

Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report

Port Phillip Planning Scheme

Referral No 1: Marlborough Street, Balaclava

8 August 2020

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Priority Projects Standing Advisory Committee Report pursuant to s151 of the Act

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Members of the Priority Projects Standing Advisory Committee who considered this referral:



Kathy Mitchell, Chair



Debra Butcher, Member

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
BVRT	Building Victoria's Recovery Taskforce
Council	Port Phillip City Council
DDO21-12	Design and Development Overlay Schedule 21-12
DELWP	Department of Environment, Land, Water and Planning
GRZ	General Residential Zone
MPS	Municipal Planning Strategy
MSS	Municipal Strategic Statement
NRZ	Neighbourhood Residential Zone
PPF	Planning Policy Framework
the Committee	Priority Projects Standing Advisory Committee
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

1 Overview

(i) Referral summary

Referral summary	
Date of referral	15 July 2020
Members	Kathy Mitchell (Chair) and Debra Butcher
Description of referral	VCAT Proceeding No. P48/2020: Use and development of land for a six-storey building above a basement car park, comprising 46 dwellings for social housing, a shop, 39 public car parking spaces and 14 resident car parking spaces, reduction in car parking requirements and removal of two easements
Common name	Referral No 1: Marlborough Street, Balaclava
Municipality	Port Phillip
Planning Authority	City of Port Phillip
Applicant	HousingFirst Limited
VCAT Reference No.	P48/2020
Planning permit application No.	Port Phillip 773/2018
Subject land	46, 48, and 50 – 58 Marlborough Street, Balaclava
Site inspection	Unaccompanied, 21 July 2020
Parties	Council: Kathryn Pound and Nick McLennan Applicant: HWL Ebsworth Lawyers for HousingFirst Ltd Applicant for review: Travis Walton of Travis Walton Architecture for himself and a number of objectors
Consultation	Round table discussion through video link (MS Teams), 22 July 2020
Information relied upon	VCAT file, Council reports, expert evidence (from HousingFirst), tabled letter and report (from Mr Walton), verbal submissions at the Roundtable discussion
Date final information was received	4 August 2020
Date of this report	8 August 2020

(ii) Findings

The Committee finds the proposal is well supported by State and local policy, it responds well to its locality and it will provide affordable housing opportunities for those in need. In relation to the key issues addressed at the round table, the Committee finds that:

- The proposal responds appropriately to DDO21-12 in the context of building heights and setbacks.

- The building materials proposed on the June 2020 plans are appropriate, subject to the red brickwork at the lower two levels of the building being solid masonry.
- the proposal will not unduly impact on Dianella Lane access for abutting traders.
- the proposal should provide for waste disposal on site.
- The issue of potential contamination is appropriately dealt with through Conditions 45 to 47, subject to minor wording changes.

(iii) Recommendation

The Priority Projects Standing Advisory Committee recommends:

- 1. That the Minister for Planning support this proposal and recommend to the Governor in Council that Port Phillip Permit Application 773/2018 be issued, subject to the amended conditions in Appendix E.**

2 Introduction

2.1 Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (the Committee) was appointed by the Minister for Planning on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference (Appendix A) to:

... provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

The Committee was provided with a letter of referral from the Minister for Planning dated 15 July 2020 (Appendix B) that tasked it to provide:

... advice and recommendations on whether a planning permit should be issued, and if so, the appropriate permit conditions.

This is Referral No. 1 of the Committee.

The Committee convened a round table discussion with the parties to the VCAT proceedings and focussed on the issues in dispute, which primarily related to:

- The height and form of the proposed development, particularly the heights and upper built form materials and setback
- The shared use of Dianella Lane.

2.2 Membership

Due to the issues to be resolved, the members of the Committee dealing with Referral No. 1 comprised:

- Kathy Mitchell, Chair
- Debra Butcher, Member.

The Committee was assisted by Georgia Thomas, Project Officer from the Office of Planning Panels Victoria.

2.3 Background to the proposal

VCAT proceeding No. P48/2020 relates to the proposed development for the use and development of land for a six-storey building above a basement car park, comprising 46 dwellings for social housing, a shop, 39 public car parking spaces and 14 resident car parking spaces, a reduction in car parking requirements and removal of two easements.

The Applicant is HousingFirst Limited, a registered social housing provider.

A permit is required by the Port Phillip Planning Scheme under:

- Clause 32.04 - Mixed Use Zone
- Clause 43.02 - Design and Development Overlay Schedule 21, Precinct 12 (DDO21-12)
- Clause 44.05 - Special Building Overlay Schedule 1
- Clause 52.02 - Easements, restrictions and reserves
- Clause 52.06 - Car parking.

The Port Phillip City Council (Council) issued a notice of decision to grant a permit for the proposal on 16 December 2019. An appeal was lodged by objectors on 12 January 2020 to review the decision to grant a permit.

VCAT held a practice day hearing on 6 March 2020, and a compulsory conference date was set for 27 April 2020, but was vacated due to COVID-19. A VCAT hearing date was later set for 14 July 2020 for three days.

In the meantime, it is understood the Applicant formally amended the application plans to assist to resolve concerns raised by the objectors. These plans substituted for VCAT on 5 June 2020 were prepared by DOIG Architecture (TP-099 Rev C; TP-100 Rev D; TP-101-106 Rev B; TP200 Rev B; TP 201-205 Rev A; TP300-301 Rev B; TP302 Rev C; TP303 Rev B; TP700 Rev). The Committee has used these plans (referred to as the June 2020 plans) as the basis of its considerations and recommendations.

2.4 Process

The Committee received the letter of referral from the Minister for Planning on 15 July 2020. The Committee had already been provided with the relevant VCAT file in anticipation of the referral. The Committee wrote to the parties to the VCAT proceeding on 16 July 2020 advising of its referral and inviting those parties to a round table on Wednesday 22 July 2020. This letter included the Terms of Reference and the referral (Document 1). The letter indicated that a Hearing did not seem to be required in this case and that a round table would be convened. The letter further invited any party to raise any procedural matter if they had concerns about what was proposed. No response about any procedural issues was received before the date of the round table (nor at the round table on 22 July 2020).

Given this, the Committee confirmed the arrangements and provided an outline of how the round table would proceed by letter on 21 July 2020 (Document 5). The round table was held as follows:

- welcome and introductions by Committee
- Council, the Applicant and objectors provided an overview of its position
- Mr Bartley for the Applicant introduced the Project Architect (Mr Doig) who spoke to the concept and the June 2020 plans
- evidence tabled and spoken to by Ms Heggen, with objectors and Committee asking questions
- evidence tabled and spoken to by Ms Dunstan, with objectors and Committee asking questions
- general discussion, including about permit conditions
- closing comments made by Council, objectors and Applicant
- closing by Committee, including Directions about review and tabling of recommended changes to permit conditions.

The Applicant provided planning and urban design evidence (Ms Heggen of Ratio Consultants) on 20 July 2020 and traffic evidence (Ms Dunstan of Traffix Group) on 21 July 2020. Both were present at the round table to discuss their evidence and to respond to any questions. Mr Walton tabled a letter from Mr Shephard (Kinetica) and a report from Mr Young (Ratio Consultants), both dated May 2020 at the round table. Neither of these experts were present, so no questions could be asked of them. Mr Walton noted that he thought having two experts

from the same firm was a conflict and that the objector group engaged Ratio Consultants first in relation to traffic matters. The Chair noted they were from different disciplines and that it did not raise a conflict.

The Committee made Directions about reviewing and responding to the Conditions (Document 10). The Applicant was directed to provide its final permit conditions by Tuesday 28 July 2020 and the objectors were invited to respond to these and provide their recommendations on the conditions by Tuesday 4 August 2020. These Directions were complied with (Documents 12 and 13).

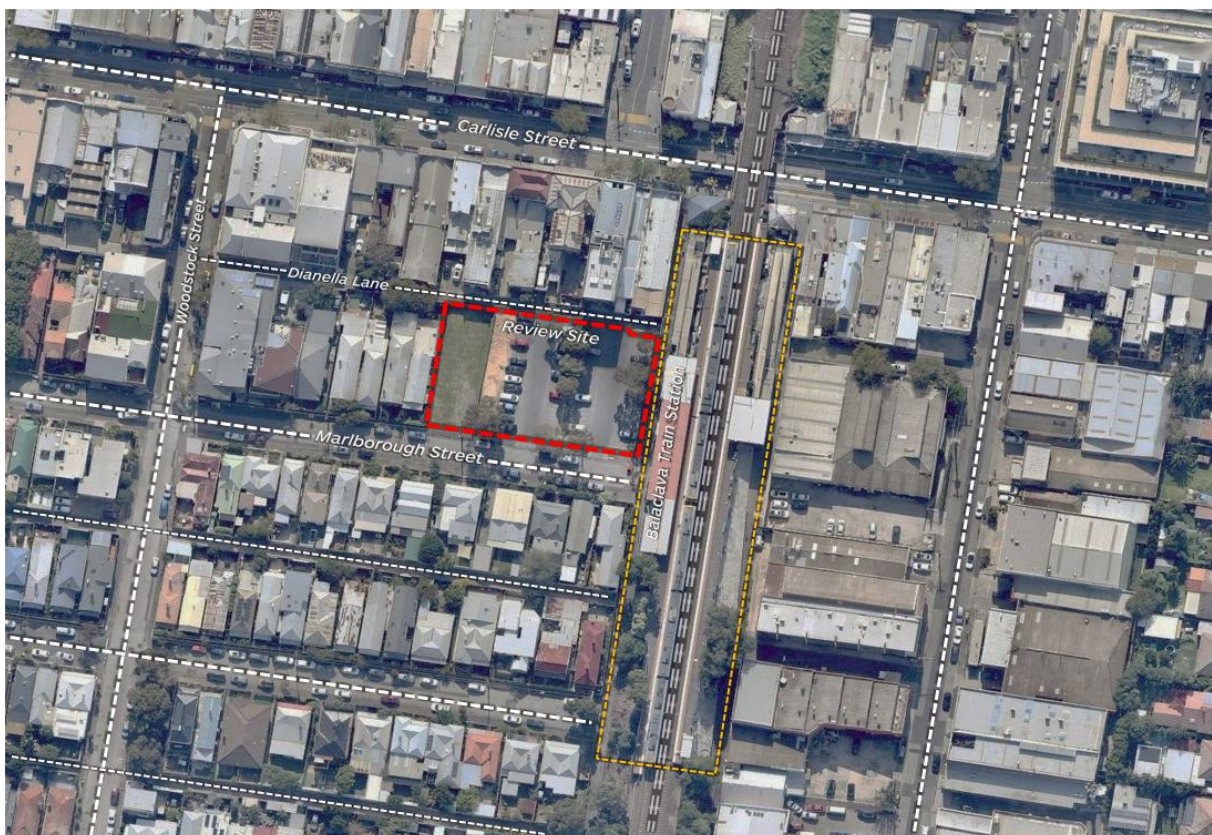
The Committee thanks all parties for the way in which they participated in this process and for their willingness to engage.

3 Site and planning context

3.1 The subject land

The subject site is located on the north side of Marlborough Street, nested on two abutments with the Carlisle Major Activity Centre and the Balacava Railway Station (Figure 1). Most of the site is currently used for public car parking, except for the western portion which is fenced and vacant. The site is owned by the City of Port Phillip and has long been earmarked to be redeveloped for social housing, the Committee noting that a sign on the car park site makes that clear. It is abutted by retail and commercial development to its north (Carlisle Street Major Activity Centre), railway uses to its east, and residential uses to its south and west.

Figure 1 Subject land



Source: Ms Heggen, Town Planning and Urban Design Report

3.2 Planning framework

Ms Heggen provided a concise summary of key State and local policy, the applicable zones and overlays, particular and general provisions, which the Committee accepts and adopts (Document 3).

(i) State policy

The proposal responds well to the Planning Policy Framework (PPF) in that it:

- provides diverse and affordable housing for households on low to moderate incomes
- is within a designated Major Activity Centre

- seeks to locate new housing near public transport
- is located in an area that has a range of commercial and urban services.

(ii) Local policy, zones and overlays

The proposal has strong support from the Local Planning Framework, noting in particular that:

- it provides for new social housing at an increased density in an established activity centre, consistent with Clauses 21.04-1 in relation to housing and accommodation more broadly and 21.06-1 in relation to East St Kilda and Balaclava specifically
- it is specifically identified as a strategic site for community housing at Clause 22.11: Carlisle Street Major Activity Centre
- it is specifically identified as a strategic site for community housing in the Carlisle Street Activity Centre Structure Plan 2009 in the Carlisle Street Urban Design Framework 2009 (both reference documents in the Planning Scheme).

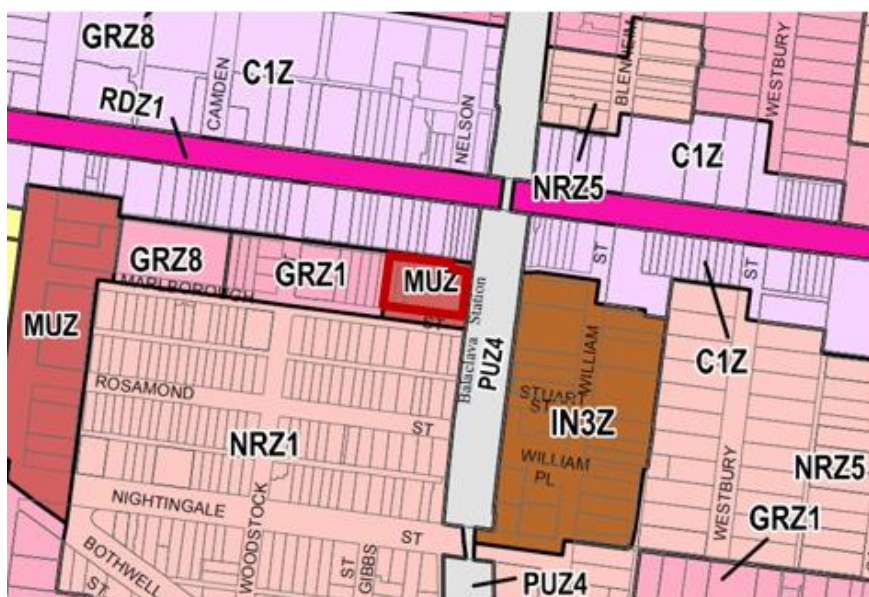
In terms of relevant Zone and Overlay controls, in summary, the subject site is:

- located in the Mixed Use Zone (Figure 2)
- subject to DDO21-12 (Figure 3)
- subject to Special Building Overlay Schedule 1.

The subject site:

- abuts the Balaclava Railway Station (Public Use Zone 4) to the east
- is opposite Neighbourhood Residential Zone Schedule 1 to its south and General Residential Zone Schedule 1 to its immediate west
- is opposite land which is in Heritage Overlay 7 to the immediate north on both sides of Carlisle Street and Heritage Overlay 439 to the south along Marlborough Street and beyond (Figure 4), noting the west of Marlborough Street and areas to the south is not in a Heritage Overlay.

Figure 2 Existing zoning



Source: Ms Heggen Town Planning and Urban Design Report

Figure 3 Design and Development Overlay 21



Source: Ms Heggen Town Planning and Urban Design Report

Figure 4 Heritage Overlay



Source: Ms Heggen Town Planning and Urban Design Report

4 The issues

From its review of the VCAT file and the information provided to it, the Committee considers the key issues to be resolved are:

- the requirements of DDO21-12 in relation to building height and setbacks
- building materials
- laneway access and waste disposal
- potential contamination.

4.1 Consistency with Design and Development Overlay 21-12

The key issue to resolve is:

- Whether the proposal is consistent with DDO21-12 in terms of its proposed building height and setbacks.

(i) Submissions and evidence

As background, the Committee notes that DDO21 relates to the Carlisle Street Major Activity Centre and provides built form guidance for the whole of the Activity Centre on a precinct by precinct basis. The subject site is located in Precinct 12 (listed as DDO21-12) and described as the Balaclava Station Car Park Site. The preferred character for the precinct is identified as:

- Higher-scale housing development to addresses the elevated station/rail line, transitioning down in height and bulk where the site interfaces with existing dwellings.
- Active commercial frontages along the walkway adjoining the station.
- Setback from the station walkway to achieve an informal public space and opportunity for landscaping.
- Design of upper levels to provide natural surveillance of the station environs.

Included in the Schedule are a number of built form requirements including a preferred maximum height of 13 metres (4 storeys) and requirements to be met in the context of this preferred height, including:

- Buildings must be no more than 8 metres high within 5 metres of the boundary.
- Above the Marlborough Street facade one additional storey may be visible provided that it is set back at least 5 metres so as to be visually recessive. This setback may be reduced by up to 2 metres if the architecture of the upper levels renders them distinctly different and visually recessive through variations in forms, materials, openings or colours.
- Any further storeys must be set back so as not to be visible when viewed from standing eye level (1.6m) at the street frontage directly across the street.

Council submitted it supported the proposal and that the relevant planning matters (including the requirements of DDO21-12) had been addressed in the Council Officer's report of December 2019. Council confirmed the proposal met the mandatory and discretionary requirements of DDO21-12 and was strongly supported in the Policy Framework of the Planning Scheme. Council confirmed it supported the June 2020 plans prepared by the Applicant, which included the following changes:

- increased setbacks of levels 3, 4 and 5 from the western boundary
- modifications to the materiality and colour palette of the southern building façade to respond to the residential character of the area

- modifications to the materiality and colour palette of the western building façade to respond to the residential character of the area
- provision of a vehicle passing bay on Dianella Lane.

Mr Doig (architect for the project) explained that the changes responded to different aspects of DDO21-12 as well as objector concerns. The revised plans included increased setbacks to the existing dwelling to the west to ensure compliance with Clause 55.04 ResCode B17 requirements, and changes to building materials.

Ms Heggen, who provided a written statement of evidence for the Applicant, referred to the provisions of DDO21-12 that set out requirements for the site in terms of heights and setbacks to all boundaries, not just the more sensitive interface to the single storey dwelling to the west. She stated that her *“evaluation of the DDO requirements is that they are intended to achieve the following:*

- Provide a ground level street setback and rhythm consistent with dwellings to the west;
- Provide an active ground floor space at the east end of the site;
- Provide an appropriate level of activation to frontages;
- Limit the potential amenity impacts of upper levels (above two storeys); and
- Limit the visual impact of upper levels (above 4 storeys) ¹.

Ms Heggen stepped through the way in which the proposal responds appropriately to the requirements of DDO21-12. She highlighted that the top two levels of the proposal, sitting above the ‘preferred’ height of four storeys, will not be visible from standing eye level (1.6 metres) on the southern side of Marlborough Street directly opposite the site due to the significant setback of those two levels. She concluded that the ‘test’ in DDO21-12 for additional height relating to visibility had been met.

Notwithstanding, Ms Heggen acknowledged the additional levels would be visible from oblique views along Marlborough Street. However, she considered the oblique views needed to be considered in the context of the:

- height and built form of the Balaclava Station behind
- building materials and articulation proposed to the upper levels of the proposal, including the use of vertical seams or ‘fluting’ elements in the masonry
- relatively small footprint of the upper two levels compared to the lower levels.

She advised the proposal would act as a ‘bookend’ for the eastern end of Marlborough Street, referring to the higher built form at the western end of Marlborough street where it intersects with Chapel Street.

Ms Heggen highlighted compliance of the June 2020 plans with the requirements of DDO21-12 stating in her evidence that:

In summary, the massing of the proposed building has responded to each interface of the review site and will successfully limit the visibility of the upper floors. In this way, the site can be allowed to efficiently increase its capacity to provide new housing without detriment to nearby established dwellings or the public domain ²

¹ Document 3, Para 2.3.14.

² Document 3, Para 2.3.26.

Mr Walton, acting for a number of resident objectors, tabled written advice from Mr Shepherd (dated 5 May 2020) which referred to an earlier version of the application plans that provided a series of urban design comments (Document 9). In essence the advice stated the proposal could provide an improved response to the residential character of the area by:

- removing the top floor
- amending the setbacks along the eastern and northern boundary
- amending the setbacks along the western boundary to comply with the ResCode B17 requirements
- improving the materiality and articulation of the building along Marlborough Street.

Mr Walton submitted that while the June 2020 plans now responded appropriately to the neighbourhood character at ground and first floor level, the upper levels did not. He suggested the 'ziggurat' built form that is proposed is inappropriate in Balaclava. He contended the building should either be smaller or have improved articulation and building materials at the upper level. The view that the building was too big was supported by Ms Walker, who described it as "*unfriendly*" and "*overwhelming*".

Mr Walton took the opportunity to ask a number of questions of Ms Heggen, including whether she considered the building appropriately transitioned, given the relatively lower height of the adjoining station development. He further sought clarification of what was actually meant by 'preferred' building height and how the proposal responds to the DDO21-12 requirements.

Ms Heggen advised that DDO21-12 sought to provide both a quantitative and qualitative approach to providing additional height above the 'preferred'. She noted the quantitative 'test' is the view at 1.6 metres standing opposite the site and that the qualitative test, where people have divergent views, is the requirement for upper levels to be visually recessive. In her view, the additional height (above the preferred height of 4 storeys) met both 'tests' and therefor 'qualified' for additional height.

(ii) Discussion and findings

The Committee can appreciate the concerns of the objectors in relation to the proposed development, given it is of a significantly greater scale than the neighbouring single storey dwellings in Marlborough Street.

Nonetheless, on balance the Committee considers that the height and setbacks proposed by the development are appropriate in the context of its location and the preferred character, design objectives and requirements of DDO21-12. The Committee agrees with Ms Heggen that the proposal qualifies for greater height above the preferred height of 4 storeys and considers that the 'tests' that are required to be met for additional height are appropriately addressed.

One important element of meeting this test relates to built form materials, which is addressed in Chapter 4.2. However, a key element is providing appropriate setbacks to Marlborough Street to meet the view line requirement opposite the site, which the proposal meets.

The Committee acknowledges that in the perspective view of the proposal when looking east along Marlborough Street, it presents as a substantial built form in the streetscape. Nonetheless, the Committee considers that this presentation is acceptable, and provides an

appropriate transition down in intensity to the residences along Marlborough Street, taking into account:

- the 'setting' to this view offered by Balaclava Station
- the setbacks of the two upper levels to Marlborough Street (17 metres at Level 4 to the south facade and at Level 5 17 metres to the balconies) and to the site's western boundary (15.23 metres to Level 4 and 17.13 metres to Level 5)
- the front and side setbacks proposed at the lower levels
- the building materials that are now proposed (Chapter 4.2).

The Committee notes the comments of objectors who stated the 'ziggurat' built form was inappropriate for Balaclava. The Committee observes this type of built form is what results from the DDO21-12 controls in place, which stem from the *Carlisle Street Activity Centre Structure Plan 2009* and the *Carlisle Street Urban Design Framework 2009*. For the proposal to respond to the requirements of DDO21-12, the 'stepping' of upper levels is necessary. Whether the requirements of the controls themselves are appropriate is not a matter for consideration by this Committee.

The Committee finds:

- The proposal responds appropriately to DDO21-12 in the context of building heights and setbacks.

4.2 Building materials

The key issue to resolve is:

- Whether the proposed building materials are acceptable.

(i) Submission and evidence

As noted, Council was supportive of the proposal, including the June 2020 plans that were submitted. The June 2020 plans proposed a number of changes, including changes in building materials to the southern and western building facades.

The Committee understands these materiality changes were primarily as a result of submissions made by the objectors. The key changes included the removal at ground and first floor level of white, precast concrete facade and replacement with red brick, along with the removal of glass balustrades and replacement with metal balustrades on levels 3, 4 and 5.

At the round table discussion, Mr Walton advised he was comfortable with the proposed use of red brickwork at the lower two levels, provided that it was solid masonry. In terms of the upper four levels, he considered they were not appropriately articulated, and that a better outcome would be either to reduce the scale of the building or to use different building materials. He suggested the upper four floors should be constructed in aluminium standing seam cladding, 'monument'.

Ms Heggen in evidence addressed the issue of the identified need for solid masonry and agreed that it would be appropriate. In relation to the upper floors and the use of aluminium standing seam cladding in monument, Ms Heggen did not agree with Mr Walton and advised that the use of monument for the four upper levels would result in the upper levels appearing as a dominant form when in fact the upper levels are intended to be recessive, particular the top two floors, as expressed in DDO21-12. Ms Heggen highlighted the use of metal cladding

to the north east corner of the building (described by Mr Doig as the ‘tower’ element) which she said was appropriate.

Ms Heggen noted a requirement of the DDO is that upper levels must be distinctly different and visually recessive. She considered the June 2020 plans addressed these issues through the building materials and treatments proposed to the upper floors, including the use of vertical ‘seams’ in the masonry and finer grained windows.

In his closing summary, Mr Bartley advised the Applicant would appreciate the opportunity to further consider the issues raised by Mr Walton about building materials. The Committee gave the Applicant the opportunity to do so through the draft conditions distributed after the round table discussion. Subsequently, in the correspondence accompanying the revised conditions, the Applicant advised:

Since the hearing last week HousingFirst and its architect have reviewed a number of options for alternative materials and colours for the finish of the upper levels of the building.

We note that the chief complaint raised by the objectors was the lack of definition of the difference between the concrete finish of levels 3, 4, 5 and 6. It would appear that we failed to adequately explain at the hearing the nature of the difference in the materials and colours as proposed.

What is proposed for levels 3&4 is precast concrete with a warm mid grey colour. This colour can be achieved either by the colour of the cement and/or aggregate, by the use of oxides or by a tinted render sealant. It has relatively low light reflectivity as the finish is matt, not polished. For certain panels we have indicated slightly raised flutes which are created using Reckli mould liners during casting. The specific details and extent of this surface modulation will be determined during the Design Development phase.

In contrast, the upper levels, 5 & 6, will use a much lighter, white concrete. This is made with Brightonlite white cement, white sand and light coloured screenings. Again, the finish is matt, and although it does not depend on a finish coating, in order to protect the surface and colour, the concrete might be sealed.

The object is to have a significant distinction between the lower and upper floors, that due to the diminishing visual strength of colour as the building rises, the colour palette reinforces the ziggurat form that the DDO demands and can very clearly be seen to be “recessive” in form and intent. The intention is to use a material that will weather gracefully and not require re-painting or re-cladding to maintain the colour difference.

Our clients have explored using a number of different materials including Colourbond and similar aluminium or steel cladding products, Hardiboard and similar products painted or with various acrylic and other renders, and other materials. Each has significant issues, in terms of maintenance, additional cost and not necessarily producing a superior outcome to that proposed ³.

In response, Mr Walton advised that *“The objector group understands the applicant’s drawings and materials schedules, our comments are that not enough differentiation has been made by the applicants proposals”* ⁴. In the tracked changed version of the draft conditions, Mr Walton included some suggested changes to Condition 1.b) to include a requirement that the building:

... should not exceed the preferred height of 13 metres (4 storeys) unless Levels 5 and 6 are distinctly different and visually recessive to levels 3 and 4 though variation in forms (façade articulation), materials (material texture other than ‘flat’ grey pre-cast concrete

³ Document 11, Section 1

⁴ Document 13, email correspondence

such as ribbed textures to level 3 and 4), openings (expression of wind details) and colours (such as standing seam cladding to levels 5 and 6).

(ii) Discussion and findings

The Committee considers that the building materials proposed in the June 2020 plans respond to the requirements of DDO21-12. These will result in an appropriate built form, subject to the red brickwork at the lower two levels being solid masonry as recommended by Mr Walton and supported by Ms Heggen.

The Committee accepts the views of Mr Doig and Ms Heggen that the use of aluminium standing seam cladding 'monument' extensively across the upper levels of the building has the potential to be overwhelming. It considers the approach taken to upper four levels, as discussed at the round table and further summarised by the Applicant in the correspondence accompanying the draft permit conditions, will result in an appropriately 'recessive' form, consistent with the requirements of DDO21-12. The Committee notes that consideration was given to other building materials, and the constraints associated with these in terms of the need for maintenance and durability. It accepts the Applicant's advice the materials that have been selected respond to those needs. Accordingly, and keeping in mind the findings of the Chapter 4.1, the Committee does not support the proposed addition to Condition 1.b) as proposed by Mr Walton.

The Committee finds:

- The building materials proposed on the June 2020 plans are appropriate, subject to the red brickwork at the lower two levels of the building being solid masonry.

4.3 Laneway access

The key issues to resolve are:

- whether approval of the proposal unduly impacts on Dianella Lane access for abutting traders
- whether waste disposal should be undertaken on site.

(i) Submission and evidence

Council confirmed it was comfortable with the June 2020 plans that included widening of the access/egress point to the at grade, rear, residents only car parking area, to provide the ability for two cars to pass each other in that location.

Mr Bartley explained the 'passing area' further and noted the objectors sought a larger passing bay area and that such a proposal was problematic as it raised some structural issues. Ms Dunstan of Traffic Group spoke to this further in her traffic and parking evidence.

The Committee was advised by Mr Skeggs, one of the objectors, that the issue of access along Dianella Lane was of concern to traders along Carlisle Street that utilised Dianella Lane for loading and unloading of goods. Mr Skeggs advised he runs a café that fronts onto Carlisle Street that has rear access from Dianella Lane.

Mr Skeggs advised that many of the traders along the south side of Carlisle Street currently use Dianella Lane for deliveries, with trucks entering the Lane from Woodstock Street, travelling east along the Lane and then exiting through the existing Council car park. He

advised that while there are loading zones provided in nearby streets, these are both some distance from his and other businesses and are frequently so busy they are unavailable.

Mr Walton provided advice from Ratio Consultants in relation to traffic issues, including the issue of loading zone parking and impacts to Dianella Lane (Document 9). In relation to this issue in particular, Ratio advised:

- Existing loading and waste vehicles do not have existing use rights of the car park. Notwithstanding, it has been there for people to use and has likely facilitated the current design and operations of existing businesses.
- Encouraging loading for existing businesses from nearby loading zones in Carlisle and Woodstock Street will impact existing businesses, given the increase in distance which goods must be carried; This may not be reasonable in all instances.
- The current practice (of rear loading in the laneway for businesses in Carlisle Street) is contrary to the Road Rules eg obstructing a road. Notwithstanding, this is what occurs and will likely continue into the future⁵.

Mr Walton provided a plan showing a proposed alternative passing bay arrangement. This alternative arrangement sought to lengthen the crossover to the car park and provide a functional passing area that caters for passing of trucks associated with loading/waste collection up to an 8.8 metre medium rigid vehicle. The increase in the passing bay would result in the loss of three car spaces in the resident's car park, which the plan proposed to relocate to the public (basement) car park. Upon questioning from the Committee, Mr Walton advised the alternative arrangement was prepared with input from Ratio's traffic engineers.

Ms Dunstan provided an overview of her evidence, focussing on the key issues to be dealt with in relation to access to Dianella Lane. In summary, Ms Dunstan advised:

- none of the properties to the north of Dianella Lane (ie those commercial properties fronting Carlisle Street) have a legal right of access to the existing car park on the subject site
- the access/egress point to the proposal from Dianella Lane shown on the June 2020 plans provides adequate passing opportunity for cars in Dianella Lane (as shown in swept path drawings in her evidence)
- if the properties to the north of Dianella Lane are using the Lane for loading and unloading, and this is not able to happen on their own land (ie it involves trucks stopping in the Lane), then this is an illegal activity
- there are loading zones provided in surrounding streets and the number of loading zones and their locations are appropriate and in her opinion, quite generous when compared to other similar activity centres around Melbourne
- the likelihood of cars needing to pass in Dianella Lane is quite low, however the passing bay proposed on the June 2020 plans will facilitate that
- there is no need to provide a passing bay that can accommodate trucks, as trucks should not be loading or unloading in the Lane
- the revised loading arrangement proposed by Mr Walton is not necessary and, in any case, would not work as it is the headroom clearance for trucks in Dianella Lane that is particularly problematic
- the arrangement shown in the June 2020 plans, aside from allowing for passing of cars, provides for a mini loader to be able to access site which could deal with the

⁵ Document 9, Ratio Advice Section 1.7

waste removal from the site rather than from Marlborough Street if there were concerns about waste removal.

In questioning Ms Dunstan, Mr Skeggs noted that traders had contributed to a levy for the use of the car park land. Ms Dunstan reiterated the traders along the north side of Dianella Lane have no legal right of access to the car park for delivery vehicles and that their delivery vehicles cannot block the laneway.

The Committee asked Ms Dunstan about a recommended additional condition in her statement of evidence requiring a section drawing of the ramp. Ms Dunstan advised this is a standard condition that she recommends as 'good practice' for all permits where basement car parks are proposed to ensure appropriate head room clearance is provided to ramps, as well as ensuring appropriate clearance to car space 19.

Mr Walton noted in his closing statement that the preference of objectors would be for refuse collection to happen on site as suggested by Ms Dunstan, rather than from Marlborough Street.

In his response to the draft permit conditions (Document 13) Mr Walton proposed an amendment to Condition 25 Waste Management Plan to address this. He also sought changes to Condition 1, to require an area for trucks to pass in Dianella Lane.

(ii) Discussion and findings

The Committee understands the concerns of traders about the way in which loading and unloading to their businesses will change as a result of the proposal. However, the Committee notes the clear advice from both Ms Dunstan and Ratio, that the current practice of loading and unloading from Dianella Lane is illegal and Ms Dunstan's advice that the passing area proposed in the June 2020 plans is appropriate.

The Committee notes Ms Dunstan's view that there are a number of loading zone options available to the traders at present. However, if these areas are not considered adequate from the traders' perspective, the Committee encourages them to liaise further with Council's traffic department about the provision of additional loading zone areas.

The Committee notes Ms Dunstan's comments about the ability to undertake waste disposal on site by a mini loader and the objectors support for such a proposal. The Committee considers such a proposal is sensible and will assist in minimising some of the amenity impacts to the residents of Marlborough Street.

The Committee finds:

- the proposal will not unduly impact on Dianella Lane access for abutting traders.
- the proposal should provide for waste disposal on site.

4.4 Potential contamination

The key issue to be resolved is:

- How potential contamination of the site is dealt with through permit conditions.

(i) Submissions

Council advised that a recent issue emerged in relation to the site about potential contamination. Ms Pound advised this issue was raised as a result of a review being

undertaken of a number of different Council owned sites in response to the pending implementation of the new Environment Protection Act. As part of the review, the subject site was identified as requiring further investigation in relation to the potential for ground water contamination and vapour risk.

Council provided the Committee and all parties with a copy of the more detailed report that was undertaken for the site by Peter J Ramsay (Document 8). This report detailed a series of recommendations at Chapter 11.2 addressing matters which included:

- the location and presence of contaminated soil which is to remain on site and how that is to be managed
- the need to replace some 'accessible' soil and how that should occur
- the potential for asbestos and how it is to be managed
- the depth to groundwater and the need for advice from a suitably qualified engineer in relation to how the basement and groundwater will interact
- the need to de-commission the groundwater monitoring wells that are on the site
- the way in which contaminated soil on the site should be combined for off-site disposal
- the need for additional sampling and analysis of some of the soil to confirm soil hazard categories
- the need for the earthworks contractor to ensure appropriate disposal of soil
- the need for the report to be provided to any waste receiver to ensure compliance with the recommendations and with EPA guidelines
- the need for all works to be performed in conjunction with relevant environmental and occupational health and safety regulatory requirements.

The Report stated at Page (iii) that:

Providing that the strategies and recommendations relating to the management of contamination as provided in this report are implemented, it is considered that a Section 53X Environmental Audit under the Environment Protection Act 1970 is not necessary for the proposed high-density residential development.

Council advised that as a result of those recommendations, it updated the draft conditions (Document 7) to include a new Condition 45 requiring compliance with recommendations of the report.

A discussion followed this advice from Council, with the Committee and Mr Bartley noting that a more focussed condition that spelt out the specific recommendations to be complied with would be beneficial. Mr Bartley noted there will be the ability to undertake the required works at the same time as the excavation for the basement and therefore the condition should address this.

Following the round table, and at the Committee's directions, a revised set of draft conditions was provided to all parties by the Applicant including revised wording associated with the issue of contamination. The revised contamination related conditions read as follows:

45. Prior to the commencement of any site works for the development as authorised by this permit a management plan must be prepared identifying how the recommendations of the Detailed Site Investigation prepared by Peter J Ramsey and Associates dated June 2020 are to be addressed and/or implemented. The management plan is to be submitted to the Responsible Authority for approval. The approved management plan must be implemented to the satisfaction of the Responsible Authority.

46. All recommendations of the Detailed Site Investigation prepared by Peter J Ramsey and Associates dated June 2020, detailed in the approved management plan must be implemented to the satisfaction of the Responsible Authority, concurrently with the commencement of site preparation works (including but not necessarily limited to demolition, excavation and remediation works), during the construction phase and for the full duration of the life of any buildings and works on the land in accordance with the development hereby approved, and must be fully satisfied prior to the occupation of the development.
47. Prior to the occupation of the development the applicant must submit to the Responsible Authority a letter confirming compliance with any findings, requirements, recommendations and conditions of the Detailed Site Investigation.

It is understood these revised conditions were prepared in collaboration with Council. The objectors provided no comment in relation to the revised contamination related conditions.

(ii) Discussion and findings

The Committee supports the position of Council and the Applicant in relation to contamination issues and the general intent of the relevant conditions.

The Committee finds:

- The issue of potential contamination is appropriately dealt with through Conditions 45 to 47, subject to minor wording changes.

4.5 Permit conditions

For the reasons expressed in this report, the Committee accepts Conditions proposed by Council and the Applicant, with the following changes:

- Condition 1.f) - add in the words *"including specification that the red brickwork at the lower two levels of the building is to be solid masonry."*
- Condition 25 - after the words *"dated 9 September 2019"* add in *"be updated to outline the waste management alternative of private waste collection from within the development using the residential carpark and Dianella Lane (Traffix Group, Section 5.7 'Waste Collection', 20 July 2020). Once updated, the document ..."*
- Condition 45 – add in specific reference to Section 11.2 'Recommendations' of the Peter J Ramsay report and require submission and implementation to the satisfaction of the Responsible Authority
- Conditions 46 – other changes to simplify the wording of the condition.

The Committee notes that the objectors' response to the draft conditions included the addition of a requirement for the replacement of existing on street planter trees at Condition 27.d). This matter was not raised at the round table. The Committee considers there is adequate opportunity for additional planting to be provided as part of the requirements for a Public Realm Plan (Condition 27) and that the additional change proposed to this condition is not warranted.

The recommended changes to the conditions are included at Appendix E.

5 Reasons and recommendation

5.1 Reasons

Council was clear in its unwavering support for this social housing proposal, subject to conditions. Council noted there had been significant engagement about the proposal and the subsequent changes to the plans have reflected many concessions. It noted the significance of the location within the Carlisle Street Major Activity Centre, its abuttal to Carlisle Street, the Balaclava Railway station and its strong policy support for the proposal. The City of Port Phillip is a recognised leader in its support for affordable housing and is to be commended for its proactive and affirmative approach in this regard.

The Committee considers the Applicant has put forward a well-considered affordable housing solution that will clearly benefit the Port Phillip community. The policy support to develop this site for higher density, community housing is clear and well established and has been in the public eye since at least 2009. The proposal itself has been carefully considered and put together to respond to the requirements of DDO21-12 (which effectively provides site specific control for built form in this location) and which takes into consideration the competing need for higher density social housing that is respectful of the lower scale adjoining residential setting.

The Committee acknowledges the concerns raised by the objectors and notes the location of the properties to the south are in a Neighbourhood Residential Zone and within a Heritage Overlay. However, the site is located in the Carlisle Street Major Activity Centre and adjacent to a railway station, where intensification of development in such areas is strongly encouraged by both State and local planning policy. It is an area where reasonable height can be contemplated without compromising the integrity of the area.

The Committee considers that given the:

- strong State and local policy support
- strategic location within the Carlisle Street Major Activity Centre
- mixed use scale of development in the broader locality
- evidence of height adjacent to and near the site
- overall built form context and site location
- positive design response, including the upper level setbacks and visually recessive façade
- transition of height and bulk
- good internal amenity
- ongoing engagement and refinement to the plans
- location of and access to car parking
- excellent public transport access
- off-site amenity
- proposed permit conditions
- provision of a significant housing opportunity to those who are in lower to moderate income brackets,

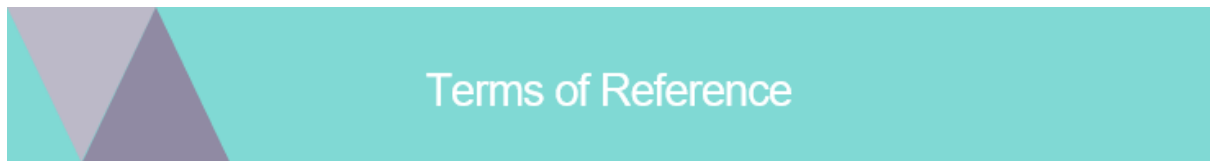
the proposal can be supported, and a permit should issue.

5.2 Recommendation

The Committee recommends:

- 1. That the Minister for Planning support this proposal and recommend to the Governor in Council that Port Phillip Permit Application 773/2018 be issued, subject to the amended conditions in Appendix E.**

Appendix A Priority Projects SAC Terms of Reference



Priority Projects Standing Advisory Committee

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

Name

- 1 The Standing Advisory Committee is to be known as the 'Priority Projects Standing Advisory Committee' (the Committee).
- 2 The Committee is to have members with the following skills:
 - a. statutory and strategic land use planning
 - b. land development and property economics
 - c. urban design and architecture
 - d. heritage
 - e. civil engineering and transport planning
 - f. social impacts
 - g. environmental planning
 - h. planning law.
- 3 The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

Purpose

- 4 The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

Background

- 5 The Victorian Government has identified Victoria's building and construction sector as a key mechanism to revitalise Victoria's economy during the coronavirus (COVID-19) pandemic.
- 6 The Government has committed to a fast-track assessment process for priority projects of state and regional significance that are shovel-ready and that will provide immediate benefits to Victoria's economy, keeping Victorians in work and priority infrastructure on track for completion.
- 7 The BVRT was formally announced on 26 April 2020. The Taskforce was established by the Minister for Planning and Treasurer to help keep Victoria's building and development industry running during the coronavirus crisis. The Taskforce will investigate planning and investment opportunities to boost Victoria's building and development industry over the short, medium and long term.

Method

- 8 The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.

- 9 The referral letter must specify:
 - a. the specific issues the Minister for Planning seeks advice about
 - b. the mechanism of intervention being considered
 - c. whether, or which previously collected, submissions are to be considered by the Committee
 - d. how the costs of the Committee will be met.
- 10 The letter of referral will be a public document.
- 11 In making a referral, the Minister for Planning or delegate must, either:
 - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes, or
 - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
- 12 The Committee may inform itself in anyway it sees fit, but must consider:
 - a. The referral letter from the Minister for Planning,
 - b. referred submissions,
 - c. the comments of any referral authority,
 - d. the views of the project proponent,
 - e. the views of the relevant Council,
 - f. The relevant planning scheme.
- 13 The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority or government agency.
- 14 The Department of Environment, Land, Water and Planning (DELWP) will be responsible for any further notification required. New submissions will be collected by DELWP.
- 15 The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
- 16 The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
- 17 The Committee may:
 - a. assess any matter 'on the papers'.
 - b. conduct discussions, forums, or video conferences when there is a quorum of:
 - i. a Chair or Deputy Chair, and
 - ii. at least one other member.
- 18 The Committee may apply to vary these Terms of Reference in any way it sees fit.

Submissions are public documents

- 19 The Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
- 20 Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.

Outcomes

- 21 The Committee must produce a concise written report to the Minister for Planning providing the following:
 - a. A short description of the project.
 - b. A short summary and assessment of issues raised in submissions.
 - c. A draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral.
 - d. Any other relevant matters raised in the course of the Committee process.

- e. Its recommendations and reasons for its recommendations.
 - f. A list of persons or authorities/agencies who made submissions considered by the Committee.
 - g. A list of persons consulted or heard, including via video conference.
- 22 Following the completion of a report, the Committee may deliver an oral briefing to the Minister for Planning and/or DELWP. The briefing may be by video conference or telephone.

Timing

- 23 The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
- a. the date of receipt of referral, if no further submissions or information are to be sought, or
 - b. receipt of the final submission of material or final day of any public process in respect of a referral.

Fee

- 24 The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.

The costs of the Advisory Committee will be met by each relevant proponent.



Richard Wynne MP
Minister for Planning

Date: 14 / 06 / 2020

Appendix B Letter of referral



Hon Richard Wynne MP

Minister for Planning
Minister for Housing

8 Nicholson Street
East Melbourne, Victoria 3002

Ms Kathy Mitchell
Chair (Lead), Priority Projects Standing Advisory Committee
Planning Panels Victoria
planning.panels@delwp.vic.gov.au

Ref: MBR042788



Dear Ms Mitchell

**SUPPLEMENTARY BRIEF TO MBR042410 CALL IN REQUEST FOR VCAT PROCEEDING
P48/2020 – 46-58 MARLBOROUGH STREET, BALACLAVA**

I refer to VCAT proceeding no. P48/2020 relating to the proposed development for the use and development of land for a six-storey building above a basement car park, comprising 46 dwellings for social housing, a shop, 39 public car parking spaces and 14 resident car parking spaces, a reduction in car parking requirements and removal of two easements. A permit is required under Clauses 32.04 'Mixed Use Zone', 43.02 'Design and Development Overlay Schedule 21', 44.05 'Special Building Overlay Schedule 1', 52.02 'Easements, restrictions and reserves' and 52.06 'Car parking' of the Port Phillip Planning Scheme. The project was referred to me by the Building Victoria's Recovery Taskforce.

I advise that I have decided to call in the proceeding from VCAT under Clause 52(2)(a) of the *Victorian Civil and Administrative Tribunal Act 1998* and refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether a planning permit should be issued, and if so, the appropriate permit conditions.

The Port Phillip City Council issued a notice of decision to grant a permit on 16 December 2019 and an appeal was lodged on 12 January 2020 to review the decision to grant a permit.

VCAT held a practice day hearing on 6 March 2020, and the compulsory conference date was set for 27 April 2020, but was vacated due to coronavirus (COVID-19). A VCAT hearing date was set for 15 July 2020.

It is understood that the applicant formally amended the application plans on 1 June 2020 for the purpose of attempting to resolve objector matters. The matters remain unresolved. The amended plans will be provided to you.

The cost of the advisory committee will be met by the applicant, HousingFirst Ltd.

If you would like more information, please contact Jane Homewood, Executive Director, Statutory Planning Services, Department of Environment, Land, Water and Planning, on (03) 8683 0975 or email jane.homewood@delwp.vic.gov.au

Yours sincerely

HON RICHARD WYNNE MP
Minister for Planning

15 / 07 / 2020

Appendix C Consultation and parties

Party	Represented by
Port Phillip City Council	Kathryn Pound and Nick McLennan
HousingFirst Ltd.	<p>Mark Bartley and Disha Kamal of HWL Ebsworth, who called expert evidence on:</p> <ul style="list-style-type: none"> - planning and urban design from Catherine Heggen of Ratio Consultants - traffic and access from Charmaine Dunstan of Traffic Group <p>In attendance, Peter Doig (Project Architect), Clive Bowden and Danielle Leigh (HousingFirst) and Alistair Oldham (Savills)</p>
Christine Walker and Todd Skeggs	Travis Walton of Travis Walton Architecture, noting that Ms Walker and Mr Skeggs also assisted the Committee

Appendix D Document list

Version 2 – 07 08 20

No.	Date	Description	Presented by
1	16 07 20	Notification letter and; <ul style="list-style-type: none"> - Letter of Referral - Terms of Reference 	Ms Thomas, on behalf of the SAC
2	17 07 20	Package of material including; <ul style="list-style-type: none"> - Application documents - Council decision - Objections - VCAT documents 	Ms Pound on behalf of City of Port Phillip
3	20 07 20	Package of material including; <ul style="list-style-type: none"> - Urban Design/Planning evidence - Proposal plans - Priority Project documents 	Ms Kamal, HWL Ebsworth on behalf of the Applicant
4	21 07 20	Traffic evidence	“
5	21 07 20	Directions and Timetable	Ms Thomas
6	22 07 20	Email to all parties filing evidence including; <ul style="list-style-type: none"> - Traffic - Urban Design/Planning 	Ms Kamal
7	22 07 20	Email correspondence including; <ul style="list-style-type: none"> - Draft permit conditions - Email correspondence and recommended permit conditions dated 5/03/2020 	Ms Pound
8	22 07 20	Detailed Site Investigation report	“
9	22 07 20	Email correspondence and attachments including; <ul style="list-style-type: none"> - Urban Design advice - Traffic advice - Discussion plans from VCAT mediation process 	Mr Walton on behalf of the Objectors
10	23 07 20	Further directions letter	Ms Thomas
11	28 07 20	Letter to SAC on building materials and colours	Ms Kamal
12	28 07 20	Revised Draft Permit conditions	“
13	04.08.20	Email correspondence and comments on draft permit conditions	Mr Walton

Appendix E SAC preferred version of Permit Conditions

Note: The Committee has used the version of the conditions provided by the Applicant (Document 12) and has included those conditions it has accepted provided by Mr Walton and other changes as recommended by the Committee.

Tracked Added

~~Tracked Deleted~~

PPSAC REFERENCE NO.	Referral No. 1
APPLICANT	HousingFirst Pty Ltd
ADDRESS	46, 48 & 50-58 Marlborough Street, Balaclava VIC 3183
RESPONSIBLE AUTHORITY	Port Phillip City Council
OTHER PARTIES	Travis Walton & Others
DATE OF ROUNDTABLE DISCUSSION	22 July 2020
PLANNING PERMIT NO	P773/2018

Draft Permit Preamble

Buildings and works including construction of a six storey building above a basement carpark, comprising 46 dwellings, a shop, 39 public car parking spaces and 14 private car parking spaces. Reduction in car parking requirements. Removal of two (party wall) easements., generally in accordance with the endorsed plans and subject to the following conditions.

Draft Conditions

1. Amended plans

Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and an electronic copy must be provided. The plans must be generally in accordance with the plans substituted for VCAT on 5 June 2020 prepared by DOIG Architecture (TP-099 Rev C; TP-100 Rev D; TP-101-106 Rev B; TP200 Rev B; TP 201-205 Rev A; TP300-301 Rev B; TP302 Rev C; TP303 Rev B; TP700 Rev- -) but modified to show:

- a) A visually permeable gate abutting Dianella Lane in the north west corner of the site.
- b) No buildings (aside from architectural features that do not exceed the required height by more than 2 metres) that are more than 8 metres high being located within 5 metres of each boundary.

- c) The location of the front fences and a detailed elevation of the front fencing to Marlborough Street at a scale of 1:50.
- d) The retention of tree 3 on all plans.
- e) Which dwellings (being a minimum of 50% of the total number of dwellings) meet the accessibility requirements of Standard D17, and/ or any modifications required to achieve this.
- f) A schedule of external finishes in accordance with condition 4 [including specification that the red brickwork at the lower two levels of the building is to be solid masonry.](#)
- g) Any changes required as a result of the amended Sustainable Management Plan in accordance with condition 7.
- h) The location of the urban art in accordance with condition 13.
- i) Any changes required to comply with the recommendations of the Wind assessment in accordance with condition 14.
- j) Incorporation of all acoustic treatment measures set out in the recommendations of the Acoustic report in accordance with condition 26.
- k) Any changes required to comply with Melbourne Water's requirements at conditions 35-41.
- l) A section drawing of the ramp demonstrating a 2.2 metre minimum headroom clearance.
- m) Clearance provided to car space 19 in accordance with Diagram 1 of Clause 52.06-9 of the Planning Scheme.

2. No Alterations (Development)

The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority.

3. Layout Not to be Altered (Use)

The layout and description of the use(s) as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority unless the Port Phillip Planning Scheme exempts the new use from requiring a permit.

4. External Finishes

Before the development starts (other than demolition or works to remediate contaminated land), a full schedule of materials, finishes and paint colours, including colour samples (colour samples in a form that is able to be endorsed and held on file), must be submitted to, be to the satisfaction of, and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit.

5. No Change to External Finishes

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

6. Privacy Screens Must be Installed

Privacy screens as required in accordance with the endorsed plans must be installed prior to occupation of the building and thereafter maintained to the satisfaction of the Responsible Authority.

7. Sustainable Management Plan & Water Sensitive Urban Design

Prior to the endorsement of plans under condition 1 of this permit, a Sustainable Management Plan (SMP) & Water Sensitive Urban Design (WSUD) that outlines proposed sustainable design measures must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The amended SMP must be generally in accordance with the SMP & WSUD & BESS report prepared by ark resources dated 21 February 2019 but modified to address, include or show:

- a) Clarification of details regarding passive solar control of north facing balconies and windows;
- b) Clarification of details regarding long term integrity from water penetration of terrace and balcony areas;
- c) Consistent WELS rating for dishwashers and washing machines;
- d) Consistent energy ratings;
- e) Consistent hot water system;
- f) Consistent clothes drying mechanism;
- g) Commitment to a maximum illumination power density (W/m²) in at least 90% of the relevant building class at least 20% lower than required by Table J6.2a of the NCC 2016 BCA Volume 1 Section J (Class 2 to 9) for non-Residential – internal lighting;
- h) Consistent area designated for solar photovoltaic system;
- i) Consistent graded area towards the proposed raingarden location;
- j) Details of the raingardens, including dimensioned cross sections, media depth, freeboard, indicative species, etc;
- k) Inclusion of a Construction Site Management Plan –that details stormwater management during construction in accordance with condition 10 below;
- l) Commitment to the use E1 or E0–grade engineered wood products (e.g. MDF, plywood, engineered-wood flooring);
- m) Consistent number of bicycle parking spaces;
- n) Installation of Electric Vehicle charge points to carparking spaces according to resident demand with electrical provisions at the main switchboard; and
- o) Achievement of minimum 50% overall score and minimums in Energy (50%), Water (50%), IEQ (50%) and Stormwater (100%) categories in BESS.

Where alternative ESD measures are proposed to those specified in this condition, the Responsible Authority may vary the requirements of this condition at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes in association with the development.

When approved, the Assessment will be endorsed and will then form part of this permit and the project must incorporate the sustainable design measures listed.

8. Incorporation of Sustainable Design initiatives

Prior to the occupation of any dwelling/building approved under this permit, the provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

9. Implementation of Sustainable Design Measures

Prior to the occupation of any dwelling/building approved under this permit, a report (or reports) from the author of the Sustainability Management Plan (SMP), approved under this permit, or similarly qualified person or company, must be submitted to the satisfaction of the Responsible Authority and must confirm all measures specified in the approved SMP and WSUD report have been implemented in accordance with the approved plans.

10. Construction Management Water Sensitive Urban Design

The developer must ensure that throughout the construction of the building(s) and construction and carrying out of works allowed by this permit;

- a) No water containing oil, foam, grease, scum or litter will be discharged to the stormwater drainage system from the site;
- b) All stored wastes are kept in designated areas or covered containers that prevent escape into the stormwater system;
- c) The amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads is minimised when vehicles are leaving the site;
- d) No mud, dirt, sand, soil, clay or stones are washed into, or are allowed to enter the stormwater drainage system;
- e) The site is developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants in accordance with currently accepted best practice.

11. Walls on or facing the boundary

Before the occupation of the development allowed by this permit, all new or extended walls on or facing the boundary of adjoining properties and/or a laneway must be cleaned and finished to a uniform standard to the satisfaction of the Responsible Authority. Unpainted or unrendered masonry walls must have all excess mortar removed from the joints and face and all joints must be tooled or pointed also to the satisfaction of the Responsible Authority. Painted or rendered or bagged walls must be finished to a uniform standard to the satisfaction of the Responsible Authority.

12. No equipment or services

Any plant, equipment or domestic services visible from the primary street frontage (other than a lane) or public park must be located and visually screened to the satisfaction of the Responsible Authority.

13. Urban Art Plan

Before the occupation of the development allowed by this permit, an urban art plan in accordance with Council's Urban Art Strategy must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The value of the urban art must be at least 0.5% of the total building cost of the development to the satisfaction of

the Responsible Authority. Urban art in accordance with the approved plan must be installed prior to the occupation of the building to the satisfaction of the Responsible Authority.

14. Wind Assessment

Before the development starts, a suitably qualified person must undertake a comprehensive wind tunnel test of the entire development and a Wind Climate Assessment Report to the satisfaction of the Responsible Authority must be provided for the written endorsement of the Responsible Authority. Any modifications required to the development in order to ensure acceptable wind conditions must be submitted to and approved by the Responsible Authority as part of the plans for endorsement. The design details of any wind mitigation works must receive the endorsement of the owner's wind climate experts, preferencing the use of architectural features and planting to resolve any issues identified, to the satisfaction of the Responsible Authority.

15. Car Parking Allocation – Private Spaces

Without the further written consent of the Responsible Authority, the fourteen (14) private car parking spaces at the ground floor level of the approved development must be allocated on any Plan of Subdivision as follows:

- a) Two spaces to the shop/s
- b) One space to each three bedroom apartment
- c) The remaining spaces to be allocated to two bedroom apartments
- d) No more than one space allocated per apartment, and
- e) Storage spaces (where applicable) must be allocated to the apartments at the ratio approved.

All to the satisfaction of the Responsible Authority.

16. Car Park Management Plan – Public Car Park

Prior to commencement of use, a Car Park Management Plan for the public car park must be submitted to and approved by the Responsible Authority. Once endorsed, the use of the car park must operate in accordance with the plan, to the satisfaction of the Responsible Authority. The plan must outline how the public car park will be operated and maintained and address, but not be limited to:

- a) The hours of operation, being no earlier than 6 am and no later than 10pm
- b) How vehicles would be prevented from parking overnight
- c) Time restrictions
- d) How the car park will be managed and maintained
- e) Security mechanisms
- f) Allocation of no more than two spaces for use by Metro Staff
- g) Lighting, and
- h) Internal and external signage.

17. Bicycle Parking Management Plan – 'Parkiteer' area

Prior to commencement of use, unless otherwise agreed to in writing by the Responsible Authority, a Bicycle Parking Management Plan for the 'Parkiteer' area must be

submitted to and approved by the Responsible Authority. Once endorsed, the use of the area must operate in accordance with the plan, to the satisfaction of the Responsible Authority. The plan must outline how the area will be operated and maintained and address, but not be limited to:

- a) Ownership, management and maintenance details, including details of any agreement/s with a third party, such as Bicycle Network
- b) Hours of operation
- c) Security mechanisms
- d) Lighting, and
- e) Internal and external signage.

18. Car and Bicycle Parking Layout

Before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and bicycles 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 may be used in accordance with the plans;
- c) Surfaced with an all weather surface or seal coat (as appropriate);
- d) Drained and maintained;
- e) Line marked to indicate each car space, visitor space, bicycle space, loading bay and/or access lane; and
- f) Clearly marked to show the direction of traffic along access land and driveways.

19. Parking and Loading Areas Must Be Available

Car and bicycle parking and loading areas and access lanes must be developed and kept available for those purposes at all times and must not be used for any other purpose such as storage to the satisfaction of the Responsible Authority.

20. Lighting

External and internal lighting of the areas set aside for car parking, access lanes and driveways must be installed and must be designed, baffled and located to prevent any adverse effect on adjoining land, to the satisfaction of the Responsible Authority.

21. Direction Sign

Before the occupation of the development allowed by this permit a sign containing details and of a size to the satisfaction of the Responsible Authority must be displayed directing drivers to the area(s) set aside for car parking. The sign must be located and maintained to the satisfaction of the Responsible Authority.

22. Vehicle Crossings

Before the occupation of the development allowed by this permit, vehicle crossings must be constructed in accordance with Council's current Vehicle Crossing Guidelines and standard drawings to the satisfaction of the Responsible Authority. All redundant crossings must be removed and the footpath, naturestrip, kerb and road reinstated as necessary at the cost of the applicant/owner and to the satisfaction of the Responsible Authority.

23. Public Services

Before the occupation of the development allowed by this permit, any modification to existing infrastructure and services within the road reservation (including, but not restricted to, electricity supply, telecommunications services, gas supply, water supply, sewerage services and stormwater drainage) necessary to provide the required access to the site, must be undertaken by the applicant/owner to the satisfaction of the relevant authority and the Responsible Authority. All costs associated with any such modifications must be borne by the applicant/owner.

24. Green Transport Plan

Before the development starts (other than demolition or works to remediate contaminated land), a green travel plan to the satisfaction of the Responsible Authority, prepared by a suitably qualified professional, must be submitted to and approved by the Responsible Authority. The green travel plan must provide detailed advice regarding how traffic movements and staff parking will be managed and ensure an alternative, non-private vehicle transport modes will be encouraged. The plan should also identify specific opportunities for the provision of more sustainable transport options and encouragement of their use. The plan must address, as appropriate:

- a) Tram, train and bus timetables be installed in prominent locations in lifts and public areas (on noticeboards, etc)
- b) Bicycle parking areas to be installed in well secured and prominent locations
- c) Provide a 'Share Car' parking space within the development for use by residents of the proposed development, as well as the wider community
- d) Install signs in prominent locations advising of the location of existing and proposed share car schemes, bicycle parking facilities for residents and visitor, tram stops, taxi ranks, railway stations, bus stops and bicycle paths
- e) Ensure that access to the on-site parking is restricted and controlled
- f) Funding by the applicant of the purchase of a bicycle as part of the sale for each of the apartments
- g) Establishment of a car-pooling database for residents
- h) Establishment of seed funding for the Owners Corporation to allocate for the purchase of public transport fares and on-line shopping deliveries
- i) Specific targets to guide the plans ongoing implementation
- j) Identify persons responsible for the implementation of actions
- k) Estimate timescales and costs for each action, and
- l) Include a plan for monitoring and review of the Travel Plan on an annual basis for at least three years.

25. Waste Management Plan

The Waste Management Plan prepared by Irwinconsult dated 9 September 2019 will be endorsed to form part of the permit and must be carried out to the satisfaction of the Responsible Authority, unless otherwise approved in writing.

The Waste Management Plan prepared by Irwinconsult dated 9 September 2019 [be updated to outline the waste management alternative of private waste collection from within the development using the residential carpark and Dianella Lane \(Traffix Group,](#)

[Section 5.7 'Waste Collection', 20 July 2020](#)). Once updated, the document will be endorsed to form part of the permit and must be carried out to the satisfaction of the Responsible Authority, unless otherwise approved in writing.

26. Acoustic Treatment

Prior to the occupation of the development, all acoustic treatments set out in the recommendations of the Acoustic report prepared by Marshall day Acoustics dated 25 September 2018, which will be endorsed to form part of the permit, must be implemented to the satisfaction of the Responsible authority, unless otherwise agreed in writing. All acoustic treatments must be maintained over time.

27. Public Realm Plan

Before the development starts, a Public Realm Plan detailing works on Balaclava Walk and any other part/s of the land intended to be retained by Council on the site as well as on the adjoining land including Marlborough Street is to be prepared and approved to the satisfaction of the Responsible Authority. When approved, the Public Realm Plan will be endorsed and will form part of this permit. The Public Realm works are to be designed in conjunction with Council's Planning and Open Space departments and are to be generally in accordance with the City of Port Phillips' Design and Technical Standards and associated guidelines in relation to landscape design, planting species, materials and finishes and should include, but not be limited to:

- a) Urban design elements including, but not limited to, paving, lighting, bicycle parking, seating and public art;
- b) DDA access through Balaclava Walk;
- c) Typical internal street elevations/ sections;
- d) Reconfiguration of on-street parking on Marlborough Street associated with the reconfiguration of crossovers and the inclusion of a small kerb extension and/ or on-street plantings adjacent to the western side of the basement car park ramp and removal of existing on-street planter between 42 and 44 Marlborough Street; and
- e) Landscaping information including:
 - i. A survey plan, including botanical names, of all existing vegetation/trees to be retained;
 - ii. Buildings and vegetation (including botanical names) on neighbouring properties within 3m of the boundary;
 - iii. Significant trees greater than 1.5m in circumference, 1m above ground;
 - iv. A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways;
 - v. Landscaping and planting within all open space areas of the site;
 - vi. Water sensitive urban design; and
 - vii. Advanced tree stock (minimum 45 litre pot or bag 2.5 metres tall when planted unless otherwise agreed to in writing by the Responsible Authority).

All works shown in the approved Public Realm Plan must be completed within one month of the date of completion of the development.

28. Landscaping plans – Non-Council land

Before the development starts (other than demolition or works to remediate contaminated land), an amended detailed Landscape Plan for non-Council land within the development must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When the Landscape Plan is approved, it will become an endorsed plan forming part of this Permit. The Landscape Plan must be generally in accordance with the advertised Landscape Concept Plans prepared by STEM Landscape architecture and Design Rev 2 dated 21 February 2019, but modified to show:

- a) Details of landscape treatments to balconies.

29. Completion of Landscaping – non-Council land

The landscaping as shown on the endorsed Landscape Plans must be carried out and completed to the satisfaction of the Responsible Authority before the occupation of the development and/or the commencement of the use or at such later date as is approved by the Responsible Authority in writing.

30. Landscaping Maintenance – non-Council land

The landscaping as shown the endorsed Landscape Plan must be maintained, and any dead, diseased or damaged plant replaced in accordance with the landscaping plan to the satisfaction of the Responsible Authority.

31. Tree Protection Management Plan

Before the development starts, a Tree Protection Management Plan prepared by a suitably qualified Arborist must be submitted to, approved by and be to the satisfaction of the Responsible Authority. It must comply with AS 4970 - 2009 *Tree protection on development sites* and set out how the four existing trees designated as being retained (trees 3, 17, 18 and 19 as identified in the Arboricultural Inspection Report prepared by Arboriculture Pty Ltd dated July 2018) will be protected during construction.

When approved, the Tree Protection Management Plan will be endorsed and form part of the permit. The tree protection measures outlined in the report must be complied with to the satisfaction of the Responsible Authority.

32. Minimum Clearance Above Footpath

The minimum clearance to the underside of any projection over the footway surface in Balaclava Walkway must be 2.7 metres.

33. Section 173 Agreement – Affordable housing provision

Before the development starts (other than demolition or works to remediate contaminated land), the applicant must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority. The agreement must be in a form to the satisfaction of the Responsible Authority, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expense (including legal expenses) incidental to the preparation, registration and enforcement of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land pursuant to Section 181 of the Section 173 of the Planning and Environment Act 1987, and must provide for the following:

- a) HousingFirst Limited shall covenant with Council to only develop or use the Development Land for a purpose which is consistent with the following:
 - i. The owner of the Development Land being a registered housing agency under part 8 of the Housing Act 1983; and
 - ii. The provision of affordable housing in accordance with the obligations of a registered housing agency under part 8 of the Housing Act 1983;
- b) If HousingFirst Limited breaches its obligation pursuant to the preceding clause of this Agreement, HousingFirst Limited shall (at Council's option) retransfer the Development Land to Council for the Specified Consideration. The exercise of such a right of retransfer is conditional upon Council giving 90 days' notice in writing to HousingFirst Limited and HousingFirst Limited failing to remedy its breach within the specified 90 days and Council having given such notice within 90 days of Council first becoming aware of the relevant breach. The transfer of the title for the Development Land must be effected within 30 days of expiration of the specified 90 day notice period; and
- c) The agreement will terminate on the date which is 50 years after the date of the agreement.

The agreement will be registered on Title in accordance with Section 181 of the Planning and Environment Act 1987. A dealing number must be provided to the Responsible Authority.

34. Public Land and Access

Council must retain ownership and be responsible for the ongoing management of the public car park and Balaclava Walk. Balaclava Walk must provide twenty four hour public access. The basement car park must provide public access at the times specified elsewhere in these conditions.

Melbourne Water Conditions 35-41

35. Amended plans

Prior to the development plans being endorsed, amended plans must be submitted to Council and Melbourne Water addressing Melbourne Water's conditions. Plans must be submitted with surface and floor levels to Australian Height Datum (AHD) and must show:

- a) Finished floor levels of the substation must be set no lower than 6.45 metres to AHD.
- b) The basement entrance must be set no lower than 6.45 metres to AHD.
- c) any opening to the basement must be set no lower than 6.45 metres to AHD.
- d) Any new fencing must be substituted with a 50% 'open style' fence.

36. Finished floor levels

Finished floor levels of the building including the substation and lift area must be constructed no lower than 6.45 metres to Australian Height Datum (AHD).

37. Basement apex

The basement must incorporate a flood proof apex constructed no lower than 6.45 metres to AHD.

38. Basement opening

Any opening to the basement must be constructed no lower than 6.45 metres to AHD.

39. Imported fill

Imported fill must be kept to a minimum on the property and must only be used for the sub floor areas of the building and driveway.

40. Fencing

Any new fencing must be open style (50%) of construction or timber paling to allow for the conveyance of overland flow.

41. Certified Survey Plan

Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.

End Melbourne Water Conditions

42. Time for Starting and Completion (Use and development)

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

- a) The development is not started within two (2) years of the date of this permit.
- b) The development is not completed within four (4) years of the date of this permit.
- c) The use is not commenced within two (2) years of the completion of the development.

The Responsible Authority may extend the periods referred to if a request is made in writing:

- a) before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet started; and
- b) within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

Easement removal

43. Certification and Lodgement Timeframe

The plan of subdivision must be lodged with the Registrar of Titles within five (5) years of its Certification by the Responsible Authority. Once lodged at the Titles Office, the Plan of subdivision must not be withdrawn without the written consent of the Responsible Authority.

44. Expiry - Easement Removal

This permit as it relates to easement removal will expire if one of the following circumstances applies:

- a) The subdivision is not started within two (2) years of the date of this permit as evidenced by the Plan of Subdivision being certified by Council within that time.
- b) A Statement of Compliance has not been issued by Council within five (5) years of the date of the Plan of Subdivision being Certified by Council.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three (3) months afterwards.

Site management – Compliance with Detailed Site Investigation [\(Peter J Ramsey and Associates, June 2020\)](#)

45. Prior to the commencement of any site works for the development as authorised by this permit a management plan must be prepared, [submitted and implemented to the satisfaction of the Responsible Authority](#), identifying how the recommendations at Section 11.2 of the Detailed Site Investigation ~~prepared by Peter J Ramsey and Associates dated June 2020~~ are to be addressed and/or implemented. ~~The management plan is to be submitted to the Responsible Authority for approval. The approved management plan must be implemented to the satisfaction of the Responsible Authority.~~
46. All recommendations at Section 11.2 of the Detailed Site Investigation ~~prepared by Peter J Ramsey and Associates dated June 2020, detailed in the approved~~ addressed in the management plan must be implemented ~~to the satisfaction of the Responsible Authority~~, concurrently with the commencement of site preparation works (including but not necessarily limited to demolition, excavation and remediation works), during the construction phase and for the full duration of the life of any buildings and works on the land in accordance with the development ~~hereby~~ approved, and must be fully satisfied prior to the occupation of the development.
47. Prior to the occupation of the development the applicant must submit to the Responsible Authority a letter confirming compliance with any findings, requirements, recommendations and conditions of the Detailed Site Investigation.