

## 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 NO. P3193/2012 & P1401/2013  
PERMIT APPLICATION NO. PA1225139, PA1226025

#### IN THE MATTER OF

NP Development Pty Ltd v Hobsons Bay CC &  
Ors (Including Summary) (Red Dot) [2014] VCAT  
851

#### BEFORE

Jeanette G Rickards, Senior Member  
S. R. Cimino, Member  
Greg Sharpley, Member

NATURE OF CASE	Demolition of an existing building within a Heritage Overlay and construction of multi-dwellings contained in an apartment building and as townhouses.
<b>REASONS WHY DECISION IS OF INTEREST OR SIGNIFICANCE</b>	
PLANNING SCHEME – interpretation or consideration of VPP provision	Consideration of height of apartment building under Design and Development Overlay Schedule 11 which refers to an 'indicative' height of 25m
APPLICATION – significant, interesting or unusual use or development; application of policy, provision or principle; or circumstances	Stage 2 redevelopment of individual lots within the former Port Phillip Woollen Mills area, Williamstown, strategic redevelopment area, considerations of height of apartment building, consideration of location opposite a Major Hazard Facility, demolition of Nugget Factory.

#### SUMMARY

Two applications were brought before the Tribunal by NP Development Pty Ltd. The applications relate to Stage 2 (Lots 10, 11 and 12) of an area marked for redevelopment known as the former Port Phillip Woollen Mills (PPWM) land. One related to Hobsons Bay City Council's refusal to grant a permit for the demolition of the Nugget Factory (Lot 12). The second application related to Hobsons Bay City Council's failure to grant a permit within the required time for demolition of all buildings including the Nugget Factory, the construction of an apartment building containing 128 dwellings and the construction of 41 townhouses in four separate blocks.

The main issues raised related to demolition of the Nugget Factory; height of the apartment building at 34m being over the 'indicative height' of 25m referred to in the Design and Development Overlay Schedule 11(DDO11); the relationship of the contemporary design of the buildings to heritage areas HO8 and HO1; amenity impacts to immediate neighbours as a result of overlooking and overshadowing; potential impacts on two state significant industries BAE shipyard and Mobil; and potential risk and safety to future residents due to the close proximity to Mobil's Point Gellibrand Tank Farm (GTF).

We find the proposed development to be supported by the strategic directions contained within the policies and provisions of the Hobsons Bay Planning Scheme. The former PPWM land has been identified for over five years for significant residential development, culminating in the zoning of the land to Mixed Use and the introduction of DDO11. DDO11 clearing contemplates a high degree of change on the former PPWM land.

We find the demolition of the Nugget Factory should be allowed on the basis that the building's external 19<sup>th</sup> century architectural features had been erased and its current presentation, as a largely post WW2 building did not 'demonstrate the most important and prosperous phase in the development of Williamstown from the mid nineteenth to early twentieth centuries' as set out in the statement of significance of HO8. The use of the building as a laundry servicing Williamstown's maritime industry and in particular the P & O Line was short lived and not sufficient to ascribe the building with a significant historical association with P & O. Despite the interpretation by Mr Vines, of the interior of the building, in our view there is simply not enough in the extant fabric to demonstrate its former use as a steam laundry or shoe polish manufacturer.

We find the proposed development does not have adverse impacts on the heritage significance of HO8, the Britannia Hotel, the significance of the Cecil Street precinct (HO1), the Time Ball Tower or Point Gellibrand Coastal Park after having considered the heritage guidelines and the provisions of DDO11.

We find what is meant by 'indicative' should be read in the context of the planning provision in which the word is found and that the height of the apartment building at 34m is permissible under DDO11, although it exceeds the 'indicative' height of 25m. The height is acceptable having taken into account the design objectives of DDO11 as well as the 'built form outcomes' for each area identified in the table in DDO11.

We find only the townhouses in Kanowna Street are to be located in the area marked 'advisory' which correlates with the WorkSafe's Outer Advisory Area, being at a distance of 300m from the boundary of the bulk storage tank bunded area of the Mobil GTF. The proposed townhouses along Kanowna Street are to be designed to withstand overpressures of 6kPa required under DDO11 and we find this to be well above the conservative estimations of 3.5kPa overpressures that could in a worst case scenario impact on the townhouses. Locating townhouses in the 'advisory area' in our view results in a relatively low number of people in this area and as such this residential use is acceptable.

We find the nearby state significant industries, BAE shipyard and Mobil will not be compromised.

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NOS. P3193/2012, P1401/2013  
PERMIT APPLICATION NOS. PA1225139, PA1226025

**CATCHWORDS**

Sections 77 & 79 of the *Planning and Environment Act 1987*; Hobsons Bay Planning Scheme; Mixed Use Zone; Design and Development Overlay Schedule 1; Heritage Overlay Schedule 8; former Port Phillip Woollen Mills and Surrounds; Demolition of Nugget Factory; Apartment Building and Townhouses; Urban Design; Building Height; Streetscape Impacts; Off Site Amenity Impacts; Internal Amenity; Car Parking; Traffic; Relationship with Industrial Neighbours; Risk, Safety and Emergency.

<b>APPLICANT</b>	NP Development Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Hobsons Bay City Council
<b>RESPONDENTS</b>	Lynne Georgiadis, BAE Systems Australia Limited, Barbara R Johnson, Michael Virant, Alexander Tyrrell, Krystyna Tyrrell, Paige Tyrrell, Charmian Gaud, Ralph & Virginia Coghill, Lyndall Boyle, Giles Black, Amanda Drew, Alan Wiese, Helen Forrester, Maria Muratore, Amadeo Bugeja, Save Williamstown Inc, Tony Green, Williamstown Newport & Spotswood Residents Association Inc, Mark Wilson, David & Alison Brideson, Marisa Varrasso, Barbara Witcombe, Philip Lethlean, Kristine & Ralph Nicholson, Gerard Drew, Godfrey Moase, Val Green, Elizabeth McKeag, Ann Susan Johnston, Mobil Refining Australia Pty Ltd, Joan Lynn, Andrew Davidson, Ralph Humphries, Suzanne Orange
<b>SUBJECT LAND</b>	3-39 & 2-10 Nelson Place & 16-20 Kanowna Street, WILLIAMSTOWN VIC 3016
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Jeanette G Rickards, Senior Member S. R. Cimino, Member Greg Sharpley, Member
<b>HEARING TYPE</b>	Hearing

<b>DATES OF HEARING</b>	3, 4, 5, 6, 10, 11, 12, 13, 17, 18, 19, 20, 24, 25, 26 & 27 February 2014  26, 27, 28 & 29 May 2014
<b>DATE OF ORDER</b>	25 July 2014
<b>CITATION</b>	NP Development Pty Ltd v Hobsons Bay CC & Ors (Including Summary) (Red Dot) [2014] VCAT 851

### **ORDER**

#### **P3193/2012**

- 1 The decision of the Responsible Authority is set aside.
- 2 In permit application PA1225139 a permit is granted and directed to be issued for the land at 3-39 Nelson Place, Williamstown in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
  - Demolition of the existing building, remove surface treatments and construct a perimeter fence.

#### **P1401/2013**

- 1 The decision of the Responsible Authority is set aside.
- 2 In permit application PA1226025 a permit is granted and directed to be issued for the land at 3-39 & 2-10 Nelson Place & 16-20 Kanowna Street, Williamstown in accordance with the endorsed plans and on the conditions set out in Appendix B. The permit allows:
  - Demolition of buildings and works and removal of surfaces within the Heritage Overlay;
  - Construction of multi-dwellings and associated fencing exceeding 1.5m within 3m of a street;
  - Construction of buildings and works, fencing and roadworks; and
  - A reduction in the statutory car parking rate.

**Jeanette G Rickards**  
Senior Member

**S. R. Cimino**  
Member

**Greg Sharpley**  
Member

## APPEARANCES

For Applicant

Mr A Finanzio SC and Mr A Walker, Barristers instructed by Planning and Property Partners.

They called the Project Architect Mr C Fraser.

They called as witnesses:

Mr B Raworth, Heritage Architect.

Ms R Riddett, Heritage Architect.

Mr M Sheppard, Urban Designer.

Mr M Barlow, Town Planner.

Mr A Clarke, Town Planner.

Mr R Burton, Acoustic Engineer.

Mr T De Young, Traffic Engineer.

Mr S Hunt, Traffic Engineer.

Mr G Weston, Social Impact.

Mr N Cann, Risk Assessment.

Mr S McLeod, Emergency Evacuation.

For Responsible Authority

Mr G Testro, Solicitor.

He called as witnesses:

Mr R McGauran, Architect/Urban Design.

Ms H Lardner, Heritage Architect.

Mr G Vines, Historical & Industrial Archaeologist.

Ms C Dunstan, Traffic Engineer.

For Respondents

Mobil Refining Australia Pty  
Ltd

Mr P G Willis, Barrister instructed by K & L Gates.

He called as witnesses:

Mr A Williamson, Safety, Security, Health and  
Environmental Manager.

Dr Xun Li, Acoustic Engineer.

BAE Systems Australia Ltd

Ms M Lee, Solicitor, Allens Linklater.

Save Williamstown Group

Ms B Woodgate, Solicitor, HWL Ebsworth, Mr M Bartley, Solicitor, HWL Ebsworth, and at various times Ms V Coghill, Mr R Coghill, Mr D Brideson and Mr D McKinnon.

Ms C Gaud

In person.

She called as a witness:

Mr I Thomas, Chemical Engineer.

Ms V Green, Mr A Green,  
Ms A Brideson, Ms A S  
Johnston, Mr N Roberts,  
Ms B Witcombe

In person

Williamstown, Newport &  
Spotswood Residents  
Association Inc

Mr J Power

## INFORMATION

Description of Proposal	<p>Review of decisions to:</p> <ul style="list-style-type: none"><li>• refuse to grant a permit for demolition of an existing building (Nugget Factory); and</li><li>• failure to determine to grant a permit for Stage 2 of the development of the former Port Phillip Woollen Mills site, Williamstown for apartments and townhouses.</li></ul> <p>The proposal for Stage 2 includes:</p> <ul style="list-style-type: none"><li>• demolition of all buildings on the site;</li><li>• construction of an apartment building (10 storeys) containing 128 residential dwellings with basement car parking;</li><li>• construction of 41 townhouses of 3 storeys in four separate blocks (with the exception of one 2 storey townhouse);</li><li>• associated public realm works (roads, footpaths, landscaping etc); and</li><li>• a reduction in car parking provision.</li></ul>
Nature of Proceedings	Application under Sections 77 and 79 of the <i>Planning and Environment Act 1987</i>
Zone and Overlays	Mixed Use Zone (MUZ1) (clause 32.04) General Residential Zone – Schedule 2 (GRZ2) (clause 32.08) <sup>1</sup> Design & Development Overlay – Schedule 11 (DDO11) (clause 43.02) Heritage Overlay (HO8) (clause 43.01)
Permit Requirements	Clause 32.04-5 – construct two or more dwellings on a lot; construct a front fence if it exceeds 1.5m in MUZ1 Clause 32.08-4 – construct two or more dwellings on a lot; construct a front fence if it exceeds 1.5m in GRZ2 Clause 43.01-1 – demolition or removal of a building and construction and carrying out of a building or works (including a fence) and street tree removal (Cecil Street) in HO8

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<sup>1</sup> Amendment VC116 was gazetted 1 July 2014. This changes the zoning of land from Residential 1 to General Residential Schedule 2.

	Clause 43.02-2 and Schedule 11 – construct a building or carry out works in DDO11.
	Clause 52.06-3 – reduction in the number of car parking spaces
Relevant Scheme policies and provisions	Clauses 10, 11, 13.01, 15, 15.01, 15.02, 15.03, 16, 17, 18.01, 18.02, 20, 21.01, 21.02, 21.03, 21.05, 21.06, 21.07, 21.08, 21.09, 21.10, 22.01, 22.02, 22.10, 32.01, 32.04, 43.01, 43.02, 52.06, 52.07, 55 and 65
Land Description	<p>The land is part of the former Port Phillip Woollen Mills site and is referred to as Stage 2 of the Nelson Place development. Although it has a Nelson Place address, the part of the former Port Phillip Woollen Mills site which is the subject of these applications does not abut Nelson Place. Stage 2 takes in Lots 10, 11, and 12. These lots combine to create a site of irregular shape, generally bounded by Kanowna Street to the east, Aitken Street to the north, Cecil Street to the south and Windsor Terrace to the west. The overall site has an area of approximately 0.7ha.</p> <p>There are various buildings over the site. A vacant industrial building known as the former Nugget Factory, occupies part of Lot 12 fronting Kanowna Street. Other industrial buildings and various works occupy other parts of the subject land, but these do not have heritage value. There are no easements or covenants affecting the site.</p> <p>The former Britannia Hotel (Lot 13) on the south western corner of Aitken Street and Kanowna Street and vacant land formerly used as a car park (Lot 14) on the southern side of Cecil Street, which are also part of the Nelson Place development land, are located directly adjacent to the Stage 2 site. The former hotel is subject to an individual Heritage Overlay (HO162). In accordance with a permit issued at the direction of the Tribunal, the hotel has been recently renovated and is to be used as a display/marketing suite for the Nelson Place development<sup>2</sup>.</p> <p>The former Port Phillip Woollen Mills land is located within an area known as the Government Survey precinct. It includes the original Government Survey</p>

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<sup>2</sup> *Nelson Place Village Pty Ltd v Hobsons Bay CC and Ors* [2013] VCAT 491

of Williamstown carried out between 1837 and 1855. The precinct is of heritage significance. It includes a number of hotels<sup>3</sup>, public buildings<sup>4</sup> and residential streetscapes, such as Cecil Street<sup>5</sup>, which are of heritage significance. However, the precinct also contains industrial buildings of no heritage value and vacant land where some industrial buildings have already been demolished. Industrial buildings to the west of Lot 10 are modern, of no heritage significance and on land zoned Residential.

The former Port Phillip Woollen Mills land is surrounded by a mix of uses with the Port of Melbourne and BAE Systems ship building yard located to the north. Mobil's Point Gellibrand Tank Farm and pier is located to the east of BAE. Immediately to the east of Kanowna Street is a car park associated with BAE and the Point Gellibrand Coastal Heritage Park within which is a historic former lighthouse known as the Time Ball Tower. Contextually, the land is about 1.5km from the Ferguson Street Activity Centre and within walking distance of the Williamstown railway station.

Tribunal Inspection

We inspected the subject site and surrounds with the parties on 4 February 2014 and the property at 12 Cecil Street on 21 February 2014.

Cases Referred To

*Nelson Place Village Pty Ltd v Hobsons Bay CC and Ors* [2013] VCAT 491;

*Green v Hobsons Bay CC* (Includes Summary) (Red Dot) (Correction) [2013] VCAT 2091 (8 January 2014)

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<sup>3</sup> Former Britannia, Prince of Wales, Telegraph and Oriental hotels

<sup>4</sup> Eg. Former Port Phillip Stevedore Club hall

<sup>5</sup> Eg. Cecil Street

## REASONS<sup>6</sup>

### What is this proceeding about?

- 1 Two applications for review brought by NP Developments Pty Ltd (NPD) are before the Tribunal. The applications relate to Stage 2 (Lots 10, 11 and 12) of an area marked for redevelopment known as the former Port Phillip Woollen Mills (PPWM) land.
- 2 Application P3193/2012 seeks the review of the Hobsons Bay City Council's (the Council) decision to refuse a permit for demolition of the building known as the Nugget Factory on Lot 12. NPD lodged this application in the event that a permit is refused for the second application described below.
- 3 Application P1401/2013 seeks the review of the Council's failure to grant a permit within the required time for:
  - demolition of all buildings, including the Nugget Factory, on the site (Lots 10, 11 and 12);
  - construction of an apartment building containing 128 residential dwelling units with basement car parking;
  - construction of 41 townhouses in four separate blocks;
  - public realm works include road works and landscaping, and
  - reduction in the amount of car parking provision.
- 4 The Council indicates it would have refused the permit application.
- 5 The Council's grounds are based on the proposal being contrary to the State Planning Policy Framework (SPPF), Local Planning Policy Framework (LPPF) and the relevant policies in the Municipal Strategic Statement (MSS); an overdevelopment of the site; and contrary to orderly and proper planning. The grounds can be summarised as:
  - Inappropriate demolition of the Nugget Factory, contrary to the heritage references in the Hobsons Bay Planning Scheme and to the *Guidelines for Infill Development in Heritage Areas in Hobsons Bay* 2006;
  - Contrary to the *Hobsons Bay Activity Centre Strategy*;
  - Inconsistent with the surrounding heritage character of the area in terms of built form, setbacks, height of fencing and lack of adequate interface /transition of Kanowna Street townhouses with the Britannia Hotel;

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<sup>6</sup> We have considered all submissions presented by the parties although we do not recite all of the contents in these reasons.

- Inconsistent with the design objectives, built form outcomes and indicative heights referred to in the Design and Development Overlay Schedule 11 (DDO11);
  - Non-compliance with all aspects of the *Design Guidelines for Higher Density Residential Development*<sup>7</sup> and objectives of Clause 55 (ResCode);
  - Inadequate provision of on-site car parking; and
  - Adverse traffic impacts.
- 6 There are a number of individual residents and two residents' groups opposing the applications. As well as being supportive of the Council's grounds, they raise specific concerns about:
- Potential risk and safety impacts to future residents from proximity to the Mobil Tank Farm at Point Gellibrand (GTF);
  - Amenity impacts from overlooking, overshadowing and noise; and
  - Social impacts.
- 7 Two of the nearby industrial companies, Mobil Australia (Mobil) and BAE Systems (BAE), also oppose the granting of a permit for the proposed development. Mobil opposes the application on the basis that it is an overdevelopment of the site. Mobil says that the level of development will potentially compromise its state significant GTF operations to continue and expand with the introduction of many new residents in a concentrated area in proximity. Mobil and BAE are concerned with the likely reverse amenity impact that noise they generate from their operations will have on future residents.
- 8 The issues raised by the parties fall into the following key categories:
- Heritage
  - Building Height
  - Urban Design
  - Amenity impacts
  - Protection of industry
  - Risk and Safety
  - Traffic
  - Parking
- 9 We must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented, and the applicable policies and provisions of the

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<sup>7</sup> Department of Sustainability and Environment 2004

Hobsons Bay Planning Scheme, we have decided to set aside the Council's decision to refuse the demolition of the Nugget Factory. We have also decided to grant a permit for the proposed development including the apartment building and townhouses, the proposed public works and car parking reduction. Our reasons follow.

### **Planning Scheme Provisions**

- 10 The proposal is clearly contemplated by the provisions of the Hobsons Bay Planning Scheme.
- 11 In *Green v Hobsons Bay CC*<sup>8</sup> the Tribunal considered applications in relation to Stage 1A to redevelop part of the land within the former PPWM area. The applications before us, described as Stage 2, relate to another part of the same large area of former industrial land.
- 12 In the *Green* determination the Tribunal concluded, the area has been identified as an area for urban renewal:

... 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'<sup>9</sup>.
- 13 The views expressed by the Tribunal in *Green* were highlighted by both Mr Barlow and Mr Clarke in their evidence. Both also referred to the background of the current provisions that apply to the land. They referred to the *Hobsons Bay Industrial Land Management Strategy* – June 2008 which identified the subject industrial land as a Strategic Redevelopment Area for alternative uses such as residential. Amendment C33<sup>10</sup> to the Hobsons Bay Planning Scheme reflected the strategy. The land was rezoned by Ministerial Amendment C75 to Residential 1<sup>11</sup>. Following the rezoning, the former Port Phillip Woollen Mills Advisory Committee (the Advisory Committee) assessed the planning and built form/urban design opportunities of the subject land. The outcome of the Advisory Committee findings resulted in Ministerial Amendment C86<sup>12</sup> which rezoned the land, except for the area west of Windsor Terrace, to Mixed Use. It also introduced the Design and Development Overlay Schedule 11(DDO11).
- 14 Following the final day of hearing on 30 May 2014, Amendment VC106 was incorporated into the Hobsons Bay Planning Scheme. This amendment directs the Council and, in turn, the Tribunal, to consider and apply *Plan*

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<sup>8</sup> (Includes Summary) (Red Dot) ( Correction) [2013] VCAT 2091 (8 January 2014)

<sup>9</sup> Ibid at [61]

<sup>10</sup> Amendment C33 Gazetted 23 December 2008

<sup>11</sup> Amendment C75 Gazetted 1 April 2010

<sup>12</sup> Amendment C86 Gazetted 1 December 2011

*Melbourne: Metropolitan Planning Strategy*<sup>13</sup>. Underpinning this policy, as well as the existing policies in the planning scheme relating to urban growth<sup>14</sup>, integrated housing<sup>15</sup>, the location of residential development<sup>16</sup> and Strategic Redevelopment Sites<sup>17</sup>, is specific focus on providing an expected growing population with a choice of diverse housing in areas close to activity centres and public transport.

- 15 For a period of over five years, the former PPWM land has been identified for significant residential development, It meets the criteria highlighted in the various policies within the planning scheme for substantial development. It is a large parcel of land, close to the Williamstown Activity Centre and the Williamstown Railway station, providing excellent access to public transport and shopping facilities. It is located opposite a large area of open space, being the Point Gellibrand Coastal Park. It has been identified for a period of time as a strategic redevelopment site for urban renewal, with the focus shifting from industrial use to residential. The former PPWM land, which includes the subject land in these applications, is ideally located to provide additional housing to meet the needs of a current and future expanding population in an excellent location, on the edge of an existing suburb.
- 16 We adopt the views expressed in the *Green* determination and highlight that the land the subject of the current applications is contained within the Mixed Use Zone as well as partly within the General Residential 2 Zone under the Hobsons Bay Planning Scheme. Under both zone provisions, the use of the land for a dwelling is ‘as of right’, that is, no permit is required. However, under both zones, a permit is required for the construction of more than one dwelling on a lot. As stated in *Green*, DDO11 provides specific guidance in terms of how the land is to be redeveloped. DDO11 needs to be read together with the other overlay controls, particularly the Heritage Overlay - Schedule 8 (HO8) which applies to a wide area known as the ‘Government Survey Heritage Precinct’.
- 17 Clause 21.02-3 of the Hobsons Bay Planning Scheme highlights as one of the key issues facing Hobsons Bay ‘*protecting the quality and character of existing suburbs from pressure associated with urban consolidation*’. The adoption of amendments affecting the former PPWM site, resulting in the zoning of the land and introduction of DDO11 facilitates outcomes that support urban renewal in the form of higher density residential development in part of this municipality where, according to the Advisory Committee, has a reduced level of sensitivity compared to other established residential neighbourhoods. Additional housing of the type proposed in this location works towards important planning outcomes with respect to accommodating

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<sup>13</sup> Department of Transport, Planning and Local Infrastructure, 2014.

<sup>14</sup> Clause 11.02-1 Hobsons Bay Planning Scheme

<sup>15</sup> Clause 16.01-1 Hobsons Bay Planning Scheme

<sup>16</sup> Clause 16.01-2 Hobsons Bay Planning Scheme

<sup>17</sup> Clause 16.01-3 Hobsons Bay Planning Scheme

expected population growth, provision of housing choice and varying levels of affordability. It also works towards easing pressure for housing growth of this scale to be located within established and more sensitive locations, such as residential heritage precincts in both Williamstown and the wider City of Hobsons Bay.

- 18 Given therefore the strategic direction for the proposed site, we must go on to consider the merits of these proposals, having regard to what is contemplated in terms of HO8, DDO11, the relationship with other existing heritage areas/features in the area, residential neighbours as well as industrial areas in the immediate vicinity.

## **Heritage**

### **Should demolition of the former ‘Nugget Factory’ building be allowed?**

- 19 The subject land partly comprises Lot 12 on which exists an industrial building known locally as the ‘Nugget Factory’. The Nugget Factory building fronts Kanowna Street, between Cecil Street and the former Britannia Hotel, and is located directly opposite the Point Gellibrand Coastal Park. The building was constructed in about 1887 for the purpose of a steam laundry, probably to service the maritime industry. However, by 1896-1897, the building was occupied by the Silex Soap Company, then remained vacant for a few years before being leased to the Standard Centrifugal Company. In 1907, the Nugget Polish Company Limited leased the building before purchasing it by 1909. The company occupied the building until 1974. During this time alterations and additions were constructed. Of these, the most significant is the change to the building’s Kanowna Street façade, which transformed the somewhat ornate Victorian façade<sup>18</sup> into one which takes on a post WW2 industrial appearance<sup>19</sup>.
- 20 The proposal involves demolition of the entire Nugget Factory building as well as removal of other industrial buildings, paved surfaces and fences. It is the removal of the Nugget Factory building which is of concern to the Council and resident objectors. The Council has refused a permit application to demolish the building, a decision which the Save Williamstown Group (SWG) and other respondent objectors support.
- 21 In essence, the parties opposing demolition of the Nugget Factory submit that demolition of the building would have an adverse impact on the significance of the heritage area within which it lies. They contend that the building is significant and should not be demolished because:

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<sup>18</sup> The original façade is shown in a photograph contained in various heritage reports. See for example, Lovell Chen (2010) Appraisal Report, Former Williamstown Steam Laundry, Kanowna Street, Williamstown – see Figure 4

<sup>19</sup> Lovell Chen (2010) Appraisal Report, Former Williamstown Steam Laundry, Kanowna Street, Williamstown – see Figures 8 and 9

- It is a rare example of 19<sup>th</sup> century industrial fabric in Williamstown and Melbourne's western suburbs;
- It has historical links with Williamstown's late 19th century maritime history as it was used as a steam laundry servicing the Pacific and Orient Line (P&O);
- Its subsequent use as a factory producing 'Nugget' brand shoe polish and other uses demonstrates Williamstown's links with 20<sup>th</sup> century noxious and chemical industries that provided employment for the local community;
- The basic structure and layout of the Williamstown Steam Laundry is largely intact, and the interior demonstrates the types of plant machinery and fittings that may have been used in association with industrial uses; and
- The building contributes to the streetscape and is of a scale that complements and has a strong visual relationship with the adjacent Britannia Hotel.

22 Under the planning scheme, the subject land, which includes the Nugget Factory, is located within Heritage Overlay – Schedule 8 (HO8) which relates to the 'Government Survey Precinct'. A permit is required under the provisions of the Heritage Overlay (HO) at Clause 43.01 to demolish the factory 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 those elements which contribute to the significance of the heritage place. The decision guidelines under Clause 43.01-4 require consideration be given to a range of matters, most relevantly in relation to demolition:

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.<sup>20</sup>

23 In *Green v Hobsons Bay CC*<sup>21</sup>, the Tribunal noted the following with respect to the direction given by planning policy to the issue of demolition:

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

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<sup>20</sup> Underlining our emphasis

<sup>21</sup> See *Green v Hobsons Bay CC* (Includes Summary) (Red Dot) (Correction) [2013] VCAT 2091

*'conservation and the restoration of contributory elements'*<sup>22</sup>. 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<sup>23</sup>. 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'*<sup>24</sup>. 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.

24 Further, we note the design objectives of DDO11 include:

To recognise the historic, environmental, conservation and recreation significance of the area.

To encourage the adaptive re-use of heritage buildings.

25 As things stand at present, the relevant Statement of Significance applicable is that for HO8<sup>25</sup> which states, in part:

Historically, the Government Survey Precinct demonstrates the most important and prosperous phase in the development of Williamstown from the mid nineteenth to early twentieth centuries and was directly associated with the development of the port and later influenced by the development of railways and associated industries. The early settlement of Williamstown and its importance as a port and defence facility also contribute to a broader understanding of the history of Victoria.

...

Aesthetically, while there are examples of unrelated post war development within the precinct, as a whole, it retains remarkably intact and cohesive groups of nineteenth century buildings that are an integral part of the special character of Williamstown.

26 The citation for the precinct includes a schedule of places that contribute to its significance, but the Nugget Factory is not one of these.

27 Subsequent to the 2010 heritage review, the Council prepared a citation<sup>26</sup> in support of Amendment C99 to the planning scheme which, amongst other things, seeks to introduce a site specific Heritage Overlay control over the Nugget Factory. The amendment, as drafted, does not seek internal building controls, however, we understand that the Council has advised the panel appointed to consider the amendment that this was an oversight and now

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<sup>22</sup> See Clause 15.03-1

<sup>23</sup> See Clause 21.06-2

<sup>24</sup> See Clause 22.02-1

<sup>25</sup> Statement of Significance for HO8 Hobsons Bay Heritage Study (Revision 2010)

<sup>26</sup> Hobsons Bay Heritage Study – Amended 2014 – Volume 3 – Heritage Precinct and Place Citations part 2 – Heritage Places

seeks to pursue internal building controls. The amendment has progressed to the stage that it is to be considered by a panel; however, independent scrutiny of the amendment has not yet occurred.

- 28 The Statement of Significance prepared in support of listing the building within its own heritage overlay ascribes the Nugget Factory local and cultural significance to Hobsons Bay. The statement says the building is significant as an example of Williamstown's maritime history in the late 19th century, providing laundry services for ships docking at Williamstown; its non-maritime manufacturing history in the 20th century associated with the manufacture of Nugget shoe polish; as well as a place for local employment. The statement rates the external condition of the building as 'fair' while the external integrity is 'moderate'.
- 29 Ms Lardner and Mr Vines support the view that demolition of the Nugget Factory building should not be allowed. Ms Lardner notes that the building is not listed as a contributory building under the Statement of Significance for the HO8 precinct. However, she expresses the view that findings of reports by Lovell Chen, Alves and Biosis, support the view that the building should be ascribed as at least being of contributory value to the precinct. Ms Lardner suggests that despite the alterations to the Kanowna Street façade, the building's Victorian origins can still be understood through elements such as views of the roof and the pattern of bays defined by pilasters in the façade.
- 30 Mr Vines originally identifies the value of the building in his 1989 *Western Regional Heritage Study* in which it is graded 'B' and recommended for protection under the planning scheme. The post war alterations to the Kanowna Street façade are of no particular significance according to Mr Vines, as the structure of the building, which is largely 19 century fabric, remains. Mr Vines says that elements of the late 1880s building are evident from within, and that the various rooms at ground level portray the former industrial functions that took place. Mr Vines expresses the view that the Nugget Factory is not only significant because of its links with Williamstown's maritime history, but also as a rare surviving example of the noxious trade and chemical industry which once characterised Melbourne's western suburbs. He suggests it is likely that the building will be of archaeological significance for evidence of former uses which will be found in buried footings, foundations and relics.
- 31 Unlike the situation in *Green*, the Tribunal's decision relating to the demolition of the former Oriental Hotel, there is no argument in this case about the structural condition of the Nugget Factory. NPD accepts that the condition of the building is such that it could be retained. However, NPD submits that demolition of the building would not have an adverse impact on the significance of HO8 given the limited time that it was used as a steam laundry, changes to the street façade which now give it a post war

appearance rather than Victorian, and the difficulty associated with understanding its industrial past on viewing internal areas.

- 32 Complications presented by this case relate to the nature of the heritage overlay which is in place, the Statement of Significance that currently applies and the Council's Amendment C99 which seeks to include the Nugget Factory within its own heritage overlay together with a site specific Statement of Significance. As things stand at present, the land is within HO8 and the applicable Statement of Significance is for that area.
- 33 We accept that it is appropriate to examine further work carried out which may reveal an importance to an area or building which has not previously been understood. However, in this case, it is clear that the heritage value of this building has been examined on numerous occasions by various well known heritage consultants. This process started in the mid 1980s when Mr Vines undertook the *Western Regional Heritage Study*. Under that study, the Nugget Factory is given a relatively high heritage grading, suggesting local to regional significance and recommended for protection under the planning scheme. On reviewing a proposed statement of significance for the building set in the 1989 Vines study, historical associations with P&O and the Nugget shoe polish factory area set out, but it does not go as far as indicating that the building itself possesses special qualities. Nor does it say that the interior of the building, in terms of its appearance and design, is of specific importance.
- 34 Despite the identification of the historical associations in the 1989 study, the building was not identified as making any contribution to the heritage value of the area in the 1993 *Williamstown Conservation Study* by Butler. We think it is likely that the authors of the 1993 study would have had access to the 1989 Vines study, which appears to be a significant body of work. We understand that many of the early heritage studies, like the 1993 study, had limitations due to the amount of work to be undertaken and the financial resources available. However, from an inspection of the Nugget Factory, telltale signs of the building's Victorian origins, such as the roof form, would have been apparent to a heritage expert, albeit that the post WW2 changes to the façade markedly changed its primary appearance when viewed from Kanowna Street.
- 35 The current Statement of Significance for HO8, to which the policy at Clause 22.01 directs our consideration, makes clear that, historically, '*... the Government Survey Precinct demonstrates the most important and prosperous phase in the development of Williamstown from the mid nineteenth to early twentieth centuries which was directly associated with the development of the port and later influenced by the development of railways and associated industries*'. The statement goes on to say that '*Aesthetically, while there are examples of unrelated postwar development within the precinct, as a whole it retains remarkably intact and cohesive*

*groups of nineteenth and early twentieth century buildings that are an integral part of the special character of Williamstown’.*

- 36 We agree with Mr Raworth that the heritage value of the building must, in the first instance, be considered against the relevant Statement of Significance applicable which is for HO8. On viewing the photographic material provided in the reports of all four heritage experts, which show pictures of how the building presented to Kanowna Street (then Morris Street) when constructed, compared to today, it is clear that the façade of the building has been substantially altered. In this regard, we note that in a report prepared for the Council, historians Lesley Alves and Associates acknowledge that *‘alterations to the external fabric include a complete defacing of the façade and replacement of all openings including the central and arched windows’*<sup>27</sup>. The Lovell Chen appraisal report, also prepared for the Council, states:

Alterations to the façade, which appear to have taken place in the 1950’s, have largely erased the architectural references to its nineteenth century origins. While the footprint of the building generally remains as originally constructed and the hipped roof and side walls remain in place, in its current state the property is not of aesthetic or architectural significance<sup>28</sup>.

- 37 Lovell Chen conclude that the *‘the building does not warrant individual recognition’*, although it contributes to the streetscape and the setting of the adjacent Britannia Hotel.
- 38 The above assessments, which note the complete defacement of the street façade and erasure of architectural features that reference the building’s nineteenth century origin are quite frank. The changes to the original Kanowna Street façade are substantial. It seems to us that these conclusions are somewhat at odds with the rating of the building’s external integrity as ‘moderate’, as set out in the proposed citation supporting the building’s inclusion within a site specific heritage overlay<sup>29</sup>. We think that rating the building’s external condition as moderate is, at best, generous, but probably somewhat misleading.
- 39 In its current condition, the Nugget Factory building presents itself as a largely post WW2 building to Kanowna Street and the public realm in the HO8 area. We are unable to conclude that the building contributes to *‘... demonstrating the most important and prosperous phase in the development of Williamstown from the mid nineteenth to early twentieth centuries’*, as set out in the Statement of Significance for HO8. The ability to do so was

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<sup>27</sup> Lesley Alves and Associates, Heritage Report, Former Nugget Factory, 16-20 Kanowna Street, Williamston, August 2012

<sup>28</sup> Lovell Chen, Appraisal Report, Former Williamstown Steam Laundry, Kanowna Street, Williamstown, December 2010.

<sup>29</sup> See Hobsons Bay Heritage Study Amended 2012 – Volume 3 – Heritage precinct and Place Citations part 2 – Heritage Places – 16-20 Kanowna Street (former Nugget Factory)

largely lost when, in the words of Alves, ‘*a complete defacing of the façade and replacement of all openings*’ occurred. The building may be from the nineteenth century and, perhaps, a rare example. However, its inability to reasonably portray its nineteenth century origins to the public realm, detracts significantly from the case supporting its retention.

- 40 The Council and the respondent objectors also submit that the building is worthy of retention given its associations with Williamstown’s maritime history, particularly as a steam laundry servicing the P&O Line. NPD concedes that the steam laundry may have been used to service P&O. However, it submits that evidence suggests other premises on nearby railway land were operated as the main laundry servicing P&O. NPD also submits that even if the building was used as a steam laundry servicing P&O, it would have been for a relatively short time and not sufficient to give the building the level of significance required for it to be retained.
- 41 The research by Lovell Chen<sup>30</sup> indicates that the Nugget Factory land remained vacant until about 1887 with the existence of a steam laundry noted in rate books the following year and in the Sands and McDougall directory as the ‘Williamstown (Steam) Laundry’ in 1889. Lovell Chen also note that by 1896-1897 the Silex Soap Company occupied the building, then it remained vacant for a number of years before occupation by Standard Centrifugal Company and subsequently by the Nugget shoe polish factory from about 1907 until 1974. Lovell Chen’s appraisal also states that the P&O laundry comprised four timber dwellings situated within the railway fence, not the laundry on the subject land. As contended by NPD, this suggests the P&O’s long term laundry was elsewhere.
- 42 The report of Alves<sup>31</sup> states:
- ... when the Williamstown Steam laundry opened in the late 1880’s, it was already too late, the Port of Williamstown was in decline, most passenger shipping having moved to Port Melbourne.
- 43 We note Lovell Chen’s assessment that:
- The subject property in Kanowna Street, is of historic interest as an early industrial premises in the Government Survey Heritage Precinct (HO8) and for its long association with the Nugget Polish Co. The building, albeit altered, is one of the few remaining buildings in Williamstown which reflects the non-maritime industrial origins and growth of Williamstown during the nineteenth century.
- 44 It is clear that Lovell Chen did not regard the building’s associations with the maritime services to be an important historical association.

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<sup>30</sup> Lovell Chen, Appraisal Report, Former Williamstown Steam Laundry, Kanowna Street, Williamstown, December 2010

<sup>31</sup> Lesley Alves and Associates (2012) Heritage Report – Former Nugget Factory

- 45 The Williamstown Steam Laundry, as constructed, was an impressive building with an ornate Victorian façade. It seems probable that the owner of the land, Mrs Black, sought to service Williamstown's maritime services. However, the evidence demonstrates that, as a laundry servicing the maritime industry, the use was short lived and unsuccessful leading to the building being either vacant or used for other purposes. It may be that the laundry did service P&O, but this would have been for a very short period. In our view, this is not sufficient to ascribe the building with a significant historical association with P&O.
- 46 However, the Council and respondent objectors also contend that association with the former Nugget Shoe Polish Co. is of significance, demonstrating early 20th century industry, providing a place of local employment and association with the noxious and chemical trades. Mr Vines expresses the view that while the façade is altered, it is possible to interpret from the built fabric the nature of former industrial uses evident in the size and position of rooms within the building.
- 47 We accept that the underlying fabric of the Nugget Factory building dates from the late 19th century, a time which is within the period where the Statement of Significance for HO8 says is:
- ... the most important and prosperous phase of the development of Williamstown from the mid nineteenth to the early twentieth centuries which was directly related with the development of the port and later influenced by the development of railways and associated industries'.
- 48 The association with the establishment of the Nugget Factory within the building during the early 20th century perhaps demonstrates the introduction of chemical trades as suggested by Vines. However, the Statement of Significance for HO8 makes no mention of industrial associations with the chemical and noxious trade industries despite the recommendations of the Vines study 25 years ago. In recent times, appraisals of the Nugget Factory, commencing with that of Lovell Chen in 2010, ascribe the building varying degrees of importance. Lovell Chen conclude that the building is of historical interest, but ultimately, that it '*... does not warrant individual recognition for cultural heritage reasons*'.
- 49 Part of the difficulty here is not just that the building has been defaced, but there is an absence of controls requiring a permit for internal alterations to the building. As the planning scheme controls stand, internal works which change the internal layout and form of the building do not require planning approval under the HO8. Other than the initial recognition of the value of the building in 1989 by Vines, which seems to have been largely dismissed until recent times, no evidence was presented to show that there has been any interest in the past in terms of seeking to apply a site specific heritage control over the Nugget Factory, including controls over internal works.
- 50 That is until Amendment C99. However, even in the case of Amendment C99, the exhibited documents do not seek internal buildings and works

controls. The Council has advised the panel considering the amendment that it now seeks to change the amendment so that internal building controls apply to the Nugget Factory. It seems that the Council suggested to the panel that the failure to provide for internal building controls was an inadvertent failure on its part. We are unsure of this, as there is no mention of the importance of the interior of the building in the proposed Statement of Significance. Further, unlike the situation with respect to the exterior of the building, the proposed Statement of Significance gives no indication of the condition or integrity of the interior of the building. Put simply, if the interior is significant warranting internal works controls, we would have thought that the Statement of Significance would explain why. We find the Council's explanation that it was an inadvertent failure to include internal buildings and works controls in the amendment as somewhat perplexing given the sensitivity of this matter to the local community and the overall background to the redevelopment of the NPD land.

- 51 We remain sceptical that internal buildings and works controls are appropriate for the Nugget Factory which is, at best, of local significance. We accept that a skilled and experienced expert like Mr Vines may be able to interpret the use of the interior of the building. However, the various other heritage consultants engaged to assess this building have been unable to come to the same conclusion. In our view, there is simply not enough in the extant internal fabric to demonstrate its former use as a steam laundry or shoe polish manufacturer. We are also unable to place much weight on what is proposed in Amendment C99 given that it has not passed the rigour of independent assessment.
- 52 The Council and the respondent objectors also submit that the building should be kept as it complements the adjacent Britannia Hotel. We agree that the overall height, scale and shape of the building, as noted in the Lovell Chen appraisal, are complementary to the adjacent hotel. However, the same could be said about any building with similar qualities, irrespective of the era. If the Nugget Factory is important to the setting of the Britannia Hotel, then it should have been included within HO162 which applies to the hotel. Alternatively, there should be some mention in the Statement of Significance that the association and relationship with the hotel building is important. While the extant Nugget Factory building has a complementary relationship with the hotel, bearing in mind the significant changes to its facade, a new, appropriately designed building could also have a complementary relationship through its form and scale.
- 53 We accept that adaptive reuse of the Nugget Factory building would also represent an acceptable outcome. However, we do not regard this as essential given our findings.
- 54 For the reasons set out above, we conclude that a permit should be granted to demolish the Nugget Factory as it will not detract from the significance of the HO8 precinct. We grant such permission in both applications. In

doing so, we include permit conditions requiring an archaeological investigation to be undertaken and for an information plaque/interpretative display as agreed to by NPD. However, given the level of significance and the extent to which the building has been altered, we are unable to agree that the circumstances warrant conditions requiring the owner of the land to undertake an interpretive/recording package or conservation management plan as put forward by the Council.

Does the proposed development have adverse impacts on heritage significance of HO8?

- 55 The Council and objectors also express concerns about the impact of new development. In general, they contend that the proposed apartment building will overwhelm the low scale character of the *Government Survey Precinct* given its height, size and overall bulk. They submit that the proposed townhouses are not designed to respond appropriately to the heritage context, particularly by way of the contemporary form and use of modern materials.
- 56 The local policy framework that applies with respect to new development in heritage areas is somewhat detailed. Objectives in the MSS call for outcomes such as ensuring ‘... *new development responds positively and enhances the unique and valued character of heritage places and precincts within Hobsons Bay*’. Strategies to achieve this outcome include ‘*to ensure that new buildings or works do not visually dominate or cause detriment to the heritage values of heritage places that are situated in the locality*’. Preference is given to ‘... *buildings that are visually recessive and compatible in terms of scale, siting, design, form and materials with the historic character of the heritage place or precinct in accordance with the “Guidelines for Infill Development in Heritage Areas”*’<sup>32</sup>. The policy at Clause 22.01 builds on these objectives and strategies and seeks outcomes including that new development is of high quality, responds positively to the surrounding historic context and does not visually dominate a heritage place or precinct.
- 57 Further, while the objectives of DDO11 call for comprehensive urban renewal, they also call for the recognition of the historic, environmental, conservation and recreation significance of the area. Decision guidelines include whether the development addresses the requirements of the heritage policy at Clause 22.01.
- 58 Broadly speaking, the HO8 precinct is largely characterised by single and double storey development, whether in the form of dwellings or other buildings. There is also a sprinkling of individually significant one and two storey buildings in the precinct such as the *Britannia*<sup>33</sup>, *Telegraph*<sup>34</sup> and

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<sup>32</sup> See Clause 21.06-1 Hobsons Bay Planning Scheme

<sup>33</sup> H0162

<sup>34</sup> H043

Prince of Wales<sup>35</sup> hotels as well as the former Port Phillip Stevedore Club Hall<sup>36</sup>.

- 59 The proposed apartment building reaches a maximum height of about 34 metres. This height is well above that of other buildings within the HO8 area. Those opposing the proposal argue that at such height, the proposed apartment building will be visually dominating within the HO8 precinct and detract from its ability to display the unifying effect of the small scale houses and other buildings.
- 60 It is clear that the proposed apartment building is much taller than surrounding development and will clearly be seen from various views. But, does it follow that because the apartment building is much larger than surrounding development and can be seen, it must therefore detract from the significance of HO8? We do not think so.
- 61 The assessment of the merits of this proposal must take into account and embrace the whole of the planning schemes policies and provisions. Of relevance in this case is that the planning scheme includes specific provisions for this area in the form of the DDO11 controls. The DDO11 provisions, both the design objectives and specific provisions, set the basis for expectations as to what can be achieved in this area. Notably, DDO11 specifies an indicative building height of 25 metres on the apartment building land. Putting aside arguments about the ‘flexibility’ there is in terms of the extent to which an indicative height may be exceeded, the reality is that a building which matches exactly the 25 metre indicative height provided for in DDO11 will be higher than the smaller scale surrounding development and will be seen from various vantage points.
- 62 In introducing the provisions of DDO11 into the planning scheme, a strategic decision was made as to what is to be expected. It is evident that as part of that process, the Advisory Committee considered the heritage context and was able to support a building to a height of 25 metres on the subject land<sup>37</sup>. Specifically on the issue of heritage, the Advisory Committee concluded that ‘... *the relative isolation of the NPD land and its location at the edge of Williamstown gives it a lower redevelopment sensitivity*’ and further:

Within its heritage context, this is one of the few sites in Williamstown that provides an opportunity for higher built form which does not impact on the undeniable but different heritage qualities of other parts of Williamstown.<sup>38</sup>

- 63 The Advisory Committee also concluded that:

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<sup>35</sup> H0210

<sup>36</sup> H035

<sup>37</sup> Report of the Former Port Phillip Woollen Mills Advisory Committee, May 2011 see page 135

<sup>38</sup> Ibid page 69

- Development *per se* will not diminish the heritage values of the Government Survey Heritage Precinct or Williamstown at large.
- Heritage issues are not determinative in generating urban design and built form outcomes. The site will inevitably generate a scale and type of development atypical of, say, Cecil Street.

- 64 We also take into account the somewhat altered heritage context of this part of the immediate locality. The apartment building is not within a sensitive residential streetscape comprising Victorian era cottages in HO8. Rather, it is in part of the precinct with a low level of heritage intactness. We agree with Mr Raworth's view that the apartment building is acceptable given that it is to be located in an area where there is substantial modern development, and it is flanked by other sites, either to remain with existing buildings or redeveloped with new lower scale development such as the Kanowna Street townhouses, which provide a transition in height.
- 65 We do not accept that a lower height is required for heritage reasons with respect to HO8. Ms Lardner suggests that lowering the overall height by about two storeys will be beneficial. We agree that with such a reduction, the apartment building would be a smaller and lower building, but it will still be clearly seen and its scale would remain atypical of that found in the more intact heritage streets in HO8. We conclude that the apartment building will not adversely affect the significance of HO8.
- 66 Ms Lardner does not express concerns about the Aitken Street townhouses. We agree that they are of an acceptable scale and design having regard to HO8.
- 67 Ms Lardner does, however, express concerns about the design of the Kanowna Street townhouses as it does not have regard to the interface with the Britannia Hotel and the characteristics of the broader heritage place. Specific concerns relate to the angular cantilevered façades and vertical glass elements.
- 68 We accept that the proposed townhouses adopt a contemporary design style incorporating angled forms and materials. We find this to be appropriate having regard to the direction given by policy and the Council's *Guidelines for Infill Development in Heritage Areas*. The objectives of the heritage policy at Clause 22.01 seek outcomes which include '*... new development which is of a high quality and creatively interprets and responds positively to the historic context ...*' and, '*... does not distort historic evidence of heritage places by copying or reproducing historic styles or detailing*'<sup>39</sup>. The guidelines support the direction given by policy. They say that '*a new building should be recognisable as a product of its time and not create a*

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<sup>39</sup> Policy at Clause 22.01-7

*false impression of age or style. Good contemporary design is strongly encouraged*<sup>40</sup>.

- 69 The Kanowna Street townhouses represent an acceptable infill response to HO8. Firstly, it must be remembered that the streetscape contains little heritage fabric. This gives more flexibility for new infill development. Secondly, we are satisfied that the overall height and scale of the townhouses meets the requirements of DDO11 and although higher than the adjacent Britannia Hotel, we agree with Mr Raworth that the difference is not substantial or unacceptable. Indeed, the height of the townhouses is about 3 metres less than the indicative height under DDO11. Thirdly, the townhouse typology is appropriate as it responds to the fine grain pattern of development typically found in the residential streets of HO8. The angled forms, including roof design, reflect an acceptable interpretation of industrial use and/or the maritime theme found in the area. Fourthly, given the nature of the streetscape, we find the use of contemporary materials, as proposed, to be acceptable.
- 70 Overall, it is our conclusion that the proposed development will not have unreasonable impacts on the significance of HO8.

Does the proposed development have adverse impacts on the significance of the Britannia Hotel?

- 71 The Britannia Hotel is located on the corner of Kanowna Street and Aitken Street, immediately to the east of the existing Nugget Factory. The Britannia Hotel is covered by its own site specific heritage control, HO162. According to the Statement of Significance for HO162, the Britannia Hotel is historically significant as one of a number of surviving corner hotels in proximity to the port and, aesthetically, as a representative and externally intact example of a Federation era hotel that contributes to the surrounding Government Survey precinct. The hotel has been recently renovated, with its façade restored. It is clearly an important heritage asset in this area.
- 72 Council and the respondent objectors assert that the proposed apartment building and the Kanowna Street townhouses will have an adverse impact on the hotel. In general, they assert that the apartment building will rise over the hotel, overwhelming it, thus diminishing its prominence and detracting from its appearance. They also assert that there is an uneasy relationship between the townhouses and the hotel given the angled alignment proposed for the new dwellings.
- 73 As a two storey federation style building, the Britannia Hotel sits proudly on the corner of Kanowna Street and Aitken Street, opposite the Point Gellibrand Coastal Park.

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<sup>40</sup> *City of Hobsons Bay: Guidelines for Infill Development in Heritage Areas* 2006 at page 6

- 74 In reviewing whether the relationship is appropriate, we observe that the proposed apartment building is not located directly behind or to the side of the Britannia Hotel. Rather, the proposed apartment building is to the southwest. This is important because when the hotel building is viewed from Kanowna Street, front on, the apartment building does not sit immediately behind the hotel. Rather, it will be to the side. This results in clear space above and behind the hotel building. We find this relationship accords with the *Guidelines for Infill Development in Heritage Areas* with respect to new development at the rear of buildings<sup>41</sup>.
- 75 Further, the proposed apartment building is set back about 25 metres from Kanowna Street. This degree of separation is substantial, allowing the hotel to continue to sit proudly at the forefront of the corner with the apartment building reading as a recessive and modern insertion, albeit that it would be taller.
- 76 In relation to the Kanowna Street townhouses, it is clear that they are taller than the adjacent Britannia Hotel. However, we do not find the additional height of about 1-2 metres<sup>42</sup>, to be excessive. We agree with the view expressed by Mr Raworth and Ms Riddett that the side wall of the townhouse facing the hotel largely maintains an existing condition which includes a separation of about 4.8 metres in the form of a single storey infill between the townhouses and the two-storey hotel. We do not share Ms Lardner's concern about the contemporary design style. This is appropriate as it is consistent with policy and will allow for the clear distinction between the heritage fabric of the hotel and the new townhouses.
- 77 We find that the proposed development will not have adverse impacts on the significance of the Britannia Hotel.

Does the proposed development have an adverse impact on the significance of the Cecil Street precinct?

- 78 The Council and respondent objectors also assert that the proposed development will have unreasonable impacts on the significance of the Cecil Street heritage precinct which is covered by the provisions of HO1. The concerns here are that the proposed apartment building will overwhelm the smaller, single storey cottage dwellings typically found along Cecil Street and the contemporary townhouses do not provide an appropriate continuation of the streetscape due to their height and design.
- 79 The precinct extends along almost the majority of both sides of Cecil Street, between Ferguson Street and Kanowna Street. It does not include the subject land which is on the northern side of the street, but does include properties directly opposite on the south side. The Statement of Significance for HO1 says that the precinct is historically significant as '*... it formed part*

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<sup>41</sup> *City of Hobsons Bay: Guidelines for Infill Development in Heritage Areas* 2006 - Figure 10.

<sup>42</sup> The height varies due to the angled roof form

*of the southern boundary of Williamstown and its ability to demonstrate important phases of its development from soon after the first land sales between 1837 and 1940 to its proclamation as a city in 1909' .*

Aesthetically, the precinct is significant as an integral part of the broader 'Government Survey' heritage precinct, and:

... it retains intact groups of predominantly nineteenth and early twentieth century dwellings, with interspersed public, church and commercial buildings that are characteristic of this part of the broader Government Survey heritage precinct and an essential part of the historic character of early Williamstown.

- 80 Ms Lardner relies on the MSS which seeks outcomes where new buildings do not visually dominate or cause detriment to the heritage significance of the broader heritage place<sup>43</sup>, as well as the design objective in DDO11 which calls for the height, scale, bulk and setback of new development which is respectful of the context.
- 81 Extracts from the Advisory Committee report were set out earlier in these reasons which provide the basis for the DDO11 controls. Ultimately, the Advisory Committee concluded that development *per se* will not diminish the heritage values of the Government Survey Heritage Precinct or Williamstown at large. It specifically found that heritage issues are not determinative in generating urban design and built form outcomes. The site will inevitably generate a scale and type of development atypical of streets such as Cecil Street. This conclusion underpins the strategic basis for the inclusion of DDO11. It is true that the Advisory Committee recommended 25 metres as a mandatory height limit for the apartment building site. However, we must apply the planning scheme as we find it and must decide whether it is reasonable to exercise the discretion provided for in the planning controls. We are therefore required to assess whether the impact of the building accords with the purpose of the heritage overlay and responds appropriately to the context which includes the area's heritage value.
- 82 The Council and respondent objectors submit that if the intent of the indicative heights set out in DDO11 is followed, the proposed apartment building should not exceed the 25 metre height specified for the apartment building land. They contend that any extra height adds visual bulk to the apartment building and that this will have an adverse impact on the significance of the adjacent heritage places. Ms Lardner supports this view and suggests the removal of two levels.
- 83 We accept that the proposed apartment building will be seen in the context of the Cecil Street heritage streetscape and, specifically, as a backdrop to the single storey heritage dwellings. However, as is the case with the Britannia Hotel, the apartment building does not sit immediately behind the Cecil Street dwellings. It is offset and set back away from Cecil Street. This

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<sup>43</sup> Clause 21.06-2 and 22.01 Hobsons Bay Planning Scheme

relationship allows for the nature of the Cecil Street Streetscape to be readily understood and appreciated when viewed front on, in line with the approach set out in figure 10 of the *Guidelines for Infill Development in Heritage Areas*. Angled views toward Ann Street will not be affected. While the height and volume of the apartment building will be apparent on angled views toward Kanowna Street, the apartment building is set back from Cecil Street, and will read as a modern insertion in the background.

- 84 Further, the two uppermost levels of the building step back away from the more consistent line of the levels below. When viewed near the building, they will clearly read as recessive elements. While the upper levels will be more exposed from further away, such as from the corner of Cecil Street and Ann Street, this view will be at a distance thus diluting the visual impression of the visual bulk associated with them.
- 85 The proposal also involves the insertion of a row of townhouses between the laneway which separates the subject land from 12 Cecil Street and the townhouses fronting Kanowna Street. The southernmost of the row of townhouses fronting Kanowna Street also has a direct abuttal with Cecil Street. Consistent with the theme for the NPD land as a whole, a contemporary design style is employed.
- 86 Ms Lardner accepts that the subject land, insofar as it has an abuttal with Cecil Street, is outside HO1. Nonetheless, she expresses the view that the townhouses should be redesigned to reflect the predominant subdivision pattern, form and scale of the Cecil Street precinct, while the corner townhouse on Kanowna Street should be reduced to 7 metres. We do not accept that these measures are necessary.
- 87 Firstly, that part of the subject land abutting Cecil Street is outside HO1. Secondly, there are no buildings of heritage value on the subject land fronting Cecil Street. Thirdly, the buildings on the subject land abutting Cecil Street are industrial in nature, not residential. Fourthly, a laneway separates the subject land from the commencement of the HO1 streetscape on the northern side of Cecil Street.
- 88 Taking into account this context, we do not accept that the changes put forward by Ms Lardner are necessary. We accept that the proposed development will bring about a marked change to the presentation of buildings to the eastern end of Cecil Street. But, as noted by Mr Raworth, this part of the subject land is located at the very end of Cecil Street, outside of HO1, and the frontage comprises a relatively short part of Cecil Street. The widened Windsor Terrace will provide a clear demarcation point that separates that part of Cecil Street which is of heritage value and modern development on the subject land. We do not see the need to seek to closely replicate the form, scale and subdivision pattern found in that part of Cecil Street in HO1 on the subject land.

- 89 Rather, we find the proposed townhouses present a ‘fine grain’ rhythm that is responsive to, rather than replicating, the pattern of development found in Cecil Street. At three-storeys, the townhouses provide a reasonable transition in the building height from the modest buildings in HO1 to the more intense development envisaged for the NPD land. The contemporary design forms and materials proposed are acceptable given the location of the site, the lack of heritage fabric fronting Cecil Street and the degree of separation between the proposed townhouses and heritage dwellings created by the widened Windsor Terrace and Cecil Street itself. We agree with Mr Raworth that the proposed townhouses will not disrupt the heritage streetscape, but rather, will read as a separate new element on the periphery of HO1. The end of the Kanowna Street townhouse onto Cecil Street is not an unusual presentation at the end of rows of townhouses and is acceptable from a heritage viewpoint given its separation from heritage buildings.
- 90 A question arises as to whether the Kanowna Street townhouse abutting Cecil Street must be lowered to meet the maximum building height specified in the table to DDO11. The table to DDO11 sets an indicative building height of 10 metres for local streetscapes including Cecil Street. The ‘built form outcome’ sought is *‘a two-storey street edge (up to 7 metres) on Cecil Street with recessed upper levels’*. While indicative heights are not mandatory in the majority of the DDO11 area, the provisions of Clause 4.0 in the schedule say that within the Advisory Area, building heights specified in the table represent maximum heights that cannot be exceeded even with a permit. The Kanowna Street townhouses are within the Advisory Area.
- 91 All of the townhouses on Kanowna Street are at a maximum height of 10 metres, albeit that for the most part, the indicative height of 13 metres is specified. The indicative height of 10 metres, at the Cecil Street end of the Advisory Area is however mandatory. It is met. The built form outcome specified in the table suggests a 7 metre street edge with the upper level set back in Cecil Street. However, Clause 4.0 of DDO11 only sets the building height as mandatory in the Advisory Area. We take that to mean the height specified in the column ‘Indicative Building Height’. The clause does not say that the built form outcome is mandatory, albeit that it is a matter to consider. Accordingly, we do not accept that the provisions of Clause 4.0 in DDO11 require the height of the end townhouse on Kanowna Street to be lowered.
- 92 Given the above, we find the proposal will not have unreasonable impacts on the significance of HO1.

Does the proposed development have an adverse impact on the significance of the Point Gellibrand Coastal Park and Time Ball Tower?

- 93 The Council and respondent objectors submit the proposed development will also have adverse impacts on the heritage significance of the adjacent

Point Gellibrand Coastal Park and the former Point Gellibrand Lighthouse, known as the 'Time Ball Tower' which sits within the coastal park. Both the coastal park (HO25) and the 'Time Ball Tower' (HO44) are covered by site specific heritage controls.

- 94 The coastal park is located directly opposite the subject land's Kanowna Street frontage. It is described in the relevant Statement of Significance as '*... comprising approximately 24 hectares of foreshore land bounded by Kanowna Street, Hanmer Street, Ann Street, Morris Street and the Cyril Curtain Reserve in the south and the coastline to the east*'. Point Gellibrand is historically significant as a centre of maritime, land transportation and communication activities essential to the earliest settlement of non-indigenous people in Williamstown and Victoria. The Statement of Significance explains that Point Gellibrand is the site of the first European settlement in the Port Phillip district; is strategically important in terms of the defence of the new colony; the Time Ball Tower which sits within it demonstrates the importance to the protection of shipping; played an important role of a dockyard and as a land corridor which provides a visual reminder of the link between the Williamstown rail line, railway workshop/yard and port activities.
- 95 Amongst other things, the Statement of Significance recommends that new development is sympathetic to the historical character of the place and future development should accord with the applicable master plan.
- 96 The Time Ball Tower is a former lighthouse within the coastal park constructed in 1849. It is not only covered by a site specific heritage overlay but also included on the Victorian Heritage Register<sup>44</sup>. It is significant as the earliest lighthouse at Port Phillip Bay and surviving public building in Williamstown and the only surviving part of a precinct of buildings which included an observatory, pilot's quarters, telegraph office, railway terminus, pier and flagstaff<sup>45</sup>.
- 97 The Point Gellibrand landscape and Time Ball Tower are both classified by the National Trust.
- 98 There is no doubt that the Point Gellibrand Coastal Park and the Time Ball Tower are assets of significant heritage importance. The question here relates to the impact of the proposed development, specifically the apartment building and the Kanowna Street townhouses, on their heritage significance.
- 99 Ms Lardner expresses the view that the proposed townhouses and apartment building will have a detrimental impact on the coastal park. She asserts that the repetitious form of the townhouses, which are directly opposite the coastal park, is inappropriate and more variation is required. This is because

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<sup>44</sup> VHR H1649

<sup>45</sup> Refer Statements of Significance for H044 and VHR 1649

the townhouses will be very dominant in the streetscape and will be seen as a wide vista from the coastal park.

- 100 In relation to the apartment building, Ms Lardner says that the overall height is excessive and will be an overly dominant built form element, compared to existing low-rise development. She asserts that the building will have a significant detrimental impact on views of Point Gellibrand from the bay and within the coastal park itself. Ms Lardner expresses the view that, at the very least, the overall height of the building should be reduced in line with the 25 metre indicative height for the land under DDO11 by the deletion of two mid rise levels within the body of the building rather than the simple deletion of the top two levels.
- 101 Mr Raworth does not share Ms Lardner's views. Rather, Mr Raworth expresses the view that the proposed apartment building, while visible from the bay and coastal park, will form part of a backdrop of buildings comprising the shipyards and port associated infrastructure. He says the deletion of two levels would not make a significant difference as the scale of the proposed apartment building is clearly larger than the surrounding development. In relation to the townhouses, Mr Raworth says that they will be viewed as part of the low rise urban fabric of the area, albeit that they are a modern insertion.
- 102 Clearly, the proposed development is not in the coastal park. The question here is whether the proposed development has a detrimental effect on the coastal park setting and views of the Time Ball Tower.
- 103 Having inspected the area, including viewing the subject land from within the coastal park and Time Ball Tower, we find that the proposed development will not have unreasonable impacts on the setting.
- 104 Ms Lardner is correct in asserting that the proposed townhouses along Kanowna Street take on a consistent and somewhat repetitive form. They are contemporary. However, we do not see a difficulty with this. The townhouses will create a new section of urban streetscape consistent with the outcomes envisaged for the area covered by DDO11. In terms of whether they will be overly dominant, we observe that the indicative height contemplated under table 1 to DDO11 along Kanowna Street is 13 metres. The Kanowna Street townhouses are designed to have a maximum height of 10 metres. This equates to about one-storey less than the indicative building height.
- 105 This is an acceptable outcome as an appropriate relationship is established between both the Britannia Hotel, as discussed earlier, and the coastal park. The coastal park has an interface with urban development comprising hotels, industrial buildings and port infrastructure. The proposed townhouses will be viewed as a built form element within that setting. We do not agree with Ms Lardner that the proposed townhouses will have a

detrimental impact on views of the coastal park or the appreciation of the Time Ball Tower which is located several hundred metres away.

- 106 The proposed apartment building will bring about a noticeable change, whether at 25 metres or at the height proposed when viewed at long range, say from the bay, within the park and from the Time Ball Tower. The photomontages clearly show the impact on the proposed apartment building. However, in the long range views identified above, the apartment building is one element within a relatively broad vista. Because of its design, the horizontal banding works toward the presentation of a low squat building to the coastal park, an outcome supported by the Advisory Committee<sup>46</sup>.
- 107 We are unable to conclude that the deletion of two levels, to reduce the height of the building to 25 metres will make much difference in terms of the impact on the views and setting of the coastal park. This is because the upper two levels are designed to step back and are clad in materials that distinguish them from the strong horizontal banding displayed by the levels below. The upper levels will be perceived as a recessive and lightweight top to the building.
- 108 The deletion of two levels, as contemplated by Ms Lardner, would result in the loss of about 32 dwellings. The objectives of DDO11 specifically encourage urban renewal which delivers increased housing diversity, affordability and density. While the design objective of DDO11 also requires recognition of the historic context and new development that is respectful of the context, we do not think that this requires the deletion of the two levels of the building. We find that the design of the apartment building, set back behind townhouses, is consistent with the expectations for this urban renewal area.
- 109 We find the development proposal satisfactory on heritage grounds.

## **Building Height**

### **Is the height of the apartment building permissible under DDO11?**

- 110 While we find the height of the proposed apartment building acceptable on heritage grounds, another key question in this case is whether the height of the proposed building is permissible as it exceeds the ‘indicative height’ specified in the plan to Clause 1.0 of DDO11.
- 111 Clause 4.0 of DDO11 states ‘buildings should be constructed generally in accordance with the indicative building heights specified in the Table to this schedule’.
- 112 Some debate was had regarding the meaning of ‘indicative’. It was observed that this is not a term generally used within planning schemes in relation to

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<sup>46</sup> Report of the Former Port Phillip Woollen Mills Advisory Committee, May 2011

building height, the more common terms being ‘preferred’ or ‘maximum’ building height.

- 113 It was submitted by NPD that ‘indicative’ is a descriptor of building height in the context of a planning control which regulates built form and is to be construed as no more or less than an indication of the height of a building which would be acceptable without ruling out higher or lower forms.
- 114 What is proposed in the central area is a 10-storey apartment building containing 128 dwellings (64 one-bedroom and 64 two-bedroom). This building is to have its main entry and western boundary flush with Windsor Terrace. A secondary access is proposed off a newly created laneway running north - south, separating the apartment building from the townhouses fronting Kanowna Street. The highest point of the apartment building is RL37.80 (at the lift core) or 34m, with the height of the proposed roof over the uppermost level of apartments at 30.60m. Excluding the lift core, this results in effectively 1.5 to 2 residential floors above the indicative height of 25m.
- 115 It was put to us by the Council, Mobil and the respondent objectors that the building at 34m instead of the indicative height of 25m referred to in DDO11 is simply too high, and well beyond what can be contemplated as being in accordance with the ‘indicative’ height specified under DDO11.
- 116 We have found reference to the dictionary definition of ‘indicative’, meaning ‘points out’, ‘indicates’, ‘suggestive of’ of some assistance. However, we consider that the starting point for what is meant by ‘indicative’ should be in the context of the planning provision in which the word is found. That is, in the context of DDO11, which sets out a number of specified building heights in a table. These building heights range from 10m to 13m, 19m and 25m and are described as indicative building heights. Their location within DDO11 is identified in a plan in Clause 1. A section of the plan is also identified as ‘Advisory Area’ and takes in the area known as the ‘WorkSafe Planning Advisory Areas’. The heights within this area are identified as ‘maximum’ and not ‘indicative’.
- 117 The area identified as 25m is highlighted in green on the plan in Clause 1.0 of DDO11 and referred to in the table as ‘central’. The built form outcomes for the central (green areas) are:
- Higher development relative to the adjoining properties which does not dominate the scale and setting of the street and foreshore.
  - Development which provides an appropriate scale to the street edge along Aitken Street.
  - Buildings which are located outside the WorkSafe Planning Advisory Areas.
  - Buildings which are oriented to the north to take advantage of the views and vistas of the Port Phillip Bay and City skyline.

- 118 A small section of the green central area is located within the Advisory Area. The provisions of Clause 4.0 make clear that the 25m is a maximum height that cannot be exceeded even with a permit. This is a contrast to other areas where an ‘indicative’ building heights apply.
- 119 The proposed apartment building sits outside the Advisory Area where the 25m maximum height applies. Accordingly, the height of this building must respond to an indicative 25m building height. Clearly, there is a difference between the ‘maximum height’ specified for the Advisory Area and the ‘indicative heights’ specified elsewhere.
- 120 We observe that a number of submissions referred to the indicative height of 25m as a ‘maximum’ height. We do not view the indicative height as being a ‘maximum’ height. The indicative heights expressed in DDO11 are just that, indicative or suggestive, and can be more or less. There is discretion to allow buildings that are taller than the ‘indicative building height’.
- 121 This does not mean that the exercise of such discretion is unfettered. In deciding whether the height of a proposed building is acceptable, we take into account the various decision guidelines in DDO11. These require that we consider, amongst other things, the design objectives for DDO11 as well as the ‘built form outcomes’ for each area identified in the table. We must also take into account other factors such as the various policies in both the state and local sections of the planning scheme, the purpose of the zone and overlays that apply as well as the impact on amenity. It is on this basis that we go on to consider whether the height and design of the proposed apartment building is acceptable.

### **Urban Design**

- 122 We now turn to the consideration of various urban design issues raised in submissions. In doing so, we refer to relevant design objectives in DDO11 which 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 19<sup>th</sup> century residential areas.
  - To encourage development which achieves high quality urban design outcomes through provision of buildings or architectural excellence located in a pleasant street environment.
  - To maintain and enhance key views and vistas.
  - To ensure that the height, scale, bulk and setback of new development is respectful of the context of the area.

123 These provide a reference for the consideration of specific urban design issues which we deal with below.

Is the proposed apartment building appropriate in terms of height and built form given its relationship to adjacent residential properties, Windsor Terrace, Cecil Street and Aitken Street?

- 124 A key issue in this case relates to whether it is reasonable to allow the apartment building exceeding 25 metres in height having regard to the surrounding built form context.
- 125 The table at Clause 1.0 of DDO11 contains a ‘Development Plan of Indicative Heights’. The plan shows the area where the apartment building is proposed marked ‘green’ with a building height of 25 metres. The proposed apartment building reaches an overall height of just over 30 metres to the roof of the uppermost level; however the lift core increases the height to about 34 metres.
- 126 The respondent objectors submitted the apartment building at 1.5 to 2 floors above what they said was the preferred maximum height stated in DDO11 results in non-compliance with DDO11. In their view, the building will be too overwhelming and dominant in height and mass in relationship to the area. They considered it would be a discordant element, dominating the surrounding area, and when viewed from a distance, intrude into the skyline. A number of their comments in relation to the height of the proposed apartment building appeared to us to disregard the provisions of DDO11 and its envisaged heights for the subject site.
- 127 The respondent objectors made repeated references to the views expressed by the Advisory Committee who recommended the heights be mandatory. Apart from the area shown under DDO11 as the ‘Advisory Area’, no mandatory height is stipulated. Therefore, in assessing what is proposed, we must have regard to and be guided by the provisions contained within the planning scheme as it stands.
- 128 The Council appeared to be somewhat at odds with what it considered an appropriate height. On the one hand, it submitted that the overall height of the apartment building should be no more than the indicative height in DDO11, a view supported by their witness Ms Lardner, from a heritage perspective. But, the Council also led evidence from Mr McGauran, who expresses the view that the overall height of the proposed apartment building is acceptable, subject to the massing of the uppermost levels being modified.
- 129 Earlier in these reasons, we found the height of the apartment building to be acceptable on heritage grounds. We now turn to our examination of the building height having regard to other urban design considerations.
- 130 Mr McGauran considered that, in overall terms, the height and number of storeys of the apartment building, as proposed, is satisfactory although he

found that the overall built form, in terms of massing, was not a comfortable outcome. In his view, the proposal does not provide an outcome that makes the increase in height acceptable, particularly when viewed from the residential area to the south and south-west, which he described as the most sensitive interface, as well as the more distant views of the building from Point Gellibrand Park. In his view, the built form would dominate the view from these aspects and a more acceptable outcome was a stepping in of the top level, providing a transition in height, particularly down to the south as he suggested.

- 131 In this regard, McGauran suggested removal of 6 of the southernmost units on level 8, 4 of the southernmost units on level 9 and removal of the northernmost 4 metres of the northern two units on level 8. He said this would result in a built form akin to the indicative 25m building height in those locations adjacent to the rear of Cecil Street properties, while maintaining the proposed height at the Aitken Street end.
- 132 Mr Sheppard was of the view the proposed height above the indicative 25m was immaterial. In his view, the indicative height is only a guide to the scale of development. He considered the proposed building is less prominent than what is envisaged in DDO11, that is, because not all of the area where 25m high development is envisaged in this location under DDO11<sup>47</sup> is being built upon. Mr Sheppard noted that part of the 25m area, towards Kanowna Street, is not proposed to be built upon at the height indicated in DDO11. Rather, part of this area will either have no development, or lower development in the form of the 10m high townhouses fronting Kanowna Street.
- 133 In relation to Mr McGauran's recommendations, Mr Sheppard was of the view that they would result in the top of the building being skewed, thereby impacting on the architectural quality of the building.
- 134 We agree with Mr McGauran that the indicative 25m height expressed in DDO11 is already 'higher development relative to adjoining properties', that is, the single and double storey dwellings in Cecil Street. However, this atypical height and scale for the subject land was clearly identified as being an acceptable outcome for this area by the Advisory Committee and it is now reflected in the DDO11 controls. We agree with Mr McGauran that DDO11 already envisages a highly visible building. We also agree with his assessment that the curvature of the façade form reduces the prominence of 'bulk'.
- 135 We do not agree, however, with his suggestion to cut back the ends of the top level to the north and south. In our view, adopting the suggestions of Mr McGauran will detract from the overall design of the building. The design,

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<sup>47</sup> Shown marked green on the Development Plan Indicative Heights in DDO11

as presented, has a balanced appearance, when viewed from long distance views, particularly those from the coastal park.

- 136 We agree with Mr Sheppard that the effect of Mr McGauran's suggested changes will skew the height of the building, so that it is taller at one end than the other. We consider that this will emphasise the height at one end, giving rise to the impression of a small tower element compared to the proposed design which through the banding of the lower levels and lightweight upper level, seeks to present a building with a horizontal emphasis rather than on its verticality.
- 137 We therefore see no necessity to interfere with the design of the upper levels, as this will simply detract from the appearance of the building.
- 138 The proposed apartment building will largely present in the form envisaged by the DDO11 controls. The taller apartment building will be seen set back behind lower built form of 10m resulting from the proposed townhouses with frontages on Cecil Street, Aitken Street and Kanowna Street. These proposed townhouses form an apron around the lower parts of the apartment building. This is an acceptable urban design outcome.
- 139 Our views expressed above in relation to Cecil Street from a heritage perspective are reiterated in the context of the area. The apartment building is set back and to the side of the heritage dwellings, not directly behind them. In relation to the new townhouses, the apartment building will sit behind the proposed Cecil Street townhouses working toward a transitional increase in building height from the street into the central part of the Stage 2 precinct as envisaged by the plan for indicative heights in DDO11. We agree with Mr McGauran that the 'flanking of the main apartment tower on all sides with low rise two and three level townhouses' is appropriate and provides 'a fine grain interface with the primary heritage neighbourhood fabric of existing adjacent residential streets and park interfaces'.
- 140 Given this, we do not consider that the suggested changes by Mr McGauran to the northern elevation of the apartment building are necessary. As indicated above, the apartment building is set back behind a row of townhouses in Aitken Street. The upper two levels of the apartment building are recessed and will only be read in relation to the building from distances. Similar to the context in Cecil Street, the direct view of the apartment building from Aitken Street is as contemplated by DDO11.
- 141 Nor do we consider necessary the suggested changes by Mr McGauran to the southern interface of the apartment building. Apart from the changes to the design of the building that would, in our view, detract from its overall design, the built form will still remain visible at 8 storeys or 10 storeys. The widening of Windsor Terrace provides appropriate space between the apartment building and the proposed 3 storey townhouses opposite to the west. With the inclusion of a pedestrian footpath, as well as landscaping, this will create an appropriate streetscape.

- 142 We accept that new development must respond to its context and to that extent, should be respectful. However, as various divisions of this Tribunal have said on numerous occasions, the notion of respectful development does not mean that new buildings must be the same or similar to those which exist. The notion of respectful development must embrace the outcome envisaged by policy and the statutory controls such as DDO11. Ultimately, the type of change that is acceptable will depend on both the physical and strategic context. In this case, the provisions of DDO11 clearly contemplate a high degree of change on the former PPWM site. DDO11 envisages a departure from the existing industrial character, with urban renewal in the form of residential development at higher densities with increased height and scale of development. Given this strategic context, we find that the outcome is acceptable from a character viewpoint taking into account the site's location within Precinct 5 of the East Hobsons Bay area.
- 143 That is not to say that any increase above the 'indicative building height' will be acceptable. A judgement call needs to be made in each case. In this case, having regard to the relevant matters to be taken into account, we find the proposal to accord with the indicative height set out in DDO11.

Do the proposed townhouses sit comfortably within the context of Cecil, Kanowna and Aitken Streets?

- 144 Three storey townhouses are proposed along the frontages of Cecil, Kanowna and Aitken Streets. Each townhouse has a garage to its rear with access from newly created internal laneways.
- 145 Under DDO11 the area fronting Cecil Street is identified as 'Local Streetscapes' with an indicative building height of 10m. The area fronting Kanowna Street is identified as the 'Urban Edges' and fronting Aitken Street the 'Aitken Corridor'. The indicative building height for both these areas is 13m.

**Cecil Street streetscape**

- 146 The built form outcomes for Cecil Street are identified as:
- development which responds to the predominant streetscape and built form character;
  - a two storey street edge (up to 7 m) with recessed upper levels;
  - dwellings to have a frontage to Cecil Street with vehicle access to the rear of the site consistent with the existing dwellings on Cecil Street.
- 147 The block of five three-storey townhouses with a frontage to Cecil Street each have three bedrooms and a double garage to the rear with access from the proposed east-west laneway. The façade treatments to the townhouses

consist of bronze coloured glass, dark grey balustrades and dark metal vertical slat screening. The rooflines alternate, sloping down to the east or west. The maximum height of these varied roof forms is 9.6m.

- 148 The frontage of each townhouse consists at ground level of a planter box approximately 1m in width and an entry area. At level 1 there is a south facing balcony that overhangs the ground level. The building at this level ranges in setbacks from a minimum of 2.40m to 3.52m and 4.32m. The upper level is set back 2.40m and includes a balcony area of approximately 2m<sup>2</sup>.
- 149 There was some criticism from the respondent objectors of these townhouses not being sufficiently respectful of the character of Cecil Street. Mr McGauran indicated he was generally supportive of the three storey scale of the proposed development to Cecil Street.
- 150 We have made comments above, in relation to these townhouses in the context of the Cecil Street Heritage Overlay HO1. Our conclusions are also applicable in terms of urban design.
- 151 The five townhouses along Cecil Street respond to the existing context of Cecil Street. They respond to the fine grain pattern of development in a contemporary design that meets the built form outcomes identified in DDO11. The setback of the upper two levels relates to the setback of the existing dwellings.
- 152 Mr McGauran indicated he was generally supportive of the three storey scale of the proposed development to Cecil Street. We agree with this.

#### Kanowna Street streetscape

- 153 Two blocks of three storey townhouses are proposed along Kanowna Street. The two blocks are separated by the proposed pedestrian walkway. Each of the townhouses has four bedrooms and double garage to the rear accessed via a new north/south laneway. Vehicle access is via the new laneway at the rear. The northernmost townhouse abuts the boundary of the former Britannia Hotel.
- 154 The predominant height of the townhouses along Kanowna Street is 9m meeting the built form outcome in DDO11 of a predominant building height of 10m. The townhouses are attached and set back 1.8m at ground level and 0.5-1.2m at the upper levels creating what is envisaged in DDO11 as a 'hard urban edge' to Kanowna Street.
- 155 The focus of concern by the respondent objectors, Mr McGauran and Ms Lardner related to the townhouse next to the Britannia Hotel which we have dealt with above in relation to heritage. Mr McGauran raised no issue with regard to the three storey height of the townhouses.

- 156 We consider the vertical elements used in the design of the façade and the proposed glazing, as highlighted by Mr Sheppard, allows the townhouses to read as individual dwellings.
- 157 All townhouses in this location are proposed to face Kanowna Street. This includes the southernmost townhouse located on the corner of Kanowna and Cecil Streets. This particular location falls within the area defined as ‘Local streetscapes’ under DDO11. The built form outcome for the ‘Local streetscapes’ seeks ‘a two storey street edge (up to 7metres) on Cecil Street with recessed upper levels’. This townhouse also falls within the ‘Advisory area’ where the maximum building height as with the other townhouses fronting Kanowna Street is 13m.
- 158 As we indicated earlier in this decision, the height of this southern townhouse at 10m is below the mandatory height of 13m for this location. What is not achieved is the desired setback due to the townhouse fronting Kanowna Street, rather than Cecil Street. We have reviewed the relationship of this townhouse fronting Kanowna Street rather than Cecil Street and conclude what is proposed will be ‘generally in accordance with’ the built form outcomes sought in DDO11. There will be no unreasonable impact on the character of the area as this location is at the furthest edge of the new character identified in DDO11, it sits opposite a vacant yard that is also zoned Mixed Use and covered by DDO11 and has no relationship with the existing dwellings in Cecil Street. We consider the configuration of this townhouse allows for vehicle access from the rear maximising the visual presentation to the public realm.

#### Aitken Street streetscape

- 159 Aitken Street runs east/west and sits within the area identified for redevelopment covered by DDO11. Any proposal within this location is assessed under the built form outcomes sought in DDO11. What is proposed along Aitken Street is two blocks of three storey townhouses, one block of seven at the western end of the proposed development on Lot 10 and a block of five on Lot 11 to the east, sitting in front of and to the north of the apartment building. These two blocks are separated by Windsor Terrace.
- 160 The height of the townhouses at 9.6m at the street edge is an outcome sought under DDO11 which seeks ‘a three storey street edge (up to 10 metres) with recessed upper levels set back 5 metres from the street’. The proposal takes on the character identified in DDO11 while at the same time maintaining the fine grain elements of existing residential development. This is an acceptable outcome that accords with DDO11.

Will the townhouses have an impact on the existing residential dwellings in Cecil Street?

- 161 Two other blocks of three storey townhouses on Lot 10 are proposed behind the townhouses fronting Aitken Street, except for the southernmost townhouse abutting 12 and 14 Cecil Street which is to be two storey. These blocks are proposed to run north /south separated by a new north/south laneway, one along the western boundary (Block B) abutting an unnamed existing laneway and one along the eastern boundary of Lot 10 abutting Windsor Terrace (Block C). Each townhouse has a single car garage accessed via the new internal laneways off Windsor Terrace.
- 162 Lot 10 is zoned General Residential 2 Zone under the Hobsons Bay Planning Scheme, unlike the land in the rest of the proposal. DDO11 however applies to Lot 10. Clause 22.10 in the Hobsons Bay Planning Scheme contains the Hobsons Bay East Neighbourhood Character Policy which applies to properties zoned General Residential 2. This policy applies therefore to Lot 10 as well as to the existing residential properties located in Cecil Street. The preferred neighbourhood character for this area, known as Precinct 5, is ‘the spacious and informal qualities of streetscapes, early architectural styles representing the historical development of Williamstown, and the distinctive low scale, lightweight nature of development should be retained and enhanced’.
- 163 The Council submitted, even if the proposal measures up satisfactorily against DDO11 this does not automatically mean it satisfies the criteria of respecting the neighbourhood character. DDO 11 requires new development to be ‘respectful of the context of the area’.
- 164 The proposed development on Lot 10 is at the rear of existing dwellings on Cecil Street and is not located within an existing residential streetscape. The preferred neighbourhood character which relates, in our view, more to the existing character of Cecil Street, is not of great assistance in assessing development on Lot 10. We consider the design objectives in DDO11 is where guidance should be taken from, rather than the preferred character expressed in Clause 22.10. Lot 10 was previously incorporated into the industrial use of the former PPWM site and had a different character to what exists. The preferred character envisaged under DDO11, whilst a more intense built form, adopts the fine grain development pattern of the surrounding residential areas.
- 165 The existing residential dwellings fronting Cecil Street have rear private open spaces abutting Lot 10. Nos 12 and 16 Cecil Street have garages located to the rear along their northern boundary with Lot 10 whilst the properties from 18 Cecil Street to the north are separated by the east/west laneway.

- 166 Mr Green expressed concerns that there was no resolution of the treatment of the area where the subject land meets the existing east/west laneway. The existing laneway running north/south along the western edge of Lot 10 from Aitken Street opens into a laneway running east/west at the rear of the properties fronting Cecil Street. NPD advised they would accept a condition requiring the reconstruction and sealing of this existing lane to the west. We agree that this is appropriate.
- 167 An existing laneway runs east/west behind 16, 18 and 20 Cecil Street opposite the subject land and terminates at the south western end of Lot 10. The townhouse at the southern end of Block B abuts the laneway and vehicle access is provided to two townhouses at the southern end of Block C abutting the existing laneway. It was not clear from the plans provided as to what was proposed in the location where this laneway meets the edge of Lot 10. Some concern was expressed that this could be an alternative vehicle access point thereby increase traffic at the rear of the Cecil Street properties.
- 168 NPD advised there was no intention to allow vehicles from the NPD land to access the rear east/west laneway behind the Cecil Street properties and treatment in the form of bollards to prevent vehicle access and egress would be installed. This can be implemented by permit condition.

## **External Amenity Impacts**

### Overlooking

- 169 The nearest existing dwelling to the proposed apartment building is 12 Cecil Street. The owner of this dwelling expressed concern with regard to the potential for direct overlooking into the upper level bedroom through skylights on the eastern side of the roof, as well as into the rear private open space area.
- 170 To determine whether there will be any unreasonable overlooking into this property, we are guided by the provisions of ResCode, at Clause 55 of the planning scheme. In relation to overlooking, Standard B22 at Clause 55 says that habitable room windows should be designed to avoid direct views into neighbouring secluded private open space or habitable room windows within 9m.
- 171 We consider that if there is any likely impact this will come from potential overlooking from four apartments on the southwest elevation of the apartment building at levels 1 and 2. Above these levels, the external façade of the building adopts a curve and with the inclusion of planter boxes on the balconies on the western elevation. This will work toward preventing direct downward overlooking from these areas toward neighbouring habitable room windows and secluded open space.
- 172 Despite the separation distance from the balconies of the apartments at levels 1 and 2 to the rear private open space of 12 Cecil Street and the

skylight windows being over 9m, we consider the incorporation of some form of screening to prevent direct downward overlooking into 12 Cecil Street would be appropriate. Such screening could take various forms. Whilst we consider a condition in this respect would be appropriate, we do not consider it necessary to nominate the type of screening that should be used, rather, it should be a matter of resolution to ensure the design integrity of the building is not compromised. This can be dealt with by a performance based permit condition.

- 173 A two storey townhouse is proposed along the rear boundary of 12 and 14 Cecil Street with an east/west aspect. A two storey wall is to be located along the southern boundary adjacent to the shed at the rear of 12 Cecil Street. This upper level is set back approximately 1.4m from the common boundary with 14 Cecil Street. There is a cut-out at the stairwell at ground and first floor levels and a setback at the second level. A screen at 1.7m in height is proposed along the southern elevation of the first floor balcony. There are no south facing windows. We therefore do not consider this townhouse will have any direct overlooking impacts on 12 or 14 Cecil Street.
- 174 We consider variations to ResCode Standards B17 and B18 are minor and agree with NPD that they have little or no impact on the amenity of either 12 or 14 Cecil Street. In this respect, the stairwell encroaches 0.8m into the required setback of the first floor and the boundary wall exceeds the average 3.2m height. The stairwell is narrow. The rear yards of both 12 and 14 Cecil Street have sheds and vegetation at the boundary. Those properties will continue to receive adequate sunlight to their rear private open space areas. We do not consider the variations to be significant to warrant any changes to the design of this townhouse.

### Overshadowing

- 175 As indicated in the diagrams included in Mr Sheppard's report, the apartment building is expected to overshadow 12 Cecil Street for a period of time in the morning with the shadow created by the building moving entirely into Windsor Terrace by 10am.
- 176 Shadow will also occur to a portion of the rear private open space areas of 12, 14, 16, 18 and 20 Cecil Street from the townhouses to the north. The shadow impacts will either be short lived, limited to the morning periods in the westernmost backyards, while over outbuildings over the easternmost backyards. Such shadow will have moved from the area, in particular the rear of 12 and 14 Cecil Street, by 3pm. We do not regard these shadow impacts as excessive or unreasonable.
- 177 Of concern, particularly to the resident of 12 Cecil Street, was not only the potential overshadowing of her rear private open space but also the impact shadowing may have on solar panels located on the eastern side of the roof

of the dwelling. There will be no overshadowing of the roof of 12 Cecil Street and in particular the solar panels from 10am at the equinox. We are therefore unable to conclude that the roof mounted solar panels will be unreasonably affected.

- 178 The section of shadow that is located to the rear of the private open space areas of the dwellings at 12, 14, 16, 18 and 20 Cecil Street will fall over areas which contain outbuildings as well as established vegetation and is unlikely in our view to have an unreasonable impact on the amenity of those private open space areas.

### **Internal Amenity Impacts**

- 179 Mr McGauran raised a number of issues regarding potential internal amenity impacts for future residents.

### **Apartment Building**

- 180 In relation to the apartment building, he was critical of 24 west facing one bedroom apartments on the ground floor, levels 1 and 2, which rely upon borrowed light from the main living area for the bedrooms. We accept, as noted by Mr McGauran, that the position of folding doors creates what he described as a studio arrangement that places the bedroom within 4m of the primary external window and results in an acceptable outcome.
- 181 We do not consider it necessary to change the southwestern end apartments as suggested by Mr McGauran to two storey live/work units, or the consolidation of four units into either three or two per level. We consider the studio type apartments provide a diversity of dwelling types and contribute to affordability.
- 182 We accept Mr McGauran's recommendation that the southernmost apartments on ground, levels 1 and 2 and the apartments immediately north of the entry on ground and level 1 incorporate a window to their bedroom area.
- 183 Mr McGauran raised concern regarding the provision of storage for a number of apartments. He noted whilst storage has been shown within the basement and levels 1 and 2 car parks there is a shortfall of 46 storage spaces. We consider a minimum of 3 cubic metres of storage space should be provided for each apartment.
- 184 A lounge and gym for the residents of the apartments has been provided on level 3. Mr McGauran recommended that an eastern access between the lounge and gym and adjoining external terraces be enhanced to facilitate interaction and flexibility through the inclusion of a bi-fold or similar retracting façade system. We accept his recommendation regarding the provision of a bi-fold or similar retracting façade adjoining the external terraces. We do not consider it is necessary to provide for interconnection between the two common areas.

- 185 We accept Mr McGauran's recommendation that the entry areas of each pair of apartments at ground, level 1 and level 2 be 1800mm in width and that internal corridors be 1500mm in width.
- 186 We have accepted Mr McGauran's recommendations with a view towards ensuring that apartments receive a satisfactory level of amenity.

### Townhouses

- 187 We agree with Mr McGauran's recommendation that the plans for the townhouses should be updated to include the provision of proposed 2000 litre water tanks, whether that be in the garages or in some other location<sup>48</sup>. This accords with what has been put forward by NPD. However, the detail should be shown on the development plans to be endorsed.

### **Risk and safety**

#### Background

- 188 A broad issue in this case is whether the proposal results in unreasonable risk to the safety of future residents and the wider community.
- 189 Two Design Objectives in DDO11 highlight the need for consideration of nearby facilities in close proximity to the subject land. They are:
- To protect state-significant operations of the Williamstown Shipyard Site, the Gellibrand Tank Farm and the Port of Melbourne.
  - To discourage development in the WorkSafe Planning Advisory Areas that attracts or accommodates significant numbers of people and which cannot respond to an emergency.
- 190 Clause 7 of DDO11 requires an application to provide 'specifications for development within the WorkSafe Planning Outer Advisory Area which detail measures to ensure the buildings can withstand overpressures of up to 6kPa'.
- 191 The subject land is situated approximately 130 metres from the BAE ship building yard and the eastern edge of the subject land is approximately 300m from the GTF operated by Mobil.
- 192 The GTF is designated a Major Hazard Facility (MHF)<sup>49</sup> by WorkSafe Victoria. It operates under a licence from WorkSafe. As a consequence,

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<sup>48</sup> Lucid Consulting, Sustainability Report, December 2012 at pg 14 "It is proposed to locate a slimline 2,000L above ground poly tank within the garage of each townhouse and reticulate rainwater to all WC cisterns and provide an irrigation point".

<sup>49</sup> WorkSafe Guidance Note GN-16, Revision 1, January 2006, The requirements for "demonstration" under the Occupational Health and Safety (Major Hazard Facilities) Regulations.

WorkSafe has defined two zones<sup>50</sup> around the GTF within which there are planning restrictions on development. These are known as the ‘Inner Planning Advisory Area’ and ‘Outer Planning Advisory Area’.

- 193 An information sheet produced by WorkSafe, *Land Use Planning near a Major Hazard Facility*, relates to proposed uses and development of land in close proximity to an MHF. Appended to this document is a plan of the area in which the subject land is located. The plan marks with a dotted line the ‘Inner Planning Advisory Area’ at a distance of 185m and the ‘Outer Planning Advisory Area’ at a distance of 300m from the boundary of the bulk storage tank bunded areas at the GTF, being the secondary containment areas surrounding the bulk storage tanks. The area of the subject land fronting Kanowna Street is shown on the plan as being partly within the ‘Outer Planning Advisory Area’.
- 194 The ‘Inner Planning Advisory Area’ is defined as an area within which the risk of death is considered to be  $1 \times 10^{-7}$ /person/year. The ‘Outer Planning Advisory Area’ is defined as an area where fatality is unlikely, but where some adverse effects may occur or where there may be difficulty in responding to an emergency which may result in injury or harm. The WorkSafe Inner and Outer Advisory Areas are informed by the findings from extensive research undertaken following the ‘Buncefield Incident’<sup>51</sup> in the UK.
- 195 People working at the MHF are covered by Occupational Health and Safety regulations. A Safety Case is required to ensure safety plans and strategies are in place in the event of an incident. There are, however, as highlighted by the respondent objectors, no ‘inbuilt mechanisms to warn residents or to protect them from the effects of an incident’ at the GTF.
- 196 The ‘Outer Planning Advisory Area’ was considered in the development of DDO11. DDO11 includes requirements for the ‘Advisory Area’. DDO11 provides that ‘before deciding on an application within the Advisory Area (illustrated in clause 1 of this schedule), the Responsible Authority must seek the views of WorkSafe Victoria’. WorkSafe did not attend the hearing but provided a written submission.

#### Should land within the Advisory Area be used for residential purposes?

- 197 WorkSafe, Mobil and various residents raised concerns in relation to the potential impact of a major incident, such as an explosion or fire at the GTF, could have on the subject land, particularly the Kanowna Street townhouses which are to be located within the DDO11 Advisory Area.

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<sup>50</sup> WorkSafe Guidance Note, unnumbered, Major Hazard Facilities Determination of land use planning advisory areas for ‘Buncefield’ type fuel storage facilities 20 May 2010.

<sup>51</sup> 11 December 2005

- 198 In correspondence to the Tribunal<sup>52</sup>, WorkSafe advised it was not an objector to the planning permit and did not seek to become party to the proceeding. However, it expressed the view that a planning permit should not issue, as a portion of the proposed development is within the ‘Outer Planning Advisory Area’. In WorkSafe’s opinion, the granting of a planning permit for residential development within the Outer Planning Advisory Area increases the exposure of future residents of the dwellings to a potential major incident at the GTF and may set a precedent for future residential intensification. WorkSafe submitted ‘in the event of a Buncefield type explosion emanating from the GTF the blast over pressure at the development may generate a side-on overpressure in the range of 5 to 8 kPa at the subject land. These pressures are generally described as causing damage in the range of minor structural to partial demolition of houses respectively’.
- 199 WorkSafe submitted if a permit is granted, the following matters should be considered:
- Building form to be capable of protecting persons from injury in the event of an explosion at the GTF, noting an explosion may generate a side-on overpressure in a range of 5 to 8kPa at the subject land.
  - Ensure persons at the proposed development are able to safely evacuate any buildings at the request of emergency services and be capable of safe evacuation should the building be affected by smoke.
- 200 We note WorkSafe’s submission differs slightly from the position they held before the Advisory Committee when it did not object to residential development on the subject land, provided significant numbers of people were not to be housed within the ‘Outer Planning Advisory Area’.
- 201 Mobil submitted the apartment building should be reduced by two levels thereby significantly reducing the number of residents in line of sight of the GTF. Mobil referred to the application requirements in DDO11 that development proposed within the WorkSafe Outer Planning Advisory Area detail measures ‘to ensure the buildings can withstand overpressures of up to 6kPa’. Mobil expressed no concerns in relation to issues associated with explosions apart from noting the development within the Outer Planning Advisory Area should facilitate the lowest people ‘attractor’ use and accepted the Kanowna Street townhouses would comply with this goal.
- 202 Some of the residents, in particular Ms Gaud, raised concerns in relation to the potential impact of an explosion at the GTF on the townhouses in Kanowna Street as well as the apartment building.

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<sup>52</sup>Letter from Susannah Palmer, Lead Lawyer, Enforcement Group WorkSafe Victoria to the Registrar VCAT dated 31 January 2014

- 203 Ms Gaud relied upon the evidence of Mr Ian Thomas in relation to the potential impacts of a fire/explosion at the GTF. Mr Thomas' position was that following the findings from the 'Buncefield' accident in the UK, the Outer Planning Advisory Area does not necessarily provide an adequate safety zone around the GTF. He advised that post the Buncefield accident the UK authorities had increased the buffer zones around Major Hazard facilities.
- 204 Mr Thomas referred to computer modelling, undertaken on his behalf, for a vapour cloud explosion from the GTF indicating an overpressure at the subject land of 0.6 kPa. He considered that based on the modelling results, the subject land should be examined in further detail given the consequences of vapour explosions have been demonstrated to be more severe at other locations.
- 205 Mr Thomas also expressed concern that potential future increases in both the number and size of ships delivering fuel to the GTF could result in additional risks to the residents of the subject land.
- 206 Both Ms Gaud and Mr Thomas drew our attention to other international sites where incidents had resulted in serious damage to buildings at distances greater than the Outer Planning Advisory Area specified for the GTF.
- 207 Mr Cann also undertook computer modelling to understand the impact of an explosive event occurring at the GTF. His modelling related to the impact of an explosion from a tank leak nearest to the subject land. The explosion resulting from the leak was modelled taking into account a number of environmental situations to, in effect, ascertain the impacts of the worst case scenario with respect to the potential impact on the subject land from such an explosion at the GTF.
- 208 Mr Cann's findings were that in the absolute worst case scenario, assuming vapour confinement conditions, which do not exist at the subject land, a maximum overpressure at the west side of Kanowna Street would be in the order of 3.5 kPa.
- 209 In Mr Cann's opinion, if the Kanowna Street townhouses are constructed as proposed, to withstand a 6 kPa blast, the occupants of the townhouses would be safe.
- 210 In relation to the apartment building, he concluded the potential overpressure will be significantly less than 3.5 kPa, as it is further away. In his opinion, provided laminated glass is used in the windows of the apartment building to prevent the release of shards, there will be no risk to either the occupants in the apartment building or to people on the street.
- 211 In relation to the issue raised by Mr Thomas of the possible increase in the size and number of ships delivering fuel to the GTF, Mr Cann noted while there may be increased fuel volumes passing through the facility, there

would be no change to the consequences of a worst-case event which would not change the overpressure on the site.

- 212 In regard to the possible explosion/fire on a ship docked at the GTF, Mr Cann expressed the view that the impact on the subject land would be greatly reduced, compared to a vapour explosion at the nearest tank, due to the increased distance.
- 213 Mobil and the NPD provided an agreed statement of facts<sup>53</sup> in relation to the *Mobil Safety Case*<sup>54</sup>. The Safety Case 'contains detailed emergency response plans for potential major incidents that might arise from a loss of containment of hydrocarbons, in a number of generic circumstances. Such incidents typically would involve or result in a fire or explosion'. It was agreed that heat flux contours that could result from a fire scenario remain within the GTF and 'none of the heat flux contours are closer to the NPD land than 250 metres'.
- 214 Mobil also provided NPD with additional consequence modelling, using other variables, dealing with consequences of a vapour cloud explosion and one scenario of a volatile gas explosion. Mobil agreed that the models 'do not show consequences greater than the consequence modelling, independently undertaken by Mr Cann'.
- 215 We accept Mr Cann's evidence that in a worst case scenario, overpressures of 3.5kPa could occur in the 'Advisory Area' as defined in DDO11. We do this on the basis that Mr Cann undertook modelling and there was no challenge to the assumptions incorporated into the modelling. While WorkSafe asserts that side overpressures on the subject land could be between 5 - 8 kPa, this assertion was not supported by site specific analysis, modelling or evidence.
- 216 Within the designated 'Advisory Area' it is proposed to develop townhouses which will be below the nominated maximum height of 13m. We are advised the townhouses are designed to withstand overpressures of up to the required 6kPa. This is higher than the expected overpressures of 3.5kPa based on Mr Cann's conservative modelling. This gives us comfort that the townhouses will be designed to withstand what Mr Cann described as a 'worst-case scenario'.
- 217 The imposition of a maximum height on development along Kanowna Street (13m) results in a limitation on the potential density of residents within the 'Advisory Area'. This view also underpinned the recommendations of the Advisory Committee regarding the limitation on height. We consider the proposed development of townhouses fronting Kanowna Street at a height of 9m with roof elements rising to 10m meets the design objective 'to discourage development in the WorkSafe Planning

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<sup>53</sup> 13 February 2014

<sup>54</sup> Approved 2012

Advisory Areas that attracts or accommodates significant number of people and which cannot respond to an emergency’.

- 218 In addition to the townhouses being designed to withstand overpressures of 6kPa, all have garages to the rear with direct access to a laneway. Residents of the townhouses will therefore not be required, in the case of an explosion/fire at the GTF, to exit into Kanowna Street, but will be able to exit to the rear of the dwellings away from the danger source.
- 219 The 12 townhouses in this location are to contain 4 bedrooms. These could be considered large dwellings. Conservatively, we would expect the maximum resident population of these townhouses to be around 60 persons<sup>55</sup>, although it is probable that it will be less. We do not find this to be a high concentration of people. Further, it is likely that residents will become familiar with local circumstances, including emergency evacuation procedures in the event of a major incident at the GTF, should it arise.
- 220 In submissions regarding the retention of the Nugget Factory, various suggestions were made regarding its potential to be used for purposes which do not require a large number of people to be present at any one time. These submissions were made with the aim of limiting the number of people within the ‘Advisory Area’. The difficulty here is that we do not have any firm proposal for the re-use of the building for some alternative purpose that is viable. It would be undesirable for any building to remain vacant. Indeed, in giving his evidence, Mr McGauran expressed the view that it would be desirable for any use of the land on Kanowna Street to have some kind of active interface with the adjacent coastal park.
- 221 The Advisory Area is relatively large. We can envisage a range of commercial uses for the land. These could include offices, café, industry or, perhaps, some form of community meeting place. All of these uses have the potential to attract more people to the Advisory Area than the townhouses. We are of the view that the residential use associated with the townhouses results in a relatively low number of persons within the Advisory Area. This, together with the design of the townhouses to withstand overpressures of 6kPa, brings about an acceptable outcome. We find the proposed residential use of the land in the Advisory Area to be acceptable.
- 222 Whilst Mobil sought to limit the number of residents in the apartment building due to it facing the GTF, the apartment building falls outside the nominated ‘Advisory Area’. It is evident from the provisions of DDO11 that a building of considerable height is expected to be located where the apartment building is proposed, that such a building would inevitably house many dwellings and residents. In response to concerns about an incident at the GTF, the Advisory Committee concluded ‘that any buildings in excess of 13m be located outside the 300 buffer area’. We therefore do not consider that a reduction in the number of levels is called for because the

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<sup>55</sup> This assumes each dwelling is occupied by 5 residents e.g. a couple with 3 children

apartment building will face towards the GTF. Based on Mr Cann's evidence, overpressures on this building would be less than 3.5kPa. We however take note of and accept Mr Cann's recommendation that windows in the apartment building be provided with laminated glass to prevent the release of shards. This can be implemented by permit condition.

Will the proposals compromise access for emergency services and evacuation of the area should a major incident occur at the GTE?

- 223 Both Mobil and the respondent objectors raised concerns in relation to emergency access to the industrial sites in the event of an incident, particularly at the GTF. The concern centred around the impact any additional number of residents from the subject land may have on access to the area by emergency services or egress from the area by residents in the event of an emergency.
- 224 They submitted an additional number of residents would divert emergency services personnel from more pressing business requiring them to manage the large number of residents and visitors in the area. In this respect, Mobil contended a reduction in the height of the apartment building would result in a reduction in the number of potential residents thereby minimising any potential impact those additional residents would have on access and egress in the event of an emergency.
- 225 Mobil and the respondent objectors' views were not supported by the traffic experts. The three experts, Ms Dunstan called by the Council and Messrs De Young and Hunt called by NPD, concluded the additional number of vehicles associated with the proposed development could be accommodated by the existing road network and would not pose unreasonable delays in terms of access for emergency service vehicles.
- 226 We accept that the introduction of additional dwellings as proposed, will add to traffic. This is inevitable. However, we are not persuaded that the increases associated with this proposal will be so significant as to result in congestion or problems in the event of an emergency. Williamstown is a seaside location which attracts many visitors during the summer months and where various festivals attracting several thousand people take place. We expect that the traffic associated with such events would be much greater than that associated with the dwellings proposed in this case.
- 227 DDO11 requires that for applications within the 'Advisory Area', an Emergency Evacuation Plan (EEP) be prepared in consultation with Council, Mobil, BAE, the Port of Melbourne Corporation and relevant emergency services agencies. A basic EEP was provided by NPD with its permit application. In preparation of this plan, there was minimal consultation with the Council and the relevant emergency services and no consultation with Mobil, BAE or the Port of Melbourne. In response to an inquiry from the Tribunal, the Port of Melbourne provided a copy of its

‘Melbourne Port Emergency Management Plan’<sup>56</sup>. The subject land whilst in close proximity to areas of responsibility under the Port of Melbourne, is not covered by the plan. BAE and Mobil each have their own emergency management plans. For Mobil, this is embodied in its Safety Case approved by WorkSafe.

- 228 Mr McLeod, an expert in Fire and Safety Management, outlined on behalf of NPD, a draft EEP which relates to the apartment building as well as the Kanowna Street townhouses. He advised the preparation of an EEP is regularly undertaken throughout the Melbourne area for multi-storey apartment blocks. He suggests that a prudent approach would involve the preparation of an EEP for the apartment building with such plan developed to provide safety actions for residents of the townhouses.
- 229 Under DDO11, the requirement to prepare an EEP lies solely with respect to land within the ‘Advisory Area’. Only the 12 townhouses fronting Kanowna Street fall within this area. Whilst the apartment building will have more occupants than the townhouses, in terms of DDO11, there is no specific requirement for an EEP for the apartment building. Further, while the provisions of DDO11 require the preparation of an EEP, they do not say how such plan should be implemented. We think it is somewhat pointless for the provisions of DDO11 to require the preparation of an EEP without then a proper mechanism put in place requiring such EEP to be implemented.
- 230 Mr McLeod expresses the view that given the proximity of the MHF, the EEP he has drafted includes evacuation locations, three times the number of Fire Wardens than would usually be required for the size of the development, and sets out measures above what is called for by the Australian Standards for office buildings. He says the EEP is designed to operate for the benefit of the townhouses and provides for the emergency warning system in the apartment building to be heard within the townhouses. The EEP requires that residents of the townhouses be offered training as Fire Wardens and be invited to attend all relevant meetings of the proposed safety committee as well as the provision of evacuation diagrams for all townhouses.
- 231 We accept that in an emergency event the workers at Mobil and BAE come under their EEPs. However, with respect to the general public, including the residents of the proposed development, the Metropolitan Fire Brigade and Victoria Police would be in charge, particularly for an evacuation of the area due to an incident at the GTF.
- 232 We understand the EEP has been prepared with specific focus on the apartment building as it can be managed and implemented through rules of the Owners Corporation. Those rules can require members to form a management committee and to assign responsibility to various Fire

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<sup>56</sup> Updated 2012

Wardens. Although the plan recommends residents of the Kanowna Street townhouses also be included as Fire Wardens, there is no specific requirement that they become part of any EEP. It is expected that the townhouses will be on separate titles, there will be no common property and they will not be required to set up an Owners Corporation. It will therefore be a matter for the residents of the townhouses as to whether they wish to be Fire Wardens and be part of the EEP for the apartment building. In short, this arrangement leaves it to the discretion of the townhouse residents as to whether they wish to be involved in the implementation of the EEP. We think that is undesirable.

- 233 We consider the EEP prepared by Mr McLeod endeavours to cover various emergency scenarios and seeks to achieve a practical outcome by linking the apartment building with the townhouses in terms of a warning system.
- 234 NPD submitted that given the design of the townhouses, in the event of an incident, the safest place in all likelihood for the occupants would be to stay inside their dwellings until requested to evacuate by emergency services. If the evacuation of the townhouses was required without the supervision of emergency services, the warning system incorporated into the apartment building would warn the townhouse residents of the need to evacuate. This, Mr McLeod suggested, could be done by sirens or emergency personnel delivering warnings and giving instructions.
- 235 We are satisfied that what has been proposed by Mr McLeod in the EEP discussed at the hearing is appropriate.
- 236 Our concern, however, rests with the implementation of this plan. We consider that an EEP is a vital component of this development, given the subject land's proximity to the GTF and location within the Advisory Area. NPD submitted the inclusion of the warning system and a requirement in the EEP for the apartment building to actively engage with the townhouses' residents was sufficient. They also observe that notices could be placed on the doors of the townhouses setting out information about evacuation in the event of an incident at the GTF. NPD suggests that the requirement to keep such information in place could be imposed under a section 173 agreement.<sup>57</sup>
- 237 We do think this is enough. A proper link must be established between the residents of the apartment building and the townhouses to ensure that an EEP is properly implemented in perpetuity.
- 238 We conclude that the appropriate mechanism to implement the EEP is through an agreement under Section 173 of the *Planning and Environment Act 1987*. Such agreement should impose an obligation for the preparation and implementation of an EEP that covers both the apartment building and townhouses. We adopt this approach based on the evidence of Mr McLeod

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<sup>57</sup> Section 173 *Planning and Environment Act 1987* – an agreement between the Responsible Authority and owner of the land which can be placed on title to the land.

that the practical way to deal with emergency procedures is through an EEP developed for the apartments. Further, agreement should be in place before further subdivision to ensure that the requirement can be implemented before the development is fragmented into multiple ownership. We will include a condition to this effect on the permit for the development of the land.

#### Does the proposal compromise existing state significant industries?

- 239 Policy<sup>58</sup> provides general support for the protection of state significant industry and ports. In the context of this proposal, this is amplified in the design objectives of DDO11 which include ‘to protect state-significant operations of the Williamstown Shipyard Site, the Gellibrand Tank Farm and the Port of Melbourne’.
- 240 As indicated above, the subject site is located in close proximity to BAE, Mobil’s GTF and to facilities of the Port of Melbourne.
- 241 Both BAE and Mobil expressed concerns that the expected increase in residents in close proximity to their industrial operations could potentially result in impacts on their current and future industrial operations. Such reverse amenity impacts could, it was considered, come from resident complaints in particular regarding noise and lighting. It was their submission that this could lead to constraints on their future operations, including potential to expand.
- 242 The respondent objectors, being supportive of the industrial facilities, also expressed concerns regarding potential reverse amenity impacts from the proposed development.

#### Noise

- 243 Clause 5 of DDO11 stipulates:

Habitable rooms of new dwellings adjacent to high levels of external noise should be designed to limit internal noise levels to a maximum of 45dB in accordance with relevant Australian Standards for acoustic control.

- 244 The decision guidelines in clause 8 of DDO11 require the Council and, in turn, the Tribunal to consider ‘whether the development incorporates appropriate noise attenuation measures’.
- 245 As stated above, BAE and Mobil have expressed concerns that with a likely increase of residents in close proximity to both industrial uses such new residents may object to noise emanating from both industrial sites.
- 246 The Council submitted the proposal fails to comply with clause 13.04-1 of the Hobsons Bay Planning Scheme in that it fails to ‘ensure that

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<sup>58</sup> See Clauses 17.02-3 and 18.03

development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area’.

- 247 In this respect, the Council submitted the proposal ‘does not incorporate noise attenuation measures unless the industrial noise condition agreed to and the other noise conditions suggested by the Council in the draft conditions are inserted into the permit’.
- 248 BAE indicated at the commencement of the hearing that it had reached agreement with the Council and NPD that should a permit issue, it would be satisfied with the imposition of the noise conditions contained in the draft permit conditions.
- 249 Mr Green raised concerns in relation to the potential impact of noise from the Mobil and BAE facilities on the residents of the Kanowna Street town houses and the units in the apartment building which face towards the BAE and Mobil sites. It was his contention that the noise emanating or potentially emanating from ships unloading would unduly impact on future occupants. He noted Mobil intends to increase the volume of fuel imported and therefore the number of ships which will berth at the Mobil facility. This was confirmed by Mr Williamson on behalf of Mobil.
- 250 Mr Green also expressed concern in relation to the noise from a nearby hotel (approximately 90 metres away) which uses a fog horn, etc as part of a theatrical show about the sinking of the Titanic. Whilst he did not wish to see this activity curtailed, he noted that since buildings on the subject land had been demolished, residents in Cecil Street can now hear the fog horn.
- 251 Mr Burton, an acoustic expert, advised he had undertaken noise monitoring and modelling in relation to BAE, Mobil and also The Titanic.
- 252 Mr Burton advised agreements had been reached between NPD, BAE and the Titanic restaurant in relation to noise. The agreements included pre-completion and pre-occupation testing to be conducted to ensure that the internal noise level in the proposed dwellings is reduced to 45dB(A).
- 253 Mr Burton advised that in addition to the above, the impact on sleep arousal should be considered and recommended an internal noise level of 55dB(A)L<sub>max</sub> be adopted.
- 254 He further noted that SEPP N- 1<sup>59</sup> provides a method of assessment of noise at residential properties and calculated the zoning based noise limits expressed in SEPP N-1 related to the north-eastern and south-eastern ends of the Kanowna Street facades.
- 255 Noise levels from the unloading of ships at the Mobil facility were recorded as considerably lower than noise from the BAE facility and would, in Mr

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<sup>59</sup> Ibid

Burton's opinion, be 'of little significance when compared to the BAE noise levels.'

- 256 Mr Burton provided a series of recommendations in relation to noise control measures to be included in the various buildings which, in his opinion, would achieve the required and recommended noise levels. NPD advised they would accept his recommendations as conditions if a permit was to issue.
- 257 Mobil called evidence from Dr Xun Li, an acoustic expert, who had undertaken noise monitoring and modelling on behalf of Mobil in relation to the impact of ship unloading and loading.
- 258 He advised that predicted noise levels from the Mobil facility would be compliant with SEPP N-1 with the exception of the upper levels of the apartment building and the second floor of the north-eastern townhouses on Kanowna Street. He noted that the levels would be exceeded by 1dB(A).
- 259 Mobil initially raised concerns in relation to the reverse impact of noise, however, following the submission of the evidence of Dr Xun Li, Mobil indicated they would not press the issue but relied upon the draft conditions.
- 260 We acknowledge that not only should the impact of the industrial facilities on the residential facilities be considered, but also the potential impact of the residential facilities on restricting further development of the industrial facilities.
- 261 We note any existing and future industrial facilities are required to comply with SEPP N-1. The expert advice received was that the current proposal will not unduly impact on likely future developments on the industrial sites.
- 262 We accept that with the inclusion of appropriate permit conditions in relation to both construction techniques and future monitoring requirements, the amenity of the future occupants of the residential development will not be unduly impacted by the existing and potential industrial developments.
- 263 In such circumstances, given both BAE and Mobil expressed consent to the inclusion of appropriate conditions regarding noise, we do not consider the proposed development will have an impact on the operations of these state-significant facilities.

### Lighting

- 264 Mr Williamson for the Mobil GTF, advised that as part of the safety and security for the GTF, lighting on the dock and the perimeter of the tank farm is permanently on at night time, regardless of whether a ship is at the berth.
- 265 A report prepared by Dr Richard Dluzniak, a lighting expert, was annexed to the report of Mr Barlow. Mobil indicated on the basis of the report, it does not press an objection on the basis of encroachment of the development adversely affecting its ability to light its operation at the GTF.

266 Having read the report by Dr Dluzniak, we are satisfied further development of the BAE and Mobil facilities would not be adversely constrained in relation to light spill on the proposed development and similarly would not adversely affect residents of the proposed development.

## **Traffic and Parking**

### Will the traffic generated by the proposal result in unacceptable impacts to the immediate or wider area of Williamstown?

- 267 The apartment building is proposed to accommodate 137 resident car spaces, 5 visitor car spaces and 6 motorcycle spaces accessed either via Windsor Terrace or the eastern laneway. Forty-three bicycle spaces are to be located in a storage area at ground level, accessed directly from the eastern lane.
- 268 The respondent objectors expressed concern that increased traffic generated by the proposal will have an unreasonable impact on existing residents. Concerns raised by the residents include:
- increase in traffic in Windsor Terrace and associated noise;
  - limited sightlines available to vehicles entering Cecil Street from the newly created eastern laneway as townhouses are constructed to the laneway, and
  - the impact that the increase in vehicle movements generated by the proposal will have on the existing road network.
- 269 The residents express these concerns as they submit that future residents of the development will be highly dependent on private cars as their primary mode of transport as the locality is not highly serviced by public transport.
- 270 Three expert traffic engineers, Ms Dunstan, Mr De Young and Mr Hunt all agreed the level of additional traffic generated by the proposal can be adequately accommodated in the surrounding local and arterial network. Mr Hunt expressed the view the proposed development, including the already approved Stage 1, 'is not expected to impact on the operation of the existing road network. Intersections will continue to operate with low degrees of saturation and total flows on local streets will remain within accepted environmental capacity levels'.
- 271 The proposed development is utilising the existing Windsor Terrace, which will be widened, as well as creating a new eastern laneway running north/south through the site, a new western laneway running internally north/south and a new northern laneway running east/west. In this respect, the three experts agreed the internal private roads are appropriately designed and should be used as 'shared zones' making it unnecessary in their view to provide a 1.2m footpath in these laneways. They differentiated these laneways to Windsor Terrace where it is proposed to create a footpath.

- 272 The width of the newly created laneway parallel to Aitken Street at 5.175m is tight. Mr De Young noted that the garages accessed off this laneway have an entry width of 4m allowing for sufficient access. He was of the view it is unnecessary to change the width of this laneway, given the very low traffic volume expected and the probability of two vehicles travelling in opposite directions needing to pass negligible. We consider the width of this laneway should be increased to 5.5m. We see no reason why this cannot be done when this is a new development that is not constrained in any way by existing infrastructure. This change can be imposed by permit condition.
- 273 The expert evidence provides a strong basis to conclude that the traffic impacts can be accommodated within the existing and proposed road network.

### **Car Parking**

#### Has a sufficient number of car spaces for residents and visitors been provided on the site?

- 274 A total of 202 car spaces are proposed within the development, including 142 car spaces within the apartment building and 60 car spaces within garages of the townhouses. With regard to the car spaces for the townhouses, 21, including 20 two bedroom plus study each have a single garage space. A dispensation of 40 car spaces is sought, 6 resident spaces and 33 visitor spaces.
- 275 A total of 43 on-site bicycle parking spaces are provided within the ground level of the apartment building, comprising 28 resident and 15 visitor spaces.
- 276 SWG submit that as a dispensation was given for the Stage 1A of the overall development, there should not be a similar dispensation for this stage. The residents highlighted the potential impact on car parking from community events held nearby, as well as the impact on the on-street parking in Kanowna Street due to the operations of BAE.
- 277 It was agreed by the three traffic engineers that the proposed two bedroom and study townhouses (20), should be considered as 3 bedrooms. They however disagreed on the number of car spaces provided for such townhouses. Ms Dunstan was of the view that two car spaces should be provided, particularly as this was a new development, whereas Mr De Young and Mr Hunt were of the view that the provision of one car space was appropriate. Clause 52.06 provides for two car spaces for a 3 bedroom dwelling.
- 278 Whilst they agreed that the provision of one car space was less than the average ownership as shown by census data, given the location of the site, with good access to public transport and within walking distance to facilities, Messrs De Young and Hunt say the provision of only one car

space was appropriate. Mr De Young was of the view that this was acceptable given the ABS data supported that 40% of existing 3 and 4 bedroom townhouses in the study area do not own a car, or own up to one car.

- 279 It was submitted the size of the study could be reduced thereby resulting in a two bedroom dwelling, with the provision of one car space being appropriate.
- 280 It was acknowledged in the *Green* decision relating to Stage 1A that there is strong policy support for sustainable development. Reducing the dependency on cars contributes to this outcome. The Stage 1A proposal concluded that given the site has good access to public transport there could be a reduction in the number of car spaces provided on-site for residents in the proposed apartment buildings. We consider that the requirement in this proposal to allow only one car space for what is agreed by the traffic engineers to be three bedroom townhouses (two bedrooms plus study) does not warrant the same reduction. We consider it preferable to require the reduction in the size of the study, so that it would be unlikely to be used as a bedroom rather than require the provision of an additional car space. We say this because the size of the garages provided also needs to take into account the provision of storage, and the possibility of accommodating a water tank. The increase in the size of the garages results in the deletion of the study or third bedroom. As such, the provision of one car space for what will be two bedroom dwellings accords with the requirements of Clause 52.06. We consider the reduction in the size of the study would better allow for design to incorporate such requirements. This can be implemented by permit condition.
- 281 With regard to the provision of car parking for the apartment building, there is a disagreement between Ms Dunstan, Mr De Young and Mr Hunt. All agreed that the provision for on-site resident parking is satisfactory and accords with Clause 52.06-5. The disagreement between the experts relates to a surplus of 14 on-site car spaces. Ms Dunstan expressed the view that these spaces should be allocated for visitors to the apartment building whilst Mr De Young and Mr Hunt disagreed, expressing the view that these spaces could be sold off or allocated to residents of the apartments.
- 282 NPD proposes all visitor car parking is proposed be accommodated on street. All experts agreed this was suitable for the accommodation of visitors to the townhouses but there was disagreement regarding visitors to the apartment building.
- 283 Mr De Young assessed the potential visitor parking generated by both Stage 1 and Stage 2 and concluded that a peak visitor car parking demand of up to 40 car spaces could occur on Friday and Saturday evenings with demands of 10 to 12 car spaces during the day. Mr Hunt considered there was sufficient angle parking in Kanowna Street to accommodate visitors to the apartment building. Mr De Young was of the view that along with the likely increase

of at least 28 car spaces along the internal road network which could partially offset the impact of visitor parking generated, reliance would be required on the use of up to 12 existing on-street car spaces during the evening. He noted a minimum of 36 daytime and 53 evening vacancies were recorded along the streets with direct frontage to the Stage 2 development (area 1), and streets with direct frontage to the entire Nelson Place Village Development, excluding those included in area 1 (area 2).

- 284 Discussion was had around the potential to enable visitors to access the 14 surplus car spaces in the apartment building located at ground level without compromising access to the parking area for residents provided in the basement and at levels 1 and 2. We note these surplus car spaces are as a result of amendments to the design of the apartment building which brought about a reduction in the number of apartments originally proposed. We accept that visitors to a site are likely to try and find a car space on the street. We also accept that visitors to the townhouses can be accommodated on-street.
- 285 With regard to the 14 on-site surplus car parks, we consider that these should be used for visitors to the apartment building. In allowing car parking reductions in Stage 1A, we found that the provision of some dwellings without car parking worked toward the provision of a form of housing attractive to people who do not wish to rely on private vehicles as their primary mode of transport. We observed that this would work toward reducing car dependency thus contributing to environmental sustainability. We find the proposition that more car parking than that required will have the reverse effect, attracting households with greater car dependency and a less environmentally sustainable outcome. While we understand how the extra car spaces came into being, we are of the view that they should be set aside for visitor parking for a large apartment building rather than extra spaces for residents. We will require the 14 car parking spaces to be set aside for visitors in the apartment building by permit condition.
- 286 Subject to the changes which we require by permit conditions, we find the overall amount of parking to be provided as acceptable.

Do the car spaces provided meet the relevant standards and provide appropriate access for vehicles?

- 287 The three traffic engineers agreed that all garages should be widened internally to 3.5m and lengthened internally to 6m. Whilst Mr De Young expressed the view that a minimum of 5.4m in length is acceptable. In this respect we note that with the exception of the garage of townhouse 10.c.07, all garages are accessible for B85 vehicles. With respect to this garage as well as the garage to the middle townhouse fronting Aitken Street (10.a.04) Mr De Young recommended they be increased to 5.4m due to their location and the practicality of increasing to 6m. We consider all garages should be lengthened to 6m. The planning scheme requires this to ensure that there is

an ability to move around cars in a garage. Car parking in our view should be designed to be convenient and providing spaces at the appropriate standard works towards this outcome. We accept, as agreed by the traffic experts all tandem garages should be lengthened to at least 10.9m. We will require appropriate permit conditions in this regard.

- 288 In the car park for the apartment building, it was agreed that the ramp have convex mirrors or electronic warning signals to allow two vehicles to use the ramp simultaneously. This can be incorporated in an appropriate permit condition.
- 289 Ms Dunstan was of the view that if a 1 in 4 grade is used for the ramp, then a 1:8 transition at the base for a length of 2.6m should be provided. Mr De Young did not agree. He indicated the ramps could be designed with ‘vertical curves’ to smooth transitions and recommended this design be accepted. Ms Dunstan’s recommendation is based on the performance of a B99 car under AS 2890.1:2004. We accept the design recommended by Mr De Young would also accommodate a B99 car and consider this to be acceptable.
- 290 We agree that a pedestrian sight triangle be provided at the egress point from the apartment car park into Windsor Terrace.
- 291 Ms Dunstan was of the view that parallel spaces within the apartment car park that are constrained at both ends should be 6.5m in length. Two car parking spaces, one on level 01 and the other on level 02, are 6.2m in length and obstructed at both ends. Mr De Young and Mr Hunt did not agree that these spaces needed to be lengthened to 6.5m. We consider that lengthening the spaces would be appropriate although we acknowledge that the two spaces are unlikely to be used for visitor parking and will still remain accessible, the difference being only 0.3m.
- 292 We observe that the provision for bicycle parking meets the requirements of clause 52.34. Mr McGauran suggested there could be some additional bicycle parking external from the apartment building for visitors. Mr McGauran recommended that car spaces 8 and 9 be removed and substituted with additional bicycle storage. We consider sufficient bicycle parking has been provided internally for the apartment building and it is unnecessary to require additional bicycle parking spaces. We consider however, that provision should be made for bicycle parking within the public realm. NPD agrees to this requirement.
- 293 We accept that a disability car space for the apartment building should be provided in an appropriate location to the satisfaction of the Responsible Authority.
- 294 Subject to the changes which we require by permit conditions, the car parking layout is acceptable.

## **Other Issues raised**

### Social impact

- 295 We were informed by Mr Weston that there will be a minimal impact on services and infrastructure as a result of this proposal with future residents enjoying convenient access to a wide range of existing community facilities and services. We accept his evidence, noting that there is a diversity of open spaces within the Williamstown area with the proposed development being immediately adjacent to Point Gellibrand Coastal Park, an extensive open space area, and also within close proximity to the Williamstown Activity Centre.
- 296 The respondent objectors questioned the suitability of older persons wishing to live in two bedroom apartments, submitting it was more likely that young singles or couples without children would live in the apartment building. We accept Mr Weston's conclusions that in coming years there will be a demand in Williamstown for housing generated by smaller households. He concluded that due to the mix of proposed dwellings it was likely that the proposed development would attract young adults aged 20 to 29, mature adults aged 30 to 39 and older adults aged 50<sup>+</sup>. He considered the development would not accommodate a large number of dependant children and youths.
- 297 Whilst it was submitted there would be an increased impact on childcare services and schools within close proximity to the site we are unable to conclude this will occur given the likely future occupants identified by Mr Weston. We consider that the proposed development will provide for a diversity of accommodation that is not found extensively within the Williamstown area and as such will allow for a variety of households to be accommodated.

### Waste management

- 298 Waste collection is to be undertaken by a private collector. A Waste Management Plan is a requirement of permit conditions. Ms Dunstan and Mr Hunt agreed that the subject site can be serviced by a garbage truck up to 8.8m in length. We accept that the configuration of the laneways and Windsor Terrace allow for such a garbage vehicle to readily access the subject site. In this respect the closure of the eastern laneway to vehicles either side of the pedestrian access zone from Kanowna Street to the apartment building, would result in the manoeuvrability of the garbage vehicle in and around the site being restricted and would direct all vehicles in this southern section of the development to ingress and egress into Cecil Street. This in our view is unnecessary and would place a potential additional traffic impact on Cecil Street.

## **Conditions**

### What conditions are appropriate?

- 299 Draft conditions were provided for discussion by the parties at the hearing. We have included conditions we have thought appropriate, a number of which we have already referred to in the body of our determination.
- 300 We note NPD's request that a number of management plans be provided for approval after the commencement of the development. We do not find this appropriate. This is a complex project, with some aspects of the management plans being interrelated. By and large, we find that these plans should be submitted concurrently with the submission of the amended plans for the development, or at such other time that the Responsible Authority finds acceptable.

## **Conclusion**

- 301 For the above reasons the decision of the Council in both applications is set aside and Permits are directed to be granted.

**Jeanette G Rickards**  
Senior Member

**S. R. Cimino**  
Member

**Greg Sharpley**  
Member

## APPENDIX A

<b>PERMIT APPLICATION NO:</b>	PA1225139
<b>LAND:</b>	3-39 Nelson Place, Williamstown
<b>WHAT THE PERMIT ALLOWS:</b>	The permit allows: <ul style="list-style-type: none"><li>• Demolition of the existing building, remove surface treatments and construct a perimeter fence</li></ul> in accordance with the endorsed plans.

### CONDITIONS

- 1 The demolition works and fencing as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 2 Before the commencement of the demolition works, a Demolition Management Plan must be submitted to and approved by the Responsible Authority in which details of the demolition works are set out including, but not limited to:
  - (a) hours of operation
  - (b) dust management
  - (c) parking and traffic movement of all workers' vehicles and other vehicles required to carry out the demolition works
  - (d) works timetable
  - (e) any impacts upon adjacent roads and pedestrian walkways and providing for adequate movement and circulation of vehicles and pedestrians adjacent to the site during the demolition phase
  - (f) access routes for demolition vehicles
  - (g) maximum number of workers expected to be on the site at any time
  - (h) measures to be implemented to limit the escape of dust and litter from the site.
- 3 The demolition works must be carried out to the satisfaction of the Responsible Authority and in accordance with the approved Demolition Management Plan.
- 4 Before works are carried out that would significantly disturb the natural surface or subsoil of the site, 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)). This includes a requirement to obtain a Consent to Excavate and/or Consent to Disturb before archaeological investigation which must include the following:

- (a) Archaeological test excavations to determine the nature and extent of surviving archaeological deposits, including further underground tanks, drains and plant, foundations of former building or buried structures, occupation and waste deposits and the like. Depending on the results of the test excavation, further archaeological salvage may be required.
  - (b) An archaeological watching brief to record structural and archaeological details revealed during demolition which must be phased in stages as follows:
    - i. After removal of roofing.
    - ii. After clearance of walls.
    - iii. After removal of floors and footings.
- 5 Upon completion of demolition works, at the cost of the owner and to the satisfaction of the Responsible Authority, an information plaque/interpretive display must be erected on the site which contains a brief written summary of the history of the former Nugget Factory, the date of its demolition as well as an image of the building representing its original form. The location of the plaque/interpretive display must be to the satisfaction of the Responsible Authority.
- 6 The owner must bear the costs of all alterations to and reinstatement of, the assets of the Council and other Public Authority required by such Authorities to be altered to facilitate the demolition works. Prior specific consent of the Council, or other relevant Public Authority, must be obtained before any such alterations and reinstatements are carried out and all such work must comply with all conditions which attach to such consent.
- 7 Except with the written consent of the Responsible Authority 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 To the satisfaction of the Responsible Authority, 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 within the site, the subject of the Demolition Management Plan in Condition 2, and within the site does not

cause a nuisance to surrounding properties. The development must not have an adverse impact on existing or future air quality.

- 9 Before any 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 unauthorised 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 being actively carried out on the site.
- 10 Any damage to the footpaths along Aitken Street, Kanowna Street and Cecil Street which are caused during the demolition works must be reinstated and made good, at the cost of the owner to the satisfaction of the Responsible Authority.
- 11 The deposit of mud, crushed rock or other debris onto a public road or footpath, as a result of the carrying out of the demolition works, must be kept to a minimum to the satisfaction of the Responsible Authority.
- 12 Except with the further consent of the Responsible Authority, vehicles used in carrying out demolition works must not be queued or parked in Cecil Street.
- 13 This permit will expire if one of the following circumstances applies:
  - (a) The construction or demolition works are not commenced within two years of the date of this permit; or
  - (b) The construction or demolition is not completed within one year from the date of the commencement of construction or demolition works.

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

<b>PERMIT APPLICATION NO:</b>	PA1226025
<b>LAND:</b>	Stage 2 Former Port Phillip Woollen Mills Development, 2-10 and 3-39 Nelson Place, 16-20 Kanowna Street, Williamstown (Lots 10,11 and 12)
<b>WHAT THE PERMIT ALLOWS:</b>	<p>The permit allows:</p> <ul style="list-style-type: none"> <li>• Demolition of buildings and works and removal of surfaces within the Heritage Overlay;</li> <li>• Construction of multi-dwellings and associated fencing exceeding 1.5m within 3m of a street;</li> <li>• Construction of buildings and works, fencing and roadworks; and</li> <li>• A reduction in the statutory car parking rate;</li> </ul> <p>generally in accordance with the endorsed plans.</p>

## 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 generally in accordance with the plans prepared by Elenberg Fraser being Drawing Nos A000-E; A003-D; A010-C; A020-C; A021-C; A022-C; A023-C; A024-D; A026-D; A027-D; A028-D; A029-D; A031-D; A100-G; A200-J; A201-I; A202-G; A203-I; A204-I; A205-G; A206-E; A207-E; A208-E; A209-H; A211-F; A215-D; A216-D; A217-D; A219-C; A220-B; A221-B; A223-C; A224-C; A225-C; A400-E; A401-F; A402-E; A403-F; A404-F; A405-E; A406-D; A407-D; A408-C; A409-B; A410-B; A500-F; A501-F; A502-D; A900-D; A901-D; A902-D; A903-D; A904-D; A905-D; A906-D; A907-D; A908-D; A910-C; A915-E; A916-D; A917-D; A918-D; A919-D; A920-D; and A921-C but modified to show to the satisfaction of the Responsible Authority:
  - (a) Front fencing on Cecil Street to be no higher than 1200mm with 25% transparency consistent with heritage fences in Cecil Street and to provide a stronger link with the garden setting of the heritage dwellings in Cecil Street.

- (b) Front fences in Aitken Street, Kanowna Street, the western lane and Windsor Terrace to be reduced to no higher than 1500mm with no reduction in transparency from the original proposal.
- (c) Amending the southern most units on Ground floor, Level 1 and Level 2 to incorporate a window to the bedroom area.
- (d) Amending the units immediately north of the entry on the Ground floor and Level 1 to incorporate a highlight window to the bedroom areas.
- (e) An openable external wall system between the gym and residents' lounge and the outdoor area to provide greater indoor-outdoor flexibility.
- (f) Confirmation that the Kanowna Street townhouses within the Work Safe Planning Outer Advisory Area can be constructed to withstand overpressures of 6kPa and how this will be achieved.
- (g) Confirmation that the glazing system (glass and fixings) on the east and north façades of the apartment building is designed and constructed to prevent the release of shards reached by blast overpressure of up to 3.5kPa from the direction of the Gellibrand Tank Farm.
- (h) Details of the glazing and method of fixing for the apartment building to be noted on the plans.
- (i) Each dwelling in the apartment block to have accessible external storage of at least 3 cubic metres. Any over bonnet storage to be a minimum 1.5m above the finished floor level and not to extend more than 1.2m into the space.
- (j) The southern most two car spaces on the ground level numbered 8 and 9 removed and the garbage bin store reconfigured with its laneway entry further north.
- (k) Provision of 14 visitor spaces within the apartment building.
- (l) The entry door to the apartment car park from Windsor Terrace set back at least 5.5m back from the frontage to ensure vehicles do not hang over the footpath.
- (m) Sight triangles in accordance with the Clause 52.06-8 (Design Standard 1) of the Hobsons Bay Planning Scheme adjacent to the exit lane of the southern accessway of the apartment building.
- (n) Swept paths to ensure that vehicular access and egress will be convenient and safe for end bays and blind aisles in the apartment car park.

- (o) 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.
- (p) All car spaces adjacent to walls in the apartment car park to be a minimum width of 2.9m.
- (q) The provision of at least one disabled car parking bay within the off-street apartment car park. Disabled parking to comply with Australian Standard for Off-Street Parking for People with Disabilities (AS/NZS 2890.6 – 2009).
- (r) All support columns in the apartment car park 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 wherever practicable, generally in accordance with Clause 52.06-8 of the Hobsons Bay Planning Scheme.
- (s) Ramp gradients and headroom clearances in the apartment car parks to comply with Australian Standard AS/NZS2890.1:2004.
- (t) All 1:8 transitions at the base of ramps to be provided at 2.6m long if a 1 in 4 grade is used.
- (u) A 2.1m headroom clearance in the car parking areas between the floor and any obstructions.
- (v) The location of any exhaust stacks for the apartment car parking areas.
- (w) Identification of parking spaces allocated to specific dwellings with one space per dwelling allocated, extra spaces to be designated for visitors.
- (x) Single and double garages having a minimum internal length of 6m.
- (y) All single garages widened to a minimum internal width of 3.5m.
- (z) Tandem garages (Type B Townhouse) having a minimum internal length of 10.9m.
- (aa) All parallel spaces provided at a minimum 6.5m long.
- (bb) Convex mirrors or other appropriate warning devices to be installed on the apartment building ramps to allow two vehicles to use the ramp simultaneously.
- (cc) A reduction in the size of the study in the townhouses in Lot 10 Blocks A, B and C and Lot 11 Block A to allow for an increase in the size of the single garages.
- (dd) Nomination of an area, with a minimum footprint of two square metres, within the apartment car park area for a designated hard rubbish collection point for residents.

- (ee) All service pipes, (excluding downpipes) concealed on exposed elevations to the satisfaction of the Responsible Authority. Downpipes to be shown in visually unobtrusive locations.
- (ff) At a scale of 1:50 details of the design of mail boxes for the apartment block. Mail boxes must be integrated into the overall entry/foyer design, be visually unobtrusive and secure together with space for newspaper delivery.
- (gg) Details showing how it is intended to improve the visibility of the stairs in the apartment block to encourage the use of stairs over elevators.
- (hh) All common doorways throughout the apartment block to have a minimum 'clear' opening of 850mm as per AS1482.2 11.5.
- (ii) An increase in the depth of the lift lobbies of the apartment block to 2100mm (from 1800mm) to enable easier pedestrian movement and manoeuvring of furniture.
- (jj) All common corridors of apartments to be 1500mm wide (minimum) with localised widening at the doorway entries to dwellings of 1800mm (minimum depth) to allow for large furniture items and to ensure accessibility. This includes indenting the entry threshold of apartments to create localised zones of 1800mm in width at Ground, Level 1, and Level 2 for each of the pairs of apartment entries.
- (kk) 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.
- (ll) A notation on the plans that states the development will be constructed in accordance with the Australian Standard AS1428 (2009) 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 of the apartment block.
- (mm) Utility meters shown in locations that are easily accessible and appropriately detailed to achieve a high quality appearance.
- (nn) 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.
- (oo) Any air conditioning condenser units on the balconies appropriately screened from view.

- (pp) The colour of the lift overrun to be in a neutral colour (i.e. neither black nor white).
- (qq) 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. These facilities must be positioned to prevent unreasonable noise and visual impact.
- (rr) The positioning of all plant and equipment (including air conditioning units, heating units, hot water systems, etc) that is proposed to be located externally. Such plant and equipment must be positioned to prevent unreasonable noise and visual impact.
- (ss) Details of wall construction with the objective of minimising noise transmission between dwellings and between dwellings and utility areas.
- (tt) Provision of any acoustic treatments to the proposed dwellings, as may be recommended in the acoustic engineers report referred to in Conditions 27, 29, 30, 31, 32, 33 and 34 of this permit.
- (uu) Windows and balconies of the rear terraces of the townhouses in lot 10 of the development designed to comply with Clause 55.04-6 Standard B23 – Internal Views of the Hobsons Bay Planning Scheme.
- (vv) Provision of planter boxes and/or screening detail to the balconies/terraces of the west facing apartments to prevent direct overlooking into the secluded open space of 12 and 14 Cecil Street. The measures taken to prevent overlooking must be designed to integrate with the design of the building as a whole.
- (ww) A 2000 litre rainwater tank in each townhouse for toilet flushing and laundry use but not at the expense of car parking provision.
- (xx) Solar shading to the western and northern facades of the upper level of the apartment block.
- (yy) Any modifications resulting from the Waste/Recycling Management Plan, as may be recommended in the report referred to in Condition 20 of this permit.
- (zz) Direct access from bike store to lift lobby.
- (aaa) All basic services, including water, electricity, gas, sewerage and telephone installed underground.

- 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.

## **Archaeological survey**

- 4 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 identified, in accordance with the requirements of Aboriginal Affairs Victoria (AAV) and to the satisfaction of the Responsible Authority.
- 5 Before works are carried out that would significantly disturb the natural surface or subsoil of the site, 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). This includes a requirement to obtain a Consent to Excavate and/or Consent to Disturb before undertaking any demolition or excavation works on the site. The historical archaeological investigation must include the following:
  - (a) Archaeological test excavations to determine the nature and extent of surviving archaeological deposits, including further underground tanks, drains and plant, foundations of former building or buried structures, occupation and waste deposits and the like. Depending on the results of the test excavation, further archaeological salvage may be required.
  - (b) An archaeological watching brief to record structural and archaeological details revealed during demolition which must be phased in stages as follows:
    - (i) After removal of roofing.
    - (ii) After clearance of walls.
    - (iii) After removal of floors and footings.

## **Recording of former Nugget Factory buildings**

- 6 Upon completion of demolition works, an information plaque/interpretive display must be embedded/erected on the wall of the new building at the cost of the owner to the satisfaction of the Council which contains a brief written summary of the history of the former Nugget Factory, the date of its demolition as well as an image of the building representing its original form. The location of the plaque/interpretive display must be to the satisfaction of the Responsible Authority.

## **Construction Management Plan**

- 7 Concurrently with the submission of amended plans in accordance with Condition 1, an amended 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. The Construction Management Plan must be amended to include, but not limited to the following:

- (a) A separate truck holding area from the construction car park to the satisfaction of the Responsible Authority.
- (b) A target recycling rate of 80% by weight.
- (c) Details of the proposed gantries to be erected in Cecil and Kanowna Streets to ensure existing footpaths are not impacted.
- (d) Adequate and appropriate traffic management to ensure that motorists and adjacent properties are notified with regard to the proposed road closure between Aitken Street and Cecil Street.
- (e) Access routes for all construction vehicles.
- (f) A plan of the proposed temporary fencing for the land.

### **Demolition Management Plan**

- 8 Concurrently with the submission of amended plans in accordance with Condition 1, a Demolition Management Plan must be submitted to and approved by the Responsible Authority. Once approved the Demolition Management Plan must be complied with to the satisfaction of the Responsible Authority. The Demolition Management Plan must set out details of the demolition works including, but not limited to the following:
- (a) Hours of operation.
  - (b) Dust management.
  - (c) Parking and traffic movement of all workers' vehicles and other vehicles required to carry out the demolition works.
  - (d) A works timetable.
  - (e) Any impacts upon adjacent roads and pedestrian walkways and providing for adequate movement and circulation of vehicles and pedestrians adjacent to the site during the demolition phase.
  - (f) Access routes for demolition vehicles.
  - (g) Maximum number of workers expected to be on site at any time.
  - (h) Measures to be implemented to limit escape of dust and litter from the site.
- 9 All activities associated with the construction or demolition 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.
- 10 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.

- 11 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 specified within the Construction Management Plan 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.
- 12 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 unauthorised 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 being actively carried out on the site.
- 13 Any damage to the footpaths along Aitken Street, Kanowna Street and Cecil Street which are caused during the demolition and/or construction works must be reinstated and made good, at the cost of the owner to the satisfaction of the Responsible Authority.
- 14 The carrying out of the demolition and/or construction works must not result in any nuisance or annoyance to an occupier of a nearby residence or otherwise adversely affect the amenity of the surrounding area.
- 15 The deposit of mud, crushed rock or other debris onto a public road or footpath, as a result of the carrying out of the demolition and/or construction works, must be kept to a minimum to the satisfaction of the Responsible Authority.
- 16 Except with the further consent of the Responsible Authority, vehicles used in carrying out the demolition and/or construction works must not be queued, or parked in Cecil Street.

### **Sustainable Design Statement**

- 17 Concurrently with the submission of amended plans in accordance with Condition 1, an amended Sustainable Design Statement generally in accordance with the Sustainable Design Statement (identified as Sustainability Report, Stage 2 Nelson Place Village, 16-20 Kanowna Street Williamstown dated December 2012, prepared by Lucid Consulting Australia) must be submitted to and approved, to the satisfaction of the Responsible Authority. The amended Sustainable Design Statement must be modified to include:

- (a) Water collected from rainwater tanks must be used by laundries and toilets of dwellings, and the STEPs report and Storm report modified accordingly.
- (b) Individual SDA and STEPS reports to demonstrate the environmental performance of each townhouse.
- (c) Document how low Volatile Organic Compounds (VOC) will be used.

### **Emergency Evacuation Plan**

- 18 Concurrently with the submission of amended plans in accordance with Condition 1, an Emergency Evacuation Plan must be submitted to and approved by the Responsible Authority. The Emergency Evacuation Plan must be generally in accordance with the draft Plan prepared by Fire Safety Australia dated February 2014. Once approved, the Emergency Evacuation Plan must be implemented to the satisfaction of the Responsible Authority.

### **Section 173 Agreement**

- 19 Before any further subdivision, the owner must enter into an Agreement (the Agreement) with the Responsible Authority pursuant to section 173 of the *Planning and Environment Act* 1987. The Agreement must provide for the following:
- (a) The owners and occupiers of the apartment building have the primary responsibility for establishing and implementing the Emergency Evacuation Plan (including the establishment of the Emergency Management Committee).
  - (b) Giving notice to the owners and occupiers that:
    - (i) There exists an emergency evacuation plan which is administered and implemented (in the event of an incident) by the Emergency Management Committee of the apartment building;
    - (ii) That the emergency evacuation plan addresses the evacuation of the dwellings in which they reside;
    - (iii) It is the obligation of the owner of the land to bring the content of the Agreement to the attention of any tenant or occupier;
    - (iv) Any tenant or occupier of the dwellings in the WorkSafe Advisory Area is encouraged to participate in and join the Emergency Management Committee;
    - (v) Up to eight places on the Emergency Management Committee are reserved for occupants of the dwellings in the WorkSafe Advisory Area; and

- (vi) The occupant of any dwelling in the WorkSafe Advisory Area is obliged to obtain and maintain a current copy of evacuation instructions near to the front and rear entrances of the dwelling, to the satisfaction of the Responsible Authority at all times.

All reasonable costs associated with the preparation, execution and recording of the Agreement must be borne by the owner. The Agreement must be recorded on the title to the land under Section 181 of the *Planning and Environment Act 1987*.

### **Waste/Recycling Management Plan**

- 20 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) Swept paths of the travel paths of any waste collection vehicles on the newly created public roads and demonstrate that waste collection, storage and removal and other loading activities are appropriately accommodated by the development and do not adversely impact on nearby roads.
  - (b) Provision of adequate waste storage areas.
  - (c) A commitment not to collect rubbish on Council's nominated rubbish collection day (currently Tuesday) so as not to conflict with Council's service.
  - (d) Commitment to collect between 9am and 4pm, Monday to Friday.
  - (e) Provision of a manual handling plan for contractors collecting bins from individual townhouses.
  - (f) Compaction of refuse and the breaking up of bottles not occurring whilst the collection vehicle is standing stationary at or near the site.

The Waste/Recycling Management Plan approved pursuant to this condition must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Arborist report**

- 21 Concurrently with the submission of amended plans in accordance with Condition 1, an Arborist report demonstrating that trees in the private open space of the neighbouring properties in Cecil Street are not impacted by the

proposed development including any measures necessary to ensure their protection during demolition, construction and post construction phases.

- 22 Any recommendations contained in the Arborist report referred to in Condition 21 must be complied with to the satisfaction of the Responsible Authority.

### **Public realm works**

- 23 All proposed public realm works including typical details for road and pedestrian pavements, landscaping, drainage details, public lighting and street furniture. A suite of street furniture including seating, bins, bike racks, street lighting and bollards to be provided. Works to be shown must be dimensioned and include treatment of the following:
- (a) Full construction of the following road reserves: all internal lanes, Windsor Terrace, Cecil Street between Kanowna Street and Windsor Terrace, the full length of the western lane (adjacent to Lot 10) and Aitken Street (along the frontage between Kanowna Street and western edge laneway adjacent to Lot 10). Works are to include the continuation of street tree and pavement details to complement existing planting and pavement themes to Responsible Authority's satisfaction, drainage and public lighting to all lanes including the lane to the west (also including any upgrades of lighting as determined by the Responsible Authority). Lighting can be mounted off the buildings in the lanes.
  - (b) Undergrounding of power in Kanowna, Cecil and Aitken Streets and Windsor Terrace.
  - (c) Increase in the width of all internal laneways to achieve a minimum carriageway width of 5500mm to accommodate two way traffic.
  - (d) Identification of proposed accessible spaces on the proposed streetscape plans compliant with current DDA standards.
  - (e) Charcoal coloured concrete footpaths and kerbs and asphalt roads.
  - (f) No stopping signs on western side of Windsor Terrace.
  - (g) Pram crossings at all proposed intersections.
  - (h) Public realm works to have a maintenance period of 5 years.
  - (i) New street tree on Cecil Street to replace the lost tree, to be a minimum 1800mm height on planting.
  - (j) Details of street furniture inclusive of seating, bins, bike racks and bollards.

- (k) Location of at least 6 bike racks in the vicinity of each of the two entrances to the apartment building.
- (l) Bollards to be placed in the location opposite townhouse 10.c.06 where the new laneway in the development meets the existing east/west laneway to prevent vehicle access to and from the subject land.
- (m) Design of internal private roads reviewed to enable suitable traffic movements. Swept path diagrams must be provided to determine the extent of landscaping that can be retained and consideration must be given to designing these areas as shared zones instead of providing a separate pedestrian footpath.

Prior to an Occupancy Permit being issued by the relevant Building Surveyor the public realm works including Windsor Terrace, Aitken Street, Kanowna Street, the laneways within the site, the western lane and Cecil Street must be completed to the satisfaction of the Responsible Authority. This includes the construction and drainage works, the construction of on street car parking spaces, public lighting, landscaping and pavement works.

#### **Architect supervision**

- 24 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 Victoria**

- 25 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.

#### **Disability Discrimination Compliance Report**

- 26 Prior to the commencement of construction of the dwellings, a Disability Discrimination Act Compliance Report must be submitted confirming *Disability Discrimination Act* 1992 compliance to the satisfaction of the Responsible Authority. Once approved, the Disability Discrimination Act Compliance Report must be complied with to the satisfaction of the Responsible Authority.

## **Acoustic report in relation to sound attenuation within the development**

27 Concurrent with the submission of amended plans in accordance with Condition 1, an acoustic assessment 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 in the apartment block.
- (b) Other apartments and travelling between or through the walls of the dwellings.
- (c) Activities associated with the apartment car park generating noise which travels into the dwellings above, below and/or on the same floor level.

The report must be submitted to the Responsible Authority for approval. It must prescribe necessary treatments to the approved dwellings in order to achieve compliance with State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade) No N-1 and the State Environment Protection Policy (Control of Music Noise from Public Premises) No N-2.

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.

28 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**

29 Each dwelling must be designed, constructed and maintained to ensure that it is protected from existing lawful industrial/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/commercial 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(A) in accordance with relevant Australian Standard 2107 for acoustic control; and

- (c) An internal noise level of 55dB(A) $L_{max}$ .

### **Pre-completion verification testing for dwellings**

- 30 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/commercial 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 condition 29(a); and
  - (b) An internal noise level of 45dB(A) in accordance with relevant Australian Standard 2107 for acoustic control; and
  - (c) An internal noise level of 55dB(A) $L_{max}$ .
- 31 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**

- 32 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/commercial 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 29(a); and
  - (b) An internal noise level of 45dB(A) in accordance with relevant Australian Standard 2107 for acoustic control; and
  - (c) An internal noise level of 55dB(A) $L_{max}$ .

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

- 33 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 and other industrial/commercial 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.

- 34 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**

- 35 Prior to commencement of works, a Street 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 Cecil Street and Kanowna Street in front of the site 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 must include the following:

- (a) Nomination of any suitable Tree Protection Zones based on the recommendations contained in the Arborist Report.
- (b) The Tree Protection Zone enclosed using a 2 metre high temporary cyclone fence or similar. This fence must not enclose the footpath which must be kept clear for pedestrian access. A sign must be erected on the fence informing that the fence is a 'Tree Protection Zone'.
- (c) Specify that parking of vehicles or storage of plant & equipment, materials, soil or waste is not permitted within the Tree Protection Zone area.
- (d) Specify that no excavation is allowed within the Tree Protection Zone except with the consent of the Responsible Authority and under the supervision of a qualified Arborist.
- (e) 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.
- (f) The engagement of a qualified Arborist to determine whether any pruning required to allow for the erection of scaffolding is acceptable and 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.
- (g) The health and condition of the trees to be monitored throughout the construction period by a qualified Arborist.

- (h) Any excavation within the Tree Protection Zone including the removal of footpaths will require a separate Arborist report to the satisfaction of the Responsible Authority discussing the impact on the trees and identifying specific measures to minimise any negative impacts.

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

### **Landscaping**

- 36 Prior to the commencement of works (excluding demolition of buildings and works and removal of surfaces) a bank guarantee or bond of \$10,000 must be lodged by the owner with the Responsible Authority to ensure the satisfactory establishment of landscaping works within Stage 2. 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.
- 37 Prior to the occupation of the development 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.

### **Environmental audit**

- 38 Prior to the commencement of construction associated with the dwellings (excluding demolition, excavation, or the construction of public realm works) 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 recorded 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 must be responsible for all costs associated with the preparation, execution and recording of the Agreement, including those incurred by the Responsible Authority.

### **Green Travel plan**

- 39 Prior to an Occupancy Permit being issued by the relevant Building Surveyor, 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. The location of the share car space must 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 or 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.

### **Car parking and access lanes**

- 40 Prior to the occupation of the development 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.
- 41 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**

- 42 All 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 the Responsible Authority prior to construction.
- 43 The owner must meet the costs of any reasonable alterations to and reinstatement of, the Responsible Authority and other Public Authority Assets reasonably 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.

## **Residential amenity**

- 44 Except for any siren or alarm required as part of the Emergency Evacuation Plan, all security alarms or similar devices installed must be of a silent type, to the satisfaction of the Responsible Authority.
- 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.

## **Time**

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

The Responsible Authority may extend the period in which to start the development or commence the use 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 ---**