole of the site²⁰. The amount of \$900 is referred to in the PE Act as the maximum amount for a Community Infrastructure Levy per dwelling in an approved Development Contributions Plan. However, no Development Contributions Plan applies to the subject sites.
- 168 SWG, as well as Ms Gaud and Ms Green submit that a wider assessment of not just the current proposals, but the future development of the whole of the former PPWM area should be considered in terms of community facilities. Ms Gaud, Ms Green and SWG consistently, throughout the hearing, refer to the proposed overall number of dwellings of 800 for the whole of the site and the likely impact that an influx of people, as a result of this higher density, would have on schools, medical facilities and other services, which they submitted is already near capacity. Ms Gaud suggests the increase in residents to the area, particularly children, would have an impact on the capacity of the existing childcare facilities and schools in the Williamstown area. In support of her contention, Ms Gaud refers to a SIA by Lynn Georgiadis which highlights child care, primary and secondary schools within the Williamstown area are near to capacity.
- 169 The near capacity of childcare facilities and schools within the Williamstown area is also highlighted in the Social Impact Assessment prepared by Urbis, as part of the application. The assessment, however, concludes that the *'demand for community facilities produced by the Nelson Place Village population will have negligible impact on services that are currently at capacity (kindergarten, child care and aged care beds)'*. This is based on the view that the development is likely to accommodate more people over 55 than children.

²⁰ Section 46L *Planning and Environment Act 1987*

- 170 Ms Gaud, Ms Green and SWG highlight the provisions of the decision guidelines in DDO11 regarding *'the need for contributions to infrastructure improvements arising from the development'*. Considering these requirements of DDO11 and in light of the increased number of residents over the whole of the site, SWG submits it is open for the Tribunal to require an infrastructure plan (or similar) as contemplated by DDO11 for the precinct as a whole. We do not agree.
- 171 We do not accept that the DDO11 requires consideration of the development of the whole of the PPWM area when looking at each individual proposal under DDO11. The opportunity to look at the whole of the site, its impact on services and infrastructure in terms of the wider Williamstown area and the incorporation of a master plan were not taken up by the Minister for Planning.
- 172 We are considering four proposals over three sites, two of which involve a modest number of townhouses. The Advisory Committee considered an amendment to the planning scheme that would apply over the whole of the site. The Advisory Committee's recommendations were not generally adopted by the Minister on this issue. While a decision guideline in DDO11 refers to the need for *'contributions to infrastructure improvements arising from the development'*, we find this relates to improvements arising from the need generated by a specific development proposal. As such, any contribution must accord with the requirements of Section 62(5) and (6) of the PE Act.
- 173 NPD also submits the Council has no power to impose such a requirement. There is no Development Contributions Overlay that affects the subject site. In opposing this requirement of the section 173 agreement, NPD submits it would not voluntarily enter into such an agreement²¹.
- 174 As highlighted by Deputy President Gibson in *Cameron Manor Pty Ltd*:
The Developer Contributions Review found that there may be situations where developers are willing to make payments or provide works, services or facilities which are not part of an approved development contributions plan. In order not to remove that opportunity, the ability for councils and developers to enter into a section 173 agreement to provide works, services or facilities or pay for them was retained in the revised version of section 62(5)(b).
However, Development contributions guidelines make it clear that such arrangements must be consensual and voluntary²².
- 175 The proposed \$900 contribution is not required under a Development Contributions Plan Overlay. The provisions of the planning scheme do not require such a payment. The recommendation found in the Advisory Committee report is not translated into the planning scheme. Its

²¹ *Curry v Melton SC* (2000) 111LGERA 30; *Cameron Manor Pty Ltd v Mornington Peninsula SC* (Red Dot) [2007] VCAT 1822; *Naprelac v Baw Baw SC* (Red Dot) [2005] VCAT 956

²² *Cameron Manor Pty Ltd v Mornington Peninsula SC* (Red Dot) [2007] VCAT 1822 at [24]

recommendation is based on the whole of the PPWM site. What is now before the Tribunal relates to only a small part of that area.

- 176 No evidence was provided supporting the view that there is any need for additional infrastructure works, services or facilities that would be specifically required as a result of one of the proposals under consideration. We are, therefore, unable to conclude that any of the individual proposals are of sufficient magnitude to generate the need for contributions. We will not include a requirement for a \$900 per dwelling contribution in the conditions.

Should an Integrated Art Plan be required?

- 177 The Council submits that the agreement should provide for an Integrated Art Plan, as set out below, given the scale of the development:

An integrated art plan in accordance with Condition [24] to provide a contribution to the street quality and sense of address for residents to the satisfaction of the Responsible Authority and that all work specified on the plan must be completed prior to occupation of the building to the satisfaction of the Responsible Authority. The plan must provide an overall intention of integrated art for the whole of the Former Port Phillip Woollen Mills site and also provide a detailed plan for Stage 1A. art work so comprise 1% of the total project budget.

- 178 The Council submits its Urban Design Consultant recommends the inclusion of an Integrated Art Plan to ensure the provision of art in public interface areas in each stage of the development. It is envisaged that the art work could be located in the communal open space areas in the form of furniture, graphics on walls or integrated into the architecture of the building/space²³.

- 179 NPD submits this is a somewhat onerous requirement given that it is proposing landscaping and undertaking road and road works internal to the site which will contribute to, and improve, the area as a whole.

- 180 Mr McGauran, in his statement of evidence, suggests an amount of 1% be applied to an Integrated Art Plan. He states:

In my experience with similar proposals and examples such as Melbourne Docklands, I would recommend to the Tribunal that a budget of 1% of the total project budget would provide for a sufficient outcome.

- 181 NPD disputes that the proposals justify a requirement for an Integrated Art Plan requirement, particularly if imposed via a Section 173 agreement. NPD submits that if there is to be a requirement, it should be no more than 0.5% of the value of the development and required under a standalone condition rather than through an agreement.

²³ Council Officer's Report to Special Planning Committee – 17 December 2012

- 182 There is no policy within the Hobsons Bay Planning Scheme that refers to or encourages Integrated Art for development sites within the municipality. This is in contrast with other planning scheme, such as Port Phillip²⁴. The amount of 1% appears to have no considered basis, other than Mr McGauran is aware such a percentage was applied in Melbourne Docklands, which is an area that is subject to different controls applying to it, compared to the sites the subject of the proposals.
- 183 We do not consider that the proposed developments require the imposition of an Integrated Art Plan requirement as proposed by the Council. There is no communal open space areas located within the proposals. The built form of the proposals for Lots 1, 2 and 3, whether in the form of town houses or an apartment building, ensure that there will be a contribution in terms of architectural interest to Nelson Place and the corner of Nelson Place and Ann Street. The proposed landscaping around the subject sites and along the newly created roads contributes to the streetscape and sense of address for residents. In the absence of a specific requirement in the planning scheme for such a contribution, we are unable to conclude that the requirement is appropriate.
- 184 We will not include a condition requiring ‘Integrated Art’.

Should an area be set aside for community use?

- 185 In relation to Lot 2 the Council proposes the inclusion of the following requirement in the agreement:

The owner is to set aside a minimum area of 200sqm for public use within the commercial tenancy area for community use and to be managed by Council.

- 186 We see no reason why there should be a requirement that 200sqm of the commercial tenancy proposed within the development of Lot 2 be set aside for use by the community or be under the care and control of the Council. We were not provided with any evidence justifying that such a requirement is necessary, appropriate or valid.
- 187 The provision on the ground floor of Lot 2 of commercial tenancies with interfaces to both Nelson Place and Ann Street will, in our view, provide for sufficient focus as a pedestrian meeting place to integrate with, or allow for community activity, without the need to impose a requirement that is vague and uncertain in its potential operation. We will not impose such a requirement on the permit for Lot 2.

To what extent should improvements to the local road network and footpaths be required?

- 188 A requirement for a peer review of the Transport Impact Assessment prepared by GTA Consultants dated 5 September 2012 and consideration of mitigation works in relation to bus movements in Ann Street is proposed

²⁴ See Clause 21.05-3, objective 1, strategy 1.5 Port Phillip Planning Scheme

under the Notices of Decision to Grant a Permit for the proposed apartments on Lots 2 and 3.

- 189 By letter dated 5 July 2013, the Public Transport Authority, who requests these conditions, indicates they are unnecessary and should be disregarded.
- 190 Ms Dunstan supports some upgrading of the bus stop opposite the site in Ann Street. She expresses the view that this would be the 'stop' used by residents commuting to the CBD or to Newport train station. A condition is already included that seeks to ensure that the bus stop in front of Lot 1 will not be compromised as a result of the development. We consider that it would be appropriate that the bus stop on the other side of Ann Street also be upgraded.
- 191 In the conditions for Lot 1, there is a requirement that a section 173 agreement include:

Improvements to the local road network and footpaths within and surrounding the site, improved pedestrian access to the Williamstown Railway Station incorporating a footpath on the western side of Ann Street to connect between Hanmer Street and Williamstown Railway Station, including to pedestrian facilities/pram crossings and improvements to bicycle racks at the Williamston Railway Station and street signage as required.

- 192 We agree that there should be improvement to the footpaths in front of the proposed developments on Nelson Place and Ann Street. We do not, however, consider that there is any need as a result of these proposals for improved pedestrian access to the Williamstown railway station or to bicycle racks at the Railway Station and street signage. There is no nexus between these requirements and what is proposed on Lots 1, 2 and 3.

Conclusion with respect to the requirements for an agreement under Section 173 of the *Planning and Environment Act 1987*

- 193 We find that the imposition of conditions requiring the owner of the land to enter into a section 173 agreement with respect to any of the matters set out above to be inappropriate, unjustified and unlawful. We will not include such conditions on any permits that may be granted in these proceedings.

Waste Collection

- 194 There is nothing about these proposals that would lead us to conclude that waste collection will be problematic. NPD accepts the inclusion of a condition requiring the preparation and implementation of a waste management plan to the Council's satisfaction for each proposal. This is an appropriate way to deal with this issue and we include such a condition on the permits granted.

Bicycle parking

- 195 Clause 52.34 requires the provision of bicycle parking facilities for development of 4 or more storeys. Specific provision for bicycle parking is

made in both apartment buildings while we would expect that bicycles will be stored in garages for the townhouses. Mr De Young's evidence is that the proposal makes provision for an adequate number of bicycle spaces which meet the requirements of Clause 52.34. He suggests, however, that bicycle parking facilities for visitors be provided either on-site in an area accessible to visitors, or on-street. The provision of bicycle parking spaces which meet the requirements of Clause 52.34 is acceptable. We agree with Mr De Young's view that visitor bicycle spaces should be in either an accessible area or on-street, to the Council's satisfaction.

Consideration of issues relating to each specific permit application

196 Having dealt with matters that are common with respect to all four proposals, we now turn our consideration to specific matters relevant to the individual proposals. As indicated earlier, we start by dealing with the proposal for Lot 2 relating to the demolition of the Oriental Hotel and proposed new apartment building.

Lot2

Should demolition of the Oriental Hotel be allowed?

197 The proposed demolition of the former Oriental Hotel building is, perhaps, the most controversial issue before us, and clearly one of the key matters to be determined.

198 The Council and the respondent objectors all submit that permission to demolish the former Hotel building should not be granted. In doing so, they submit the policies of the Hobsons Bay Planning Scheme clearly encourage and support the retention of local heritage buildings. They argue that the Oriental Hotel is an important part of local heritage because:

- It is the oldest remnant hotel building in Williamstown, existing in 1854;
- It contributes to the understanding of the prosperity which Williamstown enjoyed during the early phase of its development as a port town;
- It is a unique example of a three-storey hotel building, rare for the period;
- The Oriental Hotel forms part of a group of associated hotel buildings in the immediate area, namely the Prince of Wales²⁵, the Telegraph²⁶ and Britannia²⁷ all of which are on corners and there is a visual connection;

²⁵ Now known as the 'Titanic' theatre restaurant on the corner of Nelson Place and Kanowna Street

²⁶ Now used as a two storey dwelling on the corner of Ann Street and Aitken Street

²⁷ 14 Kanowna Street

- The Oriental Hotel has been used for a variety of purposes in the past which convey a story about Williamstown's development, and
- The Oriental Hotel is regarded as an asset to local tourism.

199 The Council and the objectors accept that the Oriental Hotel is in a poor state of repair. Nonetheless, they submit that the building is of such importance, that it should be retained, renovated and incorporated into the redevelopment of Lot 2. They do not accept that the condition of the building justifies its demolition. Rather, they assert that the building has been allowed to deteriorate to its current condition through inaction by NPD to take reasonable protective measures including basic maintenance of the roof and plumbing, boarding up broken windows and making it vandal proof. They submit that in the overall scheme of things, the estimated cost of renovating the building, of between 1.5 to 2.5 million dollars, is not onerous given NPD's lack of maintenance and the overall cost of the redevelopment of the former Port Phillip Woollen Mills area.

200 The respondent objectors also put forward the view that given the additional information which has emerged about the building, particularly the likelihood that it is Williamstown's earliest extant hotel building, its significance is elevated to state level. In this regard we note that an application has been lodged with Heritage Victoria to include the building on the Victorian Heritage Register [VHR].

201 The Oriental Hotel is subject to a site specific heritage control, HO211. The hotel is surrounded to the west, east and south by land also within HO8, which is known as the *'Government Survey Heritage Precinct'*. While it is arguable as to whether the land is in its own heritage overlay only or both HO211 and HO8, we agree with NPD's submission that from a practical viewpoint, the context of the Oriental Hotel requires consideration of any potential impacts on the significance of the *'Government Survey Heritage Precinct'*.

202 A permit is required under the provisions of the Heritage Overlay [HO] at Clause 43.01 to demolish the hotel building. In addition to implementing the policies of the planning scheme, the purpose of the HO includes to conserve and enhance heritage places of cultural significance, and to conserve and enhance those elements which contribute to the significance of the heritage place. The decision guidelines under Clause 43.01-4 require that consideration be given to a range of matters, most relevantly in relation to demolition to include:

The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.

Any applicable statement of significance, heritage study and any applicable conservation policy.

.....

Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.

203 As a general proposition, there is little doubt that the State policy encourages and supports the conservation and enhancement of heritage places specifically through the retention of *'those elements that contribute to the importance of the heritage place'* as well as the *'conservation and the restoration of contributory elements'*²⁸. Local policies express similar sentiments. The MSS calls for the protection and conservation of *'places of heritage significance in Hobsons Bay'* with the *'demolition of buildings, or works that contribute to the heritage place or precinct' to be avoided*²⁹. The local policy at Clause 22.02 seeks to ensure that the cultural significance of a heritage place is not diminished through *'the loss of fabric which contributes to the heritage place or precinct'*³⁰. While we have not set out all of the policies in detail, the extracts which we cite provide an appropriate sense of the general direction given by policy relevant to the issue of demolition.

204 However, it is also fair to say that local policy acknowledges and contemplates that there will be circumstances when demolition is appropriate. Such circumstances are set out in the policy at Clause 22.01 and include when the fabric to be removed is not significant, the fabric to be removed will not adversely effect the significance of the heritage place and/or the removal of some fabric assists the long term conservation of the heritage place. Further, it is policy to *'conserve heritage places and precincts by:'* [amongst other things]:

Discouraging the demolition of heritage places unless it can be demonstrated to the satisfaction of the Responsible Authority that the structural integrity of the heritage place has been lost;

Generally not accepting the poor condition or low integrity of a heritage place as justification for its demolition, particularly if in the opinion of the Responsible Authority the condition of the heritage place has deliberately been allowed to deteriorate;

205 In a report prepared by historians Lesley Alves and Associates³¹, the hotel is described as follows:

The former Oriental Hotel is a three storey stucco brick building, typical of the hotels built in the 1850s. It is situated on a corner site, but lacks the corner entrance commonly found on corner hotels. It has a single storey wing on the Ann Street frontage. The plain façade is relieved only by plain label courses above the windows. The veranda along the two frontages is a late addition to the building. Early photographs show parapets on both facades, which have been removed.

²⁸ See Clauses 15.03-1.

²⁹ See Clause 21.06-2

³⁰ Clause 22.01-1

³¹ Exhibit PA 3: Heritage Report 'Oriental Hotel', June 2012

206 The statement of significance for the hotel, as set out in the *Hobsons Bay Heritage Study*, Amended 2010 notes that the hotel is of local historic and aesthetic significance. The statement says:

Historically, the hotel is significant as one of a number along Nelson Place in proximity to the waterfront, which demonstrates their important role in the early development of the town and the importance of Nelson Place as the commercial heart of Williamstown during the mid to late nineteenth century. It also illustrates how hotels were upgraded following changes to the licensing laws during the late nineteenth century, which required hotel to have a certain number of rooms of minimum dimensions to be licensed. (AHC criteria A4 and D2)

Aesthetically, although altered, it is significant as a rare example of a three-storey corner hotel that relates to other similarly sited nineteenth century hotels in the Nelson Place and Government Survey Heritage Precincts (AHC criteria B2 and E1)

207 Subsequent to the above citation, Alves prepared a revised statement of significance as does Ms Lardner in her statement of evidence. While the Alves and Lardner statements of significance are not referenced in the planning scheme, none the less, their work expands on the knowledge and understanding of the hotel. In particular, their work supports the view that the hotel predates 1860 and, as such, is one of Williamstown's earliest hotels. The extract from a surveyors field book c.1854, provides strong evidence to enable us to conclude that the hotel building existed on Lot 2 at that time³². It is Williamstown's oldest extant hotel building.

208 The building has clearly undergone some alterations. Decorative fabric, such stucco mouldings, and ornamentation including the cornice, string courses and crowning pediments have been removed while some windows have been replaced. Ms Lardner expresses the view that although some of these features are removed, the hotel is substantially intact and displays high degree of integrity. Mr Lovell expresses the view that the changes to the building result in it displaying moderate intactness and integrity. Ultimately, we do not find the change to the building to be so significant to warrant demolition and, given the photographic evidence available, it is probable that appropriate reconstruction of decorative features could occur.

209 As noted in the Statement of Significance, the building's 3 storey height and proximity to other hotels in Nelson Place and the Government Survey Heritage Precinct contribute to its significance.

210 Accordingly, it is clear that the Oriental Hotel is of heritage significance. We also find that the hotel contributes to the significance of the Government Survey Heritage Precinct [HO8] as part of the fabric developed in the mid nineteenth century during a prosperous phase of Williamstown's development.

³² See Figure 5, Evidence Report of Peter Lovell, June 2013, page 11

- 211 The Statement of Significance for HO211 says that the building is of local significance. The revised Statements of Significance prepared by Alves and Lardner, do not elevate the significance of the building to higher than local. When invited to do so, Ms Lardner was unable to express the view that the significance of the building is higher than 'local'. While assisting the SWG with its application to include the Oriental Hotel on the VHR, Mr Thomas was also unable to express the definitive view that the building is of state significance and warrants inclusion on the VHR. We conclude that the building is of local significance. We place no weight on the application to Heritage Victoria. That application will need to run its course.
- 212 While we find that the building is of local significance, that does not in itself mean that it is not worthy of protection. The statement of significance, forming part of the 2010 heritage review sets out a clear basis to support retention of the Oriental Hotel.
- 213 The difficulty in this cases arises with respect to the condition of the building. It is common ground that the building is in very poor condition. There are, however, opposing views about the practicality of retaining the hotel given its condition. The Council and the respondent objectors submit the building is not so far gone as to warrant its demolition. They also contend that the condition of the building is due to NPD's neglect. They submit that NPD's lack of action to maintain the building should not result in it being rewarded by the grant of a permit for its demolition. In this regard, the Council and the respondent objectors point to the local policy at Clause 22.01 which does not support the grant of a permit in cases where the condition of the building has been deliberately allowed to deteriorate.
- 214 NPD agrees that the structural condition of the building is poor, however, it says that the condition of the building is so poor, that it is not practical for the building to be retained. It refutes claims that it allowed the building to deteriorate. It says the building was already in poor condition prior to it being purchased in 2005. In this regard, NPD refers to the findings of the panel on Amendment C34 to the planning scheme [April 2004] which considered, amongst other things, whether the Oriental Hotel should be protected under the Heritage Overlay.
- 215 The Amendment C34 panel did not recommend the inclusion of the Oriental Hotel in the Heritage Overlay. While the panel found that there had been '*severe structural deterioration of the building*', its recommendation was based on its finding that the building is not of local heritage significance³³.
- 216 Contrary to the panel's recommendation, Amendment C34 was approved with the Oriental Hotel within in its own site specific HO and as such, we must apply the planning scheme as we find it, that is, the hotel is covered by the Heritage Overlay.

³³ See Exhibit PA 4: Extract from Panel report, Amendment C34, April 2004, page 51

217 The report of the Amendment C34 panel is, however, instructive, in terms of its findings in relation to the condition of the Oriental Hotel in 2003. In this regard, the panel was presented with a report from consulting engineers, Wallbridge and Gilbert³⁴. The panel noted that the engineers report identifies the following structural deficiencies:

The existing footings are founded on highly or extremely reactive clays which will continue to generate movements in the building's walls.

The roof drainage system is not functioning and water has penetrated the interior of the structure.

A combination of various factors has resulted in the foundations being over-wetted and over-dried, exacerbating the movement of the walls.

The brick walls are brittle and have generally cracked as a result of the excessive movement of the building's foundations.

Steel rods that have been provided to stabilise the building, have been pulled through the face of the walls and lost much of their effectiveness.

Parts of each floor are untrafficable and unsafe, due to ingress of rainwater and other structural failures.

The connections between the brick walls and the floors and roof, which normally provide bracing, have been weakened by the movement of the structure.³⁵

218 The above demonstrates that the building was in a poor state of repair in 2003 and that substantial remedial works would have been required at the time. Even in 2003, the works required to maintain the Oriental Hotel would have been substantial and expensive. We think that the parties who assert that NPD failed to adequately maintain the building, have not properly taken into account the condition of the building when it was acquired, or the magnitude of the works required to maintain it. The correction of structural problems to stabilise walls would have been difficult and expensive, just as they are now.

219 The need for substantial remedial works remains. There is a reasonably high degree of agreement between Mr Spano, Mr Halls and Mr Sheldon that substantial works would be required. A significant structural problem with the building relates to the freestanding nature of external walls. Floor and ceiling joists do not provide for satisfactory retention of the walls, cross walls appear to have broken away from the external walls and tie rods that were put in place are no longer effective. We have doubts that the roof provides satisfactory structural retention of the external walls.

³⁴ See Exhibit PA12: Report of Wallbridge and Gilbert, '55 Nelson Place, Williamstown', 13 October 2003

³⁵ Panel report, Amendment C34, April 2004, page 49

- 220 It is clear that the roof of the building requires replacement, not simply to be repaired. It is also clear that the internal areas of the building are ruinous and require total replacement.
- 221 Ms Lardner suggest that even if the roof is replaced and new internal areas are constructed, the remnant building, the external shell of walls, is still worthy of retention. It could easily be argued that a redevelopment proposal which simply retains the outer shell of the building amounts to a form of *facadism*, an approach which, by and large is not, in our experience, encouraged.
- 222 However, the evidence clearly demonstrates that the extant entire outer shell of the building cannot be retained in full, and perhaps not at all. Mr Spano agrees the southeast corner of the building is unsafe and in peril of collapse. What exists will need to be demolished and that part of the external shell reconstructed. Mr Spano also agrees that the condition of the front northwest corner of the building is also in such poor condition that it will also need to be demolished and reconstructed³⁶.
- 223 Mr Spano notes that the existing street walls lean outward. Diagrams presented by NPD³⁷ show the extent to which walls lean, in some cases more than 100mm from a true vertical alignment. We would attribute this lean to a number of factors including lack of structural support for the external walls as well as failure of the poor foundations. To retain external walls, substantial underpinning is required. However, we accept Mr Sheldon's proposition that this process is likely to be difficult given the condition of the walls and the nature of the work to be undertaken. It is likely that the walls would be further damaged during the underpinning process and they may possibly collapse.
- 224 Even if the underpinning is successful, the reality is that the vast majority of the fabric of this building must be removed, far more than envisaged by Ms Lardner. We conclude that the extent of fabric to be removed is so great, the heritage value of the remnant building is severely compromised. It would no longer be a heritage building *per se*, but essentially, a largely brand new building incorporating a limited amount of the fabric of the 1854 hotel. Such a building would be of limited, if any, heritage value.
- 225 We therefore conclude that, in the circumstances, permission should be granted for the demolition of the Oriental Hotel. We accept that the hotel is of local significance. If the hotel were in reasonable structural condition, it could be incorporated into a new development on Lot 2. However, the building is in poor structural condition. The structural problems with the building predate its acquisition by NPD. To correct structural problems, the vast amount of the building fabric must be replaced. This would severely compromise the heritage value of the building. We conclude that the extent

³⁶ Refer Exhibit PA21: Diagram by Mr Spano showing the section of external walls requiring demolition and reconstruction.

³⁷ See Exhibit PA17

of fabric which could be retained is insufficient to warrant retention of the building.

Is the proposed building acceptable in terms of its response to the context?

226 The proposed development for Lot 2 involves the construction of a 6-storey apartment building containing 83 dwellings and two commercial tenancies at ground floor level.

227 The Council submits that the proposed development represents an overdevelopment. It asserts that the proposal is seeking to maximise the level of development that can be achieved on Lot 2 by seeking to cram or 'shoe horn' too many dwellings onto the site.

228 The SWG submits that the proposed apartment building is inappropriate for this 'landmark' corner. It says that even if permission is granted for the demolition of the Oriental Hotel, the proposed apartment building is inappropriate on heritage grounds as it would be visually dominant within the broader HO8 precinct site and its proximity to other heritage buildings such as the Prince of Wales and Telegraph Hotels. SWG submits that the height, bulk, scale and setback of a new building must be respectful of its context and the proposal fails to achieve this outcome.

229 With the demolition of the Oriental Hotel, the heritage context relates to the HO8, Government Survey Heritage Precinct. As noted earlier, the statement of significance for this precinct states that historically, the precinct demonstrates the most important and prosperous phase of the development of Williamstown which was directly associated with the port and later railways and industries. The statement goes on to say that the distinctive street layout, unusual and/or rare early building styles, major 19th century community and civic buildings, the unifying effect of Victorian and Edwardian era houses and early street construction are key elements of the precinct.

230 Ms Lardner expresses the view that the construction of a 6-storey building on Lot 2 would be contrary to the direction given by policies in the scheme. In this regard Ms Lardner notes that at Clause 21.06-2, the MSS objectives include:

Ensure that new buildings or works do not visually dominate or cause detriment to the heritage significance of the broader heritage place.

231 A similar objective is set out at Clause 22.01-1:

To ensure new development does not visually dominate a heritage place or precinct.

232 The policy goes on to say:

New infill buildings, alterations and additions to existing buildings are visually recessive and compatible in scale, siting, design, form and materials with the character of the heritage place or precinct.

233 DDO11 objectives include:

To ensure that the height, scale, bulk and setbacks of new developments is respectful of the context of the area.

- 234 Ms Lardner expresses the view that a building of 6-storeys will be visually dominant on this 'landmark' corner with its height easily exceeding that of heritage buildings near to the land and the broader HO8 precinct.
- 235 We agree that the heritage issue with the proposed new building is whether it will adversely affect the significance of the heritage place comprising the HO8 precinct and the most proximate heritage buildings, that is, the Prince of Wales and Telegraph hotels.
- 236 The context of Lot 2 is relevant in this regard. As noted by Mr Lovell and Mr Raworth, the subject land is not within a relatively intact heritage streetscape. On the contrary, the immediate context around Lot 2 is absent of heritage value. Lots 1 and 3, located immediately adjacent to the land comprise vacant land and as such, do not support any heritage fabric. The BAE shipyards building on the opposite side of Nelson Place is modern, presenting what some might describe as a 'brutalist' style. Modern buildings exist to the northwest while directly to the west, on the opposite side of Ann Street, new townhouse style dwellings of contemporary design have been recently constructed. In our view, the immediate surrounds around Lot 2 lack heritage context.
- 237 The most proximate heritage buildings are the two former hotel buildings, however, they are both some distance from the land. The former Prince of Wales hotel is about 130 metres from the subject land, while the Telegraph is about 50 metres away. These are substantial distances and result in a building on Lot 2 being set well away from them. As such, the proposed 19.5 metres high apartment building will be well separated from the most proximate heritage buildings. When the two hotels are viewed from their primary vantage points, say directly opposite, the proposed building will also be seen, but given the distance, it will be a recessive element in the view shed. This is important in terms of considering the appropriateness of the height of the building. There are many heritage buildings which support tall elements recessed back from the primary facades. A similar outcome would be achieved here.
- 238 Given the nature of the context, particularly the degree of separation from buildings of heritage value, we accept that the height of the proposed building is acceptable from a heritage viewpoint.
- 239 We also find the proposed building acceptable in urban design terms.
- 240 Clause 4.0 of DDO11 says:
- Buildings should be constructed generally in accordance with the indicative building heights specified in the Table to this schedule.
- 241 With respect to Lot 2, the table to DDO11 specifies an indicative building height of 19 metres and the following built form outcomes:

A prominent building which provides emphasis to the corner of Nelson Place and Ann Street.

A building which incorporates innovative façade articulation and limited sheer walls.

- 242 The provision of an apartment building at a height of about 19.5 metres is generally in accordance with the indicative building height set out in the table. 1. Mr McGauran is not critical of the architectural style or detailing of the building. As acknowledged by Mr McGauran, the height of the building accords with the requirements of DDO11. Indeed, the only concern which Mr McGauran expresses about the height and form of the building relates to his reliance on advice that the Oriental Hotel building should be retained on heritage grounds.
- 243 We find that the proposed building for Lot 2 is appropriate. It facilitates urban renewal that delivers increased housing diversity, affordability and density in Williamstown. It facilitates planning policy and the objectives of DDO11 in terms of increasing density and providing diverse and more affordable housing forms in this location. While the building contains smaller apartment forms, we do not agree with the Council that this results in a lack of housing diversity. This development seeks to introduce a new form of housing into an area where other forms of housing predominate.
- 244 The height and form of the building will make a positive contribution to the streetscape, with the height of the building providing an appropriate ‘marking’ of this corner. This is entirely consistent with the ‘built form outcome’ specified in the schedule which calls for a prominent building which provides ‘emphasis’ to the corner of Nelson Place and Ann Street. The contemporary design presents well articulated façades. The ground level of the building is designed to provide appropriate active interfaces with both Nelson Place and Ann Street and deals with issues such as slope in an acceptable way.
- 245 We find that the proposed building responds appropriately to its context.

Will the proposed apartments provide satisfactory amenity to future residents?

- 246 The Council submits that there are aspects of the design which result in apartments that do not provide satisfactory amenity for future residents. Relying on the evidence of Mr McGauran, the Council expresses concerns about apartments with rooms relying on ‘borrowed’ light from other rooms rather than having their own primary light source; small balcony spaces; bicycle parking provision as well as lack of adequate communal open space and storage areas.
- 247 We have considered the submissions and evidence on the daylight issue and have come to two conclusions.
- 248 Firstly, in a large apartment building, we consider it acceptable for it to incorporate some smaller apartments with bedrooms relying on borrowed light. We note that the *Guidelines for Higher Density Residential*

Development suggest that a reliance on rooms with borrowed light be avoided. It is desirable for all habitable rooms to have access to direct sunlight. However, various divisions of the Tribunal have found that the provision of apartments with internal bedrooms relying on borrowed light is acceptable in some circumstances. In this regard we note the Tribunals' comments in *PDG Corporation Pty Ltd v Yarra City Council*³⁸ where it said:

Nevertheless if we agree that the planning system's role is to consider the overall amenity of a dwelling then it is this approach which lead to Mr Hewet to conclude in *North & West Melbourne Association Inc v Melbourne CC*³⁹ that a single bedroom dwelling in which the bedroom relies on borrowed light is to be preferred over a bedsit dwelling notwithstanding the fact that no part of the bedsit relied on borrowed light. A judgement no doubt based upon the fact that a dwelling which provides separate living and sleeping spaces is to be preferred over one which does not.....

- 249 The Tribunal and Councils have accepted that the provision of bedrooms relying on borrowed light acceptable, in principle, as such apartments offer a particular product to the housing market which may be less expensive as well as one which provides better amenity than say, a traditional bedsit.
- 250 Having said this, Mr McGauran identifies opportunities to improve daylight access into bedrooms of some apartments, namely apartments 1.01, 3.13, 4.13 and 5.12 either by the reconfiguration of the apartment (1.01) or the provision of east facing windows. We consider that these changes are achievable and can be implemented by permit condition. We also accept Mr McGauran's evidence that it would be appropriate to reconfigure the layout of apartment 1.01 to provide the second bedroom with a direct external light source. Opportunities to do this clearly exist. We also agree with Mr McGauran's view that 1.06 should be modified to ensure that the second 'internal' room, shown as a 'study', is used for this purpose rather than a bedroom given the distance of over 7 metres from the primary light source. Screens capable of closing off this room, thus making it a bedroom, are shown on the plans. These screens should be deleted, or alternatively, the apartment reconfigured to ensure that the area is a 'study nook'. All these measures will enhance the amenity of the apartments referred and represent the preferable outcome with respect to them. We accept that some apartment will have better daylight access than others. However, this is not unusual within a large development. Overall we are satisfied that subject tot the above changes, the sunlight and daylight access to the apartments is acceptable.
- 251 We also note Mr McGauran's concerns about the size of balconies to some of the apartments. NPD agrees to increase the size of some (to apartments 1.08 and 1.11) while it resists increasing the size of others. By and large,

³⁸ [2009] VCAT 737

³⁹ [2002] VCAT 485

balconies with an area of 8 square metres with a minimum depth of 1.6 metres are typically required. This is the standard set out at in Standard B28 at Clause 55 which is typically applied. However, smaller balcony areas have been accepted for smaller apartments, like those at the ground level to this building, when they are associated with smaller single bedroom apartments. The ground floor balconies, which are slightly elevated, measure about 2.5m by 1.2m with an area of 3 square metres. Our concern is to ensure that the balconies have a reasonable degree of usefulness for future residents. Small balconies can be acceptable for some of the small apartments within a large development provided they have a minimum depth of 1.6 metres. This is to ensure that they can accommodate a table and say, two chairs. We propose to require the depth of the balconies to apartments G.01, G0.2 and G.03 to be increased to 1.6 metres. Subject to these changes we find the open space provided for apartments acceptable.

- 252 We do not agree that communal open space is required. The subject lots are well located near extensive open recreational spaces adjacent to the foreshore. We do not accept the view presented by the objectors that these open space resources should not count. The reality is that they are there and available for not only the local community, but also visitors from afar who visit Williamstown. It is unclear why the residents of these developments would not be able to use these spaces.
- 253 For reasons outlined earlier, we find the amount of parking to be provided satisfactory.
- 254 We find the bicycle parking provision adequate. We will include the condition suggested by Mr DeYoung in relation to the provision of a 5 extra bicycle parking spaces. We consider, however, that a storage area of at least 3 cubic metres should be provided, as a minimum for each apartment. NPD accepts the provision of a share car space as suggested by Mr McGauran. These are matters implemented by permit conditions.
- 255 On our assessment, we find that subject to changes to the development as set out above, including the matters agreed to be NPD, the proposed apartments provide satisfactory amenity.

Will the proposal result in adverse impacts on the amenity of the area?

- 256 We have also considered whether the proposal will have unreasonable impacts on the amenity of immediate neighbours and or the wider area.
- 257 The material before us supports the view that the proposal will not result in unreasonable impacts due to overshadowing, or potential loss of daylight, or loss of privacy due to overlooking. This is essentially because the site is well away from existing residential neighbours. Mr McGauran examined off site amenity impacts and does not raise concerns.
- 258 For reasons outlined earlier, we find the built form responsive to the context and appropriate to this site. The size of the building is in line with what is

envisaged under DDO11. The visual impact of the building, in terms of its prominence and ‘bulk’ presented is acceptable.

- 259 For reasons outlined earlier we also find that the proposal will not result in unreasonable traffic and parking impacts.
- 260 The proposal will not have unreasonable impacts on the amenity of the area.

Other matters

- 261 The development proposal provides for two retail/commercial tenancies. Under Clause 52.07, the provision of a loading bay is required. A permit can be granted to waive this requirement.
- 262 The proposal does not make provision for a loading bay. The proposal provides for two relatively small commercial tenancies. We accept the evidence of Mr DeYoung that it is reasonable to waive the requirement to provide a loading bay for two small commercial tenancies which are likely to be serviced by smaller commercial vehicles.

Conclusion with respect to Lot 2.

- 263 We find the demolition of the Oriental Hotel and the construction of the proposed apartment building to be an acceptable outcome for Lot 2. We will therefore set aside the Council’s decision in permit application no PA 1225056 and direct the grant of a permit.

Lot 1

Does the built form present an acceptable relationship with the Telegraph Hotel and the neighbourhood character?

- 264 The proposal involves the construction of seven townhouse style dwellings, 6 of which have a direct adjacency to Ann Street, with the remaining townhouse on the corner of the proposed Waterline Place and Merchant Lane.
- 265 The respondent objectors raise two key heritage issues with respect to the development proposed for this lot.
- 266 The first relates to the impact of the proposed development on the visual relationship between the Oriental Hotel and the former Telegraph Hotel building. Lot 1 lies within that part of Ann Street directly in between the two hotels. In light of our decision to allow demolition of the Oriental Hotel, this issue falls away.
- 267 The second issue relates to the relationship between the proposed townhouses and the Telegraph Hotel building. SWG submits the bulk, size, setback and height of the proposed townhouse building will visually dominate and limit views of the former Telegraph Hotel.
- 268 The Council generally accepts that the form and siting of the development to be acceptable, subject to some changes. It has approved the development

and issued a Notice of Decision to Grant a Permit. Condition 1 requires amendments to the application plans before a permit is granted. The change to the plans required by part (e) of condition 1 is the deletion of the top level of Townhouse 7 which is immediately adjacent to the former Telegraph Hotel. The Council argues that the condition is justified as it provides for a gradual transition between the former hotel and the proposed development. If not imposed, the Council submits the proposed development would, contrary to policy, dominate views of the hotel and be detrimental to its significance.

- 269 Ms Green submits the condition should be applied, at a minimum, noting that the Council's Heritage Adviser expressed the view that a 4 metre setback to the hotel should be provided. Ms Green submits a preferable outcome would be to provide the setback and allow for a landscaped open space area.
- 270 The former Telegraph Hotel is located on the corner of Ann Street and Aitken Street. It is within its own HO43 area, but like the Oriental Hotel, is also within the context of the wider HO8 area. According to the Statement of Significance for this hotel, it is of local historic, aesthetic and social significance to the City of Hobsons Bay. Historically and socially, *'the hotel is significant as an early hotel and representative of the development associated with the Port of Williamstown during its most prosperous period during the mid to late nineteenth century'*. Aesthetically the building is significant as a traditional early hotel while socially it is significant for its strong associations with the local community as a social centre and meeting place.
- 271 We heard evidence from various heritage experts, none of whom expressed the view that, in principle, the height, form, scale and architectural expression of the proposed townhouse development is inappropriate in relation to Ann Street. The key issue relates to the 'detail' of the interface between Townhouse 7 and the former Telegraph Hotel.
- 272 While the Council has imposed a condition requiring the deletion of the uppermost level of Townhouse 7, Ms Lardner expresses the view that it is the vertical metal elements and fin walls dividing apartments that are close to the frontage and therefore will be visually prominent in views of the hotel further down the street. Importantly, Ms Lardner did not express the view that the uppermost level should be deleted as required by Condition 1(e), rather she supports removal of the vertical elements and fins. In suggesting that a setback from the side boundary be provided, Ms Lardner says that this would provide opportunity for maintenance of the sidewall of the former Telegraph Hotel.
- 273 There are numerous examples of where new infill development exists hard against heritage buildings in the immediate context. In this regard, Mr Raworth points to the relationship of new modern townhouses with the Steam Packet and former Royal Hotel buildings.

- 274 The former Telegraph Hotel building is constructed to within about 500mm of the common boundary with Lot 1 and then continues along its Ann Street boundary to the corner with Aitken Street. Townhouse 7 is to be constructed to the common boundary. The proposed development is articulated by varying setbacks. At ground level, it is setback about 3.4 metres from Ann Street. At first floor level, a balcony and bathroom elements extend into the setback reducing it to about 2.1 metres to the balcony and 1.5 metres to the projecting bathroom. A further balcony is provided at second floor level with vertical elements reflecting the projection of the bathroom below.
- 275 The projections of concern to Ms Lardner are setback about 5 metres from the side wall of the former Telegraph Hotel. We agree with the evidence of Mr Raworth and Mr Lovell that the relationship is an acceptable one given the setback of the townhouses from Ann Street and the separation between the vertical element associated with Townhouse 7 and the former hotel. The main or primary view of the former Telegraph Hotel is from the Ann St/ Aitken Street corner. The proposed development will not intrude on this view. In relation to views down Ann Street toward the hotel, the proposed townhouses will be evident, but clearly distinguishable from the hotel. The setback to Ann Street is sufficient to allow for an acceptable appreciation of the former hotel. The height of the townhouses is compatible with the former hotel in overall terms and, given the setback of the upper levels from the street, an acceptable relationship results.
- 276 Ms Lardner suggests that the proposed townhouses should be setback to allow for maintenance of the hotel building wall. This is not appropriate as effectively, this assumes that trespass onto other private property is lawful and appropriate.
- 277 We find the proposal to be acceptable having regard to its interface with the former Telegraph Hotel. It will not dominate the hotel nor will it detract from its heritage significance. We will therefore delete Condition 1(e).
- 278 While we have given permission for the Oriental Hotel to be demolished, that does not mean that the hotel will be demolished, however unlikely that is. Accordingly, we also consider whether the interface with the hotel is appropriate.
- 279 Ms Lardner expresses the view that if the hotel stays, then Townhouse 1, should be setback away from the corner with Waterline Place to make it less dominant, to maintain the visual relationship with the other historic hotels (Prince of Wales and the former Telegraph Hotel).
- 280 Townhouse 1 would be well separated from the Oriental Hotel by the width of Waterline Place which is about 10 metres. Further, that part of the hotel which is of heritage significance, the 3 storey structure, is separated from Waterline Place by the non significant single storey extension. The degree of separation would be substantial. We also find that the height, setback and contemporary design of the building to be appropriate in terms of ensuring

that the built form between the Oriental Hotel and former Telegraph Hotel would read as modern fabric allowing the relationship between the two 19th century hotels to be read and understood.

- 281 Mr Green submits the proposed development is not acceptable having regard to the wider neighbourhood character. He suggests the development form comprising two-storeys, with front gardens, similar to the development directly opposite the site on the other side of Ann Street is appropriate.
- 282 In considering this issue, we note that the land is within an area earmarked for ‘urban renewal’, and in particular, for increased density. Under the table to DDO11, Lot 1 is within a local streetscape. The built form outcome envisaged under the table for Ann Street is:

Development which responds to the predominant streetscape and built form character of Cecil and Ann Streets.

A three storey street edge (10 metres) on Ann Street.

Dwellings to have a frontage to Cecil and Ann Streets.

Vehicle access from the rear of the site consistent with the existing dwellings on Cecil and Ann Streets.

- 283 The proposal clearly responds to the direction set by DDO11. This part of Ann Street is largely characterised by new development of contemporary design. The proposal is appropriately designed in a contemporary style. The overall height of the townhouses is about 10 metres. This is in line with the indicative height requirements of the table to DDO11. Dwellings have frontages to Ann Street. While one dwelling is on the corner of Waterline Place and Merchant Lane, this is acceptable as it provides an active interface to this proposed corner. Further, vehicle access is obtained via the new laneways. All these outcomes are appropriate for Lot 2 given the context. Mr McGauran and Mr Sheppard agree that the development proposed for Lot 1 is acceptable. The proposal is clearly an appropriate response to the neighbourhood character.

Other matters

- 284 There are two other matters relating to the proposed development of Lot1. The first relates to whether the garages should be setback further from Merchant Lane to facilitate acceptable vehicle access (condition 1(h)). The second relates to whether a section 173 agreement is required to ensure that the habitable area above the garages is not used as a separate dwelling (Condition 19(c)).
- 285 In relation to the access to garages, Mr De Young’s evidence includes swept path diagrams showing how the 85th percentile vehicle will enter the garages. As noted by Ms Dunstan, a corrective manoeuvre is required for a vehicle of this size. Ms Dunstan says that one corrective manoeuvre would usually be acceptable given the small number of dwellings, low traffic

volumes and two-way access. However, Ms Dunstan is concerned that Merchant Lane may become one-way if a neighbouring lot (Lot 6) is redeveloped in a way that requires vehicle access from this access way.

- 286 A small corrective manoeuvre is required for what is, essentially, a larger vehicle. As noted by Ms Dunstan, this in itself is not unacceptable given the nature of the development. We regard the concern about the possible future conversion of Merchant Lane to one-way to be somewhat speculative at this stage. We find the access arrangements satisfactory.
- 287 In relation to the potential use of the studios above garages for dwellings, NPD acknowledges that there may be potential for them to be used as separate stand alone dwellings. While it accepts that the potential for this to occur, it submits that this is appropriately controlled by a permit condition rather than in an agreement under Section 173 of the PE Act. We agree and include such a condition.

Conclusion with respect to Lot 1

- 288 We find the development proposed for Lot 1 to be acceptable. The form of the development has an appropriate interface with the former Telegraph Hotel and is in keeping with the character of the area and the provisions of DDO11. It will not have unreasonable impacts on the amenity of neighbours, while future residents will enjoy satisfactory amenity.
- 289 We will vary the Council's decision. A permit is granted for the development. However, the conditions set out in the Notice of the Decision to Grant a Permit are varied to take into account our findings.

Lot 3

- 290 There are two options for the redevelopment of this site, one for an apartment building containing 51 apartments (Option A), the other for a townhouse type development comprising 12 dwellings (Option B). Each option is the subject of its own permit application. We will deal with the matters relevant to each option separately.

Lot 3 - Option A: 51 Apartments

Is the proposed building acceptable in terms of its response to the context having regard to heritage and neighbourhood character?

- 291 The Council opposes the grant of a permit for this development on several grounds. It submits the proposal is contrary to policy and fails to respond appropriately to the interface with the Oriental Hotel. It expresses concerns about the degree of compliance with the *Design Guidelines for Higher Density Residential Development* with respect to its response to the context given its height which exceeds the indicative height under DDO11, and not providing satisfactory amenity for future residents in terms of protection of privacy, an appropriate parking layout, sufficient storage space and open space.

- 292 The SWG submits the proposed apartment building is out of context and does not represent a suitable interface and relationship with the Oriental Hotel.
- 293 It is clear that Council and objectors hold the view that the proposed apartment development would have an unacceptable relationship with the Oriental Hotel. With the demolition of the hotel, this issue falls away.
- 294 However, if the Oriental Hotel remains, Ms Lardner expresses the view that the proposed apartment building will be too dominant in the streetscape with such dominance emphasised as it will be on a corner with a proposed laneway.
- 295 We do not share this concern. While the proposed apartment building will be read in the same streetscape, nonetheless, the proposed building will not have a direct abuttal with the hotel. The heritage fabric of the hotel occupies the corner, not the entire length of the Nelson Place frontage to Lot 2. Again, we find that the degree of separation with the Oriental Hotel⁴⁰ and the Prince of Wales is sufficient to allow the new development to read as a modern infill, allowing the relationship between the hotels to be observed and understood.
- 296 From a heritage viewpoint, Lot 3 is within a streetscape in HO8 that is far from intact given the existence of vacant land and industrial buildings⁴¹. The introduction of a new apartment building in this context would not have an adverse impact on the significance of HO8. Given the context, it is to be expected that there would be a new modern infill development constructed on vacant land in this area given planning policy and the provisions of DDO11.
- 297 Under DDO11, Lot 3 is within an ‘Urban Edges’ streetscape. Under the table to DDO11, an indicative building height of 13 metres is envisaged. Relevant built form outcomes for this streetscape include:
- A hard urban edge to Nelson Place and Kanowna Street.
 - A predominant building height of 10 metres up to a maximum of 13 metres to allow for varying façade and roof forms.
 - Appropriate regard to the heritage characteristics of the former hotel on the corner of Kanowna and Aitken Streets.
 - Dwellings which have a direct street address with pedestrian access at street level.
- 298 Mr McGauran notes that although the total height of the building is 15.3 metres, inclusive of the lift overrun, the building is designed to have a parapet height presenting to Nelson Place of about 13.2 metres, with higher elements, such as the lift core and plant setback away from it. Mr McGauran concludes:

⁴⁰ This is shown in Figure 6 of Mr McGauran’s evidence report

⁴¹ Industrial buildings along Nelson Place have recently been demolished

From the plans it appears that the height of the building parapet, when combined with the positioning of the lift core, will effectively obscure the lift overrun, plant screens and roof access stair from view.

Therefore, in terms of what can actually be seen from Nelson Place at street level, the proposed development complies in my view with the objectives of the DDO11. I am comfortable with the approach and rationale taken by the Applicant in this instance.

- 299 Mr Sheppard notes that the proposed development responds to the varied and fine grain nature of Nelson Place, presenting a highly modulated form to the street. The building is also designed to achieve a degree of activation with the street.
- 300 We agree with the views expressed by both experts. The proposed apartment will sit comfortably within a new streetscape created as development that accords with DDO11 occurs. The height of the building is acceptable as it generally complies with the indicative building height specified in DDO11 for this streetscape. As noted by Mr McGauran, the incursions above the indicative height are setback behind the parapet and will not be seen at the street level.
- 301 The contemporary design, materials and presentation to the streetscape are all acceptable and meet the design objectives specified in DDO11. We find the building to be an acceptable form of infill into this streetscape.

Other matters

- 302 Mr McGauran raises concerns about some of the detailed aspects of the proposal. These include the potential for overlooking between apartments within the building and neighbouring Lot 2, the adequacy of storage, open space provision and adequacy of bicycle parking.
- 303 We accept that not all the apartments have balconies measuring 8 square metres. However, as per our discussion with respect to the development on Lot 2, we do not find that every apartment must have at least 8 square metres. On reviewing the open space areas, we note that they are well proportioned, usable and accessible from living spaces. We find the private open space acceptable.
- 304 Storage is provided within a dedicated area. While the size of the storage areas is not specified, it is clear that a sufficient number is provided, that is, at least one for each apartment. However, it is unclear as to whether the storage areas are at least 3 square metres, which we regard as the 'bottom line' in terms of size. We will include a condition requiring all apartments to have a storage area of at least 3 cubic metres.
- 305 NPD agrees to implement measures to overcome Mr McGauran's concerns about overlooking. This can be achieved through permit conditions.
- 306 We accept NPD's view that the bicycle parking is acceptable and easily meets the requirements of Clause 52.34 of the planning scheme. We note NPD agrees to provide additional bicycle parking spaces at the entry.

307 It is also clear from Mr McGauran's assessment that the proposed development will not have adverse impacts on the amenity of existing residential properties. That is not surprising as the subject land is some distance from existing houses.

Conclusion with respect to Option A for Lot 3

308 Overall, we are satisfied that a permit should be granted for the development of this apartment building. We will therefore set aside the Council's decision. The permit will include conditions as discussed at the hearing but incorporating further changes as set out in these reasons.

Lot 3 – Option B: 12 dwellings

Is the proposed building acceptable in terms of its response to the context having regard to heritage and neighbourhood character?

- 309 The second option for Lot 3 involves the construction of 12 townhouse style dwellings. The development comprises two banks of 6 townhouses with one bank with dwellings fronting Nelson Place, the other bank with dwellings fronting Waterline Place. A 5.8 metre wide centrally located driveway off a proposed new laneway provides access to garages and separates the two buildings. Most townhouses comprise three levels, although four fronting Nelson Place have the benefit of a fourth level. Overall, this building has a height of 13.5 metres.
- 310 The Council has approved this proposal, albeit subject to conditions. Ms Gaud and the SWG oppose the grant of a permit for similar reasons to their opposition of the other developments, as we have previously discussed in the 'common issues' section of these reasons.
- 311 In relation to specific concerns about the design of this proposal, we note that the heritage experts called to give opinions on the appropriateness of this development (Ms Lardner, Mr Raworth and Mr Lovell) agree that its form is acceptable. We accept their evidence and find the proposal is acceptable having regard to HO8 and the Oriental Hotel, in the event that it is not demolished.
- 312 We also note that Mr McGauran and Mr Sheppard agree that the development is also acceptable having regard to streetscape and character envisaged on application of the design objectives for DDO11. We agree with their evidence and find the proposed development acceptable in this regard.

Other matters

- 313 The only modification which we find is required to this development relates to the southwest corner of townhouse 12. We consider this townhouse should be modified to allow for adequate sightlines out of the car park for the development permitted on Lot 2. While we understand that this presupposes the redevelopment of Lot 2 as permitted, NPD has not given

indications that it does not intend to proceed with that proposal. As such, we consider it prudent to require the building to be setback or splayed at that corner to ensure acceptable sightlines.

- 314 We note that in response to matters raised by Mr McGauran, NPD is prepared to make some changes to improve balcony sizes, and reduce potential for overlooking between dwellings. We agree that the measures which NPD is prepared to implement are reasonable. We are satisfied that with these measures, satisfactory screening between dwellings and open space is provided.
- 315 We will therefore vary the Council's decision. A permit is granted subject to conditions as discussed in these reasons.

Conclusion

- 316 For the reasons set out above, we find that all four proposals are worthy of a permit. We grant those permit subject to conditions as set out in our order.

Jeanette G Rickards
Presiding Senior Member

S.R. Cimino
Member

APPENDIX A

PERMIT APPLICATION NO:	PA1225057
LAND:	Lot 1 of Stage 1A, 3-39 Nelson Place, Williamstown
WHAT THE PERMIT ALLOWS:	Construction of seven dwellings and reduction in car parking required under Clause 52.06 of the Hobsons Bay Planning Scheme generally in accordance with the endorsed plans.

CONDITIONS

- 1 Before the development starts, three copies of revised plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be substantially in accordance with the advertised plans but modified to show to the satisfaction of the Responsible Authority:
 - (a) A schedule of all external materials and finishes. The schedule must show the materials, colour (including two colour samples) and finish of all external walls, roof, fascias, window frames and paving (including car parking surfacing). The schedule must be altered to include:
 - (i) A lighter colour palette.
 - (ii) Wide framed joinery.
 - (b) The positioning of all plant and equipment (including air conditioning units, heating units, hotwater systems, etc) which is proposed to be located externally. Such plant and equipment must be positioned to prevent unreasonable noise and visual impact.
 - (c) The proposed landscape treatment of the site including the location of all existing and proposed species. An emphasis must be placed on maximising the use of native drought tolerant species. The landscape plan must include, but not be limited to, the provision of at least one advanced evergreen canopy tree within the front setback of Townhouses 3 to 7. A canopy tree must have a minimum height of 6 metres.
 - (d) A written notation on the plans stating electricity connections to the proposed dwellings are provided underground.

- (e) A report prepared by a suitably qualified structural engineer with heritage experience, outlining how the Telegraph Hotel (former) at 14 Ann Street, Williamstown will be protected and supported during the construction of the proposed dwellings. The report must include a schedule of works and methods used to ensure stability of the building.
 - (f) A minimum of 6 cubic metres of storage provided for each dwelling. The storage space provided must be separate to the space nominated within the garages for either rainwater tanks or bin storage.
 - (g) The front fences associated with each of townhouses 3 to 7 reduced to a maximum height of 1.2 metres.
 - (h) The Construction Management Plan amended to include the following:
 - (i) The treatment of dust to be in accordance with Condition 8 of this permit.
 - (ii) Detail on how construction and demolition will be managed on the site and opportunities for waste and litter minimisation.
 - (iii) A separate truck holding area from the construction car park to the satisfaction of the Responsible Authority.
 - (iv) A target recycling rate of 80% by weight (in lieu of 60%).
 - (i) Details of proposed mailboxes.
 - (j) Utility meters shown in locations that are easily accessible and appropriately detailed/located to achieve a high quality streetscape appearance.
 - (k) Submit details of wall construction between dwellings with the objective of minimising noise transmission between dwellings and utility areas.
 - (l) Details of any acoustic treatments required to achieve compliance with Condition 13.
- 2 The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
 - 3 Once the development has started, it must be continued and completed to the satisfaction of the Responsible Authority.

Waste Management Plan

- 4 Concurrently with the submission of amended plans in accordance with condition 1, a Waste/Recycling Management Plan must be submitted to and approved by the Responsible Authority. The Waste/Recycling Management Plan must be generally in accordance with the Plan submitted with the application but modified as follows:

- (a) Confirmation of whether Waterline Place is intended to provide one-way or two-way vehicle access and consequently where bins are to be collected from for townhouses 1 and 2 waste collection vehicles only be able to enter at Ann Street and exit onto Kanowna Street.

The owner and occupier and/or owners Corporation (s) of the site must ensure that the Waste/Recycling Management Plan approved pursuant to this condition is complied with to the satisfaction of the Responsible Authority.

Construction Management Plan

- 5 Concurrently with the submission of amended plans in accordance with condition 1, a Construction Management Plan must be submitted to and approved by the Responsible Authority. Once approved, the Construction Management Plan must be complied with to the satisfaction of the Responsible Authority.
- 6 All activities associated with the construction of the development permitted by this permit must be carried out to the satisfaction of the Responsible Authority and all care must be taken to minimise the effect of such activities on the amenity of the locality.
- 7 Except with the written consent of the Responsible Authority construction or demolition works must only be carried out between: 7am – 6pm Monday to Friday and Saturday 8am – 6pm. No work is to be carried out on Sundays, ANZAC Day, Christmas Day or Good Friday.
- 8 The owner must ensure that dust suppression is undertaken in the form of constant water spraying or other natural based proprietary dust suppressant to ensure that dust caused by vehicles moving along the truck route and within the site does not cause a nuisance to surrounding properties to the satisfaction of the Responsible Authority. The development must not have an adverse impact on existing or future air quality.

Architect supervision

- 9 The architect of the plans submitted with the application, or an alternative suitably qualified person approved by the Responsible Authority must be appointed for the duration of the project and oversee the implementation of the buildings and works associated with this permit to ensure the project is delivered to a reasonable standard of quality. Details of who is to be appointed to be submitted to the Responsible Authority for approval prior to the commencement of works.

Public Transport

- 10 The existing bus stops may continue to operate during construction, however if temporary stops in alternative locations are required, the temporary bus stop must be provided in consultation with, and to the satisfaction of Public Transport Victoria.

- 11 Before the occupation of the Stage 1A development, the line marking and bus stop alterations including all associated infrastructure, must be constructed in accordance with the endorsed plans, at a cost born by the permit holder and deemed compliant with the Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002, to the satisfaction of Public Transport Victoria.

Once the upgraded stops are operational, the temporary stops (if applicable) must be removed.
- 12 The owner must take all reasonable steps to ensure that disruption to bus operations along Ann Street and Nelson Place are kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to the bus operator and Public Transport Victoria 14 days prior.

Acoustic requirements for dwellings

- 13 Each dwelling must be designed, constructed and maintained to ensure that it is protected from existing lawful industrial noise so that lawful noise levels received at the dwelling comply with:
 - (a) the requirements of State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1). Where the nature of the dwelling is such that it is not practical or reasonable to undertake an outdoor measurement of the industrial noise level, the measurement point for a noise sensitive area must be indoors in accordance with SEPP N-1 Schedule A1, 4. The indoor adjustment shall be in accordance with SEPP N-1; and
 - (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.

Pre-completion verification testing for dwellings

- 14 Prior to completion of the development, before external glazing and doors are installed, noise measurements must be conducted by a qualified acoustical consultant to verify the proposed construction will ensure that existing lawful industrial noise received at the dwellings are capable of complying with:
 - (a) the requirements of State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1) in accordance with the above condition 13(a); and
 - (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.
- 15 If any additional remedial building treatment(s) or other work(s) are required to achieve compliance with the above acoustic requirements for

dwellings, such details must be provided to the satisfaction of the responsible authority and when endorsed will form part of the permit.

Pre initial occupation verification testing for dwellings

- 16 After construction and prior to the occupation of any dwelling, pre initial occupation acoustic verification testing must be conducted by a qualified acoustical consultant. The testing must verify that the design and construction of the dwellings is sufficient to ensure that the dwellings are protected from existing lawful industrial noise so that lawful noise received at the dwellings complies with:

the requirements of State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1) in accordance with the above condition 13(a); and

an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.

General requirements for pre-completion and pre initial occupation verification testing and reporting for dwellings

- 17 The pre-completion and pre initial occupation verification testing for dwellings must be documented in reports respectively containing the relevant data, time of collection, assumptions, including allowances for ensuring representative noise emissions from the Williamstown Shipyard Site and other industrial noise, details of any required additional remedial building treatment or other works necessary to achieve the compliance, the accreditation certificate of the consultant, and the result of the testing. Each report must be submitted to the responsible authority, and must be to the satisfaction of the responsible authority.
- 18 All remedial building treatments or works designed to achieve compliance with the above acoustic requirements for dwellings must be maintained on the dwellings at all times to the satisfaction of the responsible authority.

Landscaping

- 19 Prior to the endorsed plans being made available a bank guarantee or bond of \$3,500 must be lodged by the owner with the Responsible Authority to ensure the satisfactory establishment of landscaping works. Once landscaping has been completed in accordance with the endorsed landscaping plan, Council must be notified so that a site inspection can confirm the landscaping is compliant, and a 6 week establishment period will commence. The bank guarantee or bond will be returned after landscaping has been initially maintained for that period to the satisfaction of the Responsible Authority. After the establishment period, the landscaping must be maintained in accordance with the endorsed landscaping plan to the satisfaction of the Responsible Authority.

- 20 Prior to the occupation of the buildings hereby permitted, landscaping works as shown on the endorsed plans must be completed and thereafter must be maintained to the satisfaction of the Responsible Authority.

Sustainable Design Statement

- 21 Prior to the occupation, the development must be constructed in accordance with the Sustainable Design Statement (identified as Sustainable Design Statement, Application No. PA1225057, Lot 1 31 Nelson Place Williamstown (Former Port Phillip Woollen Mill) for NP Development Pty Ltd Dated: 15 August 2012, prepared by Arc Resources), to the satisfaction of the Responsible Authority.
- 22 The studios above the garages associated with Townhouses 4, 5 and 7 are not to be occupied separately to the main dwellings.

Public Roads

- 23 Public Roads adjacent to the dwellings approved must be constructed prior to the occupation of any of the dwellings.

Environmental audit

- 24 Prior to the commencement of the development allowed by this permit, the owner must provide:
- (a) A Certificate of Environmental Audit in accordance with Part IXD of the Environment Protection Act 1970; or
 - (b) A Statement of Environmental Audit in accordance with Part IXD of the Environment Protection Act 1970. A Statement must state that the site is suitable for the use and development allowed by this permit.

All conditions contained within the environmental audit must be complied with to the satisfaction of the Responsible Authority. Written confirmation of compliance with the conditions must be provided by a suitably qualified environmental professional or other suitable person acceptable to the Responsible Authority.

Where there are conditions on a statement of environmental audit that require ongoing maintenance, monitoring requirements and/or other obligations, the owner must enter into an agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act 1987, to implement the conditions of the audit. The Agreement must be registered on title prior to the commencement of the development or prior to any other date, event or construction phase approved by the Responsible Authority upon the request of the owner. The owner is responsible for all costs associated with the preparation and registration of the Agreement, including those incurred by the Responsible Authority.

Public realm works

- 25 Prior to a Certificate of Occupancy being issued by the relevant Building Surveyor the construction and drainage of Waterline Place and Merchant

Lane adjacent the subject site must be completed to the satisfaction of the Responsible Authority.

Car Parking and access

- 26 Prior to the occupation of the buildings hereby permitted, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
- (a) Constructed.
 - (b) Properly formed to such levels that they can be used in accordance with the plans.
 - (c) Surfaced with an all-weather seal coat to the satisfaction of the Responsible Authority.
 - (d) Drained and maintained to the satisfaction of the Responsible Authority.

Parking areas and access lanes must be kept available for these purposes at all times.

Engineering

- 27 Prior to commencement of the development the owner must prepare stormwater drainage design plans to the satisfaction of the relevant Building Surveyor. An application to Council must be made for a Legal Point of Discharge for the disposal of stormwater from the subject land and to determine the relevant Council standards for the stormwater drainage system design. An on-site storm water detention system will be required if the volume of stormwater exceeds the capacity of the legal point of discharge.
- 28 Any vehicle crossings must be constructed in the location shown on the endorsed plan to a standard satisfactory to the Responsible Authority. The relocation of any services including electricity poles, drainage pits, Telstra pits, fire hydrants and the like must be at the expense of the owner and approved by the appropriate authority prior to undertaking such works. Consent for such crossings must be obtained through Council's City Maintenance and Cleansing Department prior to construction.
- 29 Any alteration of soil level involving an increased or decreased level at the boundary must be retained by the provision of an adequate retaining wall, constructed of brick or masonry or other suitable alternative approved by the Responsible Authority, to buttress the soil against the possibility of shift. The construction of this retaining wall must be carried out by the owner. The retaining wall must remain in place whilst any increase or decrease level is present.
- 30 Before any construction or demolition works commence on the site, a secure fence must be provided around the perimeter of the site to prevent access to the site from unauthorized persons. This fence must be maintained for the duration of the construction and demolition, be a minimum height of

1.8m (or such alternative height as is approved in writing by the Responsible Authority), and be constructed to the satisfaction of the Responsible Authority. The gate or opening to the fence must be securely locked at all times when work has ceased on the site.

- 31 All basic services, including water, electricity, gas, sewerage and telephone must be installed underground and located to the satisfaction of the Responsible Authority.
- 32 The owner must meet the costs of all alterations to and reinstatement of, the Responsible Authority and other Public Authority Assets deemed necessary and required by such Authorities for the development. The owner is responsible for obtaining the prior specific written consent of the Council or other relevant Authority to such alterations and reinstatements and must comply with conditions required by the said Authority in relation to the execution of such works.
- 33 Prior to the occupation of the dwellings all redundant vehicle crossovers to Ann Street must be removed and the footpath, kerb and channel reinstated and made good to the satisfaction of the Responsible Authority at the cost of the owner.

Residential amenity

- 34 The dividing wall between dwellings must be constructed to limit noise transmission to the satisfaction of the Responsible Authority.
- 35 Provision must be made for a suitable structure or structures for receiving mail and newspapers. Such area must be kept clean and tidy. The structure must include separate provision for each unit to receive papers.
- 36 No more than one television aerial may be erected per building on the land without the written consent of the Responsible Authority.
- 37 All service pipes (excluding downpipes) must be concealed on exposed elevations to the satisfaction of the Responsible Authority.

Time

- 38 This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within two years of the date of this permit.
 - (b) The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the period in which to start the development if a request is made in writing before the permit expires or within six months afterwards.

The Responsible Authority may extend the period in which to complete the development if a request is made in writing before the permit expires or within 12 months afterwards and the development was lawfully started before the permit expired.

--- End of Conditions ---

APPENDIX B

PERMIT APPLICATION NO:	PA1225056
LAND:	Lot 2 of Stage 1A, 3-39 Nelson Place, Williamstown
WHAT THE PERMIT ALLOWS:	Demolition of buildings and works within the Heritage Overlay; use and construction of commercial tenancies (Shop/Food and Drink Premises); construction of multi-dwellings; construction of buildings and works (landscaping and road works); reduction in car parking requirements at Clause 52.06 of the Hobsons Bay Planning Scheme and waiver of loading/unloading requirements at Clause 52.07 of the Hobsons Bay Planning Scheme, generally in accordance with the endorsed plans.

CONDITIONS

- 1 Before the development starts, three copies of revised plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be substantially in accordance with the advertised plans but modified to show to the satisfaction of the Responsible Authority:
 - (a) Apartments 3.13, 4.13 and 5.12 modified to provide some access to eastern light to both the balcony zone and eastern façade of the living area, whilst preventing direct interface views to adjoining balcony areas and reconfiguration of Apartment 1.01 to provide daylight to the southern bedroom.
 - (b) Apartment 1.06 modified to ensure that the internal room is a ‘study nook’ and not a second bedroom.
 - (c) The depth of the balconies to Apartments G.01, G02 and G.03 increased to not less than 1.6 metres.
 - (d) The provision of at least 3 cubic metres of external storage for each apartment.
 - (e) Apartments 1.08 and 1.11 to have at least 8 square metres of private open space.

- (f) An increase of two car parking spaces in accordance with the evidence statement of Mr De Young dated 11 June 2013.
- (g) Swept paths submitted to ensure that vehicular access and egress will be convenient and safe for end bays/blind aisles, to the satisfaction of the Responsible Authority. Any modifications required to be to the satisfaction of the Responsible Authority.
- (h) All ninety-degree parking spaces excluding disabled bays with minimum dimensions of 2.6m by 4.9m with a minimum access aisle width of 6.4m.
- (i) All car spaces adjacent to walls to be a minimum width of 2.7m.
- (j) All support columns in the residential basements set back between 0.25m and 1.25m from the ends of the car spaces so as not to restrict manoeuvring or car door opening space, in accordance with Clause 52.06-8 of the Hobsons Bay Planning Scheme.
- (k) Ramp gradients and headroom clearance to comply with Australian Standards.
- (l) A 2.2m headroom clearance in the car parking areas between the floor and any obstructions.
- (m) Identification of parking spaces allocated to specific dwellings.
- (n) The building wholly contained within the title boundaries and any building protrusions set inside the title boundary accordingly.
- (o) All service pipes, (excluding downpipes) concealed on exposed elevations to the satisfaction of the Responsible Authority. Downpipes to be shown.
- (p) Details of the design of mail boxes drawn to a scale of 1:50; mailboxes to be integrated into the overall entry/foyer design, to be visually unobtrusive and secure together with space for newspaper delivery.
- (q) All common doorway's throughout the building to have a minimum 'clear' opening of 850mm as per AS1482.2 11.5.
- (r) All common corridors of residential apartments to be 1.5m wide (minimum) with localised widening wherever possible at the entries to doorways.
- (s) A notation on the plans stating that all entrances/exits and internal doors are to be in accord with Australian Standard AS1428.1 7 *Doorways, Doors and Circulation Space at Doorways*.
- (t) A notation on the plans that states the development will be constructed in accordance with the Australian Standard *1428 (2009) for Access and Mobility* to the satisfaction of the Responsible Authority in so far as it relates to the main entry foyer area and common corridors.

- (u) Utility meters shown in locations that are easily accessible and appropriately detailed to achieve a high quality appearance.
- (v) Details showing how it is intended to improve the visibility of the stairs to encourage the use of stairs over elevators.
- (w) A schedule of all external materials and finishes. The schedule must show the materials, colour (including two colour samples) and finish of all external surfaces including walls, balconies, roof, fascias, window and door frames, and paving (including car parking surfacing). All external window and door frames to be a wide-framed aluminium section and recessed into the surrounding wall. The schedule of external materials and finishes is to include, but not be limited to providing:
 - (i) Clear glazing and openings at the ground floor level retail frontages; a minimum 75% of each shopfront area must provide for unobstructed surveillance into the building from the exterior and vice versa.
 - (ii) All external window and door frames to be wide-framed aluminium section and recessed into the surrounding wall.
- (x) All air conditioning condenser units on the balconies appropriately screened from view.
- (y) The provision of 'service-ducts' from the retail area through to the roof of the building.
- (z) All roof top plant lift overruns, service entries, communication devices, television aerials and other technical attachments located externally to be treated as part of the overall design. This includes any kitchen flues required in association with the commercial tenancy. These facilities must be positioned to prevent unreasonable noise and visual impact.
- (aa) The positioning of all plant and equipment (including air conditioning units, heating units, hot water systems, etc) which is proposed to be located externally. Such plant and equipment must be positioned to prevent unreasonable noise and visual impact.
- (bb) Submit details of wall construction with the objective of minimising noise transmission between dwellings, and utility areas.
- (cc) Details of any acoustic treatments required under Conditions 20, 21 and 23.
- (dd) Sustainable design statement to be modified as follows;
 - (i) Water collected from rainwater tanks is to be used by toilets of the commercial tenancies.
 - (ii) Modification to the STEPs report and Storm report accordingly.

- (ee) Provision of adequate waste storage areas in accordance with the approved Waste/Recycling Management Plan required by Condition 8 of this permit.

Public realm works

- 2 All proposed public realm works including typical details for road and pedestrian pavements, landscaping, drainage details, lighting and street furniture. Works to be shown must be dimensioned and include treatment of the following:
 - (a) Nelson Place and Ann Street road reserves, including the continuation of street tree and pavement details to complement existing planting and pavement themes to Council's satisfaction.
 - (b) Undergrounding of power in Ann Street.
 - (c) Deletion of the proposed fixed furniture shown at the corner of Nelson Place and Ann Street to be replaced with an alternative consistent with Council's public furniture suite.
 - (d) Waterline Place, including replacement of 'crazy paving' with etched concrete and the eastern end of Waterline Place to allow for future two-way movement of vehicles.
 - (e) Merchant Lane.
 - (f) Identification of proposed accessible spaces compliant with current Disability Discrimination Act standards.
 - (g) Charcoal coloured concrete footpaths and kerbs.
- 3 The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 4 Once the development has started, it must be continued and completed to the satisfaction of the Responsible Authority

Archaeological survey

- 5 Prior to the commencement of works, a suggested procedure must be submitted explaining the process to be adopted in the event that an Aboriginal Heritage site is indentified, in accordance with the requirements of Aboriginal Affairs Victoria (AAV) and to the satisfaction of the responsible authority.
- 6 Before works are carried out that would significantly disturb the natural surface or subsoil of the land, a program of historical archaeological investigation must be conducted to the satisfaction of the Executive Director, Heritage Victoria (and in accordance with the provisions of Part 6 of the Heritage Act 1995) and Aboriginal Affairs Victoria (AAV).
- 7 Upon completion of demolition works, an information plaque must be embedded/erected on the wall of the new building at the cost of the owner to the satisfaction of the Responsible Authority which contains a brief written summary of the history of the former Oriental Hotel, the date of its

demolition as well as an image of the building representing its original form. The location of the plaque is to be to the satisfaction of the responsible authority.

Waste/Recycling Management Plan

- 8 Concurrently with the submission of amended plans in accordance with 1(ee), a Waste/Recycling Management Plan must be submitted to and approved by the Responsible Authority. The Waste/Recycling Management Plan must be generally in accord with the Plan submitted with the application but modified as follows:
- (a) A commitment not to collect rubbish on Councils' nominated rubbish collection day (currently Tuesday) so as not to conflict with Council's service.
 - (b) A commitment to have all residential waste collection occur from Waterline Place and for the collection vehicle to enter via Ann Street and exit via Kanowna Street (including the nomination of a designated collection point).
 - (c) Outline how waste will be transferred between the refuse room and Waterline Place.
 - (d) Resolve the inconsistency and ambiguity in the Waste Management Plan regarding bins left in public places. The Plan is to state that bins will not be left on public areas at any time.
 - (e) Compaction of refuse and the breaking up of bottles not occurring whilst the collection vehicle is standing stationary at or near the site.

The owner(s) and occupier(s) of the site and/or owners Corporation must ensure that the Waste/Recycling Management Plan approved pursuant to this condition is complied with to the satisfaction of the Responsible Authority.

Construction Management Plan

- 9 Concurrently with the submission of amended plans in accordance with Condition 1, a Construction Management Plan must be submitted to and approved by the Responsible Authority. Once approved, the Construction Management Plan must be complied with to the satisfaction of the Responsible Authority.
- 10 All activities associated with the construction of the development permitted by this permit must be carried out to the satisfaction of the Responsible Authority and all care must be taken to minimise the effect of such activities on the amenity of the locality.
- 11 Except with the written consent of the Responsible Authority construction or demolition works must only be carried out between: 7am – 6pm Monday to Friday and Saturday 8am – 6pm. No work is to be carried out on Sundays, ANZAC Day, Christmas Day or Good Friday.

- 12 The owner must ensure that dust suppression is undertaken in the form of constant water spraying or other natural based proprietary dust suppressant to ensure that dust caused by vehicles moving along the truck route and within the site does not cause a nuisance to surrounding properties to the satisfaction of the Responsible Authority. The development must not have an adverse impact on existing or future air quality.
- 13 Before any construction or demolition works commence on the site, a secure fence must be provided around the perimeter of the site to prevent access to the site from unauthorized persons. This fence must be maintained for the duration of the construction and demolition, be a minimum height of 1.8m (or such alternative height as is approved in writing by the Responsible Authority), and be constructed to the satisfaction of the Responsible Authority. The gate or opening to the fence must be securely locked at all times when work has ceased on the site.

Architect supervision

- 14 The architect of the plans submitted with the application, or an alternative suitably qualified person approved by the Responsible Authority must be appointed for the duration of the project and oversee the implementation of the buildings and works associated with this permit to ensure the project is delivered to a reasonable standard of quality. Details of who is to be appointed must be submitted to the Responsible Authority prior to the commencement of buildings and works.

Public Transport

- 15 Unless otherwise agreed in writing with Public Transport Victoria, prior to the commencement of works, plans to the satisfaction of Public Transport Victoria, must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must show:
 - (a) Upgrades to both existing bus stops on Ann Street, to the south of Nelson Place.
 - (b) Provision of a bus shelter to each stop, or alternatively a canopy providing all weather protection to passengers.
 - (c) Allocated space for wheelchairs within any bus shelters shown.
 - (d) Provision of bus stop identification line marking ('X' marked box) to identify each bus stop.
 - (e) Bus stop poles, flags and timetable cases to PTV's requirements for each stop.
 - (f) Access path and paved surfaces in line with the entrance and exit points of the buses with a minimum width of 1.2m.
 - (g) Provision of tactile ground surface indicators.

- 16 The existing bus stops may continue to operate during construction, however if temporary stops in alternative locations are required, the temporary bus stop must be provided in consultation with, and to the satisfaction of Public Transport Victoria.
- 17 Before the occupation of Stage 1A of the development, the line marking and bus stop alterations including all associated infrastructure, must be constructed in accordance with the endorsed plans, at a cost borne by the owner and deemed compliant with the Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002, to the satisfaction of Public Transport Victoria.
- 18 Once the upgraded stops are operational, the temporary stops (if applicable) must be removed.
- 19 The owner must take all reasonable steps to ensure that disruption to bus operations along Ann Street and Nelson Place are kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to the bus operator and Public Transport Victoria fourteen days (14) prior.

Acoustic report

- 20 Prior to the submission of amended plans in accordance with Condition 1, an acoustic assessment and report must be prepared by a suitably qualified acoustic engineer (the Acoustic Report). The Acoustic report must outline the nature of the assessments undertaken and must prescribe any mitigation measures or acoustic treatments required to protect the dwellings authorised by this permit from adverse noise impacts emanating from:
 - (a) Activities associated with the garbage chute and refuse room.
 - (b) Other apartments and neighbouring uses and travelling between or through the walls of the dwellings.
 - (c) Activities associated with the car parks generating noise which travels into the dwellings above, below and on the same floor level.

The report must be submitted to the Responsible Authority for approval.

- 21 Any measures or treatments recommended in the Acoustic Report, must be incorporated into the amended plans referred to in Condition 1 of this permit to the satisfaction of the Responsible Authority. All recommended measures or treatments must be constructed and implemented at the owner's expense to the satisfaction of the Responsible Authority prior to the occupation of the dwellings.
- 22 Any acoustic treatments/structures shown on the endorsed plan must be maintained at all times to the satisfaction of the Responsible Authority.

Acoustic requirements for dwellings

- 23 Each dwelling must be designed, constructed and maintained to ensure that it is protected from existing lawful industrial noise and existing lawful

commercial noise so that lawful noise levels received at the dwelling comply with:

- (a) the requirements of *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* (SEPP N-1). Where the nature of the dwelling is such that it is not practical or reasonable to undertake an outdoor measurement of the industrial noise level, the measurement point for a noise sensitive area must be indoors in accordance with SEPP N-1 Schedule A1, 4. The indoor adjustment shall be in accordance with SEPP N-1; and
- (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.

Pre-completion verification testing for dwellings

24 Prior to completion of the development, before external glazing and doors are installed, noise measurements must be conducted by a qualified acoustical consultant to verify the proposed construction will ensure that existing lawful industrial noise received at the dwellings are capable of complying with:

- (a) the requirements of *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* (SEPP N-1) in accordance with the above condition 23(a); and
- (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.

25 If any additional remedial building treatment(s) or other work(s) are required to achieve compliance with the above acoustic requirements for dwellings, such details must be provided to the satisfaction of the responsible authority and when endorsed will form part of the permit.

Pre initial occupation verification testing for dwellings

26 After construction and prior to the occupation of any dwelling, pre initial occupation acoustic verification testing must be conducted by a qualified acoustical consultant. The testing must verify that the design and construction of the dwellings is sufficient to ensure that the dwellings are protected from existing lawful industrial noise so that lawful noise received at the dwellings complies with:

- (a) the requirements of *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* (SEPP N-1) in accordance with the above condition 23(a); and
- (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.

General requirements for pre-completion and pre initial occupation verification testing and reporting for dwellings

27 The pre-completion and pre initial occupation verification testing for dwellings must be documented in reports respectively containing the

relevant data, time of collection, assumptions, including allowances for ensuring representative noise emissions from the Williamstown Shipyard Site and other industrial noise, details of any required additional remedial building treatment or other works necessary to achieve the compliance, the accreditation certificate of the consultant, and the result of the testing. Each report must be submitted to the responsible authority, and must be to the satisfaction of the responsible authority.

- 28 All remedial building treatments or works designed to achieve compliance with the above acoustic requirements for dwellings must be maintained on the dwellings at all times to the satisfaction of the responsible authority.

Street tree Management Plan

- 29 Prior to commencement of works, a Tree Management Plan prepared by a suitably qualified arborist must be submitted to the satisfaction of the Responsible Authority outlining how the street trees in Ann Street and Nelson Place (in front of the proposed lots 1 and 2) are to be protected above and below ground level during the construction period. When approved, the Tree Management Plan will form part of this permit. The Plan is to include the following:
- (a) Trees to be pruned to provide approximately one metre clearance to the proposed building on lot 2.
 - (b) A suitable Tree Protection Zone based on the recommendations contained in the Arborist Report prepared for Council by Homewood Consulting Pty Ltd dated 13 May 2013 with barrier fence established around the street trees on the Nelson Place and Ann Street frontages.
 - (c) The Tree Protection Zone enclosed using a 2 metre high temporary cyclone fence or similar, which must remain in place through all stages of the development. This fence must not enclose the footpath which must be kept clear for pedestrian access and a sign must be erected on the fence informing that the fence is a 'Tree Protection Zone'.
 - (d) Specify that parking of vehicles or storage of plant & equipment, materials, soil or waste is not permitted within the Tree Protection Zone area.
 - (e) Specify that no excavation is allowed within the Tree Protection Zone except with the consent of Council's Town Planning Department and under the supervision of a qualified Arborist.
 - (f) A radius of 1.5m from the trunk of the trees mulched to allow water and oxygen to penetrate the root system below and allow for healthy trunk growth.
 - (g) Replacement of some of the existing asphalt with permeable concrete or porous paving under the canopy away from the proposed building.

- (h) The engagement of a qualified aborist to determine whether any additional pruning required to allow for the erection of scaffolding is acceptable to ensure that the trees are not at risk of deteriorating health. Consideration to be given to scaffolding that goes over the top of the tree, enclosing the tree in a box like structure as this would cause less damage and require less pruning.
- (i) The health and condition of the trees to be monitored throughout the construction period by a qualified arborist.
- (j) Any excavation within the Tree Protection zone including the removal of footpaths will require a separate arborist report discussing the impact on the trees and identify specific measures to minimise any negative impacts to the satisfaction of the Responsible Authority.

Any measures recommended in the Tree Management Plan must be undertaken to the satisfaction of the Responsible Authority.

- 30 Prior to the occupation of the buildings hereby permitted, landscaping works as shown on the endorsed plans must be completed and thereafter must be maintained to the satisfaction of the Responsible Authority.

Sustainable Design Statement

- 31 Prior to the occupation of the development, the development must be constructed in accordance with the Sustainable Design Statement (identified as Sustainable Design Statement, Application No. PA1225060, Lot 2, 31 Nelson Place Williamstown (Former Port Phillip Woollen Mill) for NP Development Pty Ltd Dated: 15 August 2012, prepared by Arc Resources) as modified by Condition 1(dd), to the satisfaction of the Responsible Authority.

Environmental audit

- 32 Prior to the commencement of the development approved under this permit, or any other date approved by the Responsible Authority, the owner must submit to the Responsible Authority:
- (a) A Certificate of Environmental Audit in accordance with Section 53Y of the Environment Protection Act 1970; or
 - (b) A Statement of Environmental Audit (with or without conditions) in accordance with Section 53Z of the Environment Protection Act 1970 and must be conducted by an Environmental Auditor appointed under that Act. A statement must state that the site is suitable for the use and development allowed by this permit.

All conditions contained within the environmental audit must be complied with to the satisfaction of the Responsible Authority. Written confirmation that the audit requirements have been satisfied must be provided by a suitably qualified environmental professional or other suitable person acceptable to the Responsible Authority.

Where there are conditions on a statement of environmental audit that require ongoing maintenance and/or monitoring requirements, the owner must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987. The Agreement must be registered on title prior to the commencement of the development or prior to any other date, event or construction phase approved by the Responsible Authority upon the request of the owner. The owner is responsible for all costs associated with the preparation and registration of the Agreement, including those incurred by the Responsible Authority.

Green Travel plan

- 33 Before the development starts, an integrated travel plan (including a Green Travel Plan) must be submitted to the Responsible Authority for approval. The plan must facilitate and promote the use of sustainable transport modes (walking, cycling, public transport) in preference to private vehicle use, particularly for local and work trips and must include a share car space within Nelson Place in association with Stage 1A. The location of the share car space is to be to the satisfaction of the Responsible Authority. All costs associated with the construction, implementation and management of the car share vehicle are to be at the permit holder's expense. The space must be available for use prior to occupation of the dwellings hereby permitted or the dwellings approved in PA1225060, whichever is first occupied. When approved, the plan will form part of this permit. The plan must be implemented to the satisfaction of the Responsible Authority.

Public realm works

- 34 Prior to an Occupancy Permit being issued by the relevant Building Surveyor the Nelson Place public realm works, the construction and drainage of Waterline Place and the access Lane adjacent the site must be completed to the satisfaction of the Responsible Authority. This includes the construction of on street car parking spaces, lighting, landscaping and pavement works.

Car parking and access lanes

- 35 Prior to the occupation of the buildings hereby permitted, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must to the satisfaction of the Responsible Authority be:
- (a) Constructed.
 - (b) Properly formed to such levels that they can be used in accordance with the plans.
 - (c) Surfaced with an all-weather seal coat.
 - (d) Drained and maintained.

- (e) Line-marked to indicate each car space and all access lanes. The direction of traffic along the access lanes and driveways must also be clearly marked.
 - (f) Parking areas and access lanes must be kept available for these purposes at all times.
- 36 The car parking allocation as designated on the endorsed plan and referred to in Condition 1 must be complied with at all times and to the satisfaction of the Responsible Authority.

Engineering

- 37 Prior to commencement of the development the owner must prepare stormwater drainage design plans to the satisfaction of the relevant Building Surveyor. An application to Council must be made for a Legal Point of Discharge for the disposal of stormwater from the subject land and to determine the relevant Council standards for the stormwater drainage system design. An on-site storm water detention system must be provided if the volume of stormwater exceeds the capacity of the legal point of discharge.
- 38 Any vehicle crossings must be constructed in the location shown on the endorsed plan to a standard satisfactory to the Responsible Authority. The relocation of any services including electricity poles, drainage pits, Telstra pits, fire hydrants and the like must be at the expense of the owner and approved by the appropriate authority prior to undertaking such works. Consent for such crossings must be obtained through Council's City Maintenance and Cleansing Department prior to construction.
- 39 The entire development must be connected to the existing underground drainage and sewerage systems to the satisfaction of the Responsible Authority.
- 40 The owner must meet the costs of all alterations to and reinstatement of, the Responsible Authority and other Public Authority Assets deemed necessary and required by such Authorities for the development. The owner must obtain the prior specific written consent of the Council or other relevant Authority to such alterations and reinstatements and must comply with conditions required by the said Authority in relation to the execution of such works.
- 41 All service pipes, (excluding downpipes), must be concealed on exposed elevations to the satisfaction of the Responsible Authority.
- 42 All basic services, including water, electricity, gas, sewerage and telephone must be installed underground and located to the satisfaction of the Responsible Authority.

Residential amenity

- 43 The dividing wall between dwellings must be constructed to limit noise transmission to the satisfaction of the Responsible Authority.
- 44 Any security alarm or similar device installed must be of a silent type.
- 45 No television aerials other than shown on the endorsed plans referred to in Condition 1 of this permit are permitted to be erected so that they are visible from beyond the perimeter of the site.
- 46 Equipment, services and architectural features (other than those shown on the endorsed plan) must not be above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.

Commercial use

- 47 Tenants associated with the commercial businesses must make satisfactory arrangements for all litter including food wrappers and containers to be cleared away from the land on a regular basis to the satisfaction of the Responsible Authority.
- 48 The kitchen exhaust system must be installed and maintained to the satisfaction of the Responsible Authority so as to prevent the emission of unreasonable odours from the premises.
- 49 Provision must be within each tenancy for storage of trade wastes and garbage and such areas must be screened from public view to the satisfaction of the Responsible Authority.
- 50 No goods, packages, waste refuse or other material shall be stored and or/left exposed outside the premises as to be visible to the public to the satisfaction of the Responsible Authority.
- 51 All retail tenancies must at all times maintain an active frontage at ground level in such a manner that allows views into and out of the building to the satisfaction of the Responsible Authority. A minimum of 75% of the shopfront area must provide for unobstructed surveillance into the tenancy from outside and vice versa. Signage, shelving, blinds, displays, awnings or similar must not be located in a manner that prevents views into the building in accordance with this condition.
- 52 The amenity of the area must not be detrimentally affected by the use or development for any reason including through the:
 - (a) Transport of materials, goods or commodities to or from the land.
 - (b) Appearance of any building, works or materials.
 - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - (d) Presence of vermin.
 - (e) Construction activities.
 - (f) Hours of operation of the commercial uses.

(g) Presence of graffiti.

- 53 The collection of refuse associated with the commercial uses must be occur in a manner so as not to adversely affect the amenity of the area through the emission of noise or vibration.
- 54 The site must be kept in an ordered and tidy state and its appearance must not prejudicially affect the amenity of the area.
- 55 Any security alarm or similar device installed must be of a silent type.
- 56 Music emanating from the commercial premises must comply with the State Environment Protection Policy N-2 'Control of Noise from Public Premises'.
- 57 Mechanical noise emanating from the commercial premises must comply with the State Environment Protection policy N-1 'Control of Noise from Commerce, Industry and Trade.'
- 58 No sound or amplified equipment or loudspeakers shall be installed so as to be audible from outside the commercial premises.

Time

- 59 This permit will expire if one of the following circumstances applies:
- (a) The development is not started within two years of the date of this permit.
 - (b) The development is not completed within four years of the date of this permit.
 - (c) The use is not commenced within four years of the date of this permit.

The Responsible Authority may extend the period in which to start the development if a request is made in writing before the permit expires or within six months afterwards.

The Responsible Authority may extend the period in which to complete the development if a request is made in writing before the permit expires or within 12 months afterwards and the development was lawfully started before the permit expired.

End of conditions

APPENDIX C

PERMIT APPLICATION NO:	PA 1225059
LAND:	Lot 3 of Stage 1A, 3-39 Nelson Place, Williamstown
WHAT THE PERMIT ALLOWS:	Construction of twelve dwellings and reduction in car parking required under Clause 52.06 of the Hobsons Bay Planning Scheme generally in accordance with the endorsed plans.

CONDITIONS

- 1 Before the development starts, three copies of revised plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be substantially in accordance with the advertised plans but modified to show to the satisfaction of the Responsible Authority:
 - (a) Modification of the southwest corner of Townhouse 12 to provide for adequate sightlines out of the car park in the development on Lot 2, Stage 1A.
 - (b) A schedule of all external materials and finishes. The schedule must show the materials, colour (including two colour samples) and finish of all external surfaces including walls, roof, fascias, window frames and paving (including car parking surfacing). All external window and door frames to be a wide-framed aluminium section and recessed into the surrounding wall.
 - (c) The positioning of all plant and equipment (including air conditioning units, heating units, hotwater systems, etc) which is proposed to be located externally. Such plant and equipment must be positioned to prevent unreasonable noise and visual impact.
 - (d) The proposed landscape treatment of the site including the location of all existing and proposed species. An emphasis must be placed on maximising the use of native drought tolerant species. The landscape plan must include but not be limited to species selection in accordance with Hobsons Bay Plant Selections for Commercial and Industrial Premises 2007. Planting locations and type should be selected for durability, ease of maintenance, to provide aesthetic quality.

- (e) The building wholly contained within the title boundaries and any building protrusions set inside the title boundary accordingly.
 - (f) A written notation on the plans stating electricity connections to the proposed dwellings are provided underground.
 - (g) Each dwelling to have a private open space area of a minimum 8 square metres in area with a minimum internal width of 1800mm.
 - (h) A minimum of 6 cubic metres of storage provided for each dwelling. The storage space provided must be separate to the space nominated within the garages for either rainwater tanks or bin storage.
 - (i) Screening of habitable room windows, balconies and terraces to avoid direct views into habitable room windows, balconies and terraces of any other dwelling within the development within a horizontal distance of 9 metres (measured at ground level) to the satisfaction of the Responsible Authority. Views to be measured within a 45 degree angle from the plane of the window or perimeter of the balcony or terrace and from a height of 1.7 metres above floor level. Screening techniques referred to in Clause 55.04-6 to be used as a guide.
 - (j) The Construction Management Plan amended to include the following:
 - (i) The treatment of dust to be in accordance with Condition 8 of this permit.
 - (ii) Detail on how construction and demolition will be managed on the site and opportunities for waste and litter minimisation.
 - (iii) A separate truck holding area from the construction car park to the satisfaction of the Responsible Authority.
 - (iv) A target recycling rate of 80% by weight (in lieu of 60%).
 - (k) Details of proposed mailboxes.
 - (l) Utility meters shown in locations that are easily accessible and appropriately detailed/located to achieve a high quality streetscape appearance.
 - (m) Details of wall construction with the objective of minimising noise transmission between dwellings, and utility areas.
 - (n) Screening to the north-facing bedrooms windows of townhouses 07-12 inclusive (level 2).
 - (o) Screening to the rear windows on level 3 of townhouses 01, 02, 05 and 06.
 - (p) Details of any acoustic treatments required to achieve compliance with Condition 12.
- 2 The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

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

Waste/Recycling Management Plan

- 4 Concurrently with the submission of amended plans in accordance with condition 1, a Waste/Recycling Management Plan must be submitted to and approved by the Responsible Authority. The Waste/Recycling Management Plan must be generally in accord with the Plan submitted with the application but modified as follows:

- (a) An inconsistency in the Plan must be rectified regarding who is to return the bins once collected. The report needs to state that residents and not the operator are responsible for the return of kerbside bins.

The owner and occupier and/or owners Corporation (s) of the site must ensure that the Waste/Recycling Management Plan approved pursuant to this condition is complied with to the satisfaction of the Responsible Authority.

Construction Management Plan

- 5 Concurrently with the submission of amended plans in accordance with condition 1, a Construction Management Plan must be submitted to and approved by the Responsible Authority. Once approved, the Construction Management Plan must be complied with to the satisfaction of the Responsible Authority.
- 6 All activities associated with the construction of the development permitted by this permit must be carried out to the satisfaction of the Responsible Authority and all care must be taken to minimise the effect of such activities on the amenity of the locality.
- 7 Except with the written consent of the Responsible Authority construction or demolition works must only be carried out between: 7am – 6pm Monday to Friday and Saturday 8am – 6pm. No work is to be carried out on Sundays, ANZAC Day, Christmas Day or Good Friday.
- 8 The owner must ensure that dust suppression is undertaken in the form of constant water spraying or other natural based proprietary dust suppressant to ensure that dust caused by vehicles moving along the truck route and within the site does not cause a nuisance to surrounding properties to the satisfaction of the Responsible Authority. The development must not have an adverse impact on existing or future air quality.

Architect supervision

- 9 The architect of the plans submitted with the application, or an alternative suitably qualified person approved by the Responsible Authority must be appointed for the duration of the project and oversee the implementation of the buildings and works associated with this permit to ensure the project is delivered to a reasonable standard of quality. Details of who is to be

appointed must be submitted to the Responsible Authority for approval prior to the commencement of buildings and works.

Public Transport

- 10 The existing bus stops may continue to operate during construction, however if temporary stops in alternative locations are required, the temporary bus stop must be provided in consultation with, and to the satisfaction of Public Transport Victoria.
- 11 The owner must take all reasonable steps to ensure that disruption to bus operations along Ann Street and Nelson Place are kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to the bus operator and Public Transport Victoria fourteen days (14) prior.

Acoustic requirements for dwellings

- 12 Each dwelling must be designed, constructed and maintained to ensure that it is protected from existing lawful industrial noise and existing lawful commercial noise so that lawful noise levels received at the dwelling comply with:
 - (a) the requirements of *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* (SEPP N-1). Where the nature of the dwelling is such that it is not practical or reasonable to undertake an outdoor measurement of the industrial noise level, the measurement point for a noise sensitive area must be indoors in accordance with SEPP N-1 Schedule A1, 4. The indoor adjustment shall be in accordance with SEPP N-1; and
 - (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.

Pre-completion verification testing for dwellings

- 13 Prior to completion of the development, before external glazing and doors are installed, noise measurements must be conducted by a qualified acoustical consultant to verify the proposed construction will ensure that existing lawful industrial noise received at the dwellings are capable of complying with:
 - (a) the requirements of *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* (SEPP N-1) in accordance with the above condition 12(a); and
 - (b) internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.
- 14 If any additional remedial building treatment(s) or other work(s) are required to achieve compliance with the above acoustic requirements for dwellings, such details must be provided to the satisfaction of the responsible authority and when endorsed will form part of the permit.

Pre initial occupation verification testing for dwellings

- 15 After construction and prior to the occupation of any dwelling, pre initial occupation acoustic verification testing must be conducted by a qualified acoustical consultant. The testing must verify that the design and construction of the dwellings is sufficient to ensure that the dwellings are protected from existing lawful industrial noise so that lawful noise received at the dwellings complies with:
- (a) the requirements of *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* (SEPP N-1) in accordance with the above condition 12(a); and
 - (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.

General requirements for pre-completion and pre initial occupation verification testing and reporting for dwellings

- 16 The pre-completion and pre initial occupation verification testing for dwellings must be documented in reports respectively containing the relevant data, time of collection, assumptions, including allowances for ensuring representative noise emissions from the Williamstown Shipyard Site and other industrial noise, details of any required additional remedial building treatment or other works necessary to achieve the compliance, the accreditation certificate of the consultant, and the result of the testing. Each report must be submitted to the responsible authority, and must be to the satisfaction of the responsible authority.
- 17 All remedial building treatments or works designed to achieve compliance with the above acoustic requirements for dwellings must be maintained on the dwellings at all times to the satisfaction of the responsible authority.

Landscaping

- 18 Prior to the endorsed plans being made available a bank guarantee or bond of \$6,000 must be lodged by the owner with the Responsible Authority to ensure the satisfactory establishment of landscaping works. Once landscaping has been completed in accordance with the endorsed landscaping plan, Council must be notified so that a site inspection can confirm the landscaping is compliant, and a 6 week establishment period will commence. The bank guarantee or bond will be returned after landscaping has been initially maintained for that period to the satisfaction of the Responsible Authority. After the establishment period, the landscaping must be maintained in accordance with the endorsed landscaping plan to the satisfaction of the Responsible Authority.
- 19 Prior to the occupation of the buildings hereby permitted, landscaping works as shown on the endorsed plans must be completed and thereafter must be maintained to the satisfaction of the Responsible Authority.

Sustainable Design Statement

- 20 Prior to the occupation of the development, the development must be constructed in accordance with the Sustainable Design Statement (identified as Sustainable Design Statement, Application No. PA1225059, Lot 3 31 Nelson Place Williamstown (Former Port Phillip Woollen Mill) for NP Development Pty Ltd Dated: 15 August 2012, prepared by Arc Resources), to the satisfaction of the Responsible Authority.

Environmental audit

- 21 Prior to the commencement of the development approved under this permit, or any other date approved by the Responsible Authority, the owner must submit to the Responsible Authority:
- (a) A Certificate of Environmental Audit in accordance with Section 53Y of the Environment Protection Act 1970; or
 - (b) A Statement of Environmental Audit (with or without conditions) in accordance with Section 53Z of the Environment Protection Act 1970 and must be conducted by an Environmental Auditor appointed under that Act. A statement must state that the site is suitable for the use and development allowed by this permit.

All conditions contained within the environmental audit must be complied with to the satisfaction of the Responsible Authority. Written confirmation that the audit requirements have been satisfied must be provided by a suitably qualified environmental professional or other suitable person acceptable to the Responsible Authority.

Where there are conditions on a statement of environmental audit that require ongoing maintenance and/or monitoring requirements, the owner must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987. The Agreement must be registered on title prior to the commencement of the development or prior to any other date, event or construction phase approved by the Responsible Authority upon the request of the owner. The owner is responsible for all costs associated with the preparation and registration of the Agreement, including those incurred by the Responsible Authority.

Public realm works

- 22 Prior to an Occupancy Permit being issued by the relevant Building Surveyor the Nelson Place public realm works, the construction and drainage of Waterline Place and the access Lane adjacent the subject site must be completed to the satisfaction of the Responsible Authority. This includes the construction of on street car parking spaces, lighting, landscaping and pavement works.

Car parking and access

- 23 Prior to the occupation of the buildings hereby permitted, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:

- (a) Constructed.
- (b) Properly formed to such levels that they can be used in accordance with the plans.
- (c) Surfaced with an all-weather seal coat to the satisfaction of the Responsible Authority.
- (d) Drained and maintained to the satisfaction of the Responsible Authority.

Parking areas and access lanes must be kept available for these purposes at all times.

Engineering

- 24 Prior to commencement of the development the owner must prepare stormwater drainage design plans to the satisfaction of the relevant Building Surveyor. An application to Council must be made for a Legal Point of Discharge for the disposal of stormwater from the subject land and to determine the relevant Council standards for the stormwater drainage system design. An on-site storm water detention system will be required if the volume of stormwater exceeds the capacity of the legal point of discharge.
- 25 Any vehicle crossings must be constructed in the location shown on the endorsed plan to a standard satisfactory to the Responsible Authority. The relocation of any services including electricity poles, drainage pits, Telstra pits, fire hydrants and the like must be at the expense of the owner and approved by the appropriate authority prior to undertaking such works. Consent for such crossings must be obtained through Council's City Maintenance and Cleansing Department prior to construction.
- 26 Any alteration of soil level involving an increased or decreased level at the boundary must be retained by the provision of an adequate retaining wall, constructed of brick or masonry or other suitable alternative approved by the Responsible Authority, to buttress the soil against the possibility of shift. The construction of this retaining wall must be carried out by the owner. The retaining wall must remain in place whilst any increase or decrease level is present.
- 27 Before any construction or demolition works commence on the site, a secure fence must be provided around the perimeter of the site to prevent access to the site from unauthorized persons. This fence must be maintained for the duration of the construction and demolition, be a minimum height of 1.8m (or such alternative height as is approved in writing by the Responsible Authority), and be constructed to the satisfaction of the Responsible Authority. The gate or opening to the fence must be securely locked at all times when work has ceased on the site.

- 28 All basic services, including water, electricity, gas, sewerage and telephone must be installed underground and located to the satisfaction of the Responsible Authority.
- 29 The owner is responsible to meet the costs of all alterations to and reinstatement of, the Responsible Authority and other Public Authority Assets deemed necessary and required by such Authorities for the development. The owner is responsible for obtaining the prior specific written consent of the Council or other relevant Authority to such alterations and reinstatements and must comply with conditions required by the said Authority in relation to the execution of such works.

Residential amenity

- 30 Provision must be made for a suitable structure or structures for receiving mail and newspapers. Such area must be kept clean and tidy. The structure must include separate provision for each unit to receive papers.
- 31 The dividing wall between dwellings must be constructed to limit noise transmission to the satisfaction of the Responsible Authority.
- 32 No television aerials other than shown on the endorsed plans referred to in Condition 1 of this permit are permitted to be erected so that they are visible from beyond the perimeter of the site.
- 33 Equipment, services and architectural features (other than those shown on the endorsed plan) must not be above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
- 34 All service pipes (excluding downpipes) must be concealed on exposed elevations to the satisfaction of the Responsible Authority.

Time

- 35 This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within two years of the date of this permit.
 - (b) The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the period in which to start the development if a request is made in writing before the permit expires or within six months afterwards.

The Responsible Authority may extend the period in which to complete the development if a request is made in writing before the permit expires or within 12 months afterwards and the development was lawfully started before the permit expired.

End of conditions

APPENDIX D

PERMIT APPLICATION NO:	PA 1225060
LAND:	Lot 3 of Stage 1A, 3-39 Nelson Place, Williamstown
WHAT THE PERMIT ALLOWS:	Construction of an apartment building containing not more than 51 dwellings and reduction in car parking required under Clause 52.06 of the Hobsons Bay planning Scheme generally in accordance with the endorsed plans.

CONDITIONS

- 1 Before the development starts, three copies of revised plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be substantially in accordance with the advertised plans but modified to show to the satisfaction of the Responsible Authority:
 - (a) The provision of an additional 5 visitor bicycle parking spaces.
 - (b) The provision of not less than 3 cubic metres of external storage for each apartment.
 - (c) Swept paths submitted to ensure that vehicular access and egress will be convenient and safe for end bays/blind aisles, to the satisfaction of the Responsible Authority. All modifications required to be to the satisfaction of the Responsible Authority.
 - (d) All ninety-degree parking spaces excluding disabled bays with minimum dimensions of 2.6m by 4.9m with a minimum access aisle width of 6.4m.
 - (e) Car spaces adjacent to walls to be 2.6m wide.
 - (f) All support columns in the residential basements set back between 0.25m and 1.25m from the ends of the car spaces so as not to restrict manoeuvring or car door opening space.
 - (g) Ramp gradients and headroom clearance to comply with Australian Standards.
 - (h) Identification of parking spaces allocated to specific dwellings.
 - (i) The building wholly contained within the title boundaries and any building protrusions set inside the title boundary accordingly.

- (j) All service pipes, (excluding downpipes) concealed on exposed elevations to the satisfaction of the Responsible Authority. Downpipes to be shown.
- (k) Details of the design of mail boxes drawn to a scale of 1:50; mailboxes to be integrated into the overall entry/foyer design, to be visually unobtrusive and secure together with space for newspaper delivery.
- (l) All common doorways throughout the building to have a minimum 'clear' opening of 850mm as per AS1482.2 11.5.
- (m) All common corridors of residential apartments to be 1.5m wide (minimum) with localised widening wherever possible at the entries to doorways.
- (n) A notation on the plans stating that all entrances/exits and internal doors are to be in accord with Australian Standard AS1428.1 7 *Doorways, Doors and Circulation Space at Doorways*.
- (o) A notation on the plans that states the development will be constructed in accordance with the Australian Standard *1428 (2009) for Access and Mobility* to the satisfaction of the Responsible Authority in so far as it relates to the main entry foyer area and common corridors.
- (p) Utility meters shown in locations that are easily accessible and appropriately detailed to achieve a high quality appearance.
- (q) Details showing how it is intended to improve the visibility of the stairs to encourage the use of stairs over elevators.
- (r) Any air conditioner condenser units on the balconies screened from view.
- (s) Screening of habitable room windows, balconies and terraces to avoid direct views into habitable room windows, balconies and terraces of any other dwelling within the development within a horizontal distance of 9 metres to the satisfaction of the Responsible Authority. Views to be measured within a 45 degree angle from the plane of the window or perimeter of the balcony or terrace and from a height of 1.7 metres above floor level. Screening techniques referred to in Clause 55.04-6 to be used as a guide. Screening requirements include diagonal overlooking via the light court between Lot 2 and Lot 3A and overlooking across the light court between Apartments 1.01 and 1.14, 2.01 and 2.14, and 3.01 and 3.14. Other overlooking opportunities between apartments to be addressed as per this condition.
- (t) A schedule of all external materials and finishes. The schedule must show the materials, colour (including two colour samples) and finish of all external surfaces including walls, balconies, roof, fascias, window and door frames and paving (including car parking surfacing).

All external window and door frames to be a wide-framed aluminium section and recessed into the surrounding wall.

- (u) The proposed landscape treatment of the site including the location of all proposed species. Planting locations and type must be selected for durability, ease of maintenance, and to provide aesthetic quality.
 - (v) The positioning of all plant and equipment (including air conditioning units, heating units, hot water systems, etc) which is proposed to be located externally. Such plant and equipment must be positioned to prevent unreasonable noise and visual impact.
 - (w) Provision of any acoustic treatments required by Conditions 12 and 14.
 - (x) Provision of adequate waste storage areas in accordance with the approved Waste/Recycling Management Plan required by Condition 4 of this permit.
 - (y) Appropriate screening to the bedrooms of apartments 01 and 14 on level 1-3 inclusive.
 - (z) Car spaces numbered 14 and 27 adjacent to walls to be widened to at least 2.7 metres.
 - (aa) Operable doors to the freestanding storage spaces to be replaced with roller doors.
- 2 The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 3 Once the development has started, it must be continued and completed to the satisfaction of the Responsible Authority.

Waste/Recycling Management Plan

- 4 Concurrently with the submission of amended plans in accordance with condition 1(x), a Waste/Recycling Management Plan must be submitted to and approved by the Responsible Authority. The Waste/Recycling Management Plan must be generally in accord with the Plan submitted with the application but modified as follows:
- (a) A commitment not to collect rubbish on Councils' nominated rubbish collection day (currently Tuesday) so as not to conflict with Council's service.
 - (b) A commitment to have all residential waste collection occur from Waterline Place and for the collection vehicle to enter via Ann Street and exit via Kanowna Street (including the nomination of a designated collection point).
 - (c) Outline how waste will be transferred between the refuse room and Waterline Place.

- (d) Resolve the inconsistency and ambiguity in the Waste Management Plan regarding bins left in public places. The Plan is to state that bins will not be left on public areas at any time.
- (e) Compaction of refuse and the breaking up of bottles not occurring whilst the collection vehicle is standing stationary at or near the site.

The owner, occupier and Owners Corporation of the site must ensure that the Waste/Recycling Management Plan approved pursuant to this condition is complied with to the satisfaction of the Responsible Authority.

Construction Management Plan

- 5 Concurrently with the submission of amended plans in accordance with Condition 1, a Construction Management Plan must be submitted to and approved by the Responsible Authority. Once approved, the Construction Management Plan must be complied with to the satisfaction of the Responsible Authority.
- 6 All activities associated with the construction of the development permitted by this permit must be carried out to the satisfaction of the Responsible Authority and all care must be taken to minimise the effect of such activities on the amenity of the locality.
- 7 Except with the written consent of the Responsible Authority construction or demolition works must only be carried out between: 7am – 6pm Monday to Friday and Saturday 8am – 6pm. No work is to be carried out on Sundays, ANZAC Day, Christmas Day or Good Friday.
- 8 The owner must ensure that dust suppression is undertaken in the form of constant water spraying or other natural based proprietary dust suppressant to ensure that dust caused by vehicles moving along the truck route and within the site does not cause a nuisance to surrounding properties to the satisfaction of the Responsible Authority. The development must not have an adverse impact on existing or future air quality.
- 9 Before any construction or demolition works commence on the site, a secure fence must be provided around the perimeter of the site to prevent access to the site from unauthorized persons. This fence must be maintained for the duration of the construction and demolition, be a minimum height of 1.8m (or such alternative height as is approved in writing by the Responsible Authority), and be constructed to the satisfaction of the Responsible Authority. The gate or opening to the fence must be securely locked at all times when work is not actually taking place on the site.

Architect supervision

- 10 The architect of the plans submitted with the application, or an alternative suitably qualified person approved by the Responsible Authority must be appointed for the duration of the project and oversee the implementation of the buildings and works associated with this permit to ensure the project is

delivered to a reasonable standard of quality. Details of who is to be appointed must be submitted to the Responsible Authority for approval prior to the commencement of buildings and works.

- 11 The owner must take all reasonable steps to ensure that disruption to bus operations along Ann Street and Nelson Place are kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to the bus operator and Public Transport Victoria fourteen days (14) prior.

Acoustic report

- 12 Prior to the submission of amended plans in accordance with Condition 1, an acoustic assessment and report must be prepared by a suitably qualified acoustic engineer (the Acoustic Report). The Acoustic Report must outline the nature of the assessments undertaken and must prescribe any mitigation measures or acoustic treatments required to protect the dwellings authorised by this permit from adverse noise impacts emanating from:

- (a) Activities associated with the garbage chute and refuse room.
- (b) Other apartments and neighbouring uses and travelling between or through the walls of the dwellings.
- (c) Activities associated with the car parks generating noise which travels into the dwellings above, below and on the same floor level.

The report must be submitted to the Responsible Authority for approval.

- 13 Any acoustic treatments/structures shown on the endorsed plan must be maintained at all times to the satisfaction of the Responsible Authority

Acoustic requirements for dwellings

- 14 Each dwelling must be designed, constructed and maintained to ensure that it is protected from existing lawful industrial noise and existing lawful commercial noise so that lawful noise levels received at the dwelling comply with:

- (a) the requirements of *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* (SEPP N-1). Where the nature of the dwelling is such that it is not practical or reasonable to undertake an outdoor measurement of the industrial noise level, the measurement point for a noise sensitive area must be indoors in accordance with SEPP N-1 Schedule A1, 4. The indoor adjustment shall be in accordance with SEPP N-1; and
- (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.

Pre-completion verification testing for dwellings

- 15 Prior to completion of the development, before external glazing and doors are installed, noise measurements must be conducted by a qualified acoustical consultant to verify the proposed construction will ensure that existing lawful industrial noise received at the dwellings are capable of complying with:
- (a) the requirements of *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* (SEPP N-1) in accordance with the above condition 14(a); and
 - (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.
- 16 If any additional remedial building treatment(s) or other work(s) are required to achieve compliance with the above acoustic requirements for dwellings, such details must be provided to the satisfaction of the responsible authority and when endorsed will form part of the permit.

Pre initial occupation verification testing for dwellings

- 17 After construction and prior to the occupation of any dwelling, pre initial occupation acoustic verification testing must be conducted by a qualified acoustical consultant. The testing must verify that the design and construction of the dwellings is sufficient to ensure that the dwellings are protected from existing lawful industrial noise so that lawful noise received at the dwellings complies with:
- (a) the requirements of *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* (SEPP N-1) in accordance with the above condition 14(a); and
 - (b) an internal noise level of 45dB in accordance with relevant Australian Standard 2107 for acoustic control.

General requirements for pre-completion and pre initial occupation verification testing and reporting for dwellings

- 18 The pre-completion and pre initial occupation verification testing for dwellings must be documented in reports respectively containing the relevant data, time of collection, assumptions, including allowances for ensuring representative noise emissions from the Williamstown Shipyard Site and other industrial noise, details of any required additional remedial building treatment or other works necessary to achieve the compliance, the accreditation certificate of the consultant, and the result of the testing. Each report must be submitted to the responsible authority, and must be to the satisfaction of the responsible authority.

- 19 All remedial building treatments or works designed to achieve compliance with the above acoustic requirements for dwellings must be maintained on the dwellings at all times to the satisfaction of the responsible authority.

Landscaping

- 20 Prior to the occupation of the buildings hereby permitted, landscaping works as shown on the endorsed plans must be completed and thereafter must be maintained to the satisfaction of the Responsible Authority.

Sustainable Design Statement

- 21 Prior to the occupation of the development, the development must be constructed in accordance with the Sustainable Design Statement (identified as Sustainable Design Statement, Application No. PA1225060, Lot 3 31 Nelson Place Williamstown (Former Port Phillip Woollen Mill) for NP Development Pty Ltd Dated: 15 August 2012, prepared by Arc Resources), to the satisfaction of the Responsible Authority.

Environmental audit

- 22 Prior to the commencement of the development approved under this permit, or any other date approved by the Responsible Authority, the owner must submit to the Responsible Authority:
- (a) A Certificate of Environmental Audit in accordance with Section 53Y of the Environment Protection Act 1970; or
 - (b) A Statement of Environmental Audit (with or without conditions) in accordance with Section 53Z of the Environment Protection Act 1970 and must be conducted by an Environmental Auditor appointed under that Act. A statement must state that the site is suitable for the use and development allowed by this permit.
- 23 All conditions contained within the environmental audit must be complied with to the satisfaction of the Responsible Authority. Written confirmation that the audit requirements have been satisfied must be provided by a suitably qualified environmental professional or other suitable person acceptable to the Responsible Authority.
- 24 Where there are conditions on a statement of environmental audit that require ongoing maintenance and/or monitoring requirements, the owner must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987. The Agreement must be registered on title prior to the commencement of the development or prior to any other date, event or construction phase approved by the Responsible Authority upon the request of the owner. The owner is responsible for all costs associated with the preparation and registration of the Agreement, including those incurred by the Responsible Authority.

Green Travel Plan and share car

- 25 Before the development starts, an integrated travel plan (including a Green Travel Plan) must be submitted to the Responsible Authority for approval. The plan must facilitate and promote the use of sustainable transport modes (walking, cycling, public transport) in preference to private vehicle use, particularly for local and work trips and must include at least one share car space within Nelson Place in association with Stage 1A of the development. The location of the share car space is to be to the satisfaction of the Responsible Authority. All costs associated with the construction, implementation and management of the car share vehicle are to be at the permit holder's expense. The space must be available for use prior to occupation of the dwellings hereby permitted or the dwellings approved in PA1225056, whichever is first occupied. When approved, the plan will form part of this permit. The plan must be implemented to the satisfaction of the Responsible Authority.

Public realm works

- 26 Prior to an Occupancy Permit being issued by the relevant Building Surveyor the Nelson Place public realm works, the construction and drainage of Waterline Place and the access Lane adjacent the site must be completed to the satisfaction of the Responsible Authority. This includes the construction of on street car parking spaces, lighting, landscaping and pavement works.

Car parking and access lanes

- 27 Prior to the occupation of the buildings hereby permitted, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must to the satisfaction of the Responsible Authority be:
- (a) Constructed.
 - (b) Properly formed to such levels that they can be used in accordance with the plans.
 - (c) Surfaced with an all-weather seal coat.
 - (d) Drained and maintained.
 - (e) Line-marked to indicate each car space and all access lanes. The direction of traffic along the access lanes and driveways must also be clearly marked.

Parking areas and access lanes must be kept available for these purposes at all times.

- 28 The car parking allocation as designated on the endorsed plan and referred to in Condition 1 must be complied with at all times and to the satisfaction of the Responsible Authority.

Engineering

- 29 Prior to commencement of the development the owner must prepare stormwater drainage design plans to the satisfaction of the relevant Building Surveyor. An application to Council must be made for a Legal Point of Discharge for the disposal of stormwater from the subject land and to determine the relevant Council standards for the stormwater drainage system design. An on-site storm water detention system must be provided if the volume of stormwater exceeds the capacity of the legal point of discharge.
- 30 Any vehicle crossings must be constructed in the location shown on the endorsed plan to a standard satisfactory to the Responsible Authority. The relocation of any services including electricity poles, drainage pits, Telstra pits, fire hydrants and the like must be at the expense of the owner and approved by the appropriate authority prior to undertaking such works. Consent for such crossings must be obtained through Council's City Maintenance and Cleansing Department prior to construction.
- 31 The entire site must be connected to the existing underground drainage and sewerage systems to the satisfaction of the Responsible Authority.
- 32 The owner must meet the costs of all alterations to and reinstatement of, the Responsible Authority and other Public Authority Assets deemed necessary and required by such Authorities for the development. The owner must obtain the prior specific written consent of the Council or other relevant Authority to such alterations and reinstatements and must comply with conditions required by the said Authority in relation to the execution of such works.
- 33 All service pipes, (excluding downpipes), must be concealed on exposed elevations to the satisfaction of the Responsible Authority.
- 34 All basic services, including water, electricity, gas, sewerage and telephone must be installed underground and located to the satisfaction of the Responsible Authority.

Residential amenity

- 35 Any security alarm or similar device installed must be of a silent type.
- 36 No television aerials other than shown on the endorsed plans referred to in Condition 1 of this permit are permitted to be erected so that they are visible from beyond the perimeter of the site.
- 37 Equipment, services and architectural features (other than those shown on the endorsed plan) must not be above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.

Time

- 38 This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within two years of the date of this permit.

- (b) The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the period in which to start the development if a request is made in writing before the permit expires or within six months afterwards.

The Responsible Authority may extend the period in which to complete the development if a request is made in writing before the permit expires or within 12 months afterwards and the development was lawfully started before the permit expired.

End of conditions