

Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report

Hobsons Bay Planning Scheme

**Referral No 9A and 9B: 571-589 Melbourne Road,
Spotswood**

23 March 2021

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

Hobsons Bay Planning Scheme

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



Sarah Carlisle, Chair



Sally Conway, Member



Elizabeth McIntosh, Member



Andrew Hutson, Member

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
BoL application	Balance of the land permit application (excluding the Building A and Building B planning units)
Building A	Building the subject of Referral No. 9A, VCAT Proceeding No. P1278/2020 and Hobsons Bay Planning Permit Application PA 1945411
Building B	Building the subject of Referral No. 9B, VCAT Proceeding No. 1751/2020 and Hobsons Bay Planning Permit Application PA 1945441
BVRT	Building Victoria's Recovery Taskforce
Council	Hobsons Bay City Council
DDO2	Design and Development Overlay Schedule 2
DELWP	Department of Environment, Land, Water and Planning
DoT	Department of Transport
EAO	Environmental Audit Overlay
EPA	Environment Protection Authority
ESD	Environmentally sustainable development
HO200	Heritage Overlay Schedule 200
ILMS	<i>Industrial Land Management Strategy 2008</i>
MUZ	Mixed Use Zone
PAN	Pollution Abatement Notice
RTA	Renzo Tonin & Associates
SEPP (AQM)	State Environment Protection Policy (Air Quality Management)
SEPP N-1	State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1
SMC/SMF	Spotswood Maintenance Centre / Spotswood Maintenance Facility
SRA	Strategic Redevelopment Area
the Committee	Priority Projects Standing Advisory Committee considering Referrals 9A and 9B
VCAT	Victorian Civil and Administrative Tribunal

1 Overview

(i) Referral summary

Referral summary	
Date of referral	28 December 2020
Members	Sarah Carlisle (Chair), Sally Conway, Elizabeth McIntosh, Andrew Hutson
Description of referral	<p>VCAT Proceeding No. P1278/2020: Use and development of land for the construction of a four storey building comprising 58 dwellings with basement parking (Building A) and vegetation removal</p> <p>VCAT Proceeding No. P1751/2020: Use and development of land for the construction of a four to eight storey building comprising 67 dwellings (Building B) and vegetation removal</p>
Common name	Referral No 9A and 9B: 571-589 Melbourne Road, Spotswood (Building A and Building B)
Municipality	Hobsons Bay
Responsible Authority	Hobsons Bay City Council
Applicant	Vega One Pty Ltd
Subject land	571-589 Melbourne Road, Spotswood
Site inspection	Unaccompanied, 27 and 28 February 2020
Consultation	<p>Roundtable discussion through video conference for:</p> <ul style="list-style-type: none"> – Building A on 1 February 2021 – Building B on 22 February 2021
Parties	<p>Hobsons Bay City Council represented by Adeline Lane of Marcus Lane Group with supporting evidence from:</p> <ul style="list-style-type: none"> – Robert McGauran of MGS Architects (urban design expert) – Ross Leo of Clarity Acoustics (acoustic expert) – Josh Kamil of Hobsons Bay City Council (traffic and transport engineer) <p>Applicant represented by John Cicero and Eliza Minney of Best Hooper assisted by Sarah Thomas of SJB Planning with supporting evidence from:</p> <ul style="list-style-type: none"> – Andrew Biacsi of Contour (town planning expert) – John Kiriakidis of GTA Consultants (traffic expert) – Julia Bell of Kinetica (urban design expert for Building A) – Mark Sheppard of Kinetica (urban design expert for Building B) – Darren Tardio of Enfield Acoustics (acoustic expert) – Terry Bellair of Environmental Science Associates (odour expert) <p>Mobil represented by Bradley Frick</p>

	VicTrack represented by Kate Kraft
	Better West Inc. represented by Rosa McKenna
Information relied upon	Refer to Appendix C – Document List
Date of this report	23 March 2021

(ii) Findings

The Committee finds that subject to some modifications, the proposals for both Building A and Building B will result in acceptable planning outcomes. Permits should be granted for both Building A and Building B, subject to the conditions recommended by the Committee in Appendix D (Building A) and Appendix E (Building B).

The Committee has considered the individual merits of Building A and Building B and the coordinated development of the two proposals, as required by the referral letter. Several findings and recommendations are directed to ensuring the coordinated development of Buildings A and B. The Committee has also recommended cross-referenced and consistent permit conditions in Appendix D and Appendix E, to further aid in coordinated development. Both permits are, however, ‘stand alone’ and either can be issued on the conditions in Appendices D and E without the other.

Common issues

In relation to the need for an approved master plan, the Committee finds:

- While an approved master plan that had been through a community/Council consultation process prior to permit applications being made may have been a ‘good idea’, there is no requirement in the Planning Scheme for a master plan. The permit applications can be assessed without an approved master plan.
- The informal Spotswood Yards Master Plan submitted by the Applicant does not require statutory approval and the Committee makes no findings in relation to the merits of the Master Plan.

In relation to reverse amenity impacts from the proposed development of Buildings A and B on the Spotswood Maintenance Facility (SMF)¹, the Committee finds:

- Reverse amenity impacts (in particular noise and odour) have been considered.
- While further assessment of noise impacts will be required, this can be provided for through permit conditions and does not need to be undertaken prior to permits issuing.
- The Committee is satisfied that mitigation measures can be included in the proposed developments to enable the SMF to meet its obligations under State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1).

In relation to traffic impacts and active transport issues, the Committee finds:

- Additional traffic generated by Building A and Building B is not expected to compromise the safety or function of the surrounding road network.
- The proposed access points to Birmingham Street are acceptable.

¹ The Spotswood Maintenance Facility is also referred to in the documents as the Spotswood Maintenance Centre.

- There is no justification for requiring the development of Buildings A or B to include the upgrade or widening of Birmingham Street.
- The development should include a 2.5 metre (minimum) wide shared path along the site's frontage to Birmingham Street between the Melbourne Road / Birmingham Street signals to the east and to the existing at-grade rail crossing to the west. The shared path must be fully sealed, and delivered as part of Building A. Council should seek the views of DoT before approving the final cross section for the shared user path.
- Internal road connections The Crossways and Park Street (and associated car parking and landscaping) should be delivered prior the occupation of the earlier of Building A or Building B.

In relation to affordable housing contributions, the Committee finds:

- Despite there being an established need and policy support for affordable housing, the Committee is not able to support Council's proposed conditions seeking a 10 percent affordable housing contribution. This is because the current legislative framework does not support contributions that are not voluntary.

Building A

In relation to the built form of Building A, the Committee finds:

- The Building A streetscape presentation is appropriate to the site context subject to:
 - recessing the built form above the entrance at the second and third storeys
 - delivering the triangular 'local park' in the south-west corner of the site as part of the Building A development.
- The proposal provides for a suitable level of internal amenity for future residents, subject to:
 - adding natural light and air access to the internal hallways at the western end of the ground floor level and eastern ends of the first and second floor levels
 - indenting the stairwells at all levels
 - adding a 1 metre landscaped separation between the planter boxes lining the south facing ground level terraces and the new internal footpath along Park Street
 - projecting the balconies of south facing units type A1-1 at the second, third and fourth storeys (levels 1, 2 and 3), and repositioning corresponding habitable room windows closer to the facade line of the building.

Building B

In relation to the built form of Building B, the Committee finds:

- The amended proposal for the landscape and fence treatment to the Birmingham Street frontage of Building B is acceptable.
- The top two levels of the southern section of Building B will not result in unacceptable planning outcomes, and can be retained.
- Subject to a number of modifications recommended in Chapter 6.2, the proposal provides for a suitable level of internal amenity for future residents.

In relation to heritage impacts on the Ways and Works Building and its surrounds, the Committee finds:

- The removal of Tree 92 will not unacceptably impact the heritage values of the Ways and Works Building.

- The restoration of the heritage building and completion of associated landscaping to the heritage park is not required as part of the scope for Building B (other than as recommended in Chapter 6.2).
- The deletion of the upper two levels on the southern element of Building B is not warranted from a heritage perspective.

(iii) Recommendations

The Priority Projects Standing Advisory Committee recommends:

- 1. That the Minister for Planning support the Building A proposal and recommend to the Governor in Council that Hobsons Bay Permit Application 1945411 be issued, subject to the amended conditions in Appendix D.**
- 2. That the Minister for Planning support the Building B proposal and recommend to the Governor in Council that Hobsons Bay Permit Application 1945441 be issued, subject to the amended conditions in Appendix E.**

2 Introduction

(i) 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 Minister for Planning referred Referrals 9A and 9B to the Committee on 28 December 2020. The referral letter (Appendix B) tasked the Committee to:

Consider and advise on recommendations to ensure the coordinated development of the Building A and Building B development stages and conditions, should the Committee recommend a permit or permits be issued.

The Committee reviewed permit application material, objections to the planning permit applications and Statements of Grounds for the VCAT proceedings to inform the Committee's understanding of issues but it should be noted that the Committee's findings are focused on issues raised by parties to the roundtables.

(ii) Membership

The members of the Committee were:

- Sarah Carlisle, Chair (Building A and Building B)
- Elizabeth McIntosh (Building A and Building B)
- Sally Conway (Building A)
- Andrew Hutson (Building B).

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

Member McIntosh made declarations at the commencement of the hearings to which no party objected.

(iii) Background to the proposal

The site at 571-589 Melbourne Road, Spotswood is a large triangular site that fronts Birmingham Street, Melbourne Road and the SMF. The site is described in more detail in Chapter 3.1.

Buildings A and B (both of which front Birmingham Street) represent the first two stages of a proposed three stage development of the site known as Spotswood Yards. The third stage is an application for development of the balance of the land (the BoL application). The Applicant for Building A, Building B and the BoL application is Vega One Pty Ltd.

Council failed to determine the application for Building A (but subsequently resolved that it would have refused the application), and refused the application for Building B. At the time of the roundtable the BoL application was yet to be determined by Council.

The Spotswood Yards Master Plan

Buildings A and B are shown on an informal master plan for the entire site (referred to as the 'Spotswood Yards Master Plan') which was prepared by David Lock Associates on behalf of the Applicant. The Master Plan divides the site into five precincts with Precinct 1 comprising Building A and Building B (refer to 1). The Master Plan has not been approved by Council and has no formal status.



Figure 1 Precincts as shown in the Spotswood Yards Master Plan
Source: SJB Town Planning Report, December 2019, Document 6

Building A

VCAT Proceeding No. P1278/2020 relates to Building A. Building A is the first stage of the proposed development of the site. Figure 2 below shows an indicative image of the proposed development (Birmingham Street frontage).



Figure 2 Visual image of the proposed development of Building A
Source: Application Architectural Renders TP8.001 P2, contained in Document 2

A brief chronology of the permit application and VCAT proceeding is provided in Table 1.

Table 1 Chronology for Building A permit application

Date	Event
18 December 2019	- Applicant applied for a permit for the proposal with Council
15 January 2020	- Council made a request for further information
30 April 2020	<ul style="list-style-type: none"> - Applicant lodged an application to amend the proposal and a response to the request for further information - Key changes included (as relevant): <ul style="list-style-type: none"> - amended architectural plans dated 22 April 2020, including a reduction in front boundary fencing height to 1.2 metres with a transparent design - amended landscape plans dated 28 April 2020 - a Green Travel Plan, Traffix Group, April 2020 - amended acoustic report, ARUP, 23 April 2020, which made recommendations to protect proposed dwellings with reference to the Spotswood Maintenance Centre (SMC) to the south - amended Traffic Engineering Assessment, Traffix Group, April 2020 - a Social Impact Assessment, Public Place, 8 April 2020 - an Urban Design Statement, Kinetica, 28 April 2020 - an updated Master Plan (site wide), David Lock Associates (now Kinetica), February 2020 – for reference only
5 June 2020	<ul style="list-style-type: none"> - Amended application advertised - 29 objections received - Key issues raised included lack of an approved master plan to guide future development and therefore implications of cumulative development, inadequate car parking arrangements (not enough/too much), increased traffic congestion on Birmingham Street and Melbourne Road leading to problems in surrounding streets, Birmingham Street's role as a dedicated cycling route, building bulk, height and design, amenity issues (noise, privacy), lack of open space, construction issues, inadequate consultation.
30 July 2020	- Applicant lodged an appeal to VCAT against Council's failure to grant a permit within the prescribed time (Section 79 of the <i>Planning and Environment Act 1987</i>). Reference: VCAT Application P1278/2020.
21 September 2020	- Council determined that if it had been in a position to determine planning permit application no. PA 1945411 it would have refused to grant a permit on 15 grounds.
4 November 2020	- VCAT P1278/2020 compulsory conference held

Date	Event
10 December 2020	<ul style="list-style-type: none"> - Applicant lodged a Notice of an Amendment of an Application with VCAT, which included the following key changes in Amended Plans dated 9 December 2020 (as relevant): <ul style="list-style-type: none"> - increased building height by 500 mm - reduced extent of basement - bicycle parking moved to ground level - communal area introduced to level 1 (ground floor) - changes to vehicular access - gated entries to the southern apartments.
28 December 2020	- Minister for Planning called in the VCAT proceeding and referred it to the Building Victoria's Recovery Taskforce (BVRT)
28 December 2020	- Minister referred the proposal to the Priority Projects Standing Advisory Committee, together with VCAT file P1278/2020

Building B

VCAT Proceeding No. P1751/2020 relates to Building B. Building B is the second stage of development of the larger site. Figure 3 below shows an indicative image of the proposed development (Birmingham Street frontage).



Figure 3 Visual image of the proposed development of Building B
Source: Application Architectural Renders TP8.001 P2, Document 2

A brief chronology of the permit application and VCAT proceeding is provided in Table 2.

Table 2 Chronology for Building B permit application

Date	Event
20 December 2019	- Applicant applied for a permit for the proposal with Council
21 January 2020	- Council made a request for further information
28 July 2020	<ul style="list-style-type: none"> - Applicant lodged an application to amend the proposal and a response to the request for further information - Key changes included (as relevant): <ul style="list-style-type: none"> - amended architectural plans dated 23 July 2020, including increased setbacks to Birmingham Street and tower element moved southward - amended landscape plans dated 16 July 2020 - a Green Travel Plan, Traffix Group, July 2020 - amended acoustic report, ARUP, 9 July 2020, which made recommendations to protect proposed dwellings with reference to the Spotswood Maintenance Centre (SMC) to the south - amended Traffic Engineering Assessment, Traffix Group, July 2020 - a Social Impact Assessment, Public Place, 8 April 2020 - an Urban Design Statement, Kinetica, 27 July 2020 - an Updated Master Plan (site wide), David Lock Associates (now Kinetica), February 2020 – for reference only (the same version provided with the request for further response for Building A)
17 August 2020	<ul style="list-style-type: none"> - Amended application advertised - 41 objections received - Key issues raised included lack of an approved master plan to guide future development and therefore implications of cumulative development, inadequate car parking arrangements (not enough/too much), increased traffic congestion on Birmingham Street and Melbourne Road leading to problems in surrounding streets, Birmingham Street's role as a dedicated cycling route, building bulk, height and design, amenity issues (noise, privacy, loss of trees), lack of open space, construction issues, inadequate consultation
21 September 2020	- Council determined (delegated decision) to refuse to grant a permit for planning permit application no PA1945441 on 17 grounds
7 October 2020	- Applicant lodged an appeal to VCAT against Council's refusal to grant a planning permit (Section 77 of the <i>Planning and Environment Act 1987</i>). Reference: VCAT Application P1751/2020
9 November 2020	- VCAT issued an initiating order and listed P1751/2020 for a compulsory conference on 22 February 2020
28 December 2020	- Minister for Planning called in the VCAT proceeding and referred the proposal to the Building Victoria's Recovery Taskforce (BVRT)
28 December 2020	- Minister referred the proposal to the Priority Projects Standing Advisory Committee, together with VCAT file P1751/2020

Date	Event
22 January 2021	<ul style="list-style-type: none"> - Applicant circulated amended plans dated 22 January 2021, which included the following key changes (as relevant): <ul style="list-style-type: none"> - reduced number dwellings from 87 to 67 - increased street wall height along Birmingham Street by 600 mm - basement level parking removed - changes to vehicular access - increased setbacks above the street wall along internal street.

(iv) Consultation

The Committee wrote to all parties to both VCAT proceedings on 18 January 2021 to advise that the Minister for Planning had called in the VCAT proceedings and referred them to the Committee for advice and recommendations. Parties were given a copy of the referral letter and Terms of Reference. The Committee advised that separate roundtable discussions would take place for each Building, and invited the parties to the relevant VCAT proceedings to attend the roundtables.

Parties were asked to raise any procedural issues prior to the roundtables. None were raised.

The Committee requested the following material in its 18 January 2021 letter for each application:²

- current/revised application and plans
- Council report
- objections
- any evidence lodged
- any other relevant information.

All of the requested information was provided in advance of the roundtables.

Building A

Five of the eight parties to VCAT Proceeding No. 1278/2020 advised that they wished to participate in the Building A roundtable.³ The Department of Transport (DoT) advised that it had *“reached a mutual agreement regarding the relevant permit conditions with representatives of the Applicant and Council”* and therefore would not be participating in the roundtable discussions unless requested by the Committee to do so. The Committee was provided with a copy of the proposed permit conditions and did not require DoT to attend the roundtable. Energy Safe Victoria advised that they did not wish to be joined as a party to the matter. No response was received from the Environment Protection Authority (EPA) or the APA Group (pipeline licensee for the South Melbourne – Brooklyn pipeline).

The Committee wrote to the Building A parties on 22 January 2021⁴ outlining key issues it wished to explore at the Building A roundtable based on the Minister’s letter of referral and its review of material so far:

² Document 4 - Notification letter

³ Vega One represented by Best Hooper, Hobsons Bay City Council represented by Marcus Lane Group, VicTrack, Mobil Oil, Better West Incorporated.

⁴ Document 9 – Directions and Agenda V1

- the lack of an approved master plan for the whole of the site
- ensuring the coordinated development of the Building A and Building B development stages
- reverse amenity impacts on the SMF, in particular noise
- other issues if time permitted, including how the amended plans have addressed internal amenity of the apartments, affordable housing contributions and any other issues parties wished to raise.

The roundtable discussion was held on 1 February 2020, with discussion structured around the following key issues:

- the lack of an approved master plan
- coordinated development of Building A and Building B
- reverse amenity impacts on the SMF
- Council concerns
- Mobil concerns
- Better West Inc. concerns.

Kate Kraft from VicTrack had intended to present to the Committee, and was present for the morning session, but technical issues prevented Ms Kraft's verbal presentation in the afternoon. She indicated that VicTrack would instead rely on its written submission to the Committee.⁵

Building B

The Committee wrote to the two parties to VCAT Proceeding No. 1751/2020 (Council and the Applicant) on 3 February 2021 outlining the issues it wished to explore at the Building B roundtable, being:

- recap on key issues discussed at the Building A roundtable and how they relate to Building B (lack of approved master plan and coordinated development of Building A and Building B)
- built form
- other Council concerns.

In reaching its findings the Committee considered all of the material received prior to, during and after the roundtables.

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

⁵ Documents 14, 15 and 16

3 Site and planning context

3.1 The subject site

The subject site is located at 571-589 Melbourne Road, Spotswood. It is on the south-western corner of Birmingham Street and Melbourne Road, triangular in shape, with the third boundary abutting land owned by VicTrack containing the SMF and a freight railway line.



Figure 4 Subject land

Source: SJB Town Planning Report, December 2019, Document 6

The site is identified in the *Industrial Land Management Strategy 2008* (ILMS) as a Strategic Redevelopment Area (SRA), specifically, part of Precinct 17.

To the north, the site has frontage to Birmingham Street of approximately 350 metres. On the northern side of Birmingham Street are a mix of single and double storey residential dwellings and townhouses. The eastern frontage of approximately 285 metres is to Melbourne Road. On the opposite side of Melbourne Road is the site at 31-69 McLister Street, Spotswood which is currently being developed with a neighbourhood activity centre including supermarket, shops, medical centre, chemist, café and dwellings. South of the McLister Street development is an existing industrial use, Sadleirs Logistics Melbourne.

Vehicle access to the site is currently from Melbourne Road via an existing access towards the southern end. The accessway is burdened by a carriageway easement E-1 stated as having the purpose of a carriageway, drainage, sewerage, water supply, telephone, gas and electricity. This accessway also provides vehicular access to the SMF.

The site was formerly occupied by the Spotswood Railway Workshops Complex. The heritage listed Ways and Workshops Building remains in the north-eastern corner of the site.

Scattered vegetation and mature trees exist across the site, and particularly along the Birmingham Street frontage.

A restrictive covenant applies to the land to the benefit of the SMF. The purpose of the covenant is to prevent residential dwellings and other sensitive uses from being located within 30 metres of the boundary shared with the SMF.

3.2 Planning framework

The site is:

- in the Mixed Use Zone (MUZ)
- subject to
 - Design and Development Overlay Schedule 2 (DDO2) – Birmingham Street Area
 - Environmental Audit Overlay (EAO)
 - Heritage Overlay (HO200) Spotswood Railway Workshops and Complex (former) – partially affected.

(i) State policy

Key relevant State policies include:

- Clause 11 – Settlement
 - Clause 11.01-1S – Settlement
 - Clause 11.01-1R – Settlement – Metropolitan Melbourne
 - Clause 11.02-1S – Supply of urban land
- Clause 13 – Environmental Risks and Amenity
 - Clause 13.04-1S – Contaminated and potentially contaminated land
 - Clause 13.05-1S – Noise abatement
 - Clause 13.07-1S – Land use compatibility
- Clause 15 – Built Environment and Heritage
 - Clause 15.01-1S – Urban design
 - Clause 15.01-1R – Urban design – Metropolitan Melbourne
 - Clause 15.01-2S – Building design
 - Clause 15.01-4S – Healthy neighbourhoods
 - Clause 15.01-5S – Neighbourhood character
 - Clause 15.02-1S – Energy and resource efficiency
 - Clause 15.03-1S – Heritage conservation
- Clause 16 – Housing
 - Clause 16.01-1S – Housing supply
 - Clause 16.01-1R – Housing supply – Metropolitan Melbourne
 - Clause 16.01-2S – Housing affordability
- Clause 17 – Economic Development
 - Clause 17.03-3S – State significant industrial land
- Clause 18 – Transport
 - Clause 18.01-1S – Land use and transport planning
 - Clause 18.01-2S – Transport system
 - Clause 18.02-1R – Sustainable personal transport – Metropolitan Melbourne
 - Clause 18.02-2R – Principal Public Transport Network
 - Clause 18.02-3S – Road system
 - Clause 18.02-4S – Car parking
- Clause 19 – Infrastructure
 - Clause 19.01-3S – Pipeline infrastructure

- Clause 19.02-6S – Open space.

Broadly, these policies seek to:

- promote urban renewal and infill redevelopment
- create mixed use neighbourhoods at varying densities, through the development of urban renewal precincts that offer housing diversity and employment opportunities and that deliver better access to services and facilities
- deliver more affordable housing
- encourage built form to integrate positively into the characteristics of the local area while ensuring minimal adverse impacts to abutting properties
- ensure all new developments respond appropriately to their environment, contributing to a sense of place and identity
- design development to foster healthy and active living and community wellbeing
- encourage environmentally sustainable development
- promote a housing market that meets community needs and provides a range of housing types
- ensure the conservation of places of heritage significance
- ensure potentially contaminated land is assessed, where necessary remediated, and used safely
- ensure development is protected from offsite noise impacts, and also protects community amenity from any on site noise emissions
- ensure development is compatible with adjoining and nearby land uses
- protect existing commercial and industrial operations from development that would compromise the ability of the uses to function safely and effectively
- ensure transport access is provided in accordance with forecast demand, takes advantage of all modes of transport, reduces environmental impacts and minimises adverse impacts on the surrounding area
- promote high quality environments that promote sustainable personal transport modes, and ensure cycling routes and infrastructure are constructed early in new developments
- coordinate improvements to, and integrate, public transport, walking and cycling networks as part of redevelopment
- ensure pedestrian and cyclist access to public transport is facilitated and safeguarded
- develop local cycling networks that link to and complement the Principle Bicycle Network
- provide adequate car parking balancing the need to promote sustainable personal transport modes and which protects the amenity of residential precincts from road congestion created by on-street parking
- safeguard pipeline infrastructure and minimise risk to people, other critical infrastructure and the environment
- establish and improve public open space that meets the needs of the community.

(ii) Local policy

Key aspects of local policy that relate to the proposal are:

- Clause 21.02-4 (Strategic Vision)
 - supports housing growth and diversity that complements existing neighbourhoods

- recognises and supports the protection of national and state significant major industrial enterprises and their continued operation
- manages the interface between industry and other sensitive uses
- provides integrated, convenient, functional, accessible and sustainable modes of transport
- recognises that development potential must consider and respond to the local neighbourhood context
- Clause 21.02-5 (Strategic Framework Plan)
 - identifies the subject site as a Strategic Redevelopment Area
- Clause 21.03-2 (Strategic Redevelopment Areas)
 - introduces the Hobsons Bay Industrial Land Management Strategy 2008 (ILMS) as a Reference Document
 - seeks to manage the transition of these areas through the development of outline development plans (i.e. master plans) or other appropriate planning controls to achieve net community benefit and to manage change having regard to the protection of existing industrial uses
 - requires a number of matters to be addressed as part of planning applications including (as relevant) any contamination, range of future uses, community and open space infrastructure requirements, off site impacts, traffic management, staging, protection of adjoining uses, neighbourhood character, social impacts, environmentally sustainable design principles, and housing choice including affordable housing
 - requires the preparation of a master plan for sites that are no longer suitable for traditional industrial uses and are in multiple ownership in consultation with landowners, adjoining landowners and other key stakeholders
 - requires residential development to include measures to protect residential amenity including noise attenuation within new buildings and appropriate design and siting of private open space to protect occupants' amenity
 - requires consideration of the potential for new character in future residential areas where appropriate
 - requires the provision of appropriate community infrastructure
 - requires new development to consider and respect the existing road layout and subdivision pattern in the broader neighbourhood
- Clause 21.04 (Open Space)
 - seeks to ensure adequate open space is provided as part of new development to support new communities
- Clause 21.06 (Built Environment and Heritage)
 - supports the establishment of a new residential character for Strategic Redevelopment Areas but requires this to consider and respect the character of the existing surrounding area
 - promotes innovative and environmentally sustainable design
 - seeks to protect the amenity of existing residential areas
 - seeks to protect the continued operations of adjacent industrial uses
 - promotes high quality landscaping to enhance open space areas and the amenity of the area
 - protects places of heritage significance and requires new development to respond positively to heritage character

- Clause 21.07 (Housing)
 - supports housing diversity, affordability and higher density in neighbourhoods that have good infrastructure and proximity to public transport routes.
- Clause 21.09 (Transport and Mobility)
 - seeks to ensure new developments include, and are connected to, integrated transport networks that have regard to State transport strategies
 - promotes walking and cycling
 - seeks to ensure that new development does not cause negative off site traffic amenity issues
- Clause 22.13 (Environmentally Sustainable Development)
 - provides a framework for early consideration of environmental sustainability at the building design stage
 - requires developments of 10 or more dwellings to include a Sustainable Management Plan (SMP) and a Green Travel Plan (GTP) addressing measures set out in the policy.

(iii) Zones and overlays

All zones and overlays have the purpose of implementing the Municipal Strategic Statement and the Planning Policy Framework. The other purposes of the applicable zone and overlays are (as relevant):

Table 3 Purposes of the applicable zone and overlays

Control	Purposes
MUZ	<ul style="list-style-type: none"> - To provide for a range of residential, commercial, industrial and other uses which complement the mixed use function of the locality. - To provide for housing at higher densities. - To encourage development that responds to the existing or preferred neighbourhood character of the area. - To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone. [Note: none specified]
DDO	<p>Head clause:</p> <ul style="list-style-type: none"> - To identify areas which are affected by specific requirements relating to the design and built form of new development. <p>Schedule 2 Design Objectives:</p> <ul style="list-style-type: none"> - To ensure that development enhances the amenity of Melbourne Road and the residential area along Birmingham Street.
EAO	<ul style="list-style-type: none"> - To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.
HO200	<ul style="list-style-type: none"> - To implement the Municipal Planning Strategy and the Planning Policy Framework. - To conserve and enhance heritage places of natural or cultural significance. - To conserve and enhance those elements which contribute to the significance of heritage places.

Control	Purposes
	<ul style="list-style-type: none"> - To ensure that development does not adversely affect the significance of heritage places. - To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

(iv) State Environment Protection Policies

Two State Environment Protection Policies are relevant to the proposal:

- SEPP N-1 manages noise impacts from commercial, industrial or trade premises on beneficial uses including residential use (including sleep in the night period).
- State Environment Protection Policy (Air Quality Management) (SEPP (AQM)) manages impacts of odour emissions on beneficial uses including local amenity and aesthetic enjoyment.

4 Common issues

The key issues common to both Building A and Building B that need to be resolved are:

- whether there is a requirement for an approved master plan for the whole of the site
- reverse amenity impacts on the SMF, including its ability to meet SEPP N-1 and SEPP (AQM)
- traffic impacts and active transport requirements
- affordable housing contributions.

4.1 Master plan

The issue is whether there is a requirement for a master plan to be approved for the whole of the site before permits are granted, and if so whether the Spotswood Yards Master Plan submitted by the Applicant is adequate to guide development on the site.

(i) Context

The Spotswood Yards Master Plan prepared by David Lock Associates sets out a vision and objectives for the whole of the site, together with principles for development and strategies for the movement network, open space, built form and parking. It also outlines the purpose of the five precincts proposed.

(ii) Submission and evidence

Council submitted that *“unambiguous strategic support exists for the need for redevelopment of the Subject Land to be led by a masterplan”*. Council relied on local policy at Clause 21.03-2 to support this position, the objective of which seeks:

To successfully manage the transition and strategic redevelopment of redundant industrial areas identified as Strategic Redevelopment Areas through the development of Outline Development Plans (i.e. a master plan) or other appropriate planning controls to achieve net community benefit.

Council directed the Committee to further support for such an approach in the ILMS, which recommends that outline development plans and/or master plans, development plans or design and development overlays be applied to the nine SRAs identified in the ILMS, and sets out requirements for development proposals including land use, staging, amenity, environmental and environmentally sustainable development (ESD) considerations. The ILMS also contains specific guidance for Precinct 17, noting in particular the importance of consideration of continued and future operations at the adjoining SMF, the existing Ways and Works heritage building on site and the interface with existing residential development along Birmingham Street.

Council submitted that:

... the absence of a formally approved master plan that has been subject to rigorous and informed consultation and input from key stakeholders and Council is problematic, so too a staging plan. It is contrary to local policy, the ILMS and principles of proper and orderly planning more broadly. In practical terms, it is prohibitive to a well-considered, integrated planning outcome on the Land.

Council filed expert evidence prepared by Robert McGauran of MGS Architects. Mr McGauran’s written evidence did not specifically comment on the requirement or otherwise for a master plan through planning scheme provisions, but noted:

... the project remains a work in progress and the absence of a well resolved masterplan and staging plan is undermining the clarity and indeed the likelihood of success of the project. The absence of a master plan phasing plan and a strong conceptual framework for this plan has resulted in my view poor decision making regarding the scope of this stage of work and the positioning of the internal road network and how buildings interface with this network.

Council submitted that the Spotswood Yards Master Plan was not informed by relevant site wide technical analysis and that it presented substantial issues, particularly in respect of:

- walkability and access
- the positioning of the internal road network
- how the buildings interface with the internal road network
- overshadowing of the public realm
- a lack of quality open space for residents having regard to the projected density.

Mr McGauran's evidence also raised concerns with around scope, detail, staging and quality aspirations in the Master Plan:

Presently there is little clarity around the timelines of placemaking and community dividend arising from the project in the masterplan and poor alignment with the needs of residents, quality, and amenity of shared space. This plan should be the subject of a separate review as the proposed footprints envisaged are very significant and rely on very large capital projects at each stage which is at odds with contemporary development economics. The public amenity and positioning of open space appears problematic with much of the space significantly overshadowed and the larger scale southern buildings that are proposed to house the greatest number of occupants having little clarity around how poor amenity outcomes will be avoided.

Better West Inc. supported Council's position that the development should not be approved *"in a piecemeal way"*, noting that they had not viewed the master plan and that *"approvals should not be made excluding community views"*.

The Applicant submitted that:

... there is no planning scheme or other requirement which requires the Applicant to prepare a master plan for the whole of the site. Nevertheless, one has been prepared and it is the Applicant's submission that it provides appropriate guidance to the Council and Committee as to the future direction of this precinct and the way in which Building A will integrate with the proposed whole of site response.

The Applicant noted the provisions of Clause 21.03 and in particular:

- the option in the objectives to use *"other appropriate planning controls"* in lieu of a master plan
- that an outline development plan is only required in areas that *"are no longer suitable for traditional industrial uses and are in multiple ownership"* (emphasis added)
- the ability to consider the potential for new residential character
- the option to apply the DDO to implement the ILMS to manage the transition of redundant residential land.

It noted that the site is not in multiple ownership, does not require rezoning to facilitate development in the form contemplated, and already has a DDO applied to the site. It noted that the BoL application was consistent with the Master Plan, and summarised its position as follows:

... there is no requirement or necessity for a master plan to be prepared and approved by Council, as a pre-condition to the approval of Building A. Notwithstanding, the

Council, relevant authorities and the community now have the opportunity to consider the Applicant's development proposal for the whole of the subject site.

The Applicant engaged Andrew Biacsi of Contour Town Planners to provide expert evidence on the town planning implications of the applications. Mr Biacsi's evidence was consistent with the Applicant's submission that the provisions of the local policy did not require an approved master plan to guide future development of the site and that the DDO is acknowledged in the policy as an appropriate tool to manage the site's transition. Nevertheless, Mr Biacsi considered the Spotswood Yards Master Plan to be a "*worthy document to guide the future planning and development of the SRA in this case*".

(iii) Discussion

Master plans are a useful tool to guide development on larger sites that may be subject to staging over a number of years. The Committee acknowledges that the lack of an approved master plan may be problematic for Council in understanding the application in the context of a known future development outcome and staging plan for the whole of the land.

However, the Committee supports the Applicant's position that the Planning Scheme does not require an approved master plan prior to considering a planning permit application for the site. In forming this view, the Committee has considered relevant legislation and policy and a number of VCAT decisions.

The issue of a planning permit being sought prior to the approval of a master plan by the responsible authority was considered by VCAT in *Nelson Place Village Pty Ltd v Hobsons Bay CC & Ors*.⁶ That case concerned an application for demolition on part of a large redevelopment site in Williamstown. Member Code determined that the absence of an approved master plan was no proper basis for refusing a permit because (summarised as relevant):

- The Applicant's other applications, including potential future development applications, were not before the Tribunal.
- Whether the development is to be staged is irrelevant to the demolition application before the Tribunal.
- The appropriateness of any staging plan is better considered in the context of the development application(s) and not the demolition application.
- Although a master plan might assist in public participation in and decision making for the future development of the site, it is not a requirement of the Planning Scheme. The Planning Scheme could have applied a Development Plan Overlay or an Incorporated Plan Overlay to the land, but did not. Member Code held that the Tribunal "*cannot therefore impliedly include the requirement*".
- Although a master plan had not been prepared, the planning requirements for the development of the subject land have been established. Member Code found that "*demolition was not occurring in a planning void. The land has recently been included in a MUZ and DDO11 following an inquiry by an advisory committee that conducted public hearings over 15 days and produced a 166-page report.*"

In this matter, the application is for development rather than demolition. Nevertheless, the Committee considers that Member Code's observations about the absence of a requirement for an approved master plan in the Planning Scheme apply equally here.

⁶ *Nelson Place Village Pty Ltd v Hobsons Bay CC & Ors* [2013] VCAT 7 (3 January 2013)

The ILMS sets out broad land use and development guidelines for the site of the type normally found in a master plan. It is clear to the Committee that the DDO2 is not intended to introduce a master plan type requirement and notes its introduction to the Planning Scheme prior to Council's adoption of the ILMS.

The Committee asked Council at the Building A roundtable why a requirement for a master plan or similar tool had not been applied to the site, noting that such a requirement had been put in place for a nearby site in Blackshaws Road via the DDO10. Council responded that in the intervening years between the approval of the ILMS and the current applications, the Strategic Planning Unit had not had the resources to implement such a tool and that there had been no urgency to do so as VicTrack held the land up until two years ago.

The Committee agrees with the Applicant that there is no planning scheme requirement for a master plan in this case. Further, the Committee considers that the applications have not been made within a 'planning void'. An approved master plan may have simplified the planning permit approvals process, however applicable State and local policy, the MUZ and applicable overlays all provide strategic guidance to enable a position to be determined on the applications.

A similar position was taken in *Regis Group Pty Ltd v Stonnington City Council*,⁷ where the Tribunal found that while a master plan would have been a "good idea", there was no obligation within the Scheme for a master plan, and "*the proposal is able to be assessed on its merits and some operational matters can potentially be addressed by permit conditions*".

One of the key matters that might be addressed in a master plan is the staging of the development of the site. The draft without prejudice staging conditions submitted by Council⁸ obliged staging plans and detailed plans of the built form and infrastructure required for the respective planning units of Building A and Building B as well as those intended for the larger site. The staging plans and detailed plans were required prior to development commencing.

The Committee deals with built form and infrastructure obligations associated with Building A and Building B at Chapters 4.3, 4.4, 5 and 6. As to whether details should be required of built form and infrastructure on the balance of land prior to development of Buildings A and B, the Committee views this requirement as akin to requiring an approved master plan. There is no requirement in the Planning Scheme that provides a basis for these obligations and the Committee does not consider they should be included as conditions in a planning permit.

The Committee has considered the merits of the applications in accordance with relevant legislation and provisions in the Planning Scheme. It has also considered issues related to the coordinated development of Building A and Building B. The informal Master Plan and BoL application material has provided useful background context, but an assessment of the merits of the Master Plan itself is beyond the scope of the Committee given there is no statutory requirement for a master plan.

(iv) Findings

The Committee finds:

- While an approved master plan that had been through a community/Council consultation process prior to permit applications being made may have been a 'good

⁷ *Regis Group Pty Ltd v Stonnington CC* [2008] VCAT 2336 (24 November 2008)

⁸ Document 67 – Proposed staging permit conditions provided by Council (for both Building A and Building B)

idea', there is no requirement in the Planning Scheme for a master plan. The permit applications can be assessed without an approved master plan.

- The informal Spotswood Yards Master Plan submitted by the Applicant does not require statutory approval and the Committee makes no findings in relation to the merits of the Master Plan.

4.2 Reverse amenity and the Spotswood Maintenance Facility

The issue is whether reverse amenity impacts from the proposed residential development of Buildings A and B, specifically noise and odour emissions, have been adequately considered and whether they could compromise current and future operations of the SMF.

(i) Context

The state significant SMF is located to the immediate south/south-east of the site. The SMF comprises a main workshop, washing facility and load test cell. VicTrack is the registered proprietor of the SMF site. UGL operates and manages the SMF, which provides maintenance for Pacific National's locomotive fleet. The site is identified in state policy as 'local industrial land – existing'.⁹

A restrictive covenant applies to the subject site, to the benefit of the SMF, and restricts (among other things) residential dwellings within 30 metres of the common boundary shared with the SMF land. The DDO2 also contains a discretionary buildings and works requirement that no accommodation is to be constructed so that any part of a dwelling or its private open space is within 30 metres of an industrial zone.

The Applicant provided a copy of the planning permit applying to the SMF.¹⁰ Condition 6 requires ongoing compliance with SEPP N-1.

The permit applications for Buildings A and B were each accompanied by acoustic reports prepared by ARUP dated 13 December 2019.¹¹ The ARUP reports took the position that the applications did not need to consider reverse noise amenity impacts and compliance with SEPP N-1, as compliance is the responsibility of the emitter (the SMF).

ARUP recommended specific noise mitigation measures for the development, including facade construction, glazing type, door details and mechanical ventilation, that were designed to address compliance with the internal amenity limits specified in Clause 55.07-6 of the Planning Scheme (Standard B40) for Building A and Clause 58.04-3 (Standard D14) for Building B.

In its requests for further information, Council sought clarification of whether the ARUP acoustic modelling accounted for compliance with SEPP N-1, and whether interim noise barriers would need to be installed to avoid the need for mechanical ventilation in south facing apartments. Council also requested consideration of noise mitigation for internal noise sources. In response, the Applicant submitted additional acoustic reports prepared by ARUP dated 23 April 2020 (Building A) and 9 July 2020 (Building B). Recommendations did not

⁹ Melbourne Industrial and Commercial Land Use Plan, DELWP, 2020

¹⁰ Document 32 – SMF Permit

¹¹ Included in Document 5 – Building A Material provided by Council and Document 7 – Building B material provided by the Applicant

change in the second reports, however the acoustic modelling was more comprehensively explained.

Council referred the permit applications to the Environment Protection Authority (EPA), although the EPA is not a formal referral authority. The EPA's responses indicated that the EPA considered the main environmental risks in relation to the proximity of the proposal to the SMF to be noise, odour and potentially contaminated land.¹² The EPA noted that it had received past complaints about the SMF operations as follows:

- noise complaints from Birmingham Street residents between 2018 to 2020
- odour complaints regarding diesel fumes and smoke from the diesel train testing between 2012-2015 and 2020, from Reed Street and Birmingham Street residents.

The EPA letters advised that it had issued a Pollution Abatement Notice (PAN) on 1 April 2019 for noise non-compliance at the SMF. In response, UGL (operator of the SMF) commissioned Renzo Tonin & Associates (RTA) to undertake an acoustic assessment, documented in the RTA Report dated 23 August 2019.¹³ The RTA Report recommended a set of operational protocols and construction of a (now erected) acoustic barrier alongside the load test facility to address the PAN. The EPA revoked the PAN on 8 February 2021.¹⁴

The EPA provided the following recommendations to Council in its consideration of the ARUP reports for Building A and Building B:

1. It is considered that the following will enable compliance with SEPP N-1:
 - a) The facade construction design and other recommendations in the Proponent's acoustic reports; and
 - b) The noise barrier wall to be constructed at the SMF premises and tested prior to the occupation of the dwellings.
2. EPA does not make any comment on the internal design of the building and its noise mitigation measure.
3. There is a risk of non SEPP N-1 compliance if the noise barrier at UGL is not constructed and all or some of the recommendations in the acoustic report are not followed up.

The EPA recommended consideration be given to potential odour concerns and noted the Applicant's intention to complete a section 53X Environmental Audit in accordance with the requirements of the EAO.

While the BoL application is not before the Committee, it notes that the EPA also provided a response to the (non-statutory) referral of the BoL application. The EPA outlined the same risks of noise, odour and potentially contaminated land as it had for Building A and Building B. It again accepted the recommendations of the ARUP Report (dated 11 December 2020) submitted by the Applicant with the BoL application for acoustic management of that site.¹⁵ Differing in the recommendations for Building A and Building B was a recommendation that the Applicant be required to assess low frequency noise impacts.

¹² The EPA responses were included in the Building A and Building B material (Documents 6 and 7)

¹³ Document 65

¹⁴ Document 50 – Building B – EPA Response balance of land application (provided by Council)

¹⁵ Document 50 – Building B – EPA Response balance of land application (provided by Council)

(ii) Submissions and evidence

Noise

Council tabled evidence prepared by Mr Leo of Clarity Acoustics. The Applicant tabled evidence prepared by Mr Tardio of Enfield Acoustics. Both experts attended both roundtables.

The following matters were common ground between all parties:

- the appropriate noise limits are those derived from SEPP N-1 which apply externally at the proposed developments, as both Building A and Building B have openable doors and windows on the facades facing the SMF
- compliance with SEPP N-1 is legally the responsibility of the noise emitter (the SMF) rather than surrounding development
- however it is common practice to apply the ‘agent of change’ principle in planning decisions so that existing noise emitting uses are not prejudiced by reverse amenity impacts from new residential development
- the noise wall recently erected on the SMF site is in the wrong location to provide any noise shielding benefits to Building A or Building B.

There was some discussion at the Building A roundtable of whether the noise assessments for the proposed development should proceed on the assumption that the SMF is (or will be) in compliance with its SEPP N-1 obligations at the existing residences in Birmingham Street. If compliance at Birmingham Street is assumed, the measures required to achieve compliance at the proposed development would be less extensive.

Mr Tardio’s position was that it is *“good planning practice to assume that existing industry is currently complying, and will continue to comply, with SEPP N-1 at existing sensitive uses in the area”* and that *“this is a sensible approach given this requirement would not change whether the Application was approved or rejected.”* Mr Tardio considered that any new controls should make up any shortfall in compliance as a result of the new proposal. The Committee agrees, and has proceeded on that basis.

Both Mr Leo and Mr Tardio provided noise modelling which predicted the noise levels at the proposed development, and made recommendations about measures (including noise walls on the subject site) that would be required to enable the SMF to achieve compliance with SEPP N-1 at Building A and Building B respectively. The experts agreed that compliance with the SEPP N-1 noise limits could be achieved for both Buildings, although they differed in their recommendations as to what mitigation measures would be required, primarily based on differing assumptions they had applied about the number and location of noise sources on the SMF site. Mr Leo also calculated higher levels at the residences along Birmingham Street than Mr Tardio, due to the noise reflection effect of the acoustic wall on the SMF site.

Council submitted that the *“likely noise impacts for residents have not been fully realised nor addressed and have the significant potential to compromise the viability and operation of the state significant industry, the SMF”*. Council pointed to many State and local policy statements in the Planning Scheme to support the ongoing operations of existing industry.

Mr Leo’s primary concern with ARUP’s assessments was that they had assessed internal compliance based on the standards in Clauses 55.07-6 and 58.04-3 rather than external compliance based on the limits in SEPP N-1. He did not agree with the EPA’s assessment that facade mitigation and the noise barrier erected on the SMF site in response to the PAN would

enable compliance with SEPP N-1. He concluded that compliance with SEPP N-1 could only be achieved by:

- redesigning Building A to have a fixed facade and/or non-habitable spaces facing the SMF site (similar to the proposals for Newport Village and the McLister Street development), or
- the SMF modifying its operations, or
- installing significant screening to the boundary of the site.

Mr Leo's acoustic modelling calculated that assuming SEPP N-1 compliance at Birmingham Street, a 12.5 metre high acoustic wall (length unspecified) would be required along the boundary of the site shared with the SMF facility to achieve compliance at Building A. The acoustic wall would need to be taller and longer in the scenario in which the SMF is not achieving compliance with SEPP N-1 at Birmingham Street. Mr Leo also provided recommendations for building design modifications should the Committee determine that compliance with the standards for internal amenity contained in the Planning Scheme was appropriate, rather than external compliance based on SEPP N-1.

Mr Leo also assessed the short term effects of locomotive horn noises on maximum night time noise levels. He relied on overseas data¹⁶ in the absence of relevant data in the RTA Report. In the absence of Victorian limits for short term noise events (SEPP N-1 limits are averaged over a period), he applied noise limits defined by the New South Wales EPA¹⁷ and lowered the figure to account for openable windows in the south-west facing facades of Buildings A and B. He predicted that the noise limits would be exceeded. He considered that different building materials would sufficiently attenuate these effects and recommended a performance based condition quantifying the maximum (internal) night time noise limits. Mr Tardio supported this approach.

Mr Leo recommended low frequency noise assessment to align with the anticipated release of relevant EPA policy. He expected further mitigation would be necessary given the types of noise sources at the SMF. He conceded however that no relevant empirical data exists, nor did details of the future policy. He nonetheless recommended an associated condition of permit. Mr Tardio considered that it would be premature to consider these impacts ahead of the release of the EPA's anticipated policy on low frequency noise.

Mr Tardio modelled noise impacts at Building B using data from the RTA Report (which he did not have when preparing his Building A evidence). He assessed a 9 metre tall and 25 metre long acoustic wall along the site boundary would be required to enable SEPP N-1 compliance to be achieved, and recommended a performance based condition which assumed SEPP N-1 compliance at Birmingham Street. His evidence was based on an assumption that the operational protocols on the SMF site recommended in the RTA Report to achieve SEPP N-1 compliance would be implemented. These included (among other things) no night time testing of locomotives outside the testing facility.

¹⁶ Consistent with train horn data provided in the Canadian Transportation Agencies Railway Noise Measurement and Reporting Methodology of 100 dB L_{AMAX} at 15 metres.

¹⁷ New South Wales Environment Protection Authority, Road Noise Policy

Odour

The Applicant tabled evidence prepared by Dr Bellair of Environmental Science Associates in relation to the odour impacts on Buildings A and B from the SMF (primarily diesel fuel odours). Dr Bellair attended both roundtables. No other party called odour evidence.

Dr Bellair's key conclusions were that odours are unlikely to be detectable by future residents of Building A, and unlikely to adversely affect future residents of Building B. He noted that no objectors or referral agencies had raised odour concerns, and concluded that odour emissions are unlikely to have adverse affects on local amenity.

Dr Bellair reached his conclusions based on a modelling assessment undertaken by GHD in 2015 in connection with the proposed Newport Village development to the south of the SMF (2015 GHD Report)¹⁸, plus additional Building B specific modelling undertaken for the Applicant in 2021 (2021 CAMM Report).¹⁹ No specific modelling was undertaken to support the permit application for Building A, as it was not considered necessary based on the odour contours identified in the 2015 GHD Report. However the odour contours plotted in the 2021 CAMM report enabled some assessment of the likely impacts of odour on Building A.

Dr Bellair's evidence explained that the key odour source on the SMF site was the load testing cell facility. The 2015 GHD Report and 2021 CAMM Report modelled four scenarios of odour emissions from the SMF load testing facility:

- occasional load upsets
- testing internal to cell
- testing external to cell
- combined internal and external testing.

Dr Bellair considered the 2021 CAMM Report's modelling to be based on conservative assumptions, including using detuned locomotives running at higher frequency and longer time periods than would likely occur in practice.

Dr Bellair considered that it would be an acceptable outcome to achieve 5 odour units (OU) at the residences at Buildings A and B. He noted that while SEPP (AQM) currently sets a quantitative limit of 1 OU at the property boundary of the odour source, 5 OU at the receptor was consistent with the EPA's imminent replacement of the current limit with a new qualitative objective being "*an air environment that is free from offensive odours from commercial, industrial, trade and domestic activities*".²⁰ It was Dr Bellair's experience that 5 to 10 OU was the range at which residents are likely to find an odour offensive, and that 1 OU is detectable by only limited calibrated nose experts in laboratory conditions.

The modelling undertaken by the 2021 CAMM Report indicated that the 5 OU contour did not extend to the Building B envelope (nor Building A) in any scenario.

Council submitted that the odour impacts of Building B had not been sufficiently addressed to satisfy consideration of amenity impacts on future residents. It criticised the Applicant's

¹⁸ GHD (July 2015). "Spotswood Maintenance Facility – Air Quality Assessment". Prepared for Clayton Utz Lawyers (acting for Asciano).

¹⁹ Consulting Air pollution Modelling & Meteorology (February 2021). "Spotswood Maintenance Centre – Odour Dispersion Modelling Assessment". Prepared for SJB Planning.

²⁰ EPA, Environment Protection Act 2017, Environment Reference Standard

assessments for being based on assumptions directed by the authors, rather than comprehensive modelling and measured data.

Council noted that Dr Bellair's reports appeared to indicate that future buildings which may be taller and closer to the SMF are likely to be subject to adverse odour impact. These buildings will form part of the BoL application and are not presently before the Committee for assessment.

VicTrack and UGL responses

VicTrack provided a letter to the Committee dated 27 January 2021 advising that *"due to the ample setback of the development from railway land and the buffer afforded by the requirements of Design and Development Overlay Schedule 2, VicTrack has no objection to the applications."*²¹ VicTrack requested that several conditions be placed on any planning permit issued for the developments, but those conditions did not relate to reverse amenity impacts of noise or odour from the SMF.

Council advised that UGL were notified of the applications but did not respond.

(iii) Discussion

There is ample policy direction in the Planning Scheme which requires new development, and specifically SRAs, to consider:²²

... mechanisms/proposals to protect ongoing viable industries from encroaching sensitive uses such as buffer distances and acoustic measures to attenuate noise levels within the new development.

This is consistent with clear State and local policy support in other parts of the Scheme for the protection of existing industrial uses from encroachment by development that would compromise ongoing operations.²³

The Committee accepts Council's submission that the SMF is of state, and possibly national, importance. Given this, the Committee supports the position that it is appropriate to apply the 'agent of change' principle. The proposed development should respond to the SMF, and incorporate measures to protect its ongoing operation.

The questions then become:

- in what manner should the agent of change principle be applied?
- are the proposed noise attenuation measures acceptable?
- how should the acoustic management be conditioned?
- will odour emissions be problematic?

It was common ground among parties that noise impacts could be managed by suitable mitigation measures. Both experts recommended an acoustic wall constructed on the boundary of the site adjacent to the SMF, while Mr Leo recommended other measures including facade treatments as an alternative to a noise wall.

Ultimately both Council and the Applicant, and their respective experts, supported a performance based acoustic management condition requiring the development to include measures to enable the SMF to achieve compliance with SEPP N-1 limits. The Committee

²¹ Document 14 – Letter to Committee from VicTrack

²² At Clause 21.03-2

²³ Clauses 13.07-1S, 21.02-3, 21.02-4, 21.03-2 and 22.02

supports this approach. It also supports Mr Tardio's position that the condition should be based on an assumption that the SMF does (or will) meet the SEPP N-1 limits at existing residences in Birmingham Street. Thus, the Committee finds that it is appropriate to apply mitigation to such a level that it will make up any shortfall in compliance with SEPP N-1 as a result of the new development.

Clauses 55.07-6 and 58.04-3 include internal noise limits to protect future residents from external and internal noise sources. Mr Tardio advised that the SEPP N-1 requirements for internal noise amenity are consistent with the general requirements of Clause 55.07-6 and Clause 58.04-3. He further advised that external SEPP N-1 compliance is generally a more robust approach (in other words, if the external SEPP N-1 limits are achieved, internal noise limits will also be met).

Notwithstanding the above, the Committee agrees with the experts that because the southern facades of both Building A and Building B include openable elements, the external limit in SEPP N-1 is the correct limit to apply.

Both experts agreed that an acoustic wall could attenuate noise impacts for both Building A and Building B to achieve SEPP N-1 compliance, although they differed in their opinions as to the height, length and location of the acoustic wall that would be required. The Committee agrees with Mr Tardio that more specific detail would need to be provided to determine appropriate specifications for the wall. The Committee therefore considers that a performance based approach is appropriate, rather than a condition which seeks to prescribe the precise specifications of the acoustic wall. The urban design and visual amenity impacts will require further assessment, and the condition should require the wall to be to the satisfaction of Council.

The Committee supports the agreed expert position that a condition should be applied to prescribe internal maximum night time noise limits to deal with intermittent noise sources such as locomotive horns. It accepts Mr Leo's evidence that these noises have the potential to unreasonably disturb sleep. The Committee adopts the NSW EPA noise limits recommended by Mr Leo.

Based on the above, the Committee considers that it is appropriate to require an updated acoustic assessment for each of Building A and Building B which:

- demonstrates that SEPP N-1 external requirements can be met at both buildings, assuming the SMF is complying with SEPP N-1 at the existing dwellings on Birmingham Street
- demonstrates that internal maximum night time noise limits (based on those specified by the NSW EPA) can be met at both buildings
- recommends noise mitigation measures to achieve compliance with the above limits,

all to the satisfaction of Council. The urban design and visual amenity impacts of the acoustic wall will require further consideration, and the Committee has included an appropriate condition to facilitate that.

In the absence of the anticipated regulatory framework, the Committee does not support requiring either Building A or Building B to address low frequency noise emissions. If required, these matters can be considered when the relevant framework is applied.

The Committee accepts Dr Bellair's evidence that future residents of both Building A and Building B are unlikely to be impacted by odour effects. His evidence was uncontested.

Neither Council nor the Applicant included an odour management condition in their 'without prejudice' permit conditions. The Committee does not consider odour conditions are necessary.

(iv) Findings

The Committee finds:

- The reverse amenity impacts from the proposed residential development of Buildings A and B (in particular noise and odour) have been considered.
- While further assessment of noise impacts will be required, this can be provided for through permit conditions and does not need to be undertaken prior to permits issuing.
- The Committee is satisfied that mitigation measures can be included in the proposed developments to enable SMF to meet its obligations under SEPP N-1.

4.3 Traffic impacts and active transport requirements

The issues are:

- whether the impacts of increased traffic generated by the proposed development have been adequately considered
- whether the proposals for Buildings A and B should include a cycling and pedestrian pathway connecting to wider networks external to the site
- when new internal streets The Crossways and The Park should be delivered.

(i) Context

The site has boundary frontage to Melbourne Road to the north-east (a primary arterial road zoned Road Zone Category 1) and Birmingham Street to the north-west (a local access road).

The plans indicate that two vehicle access points are proposed to Birmingham Street. The western most access point would provide entry and exit for the basement car park for Building A. It would also be the exit for visitors to both Buildings A and B via an accessway to the rear of Building A (Park Street) where visitor parking is provided. The eastern access point (The Crossways) would provide entry and exit to the at-grade car park for Building B and to Park Street. It is understood that it is intended that these access points would also provide access to Birmingham Street for a future Building D but this is part of the BoL application and is not before the Committee.

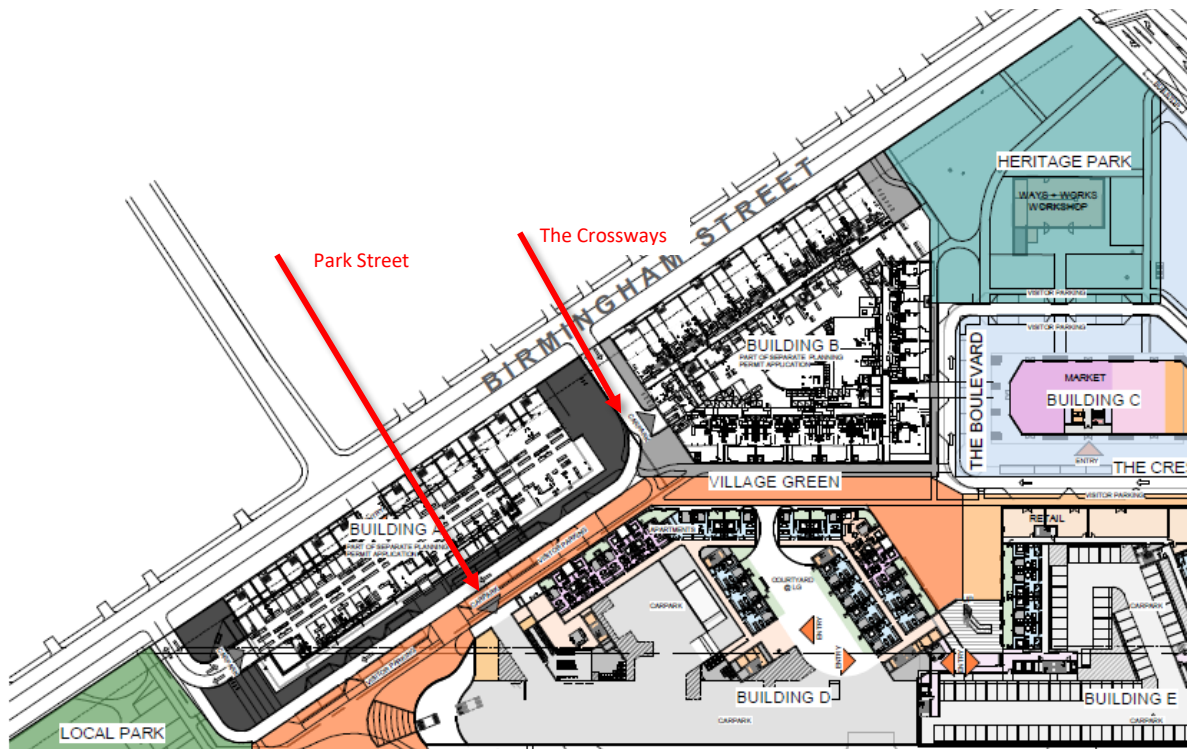


Figure 5 Plan showing access arrangements for Buildings A and B

Source: Document 44, Publicly Accessible Open Space Plan, CHT Architects, with the Committee's annotations

(ii) Submission and evidence

In respect of Building A, Council submitted that its concerns about traffic impacts were for the most part related to the need for a site wide assessment. Council submitted that this was necessary in order to understand the cumulative impacts of redevelopment of the site in its entirety on the surrounding roads and intersections, noting the proximity of other nearby sites also undergoing major redevelopment.

The Applicant relied on the expert evidence of Mr Kiriakidis (GTA Consultants) in relation to the parking, traffic and transport implications for both Buildings A and B. Alongside other relevant legislation and policy documents, Mr Kiriakidis reviewed separate traffic engineering assessments prepared by Traffix Group for Buildings A and B as well as for the wider site development, the latter report appended to his expert evidence.²⁴ A summary of Mr Kiriakidis' position on traffic capacity is as follows:

- Building A is expected to generate up to 20 and 200 vehicle movements in any peak hour and daily respectively.
- Building B is expected to generate up to 23 and 235 vehicle movements in any peak hour and daily respectively.
- There is adequate capacity at the Melbourne Road / Birmingham Street intersection to accommodate the forecast traffic generation under the existing unsignalised configuration (with the inclusion of the banned right turn out of Birmingham Street as required by DoT) or the proposed signalised configuration (to be delivered by the McLister Street development).

²⁴ Document 12 – Evidence statement of J Kiriakidis

- The existing Birmingham Street carriageway is capable of accommodating the forecast traffic demands associated with Buildings A and B.
- Mr Kiriakidis reviewed the site wide traffic analysis completed by Traffix Group that was provided in support of the BoL application and was satisfied that the mitigation works proposed as part of each application are appropriate to manage the future traffic demands generated by the whole of the site.

In regard to Building B, Council directed the Committee to concerns raised in a traffic engineering assessment prepared by Council's traffic and transport engineer Mr Kamil dated 19 February 2021²⁵ which raised the following concerns. Mr Kamil also attended the roundtable for Building B:

- The Traffix reports do not use modelling which can assess the impact of additional congestion in downstream locations, particularly Melbourne Road which already experiences significant congestion in the morning and evening peaks.
- The analysis does not adequately account for the likely increase in pedestrians and cyclists from the proposed development and surrounding new developments, noting that Birmingham Street is a significant pedestrian/cycle route to the Spotswood Railway Station. Nor has it considered school time volumes.
- The cumulative impact of Buildings A, B and D will exceed threshold limits on Birmingham Street for an Access Place (1,000 vehicles per day) and thus will require an upgrade to the road to allow for two-way traffic and a parking lane. Future visitor parking demand will also impact on the ability of Birmingham Street to function adequately.
- Swept path analysis by Council demonstrated that the proposed access locations in conjunction with the 6.25 metre width of the Birmingham Street carriageway would result in the loss of parking on the northern side to allow vehicles to exit the site. This is based on the turning requirements of a 6.4 metre private waste collection vehicle.
- Widening Birmingham Street on the southern side would allow parking to be maintained on the northern side without loss of nature strip or mature trees.
- Swept path analysis by Council also shows that the proposed 6.4 metre waste collection vehicle cannot enter the site satisfactorily (without veering into exiting traffic) due to width of Birmingham Street and dimensions of proposed accessway.

Statements of Grounds from the community were concerned about the increased traffic volumes on the surrounding network. Residents expressed concern that there would be increased potential for 'rat running' through local streets adjacent to Melbourne Road to avoid long queues along Melbourne Road. Mr Kiriakidis' assessment of traffic volumes showed no evidence of rat running on local streets, inside or outside peak hours.

Other residents asserted that the traffic impacts of queuing at the West Gate Freeway had not been properly calculated. Mr Kiriakidis' evidence was that the West Gate Freeway Interchange with Melbourne Road would improve queuing conditions along Melbourne Road. This view derived from his contribution to an Independent Review of the Interchange undertaken on behalf of the State Government as part of the Westgate Tunnel project. He further considered that the completed works would improve queuing conditions based on redevelopment of surrounding SRAs. Mr Kamil also expressed the view that planned ramp signals at the Interchange would improve queuing.

²⁵ Document 64 – Appendix B to Council's Building B Submissions, Marcus Lane Group

Mr Kiriakidis noted Birmingham Street's role as part of a strategic cycling corridor and presented evidence to determine an appropriate path design and width. As a contribution for the overall redevelopment, Mr Kiriakidis recommended that a 2.5 metre shared path be provided along the south side of Birmingham Street between the Melbourne Road / Birmingham Street intersection in the east and the existing at-grade rail crossing in the west, delivered as part of Building A.

Council emphasised throughout both roundtables the importance of Birmingham Street as a strategic cycling corridor and advocated for a parallel 1.5 metre pedestrian path, 2.5 metre cycle path and landscaping separating the two paths from the south side of the street. A cross section was presented in Council's traffic engineering assessment which showed provision of these, along with a widening of the road which would require extension of the Birmingham Street road reserve by 1.9 metres into the site frontage.

As part of its Building A submission, Council noted that separate cycle and pedestrian paths were a 'gold standard' approach and that a 2.5 metre shared path would be an acceptable alternative as widening of the carriageway was considered more important. Council further submitted that due to the evolving position regarding pedestrian and cycling infrastructure, the preferred approach would be to apply a condition to any permit that might issue requiring the provision of detailed plans showing the standards to be determined by Council and approved as part of secondary approval processes.

The Committee asked Council about the provision of pathways at nearby redevelopment sites and was informed that in recent cases only a 2.5 metre shared path had been required. Council was not able to point to any cases where separate paths had been required.

In relation to the internal traffic network, Council's position was that The Crossways and Park Street should be delivered as part of Building A if constructed before Building B. This was to enable a continued entry and exit circuit off Birmingham Street. Council further noted that Park Street will be the primary access to onsite visitor parking intended to service both Building A and Building B. The Applicant submitted the roads should be provided with the delivery of Building A or Building B, whichever was later.

Better West Inc. noted that the bulk of objectors to the permit applications were concerned about traffic. In particular, Better West Inc. submitted that *"road space priorities should be given to pedestrians and cyclists accessing the Spotswood Activity Centre including the school and railway station."* It disputed the traffic projections and analysis provided in support of the permit applications, and requested the following amendments to the proposal:

- A separate 2.5 metre bike path and 1.5 metre pedestrian path on the south side of Birmingham Street, separated by at least 2.5 metres, with an appropriate buffer to the road and space to accommodate tree planting (to accord with various State Government policies for strategic cycling corridors).
- Reducing the number of access points from the development site to Birmingham Street from two to one, providing access to only Buildings A and B and with no access to Building D (proposed as part of the BoL application).
- Once the entire site is developed, diverting access from Buildings A and B to Melbourne Road so that no cars are accessing Birmingham Street.

DoT did not wish to be heard at the roundtables but referred the Committee to agreed permit conditions for the development. These conditions included (among other things) the

installation of “No Right Turn” signs prohibiting right turn vehicular movements from Birmingham Street onto Melbourne Road until traffic signals are installed at this intersection.

APA, the owner of the high pressure gas pipeline in Birmingham Street, did not request to be a party at the roundtable discussions. APA provided referral responses to Council stating no objection to the applications subject to the inclusion of specified planning permit conditions. It did not raise any concerns in relation to the impacts of road widening or a shared user path in Birmingham Street on the high pressure gas pipeline.

(iii) Discussion

The Committee understands Council’s desire to consider the cumulative traffic implications of the proposed development of the whole of the subject site in addition to traffic generated by other major redevelopments occurring in the surrounding area. The Committee notes that a site wide assessment was ultimately provided as part of the BoL application but reiterates that this application is not before the Committee. The Committee must decide on the merits of the applications for Buildings A and B and make recommendations on the basis of these proposals.

State policy requires urban development to ensure equitable access is provided to developments in accordance with forecast demand, taking advantage of all available modes of transport while minimising adverse impacts on existing networks and the amenity of surrounding areas.²⁶

The DDO2 prescribes that no vehicle access point can be constructed to Birmingham Street except those required for emergency purposes and for access to a residential development. Buildings A and B are solely residential in nature and thus meet this requirement. The Committee also notes the proposals meet the access requirements of Clause 52.06 and Clause 55.03-9.

The Committee finds no policy justification to require a reduced number of access points for Buildings A and B to Birmingham Street, or for the diversion of all traffic in the future to Melbourne Road. No evidence was provided to support this position.

The Delegate Reports prepared by Council for both Buildings A and B included traffic engineer advice that traffic generation rates and assumptions in each respective assessment were reasonable. Mr Kiriakidis viewed the traffic generation rates in the Traffix Reports to be conservative, on the high side for a medium-high density development in a metropolitan area. Mr Kiriakidis presented evidence using slightly lower rates based on the NSW Road Traffic Authority’s ‘Guide to Traffic Generating Developments’ (Technical Direction dated August 2013).

The traffic volume analysis from both Traffix Group and Mr Kiriakidis supports the position that the increased traffic generated by Buildings A and B is not sufficient to trigger a reclassification of Birmingham Street from an Access Place to an Access Street Level 1. The Committee further accepts Mr Kiriakidis’ opinion that additional traffic generated by the proposed development of Building A and Building B is not expected to compromise the safety or function of the surrounding road network.

²⁶ Clause 18.01-15

The Committee notes Council's concerns about congestion and queuing at the intersection of Melbourne Road and Birmingham Street, particularly prior to signalisation of this intersection. The Committee accepts the evidence of Mr Kiriakidis that the additional traffic generated by Buildings A and B would have a minor impact on its operation. The Committee is also of the view that the signalisation of this intersection is likely to occur in the near future. Construction works are underway at the McLister Street development (which must provide signalisation of this intersection as part of its permit conditions). The Committee also notes that DoT did not object to Buildings A or B, subject to permit conditions which specifically addressed this intersection. The Committee is persuaded that adequate conditions can be placed on any planning permits issued to address any concerns in the interim, in particular a no right turn into Melbourne Road from Birmingham Street until the intersection is signalised.

With regard to the capacity of Birmingham Street, the Committee finds that as there would be no reclassification of this street as a result of Buildings A or B there is no justification for an upgrade or widening of the pavement. This position may change with the development of Building D, but that is not before the Committee. The Committee supports the position that parking should not be permitted on the south side of Birmingham Street in order to ensure that one trafficable lane remains open at all times.

Significant State and local policy is in place which promotes sustainable personal transport options, including walking and cycling.²⁷ Birmingham Street has long been identified as a potential cycling corridor. It was identified as a location for a local bicycle route in the *Hobsons Bay Strategic Bicycle Plan 2003*, to be developed with an off road shared path. More recently Birmingham Street has been identified as a Main Route in DoT's *Strategic Cycling Corridor Network 2020* forming part of Victoria's Principal Bicycle Network.

For this reason, the Committee considers that cycling infrastructure in this location is very important. However while some guidance is given, the Strategic Cycling Corridor Overview 2020 does not provide specific details around the design and width of the cycle path that should be provided. Nor was the issue raised in referral responses to Council from DoT or in DoT's correspondence to the Committee dated 21 January 2021.²⁸

The Committee has had regard to the analysis of Mr Kiriakidis in relation to the provision of separate off road cycling and pedestrian paths as requested by Council, and has given thought to what might be a reasonable contribution from the developer of the subject land given the cycle route is part of a network servicing a much wider catchment. The Committee has also considered the issues and concerns associated with shared paths, such as cycle speed, safety risks, perception of users and liability risks.²⁹

The Committee views separate paths as an optimum and desirable outcome but is not persuaded that evidence of future demand has been provided to meet threshold requirements for this, or that it would be fair and reasonable to require an outcome which would encroach into the subject land solely at the developer's cost. The Committee accepts the recommendation of Mr Kiriakidis that it would be appropriate to require the development to include a 2.5 metre (minimum) wide shared path along the site's frontage to Birmingham Street between the Melbourne Road / Birmingham Street signals to the east and to the existing at-grade rail crossing to the west as part of Building A. This is consistent with the

²⁷ Clause 18.02-1S, Clause 18.02-1R, Clause 21.09 and Clause 21.10

²⁸ Document 8 – Email from the Department of Transport

²⁹ Refer to Shared Paths – The Issues, Victoria Walks and Vic Health, March 2015

requirements that have been applied to other developments along the Strategic Cycling Corridor route, and the Committee sees no justification for seeking a higher standard in relation to that section of the path fronting this development. That said, the Committee considers that Council should seek the views of DoT before approving the final cross section for the shared user path.

The Committee has reviewed the proposed conditions regarding the provision of the paths and remains unclear as to why Council is seeking an 850mm wide nature strip between the shared path and the kerb line. Council indicated that this was to prevent dooring of cyclists, but parking on the south side of Birmingham Street is not an outcome that is being sought.

The Committee does not consider a gravel path to be an acceptable outcome as proposed in the application documents and finds that a sealed path is required. It notes that the Applicant agreed to this at the Building B roundtable.

The Committee considers that The Crossways and Park Street (and associated landscaping and car parking) should be delivered prior to the occupation of the earlier of Building A or Building B, rather than the later as submitted by the Applicant. Occupation of Building A without The Crossways means that the one-way circulation off Birmingham Street via Park Street would be incomplete. Occupation of Building B without Park Street and associated parking would mean no available onsite visitor parking, (temporarily) transferring visitor parking demand onto Birmingham Street, contradicting Mr Kiriakidis' assessment that Building A and Building B will be self-sufficient for visitor parking. While the Committee acknowledges that the calculated number of required visitor car parking spaces is relatively low and could be accommodated on Birmingham Street in the interim, it is not known how long these spaces would be required in Birmingham Street. It therefore does not support this as an interim solution.

(iv) Findings

The Committee finds:

- Additional traffic generated by Building A and Building B is not expected to compromise the safety or function of the surrounding road network.
- The proposed access points to Birmingham Street are acceptable.
- There is no justification for requiring the development of Buildings A or B to include the upgrade or widening of Birmingham Street.
- The development should include a 2.5 metre (minimum) wide shared path along the site's frontage to Birmingham Street between the Melbourne Road / Birmingham Street signals to the east and to the existing at-grade rail crossing to the west. The shared path must be fully sealed, and delivered as part of Building A. Council should seek the views of DoT before approving the final cross section for the shared user path.
- Internal road connections The Crossways and Park Street (and associated car parking and landscaping) should be delivered prior the occupation of the earlier of Building A or Building B.

4.4 Affordable housing contributions

The issue is whether the Building A or Building B permits should include conditions requiring an affordable housing contribution.

(i) Submissions

The applications for Building A and Building B did not propose an affordable housing contribution. Both were accompanied by a Technical Advice Note on Social Impacts prepared by SJB Planning that stated:

It is proposed that Building A and Building B be developed to include a mix of one, two and three-bedroom apartments and three and four-bedroom townhouses. Housing delivered in a medium to high density form is typically more affordable than housing delivered in lower density forms, such as detached dwellings. That is, the proposed housing would be relatively affordable and as such would improve 'local affordability' and assist in maintaining socio-economic diversity in the City of Hobsons Bay.

Council rejected the suggestion that because the development offers diversity in density compared to existing housing stock, it will deliver affordable housing:

There are no controls in place to ensure privately rented or owned housing will be allocated to households within income ranges eligible for affordable housing as set out in the Act. Additionally, the private market does not benefit from controls to ensure that rental costs are less than 30 per cent of household income.

Council submitted that an appropriate affordable housing outcome for the land is critical, and that affordable housing contributions should be made on both buildings. It sought a 10 percent contribution of non-market (social) housing on both applications. It submitted:

Council considers the redevelopment of a strategic redevelopment site of this magnitude warrants the meaningful provision of affordable housing.

The applicant's unwillingness to provide or make a contribution to affordable housing in respect of this permit application is contrary to the clear policy imperatives dealing with this issue.

Council explained that it had recently (in June 2020) endorsed Housing Choices Australia Limited as Trustee of the Hobsons Bay Affordable Housing Trust, to (among other things) facilitate affordable housing contributions from developers.

The Applicant made no submissions directly addressing affordable housing, but struck out the affordable housing conditions proposed by Council in its without prejudice conditions, stating that there is no requirement in the Planning Scheme for an affordable housing contribution.³⁰

(ii) Discussion

There is policy support for affordable housing in Hobsons Bay. State planning policy in Clause 16 that seeks to ensure that (among other things):

- planning for housing includes the provision of land for affordable housing
- more affordable housing is delivered closer to jobs, transport and services
- the supply of well located affordable housing is increased, including by:
 - encouraging a significant proportion of new development to be affordable
 - facilitating a mix of private, affordable and social housing in urban renewal precincts.

Council's *Affordable Housing Policy Statement 2016* articulates Council's commitment to ensuring all households in the municipality are able to live in affordable, secure and appropriate housing that meets their needs, particularly those with low and moderate incomes. It focuses on the provision of affordable housing for low income households who

³⁰ See Documents 33 and 58

are particularly vulnerable in the housing market, and for key worker households on lower incomes.

The Policy Statement indicates that Council will seek a 10 percent non-market (social) affordable housing contribution in SRAs. The policy refers to “*captur[ing] the betterment uplift of zoning changes, amended planning controls (e.g. building heights), or significant public infrastructure investments (e.g. road or rail changes)*”.

While the Affordable Housing Policy Statement may be adopted policy of Council, it is not incorporated in the Planning Scheme or referenced in Council’s local housing policy at Clause 21.07.

The BoL application is supported by a Social Impact Assessment dated December 2020 prepared by Public Place. That report states that, notwithstanding that much of the housing proposed in Buildings C to E would be “*relatively affordable*” due to its higher density, market forces would ultimately dictate the price of the dwellings. It states that the Applicant is willing to contribute 5 percent of the dwellings in the BoL application as affordable housing, or to make a commensurate cash contribution to Council’s Housing Trust. It does not state on what basis the 5 percent contribution would be made (social housing versus market housing discounted to ensure it meets the affordability criteria in the Act, whether the housing would be gifted and so on).

The difficulty Council faces seeking permit conditions that require a 10 percent contribution is that there is currently no legislative basis for mandatory permit conditions. The question then becomes, is a permit application that does not offer up a voluntary affordable housing contribution so contrary to policy that it should be refused?

While the policy framework strongly supports the provision of affordable housing, the Committee does not consider that it can effectively mandate an affordable housing provision. If the applications are otherwise consistent with the policy framework and the applicable built form outcomes expected under the Scheme, it would not be appropriate to refuse them solely on the basis of an absence of an affordable housing contribution.

Further, Council’s Affordable Housing Policy Statement contemplates seeking contributions as part of a value capture – where the developer benefits from an uplift in value due to a rezoning or amended planning controls. No such uplift has occurred in this case. The land has been in the MUZ for some time, and no rezoning or changes to the planning controls are required to facilitate the development.

On balance, the Committee does not support Council’s proposed affordable housing conditions. Notwithstanding the well established need for more affordable and social housing across Victoria, including in Hobsons Bay, the current legislative framework does not support contributions that are not voluntary.

(iii) Findings

The Committee finds:

- Despite there being an established need and policy support for affordable housing, the Committee is not able to support Council’s proposed conditions seeking a 10 percent affordable housing contribution. This is because the current legislative framework does not support contributions that are not voluntary.

5 Building A issues

5.1 Urban design

The issue is whether the proposed Building A streetscape response is appropriate.

(i) Context

The site's physical, statutory and policy contexts seek a higher density 'new character' response that complements existing character.³¹ The site area is large and is one of a few substantial redevelopment opportunities in the area. The MUZ specifically aims for housing at higher densities and sets no maximum height limits. The design objective at DDO2 is to ensure development enhances the amenity of residential areas along Birmingham Street. Clause 21.03-2 contemplates a new character for strategic redevelopment sites.

In contrast, the physical, statutory and policy context on the north side of Birmingham Street is suburban residential, where 11 metre maximum building height limits apply and development is encouraged to respect neighbourhood character.³² This side of the residential street comprises a mix of one and two storey dwellings with mostly pitched roofs and an emergence of side-by-side townhouses. Architectural styles range from post-war era to contemporary. Landscaped setbacks vary from multiple mature trees to just grass with street trees interspersed irregularly. This character is described in policy as a cohesive built form and garden setting.

Statements of Grounds lodged by residents generally considered that Building A was not keeping with the current low density housing on the north side of Birmingham Street and that the building would overwhelm the street. In contrast, there was consensus between Council and the Applicant that overall, an apartment building of four storeys with a three storey street wall behind a landscaped setback responds appropriately to the site's physical, zone and policy contexts.

Council agreed that a number of built form elements of Building A constituted an appropriate urban design response to the site's context, including:

- the architectural expression reflecting the industrial history of the site
- the four storey building height, which provides an appropriate transition between the existing low density along the north side of Birmingham Street and proposed higher density within the subject site
- the front setback of 6.8 metres, which responds to the existing setbacks along Birmingham Street
- (re) lowering the ground floor height to RL 14.6, as proposed in the original application (as opposed to the Amended Plans submitted on 10 December 2020 which raised the building height by 500 mm – see chronology for Building A)³³
- maximum front fence height of 1.2 metres.

The Committee agrees that these built form elements are appropriate, and has not addressed them further in this report.

³¹ Clause 21.03-2 and Clause 32.04

³² Clause 22.08-3, Clause 32.08

³³ Document 5

Council disputed the appropriateness of various elements along the Birmingham Street frontage, including the landscaping within the front setback along Birmingham Street and the delayed delivery of the local park in the south-western corner of the site. The Committee addresses these elements below.

(ii) Submission and evidence

The contested built form streetscape elements along Birmingham Street were:

- the perforated screens at the second floor level
- the overall building mass
- the extent of deep soil planting on the ground level front setback
- delivery of the local park as part of Building A.

Removal of the perforated screens at the third storey

The amended plans identified charcoal coloured perforated screens on the third storey of the Birmingham Street frontage, in line with the ground and first floor levels below. Refer to Figure 2.

Council considered that the perforated screens added unacceptable visual bulk to the street wall, resulting in the proposal failing to make an acceptable transition between the adjoining low rise Birmingham Street streetscape. This position reflected views of Mr McGauran who considered the screening amplified the street wall scale in what he deemed a one and two storey context.

Conversely, the Applicant's urban design expert, Ms Bell of Kinetica, assessed the three storey street wall as a fitting response on a MUZ site where two storeys was the predominant scale. She considered that the red brick of the levels below held the visual emphasis away from the screens to reduce bulk in views from the street. The Applicant's planning expert Mr Biacsi considered that the retractable 'windows' within the screens provided dynamics to the street wall.

Building mass

The amended plans showed a 'glazing void' at the ground level entrance in the Birmingham Street facade, which continues upward to the second storey. The third storey comprises the perforated screen, as noted above, and the fourth storey is set back from the facade line.

Relying on the evidence of Mr McGauran, Council considered that the section of the street wall above the entrance should be eroded (recessed). It considered that this would break up the building mass, and provide a more appropriate building rhythm. Mr McGauran viewed the Birmingham Street facade as 'unremitting' and considered further indentation above the entrance would create a more appropriate 'composition' akin to two buildings.

Relying on the evidence of Ms Bell, the Applicant opposed the eroded building mass. Ms Bell considered that the glazed entrance at the lower two storeys, with a red brick street wall on either side, sufficiently broke the building into two distinct elements.

Deep soil planting

The amended plans showed roughly one third of the 6.8 metre setback along Birmingham Street available for deep soil planting, proposed to contain a combination of evergreen and deciduous trees.

The DDO2 provisions manage the removal of trees (via consent, not a permit trigger) and require landscaped setbacks without specifying a preferred character. Clause 21.06 and Clause 22.08 collectively seek a landscape response which reflects the existing ‘garden setting’ character. The Clause 55.07-4 standards for ‘Deep soil areas and canopy trees objective’ guide 15 percent deep soil planting across the site and one large tree or two medium trees per 90 square metres of deep soil (with which the proposal complies).

Council regarded the proposed landscaping as ‘tokenistic’ and unacceptable. Mr McGauran considered that increased deep soil planting along the Birmingham Street frontage would better respond to existing landscape character. The Applicant argued the proposed deep soil planting extent was acceptable and consistent with the planning scheme requirements. Ms Bell viewed the proposed landscaping as ‘substantial’, and Mr Biacsi considered that the deep soil planting reinforced the garden setting opposite.

Delivery of the local park

The local park sits at the westernmost corner of the larger site, to the immediate south-west of Building A. There is currently a high mound on this part of the site, and dispersed mature vegetation. The local park appears to be sited and sized according to site features.

The staging plan for the larger site identifies the park as ‘Stage 4’, to be delivered after Building A (Stage 1), Building B (Stage 2) and a ‘Heritage Park’ on the corner of Melbourne Road and Birmingham Street (Stage 3).³⁴

The Social Impact Assessments submitted by the Applicant in support of the applications indicated that Building B (only) would be sufficiently serviced by existing open space provision, as would the BoL application (with the additional provision of the heritage park).³⁵

Council submitted that the local park should form part of the planning unit for Building A, and should be delivered as part of the Building A development. Mr McGauran considered:

The logically included western triangle of land has been excluded from development leaving the site disconnected from its context. This public space should be included within this phase of work as an important contribution to development integration into the neighbourhood ... rather than leaving fragments in this case proposed public open space, unresolved and denied the community of both the development and the neighbourhood.

The Applicant submitted the local park should be provided prior to occupation of Building A or Building B, whichever was later. It explained the staging plan was not informed by technical assessments but rather reflected the intended order of construction, being to progressively improve the parts of the site moving towards Melbourne Road. The intention was to keep the local park available for construction access. It reasoned that delivery of the open space as part of the Building A planning unit was not needed but acknowledged it would be possible.

(iii) Discussion

The Planning Scheme clearly establishes an expectation that the site will undergo transformative change and into a more intensive, yet responsive, form than what exists on the opposite side of the street. Other nearby SRAs are developed to a similar scale to that proposed for Building A (and Building B). Beneficially, the site’s location and orientation mean

³⁴ Document 5 – Building A Material (provided by Council)

³⁵ Document 6 – Building A Material (provided by the Applicant)

amenity considerations of overshadowing and overlooking on neighbouring properties do not apply. Generally speaking, the Committee sees a new built form character as both encouraged and necessary.

Removal of the perforated screens at the third storey

The Committee considers that removal of the perforated screen is not necessary to manage visual bulk when considered in the context of a lowered ground floor level (as agreed by parties).

The two key visual effects of lowering the level of the ground floor are reducing the overall street wall height and the increasing visual permeability at the lower two storeys. The reduced street wall will be mostly read as three storeys, not the almost four storeys assessed by Mr McGauran (based on the raised ground floor level shown in the December 2020 amended plans). The Committee considers that this is a suitably transitioned response to the opposite scale of one and two storeys and where three storeys are permitted by the General Residential Zone.

The screen comprises a lighter weight form of varying visual permeability. The windows in the perforated screen add temporal visual interest, particularly if open, with further visual interest presented by the contrasting red bricks below. The increased visual permeability at the (raised) ground floor terraces will provide visual interest in short range views into the site to soften the overall appearance of visual bulk.

The Committee finds further support for retaining the perforated screens in the collective street wall response of Building A and Building B. The proposals will be mostly read as a continuous three storey street wall that will transition in a legibly consistent manner from the one and two storeys opposite.

Building mass

The Committee agrees with Council and Mr McGauran that eroding the mass above the entrance is needed to improve the proposed building rhythm and more effectively break the mass into two visually distinct elements.

The Committee accepts Ms Bell's evidence that the 'townhouse modules' created by the red brick formations in the facade respond to the existing streetscape rhythm. However, the proposed building is almost 100 metres in length with no variation to front setbacks at the first, second and third storeys (when measured at the perforated screens for the latter). The lack of visual relief across the length of the facade is amplified through repetition of the red brick in the street wall and fence detailing. In the Committee's opinion, these cumulative elements warrant a more meaningful visual break to the building mass. Eroding the built form above the entrance will allow the facade to be read as a composition of two buildings and will better demarcate building entry in views from Birmingham Street.

Creating two distinct elements along the Building A facade will match the composition of the Building B facade. The street wall of Building B is broken above the building entrance to relieve the otherwise 76 metre long frontage and denote the building access. The distinction in built form above the entrances of both facades will enable each building to be read as two components separated from one another by green spaces, rather than long unremitting ones, in views from Birmingham Street.

Deep soil planting

The Committee considers the extent of deep soil planting appropriate, and a suitable response to existing character within the broader landscape as called for by the Planning Scheme.

Ms Bell described the front garden character opposite the site as relatively inconsistent comprising sporadic street trees with some setbacks well vegetated and other relatively bare. Conversely, Mr McGauran described a 'lush front yard planting'. The Committee observed on its site visits that the landscape on the north side of Birmingham Street varies from minimal to well vegetated, with intermittent street trees. It more closely reflects Ms Bell's description.

The Committee considers the landscape plan provides for a depth and variation of landscaping in the front setback that is suitably responsive to context and appropriately contributes to a garden setting character. The landscaped front setback, which is a comparable depth to opposite lots, comprises a combination of large (including one retained) and medium trees and shrubs. The deep soil planting areas are regularly spaced across the frontage and sit adjacent to the terrace entrances to provide a landscape contribution to the public realm. In ground planting behind the front fence and vegetated indentations external to the front fence fill the intervening spaces for a relatively consistent green corridor along the terrace spaces. The front setbacks are bordered by a further row of shrubs external to the front fence, which will soften this street edge. For these reasons, the Committee finds additional deep soil planting is not needed.

The Committee finds further support for the landscape response of Building A when considered with the intended response for Building B. Similar to the effect of the street wall, the landscaping at Building A holds visual emphasis at the shrubs and plants at the lower storeys, with distinctively spaced taller trees of relatively consistent (deciduous) species above (as well as the retained mature tree of a different species). Comparatively, the landscaping at Building B holds visual emphasis at the upper storeys due to the variety of taller deciduous and evergreen species with differing canopy spread, typical heights and foliage type and at closer spacing. The Committee finds the varied yet complementary landscaping presentation of Building A and Building B suitably responds to a 'garden setting' character where existing vegetation and street trees on the opposite side of the street are varied.

Delivery of the local park

Accepting that the local park is not needed to fulfil open space provision ratios as identified in the Social Impact Assessments, the Committee nevertheless considers that the local park should be included in the Building A planning unit, and delivered with the development of Building A. There are two key reasons for this.

Firstly, the Committee considers that the local park will assist to 'stitch' Building A into the existing streetscape. Delivering the park with Building A will complete a whole half of the new southern edge to Birmingham Street, visually tying the building, the park and the rail corridor beyond at the proposal's western edge. Complementing this is the small pocket park between Building A and Building B. Collectively, the parks will help settle Building A into the garden setting of Birmingham Street before the remaining parts of the larger site are delivered.

Second, delivery of the local park with Building A will contribute to orderly planning and minimise construction impacts on the existing residents along Birmingham Street and future occupants of Building A. In the alternative scenario where the south-western corner of the site is retained for construction access, future occupants of Building A will have construction

sites on all three internal interfaces for the foreseeable future. Further, the Committee queries the practicality of construction access through the location of the local park given its raised terrain. A more ordered approach is to deliver the parks at the eastern and western edges of Building A at the same time.

(iv) Findings

The Committee finds:

- The Building A streetscape presentation is appropriate to the site context subject to:
 - recessing the built form above the entrance at the second and third storeys
 - delivering the triangular 'local park' in the south-west corner of the site as part of the Building A development.

5.2 Internal amenity

The issue is whether the proposal provides future occupants with a suitable level of internal amenity.

(i) Context

Building A consists of a combination of townhouse and apartments of one, two and three bedrooms. The amended plans identified that apartments were largely compliant with the internal amenity provisions of Clause 55. Notwithstanding, Council sought a range of changes to the amended plans. The Applicant agreed to some and opposed others. Most of the disputed internal amenity elements related to overall building layout and functionality.

The agreed internal amenity changes, which are reflected in the without prejudice permit conditions and which the Committee supports, are:³⁶

- amend layouts for Townhouses Type 1 and Apartment Types A1, A2-1, A2-2, A2-3, A2-4, A3-1 and A3-4 to quarantine the primary living areas from the adjoining kitchen and laundry operations and circulation spaces
- extend the ground floor eastern common corridor through the eastern common open space and provide with operable glazing
- include layouts of kitchens to all dwellings, including appliances, to illustrate fitness for purpose
- demonstrate layouts can accommodate the expected number of residents, that is, a three-bedroom dwelling has seating space for six people
- show glazing operations for all dwellings, for example, sliding doors or operable windows
- add planters or other screening measures at the fourth storey to prevent overlooking below (and address Standard B22).

Additional elements sought by Council but disputed by the Applicant were:

- reconfigure hallways to terminate with natural light and air access at all levels
- indent stairwells at all levels
- add a 3 metre wide landscaped setback between south facing ground level terraces and the adjoining footpath (of Park Street)

³⁶ Document 33

- project balconies of unit type A1-1 beyond the southern facade at the second, third and fourth storeys
- add a parcel delivery area
- include a condition requiring compliance with Australian Standard 1428-2009 (Design for Access and Mobility)
- require construction details for the raingarden.

(ii) Submission and evidence

Disputed elements are discussed below.

Hallways

The hallways are proposed to be roughly 90 metres long at the ground and first floor levels and 80 and 75 metres at the second and third floor levels respectively. The issue is whether the hallways would have sufficient light and air access.

The amended plans identified one central source of natural light and air access for the hallways (at the entry and lift core areas), plus natural light access to the western ends of the third and fourth storey.

Clause 55.07-8 aims to ensure that internal communal areas provide adequate access to daylight and natural ventilation and provides guidance that these areas should include at least one source of daylight and natural ventilation.

Relying on Mr McGauran's evidence, Council considered the hallways were unreasonably long, and should have more than one source of daylight and air access at all levels (where not already provided). The Applicant disagreed, and considered further hallway windows were unnecessary. Mr Biacsi considered that the hallways provided sufficient amenity levels, save that he considered glazing should be added to the internal wall of the ground floor communal area.

Indenting stairwells

The amended plans illustrated the hallways as punctuated at the entry void and lift core area (at every level). Indented apartment entries occurred irregularly across all levels. Stairwells were not indented.

Clause 55.07-8 includes an objective to ensure internal layout of buildings provide for the safe, functional and efficient movement of residents.

Council argued that the hallways were poorly conceived. Mr McGauran recommended indentation of the stairwells to reduce the 'gun-barrel' character of the hallways. The Applicant did not support added hallway indentations. Mr Biacsi did not agree with Council's characterisation of the hallways as long and unrelieved and did not consider indentation as necessary.

Landscaped setback on south facing interface

The amended plans illustrated the ground level terraces on the southern side (along Park Street) separated from Park Street by a continuous border of raised planter boxes, broken by gates to provide access to individual dwellings. These terraces will no longer be elevated with the agreed lowered ground floor level.

Clause 55 provides guidance in relation to internal views between dwellings but not across a private and (internal) public realm interface.

Council submitted the landscaped setback would manage views into the apartments from the parallel pedestrian path, as recommended by Mr McGauran. The Applicant opposed the landscaped setback. Ms Bell considered that the planter boxes provided an appropriate level of privacy across the interface between the private terraces and the new internal street.

Projecting balconies

The amended plans showed the southern edge of south facing balconies sitting in line with the southern facade across the first, second and third storeys. This results in the private open space of these apartments being recessed into the building.

There are two relevant Clause 55 objectives. Clause 55.03-3 seeks adequate daylight into new habitable windows and Clause 55.07-13 seeks adequate daylight to single aspect habitable rooms. The latter sets minimum room depths of 2.5 times the ceiling height and states that decision making should consider the orientation and overhang above the windows (amongst other things).

Council submitted that balconies of unit type A1-1 should be projected to allow further daylight access to these spaces and adjoining habitable rooms. Council considered that the habitable rooms had poor daylight access due to their position behind balconies which were enclosed by the level above, especially given their southerly aspect. Mr McGauran considered that projecting the balconies beyond the main building line would substantially improve daylight access.

In response to questions from the Committee, Mr Leo expressed the opinion that projecting the balconies a further metre or so from the main building line would not significantly increase noise levels on the balconies or require further noise modelling.

The Applicant considered projecting the balconies unnecessary, suggesting that longer light projections from the balcony edge into adjoining rooms could further reduce daylight access. In response, Council confirmed it sought projection of the adjoining habitable room windows in parallel with the projected balconies (meaning the light projection would not be lengthened). Mr Biacsi assessed that the proposal achieved Clause 55.05-3 objectives and Clause 55.07-13 standards, and there was no need to project balconies.

Parcel delivery area

The amended plans illustrated a large open lobby area with mailboxes along one side, but no dedicated parcel 'drop off' zone.

Clause 55 does not provide specific guidance for parcel delivery areas, however the *Apartment Design Guidelines for Victoria* interprets Clause 55.07-8 'Building Entry' as guiding the provision of mailboxes and parcel post facilities close to building entries in a well-lit and weather protected area with potential for informal surveillance.

Council considered a parcel delivery area was required. Neither Mr McGauran nor Mr Biacsi considered this was needed.

Access and mobility

The amended plans indicated that the proposal met the (discretionary) standards of Clause 55.07-7 'Accessibility objective' which encourage at least 50 percent of dwellings to have the

circulation dimensions for bathrooms, dwellings entries and circulation spaces set out in the Clause.

Council submitted that any planning permit issued should require compliance with Australian Standard 1428-2009 for access and mobility design, as well as specifying dimensions for circulation spaces and dwelling entries and requiring installation universal design fittings. The Applicant responded that these requirements were appropriately addressed through the building permit process, not the planning permit process.

Raingarden

Council submitted that any planning permit issued should require construction details for the raingarden to be included in the Built Environment Sustainability Scorecard (BESS) assessment and Sustainability Management Plan. The Applicant submitted that construction details were a detailed design matter to be addressed in later stages of development.

(iii) Discussion

The Committee considers that overall, the proposal provides a good level of compliance with the internal amenity objectives of the Planning Scheme. The proposal has generally sought to use the site's features to provide for a comfortable level of amenity for future residents. That said, some changes should be made.

Hallways

The Committee agrees with Mr McGauran that the hallways require operable windows to permit natural light and air access at each end and at every level.

The Clause 55.07-8 objectives state that common areas should include at least one source of daylight and natural ventilation access. While one source is provided by the lift lobby and glazed entrance void at ground floor level, the Committee does not consider this will provide sufficient light and air access to provide a suitable level of comfort along the hallways lengths, which extent for up to 90 metres. The Committee considers further light and air access is warranted.

The Committee agrees with Mr McGauran that additional windows will provide an opportunity for interaction between the hallway spaces and the external common areas. Windows will also provide the opportunity for outlook and casual surveillance over the external common areas.

Indenting stairwells

The Committee agrees with Mr McGauran that indentation of the stairwells is needed to reduce the gun-barrel effect of the hallways. It considers indentation will improve residents' legibility of and movements around these key circulation spaces and deliver on Clause 55.07-8 objectives for safe, functional and efficient movement of residents. The indentation will also add needed visual interest along the hallway lengths.

Landscaped setback on the south facing interface

The Committee considers a landscaped setback between the ground level south facing terraces and the adjoining Park Street footpath is warranted given the lowered ground level, and that a width of 1 metre is sufficient.

Users of this new internal street will most likely be residents and visitors from within the site and will be moving along the street rather than resting, requiring a lesser level of privacy than would be necessary for an external street. A further 1 metre of landscaping extending from the southern building facade will provide a sufficient setback depth to mediate views into terraces whilst permitting outlook views for new residents.

Projecting balconies

The Committee considers a projection of the south facing balcony spaces of unit type A1-1 and a corresponding projection of adjoining habitable rooms will provide needed improvement to daylight access to these habitable rooms. The change will allow a deeper penetration of natural light into these spaces and the adjacent (projected) habitable rooms, as guided by Clause 55.07-13. The Committee notes Mr Leo's assessment that this design change would not trigger the need for further acoustic modelling or management.

Parcel delivery area

The Committee considers the proposed mailbox arrangements are suitably located and designed to meet the objectives of Clause 55.07-8 and the guidance provided in the *Apartment Design Guidelines for Victoria*. The lobby area is large enough to accommodate parcel delivery whilst accommodating the safe movement of residents. The glazed entrance will provide opportunity for passive surveillance over the mailbox area. A parcel delivery area is not considered necessary.

Access and mobility

The Committee agrees with the Applicant that compliance with the Australian Standards for access and mobility for circulation spaces and design fittings falls under the Building Act and does not necessitate a planning permit condition.

Council indicated it would rely on the standards at Clause 55.07-7 to guide the layouts of circulation spaces and layouts within apartments, noting this Clause does not guide universal design fittings. The Committee contemplated whether an alternative condition of permit requiring compliance with the standards of Clause 55.07-7 was warranted, but does not consider this necessary as the amended plans meet the standard. The same applies for Building B.

Raingarden

The Committee agrees with the Applicant that details on raingarden construction are better addressed as part of the future detailed design, and does not need to be addressed in amended plans required under condition 1 of the permits.

(iv) Findings

The Committee finds:

- The proposal provides for a suitable level of internal amenity for future residents, subject to:
 - adding natural light and air access to the internal hallways at the western end of the ground floor level and eastern ends of the first and second floor levels
 - indenting the stairwells at all levels
 - adding a 1 metre landscaped separation between the planter boxes lining the south facing ground level terraces and the new internal footpath along Park Street

- projecting the balconies of south facing units type A1-1 at the second, third and fourth storeys (levels 1, 2 and 3), and repositioning corresponding habitable room windows closer to the facade line of the building.
- The following changes sought by Council are not considered necessary:
 - a parcel delivery area
 - a requirement that the planning permits comply with Australian Standards for design and access mobility
 - plans amended to include detailed construction of raingardens.

6 Building B issues

6.1 Urban design

The issues are:

- whether the landscape treatment along the Birmingham Street frontage is appropriate
- whether the height of the southern tower element is appropriate.

(i) Context

There was consensus between Council and the Applicant that the built form that fronts onto Birmingham Street – an apartment building of four storeys with a three storey street wall behind a landscaped setback – responds appropriately to the site’s physical, statutory and policy contexts. The Committee agrees.

(ii) Submissions and evidence

Height of the southern tower element

The southern component of Building B, an eight storey tower element, is different in scale (height) in comparison with Building A. Council did not consider that the height of the southern element was appropriate. Relying on Mr McGauran’s evidence, Council submitted that the upper two levels should be deleted.³⁷

Mr McGauran’s report recommended the deletion of what are referred to as levels 6 and 7 (storeys 7 and 8) on the basis of overshadowing impacts on pedestrian and open spaces within the overall development, such that it could be demonstrated that:³⁸

- a) The eastern side of The Boulevard from a kerbline 5m from the building C and south kerb of the circuit to ensure no overshadowing of these areas between 10:00am and 2:00pm at the September equinox.
- b) The southern half of the proposed Village Green link between The Boulevard and The Crossways is not in shadow between 10:00am and 2:00pm at the September equinox as a result of the proposed Building B built form.
- c) As a regionally significant open space, that no additional overshadowing of the existing heritage reserve and buildings east of the development arises from the development between 10:00am and 2:00pm at the Winter solstice.

At the roundtable, Mr McGauran explained that these two upper levels accommodated only two modestly sized units and that the deletion would have a minimal impact on the development yield.

Mr McGauran did not suggest that the deletion of these two levels would have a beneficial impact on the neighbouring context or transition in scale from the existing 1 to 2 storey residential context north of Birmingham Street.

Mr Biacsi did not see any detrimental visual impact from the taller southern element:

The proposed building has been setback sufficiently from its frontage and side boundaries to mitigate the effects of building and therefore the prospect of an adverse visual impact from Birmingham Street is not an issue.

³⁷ Document 59

³⁸ Document 59 p.12

The Applicant's urban design expert Mr Shepherd agreed.

Mr Shepherd did not agree that the proposed configuration of the southern section would result in unacceptable overshadowing. His position was that between the hours of 11.00 am and 2.00 pm at the Spring equinox the shadow cast would be acceptable and that the longer shadow cast by the highest form would be fast-moving and have minimum impact on the pedestrian and open spaces and the proposed heritage park. Mr Shepherd did not refer to a time period outside 11.00 am and 2.00 pm and did not refer to the winter solstice period in regard to shade cast on the heritage park space.

Landscape treatment along Birmingham Street

The amended landscape and architectural plans included a 1.2 metre high permeable fence at the street alignment with layered vegetation between this fence and a higher wall that visually protects the raised terraces behind.

It was suggested by Mr McGauran that the scheme be revised to avoid an overdependence on what he regarded as unusually high screens to the raised deck. He recommended a landscaped approach to screening. The Council draft conditions required:³⁹

Fencing between the north wall of the building and the northern title boundary no higher than 1200mm above the finished footpath level or no higher than 1800mm above the finished footpath level with a minimum 50% transparency, or other alternative option agreed to by the Responsible Authority.

The Applicant's without prejudice draft conditions were almost in complete agreement with this draft condition except the highest point of the fencing would be 1900 mm instead of 1800 mm.⁴⁰ Given the level of the raised terraces (700 mm above the footpath), a height of 1900 mm would give 1200 mm of screening above the terrace.

(iii) Discussion

Height of the southern tower element

Council confirmed that if the rear section of Building B was lowered by two levels as recommended by Mr McGauran to address overshadowing concerns, its concerns in relation to the scale of the development would be satisfied.

The Committee agrees with the expert witnesses for the Applicant and considers that the height of the southern tower element of Building B would not have an unacceptable visual impact on the northern residential context. The scale of the higher form of the southern tower element would not have a significant visual presence within the existing context and due to the degree of its separation from Birmingham Street in conjunction with the four storey proposed form fronting the street. The form would not have a detrimental impact on the scale of transition fronting Birmingham Street.

Mr McGauran's position that two levels should be deleted to avoid a significant overshadowing impact on the open spaces, pedestrian space and proposed heritage park is not supported by the Committee. The shadow diagrams submitted for the equinox indicate that the deletion of the upper two levels would not have a significant effect on the shadow cast outline to the south or to the east. The Committee accepts Mr Shepherd's position that

³⁹ Document 66

⁴⁰ Document 68

the shadow cast by the upper levels would be a relatively small and fast-moving footprint on the ground. The extension of the time period for shadow protection to include 10.00 am at the equinox as recommended by Mr McGauran would only alter the shade cast by the upper levels for a relatively small sections of open space between proposed future building stages.

The recommendation by Mr McGauran that the shadow cast to the east be considered at the winter solstice is graphically demonstrated by the shadow diagrams submitted with the amended plans.⁴¹ These show that the southern corner form would cast shade to the south-east and east after 2.00 pm at the solstice onto the road and access area between Building B and the heritage building. It appears from these diagrams that the deletion of the upper two levels would still result in full shade between the two buildings.

At the time of writing this report there is no policy or other requirement in the Planning Scheme to consider the shadows cast at the winter solstice but even if arguments could be used to persuade consideration for its usage, the Committee remains of the view that retaining the two upper levels will deliver an acceptable amenity outcome.

Landscape treatment along Birmingham Street

The Committee considers that the proposed landscape treatment to the Birmingham Street frontage is appropriate. The deletion of the basement and the provision of deep soil planting opportunities will enable substantive planting to be undertaken as indicated in the amended landscape plans. Council and the Applicant generally agreed that the provision of larger scale trees as indicated on the amended landscape plan, in conjunction with layered screen planting and elevated decks, was an appropriate response. The Committee agrees.

Council did not express any concerns regarding the raised terrace and ground floor level of Building B. The Committee considers the 700 millimetre raised floor level to be appropriate. The front terraces of Building A will (when the ground floor level is lowered as agreed) be raised to a similar level as those at Building B. In the Committee's view, a continuous row of raised terraces along the southern side of Birmingham Street will produce a cohesive and legible streetscape response.

The higher fence of 1900 millimetre with 50 percent transparency would result in an effective 1200 millimetre visual barrier from the raised terrace and would be consistent with the 1200 millimetre height of the front fence. This, combined with the layered landscaping, is an appropriate response to the site's garden setting.

(iv) Findings

The Committee finds:

- The amended proposal for the landscape and fence treatment to the Birmingham Street frontage of Building B is acceptable.
- The top two levels of the southern section of Building B will not result in unacceptable planning outcomes, and can be retained.

6.2 Internal amenity

The issue is whether the proposal affords future occupants with a suitable level of internal amenity.

⁴¹ Document 7

(i) Context

Building B comprises a combination of townhouse and apartments of one, two and three bedrooms. The amended plans identified that the apartments are largely compliant with the internal amenity provisions of Clause 58. Notwithstanding, Council sought a range of changes to the amended plans and external features. The Applicant agreed to some, and disputed others. Most of the disputed elements related to overall building layout and functionality.

Council and the Applicant agreed to various internal amenity changes, which are reflected in the without prejudice permit conditions and which the Committee supports:⁴²

- ensure the internal layouts of apartments conform to the standards sought in Clause 58.07-1 and that all apartment layouts have living areas of 10 square metres minimum and unencumbered circulation in accordance with Clause 58.07-1. These recommendations were specifically to be applied to the following apartment types:
 - Apartment 3 bed type A3-1, A 3-2
 - Apartment 2 bed type A2-1, A2-2, A2-3, A2-5, A2-6, A2-7, A2-8, A2.10, A2-11, A2-12
 - Apartment 1 bedroom A1-1, A1-5, A1-6, A1.8, A1.11.
- ensure all apartment layouts can be furnished to accommodate the expected number of residents
- units B316 be replanned to remove embedded open space and improve daylight access and privacy provision
- all common areas, car parking spaces and all dwelling at ground level to be universally accessible from common area corridors and lobbies
- reconfiguration of car spaces to enable adequate pedestrian access to storage cages and storage rooms
- reconfigure car spaces to provide adequate access to residential corridors and lift lobbies
- reconfigure car spaces and provide access at level 3 to north corridor adjacent to lift and stairs
- all common corridors a minimum of 1500 mm wide and 1800 mm wide at apartment thresholds. All common doorways to have minimum clear opening 850 mm
- rectifying plan anomalies, including:
 - confirmation of floor levels
 - deletion of stairs to ground floor north corridor from car park
 - insertion of door to ground floor communal dining area
- provision of bicycle charging stations.

Additional changes sought by Council but disputed by the Applicant were:

- accessway and landscape works for The Crescent, The Boulevard and the Village Green pathway network be constructed before the occupation of Building B
- the building and landscape works for the heritage park and the 'Ways and Works Workshop' building be completed before occupation of Building B
- unit B404 be replanned to remove embedded open space and improve daylight access and privacy provision

⁴² Document 68

- unit B402 be set back a minimum of 6 metres from the south elevation of the portion of Building B that fronts Birmingham Street (Mr McGauran provided a suggested replanning of B402 and adjacent corridor that would enable a greater setback)
- the carpark access door be set back 2 metres from the west face of Building B
- relocation of bicycle parking near the south-east entry
- deletion of the loading bay to east side and replacing with landscaping.

(ii) Submissions and evidence

The intention for the later stages, based on the Master Plan and the BoL application, would be to provide:

- landscaping and a pedestrian path access to the south (the Village Green)
- a landscaped area around the renovated Ways and Works Building to the east (the heritage park)
- access roadways and landscaping for the south-east entry designated 'The Boulevard' which would connect to Melbourne Road via 'The Crescent'.

Relying on the evidence of Mr McGauran, Council submitted that these works should be required to be completed prior to Building B being occupied. Mr McGauran proposed that The Boulevard car and pedestrian access was necessary to service the main south-east entry to Building B. This would enable car pick-up and drop off and vehicle-based delivery to the building. As a consequence, the internal connecting road to Melbourne Road would also be required.

The Applicant did not agree to a requirement to complete these works prior to Building B being occupied. Relying on the evidence of Mr Biacsi and Mr Sheppard, the Applicant submitted that these works were not necessary for the amenity of Building B at this stage of the overall development.

In its version of the without prejudice permit conditions, the Applicant retained the draft condition relating to the redesign of unit B316 but deleted the condition relating to the apartment immediately above, unit B404, which has a similar configuration. Similarly, the Applicant disputed the conditions providing for the redesign of the north edge of the higher form of Building B a to provide a greater setback of unit B402, and did not agree to the relocation of the bicycle parking and loading bay from the west side of Building B.

While agreeing with the principle for the need to reconfigure car spaces and access from the car parking areas to accommodate usage and access issues to storage areas and common corridors, the Applicant believed that these issues could be addressed via performance based conditions rather than prescriptions.

(iii) Discussion

The internal amenity of the apartments should comply with standards and objectives of clause 58.07. Council and the Applicant agreed with this position.

Access and landscaping works

The submissions and discussions about the external amenity for the occupants of the southern and south-eastern portions of Building B raised issues around the access and outlook from these apartments before the subsequent stages of the overall development were completed.

Mr McGauran proposed that The Boulevard car and pedestrian access was necessary to service the main south-east entry to Building B. This would enable car pick-up and drop off and vehicle-based delivery to the building. As a consequence, the internal connecting road to Melbourne Road would also be required. If such access was not provided with Building B, the question arises as to whether adequate provision of car and larger vehicle access to the building could be provided elsewhere.

The latest amended plans require a pedestrian who needs to access a third party vehicle such as a taxi or share ride from the southern section of Building B to walk from the foyer to either Birmingham Street or to The Crossways. These distances could be significant for some and may be prohibitive for those with mobility issues.

In the Committee's view, provision must be made to enable external vehicle access to or near the south-east foyer of the southern entry to Building B, to provide reasonable access before the balance of the site is developed. This could be provided by partial construction of the internal roadways or through a managed solution with appropriate means for external vehicle access through the car park. The solution must also address the issue of delivery and removalists vehicles.

In the Committee's view, the development of the Village Green would assist in providing amenity and access to the southern section of Building B and the units that have direct external access. The provision of the pathway and landscaping for the area designated by the dashed line on the amended plans that delineates the south-west extent of the planning unit for Building B would be sufficient to provide a landscaped buffer to the later stages to the south.

Heritage Park

The Council position, following the recommendation from Mr McGauran, is that the heritage park and associated works to renovate the building should be completed with the completion of Building B. The discussion during the roundtable was whether the completion of the park was required to bring the amenity of outlook and access to Building B to an acceptable level while awaiting the proposed completion of the later stages.

If the park were completed it would have a ground level impact that improves the amenity to units B308, B309 and B310 as well as the common dining space. The other ground level units would not have direct outlook onto this landscaped area. Upper level units would potentially have outlook to the east over the area earmarked for the park. The question is, what is an acceptable landscaped buffer for the amenity of Building B?

Another consideration in relation to the heritage park is the Birmingham Street frontage. A partial completion of the landscaping of the heritage park, in conjunction with completion of Building A and the associated local park to the west, could see a landscape frontage for the full extent of Birmingham Street up to the corner with Melbourne Street.

In the Committee's view, it is not necessary to complete the whole of the heritage park as part of the Building B proposal. A 10 metre wide buffer following the planning unit shown on the amended plans for Building B and 10 metre setback zone of landscaping along the Birmingham Street frontage (to the corner of Melbourne Road) would provide adequate amenity for the Building B stage of the development.

Reconfiguration of units B316 and B404

The reconfiguration of unit B316 would enable the external balcony space to have an improved outlook and better solar access. The Applicant's preferred permit conditions agreed to a redesign for this apartment.⁴³ The apartment immediately above (unit B404) has a similar plan with a recessed private open space. If the redesign of B316 is valid then, in the Committee's view, a similar redesign for B404 is warranted.

Setbacks on unit B402

Mr McGauran made recommendations to increase the setback of the southern portion of Building B from the northern portion. Mr McGauran made suggestions during the Building B roundtable about how a reconfiguration of apartment B402 and the adjacent corridor could assist in achieving this increased setback. In the Committee's view, while there may be an advantage in such a change in respect to better usage of the units, the proposed configuration with the balcony at the corner of unit B402 being 2.8 metres from the wall of the lower level units to the north would be acceptable. Sufficient and effective screening to the windows and balcony of B402 to prevent overlooking and protect the privacy of the units below must be provided. Given the southern aspect of unit B311 and the partial southern aspect of unit B310, the location of unit B402 would not have an unacceptable impact on daylight into these units.

Carpark entry and bicycle parking

There does not appear to be any advantage in setting the carpark door to the west elevation back from the wall alignment, as suggested by Mr McGauran. The removal of bicycle parking and the loading bay from the west side (also suggested by Mr McGauran) does not seem warranted as these elements would assist the amenity and function of Building B.

(iv) Findings

The Committee finds:

- the Village Green pathways and landscaping should be delivered as part of the Building B development, to the extent of the planning unit boundary on the amended plans (approximately 5 metres from the landscaped private open space areas of the ground floor units)
- provision should be made to enable external vehicle access including delivery and removalists vehicles to or near the south-east foyer, through partial construction of internal roadways or through designated external vehicle access through the car park
- the Building B development should include (and the Building B planning unit should be extended accordingly):
 - a 10 metre buffer including landscaping and pathways to the south-east and east boundaries
 - a 10 metre landscaped setback including pathways as required to the east of building line along Birmingham Street to the corner of Melbourne Street
- the design of units B316 and B404 should be reconfigured to remove recessed private open space and provide good quality private open space, privacy and daylight access to all units
- the design and location of units B402 is acceptable with the provision of effective privacy screening to balcony and windows

⁴³ Document 68

- all common areas, car parking spaces and all dwelling at ground level should be universally accessible from common area corridors and lobbies.

6.3 Heritage

The issue is whether the Building B development will have an unacceptable impact on the heritage place within overlay HO200 (the Ways and Works Building and its curtilage).

(i) Context

The proposed Building B planning unit has a portion to the east that overlaps with the boundary of HO200 – Spotswood Railway Workshops Complex (former). The remainder of the Building B planning unit is adjacent or near to the Heritage Overlay.

HO200 is a triangular section of land with the apex of the triangle at the corner of Birmingham Street and Melbourne Road. It currently contains the Ways and Works Workshop building and a number of mature trees. The citation for the overlay includes the following:⁴⁴

... the remaining buildings and mature trees are significant as examples of a custom designed building and related landscape setting that illustrate the high standard of Victorian Railways architectural and landscape practice during the interwar period under the direction of James Fawcett.

(ii) Submissions and evidence

Council submitted a Heritage Adviser's Report and the Applicant submitted heritage advice from GJM Heritage.⁴⁵ The Council Heritage Adviser's report raised the broad concern that the proposed development is an overdevelopment which would dominate the heritage building. The recommendations included:

- the proposal includes restoration of the existing Ways and Works building
- the listed trees are retained and incorporated into the overall design
- car parking is located underground
- the section of Building B fronting onto Birmingham Street is reduced to three storeys high with the third storey set back
- the proposed built form reflects the style and feature of the existing Ways and Works building
- the upper two levels of the southern element be deleted to achieve a design more sympathetic with the heritage setting.

The GJM Heritage Report submitted by the Applicant considered that the proposed development:

... appropriately considered the significance HO200 in form, design articulation, choice of materials and set back from the heritage building.

The landscape plan notes the removal of two trees within the Heritage Overlay (tree numbers 94 and 95) which have little or no arborist rating. Tree number 92 is rated as moderate, and is also proposed to be removed. The GJM Heritage Report assessed that a loss of a small number of established trees which had been assessed as having little or no arboricultural value was appropriate.

⁴⁴ The extract from the citation is included in Document 48 having been cited from Hobsons Bay Heritage Study – Volume 3 (2017)

⁴⁵ Documents 56 and 48 respectively

Council's without prejudice permit conditions referenced three conditions that could be related to heritage issues:

- a requirement that tree number 92 (as identified in the landscape plan) be retained
- a requirement that the heritage building be restored in association with landscape improvements
- the deletion of levels 6 and 7 in the southern element of Building B.

The Applicant's preferred permit conditions deleted all three conditions.

(iii) Discussion

The location of Tree 92 is on or near the north boundary with Birmingham Street and is at the western extremity of the Heritage Overlay triangle. Given its location and distance from the centre of the heritage place it can be argued that its removal would not have a significant impact.

The completion of the restoration of the heritage building and associated landscaping within this stage of the overall development would appear excessive given that the proposed Building B planning unit does not have an extensive interface with the heritage overlay compared to the intended staged sections for Building C1 and C2 (part of the BoL application). The Committee considers that it is more appropriate that it be included in future stages of the development.

The deletion of the upper two levels of the southern tower element of Building B have been discussed elsewhere in relation to overshadowing of the heritage park (which includes the Heritage Overlay area). The Committee considers that deletion of these two levels is not warranted. The southern section of Building B would be a substantial distance from the existing heritage building. The lower forms to the north will have a greater visual presence from within the Heritage Overlay. There is no case for the deletion of the upper two levels from a heritage position.

Importantly, the Committee considers the primacy of the Ways and Works Workshop heritage building and its setting at the corner of Birmingham Street and Melbourne Road is maintained by the generous setbacks and the visually distinct built form of Building B.

(iv) Findings

The Committee finds that:

- The removal of Tree 92 will not unacceptably impact the heritage values of the Ways and Works Building.
- The restoration of the heritage building and completion of associated landscaping to the heritage park is not required as part of the scope for Building B (other than as recommended in Chapter 6.2).
- The deletion of the upper two levels on the southern element of Building B is not warranted from a heritage perspective.

7 Reasons and recommendations

7.1 Coordinated development of Building A and Building B

The referral letter from the Minister for Planning requested the Committee to consider:

... the coordinated development of the Building A and Building B development stages and any conditions ...

The findings of the Committee consider both the individual merits of Building A and Building B and the coordinated developments of the two proposals. The findings of this report that relate to coordinated and staged development are:

- conditions should be applied on both permits to manage reverse amenity impacts from Buildings A and B on the SMF (Chapter 4.2)
- the cumulative traffic impacts of Building A and Building B on the road network are acceptable (Chapter 4.3)
- mandatory affordable housing contributions are not supported for either building (Chapter 4.4)
- findings in relation to the combined streetscape presentation of Building A and Building B, particularly in relation to street wall and landscaping (Chapters 5.1 and 6.1)
- triggers for the delivery of:
 - the local park located west of Building A (Chapter 5.1)
 - the heritage park located east of Building B (Chapter 6.2)
 - the shared path which extends along the entire Birmingham Street frontage of the larger site (Chapter 4.3)
 - The Crossways, being the shared vehicular access which runs from Birmingham Street and in between Building A and Building B (Chapter 4.3)
 - Park Street (and associated parking and landscaping), being the internal one-way street which runs parallel to the southern elevation of Building A and which provides access to visitor parking intended to serve Building A and Building B (Chapter 4.3)
 - the Crescent, the Boulevard and the Village Green, being the internal roads to the south-east and south-west of Building B (Chapter 6.2).

The Committee has also recommended cross-referenced and consistent permit conditions in Appendix D and Appendix E; but each permit can 'stand alone', and either could be issued without the other.

7.2 Reasons

Council summarised in submissions that while it was generally supportive of Building A (with some modifications), its concerns for Building B were insurmountable and justified refusal of a permit.

Council's overarching concern was the lack of an approved master plan for the larger site.

Council policy and the planning controls clearly indicate the site is ready for redevelopment. Yet the strategic work which Council submitted was necessary to guide the planning has not been prepared. This is despite the passage of time since the site was rezoned from industrial to residential, and despite similar strategic work completed on nearby SRAs. The Committee

appreciates Council may have lacked adequate resources to progress this work. That said, the Committee finds no basis in the Planning Scheme to refuse either proposal due to the lack of an approved master plan. As noted previously, the Committee makes findings on the merits of the Spotswood Yards Master Plan submitted with the applications, as there is no statutory requirement for the plan.

The roundtable parties generally agreed that reverse amenity impacts for both Building A and Building B can be appropriately managed. Parties agreed that acoustic impacts required management and that further acoustic assessment of the final design was required. The Committee recommends the permit conditions should be performance based. Odour impacts are unlikely to affect future occupants of Building A and Building B and the Committee finds further assessment is unnecessary.

Vehicle volumes on the surrounding network, both local streets and arterial roads, would increase when Building A and Building B are occupied. These levels can be accommodated by the existing network and the Committee finds that neither the individual nor joint occupation of Building A and Building B trigger the need for road upgrades.

State policy identifies Birmingham Street as a key bicycle route. The Committee concludes that development of Building A and Building B trigger the delivery of a paved shared path (to service both pedestrians and cyclists) extending along the entire Birmingham Street frontage of the larger site.

The site's physical, statutory and strategic context clearly calls for a redevelopment of more intensive form than exists on the opposite side of Birmingham Street. Policy guides a landscaping response that respects the existing character. In the Committee's opinion, Building A and Building B demonstrate a suitable response to context, both individually and collectively. Presentation of four storey apartment buildings with three storey street walls is a comfortable fit in the Birmingham Street streetscape. The landscape response includes a combination of (new and retained) mature trees, bushes and shrubs that are appropriate to the 'garden setting' of the site. The primacy of the Ways and Works heritage building and its setting at the corner of Birmingham Street and Melbourne Road is maintained by the generous setbacks to and the visually distinct built form of Building B.

Council raised concerns with the upper levels of the southern tower element of Building B, on grounds of building mass and shadow impact on the internal public spaces below. Shadows will fall partly over the public spaces, but these will primarily be used as thoroughfares rather than large open spaces to rest. The Committee finds these shadow impacts reasonable and commensurate with the nature of the public space.

Council expressed numerous concerns in relation to internal amenity in relation to both proposals, mostly strongly for Building B. Concerns related to light and air access to private and communal spaces, layout of dwellings and carparking areas and circulation spaces. The Committee finds that these can be suitably managed by conditions.

The Committee acknowledges the concerns raised by the objectors relating to built form and traffic. The Committee finds these impacts have been appropriately considered and can be managed by conditions of permits. Intensification on the subject site is clearly identified in the Planning Scheme. The proposals are (with some modifications) suitable in terms of visual bulk, and separately and collectively manage their mass to Birmingham Street appropriately. Both buildings have architectural expressions that sufficiently ameliorate this potential

impact. The Committee's recommendations in relation to the concurrent delivery of open spaces flanking Building A and Building B and the suitability of the landscaped front setbacks will help to settle the proposals into the Birmingham Street 'garden setting'. The local street network, including Birmingham Street, has sufficient capacity to absorb the expected increase in traffic flows without causing detrimental impact.

The Committee considers that proposals can be supported, and permits should issue. The key reasons for this finding are that, subject to conditions of permits, the proposals:

- receive strong State and local policy support
- are strategically located within a SRA (Precinct 17 of the ILMS)
- are proximate to key services of the Spotswood Activity Centre and Train Station and Newport Lakes Reserve
- suitably manage reverse amenity impacts to the SMF
- result in traffic volumes that can be accommodated on the existing network
- locate and provide access to car parking consistent with planning scheme provisions
- are of a similar scale to approved redevelopment on nearby former industrial sites that have also been identified for urban renewal
- appropriately transition in terms of height and bulk along Birmingham Street
- provide a landscape response that is appropriate to the site's garden setting
- sufficiently manage internal amenity impacts, with some modifications
- can be satisfactorily managed for staging of transport infrastructure and open space.

7.3 Recommendations

The Priority Projects Standing Advisory Committee recommends:

- 1. That the Minister for Planning support the Building A proposal and recommend to the Governor in Council that Hobsons Bay Permit Application 1945411 be issued, subject to the amended conditions in Appendix D.**
- 2. That the Minister for Planning support the Building B proposal and recommend to the Governor in Council that Hobsons Bay Permit Application 1945441 be issued, subject to the amended conditions in Appendix E.**

Appendix A Priority Projects SAC Terms of Reference

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



Richard Wynne MP
Minister for Planning

Date: 14 / 06 / 20

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: MBR043881



Dear Ms Mitchell

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL PROCEEDINGS P1278/2020 (BUILDING A)
AND P1751/2020 (BUILDING B), 571-589 MELBOURNE ROAD, SPOTSWOOD**

I refer to Victorian Civil and Administrative Tribunal (VCAT) proceeding P1278/2020 relating to the proposed use and development of land for the construction of a four-storey building comprising 58 dwellings with basement parking and vegetation removal and VCAT proceeding P1751/2020 relating to the proposed use and development of land for a 4–8-storey residential building, comprising 87 dwellings and removal of trees at 571-589 Melbourne Road, Spotswood. The projects were recommended to me for consideration for intervention by the Building Victoria's Recovery Taskforce.

On 30 July 2020, the applicant initiated VCAT proceeding P1278/2020 under section 79 of the *Planning and Environment Act 1987* after the Hobsons Bay City Council failed to determine the planning permit application within the prescribed timeframe. A compulsory conference was undertaken on 4 November 2020 and did not resolve the matter. The hearing of the appeal is scheduled to start at VCAT on 1 February 2021 for four days, with four parties to the proceeding.

On 21 September 2020, the council issued a notice of decision to refuse to grant a permit for Building B. The applicant initiated VCAT review proceeding P1751/2020 under section 77 of the *Planning and Environment Act*. A compulsory conference is scheduled for 22 February 2021. The hearing of the appeal is scheduled to commence at VCAT on 1 May 2021 for four days.

I have decided to call in these two VCAT review proceedings and I am referring the matters to the Priority Projects Standing Advisory Committee for advice and recommendations on whether planning permits should be issued and, if so, the appropriate permit conditions that should be imposed. The committee is to afford the opportunity to be heard to all parties to the VCAT proceedings.

In considering the above, I request that the committee consider and advise on:

- recommendations to ensure the coordinated development of the Building A and Building B development stages and any conditions, should the committee recommend a permit or permits be issued.

The cost of the advisory committee is to be met by the applicant, Vega One Pty Ltd.

If you have any questions, please contact Matt Cohen, Director, Priority Projects, Statutory Planning Services, Department of Environment, Land, Water and Planning, on 0409 346 522 or email matthew.cohen@delwp.vic.gov.au.

Yours sincerely



HON RICHARD WYNNE MP
Minister for Planning

28 / 12 / 2020

Appendix C Document list

No.	Date	Description	Provided by
1	28 12 20	Letter of Referral	Minister for Planning
2	12 01 21	VCAT file for proceeding P1278/2020 (Building A)	VCAT
3	"	VCAT file for proceeding P1751/2020 (Building B)	VCAT
4	18 01 21	Notification letter and Terms of Reference	Committee
5	21 01 21	Material provided by Council including: <ul style="list-style-type: none"> - Permit application material - Request for information - Request for information response - Referral comments - Objections - Application for review - Statement of Grounds - Council position Amended plans	Council
6	"	Building A material	Applicant
7	"	Building B material	"
8	"	Email advising non-attendance at Roundtable Discussion	DoT
9	22 01 21	Directions and Roundtable Agenda V1	Committee
10	25 01 21	Evidence Statement of Andrew	Applicant
11	"	Evidence Statement of J Bell	"
12	"	Evidence statement J Kiriakidis	"
13	27 01 21	Email advising attendance at Roundtable	VicTrack
14	"	Letter to Committee	"
15	"	Letter to Council dated 22 June 2020	"
16	"	Letter to Council dated 22 September 2020	"
17	"	Evidence Statement of Darren Tardio	Applicant
18	"	Roundtable Agenda V2	Committee
19	28 01 21	Evidence Statement of Terry Bellair	Applicant
20	"	Email correspondence to Committee	Better West Inc.
21	"	Applicant response to Committee correspondence dated 22 January 2021	Applicant
22	"	Email to Committee and parties	Council

No.	Date	Description	Provided by
23	"	Draft without prejudice permit conditions	"
24	"	Amended Pollution Abatement Notice	"
25	"	EPA response to Committee correspondence dated 22 January 2021	"
26	"	Email and response from Energy Safe Victoria to Committee correspondence dated 22 January 2021	"
27	"	Email and response (with maps) from Energy Safe Victoria to Committee correspondence dated 22 January 2021	"
28	01 02 21	Submission	Better West Inc.
29	"	Submission	Council
30	"	Submission	Applicant
31	"	Technical Note – P Greenup	"
32	"	SMF Permit	"
33	"	Response to draft without prejudice permit conditions (mark up of document 23)	"
34	12/02/21	Building B - Extension request to lodge evidence of Mr Bellair	Applicant
35	"	Building B - Response to document 34 and extension request to lodge evidence of Mr McGauran	Council
36	15/02/21	Building B – Expert Evidence of Robert Galbraith	Applicant
37	"	Building B – Expert Evidence of Darren Tardio	"
38	"	Building B – Expert Evidence of John Kiriakidis	"
39	"	Building B – Expert Evidence of Lindsay Richardson	"
40	"	Building B – Expert Evidence of Andrew Biacsi	"
41	"	Building B – Expert Evidence of Mark Sheppard	"
42	"	Building B – Landscape plan prepared by Tract Consultants	"
43	"	Building B – ARUP Technical Note, dated 12 February 2021	"
44	"	Building B – Publicly accessible open space plan, prepared by CHT Architects	"
45	"	Building B – Technical note prepared by Public Place, dated 20 January 2021	"
46	"	Building B - Architectural perspectives prepared by CHT Architects	"
47	"	Building B - Email in response to Committee Direction 2(b)	"

No.	Date	Description	Provided by
48	“	Building B – GJM Heritage letter	Applicant
49	“	Building B – Letter in response to Committee directions	Council
50	“	Building B – EPA response to balance of land application dated 10 February 2021	Council
51	“	Building B – Hobsons Bay Strategic Bicycle Plan	“
52	“	Building B – Ross Leo's expert acoustic evidence for Council - Building B	“
53	17/02/21	Building B – Expert Evidence of Terry Bellair	Applicant
54	“	Building B – Odour Assessment of Graeme Ross	“
55	“	Building B – Email chain with Council regarding Direction 2(a)	PPV
56	“	Building B – Referral response of Ms Gasparetto – Heritage	Council
57	“	Building B – Letter to Committee and Parties regarding the late filing of evidence	“
58	18/02/21	Building B – Letter – Expert evidence and changes to Agenda	“
59	“	Building B – Expert witness statement of Rob McGauran	“
60	“	Applicant's without prejudice draft permit conditions for Building A – Marked up by Council	“
61	“	Without prejudice draft permit conditions for Building B – served on 18 Feb 2021	“
62	“	Building B – Roundtable Agenda V2	Committee
63	22/02/21	Building B – Submissions	Applicant
64	“	Building B – Submissions	Council
65	“	Building B - Renzo Tonin Associates report dated 23 August 2019	“
66	“	Building B – Without prejudice draft permit conditions – Council comments	“
67	24/02/21	Building B – Proposed staging permit conditions	“
68	“	Building B – Without prejudice draft permit conditions – Applicant comments	Applicant
69	“	Building B – Proposed staging permit conditions	“
70	03/02/21	Building B – Roundtable Agenda V2	Committee

Appendix D Recommended permit conditions for Building A

Note: The Committee has used the version of the conditions provided by the Applicant (Document 13 and Document 67) and has included those conditions it has accepted provided by the Applicant and other changes as recommended by the Committee.

[Tracked Added](#)

~~Tracked Deleted~~

Draft Permit Preamble

Construction of two or more dwellings on a lot and the construction of front fencing exceeding a height of 1.5m within 3 metres of a street, ~~and the removal of trees.~~

Draft Conditions

- 1) Before the development starts, three copies of revised plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit.

The plans must be substantially in accordance with the plans [prepared by CHT Architects](#) dated 9/12/2020, but modified to show to the satisfaction of the Responsible Authority:

- a) Confirmation of the distance of the proposed site boundary from Melbourne Road and the eastern boundary of Lot 1 on Plan of Subdivision 633558.
- b) A minimum [1m](#) ~~3m~~ wide landscape setback between the southern building façade and the footpath [of Park Street](#).
- c) The planning unit of Building A extended 3m further south (in accord with Condition 1(d)) and expanded to include the eastern crossover, entry road and associated landscaping on both sides of the accessway.
- d) The planning unit of Building A extended to include the triangular wedge of land west of Building A up to the western title boundary of Lot 1 on Plan of Subdivision 633558 as an open space area, suitably landscaped.
- e) The [ground floor](#) ~~building height~~ lowered to a maximum RL14.6.

~~Deletion of the perforated bi-fold screens on Level 2 and the associated frame extending to balustrade height at Level 3.~~

- f) Provision of planters or other screening measure on the Level 3 balconies in accordance with Standard B22 of Clause ~~55~~54.04-6 of the Hobsons Bay Planning Scheme to limit overlooking of private open space on Level 2.
- ~~A 1:20 gradient into the primary entry from Birmingham Street.~~
- g) Front fencing within 1 metres of the northern title boundary no higher than 1200mm above the finished footpath level.
- ~~At least 50% of the front setback area at ground level between the building and front boundary made available for deep soil planting and landscaping.~~
- h) Public realm works as follows, all to the satisfaction of the Responsible Authority:
- i) Provision of pedestrian connections to Cullen Street and Arras Street including pram ramps and footpaths.
 - ii) Modifications to the Birmingham Street road reserve, based on a revised cross section which provides for main route cycling infrastructure taking into account the views of the Department of Transport, to include:
 - ~~The existing road pavement widened to 7.6m by moving the southern kerb line south to accommodate two way traffic and parking on the south side of Birmingham Street.~~
 - A minimum 2500mm paved shared path along the length of Birmingham Street between Melbourne Road and Hick Street ~~with a 300mm wide landscape strip between the shared path and site boundary and an 850mm wide nature strip between the shared path and the kerb line to prevent dooring to the satisfaction of the Responsible Authority.~~
- i) Detailed design of the communal terraces including hard and soft landscaping to visually shield these areas from the industrial interface.
- j) All common corridors a minimum 1500mm wide and a minimum 1800mm wide at entry thresholds.
- k) The ground floor eastern common corridor extended through to the eastern common open space area and provided with operable glazing by revising Unit AG15.
- l) The western end of the ground floor amended to provide an enhanced lobby zone and connection to the bike store. Operable glazing to be provided at the western end of the corridor.

- m) Indentation of the stairwells at all levels to widen the hallway areas at the eastern and western ends of the building to enhance the public realm and create visual interest.
- n) Operable glazing at the western end of the hallway and communal area on Level 1 to provide an enhanced arrival lobby.
- o) Unit A104 modified to provide for an extension of the eastern common corridor to the building edge including the provision of operable glazing.
- p) Unit A212 modified to locate the entry in line with the eastern wall of A211 to provide for an extension of the eastern common corridor including the provision of south facing operable glazing (to the common corridor east section of Unit A213).
- q) Unit A311 modified to allow for the extension of the eastern common corridor by at least 1m beyond the eastern wall of A312 and the provision of south-facing operable glazing to the common corridor (east of Unit A312).
- r) Removal of development footprint on Levels 2 and 3 corresponding to the midblock void at Level 1 to provide a central break in form.
- s) All common doorways to have a minimum 'clear' opening of 850mm.
~~Provision of a parcel delivery area within the building.~~
- t) Amended layouts of Townhouse Type 1, Apartment Types A1, A2-1, A2-2, A2-3, A2-4, A3-1 and A3-4 to quarantine the primary living areas from incursion for the operation of adjoining kitchen and laundry areas and circulation between the entry and habitable rooms and connecting stairs.
- u) The layouts of kitchens to all dwellings including the location of the refrigerator, sink, cooking areas and storage illustrating fitness for purpose for the expected number of residents.
- v) Demonstration that apartments can be furnished to accommodate the expected number of residents (e.g. three-bedroom dwellings should have seating for up to 6 people, etc.).
- w) Show glazing to all dwellings by type (e.g. sliding doors, operable windows, etc.)
- x) Project the balconies to Unit Type A1-1 beyond the façade at the Levels 1, 2 and 3 and project the adjoining habitable room windows to improve daylight into new

habitable room windows and achieve compliance with B27 of Clause 55.05-3 of the Hobsons Bay Planning Scheme.

- y) The development to meet the objectives of Clause [55.07-15](#) ~~58.07-4~~ of the Hobsons Bay Planning Scheme with respect to cross ventilation of dwellings.
- z) A schedule of all external colours, materials and finishes and a samples board. The schedule must show the materials, colour and finish of all external walls, roofs, fascias, window and door frames, glazing, car park entry doors, balustrades, fencing and paving.
- aa) Detailed design of any service cupboards or utility metres that are visible from public areas (including the booster cupboard at the apartment entry) to achieve a high quality appearance.
- bb) Treatment of the 'gallery' wall adjacent the stair to increase visibility of the stairs to encourage the use of stairs over elevators.
- cc) A notation that all basic services, including water, electricity, gas, sewerage and telephone will be installed underground.
- dd) Any air conditioner condenser units on the balconies screened from public view.
- 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) The positioning of all plant and equipment that are proposed to be located externally treated as part of the overall design (including but not limited to lift overruns, service entries, communication devices and other technical attachments, air conditioning units, heating units, hot water systems, etc.). Such plant and equipment must be positioned to prevent unreasonable noise and visual impact.
- gg) A fully resolved landscape scheme for all communal and private areas, [generally in accordance with the Tract Landscape Plan dated 9 December 2020](#), to include:
 - i) The location of all proposed species and retention of tree number [123 and 144](#) [as referenced in](#) ~~shown on~~ the Tract [Consultants](#) Landscape Plan dated [9 December 2020](#) ~~28/04/2020~~.

- ii) The type, location, quantity, height at planting, height at maturity and botanical names of all proposed plants. Any trees installed to be a minimum 1.8m height at time of planting.
- iii) Planter details, including soil profile and irrigation systems.
- iv) Specify the location of all areas to be covered by lawn, paving or other surface materials.
- v) A specification of works to be undertaken prior to planting.
- vi) Plant selection to consider species that positively contribute to urban biodiversity outcomes (i.e. local indigenous species of all vegetation strata including trees, understorey and ground plants).
- vii) Clear definition of terraced spaces, retaining walls, seating elements and other structures independent of paving treatments.
- viii) Water sensitive urban design (WSUD) features.
- ix) A management plan, including irrigation and stormwater re-use.
- x) Details of irrigation and drainage of planting and open space areas.

~~Confirmation by a notation on the development plans that it incorporates the principles of universal design and complies with Australian Standard 1428-2009 (Design for Access and Mobility) and includes the following measures:~~

~~A continuous accessible path of travel from the footpath into the main residential entry, into the lift and to the front door of apartments.~~

~~The lift meets the required building standards and incorporates sufficient space for a person using a mobility aid.~~

~~All apartments nominated as accessible to have internal doors and hallways to be provided with a minimum clearing opening width of 850mm, with a minimum corridor/passageway width of 1000mm.~~

~~All apartments nominated as accessible to have reinforced walls for all toilets and bathrooms are included to allow grab rails to be installed if needed, with additional circulation spaces in the bathrooms areas to increase accessibility.~~

~~Provide universal design fittings throughout the building, such as handles, light fittings, doors and windows.~~

~~The internal access stairway to be a minimum 1m wide and have a continuous handrail on one side.~~

hh) Traffic engineering requirements as follows:

- i) A notation that says 'Keep clear' line marking treatments will be provided at the Melbourne Road/Birmingham Street/McLister Street intersection if dwellings are occupied before the signalised intersection is operational.
- ii) A notation that says right turn out movements will be banned until such time as the proposed signals at the Melbourne Road/Birmingham Street/McLister Street intersection are operational.
- iii) Longitudinal and cross-section plans of the entrance to the car park, parking areas and ramps.
- iv) Headroom clearances including a minimum height clearance of 2.2m within all car park levels and along all ramps in accordance with AS2890.1:2004.
- v) Headroom clearance of 2.5m above the waste loading area to accommodate the operational height of the waste truck.
- vi) A 300mm clearance provided adjacent to standard car spaces near walls.
- vii) Columns located 0.25m – 1.25m from the aisle end of car spaces in accordance with Design Standard 2 in Clause 52.06.
- viii) Provision of wheel stops to minimise damage to walls in the car park.
- ix) Provision of appropriate lighting, line marking, directional arrows and signage within the car park and entrances, and priority line markings at either ends of the proposed internal road.
- x) A detector loop with a flashing light system installed. Priority to be given for vehicles entering the basement.
- xi) A pedestrian sight triangle measuring 2.5m (along the driveway edge) by 2.0m (along the property line) clear of any objects or vegetation greater than 600mm in height on the departure side of the driveway.
- xii) A concept plan for the proposed internal road ([Park Street](#)) and connection to Birmingham Street including traffic calming devices to minimise speeds through the internal road.

- xiii) Provision of at least one accessible parking space within the basement located close to the lifts.
 - xiv) The location of the proposed access door/security gate and confirmation that a remote opening gate is to be provided to the basement parking area.
 - xv) Provision of at least one accessible parking bay in close proximity to the apartment entrance.
- ii) The BESS assessment and Sustainability Management Plan adjusted to reflect the following:
- i) Fully address the no/low VOC objective of Clause 22.13. The table of thresholds as in the Green Star Guidelines must be included in the SMP.
 - ii) The preliminary NatHERS reports for each unique thermal group must be submitted based on the current design. The thermal groupings must be clearly identified (graphically and colour coded) and discrepancies addressed. The results must confirm that cooling loads are less than 22MJ/sqm for each dwelling.
 - iii) The location of the facilities for management of food and organic waste must be shown on the plans and/or the credit removed from BESS.
 - ~~A precinct-wide Water Sensitive Urban Design (WSUD) strategy must be submitted.~~
 - iv) A WSUD plan and updated supporting STORM report for Building A showing all impervious areas and respective treatment systems. STORM and the landscape plan to correlate.
 - v) A tap and drain to every balcony must be noted in the SMP.
 - vi) BESS must be recalculated to accommodate any changes to paved areas and loss of green spaces.
 - vii) Changes must be clouded in any re-submission.
 - viii) The SDA report must be cross referenced clearly and prominently near the ESD notes on the plans.
 - ix) The SDA notes on the architectural plans must state a tap and drain is provided to every townhouse courtyard.
 - x) The water efficient garden connected to the rainwater tank must be shown on the landscape plan. All water efficient garden areas must be clearly marked on the plans and annotated with area calculations as nominated in BESS.

~~The raingarden construction details must be included in the landscape plans or the SMP.~~

~~To enable an assessment of the effectiveness of canopy trees in addressing urban ecology, the landscape plan needs to include a coding system in the plant schedule to identify each species and location.~~

jj) Provision of any acoustic treatments to the proposed dwellings, as may be recommended in the acoustic engineer's report referred to in Conditions 11) and 12) of this permit including the design modified so as to have hinged doors to bedrooms facing the SMF.

kk) An updated Green Travel Plan.

- 2) The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
- 3) Prior to the occupation of any dwelling, all buildings and works specified in the permit must be completed to the satisfaction of the Responsible Authority.

Public realm works

- 4) Prior to the commencement of the development, or other date agreed to by the Responsible Authority, detailed construction plans to the satisfaction of the Council must be submitted for approval. The plans must be drawn to scale and show all pavements, landscaping, drainage, public lighting (if required) and location of services associated with:
 - a) the construction of footpath extensions to Cullen Street and Arras Street including pram ramps and footpaths, and
 - b) ~~the~~ Birmingham Street road reserve works in accordance with the cross section endorsed in Condition 1)h)ii) ~~by moving the southern kerb line south (i.e. widened road pavement to accommodate two-way access and parking on one side of the street, a shared path, nature strips and landscaping).~~

All works must be constructed at the cost of the owner to the satisfaction of the Responsible Authority prior to the occupation of any dwelling approved under this permit,

or other date agreed to by the Responsible Authority. Alternatively, the Responsible Authority may accept a bond or bank guarantee in lieu of completion of civil works.

Staging

- 5) Park Street including car parking, accessways and landscaping and The Crossways must be constructed in accordance with the endorsed plans prior to the occupation of Building A or Building B (if approved), whichever is earlier, and maintained to the satisfaction of the Responsible Authority.
- 6) Concurrently with the submission of plans in accordance with Condition 1, a staging plan must be submitted to the Responsible Authority which clearly details the staging of the proposed development of the whole of the land in Lot 1 on Plan of Subdivision 633558 ~~and associated infrastructure~~ and the proposed timeframes for the development of each stage including but not limited to:
- a) ~~the timing of infrastructure works specified to be included in the staging plan.~~
 - b) ~~built form~~ the timing of the delivery of buildings and works,
 - c) landscaping and ~~public~~ open space,
 - d) Water Sensitive Urban Design initiatives as relevant to each stage,
 - e) all civil works within and external to the site as relevant to each stage,
 - f) ~~all~~ any interim measures to provide acoustic protection (including temporary acoustic barriers and design treatment) and the proposed staging/timing ~~program~~ for removal of any interim acoustic barriers relative to the later stages of construction,
 - g) ~~all~~ any interim measures to provide access for construction or other vehicle traffic proposed,
 - h) construction of Park Street including car parking, accessways and landscaping and The Crossways prior to the occupation of Building A or Building B (if approved), whichever is the earlier,
 - i) construction of the triangular shaped open space area ('local park') west of Building A prior to the occupation of Building A

all to the satisfaction of Council.

~~In respect of Building A, the staging plan must also show the following with full details:~~

~~the staging and sequencing of the development of the whole of the land described as Lot 1 on Plan of Subdivision 633558, the triangular shaped open space area (local park) west of Building A included as part of the Building A planning unit and constructed prior to the occupation of Building A, construction of Park Street including car parking, accessways and landscaping and The Crossways prior to the occupation of Building A, all to the satisfaction of Council.~~

After the staging plan is approved it will be endorsed and will then form part of this permit. The endorsed staging plan must be adhered to during the construction of all buildings and the carrying out of all works including interim measures described in the endorsed staging plan, unless otherwise consented to in writing by the Responsible Authority.

~~Before the development of Building A starts, detailed plans of the proposed stages referred to in Condition XX b) and c) must be submitted to the Responsible Authority for approval and be to the satisfaction of the Responsible Authority. The plans must be dimensioned and include details of all road and footpath pavements, any services, drainage details, hard and soft landscaping, public lighting and street furniture. When approved, the plans will form part of this permit.~~

Landscaping works completed prior to occupation

- 7) Prior to the occupation of any dwelling, landscaping works as shown on the endorsed plans must be completed and thereafter must be maintained to the satisfaction of the Responsible Authority and any dead, diseased or damaged plants replaced in accordance with the landscaping plan to the satisfaction of the Responsible Authority.

Landscape bond

- 8) Concurrently with a request for endorsed plans under this permit, the owner must lodge a bank guarantee or bond of \$30,000 with the Responsible Authority to ensure the satisfactory establishment of landscaping works. Once landscaping has been completed in accordance with the endorsed landscaping plan, Council must be notified so a six month establishment period will commence. The bank guarantee or bond will be

returned after an inspection has confirmed the landscaping has been 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.

Tree management plan

- 9) Before the development commences, a Tree Management Plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified Arborist and must be submitted to and approved by the Responsible Authority. When approved the Tree Management Plan will be endorsed and will form part of this permit.

The Tree Management Plan must make recommendations for the protection of the existing trees [number 123 and number 144](#) (~~Number 144 as referenced~~ in the Landscape Plan by Tract Consultants [dated 9 December 2020](#) ~~28/04/2020~~) to be retained pre-construction, during construction and post construction. The Tree Management Plan must include requirements for a Tree Protection Zone and specify that prior to any works commencing, a Tree Protection Zone (TPZ) and a non-destructive dig (NDD) must occur to identify roots present. The Tree Management Plan must specify whether any pruning is required and include watering and maintenance regimes.

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

- 10) The Tree Protection Zone fence must remain in place until all construction is completed. No excavation is allowed within the Tree Protection Zone except with the consent of the Responsible Authority and under the supervision of a suitably qualified Arborist

Acoustic report

~~An acoustic report prepared by a suitably qualified acoustic consultant must be submitted demonstrating that the development has been designed such that noise levels received at the dwellings from existing industrie(s) including the Spotswood Maintenance Centre~~

~~comply with the requirements of State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1). The assessment of noise emanating from existing industrie(s) including the Spotswood Maintenance Centre must include a comprehensive assessment of the activities — both current and reasonably foreseen planned future activities.~~

~~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, and thereafter maintained at all times to the satisfaction of the Responsible Authority.~~

~~Before the development is occupied, a further acoustic report prepared by a suitably qualified acoustic engineer to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The report must confirm the required level of noise attenuation has been achieved for those matters identified within the report. This includes:~~

- ~~- Confirmation of compliance with relevant conditions of the permit; and~~
- ~~Provision of measurement data demonstrating compliance with State Environment Protection Policy (Control of noise from industry, commerce and trade) No. N-1 (SEPP N-1), and any other relevant requirement.~~
- ~~Details of any remedial building treatments or works designed to achieve compliance with the above requirements.~~

- 11) Concurrently with the submission of amended plans in accordance with Condition 1, an Acoustic Report prepared by a suitably qualified acoustic engineer and to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit.

The acoustic report must:

- a) Confirm that the development has been designed such that industrial noise received at new residential or other noise-sensitive uses complies with 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 development is such that it is not practical or reasonable to undertake an outdoor measurement of the industrial noise level, the measurement point for a noise sensitive area must be indoors in accordance with SEPP N-1 Schedule A1, 4. The indoor adjustment (Schedule A2, 4, (d)) should not be greater than 15 dB. The assessment shall be undertaken on the assumption that noise emanating from the Spotswood Maintenance Facility is compliant with SEPP N-1 at existing dwellings on Birmingham Street.
- b) Confirm that the development is designed such that maximum airborne noise from the Spotswood Maintenance Facility received at new residential or other noise sensitive uses achieves a noise level of 55 dB LAmax in bedrooms and a noise level of 60 dB LAmax in living areas. These noise levels are to be measured internally near the centre of habitable rooms, with the doors, windows and ventilation closed.

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.

~~Any remedial building treatments or works designed to achieve compliance with the above acoustic requirements must be installed and maintained at all times to the satisfaction of the Responsible Authority.~~

- 12) Before the development is occupied, an acoustic report prepared by a suitably qualified acoustic engineer to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The report must confirm the required level of noise attenuation has been achieved as identified within the approved acoustic report approved in Condition 11). The report must also include details of any remedial building treatments or works designed to achieve compliance with the above requirements.

Any buildings or works required to achieve compliance with the acoustic report must be installed and maintained at all times to the satisfaction of the Responsible Authority.

- 13) The details of the design of any acoustic treatments external to the building recommended in the acoustic engineer's report referred to in Conditions 11) and 12) of this permit must be to the satisfaction of the responsible authority.

~~Concurrently with the submission of amended plans in accordance with Condition 1, an Acoustic Report prepared by a suitably qualified acoustic engineer and to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must be generally in accordance with the Acoustic Report prepared by Arup titled 571-589 Melbourne Road, Building A – Acoustic Report (job number 259541-00) revision 3 dated 23 April 2020, but modified as follows:~~

~~The report updated to reflect the correct SEPP N-1 noise limits at existing residences to the north.~~

~~The report updated to include an assessment of noise from individual items such as balcony condensers, kitchen exhaust fans etc. considering Section 48A of the Environment Protection Act (1970) and Environmental Protection (Residential Noise) Regulations 2018.~~

~~The traffic noise assessment either updated to consider the “near minor roads” criteria of AS2107 or be included in the Clause 55.07-6 assessment.~~

~~The dwellings designed and constructed to achieve internal maximum noise levels of 55 dBA, L_{max} in bedrooms and 60 dBA, L_{max} in living areas.~~

~~The dwellings designed and constructed to achieve internal noise levels no greater than 35dB(A), L_{Aeq} for bedrooms and no greater than 40dB(A), L_{Aeq} for living areas.~~

~~The report to incorporate proposed glazing to have a sound insulation performance of at least 40 dB Rw+Ctr.~~

~~The design modified so as to have hinged doors to bedrooms facing the SME~~

~~Any measures or treatments recommended in the Acoustic Reports must be incorporated into the amended plans referred to in Condition 1 of this permit to the satisfaction of the~~

~~Responsible Authority, and thereafter maintained at all times to the satisfaction of the Responsible Authority.~~

~~Before the development is occupied, a further acoustic report prepared by a suitably qualified acoustic engineer to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The report must confirm the required level of noise attenuation has been achieved for those matters identified within the report. The report must also:~~

~~Confirm compliance with relevant conditions of the permit; and~~

~~Include details of any remedial building treatments or works designed to achieve compliance with the above requirements.~~

~~Any remedial building treatments or works designed to achieve compliance with the above acoustic requirements must be installed and maintained at all times to the satisfaction of the Responsible Authority.~~

Affordable housing

~~Prior to the commencement of the development, or other date agreed to by the Responsible Authority, the owner of the land must enter into an agreement with the Hobsons Bay City Council (Council) under section 173 of the Planning and Environment Act 1987 for the provision of not less than 10% affordable housing within the development in accordance with the Hobsons Bay Affordable Housing Policy Statement 2016.~~

~~The owner is responsible for all costs associated with the preparation, execution and recording of the Agreement on the land title, including those incurred by the Responsible Authority.~~

~~The Agreement must be recorded on the title to the land pursuant to Section 181 of the Planning and Environment Act 1987.~~

Environmental audit

- 14) Prior to the commencement of development approved under this permit, excluding demolition and works associated with the environmental audit, 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. A statement must state that the site is suitable for the use and development allowed by this permit.

All conditions contained within the Statement or Certificate and the Environmental Audit report leading to it must be complied with to the satisfaction of the Responsible Authority. Written confirmation that the audit related 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 which 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 pay all costs including the Responsible Authority's costs associated with the preparation, execution, recording and, if sought later, amendment or ending of the Agreement on the land title.

Construction Management Plan

- 15) Prior to the commencement of the development authorised under this permit, the owner must submit a Construction Management Plan to the Responsible Authority for

approval. Once approved, the Construction Management Plan will be endorsed to form part of this permit and must be implemented to the satisfaction of the Responsible Authority. The plan must be to the satisfaction of the Responsible Authority and must provide details of the following:

- a) Hours for the construction activity to accord with Condition 18) of this permit.
- b) Measures to control the escape of noise, dust, litter, water and sediment laden runoff from the site.
- c) Measures to control mud, crushed rock or other debris being carried onto public roads or footpaths from the site.
- d) Details of protection works and traffic control measures for surrounding streets.
- e) Retention of public access to public roads and footpaths. Any drawings contained in the plan must include notations that such access will be retained.
- f) Access routes for construction vehicles.
- g) The location and design of a vehicle wash down bay for construction vehicles on the site, if required.
- h) Details of measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan.
- i) Contact details of key construction site staff including after-hours contact numbers.
- j) The location of any portable site offices and amenities.
- k) An indicative timetable for staging of works.
- l) Details of temporary fencing and site security. The temporary fencing must be maintained for the duration of the construction, be a minimum height of 1.8m (or such alternative height as is approved in writing by the Responsible Authority). The plan must specify that the gate or opening to the fence will be securely locked at all times when work is not being actively carried out on the site.
- m) The location of parking areas for construction vehicles and construction workers vehicles, to ensure that vehicles associated with demolition and/or construction activity cause minimal disruption to surrounding land uses and traffic flows. The basement car park on the land must be made available without delay for use by subcontractors/tradespersons upon completion of that area.
- n) Number of workers expected to work on the site any one time.

- o) Any other relevant matters.
- 16) All activities associated with the construction of buildings or works allowed 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.
- 17) The construction of buildings or works must not result in any unreasonable nuisance or annoyance to an occupier of a nearby residence or otherwise unreasonably ~~adversely~~ affect the amenity of the surrounding area.
- 18) Except with the written consent of the Responsible Authority demolition of existing buildings or the construction of buildings or works must only be carried out between: 7am – 6pm Monday to Friday and Saturday 9am – 6pm. No work is to be carried out on Sundays or public holidays.
- 19) 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 demolition of existing buildings or the construction of buildings or works must not have an adverse impact on existing or future air quality.

Sustainable Design Assessment

- 20) All works must be undertaken in accordance with the endorsed Sustainability Management Plan report to the satisfaction of the Responsible Authority. No alterations to the Sustainability Management Plan report may occur without the written consent of the Responsible Authority.
- 21) Prior to the occupation of any development approved under this permit, a report from the author of the Sustainability Management Plan approved under this permit, or similarly qualified person or company must be submitted to the Responsible Authority.

The report must be to the satisfaction of the Responsible Authority and must confirm that all measures have been implemented in accordance with the approved Sustainability Management Plan.

Waste Management Plan

- 22) [Concurrently with the submission of amended plans in accordance with Condition 1, a Waste Management Plan prepared by a suitably qualified person and to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Waste Management Plan will be endorsed and will form part of this permit. The Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Leigh Design dated 12 December 2019 but modified to reflect any changes required under condition 1 of the permit.](#)

- 23) All waste collection must be undertaken in accordance with the endorsed Waste Management Plan to the satisfaction of the Responsible Authority. No alterations to the Waste Management Plan may occur without the written consent of the Responsible Authority.

Green Travel Plan

- 24) The initiatives outlined in the endorsed Green Travel Plan must be implemented to the satisfaction of the Responsible Authority and thereafter complied with to the satisfaction of the Responsible Authority. No alterations to the Green Travel Plan may occur without the written consent of the Responsible Authority.

Architect supervision

- 25) 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.

Car parking and access lanes

- 26) 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, maintained and line-marked to indicate each car space and all access lanes.

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

Engineering

- 27) The site must be connected to a legal point of drainage discharge to the satisfaction of the Responsible Authority.
- 28) Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council's infrastructure resulting from the development must be reinstated:
- a) at the permit holder's cost; and
 - b) to the satisfaction of the Responsible Authority.
- 29) The quality of the water discharged is to be in accordance with the Hobsons Bay Planning Scheme Clause 55.03-4, Standard B9.
- 30) Prior to commencement of the development the owner must prepare stormwater drainage design plans to the satisfaction of Hobsons Bay City Council Development Engineer. The volume of water discharging from the development in a 20% AEP storm must not exceed the peak flow experienced in a 20% AEP storm prior to development. The peak flow must be controlled by the use of retardation basins or approved retardation systems located on the subject site to the requirements and satisfaction of the Responsible Authority. The storage system must have a storage capacity of a 10% AEP.

- 31) A drainage management strategy detailing catchments both internal and external to the development, 1 % AEP flow paths and flow volumes for the entire development (Lot B) must be submitted.
- 32) Underground drainage must be provided and any other drainage works necessary for the transmission of drainage as required to the outfall also must be provided.
- 33) All drainage works must be designed to meet the current best practice performance objectives for stormwater quality as contained in the Urban Stormwater – Best Practice Environmental Management Guidelines (1999).
- 34) All existing conditions affected by the development works must be reinstated at no cost and to the satisfaction of the Responsible Authority.
- 35) 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.
- 36) The owner must meet the costs of all alterations to and reinstatement of, the Responsible Authority and other Public Authority Assets deemed necessary and required by such Authorities for the development. The owner must obtain the prior specific written consent of the Council or other relevant Authority to such alterations and reinstatements and must comply with conditions required by the said Authority in relation to the execution of such works.
- 37) All basic services, including water, electricity, gas, sewerage, telephone and other telecommunication facilities must be installed underground and located to the satisfaction of the Responsible Authority.

- 38) The entire development site must be connected to the existing underground drainage and sewerage systems to the satisfaction of the Responsible Authority.
- 39) No plant, equipment, services and architectural features (other than those shown on the endorsed plan) are permitted above the roof level of the building without the prior written consent of the Responsible Authority.
- 40) All service pipes, (excluding downpipes), fixtures and fittings servicing the building must be concealed on exposed elevations to the satisfaction of the Responsible Authority.
- 41) Any plant, equipment or domestic services visible from the Birmingham Street frontage must be located and visually screened to the satisfaction of the Responsible Authority.

Transport for Victoria

- 42) Prior to the occupation of the development, a report prepared by a suitability qualified acoustic engineer must be submitted to the Head, Transport for Victoria and the Responsible Authority. The report must be at no cost to and to the satisfaction of ~~The the~~ Head, Transport for Victoria and the Responsible Authority and must confirm that all the measures specified in the Acoustic Assessment prepared in accordance with Condition 11) and Condition 12) have been implemented. ~~by Vega One Pty Ltd (571-589 Melbourne Road) Building A, Acoustic Report (13 December 2019) have been implemented in accordance with the Acoustic Assessment.~~
- 43) No lighting is to be erected (permanent or temporary) that spills light onto the railway tracks or which interferes with the visibility of signals and rail lines by train drivers.
- 44) Building materials (including glass/window treatments) along the rail corridor must be non-reflective and avoid red and green colour schemes that may interfere with driver operations.
- 45) No drainage, effluent, waste, soil or other materials must enter or be directed to railway land or stored or deposited on railway land.

Vic Roads

- 46) Before the development commences (excluding demolition), or other time agreed to in writing with Head, Transport for Victoria, amended plans are to be submitted to The Head, Transport for Victoria and once approved, can be endorsed by the Responsible Authority, upon which the plans will form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. These plans must be generally in accordance with the plans submitted to Head, Transport for Victoria with the application but are to be modified to show:
- a) The installation of “No Right Turn” sign/s prohibiting right turn vehicular movements from Birmingham Road onto Melbourne Road.

The prohibition of right turn movements into Melbourne Road from Birmingham Road referred in this condition (above) to remain in place until such time as traffic signals are installed and operational at this intersection.

APA

- 47) Prior to the development and/or use commencing, a risk assessment workshop, must be conducted with the pipeline licensee/operator and its recommendations/actions must be implemented to the satisfaction of the pipeline licensee/operator (APA VTS Australia (Operations) Pty Ltd).
- 48) Buildings, structures, roadway, pavement, pipeline, cable, fence or any other improvement on or under the land within the gas transmission pipeline easement or where there is no pipeline easement within three metres of the gas transmission pipeline must not be constructed without prior consent in writing from the pipeline licensee/operator (APA VTS Australia (Operations) Pty Ltd). No structure or vegetation will be permitted on the easement that prohibits maintenance of line of sight along the pipeline easement.
- 49) Prior to the development commencing for any stage which includes the gas transmission pipeline, landscape plans depicting any planned landscaping, including the planting of vegetation, species details, surface treatments, furniture, structures or improvements on

or immediately abutting the gas transmission pipeline easement or where there is no easement within 3 metres of the gas pipeline must be submitted to and approved by the Responsible Authority. The Responsible Authority will seek the view of the pipeline licensee / operator (APA VTS Australia (Operations) Pty Ltd) in this matter.

- 50) Prior to the commencement of any works within the gas transmission pipeline easement or where there is no easement within 3 metres of the gas transmission pipeline, the proponent must enter a Third Party Works Authorisation agreement with the pipeline licensee/operator (APA VTS Australia (Operations) Pty Ltd). Works within the easement must comply with any conditions attached to a third party works approval.
- 51) All plans which include the area of the gas pipeline must have the pipeline clearly identified with hatching 3m either side of the pipeline. The area must also be clearly labelled as *'high pressure gas pipeline right of way – no works to occur without the prior authorisation of the pipeline operator'*.
- 52) The proposed development must provide for and maintain emergency exit doors, available to be access by all apartments/units within the development, that allow for exit away from the pipeline (in Birmingham Street) in the event of a pipeline incident.
- 53) Before the occupation of the development, an Evacuation Management Plan must be submitted to, approved by, and be to the satisfaction of the Responsible Authority. When the Evacuation Management Plan is approved, it will become an endorsed plan forming part of this permit. The Evacuation Management Plan must provide for the following to the satisfaction of the Responsible Authority:
- a) Evacuation protocols in the event of an incident that compromises the high pressure gas pipeline;
 - b) Evacuation must provide for egress away from Birmingham Street and must not utilise Birmingham Street as an emergency assembly area for any type of evacuation; and
 - c) Other matters as necessary.

Any Future Owners Corporation Rules developed for the site must include a requirement to make future owners and tenants aware of the evacuation management plan. The evacuation management plan must not be amended except with the prior written consent of the Responsible Authority.

- 54) Prior to the commencement of any works, including demolition, within the easement or on land within 50 metres of the gas transmission pipeline, a Construction Management Plan must be submitted to and approved by the Responsible Authority. The plan must:
- a) Prohibit the use of rippers or horizontal directional drills unless otherwise agreed by the operator of the gas transmission pipeline.
 - b) Avoid significant vibration, heavy loadings stored over the pipeline and Heavy vehicle / plant crossings of the pipeline within the easement.
 - c) Be endorsed by the operator of the gas transmission pipeline where the works are within or crossing the relevant gas transmission easement.
 - d) Include any other relevant matter to the satisfaction of the Responsible Authority.

The Responsible Authority must be satisfied that the gas transmission pipeline licensee (APA VTS Australia (Operations) Pty Ltd) has reviewed and approved the Construction Management Plan. The Construction Management Plan must be implemented to the satisfaction of the Responsible Authority. The Construction Management Plan may be amended to the satisfaction of the Responsible Authority.

VicTrack

- 55) The permit holder must, at all times, ensure that the common boundary with railway land is fenced at the permit holder's expense. Fencing of railway land must be a minimum of 1.8 metres high black chain mesh or paling construction with the orientation of any supporting rails on the railway side to prohibit unauthorised access to the rail corridor.
- 56) Boundary wall / fence must be treated with a graffiti proof finish and any graffiti that appears on the wall must be cleaned / removed as soon as practicable to the satisfaction

of VicTrack. Costs involved in clean / removal of graffiti and associated cost of permit/s for entry to VicTrack land will be borne by the developer or body corporate of the land.

- 57) The permit holder must not, at any time:
- a) allow any drainage, effluent, waste, soil or other materials to enter or be directed to the railway land; or
 - b) store or deposit any waste, soil or other materials on the railway land.
- 58) The permit holder must not carry out, or allow to be carried out, any excavation, filling or construction on the common boundary between the subject land and the railway land unless it has obtained the prior written approval of VicTrack and the Rail Operator.
- 59) All works, including hoardings, must be undertaken within the subject land and must not encroach onto the railway land.
- 60) The permit holder must not at any time erect lighting (permanent or temporary) that spills light onto the railway tracks or which interferes with the visibility of signals and rail lines by train drivers.

Permit Expiry

- 61) 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 six years of the date of this permit.

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

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

Appendix E Recommended permit conditions for Building B

Note: The Committee has used the version of the conditions provided by the Applicant (Document 67 and Document 68) and has included those conditions it has accepted provided by the Applicant and other changes as recommended by the Committee.

[Tracked Added](#)

~~Tracked Deleted~~

Planning Application PA1945441

571-589 Melbourne Road, Spotswood (Building B)

Permit preamble

- The construction of two or more dwellings on a lot and the construction of a front fence within three metres of the frontage under Clause 32.04-6 (Mixed Use Zone).
- The construction of a building and carrying out of works, and removal of trees under Clause 43.01 (Heritage Overlay HO200).
- The construction of a building and carrying out of works under Clause 43.02-2 (Design and Development Overlay DDO2).

Draft conditions

- 1) Before the development starts, three copies of revised plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit.

The plans must be substantially in accordance with the substituted plans [prepared by CHT Architects](#) dated 22/01/2021 ([all Revision P4](#)), but modified to show to the satisfaction of the Responsible Authority:

- a) Confirmation of the distance of the proposed Building B planning unit site boundary from Melbourne Road and the eastern boundary of Lot 1 on Plan of Subdivision 633558.

~~Retention of tree number 92 identified in the landscape plan by Tract and dated 28/01/2021.~~

- b) Fencing between the north wall of the building and the northern title boundary no higher than 1200mm above the finished footpath level or no higher than ~~19~~800mm above the finished footpath level with a minimum 50% transparency, or other alternative option agreed to by the Responsible Authority.
- c) The elevated courtyards around the building perimeter on the ground floor modified to incorporate planters or screens between dwellings to a maximum height of 1.7m above the finished floor level of the courtyard, or other solution agreed to by the Responsible Authority that maintains privacy between dwellings without negatively impacting on the streetscape.
- d) For dwellings fronting Birmingham Street, ~~removal of fencing/retaining walls from the proposed treed landscape zones~~ spacing of trees to create avenue planting at ground level ~~(adjacent to the courtyards).~~
- e) ~~Bicycle parking adjacent to the car park entry relocated~~ Additional bicycle spacing adjacent to the south eastern pedestrian entry to Building B ~~with the bicycle parking area adjacent the entry replaced with landscaping.~~
~~Deletion of the MRV loading bay and replacement with landscaping.~~
- f) Bicycle charging station/s for residents within the car park proximate to bicycle storage.
- g) All common areas (including but not limited to hallways, the communal dining room, etc.) and carparking ~~must~~ to be universally accessible from common area corridors and lobbies.
- h) All dwellings at ground level ~~must~~ to be universally accessible.
- i) All plan anomalies rectified including but not limited to:
 - i) Confirmation of finished floor levels.
 - ii) Deletion of the stairs leading from the northern corridor into the carpark.
 - iii) Insertion of a door from the communal dining room into the common corridor to the north.

~~The car park entry gate setback 2m from the western wall/car park entry.~~

- j) On Level 3, the south tower unit arrangement reconfigured to remove the embedded private open space to unit B316, and provision of good quality private open space, privacy and daylight access to all units.
- k) On Level 4, the south tower unit arrangement reconfigured to remove embedded private open space to unit B404, and provision of good quality private open space, privacy and daylight access to all units.
- l) Car spaces be reconfigured to:
 - i) enable adequate width for pedestrian access to storage cages and storage rooms.
 - ii) provide adequate and required access to residential corridors and lift lobbies.
 - iii) provide access at level 3 to north corridor adjacent to lift and stairs.

~~On Level 4, the south tower setback a minimum of 6m from the south wall of units B310 and B311 to allow adequate separation, southern aspect and daylighting for the south facing habitable rooms.~~

~~On Level 4, the south tower unit arrangement reconfigured to remove embedded private open space to unit B404, and provision of good quality private open space, privacy and daylight access to all units.~~

~~Deletion of Levels 6 and 7.~~

~~Shadow drawings that demonstrate:~~

~~No overshadowing of the eastern side of The Boulevard to within 5m of future Building C and the south kerb of The Crescent between 10:00am and 2:00pm at the September equinox.~~

~~No overshadowing of the southern half of the proposed Village Green link between the Boulevard and the Crossways between 10am and 2pm at the September equinox.~~

~~No additional overshadowing of the existing heritage reserve and buildings east of Building B between 10am and 2pm at the Winter solstice.~~

- m) Unit layouts amended to provide living areas of 10 sqm unencumbered by circulation requirements for other uses in accordance with Table D8 Clause 58 -07.1 of the Hobsons Bay Planning Scheme. Unit types include: A1-1, A1-5, A1-6, A1-8, A1-11, A2-1, A2-2, A2-3, A2-5, A2-6, A2-7, A2-8, A2-10, A2-1, A2-12, A3-1 and A3-2.

- n) Demonstration that apartments can be furnished to accommodate the expected number of residents (e.g. three-bedroom dwellings should have seating for up to 6 people, etc.).
- o) The Building B planning unit expanded to include, and detailed plans provided for:
 - ~~Park Street, The Crescent and The Boulevard accessways and landscape works including the provision of a landscaped arrival and drop-off sequence for Building B and the south east tower, together with short stay indented parking and visitor bicycle storage adjacent the south east building entry.~~
 - i) The component of The Village Green within 5 metres of the private open space of the ground floor units including the Pathway network and landscape scope to include the proposed shared cycle and pedestrian path.
~~The open space area west of Building A.~~
~~The heritage restoration and adaptive reuse works proposed for the former Ways and Works Workshops building together with associated landscape improvements for the proposed open spaces flanked by The Boulevard to the south, Melbourne Road to the northeast, Birmingham Street to the northwest and Building B to the west.~~
 - ii) A 10m landscaped buffer expansion of the Building B planning unit to the south-east and east including pathways and landscaping.
 - iii) A 10m landscape set-back from Birmingham Street extending from the corner with Melbourne Road to the east side of Building B portion that fronts the road.
- p) The landscape plan and the architectural plans to match.
- q) Public realm works as follows:
 - i) the construction of footpath extensions ~~Provision of pedestrian connections~~ to Cullen Street and Arras Street including pram ramps and footpaths.
 - ii) Modifications to the Birmingham Street road reserve, based on a revised cross section which provides for main route cycling infrastructure taking into account the views of the Department of Transport, to include ~~additional width to the road pavement to accommodate a lane of traffic in each direction and parking on one side and:~~

~~A separated 2.5m wide cycle path and 1.5m wide footpath with a landscaped verge between and a 1m landscape strip along the site boundary, all south of the existing kerb line of Birmingham Street to the satisfaction of the Responsible Authority. OR~~

- A minimum 2500mm paved shared path along the length of Birmingham Street between Melbourne Road and Hick Street ~~with a 300mm wide landscape strip between the shared path and site boundary and an 850mm wide nature strip between the shared path and the kerb line to prevent dooring~~ to the satisfaction of the Responsible Authority.

- r) All common corridors a minimum 1500mm wide and a minimum 1800mm wide at entry thresholds.
- s) All common doorways to have a minimum 'clear' opening of 850mm.
- t) Provision of a parcel delivery area within the building.
- u) A schedule of all external colours, materials and finishes and a samples board. The schedule must show the materials, colour and finish of all external walls, roofs, fascias, window and door frames, glazing, car park entry doors, balustrades, fencing and paving.
- v) Detailed design of any service cupboards or utility meters that are visible from public areas (including the booster cupboard at the apartment entry) to achieve a high quality appearance and integrated into the architecture of the building.
- w) Treatment of the 'gallery' wall adjacent the stair to increase visibility of the stairs to encourage the use of stairs over elevators.
- x) A notation that all basic services, including water, electricity, gas, sewerage and telephone will be installed underground.
- y) Any air conditioner condenser units on the balconies screened from public view.
- z) All service pipes, (excluding downpipes) concealed on exposed elevations to the satisfaction of the Responsible Authority. Downpipes to be shown in visually unobtrusive locations.
- aa) The location of all plant and equipment located externally treated as part of the overall design (including but not limited to lift overruns, service entries, communication devices and other technical attachments, air conditioning units,

heating units, hot water systems, etc.). Such plant and equipment must be positioned to prevent unreasonable noise and visual impact.

- bb) A fully resolved landscape scheme for all communal and private areas ~~to~~ generally in accordance with the Landscape Report prepared by Tract Consultants, dated 12 February 2021 but modified to include:

~~The retention of tree number 92 shown on the Tract Landscape Plan dated 28/01/2021.~~

- i) The type, location, quantity, height at planting, height at maturity and botanical names of all proposed plants. Any trees installed to be a minimum 1.8m height at time of planting.
- ii) Planter details, including soil profile and irrigation systems.
- iii) The location of all areas to be covered by lawn, paving or other surface materials.
- iv) A specification of works to be undertaken prior to planting.
- v) Plant selection to consider species that positively contribute to urban biodiversity outcomes (i.e. local indigenous species of all vegetation strata including trees, understorey and ground plants).
- vi) Clear definition of terraced spaces, retaining walls, seating elements and other structures independent of paving treatments.
- vii) Water sensitive urban design (WSUD) features.
- viii) A management plan, including irrigation and stormwater re-use.
- ix) Details of irrigation and drainage of planting and open space areas.

~~Confirmation by a notation on the development plans that principles of universal design have been adopted and compliance with Australian Standard 1428-2009 (Design for Access and Mobility) has been achieved and includes the following measures:~~

~~A continuous accessible path of travel from the street entrance and/or parking area to a dwelling entrance.~~

~~At least one level (step-free) entrance with a minimum clear door opening width of 850mm.~~

~~All apartments nominated as accessible to have internal doors and hallways to be provided with a minimum clearing opening width of 850mm, with a minimum corridor/passageway width of 1000mm.~~

~~All apartments nominated as accessible to have reinforced walls for all toilets and bathrooms are included to allow grab rails to be installed if needed, with additional circulation spaces in the bathrooms areas to increase accessibility. Provide universal design fittings throughout the building, such as handles, light fittings, doors and windows.~~

~~The internal access stairway to be a minimum 1m wide and have a continuous handrail on one side.~~

~~Notation that outdoor surface areas and pavements will have a firm and slip resistant surface.~~

- cc) Provision for external vehicle access to, or near, the south-east foyer to accommodate pick-up and drop-off with private, taxi or ride-share vehicles, furniture relocation and removalists vehicles, and delivery vehicles to be provided by construction of internal roadways or through a managed solution with appropriate means for external vehicle access through the car park.

dd) Traffic engineering requirements as follows:

- i) Resident car parking provision compliant with the rates set out in Column B of Table 1 to Clause 52.06 of the Hobsons Bay Planning Scheme.
~~The proposed car park access door/security gate set back 2m with a minimum width of 5m, and confirmation that a remote opening gate is to be provided.~~
- ii) Car spaces numbered 10-12 be reconfigured to match the layout of spaces numbered 35-37 on Level 1.
- iii) Car space number 74 widened to 2.9m.
- iv) Swept paths demonstrating access and egress for a 6.4m long waste collection vehicle to the waste storage area. Where waste is to be collected within car parks, collection vehicles must enter and exit forward facing.
- v) Swept paths demonstrating satisfactory access and egress for vehicles entering and exiting the car park and parking spaces.

~~Removal of car spaces 36 on Level 1 and adjustment of the two remaining spaces in the row to facilitate pedestrian access to the storage cages.~~

~~Removal of car space 55 to enable access into the secure storage room and consolidation of the storage cages between car spaces 49 and 51 through an extension of the secure storage room.~~

~~Removal of car spaces 68, 76, 78, and 79 on Level 3 to provide for accessibility to the surrounding residential access corridors and lift lobbies.~~

~~Removal of car space 63 to provide an exit from the car park into the northern wing corridor.~~

- vi) Provision of at least one accessible parking bay in close proximity to the building entrance at The Boulevard.
- vii) A notation that says 'Keep clear' line marking treatments will be provided at the Melbourne Road/Birmingham Street/McLister Street intersection if dwellings are occupied before the signalised intersection is operational.
- viii) A notation that says right turn out movements will be banned until such time as the proposed signals at the Melbourne Road/Birmingham Street/McLister Street intersection are operational.
- ix) Longitudinal and cross-section plans of the entrance to the car park, parking areas and ramps.
- x) Headroom clearances including a minimum height clearance of 2.2m within all car park levels and along all ramps in accordance with AS2890.1:2004.
- xi) Headroom clearance of 2.5m above the waste loading area to accommodate the operational height of the waste truck.
- xii) A 300mm clearance provided adjacent to standard car spaces near abutting walls.
- xiii) Columns located 0.25m – 1.25m from the aisle end of car spaces in accordance with Design Standard 2 in Clause 52.06.
- xiv) Provision of wheel stops to minimise damage to walls in the car park.
- xv) Provision of appropriate lighting, line marking, directional arrows and signage within the car park and entrances, and priority line markings at either ends of the proposed internal road.

- xvi) A pedestrian sight triangle measuring 2.5m (along the exit lane of the driveway edge at the Birmingham Street boundary) by 2.0m (along the property line) clear of any objects or vegetation greater than 600mm in height on the departure side of the driveway.
 - xvii) A concept plan for the proposed internal road (Park Street) and connection to Birmingham Street including traffic calming devices to minimise speeds through the internal road.
 - xviii) Provision of at least two accessible parking space within the internal car park located close to the lifts.
- ee) The BESS assessment and Sustainability Management Plan amended to reflect and include the following:
- i) The location of the 30,000 litre water tank.
~~A precinct wide Water Sensitive Urban Design (WSUD) strategy.~~
 - ii) An updated WSUD plan for Building B resolving inaccuracies regarding roof areas, and all components of the WSUD plan to be shown (e.g. all impervious areas, raingarden details, etc.).
 - iii) An accurate assessment of food production areas watering needs included in the BESS tool.
 - iv) The STORM report for Building B updated to resolve inaccuracies regarding number of bedrooms, showing all impervious areas and respective treatment systems. STORM and the landscape plan to correlate.
 - v) Supporting evidence to confirm stated passive solar design outputs have been achieved.
 - vi) Changes must be clouded in any re-submission.
 - vii) The SDA report must cross reference ESD notes on the architectural plans.
- ff) Provision of any acoustic treatments, as may be recommended in the acoustic engineer's report referred to in Condition 11) and Condition 12) of this permit.
- gg) An updated Waste Management Plan.
- hh) An updated Green Travel Plan.

- 2) The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
- 3) Prior to the occupation of any dwelling, all buildings and works specified in the permit must be completed to the satisfaction of the Responsible Authority.

Public realm works

- 4) Prior to the commencement of the development, or other date agreed to by the Responsible Authority, detailed construction plans to the satisfaction of the Council must be submitted for approval. The plans must be drawn to scale and show all pavements, landscaping, drainage, public lighting (if required) and location of services associated with:
 - a) the construction of footpath extensions to Cullen Street and Arras Street including pram ramps, and
 - b) ~~the~~ Birmingham Street road reserve works in accordance with the cross section endorsed in Condition 1)q)ii). ~~by moving the southern kerb line south (i.e. widened road pavement to accommodate two way access and parking on one side of the street, a cycling path, nature strips and landscaping).~~
- 5) All works must be constructed at the cost of the owner to the satisfaction of the Responsible Authority prior to the occupation of any dwelling approved under this permit, or other date agreed to by the Responsible Authority. Alternatively, the Responsible Authority may at its own discretion accept a bond or bank guarantee in lieu of completion of civil works.

Staging

~~Prior to the occupation of Building A and before the commencement of Building B, the triangular shaped open space area west of Building A must be constructed in accordance with the endorsed plans and maintained to the satisfaction of the Responsible Authority.~~

~~Prior to the occupation of Building B, Park Street, The Crescent and The Boulevard accessways and associated landscaping works, and the Village Green pathway network~~

~~must be constructed in accordance with the endorsed plans and maintained to the satisfaction of the Responsible Authority.~~

~~Prior to the occupation of Building B, the heritage restoration and adaptive reuse works to the former Ways and Works Workshop Building and associated landscaping of open spaces must be completed in accordance with the endorsed plans and maintained to the satisfaction of the Responsible Authority.~~

- 6) Park Street including car parking, accessways and landscaping and The Crossways must be constructed in accordance with the endorsed plans prior to the occupation of Building A (if approved) or Building B, whichever is earlier, and maintained to the satisfaction of the Responsible Authority.
- 7) Prior to the occupation of Building B, landscaped buffers (including landscaping and pathways) described in Condition 1)o)ii) and Condition 1)o)iii), and the component of the Village Green pathway network described in Condition 1)o)i) must be constructed in accordance with the endorsed plans and maintained to the satisfaction of the Responsible Authority.
- 8) Concurrently with the submission of plans in accordance with Condition 1, a staging plan must be submitted to the Responsible Authority which clearly details the staging of the proposed development of the whole of the land in Lot 1 on Plan of Subdivision 633558 ~~and associated infrastructure~~ and the proposed timeframes for the development of each stage including but not limited to:

~~the timing of infrastructure works specified to be included in the staging plan.~~
 - a) ~~built form~~ the timing of the delivery of buildings and works,
 - b) landscaping and ~~public~~ open space,
 - c) Water Sensitive Urban Design initiatives as relevant to each stage,
 - d) all civil works within and external to the site,

- e) ~~all~~ any interim measures to provide acoustic protection (including temporary acoustic barriers and design treatment) and the proposed staging/timing ~~program~~ for removal of any interim acoustic barriers relative to the later stages of construction,
 - f) ~~all~~ any interim measures to provide access for construction or other vehicle traffic proposed,
 - g) construction of Park Street including car parking, accessways and landscaping and The Crossways prior to the occupation of Building A (if approved) or Building B, whichever is the earlier
- all to the satisfaction of Council.

~~In respect of Building B, the staging plan must also show the following:~~

~~the staging and sequencing of the development of the whole of the land described as Lot 1 on Plan of Subdivision 633558,
construction of The Crescent and The Boulevard accessways, car parking and associated landscaping to provide vehicular and pedestrian access to the southern tower in Building B, all prior to the occupation of Building B. Provision made for interim vehicular access to the southern tower of building B prior to the full construction of The Crescent and Boulevard access roads,
construction of the Village Green pedestrian pathway network with a widened shared path (minimum 1800mm wide) and associated landscaping prior to the occupation of Building B, landscaping and construction of associated pathways west of the heritage building in the heritage park prior to the occupation of Building B,~~

~~all to the satisfaction of Council.~~

After the staging plan is approved it will be endorsed and will then form part of this permit. The endorsed staging plan must be adhered to during the construction of all buildings and the carrying out of all works including interim measures described in the endorsed staging plan, unless otherwise consented to in writing by the Responsible Authority.

~~Before the development of Building B starts, detailed plans of each of the proposed stages referred to in Condition XX d), e) and f) must be submitted to the Responsible Authority for approval and be to the satisfaction of the Responsible Authority. The plans must be~~

~~dimensioned and include all road and footpath pavements, any services, drainage details, hard and soft landscaping, public lighting and street furniture. When approved, the plans will form part of this permit.~~

Landscaping works completed prior to occupation

- 9) Prior to the occupation of any dwelling, landscaping works as shown on the endorsed plans must be completed and thereafter must be maintained to the satisfaction of the Responsible Authority and any dead, diseased or damaged plants replaced in accordance with the landscaping plan to the satisfaction of the Responsible Authority.

Landscape bond

- 10) Concurrently with a request for endorsed plans under this permit, the owner must lodge a bank guarantee or bond of \$30,000 with the Responsible Authority to ensure the satisfactory establishment of landscaping works. Once landscaping has been completed in accordance with the endorsed landscaping plan, Council must be notified so a six month establishment period will commence. The bank guarantee or bond will be returned after an inspection has confirmed the landscaping has been 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.

~~Tree management plan~~

~~Before the development commences, a Tree Management Plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified Arborist and must be submitted to and approved by the Responsible Authority. When approved the Tree Management Plan will be endorsed and will form part of this permit.~~

~~The Tree Management Plan must make recommendations for the protection of the existing tree (Number 92 in the Landscape Plan by Tract Consultants 28/01/2021) to be retained pre construction, during construction and post construction. The Tree Management Plan must include requirements for a Tree Protection Zone and specify that~~

~~prior to any works commencing, a Tree Protection Zone (TPZ) and a non-destructive dig (NDD) must occur to identify roots present. The Tree Management Plan must specify whether any pruning is required and include watering and maintenance regimes.~~

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

~~The Tree Protection Zone fence must remain in place until all construction is completed. No excavation is allowed within the Tree Protection Zone except with the consent of the Responsible Authority and under the supervision of a suitably qualified Arborist~~

Acoustic report

- 11) Concurrently with the submission of amended plans in accordance with Condition 1, an Acoustic Report prepared by a suitably qualified acoustic engineer and to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit.

The acoustic report must:

- a) Confirm that the development has been designed such that industrial noise received at new residential or other noise-sensitive uses complies with 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 development is such that it is not practical or reasonable to undertake an outdoor measurement of the industrial noise level, the measurement point for a noise sensitive area must be indoors in accordance with SEPP N-1 Schedule A1, 4. The indoor adjustment (Schedule A2, 4, (d)) should not be greater than 15 dB. The assessment shall be undertaken on the assumption that ~~of~~ noise emanating from the Spotswood Maintenance Facility is compliant with SEPP N-1 at existing dwellings on Birmingham Street. ~~must include a comprehensive assessment of the activities — both current and reasonably foreseen~~

~~planned future activities (and address worst case and upset conditions) — of the Spotswood Maintenance Facility.~~

~~Undertake an assessment of low frequency noise from Spotswood Maintenance Facility in accordance with the methodology in “Assessing low frequency noise from industry — a practical approach” by Gordon Downey and Jeffrey Parnell or any other method approved by the Environmental Protection Authority, and provide recommendations for mitigation if required.~~

- b) Confirm that the development is designed such that maximum airborne noise from the Spotswood Maintenance Facility received at new residential or other noise sensitive uses achieves a noise level of 55 dB LA_{max} in bedrooms and a noise level of 60 dB LA_{max} in living areas. These noise levels are to be measured internally near the centre of habitable rooms, with the doors, windows and ventilation closed.

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.

- 12) Before the development is occupied, an acoustic report prepared by a suitably qualified acoustic engineer to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The report must confirm the required level of noise attenuation has been achieved as identified within the approved acoustic report approved in Condition 11). The report must also include details of any remedial building treatments or works designed to achieve compliance with the above requirements.

Any buildings or works required to achieve compliance with the acoustic report must be installed and maintained at all times to the satisfaction of the Responsible Authority.

- 13) The details of the design of any acoustic treatments external to the building recommended in the acoustic engineer’s report referred to in Conditions 11) and 12) of this permit must be to the satisfaction of the responsible authority.

Affordable housing

~~Prior to the commencement of the development, or other date agreed to by the Responsible Authority, the owner of the land must enter into an agreement with the Hobsons Bay City Council (Council) under section 173 of the Planning and Environment Act 1987 for the provision of not less than 10% affordable housing within the development in accordance with the Hobsons Bay Affordable Housing Policy Statement 2016.~~

~~The owner is responsible for all costs associated with the preparation, execution and recording of the Agreement on the land title, including those incurred by the Responsible Authority.~~

~~The Agreement must be recorded on the title to the land pursuant to Section 181 of the Planning and Environment Act 1987.~~

Environmental audit

- 14) Prior to the commencement of development approved under this permit, excluding demolition and works associated with the environmental audit, 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. A statement must state that the site is suitable for the use and development allowed by this permit.

All conditions contained within the Statement or Certificate and the Environmental Audit report leading to it must be complied with to the satisfaction of the Responsible Authority. Written confirmation that the audit related 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 which 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 pay all costs including the Responsible Authority's costs associated with the preparation, execution, recording and, if sought later, amendment or ending of the Agreement on the land title.

Construction Management Plan

- 15) Prior to the commencement of the development authorised under this permit, the owner must submit a Construction Management Plan to the Responsible Authority for approval. Once approved, the Construction Management Plan will be endorsed to form part of this permit and must be implemented to the satisfaction of the Responsible Authority. The plan must be to the satisfaction of the Responsible Authority and must provide details of the following:
- a) Hours for the construction activity to accord with Condition 18) of this permit.
 - b) Measures to control the escape of noise, dust, litter, water and sediment laden runoff from the site.
 - c) Measures to control mud, crushed rock or other debris being carried onto public roads or footpaths from the site.
 - d) Details of protection works and traffic control measures for surrounding streets.
 - e) Retention of public access to public roads and footpaths. Any drawings contained in the plan must include notations that such access will be retained.
 - f) Access routes for construction vehicles.
 - g) The location and design of a vehicle wash down bay for construction vehicles on the site, if required.
 - h) Details of measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan.

- i) Contact details of key construction site staff including after-hours contact numbers.
 - j) The location of any portable site offices and amenities.
 - k) An indicative timetable for staging of works.
 - l) Details of temporary fencing and site security. The temporary fencing must be maintained for the duration of the construction, be a minimum height of 1.8m (or such alternative height as is approved in writing by the Responsible Authority). The plan must specify that the gate or opening to the fence will be securely locked at all times when work is not being actively carried out on the site.
 - m) The location of parking areas for construction vehicles and construction workers vehicles, to ensure that vehicles associated with demolition and/or construction activity cause minimal disruption to surrounding land uses and traffic flows. The car park on the land must be made available without delay for use by subcontractors/tradespersons upon completion of that area.
 - n) Number of workers expected to work on the site any one time.
 - o) Any other relevant matters.
- 16) All activities associated with the construction of buildings or works allowed 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.
- 17) The construction of buildings or works must not result in any unreasonable nuisance or annoyance to an occupier of a nearby residence or otherwise unreasonably ~~adversely~~ affect the amenity of the surrounding area.
- 18) Except with the written consent of the Responsible Authority demolition of existing buildings or the construction of buildings or works must only be carried out between: 7am – 6pm Monday to Friday and Saturday 9am – 6pm. No work is to be carried out on Sundays or public holidays.
- 19) 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 demolition of existing buildings or the construction of buildings or works must not have an adverse impact on existing or future air quality.

Sustainability Management Plan

- 20) All works must be undertaken in accordance with the endorsed Sustainability Management Plan report to the satisfaction of the Responsible Authority. No alterations to the Sustainability Management Plan report may occur without the written consent of the Responsible Authority.
- 21) Prior to the occupation of any development approved under this permit, a report from the author of the Sustainability Management Plan approved under this permit, or similarly qualified person or company must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures have been implemented in accordance with the approved Sustainability Management Plan.

Waste Management Plan

- 22) Concurrently with the submission of amended plans in accordance with Condition 1, a ~~Waste Management Plan~~ Waste Management Plan prepared by a suitably qualified person and to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Waste Management Plan will be endorsed and will form part of this permit. The Waste Management Plan must be generally in accordance with the ~~waste management plan~~ [Waste Management Plan](#) prepared by Leigh Design dated 18 December 2020 but modified to reflect any changes required under Condition 1 of the permit.
- 23) All waste collection must be undertaken in accordance with the endorsed Waste Management Plan to the satisfaction of the Council. No alterations to the Waste Management Plan may occur without the written consent of the Responsible Authority.

Green Travel Plan

- 24) The initiatives outlined in the endorsed Green Travel Plan must be implemented to the satisfaction of the Responsible Authority and thereafter complied with to the satisfaction of the Responsible Authority. No alterations to the Green Travel Plan may occur without the written consent of the Responsible Authority.

Architect supervision

- 25) 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.

Car parking and access lanes

- 26) 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 concrete, asphalt or similar paving.
 - d) Drained, maintained and line-marked to indicate each car space and all access lanes.
- Parking areas and access lanes must be kept available for these purposes at all times.

Engineering

- 27) The site must be connected to a legal point of drainage discharge to the satisfaction of the Responsible Authority.
- 28) Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council's infrastructure resulting from the development must be reinstated:

- a) at the permit holder's cost; and
- b) to the satisfaction of the Responsible Authority.

- 29) The quality of the water discharged is to be in accordance with the Hobsons Bay Planning Scheme Clause 58.03-8, D13 ~~55.03-4, Standard B9~~.
- 30) Prior to commencement of the development the owner must prepare stormwater drainage design plans to the satisfaction of Hobsons Bay City Council Development Engineer. The volume of water discharging from the development in a 20% AEP storm must not exceed the peak flow experienced in a 20% AEP storm prior to development. The peak flow must be controlled by the use of retardation basins or approved retardation systems located on the subject site to the requirements and satisfaction of the Responsible Authority. The storage system must have a storage capacity of a 10% AEP.
- 31) A drainage management strategy detailing catchments both internal and external to the development, 1 % AEP flow paths and flow volumes for the entire development (Lot B) must be submitted.
- 32) Underground drainage must be provided and any other drainage works necessary for the transmission of drainage as required to the outfall also must be provided.
- 33) All drainage works must be designed to meet the current best practice performance objectives for stormwater quality as contained in the Urban Stormwater – Best Practice Environmental Management Guidelines (1999).
- 34) All existing conditions affected by the development works must be reinstated at no cost and to the satisfaction of the Responsible Authority.
- 35) 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.

- 36) The owner must meet the costs of all alterations to and reinstatement of, the Responsible Authority and other Public Authority Assets deemed necessary and required by such Authorities for the development. The owner must obtain the prior specific written consent of the Council or other relevant Authority to such alterations and reinstatements and must comply with conditions required by the said Authority in relation to the execution of such works.
- 37) All basic services, including water, electricity, gas, sewerage, telephone and other telecommunication facilities must be installed underground and located to the satisfaction of the Responsible Authority.
- 38) The entire development site must be connected to the existing underground drainage and sewerage systems to the satisfaction of the Responsible Authority.
- 39) No plant, equipment, services and architectural features (other than those shown on the endorsed plan) are permitted above the roof level of the building without the prior written consent of the Responsible Authority.
- 40) All service pipes, (excluding downpipes), fixtures and fittings servicing the building must be concealed on exposed elevations to the satisfaction of the Responsible Authority.
- 41) Any plant, equipment or domestic services visible from the Birmingham Street frontage must be located and visually screened to the satisfaction of the Responsible Authority.

Transport for Victoria

- 42) Before the development commences (excluding demolition), or other time agreed to in writing with [The](#) Head, Transport for Victoria, amended plans are to be submitted to [The](#) Head, Transport for Victoria and once approved, can be endorsed by the Responsible Authority, upon which the plans will form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. These plans must be

generally in accordance with the plans submitted to [The](#) Head, Transport for Victoria with the application but are to be modified to show:

- a) The installation of “No Right Turn” sign/s prohibiting right turn vehicular movements from Birmingham Road onto Melbourne Road.

- 43) The prohibition of right turn movements into Melbourne Road from Birmingham Road referred [to in Condition 42\)](#) ~~in this condition (above)~~ to remain in place until such time as traffic signals are installed and operational at this intersection.

- 44) Prior to the occupation of the development, a Green Travel Plan must be submitted to and approved by the Head, Transport for Victoria and the Responsible Authority. When approved, the Green Travel Plan will be endorsed and will form part of this permit. the Green Travel Plan must include, but not be limited to, the following:

- a) The objectives must be linked to measurable targets, actions and performance indicators.
- b) A description of the existing active private and public transport context.
- c) Initiatives that would encourage (residents/employees/visitors) of the development to utilise active private and public transport and other measures that would assist in reducing the amount of private vehicle traffic generated by the site.
- d) Timescale and costs for each action.
- e) The funding and management responsibilities, including identifying a person(s) responsible for implementation of actions, and
- f) A monitoring and review plan requiring annual review for at least 5 years (resident/employee/student) welcome packs (eg: provision of a Myki card).
- g) The promotion of various public transport smartphone applications, such as tram tracker.
- h) Tram, train and bus timetables be installed in prominent locations in lifts and public areas (on noticeboards, etc. or electronically where relevant).
- i) The installation of signs in prominent location ~~a~~ advising of the location of existing and proposed car-share schemes, bicycle parking facilities for residents and visitors, tram stops, taxi rank, railway stations, bus stops and bicycle paths.

- j) Signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3.
 - k) Establishment of a car-pooling data base for residents.
- 45) Prior to the occupation of the development, a report prepared by a suitability qualified acoustic engineer must be submitted to ~~the~~ The Head, Transport for Victoria and the Responsible Authority. The report must be at no cost to and to the satisfaction of ~~the~~ The Head, Transport for Victoria and the Responsible Authority and must confirm that all the measures specified in the Acoustic Assessment prepared in accordance with Condition 11) and Condition 12) have been implemented ~~by Vega One Pty Ltd (571-589 Melbourne Road) Building B, Acoustic Report (9 July 2020) have been implemented in accordance with the Acoustic Assessment.~~
- 46) No lighting is to be erected (permanent or temporary) that spills light onto the railway tracks or which interferes with the visibility of signals and rail lines by train drivers.
- 47) Building materials (including glass/window treatments) along the rail corridor must be non-reflective and avoid red and green colour schemes that may interfere with driver operations.
- 48) No drainage, effluent, waste, soil or other materials must enter or be directed to railway land or stored or deposited on railway land.

APA

- 49) Prior to the development and/or use commencing, a risk assessment workshop, must be conducted with the pipeline licensee/operator and its recommendations/actions must be implemented to the satisfaction of the pipeline licensee/operator (APA VTS Australia (Operations) Pty Ltd).
- 50) Buildings, structures, roadway, pavement, pipeline, cable, fence or any other improvement on or under the land within the gas transmission pipeline easement or where there is no pipeline easement within three metres of the gas transmission pipeline

must not be constructed without prior consent in writing from the pipeline licensee/operator (APA VTS Australia (Operations) Pty Ltd). No structure or vegetation will be permitted on the easement that prohibits maintenance of line of sight along the pipeline easement.

- 51) Prior to the development commencing for any stage which includes the gas transmission pipeline, landscape plans depicting any planned landscaping, including the planting of vegetation, species details, surface treatments, furniture, structures or improvements on or immediately abutting the gas transmission pipeline easement or where there is no easement within 3 metres of the gas pipeline must be submitted to and approved by the Responsible Authority. The Responsible Authority will seek the view of the pipeline licensee / operator (APA VTS Australia (Operations) Pty Ltd) in this matter.
- 52) Prior to the commencement of any works within the gas transmission pipeline easement or where there is no easement within 3 metres of the gas transmission pipeline, the proponent must enter a Third Party Works Authorisation agreement with the pipeline licensee/operator (APA VTS Australia (Operations) Pty Ltd). Works within the easement must comply with any conditions attached to a third party works approval.
- 53) All plans which include the area of the gas pipeline must have the pipeline clearly identified with hatching 3m either side of the pipeline. The area must also be clearly labelled as 'high pressure gas pipeline right of way – no works to occur without the prior authorisation of the pipeline operator'.
- 54) The proposed development must provide for and maintain emergency exit doors, available to be access by all apartments/units within the development, that allow for exit away from the pipeline (in Birmingham Street) in the event of a pipeline incident.
- 55) Before the occupation of the development, an Evacuation Management Plan must be submitted to, approved by, and be to the satisfaction of the Responsible Authority. When the Evacuation Management Plan is approved, it will become an endorsed plan

forming part of this permit. The Evacuation Management Plan must provide for the following to the satisfaction of the Responsible Authority:

- a) Evacuation protocols in the event of an incident that compromises the high pressure gas pipeline;
- b) Evacuation must provide for egress away from Birmingham Street and must not utilise Birmingham Street as an emergency assembly area for any type of evacuation; and
- c) Other matters as necessary.

Any Future Owners Corporation Rules developed for the site must include a requirement to make future owners and tenants aware of the evacuation management plan. The evacuation management plan must not be amended except with the prior written consent of the Responsible Authority.

- 56) Prior to the commencement of any works, including demolition, within the easement or on land within 50 metres of the gas transmission pipeline, a Construction Management Plan must be submitted to and approved by the Responsible Authority. The plan must:
- a) Prohibit the use of rippers or horizontal directional drills unless otherwise agreed by the operator of the gas transmission pipeline.
 - b) Avoid significant vibration, heavy loadings stored over the pipeline and Heavy vehicle / plant crossings of the pipeline within the easement.
 - c) Be endorsed by the operator of the gas transmission pipeline where the works are within or crossing the relevant gas transmission easement.
 - d) Include any other relevant matter to the satisfaction of the Responsible Authority.

The Responsible Authority must be satisfied that the gas transmission pipeline licensee (APA VTS Australia (Operations) Pty Ltd) has reviewed and approved the Construction Management Plan. The Construction Management Plan must be implemented to the satisfaction of the Responsible Authority. The Construction Management Plan may be amended to the satisfaction of the Responsible Authority.

VicTrack

- 57) The permit holder must, at all times, ensure that the common boundary with railway land is fenced at the permit holder's expense. Fencing of railway land must be a minimum of 1.8 metres high black chain mesh or paling construction with the orientation of any supporting rails on the railway side to prohibit unauthorised access to the rail corridor.
- 58) Boundary wall / fence must be treated with a graffiti proof finish and any graffiti that appears on the wall must be cleaned / removed as soon as practicable to the satisfaction of VicTrack. Costs involved in clean / removal of graffiti and associated cost of permit/s for entry to VicTrack land will be borne by the developer or body corporate of the land.
- 59) The permit holder must not, at any time:
 - a) allow any drainage, effluent, waste, soil or other materials to enter or be directed to the railway land; or
 - b) store or deposit any waste, soil or other materials on the railway land.
- 60) The permit holder must not carry out, or allow to be carried out, any excavation, filling or construction on the common boundary between the subject land and the railway land unless it has obtained the prior written approval of VicTrack and the Rail Operator.
- 61) All works, including hoardings, must be undertaken within the subject land and must not encroach onto the railway land.
- 62) The permit holder must not at any time erect lighting (permanent or temporary) that spills light onto the railway tracks or which interferes with the visibility of signals and rail lines by train drivers.

Permit Expiry

- 63) 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 six years of the date of this permit.

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

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