

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1031/2020
PERMIT APPLICATION NO. 217/2019

CATCHWORDS

Planning and Environment Act 1987; Port Phillip Planning Scheme; Commercial 1 Zone, Design and Development Overlay DDO26; proposed 70 metre high mixed development; performance of design against planning scheme requirements; issues of impact on historic and cultural significance of the Shrine of Remembrance and overshadowing of memorial gardens.

APPLICANT	Paul Smith
RESPONSIBLE AUTHORITY	Port Phillip City Council
REFERRAL AUTHORITY	Vic Roads - Metropolitan North West Region, and Heritage Victoria
RESPONDENT	URBIS
SUBJECT LAND	11-17 Dorcas Street SOUTH MELBOURNE VIC 3205
HEARING TYPE	Hearing
BEFORE	Christina Fong, Member
DATE OF HEARING	12 November 2020
DATE OF ORDER	14 December 2020
CITATION	Smith v Port Phillip CC [2020] VCAT 1401

ORDER

Permit granted

- 1 In application P1031/2020 the decision of the responsible authority is varied.
- 2 In planning permit application 217/2019 a permit is granted and directed to be issued for the land at 11-17 Dorcas Street, SOUTH MELBOURNE in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of a mixed use building comprising a retail premises and dwellings; and
 - Reduction in car parking.



Christina Fong
Member

APPEARANCES

For applicant	Paul Smith in person.
For responsible authority	Kathryn Pound, Major Protects & Appeals Advisor, City of Port Phillip
For referral authorities	No appearance
For respondent	Andrew Walker, barrister, briefed by Minter Ellison. He called Amanda Ring, town planner, to give evidence ¹ .

¹ The authors of the other two expert witness reports, namely *11-17 Dorcas Street, South Melbourne Reflectivity Expert Witness Report* and *VCAT Photomontages – Methodology Statement VCAT Reference No. P1031/2020* were not called to give oral evidence.



INFORMATION

Description of proposal	<p>A multi-storey (20 storeys) building plus two basements for a mixed development, comprising of retail on the ground floor and dwellings above. The number of dwellings provided is 58, a mixture of one bedroom, two bedrooms, three bedrooms, four bedrooms and two penthouse apartments. A total of 89 car spaces are provided. Vehicular access is from Middleton Lane at the rear. A total of 50 bicycle spaces are located on the ground floor.</p> <p>The height of the building is a maximum of 70 metres AHD.</p>
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Port Phillip Planning Scheme
Zone and overlays	Commercial 1 Zone, Design and Development Overlay Schedule 14 (DDO14 City Link Exhaust Stack Environs), and Design and Development Overlay Schedule 26 (DDO26 St. Kilda Road North Precinct).
Permit requirements	Clauses 34.01-1, 34.01-4, 43.02-2 (regarding DDO26 but not DDO14), 52.06-2 (to reduce car parking spaces for the retail use).
Relevant scheme policies and provisions	Clauses 11, 15, 16, 19, 21.03, 21.04, 21.05, 21.06, 22.06, 22.12, 22.13, 52.06, 52.34, 58 and 65.



Land description

The land is located on the south side of Dorcas Street between St. Kilda Road and Wells Street, South Melbourne. It is separated from the St. Kilda Road lots by Middleton Lane. The Shrine of Remembrance is located approximately 250 metres to the east and on the opposite side of St. Kilda Road.

The land is irregular in shape. It has a frontage of 35.69 metres and a depth of 34.2 metres. The rear boundary is 23.89 metres, and the eastern boundary at 36.17 metres. The site area is approximately 1,021 square metres.

A five storey office building currently occupies the site. Abutting the site to the west is a group of single storey and then double storey buildings up to Well Street. To the east across Middleton Lane are a single and two storey buildings at 336-340 St. Kilda Road: the First Church of Christ Scientist building.

Opposite the site on the north side of Dorcas Street is a group of multi-storey buildings, comprising of a seven storey office building at the corner of St. Kilda Road and Dorcas Street, then an 18 storeys, 8 storeys and 22 storeys building up to Wells Street. This area is in the municipality of City of Melbourne.

Council describes development in the area as having an emerging multi-storey character along Dorcas Street.

Tribunal inspection

I inspected the site on 15 November 2020, and not accompanied by the parties.



REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 This is a Section 82 under the *Planning and Environment Act 1987* to review the notice of decision to grant a permit to use and develop the site for a multi-storey (20 storeys not including basements) mixed development. The notice sets out a number of conditions, ranging from modifications to the design (condition 1), requirement of a landscape plan (No. 3), a Waste Management Plan (No. 13), noise attenuations for apartments (No. 17), tree protection (No. 14), urban art (No. 15), manner of car parking allocation (No. 18) and others. There is no Section 80 review against any of the permit conditions. This indicates an acceptance by the permit applicant of the conditions.
- 2 Having considered the submissions, expert evidence and comments made at the hearing, I have made some minor changes to permit conditions. The decision is thus upholding council's decision with minor modifications.

WHAT ARE THE KEY ISSUES?

- 3 The key issues are whether the proposal achieves the level of development expected of the zone and the strategic intent of the planning scheme; whether there is unacceptable amenity impact on surrounding properties; whether the provisions of internal amenity, car and bicycle parking are adequate; whether the scale, height and massing of the building meet the relevant requirements of the planning scheme; and whether the impact of the building on the Shrine of Remembrance and the Memorial Gardens in terms of height and massing, and overshadowing excessive.

ISSUES NOT DISPUTED

- 4 The issues disputed in this review are the concerns raised by the applicant, mainly in the height of the building and its impact on the significance of the Shrine and Memorial Gardens, and particularly the overshadowing of these grounds.
- 5 Although these reasons will focus on the disputed issues, the Tribunal will still need to be satisfied that those not in contention are consistent with the requirements of the planning scheme.
- 6 The zoning of the land is Commercial 1, the purpose of which is "*to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses, and to provide for residential uses at densities complementary to the role and scale of the commercial centre*". The proposal is to use and develop the land for a multi-storey mixed

² The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.



development. This is consistent with the purpose of the zone. The location of the site is excellent, being close to the CBD with access to employment, services, public open space and public transport. The development of this part of South Melbourne is a mixture of commercial and residential and many in multi-storey buildings.

- 7 In informing the scale of development, the most relevant control is DDO26, an overlay to specifically manage the St. Kilda Road North area, an area bounded by Dorcas Street, St. Kilda Road, Kingsway/Queens Road and the St. Kilda Junction. DDO26 is the result of Amendment C107 to implement the *St. Kilda Road North Precinct Plan 2013*.
- 8 For the issues not in dispute, I form the view that council's assessment regarding the overall design, its performance against DDO26 despite the design not strictly meeting the podium approach recommended for the precinct, provision of parking and vehicular access against clause 52.06 despite the need to reduce the number of car spaces for the retail component, and its performance against clause 58 which is the test for internal amenity and external amenity impact for development over five storeys, is appropriate. Subject to the permit conditions council imposed in the notice of decision to grant a permit, I am satisfied that the proposal, on balance, is consistent with the requirements and relevant policies of the planning scheme. It is supported. Design details such as assessments on reflectivity of external materials and wind effects have been subject of expert evidence and permit conditions. The Tribunal does not propose to analyse in details the acceptability of the proposal regarding these issues.
- 9 The issues in dispute are the height and building massing of the development and its impact on the historic and cultural significance of the Shrine of Remembrance, and its impact on the amenity of the Shrine and surrounds in the aspect of overshadowing.
- 10 Before I address these issues, I re-iterate the Tribunal's scope of responsibility in this review. It is to stand in the shoes of Port Phillip City Council as the responsible authority for this permit application. It is bound to consider the planning merits of the proposal and implement the Port Phillip Planning Scheme as it stands. The Tribunal does not have power to depart from the planning scheme. It is also not its responsibility to deal with what the applicant considers as unsatisfactory management of the application by council and bodies which have statutory responsibility on the application.
- 11 The proposal is required to be referred to a number of bodies and authorities, each with their specific interest and expertise relating to their areas of responsibility. These bodies are the Shrine of Remembrance Trustees, Heritage Victoria (the Shrine is on the Victorian Heritage Register), and the Environmental Protection Agency. None of these bodies offered objections.



- 12 In the area of public notice, Extensive notice has been given to persons or bodies potentially adversely affected by the application. This includes the City of Melbourne, the municipal council responsible for planning of the area on the east side of St. Kilda Road (including The Domain which contains the Shrine of Remembrance, Memorial Gardens, and Botanic Gardens) and north of Dorcas Street. The City of Melbourne has not lodged an objection against this proposal.

THE ISSUE OF HEIGHT AND MASSING OF THE DEVELOPMENT

- 13 The site is affected by DDO26, a design and development overlay introduced specifically to manage planning of the St. Kilda Road North area (by Amendment C107 of the Port Phillip Planning Scheme at the time). The applicant's submission included a copy of the Panel report for this amendment, and the Panel's report on Amendment C125 and Permit Application 2008/0758 for a development at 324-332 St. Kilda Road in the City of Melbourne, a development which faced similar issues, which also resulted in specific DDOs for that site. These two reports analysed the planning circumstances of the area west of St. Kilda Road and built form of that area, including heights to protect the significance of the Shrine of Remembrance and its environs. One of the objectives of these DDOs is to ensure that development on the west and southwest of the Shrine does not detract from significance of the Shrine.
- 14 DDO26 designated the St. Kilda Road North area into sub-precincts. The site is in Sub-precinct 1: Edge of Shrine Memorial Gardens. This sub-precinct is at the northern edge of the St. Kilda Road North precinct and for an area bounded by Dorcas Street (north), St. Kilda Road (east), Park Street (south) and Wells Street (west).
- 15 The relevant objectives of this sub-precinct read:

The Edge of Shrine Memorial Gardens Sub-Precinct forms the western backdrop to the Shrine and the edge to the Memorial Gardens and the Domain Parklands. The scale, form and detailed design elements of buildings within this Sub-Precinct are critical in respecting the sensitivity of the Shrine setting.

- To ensure that buildings are of a scale, form and design detail that creates a respectful background to the Shrine of Remembrance and Memorial Gardens.
- To ensure that buildings are designed to respect the sensitivity of the immediate vicinity of the Shrine of Remembrance and the more distant elevated points of the Shrine of Remembrance step
- To ensure that new development reinforces the established and consistent built form pattern of low scale built form at street edge with high towers that have substantial setback from the street edge.
- To ensure the continuation of consistent street tree plant that contributes to the maintenance of a high amenity of streetscape.



(Underlining my emphasis.)

- 16 This sub-precinct is further divided into 3 sub-areas in accordance with Map 2 of DDO26: one area comprising of a 50 metre wide band of area from St. Kilda Road as area 26-1a; the balance of land to Wells Street as 26-1c, and a strip of land opposite Bank Street to St. Kilda Road as 26-1b.
- 17 DDO26 has the following built form and setback requirements for Sub-Precinct 1:

Development should be generally in accordance with Map 2 of this schedule.

- Development must not protrude into the Shrine's silhouette above the level of the Portico roof when viewed from Birdwood Avenue. A permit may not be granted to construct a building or construct or carry out works which are not in accordance with this requirement unless allowed by clause 4.0 of this schedule.
- Buildings and works must not cast any additional shadow across the Shrine of Remembrance and its northern forecourt, shown in Figure 1 of this schedule, between the hours of 11.00am and 3.00pm from the 22 April to the 22 September. A permit may not be granted to construct a building or construct or carry out works which are not in accordance with this requirement³.

- 18 For Precinct 26-1c, the sub-area the site is in, the following controls apply:

Precinct 1-c

Development within 5 metres of Dorcas, Wells and Park Streets should not exceed a height of 18 metres.

Development beyond the setbacks identified above must not exceed a height of 70 metres AHD. A permit may not be granted to construct a building or construct or carry out works which are not in accordance with this requirement unless allowed by clause 4.0 of this schedule.

- 19 The proposal meets the mandatory maximum height of 70 AHD, although not the discretionary height of 18 metres within 5 metres of Dorcas Street. Council considers this digression acceptable in design terms. The purpose of the latter is to achieve a podium with a maximum height of 18 metres. Having reviewed the reasons put forward by council, I agree with it that the proposed curve design of the building is unique instead of the common podium and tower approach. Due to a lack of a strong podium character in the area, I accept council's view that this departure is justified.
- 20 The critical issue is the applicant's contention that the height and massing of the development severely impacting on the significance of the Shrine and Memorial Gardens. He contends that council's assessment has missed the aspect view of the Cenotaph, and that the view of the proposed development from the part of the forecourt at the Cenotaph would be massive and distracting.

³ Figure 1 in the schedule defines the Shrine of Remembrance and its Northern Forecourt.



- 21 His reading of the panel report for Amendment C107 that introduced DDO26 is that the maximum was too high; that the 70 metre height limit to protect the Shrine's prospect views is not relevant for the Cenotaph. He contends that the view from the Cenotaph towards the development is a bulky building that would detract from the significance of the Shrine. He reasoned that too much reliance has been placed on the Shrine Vista Controls and the 70-metre AHD mandatory height limit while ignoring other severe impacts. This is the reason he formed the view that the Shrine Trustees did not object.
- 22 As for the reason why Heritage Victoria did not object, his reason is because the site is at 11-17 Dorcas Street, a site that has no heritage protection.
- 23 As for council's support for the proposal, his reason is that council is wary of being taken to VCAT and chose not to challenge the developers, and that council's committee is comprised of politicians and not professionals.
- 24 The applicant may have his reasons why bodies or authorities with responsibility for the protection of the Shrine and the planning scheme did not support his view. The fact remains that the referral authorities did not object, and the Tribunal accepts their respective positions.
- 25 Returning to the matter of the views towards the development from the Cenotaph, the document *The Shrine of Remembrance, Managing the Significance of the Shrine, July 2013* is the relevant strategic document to consider, and the origin of planning controls regarding protection of the Shrine. It is a reference document in the planning scheme. This document sets out the objectives, policies and recommendation for planning controls to protect the Shrine and its grounds. It acknowledges that the significance of the place lies in the design of the Shrine and its landscape setting, the qualities and experiential qualities of the place as a place of ceremonial purpose, the axial and formal design qualities, its separateness from the hard forms and activities of the City, its grandeur, and its sense of isolation on an elevated site. The Cenotaph is one of the monuments considered in the study, including views out from this part of the forecourt and views towards the monument from outside the Shrine grounds. Views towards the Cenotaph and the eternal flame are parts of the formal parade route.
- 26 Part 5 of the study reviewed how the Shrine's significance could be compromised, such as foreground and background intrusions into the axial view corridors (aspect view), by building heights in the vicinity of the Shrine affecting the context of the experience of the place, by secondary built form impact such as reflectivity, shadows, and illuminated signage. Figure 5.1⁴ identifies the area where there is potential to cause silhouette intrusion (managed by the Shrine Vista Control), and intrusions caused by the height and bulk of nearby buildings. Part of the St. Kilda Road North

⁴ Page 29 of *The Shrine of Remembrance, Managing the Significance of the shrine July 2013*



Precinct has been identified to have the potential to cause height and bulk intrusions, including Sub-precinct 1 in DDO26.

- 27 This study finds some buildings on the western and south-western quarter of the Shrine Reserve too high and too close, intruding into the sense of separateness and ceremonial purpose experienced on the forecourt and the western memorial grounds. It concludes that buildings should play a subservient role, and views to the Cenotaph should not be eroded by tall buildings with vertical proportions in the background that compete with the Cenotaph's form, especially when the command '*eyes right*' is made during the parade and when eyes turn towards the Cenotaph.
- 28 In this study, viewline models were prepared to determine the acceptable heights of buildings to protect views relating to the Shrine. A maximum of 70 metres was reached for this part of the St. Kilda Road North area, which would be deemed to meet the objectives stated in DDO26-1, which are:
- To ensure that buildings are of a scale, form and design detail that creates a respectful background to the Shrine of Remembrance and Memorial Gardens.
 - To ensure that that buildings are designed to respect the sensitivity of the immediate vicinity of the Shrine of Remembrance and the more distant elevated points of the Shrine of Remembrances site.
- 29 My inspection of the site from the forecourt of the Shrine and in front of Cenotaph and the Eternal Flame confirmed the visual perception described in the study. This view is currently distracted by the tall buildings such as the Royal Domain Tower at 368 St. Kilda Road and St. James Building at 350 St. Kilda Road.
- 30 The proposed building will be of a height that will form the backdrop of buildings visible from that point. The vegetation between this point and the review site will provide some screening and softening of the building. The applicant commented that the big tree that provides screening may die and thus expose the visibility of the building. The study is not clear on the contribution of vegetation in the softening of built form in the background. However, the large tree that provides the most screening seems to be in good health, with no obvious lean or splitting of main trunks. This large tree and many other trees in the Memorial Gardens are of cultural values, as many are dedicated to various regiments and military bodies who contributed to the wars Australia was involved in. There are other trees that provide screening and softening of buildings in the background, many of which are yet to reach maturity, including the number of Queensland Box between the forecourt and St. Kilda Road.
- 31 I am thus not persuaded that the height and massing of the building is excessive as determined by relevant planning controls. Instead, it achieves the objectives of protecting the significance of the Shrine and its immediate environs in accordance with DDO26.

IMPACT ON THE SHRINE AND MEMORIAL GARDENS BY OVERSHADOWING

- 32 The issue of overshadowing from the development can be considered in two areas: overshadowing of the Shrine and the public parkland in the surrounds, including the Memorial Gardens.
- 33 The applicant's submission included shadow diagrams showing overshadowing by the proposal and other buildings over the Shrine surrounds including the Memorial Gardens. His calculation is that the development will cause approximately 990 hours of overshadowing in the afternoon, with shadow reaching the Shrine of Remembrance and the Northern Forecourt for over 8 months for a total of approximately 440 hours. Other impacts include shadow over a tree of state significance 'Melba's Poplar' for approximately 140 hours.
- 34 The issue of overshadowing has also been dealt with by the 2013 Shrine study. This study recognises that shadow over the Shrine grounds can be a problem in the late afternoon for memorial gardens in the western quarter adjacent to St. Kilda Road. It also concedes that some overshadowing of the memorial gardens is inevitable, and that new development need to be carefully considered to understand the impact on the 'sense of place' of the Shrine. The way overshadowing is managed in the planning scheme is again DDO26 and for Sub precinct 26-1.
- 35 One of the precinct-wide objectives of DDO26 relating to the Shrine setting is:
- To maintain solar access to the Shrine's Memorial Gardens.
- 36 The requirements for Sub-Precinct 1 is:
- Buildings and works must not cast any additional shadow across the Shrine of Remembrance and its northern forecourt, shown in Figure 1 of the schedule, between the hours of 11.00am and 3.00pm from the 22 April to the 22 September. A permit may not be granted to construct a building or construct or carry out works which are not in accordance with this requirement.
- 37 Figure 1 defines the space that is the Shrine of Remembrance and the Northern Forecourt. The proposal meets this requirement. This is not disputed by the applicant. The Shrine Trustees, the referral authority for the proposal also has no objection to the proposal.
- 38 Based on the compliance with the shadowing requirements of DDO26, I agree with council and the Trustees that the overshadowing requirements as far as the Shrine is concerned have been met.
- 39 The next overshadowing issue is overshadowing of the part of The Domain including the Memorial Gardens, an area of public parkland, currently used by visitors to the Shrine, as outdoor and/or passive recreation for office workers in the area and residents of nearby residential developments.



- 40 The applicant’s submission is that the development would cast unacceptable shadow on this part of the Domain, a public parkland relied on and well used by residents of the area. He cites clause 22.06 (Urban Design Policy for Non Residential Development and Multiunit Residential Development) where it is policy for public open space, to:
- Ensure that new development does not overshadow public parkland (land included in the Park and Recreation Zone) between the hours of 10.00am and 4.00pm on the 22 June (winter solstice) unless otherwise specified in a DDO.
- 41 His submission included shadow diagrams showing overshadowing by the proposed development and nearby buildings. His calculation is that the development will cause approximately 990 hours of shadow in the afternoon.
- 42 To support his contention that The Domain is an important public open space, he cites studies undertaken by the City of Melbourne⁵ and City of Port Phillip⁶.
- 43 He also cites clause 22.02 of the Melbourne Planning Scheme that described this policy as recognising that “*sunlight contributes to its streets and public spaces at the times of the year when the intensity of pedestrian activity is highest*”, and that “*sunlight contributes to the amenity and useability of public space, public health and well being and supports trees and other plants.*”
- 44 Based on the applicant’s submitted diagrams, the extent of overshadowing caused by the development is extensive. However, these diagrams cannot be considered as expert evidence and cannot be tested. Further, these diagrams do not reflect the shadowing impact of the proposal as required in DDO26 and policies.
- 45 With regard to clause 22.06 of the Port Phillip Planning Scheme, it is a policy that does not apply. The area affected by the overshadowing falls outside the municipal district of Port Phillip. Clause 72.0 of the planning scheme states that the area covered by the planning scheme is the municipal district of the City of Port Phillip, unless it is land adjoining the municipal district as specified in the scheme.
- 46 The more helpful consideration would be the Melbourne Planning Scheme which has jurisdiction over The Domain where the shadows fall. Clause 22.02 in that planning scheme is the local policy on sunlight to public spaces. The relevant objectives of this policy in this matter are to ensure new buildings to allow good sunlight access to public spaces, to ensure that overshadowing from new buildings does not result in significant loss of sunlight and diminish the enjoyment of public spaces for pedestrians, and to

⁵ The Domain Parklands Master Plan 2019-2039

⁶ City of Port Phillip Council Plan 2017-27



protect where possible increase the level of sunlight to public spaces during the times of the year when the intensity of use is at its highest.

- 47 The policy to achieve these objectives is to assess the impact based on three types of open areas:
- The type where there must be no additional shadow at key times and dates. These areas have been identified, such as the Yarra River, Federation Square, City Square, State Library Forecourt, Bourke Street Mall, Shrine of Remembrance and its Northern Forecourt;
 - The type where there should not be additional shadow at key times and dates. These areas have also been identified, such as Parliament Gardens, Treasury Gardens, Flagstaff Gardens, Flinders Street Railway Station steps, Birrarung Marr, and etc;
 - For other public space, public parks and gardens, public square and etc, development should not cast additional shadow between 11.00am and 2.00pm on 22 September.
- 48 The part of the Domain affected is in the third type. Therefore, an assessment should be based on additional shadow between 11am and 2pm on 22 September. The shadow diagrams submitted with the proposal show that additional overshadowing from the development does not reach St. Kilda Road during these times, and hence neither the Memorial Gardens nor the Shrine. The proposal achieves what is sought in clause 22.02 in the Melbourne Planning Scheme.
- 49 Based on the various guidance of the planning scheme including the 2013 Shrine study, and as assisted by the Melbourne Planning Scheme, I agree with Council and Ms. Ring that the proposal would cause a level of overshadowing that is within the realm of the planning scheme.
- 50 The planning scheme is not static but capable of responding to changes in planning circumstances. If it is found wanting, the proper way to deal with it is to commence the process of investigation, community consultation and a planning scheme amendment process.

CONCLUSION

- 51 In all, based on the materials before me, there is no justification to set aside council's decision.
- 52 The only changes I would make to the decisions are minor modifications to certain permit conditions:
- Condition 1s) to specify that reflectivity of external materials is to accord with Condition 22;
 - Condition 1x) relating to the timing of confirmation by a Licensed Land Surveyor verifying that the development does not exceed 70 metres AHD; and



- Condition 22 to make reference to the recommendation regarding reflectivity to accord with the expert reflectivity evidence dated 28 October 2020.

53 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to the conditions set out in the Appendix of this order.

Christina Fong
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	217/2019
LAND:	11-17 Dorcas Street SOUTH MELBOURNE VIC 3205

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of a mixed use building comprising a retail premises and dwellings; and
- Reduction in car parking.

Amended Plans required

- 1 Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and an electronic must be provided. The plans must be generally in accordance with the advertised plans prepared by Wood / Marsh architecture submitted with the application but modified to show:
 - (a) An additional pedestrian entry directly from Dorcas Street into the ground floor retail unit.
 - (b) The ground and first floor of the building setback a minimum of 1.5m from the southern and eastern boundaries (Middleton Lane).
 - (c) The perforated metal screen proposed to the south and east elevation at the podium levels replaced with an alternative design and material finish which provides high quality articulation and visual interest and adequate screening of the car parking at these levels.
 - (d) Indication of the allocation of storage cages within the parking areas for residents of dwellings within the development only.
 - (e) Indication of the operability of all windows and external openings within the development.
 - (f) The proposed 1.8sqm terrace to Apartment type 1 at level 4 to the west side removed.
 - (g) Indication of a minimum separation of 500mm between all tandem car parking spaces with aisles widths maintained in accordance with Clause 52.06 of the planning scheme.



- (h) The location of the proposed rainwater tank and details of connectivity or any other stormwater treatment to be consistent with the Sustainability Management Plan in accordance with condition 6.
- (i) The north and south edges of the balcony of Apartment Type 12 increased by a minimum of 450mm to 3.35m and 1.45m respectively.
- (j) The depth of the balcony of Apartment Type 13 increased by a minimum of 200mm (north to south dimension).
- (k) Dimensions to the north and south sides of the balcony of Apartment Type 16 indicating the total length of both edges equates to a minimum of 4.8m
- (l) The east and west sides of the main balcony of Apartment Type 17 increased to indicate the total length of both edges equates to a minimum of 4.8m.
- (m) Indication that Apartment Types 05, 09, 10, 12, 13, 14 and 16 achieve all criteria under Standard D17 of Clause 58 (Accessibility).
- (n) Indication that each apartment type achieves the required minimum storage space identified under Table D6 of Standard D20 (Storage) of Clause 58 (Apartment Developments).
- (o) Indication of bins to be used for garbage and recycling.
- (p) Indication of separate bin chutes for garbage and recycling on each floor at the residential levels.
- (q) Details of the material finish and specification of the screening of plant and equipment at roof level.
- (r) An urban art contribution in accordance with Condition 15.
- (s) A coloured schedule of the materials, colours and finishes to be used on the main external surfaces, including roofs, walls, windows, doors of the proposed additions with details of the glare and solar reflectivity of the building in accordance with Condition 22.
- (t) All plant, equipment and domestic services (including air conditioning, heating units, hot water systems, etc.) which are to be located externally and specifically how they will be acoustically treated and include any details of any screening.
- (u) Any alterations to the plans required by Conditions 3 (Landscaping)
- (v) Any alterations to the plans required by conditions 6 (Sustainable Management Assessment).
- (w) Any alterations to the plans required by Condition 13 (Waste Management).
- (x) A notation on the plans that written confirmation by a Licensed Land Surveyor will be provided to the Responsible Authority verifying that the development does not exceed 70 metres AHD. This must be



provided at relevant stages during the construction of the building as nominated by the Responsible Authority and before the building is occupied.

All to the satisfaction of the Responsible Authority.

No Alterations

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

Landscape Plan

- 3 Before the development starts (other than demolition or works to remediate contaminated land), a detailed Landscape Plan must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When the Landscape Plan is approved, it will become an endorsed plan forming part of this Permit. The Landscape Plan must incorporate:
 - (a) A survey plan, including botanical names, of all existing vegetation/trees to be retained;
 - (b) Buildings and vegetation (including botanical names) on neighbouring properties within 3m of the boundary;
 - (c) Significant trees greater than 1.5m in circumference, 1m above ground;
 - (d) All street trees and/or other trees on Council land;
 - (e) A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways;
 - (f) Landscaping and planting within all open space areas of the site;
 - (g) Water sensitive urban design;

All species selected must be to the satisfaction of the Responsible Authority.

Completion of Landscaping

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

Landscaping Maintenance

- 5 The landscaping as shown the endorsed Landscape Plan must be maintained, and any dead, diseased or damaged plant replaced in



accordance with the landscaping plan to the satisfaction of the Responsible Authority.

Sustainable Management Plan

- 6 Prior to the endorsement of plans under condition 1 of this permit, a Sustainable Management Plan (SMP) that outlines proposed sustainable design measures must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The amended SMP must be generally in accordance with the SMP titled ‘Sustainability Management Plan, 11-17 Dorcas Street, South Melbourne Revision 2 Job No. MEL0508’, prepared by ADP Consulting, dated 26 February 2019 but modified to include or show;
- (a) A preliminary assessment of energy ratings.
 - (b) A preliminary National Construction Code (NCC) Section J Energy Efficiency Deemed-to-satisfy or JV3 assessment.
 - (c) Washing machines set as “default or unrated” if these appliances are not provided as part of the fit-out.
 - (d) Details of daylight reporting.
 - (e) Details of natural ventilation.

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

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

Incorporation of Sustainable Design initiatives

- 7 The project must incorporate the sustainable design initiatives listed in the endorsed Sustainable Management Plan (SMP) to the satisfaction of the Responsible Authority.

Implementation of Sustainable Management Plan

- 8 Before the occupation of the development approved under this permit, a report from the author of the Sustainable Management Plan (SMP) approved pursuant to this permit, or similarly qualified person or company, must be submitted to the satisfaction of the Responsible Authority. The report must confirm that all measures and recommendations specified in the SMP have been implemented and/or incorporated in accordance with the approved report to the satisfaction of the Responsible Authority.



Water Sensitive Urban Design

- 9 Before the development starts (other than demolition or works to remediate contaminated land) a Water Sensitive Urban Design Report that outlines proposed water sensitive urban design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The report must demonstrate how the development meets the water quality performance objectives as set out in the Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) or as amended.

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

Incorporation of Water Sensitive Urban Design initiatives

- 10 Before the occupation of the development approved under this permit, the project must incorporate the water sensitive urban design initiatives listed in the endorsed Water Sensitive Urban Design Report to the satisfaction of the Responsible Authority, and thereafter maintained to the satisfaction of the Responsible Authority.

Maintenance Manual for Water Sensitive Urban Design Initiatives (Stormwater Management)

- 11 Before the development starts (other than demolition or works to remediate contaminated land) a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority.

The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:

- inspection frequency
- cleanout procedures
- as installed design details/diagrams including a sketch of how the system operates

The WSUD Maintenance Manual may form part of a broader Maintenance Program that covers other aspects of maintenance such as a Builder' User's Guide or a Building Maintenance Guide.

Site Management Water Sensitive Urban Design (larger Multi-Unit Developments)

- 12 The developer must ensure that:
- (a) No water containing oil, foam, grease, scum or litter will be discharged to the stormwater drainage system from the site;
 - (b) All stored wastes are kept in designated areas or covered containers that prevent escape into the stormwater system;



- (c) The amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads is minimised when vehicles are leaving the site.
- (d) No mud, dirt, sand, soil, clay or stones are washed into, or are allowed to enter the stormwater drainage system;
- (e) The site is developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants in accordance with currently accepted best practice.

Waste Management Plan for Higher Density Residential Development

13 Before the development starts (other than demolition or works to remediate contaminated land), a Waste Management Plan based on the City of Port Phillip's Waste Management Plan Guidelines for Developments must be prepared by a Waste Management Engineer or Waste Management Planner to the satisfaction of the Responsible Authority and endorsed as part of this permit. The Plan must include reference to the following:

- Land use type.
- The estimated garbage and recycling volumes for the whole development.
- Bin quantity, size and colour.
- The garbage and recycling equipment to be used.
- Collection frequency.
- The location and space allocated to the garbage and recycling bin storage area and collection point.
- The waste services collection point for vehicles.
- Waste collection provider.
- How tenants will be regularly informed of the waste management arrangements.
- Scaled waste management drawings.
- Signage.

The Waste Management Plan must be generally in accordance with the Waste Management Plan submitted with the application prepared by Leigh Design (dated 22 March 2019) but must be amended to include changes required by conditions 1 p) and q) above.

Once submitted and approved, the waste management plan must be carried out to the satisfaction of the Responsible Authority.



Tree Protection

- 14 Before demolition begins, a tree protection management plan (TPMP), setting out how the street tree's will be protected during construction and which generally follows the layout of Section 5 (i.e. General, Tree Protection Plan, Pre-construction, Construction stage and Post Construction) of AS4970 'Protection of trees on development sites'. Must be submitted to and approved by the responsible authority. When approved the TPMP will be endorsed and form part of the permit.

Urban Art

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

Alteration/Reinstatement of Council or Public Authority Assets

- 16 Before the occupation of the development allowed by this permit, the Applicant/Owner shall do the following things to the satisfaction of the Responsible Authority:
- (a) Pay the costs of all alterations/reinstatement of Council and Public Authority assets necessary and required by such Authorities for development.
 - (b) Obtain the prior written approval of the Council or other relevant Authority for such alterations/reinstatement.
 - (c) Comply with conditions (if any) required by the Council or other relevant Authorities in respect of reinstatement.

Noise Attenuation for Apartments

- 17 The building must be designed and constructed to achieve the following noise levels:
- (a) Not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 5am.
 - (b) Not greater than 40dB(A) for living areas, assessed LAeq,16h from 5am to 10pm.

Car Parking Allocation

- 18 Without the further written consent of the Responsible Authority, a minimum of 89 car parking spaces are to be provided generally in accordance with the plans prepared by Wood March Architecture (drawing number TP-20-98 and TP-20-99 all revision 3 dated 17 October 2019).



Without the further written consent of the Responsible Authority, the allocation of the 89 car parking spaces should be in accordance with the following rates:

- A minimum of 11 spaces allocated to the proposed one-bedroom apartments.
- A minimum of 20 spaces allocated to the proposed two-bedroom apartments.
- A minimum of 54 spaces to the remaining three or more bedroom apartments.
- 2 spaces for the proposed retail use.
- 2 spaces for residential visitor car parking.

Parking and Loading areas must be available

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

Public Services

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

On-Site Bicycle Parking

- 21 Before the development is occupied, the approved bicycle racks must be provided on the land to the satisfaction of the Responsible Authority.

Glare

- 22 External building materials and finishes must not result in hazardous or uncomfortable solar reflectivity and glare to pedestrians, public transport operators and commuters, motorists, aircraft, or occupants of surrounding buildings and public spaces in accordance with the parameters contained in the recommendations at Part VI of the Reflectivity Evidence prepared by Inhabit dated 28 October 2020, to the satisfaction of the Responsible Authority.



Lighting

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

Piping and ducting

- 24 All piping and ducting (excluding down pipes, guttering and rainwater heads) must be concealed to the satisfaction of the Responsible Authority.

No equipment or services

- 25 Any plant, equipment or domestic services visible from a street (other than a lane) or public park must be located and visually screened to the satisfaction of the responsible authority.

SEPP N1

- 26 All air conditioning and refrigeration plant must be screened and baffled and/or insulated to minimise noise and vibration to ensure compliance with noise limits determined in accordance with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 to the satisfaction of the Responsible Authority.

Time for starting and completion

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

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

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

- End of conditions -

