

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## ADMINISTRATIVE DIVISION

### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1998/2016  
PERMIT APPLICATION NO. TP274/2016

### CATCHWORDS

Proposed apartment building; Relevance of 4 storey height in DDO8; Policy support for increased density of housing; Site with limited constraints; Proximity to PPTN; Underdevelopment; Interim Order; Amendments required to proposal; Final Order.

<b>APPLICANT</b>	Jabala Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Maribyrnong City Council
<b>REFERRAL AUTHORITY</b>	Melbourne Water
<b>SUBJECT LAND</b>	6 Cross Street, Footscray
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Rachel Naylor, Senior Member Ann Keddie, Member
<b>HEARING TYPE</b>	Hearing
<b>DATES OF HEARING</b>	14, 15 and 16 March 2017
<b>DATE OF INTERIM ORDER</b>	20 July 2017
<b>DATE OF FINAL ORDER</b>	2 March 2018
<b>CITATION</b>	Jabala Pty Ltd v Maribyrnong CC [2018] VCAT 314

### ORDER

#### Permit granted

- 1 In application P1998/2016, the decision of the responsible authority is set aside.
- 2 In planning permit application TP274/2016, a permit is granted and directed to be issued for the land at 6 Cross Street, Footscray in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - Use of part of the land (three commercial tenancies) for the purpose of food and drink premises in the General Residential Zone;
  - Construction of more than two dwellings on a lot in the General Residential Zone;

- Construction of a building and construction and carrying out of works in the General Residential Zone for the food and drink premises, in the Design and Development Overlay Schedule 8, and in the Special Building Overlay; and
- Reduction of the standard car parking requirements for the dwellings, residential visitors and food and drink premises.

**Rachel Naylor**  
Senior Member

**Ann Keddie**  
Member

### APPEARANCES

For Jabala Pty Ltd ('the Applicant')

Mr T Pikusa of counsel instructed by Bazzani Scully Priddle Lawyers

He called the following witnesses:

- Mr S Schutt, landscape architect of Hansen Partnership Pty Ltd;
- Ms C Dunstan, traffic engineer of Traffix Group Pty Ltd;
- Mr M Barlow, town planner of Urbis Pty Ltd;
- Mr S McGurn, town planner of Urbis Pty Ltd;
- Mr J Talacko, daylight expert of Ark Resources Pty Ltd; and
- Ms V Huang, ESD consultant of LID Consulting in regard to the waste collection and waste management plan.

Mr Pikusa chose not to call Mr C Goss to give evidence about the preparation of the photomontages as neither the Council nor the Tribunal wished to cross-examine Mr Goss.

For Maribyrnong City Council ('the Council')

Ms N Luketic, solicitor of Harwood Andrews

For Melbourne Water

No appearance

## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Jabala Pty Ltd (the Applicant) seeks planning permission to construct a building of between four and seven storeys in height on No. 6 Cross Street, Footscray (at the corner of Cross and Hocking Streets). The building is proposed to contain two food and drink premises, residential apartments and car parking. Council refused to support this proposal because of its failure to satisfy the Design and Development Overlay (DDO8) that affects Nos. 4 and 6 Cross Street, particularly that the height of the building exceeds four storeys. The Council also refused the proposal because the Hocking Street frontage is not acceptably active and because there is insufficient car parking.

### INTERIM ORDER

- 2 We gave reasons and issued an Interim Order on 20 July 2017.<sup>2</sup> We found DDO8 requires the design of the proposed development to consider as appropriate the West Footscray Urban Design Framework (the WF UDF). We also found the WF UDF suggests that consideration should be given to the content of the planning scheme and to the character and features of the site and surrounds. Having considered these matters, we determined this site is located in a robust physical context that is largely unaffected by constraints. This context presents the opportunity for development on this site that is substantially taller than four storeys. As such, we concluded the proposed overall height of seven storeys is acceptable but the detail of the design is otherwise an underdevelopment of the site, and a greater intensity of development should be considered. We identified a range of aspects of the design that should be reconsidered, including:

- The appearance of the building in the permit application plans is preferable. It had a greater variety of materials; vertical panels in each façade creating visual interest; and a change in façade material and use of a curved element, which emphasised the importance of the street corner;<sup>3</sup>
- A higher floor to ceiling of the corner commercial tenancy is preferable;<sup>4</sup>
- Level 4 (the fifth storey) along Cross Street being built to the east side boundary (as in the permit application plans);<sup>5</sup>

---

<sup>1</sup> The submissions and evidence of the parties, the supporting exhibits given at the hearing including the Applicant's Tribunal Book, the statements of grounds filed, and the material and submissions filed in response to our Interim Orders 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.

<sup>2</sup> *Jabala Pty Ltd v Maribyrnong CC* [2017] VCAT 1083 (the Interim Order).

<sup>3</sup> Refer to paragraph 38 of the Interim Order.

<sup>4</sup> Refer to paragraph 39 of the Interim Order.

<sup>5</sup> Refer to paragraph 40 of the Interim Order.

- The level 5 floor plan extending in a similar way to the north and west as level 4, with modifications to apartments 4.04 and 4.09 subject to considering any changes to the approved development at No. 4 Cross Street;<sup>6</sup>
- The level 6 floor plan shown in the permit application plans is acceptable and consideration be given to extending it to the north, wrapping around the north side of the communal courtyard area subject to the acceptability of any internal overshadowing of this area;<sup>7</sup>
- Activating the Hocking Street frontage as much as possible is a preferable design outcome;<sup>8</sup>
- A larger commercial tenancy that wraps around the street corner would be a good design outcome, including dealing with the potential for flooding along the Cross Street frontage and poor internal amenity for south facing ground floor apartments;<sup>9</sup>
- The desirability of creating another commercial tenancy in the northwest corner of the ground floor;<sup>10</sup> and
- The required car parking to be reconsidered having regard to the findings made in our Interim Order.<sup>11</sup>

### **AMENDED PLANS AND SUBMISSIONS**

3 In late October 2017, the Applicant submitted:

- Amended plans and a summary statement of the changes made;
- An updated waste management plan that explains the arrangements for the waste chute system, the private collection of the commercial waste and the Council collection service for the residential waste;
- An addendum statement by Ms Dunstan on the provision and layout of the car parking and waste arrangements, and the associated traffic impacts; and
- An addendum statement by Mr Talacko analysing the daylight penetration of the amended apartment layout, with recommendations for some further changes to improve the daylight penetration to some apartments on the lower levels.

4 In late November 2017, the Tribunal received a written submission and updated ‘without prejudice’ permit conditions from the Council. Its submission considers ‘that the building ought to incorporate a greater

---

<sup>6</sup> Refer to paragraph 41 of the Interim Order.

<sup>7</sup> Refer to paragraph 41 of the Interim Order.

<sup>8</sup> Refer to paragraph 45 of the Interim Order.

<sup>9</sup> Refer to paragraphs 46 and 47 of the Interim Order.

<sup>10</sup> Refer to paragraph 48 of the Interim Order.

<sup>11</sup> Refer to paragraphs 49 and 50 of the Interim Order.

variety of materials and colours at the upper levels to provide some visual relief (and interest) to the massing of the built form. The proposed scheme is predominantly white and offers no change in the façade material.’ The Council also submits that access to the private open space from the ground floors of apartments 1.05 and 1.06 should be provided from both ground floor bedrooms in each apartment rather than from one bedroom only. The Council advised that it is not necessary to hold a further hearing.

- 5 No submissions have been received from No. 4 Cross Street or from Melbourne Water.

## **RECENT PLANNING SCHEME AMENDMENTS**

- 6 We are required to make our final decision having regard to the planning policies and provisions that are currently contained within the planning scheme. Hence, since the hearing, there have been changes implemented through planning scheme amendments. By order dated 8 September 2017, we gave leave to the parties to address any implications arising from the gazettal of Amendment VC139 for this proceeding. No submissions were received. Despite this, we have considered this amendment, particularly its introduction of the urban design and apartment guidelines as reference documents to State planning policy. We are satisfied that there are no new matters arising from this amendment that impact upon our final consideration of the merits of this proposal.
- 7 We have also had regard to the recent Amendment VC142 that makes a number of changes to the Victoria Planning Provisions in all planning schemes, including this scheme. We note one of those changes is to remove the need for a planning permit to waive or reduce the loading bay requirements. A loading bay remains a decision guideline in clause 65 of the scheme and we are satisfied that this proposal provides for some loading to occur onsite as evident by the waste loading capability and the nomination of a resident loading area. We are also satisfied that there is sufficient available on-street parking for use for loading purposes as well.

## **REASONS FOR FINAL DECISION**

- 8 Having considered the amended plans, the submission received and the further written reports of the expert witnesses, we have decided that a permit should issue subject to conditions, which we explain further below.

### **The Strong Verticality of the Built Form**

- 9 The strong verticality of the amended design presentation to both Cross and Hocking Streets, emphasised by the recessed elements along both facades, is supported.

### **The Cross Street Elevation and the East Side Setbacks**

- 10 Our Interim Order supported a five storey building along Cross Street. The amended design proposes six storeys along Cross Street, with the seventh

storey set back 2.5 metres from the east side boundary. We are not persuaded this extent of built form across the Cross Street frontage is acceptable. The expanse of the sixth storey is acceptable as it maintains a suitable transition in scale of 1.5 to 2 storeys from No. 4 Cross Street (e.g. a gradual stepping up in the building form to the Hocking Street intersection). However, the amended design of the seventh storey needs to be modified along Cross Street. The 2.5 metre setback from the east side boundary is insufficient to be an effective transition in scale.

- 11 A better example of an acceptable transition is the rear north-eastern apartment (unit 6.04) that is set back more than 10 metres. The southern section of the sixth storey needs to be set back as far as the vertical element to the west of gridline G, resulting in the deletion of unit 6.06. The eastern end of unit 6.05 beyond this point may remain if the Applicant wishes as it is sufficiently setback from the street frontage and will not have any appreciable impact upon the Cross Street elevation. Subject to this change, the southern frontage built form is acceptable.

### **The Cross/Hocking Streets Corner**

- 12 The Cross and Hocking Streets corner of the building is an important element, as we identified in our Interim Order. We identified that consideration should be given to a higher floor to ceiling in the corner commercial tenancy, as was proposed in the permit application plans. These earlier plans drew attention to the corner by:

- The double height glazing,
- The curved built form, and
- The more solid wall treatment above these features that distinguish it from the vertical elements located beyond the street corner along both streets.

- 13 We are not persuaded the amended design achieves this outcome. We have decided that the corner needs further emphasis by an increase in the floor to floor height as was proposed in the permit application plans. Double height glazing with a distinguishing and a more robust wall treatment above will visually distinguish and bring emphasis to the street corner. The increase in floor to ceiling height may necessitate changes to unit 1.10 (such as a reduction in its size or its deletion and incorporation into unit 1.11).

### **The Materials and Finishes**

- 14 The vertical elements beyond the street corner do not have sufficient distinction in their streetscape presentation. These elements in the permit application plans were further identified by a change of colour and material. The shaded recesses with alternating punched windows to the bedrooms in the adjoining apartments also added variety to the street facades. We agree with the Council's submission that the design treatment in the amended

plans now before us is bland. It lacks the solidity of the permit application plans.

- 15 For these reasons, the proposed materials and finishes need to change. The Council submits that the building ought to incorporate a greater variety of materials and colours, and we agree. The drawings and images submitted in response to our Interim Order appear to have reduced the mix of materials and finishes, and there is no clear explanation as to why, or what benefits are derived from these changes. For example, it is not clear where the alternative open and closed balcony treatments are proposed as the treatments shown on the elevations do not appear to match those on the plans. Balustrading noted as a 'white colorbond' appears as black in the images. The scattered window framing elements introduced in the amended plans have a negative effect on daylight to some apartments (a matter we discuss further later in these reasons), and these elements add little to enliven the façade of the building.
- 16 Further work needs to be undertaken with the Council to resolve this aspect of the design. Visual interest needs to be introduced into all elevations of the building without impacting on the overall design. This could be achieved, for example, by introducing a change of material to one or more of the vertical elements as was proposed in the initial permit application plans. In those plans, the solid vertical elements that made up the street facades were clearly expressed. Light in tone and sitting above a dark plinth, the solidity was emphasised both by the change in materials and the regular recessed elements between them. This is the sort of outcome that should be achieved by the Applicant and approved by the Council.

## **The Ground Floor Configuration**

### General configuration acceptable

- 17 In general terms, the changes to the configuration of the ground floor are acceptable. The removal of the majority of the ground floor apartments has assisted in creating opportunities for greater activation of the street frontages and reducing the issues for the dwellings such as poor internal amenity and flooding potential.

### Changes to waste design and collection arrangements

- 18 The provision of a shared waste storage room is appropriate, but the proposed alternate collection arrangements for commercial and residential waste, particularly the residential waste collection, are not acceptable due to the design implications. The Lid Consulting Waste Management Plan specifies for the commercial waste to be collected privately and the residential waste to be collected by Council. The Council has made no comment about this proposal. We make no finding on this. We will leave the type of for collection to be a matter to be resolved between the parties as part of a permit condition. Our concern is with the design implications of

the differing collection arrangements. We have decided changes are required to the design, which will necessitate changes to the collection arrangements.

- 19 Appendix A of the Lid Consulting Waste Management Plan illustrates the commercial waste will be collected via a private waste truck in the vehicle entry area of the ground floor that contains a shared hard stand area, visitor car parking, bicycle car parking, electrical and other services metres. This route of collection is acceptable. Appendix A also illustrates that the residential waste will be collected from the street with the bins moved through the depicted paved area that wraps around the northern side of Commercial tenancy 3. This is a poor and unacceptable design outcome.
- 20 The movement of all waste bins should occur through the vehicle entry area. In turn, the northern end of the western refuse area with the waste chutes should have a solid wall with high level glazing to introduce natural light into this area. By removing this waste door access, the paved area that wraps around the northern side of Commercial tenancy 3 can be utilised as a sunny and partially sheltered outdoor area for patrons of the tenancy. Increasing the extent of window along this part of tenancy 3's east wall would also enhance what will be a communal outdoor paved area.

#### Access from the ground floor apartments

- 21 The northeast corner of the ground floor contains two two-storey apartments (units 1.05 and 1.06). The ground floor of these apartments each contain two bedrooms, and the first floors each contain a further bedroom and an open plan living areas that has direct access to a north facing balcony of about 12 square metres. The Council submits that access to the private open space from the ground floors of these apartments should be provided from both bedrooms in each apartment rather than from one bedroom only. The Applicant is agreeable to this, however we are not persuaded this is a good design outcome.
- 22 Our Interim Order did not make any findings about the landscape concept plan presented by Mr Schutt at the hearing. This is because our Interim Order dealt with the matters of concern to the Council and then identified the aspects of the proposal that we considered need to change. Now, we have the amended plans and we remain of the view that Mr Schutt's landscape concept plan is not an aspect of the proposal that needs to change. Mr Schutt's ground floor landscape plan included a dense planting of vegetation including trees along the northern boundary. During the hearing, he expressed the view that it should be in common ownership and fenced with a gate for maintenance. Whilst we are happy with a paved area at the northwest end of the northern boundary, the balance of this boundary should include the density of planting proposed by Mr Schutt.
- 23 This means the ground floor area adjacent to unit 1.06, unit 1.05, the eastern waste room and the northern fire staircase should include the density of



planting proposed by Mr Schutt and be in common ownership. This also means the access proposed from units 1.05 and 1.06 is removed. A fence and gate should be included, but it may be that these are set back from the edge of the paved area around commercial tenancy 3 to enable some landscaping to soften what may be an outdoor seating area in the future.

#### Vehicle access security gate

- 24 The amended plans include a security gate across the vehicle access point at the Hocking Street footpath. Ms Dunstan considers this gate must be open between 9am and 9pm, seven days a week in order to ensure visitors can access the on-site visitor parking or the gate is set back 6 metres into the vehicle entry area with an intercom that visitors can operate. We find a gate that is set back would be an acceptable and preferable design outcome. The small landscaping bend on the north side of the vehicle access can be removed, as it was not part of the original design and is unnecessary particularly given its small size. The areas and design of the electrical and other services and meters and bicycle parking can all be modified as necessary to accommodate a gate and intercom.

#### **The multi-purpose common area**

- 25 The amended plans include a 252 square metre rectangular shaped 'multi-purpose area' that is described as a 'common area' in the statement of changes provided with the plans. This is located internal to the site, at the rear of the first floor area that provides storage for each apartment. This area is set back 2.5 metres from the east side boundary and includes four windows that are reasonably narrow in width. There is no further explanation as to how this area will be utilised. In the plans we considered in our Interim Order, this area was a void space above the car stacker system. We are not persuaded that this area serves any useful purpose as currently proposed. Again, there is no detail about how it will be used, any arrangements for its fit-out or ongoing management.
- 26 Mr Schutt's level 2 communal courtyard landscape concept plan includes planting within the east setback of 2.5 metres and within the courtyard area. The layout of the apartments surrounding this courtyard has changed since our Interim Order, so there are no longer balconies/terraces adjacent to the east setback landscaped area.
- 27 The amended plans create a design that does not acceptably take advantage of the eastern orientation and the landscaping opportunities. We have decided changes should be made. The east side setback should be increased to 4.5 metres on levels 1, 2, 3, 4 and 5, creating greater landscaping opportunities. This means the multi-purpose room needs to be setback further and the apartments on levels 2 to 5 modified (and in some cases reduced in size). These modifications could include changing units 2.07 and 2.10 into double storey apartments that utilise the remaining area of the multi-purpose room.

## **Internal Amenity of Apartments**

28 Mr Talacko has recommended some further changes to the design of some of the apartments in order to increase the daylight penetration. With his changes, he advises only four apartments will be marginally below the best practice standard for daylight in the living/dining/kitchen areas. We have incorporated his recommendations into the permit conditions, with an acknowledgment that these may need to be further reviewed if there are any substantial changes made to the appearance, materials and finishes of the building.

## **Commercial tenancies**

29 The amended plans describe the commercial tenancies as exactly that. Ms Dunstan's statement acknowledges they could be used for either a shop or 'potentially' food and drink premises. The Lid Consulting Waste Management Plan has calculated the waste generation based specifically on a convenience store and a café.

30 At paragraph 46 of our Interim Order, we explained that the use of part of this site as a convenience shop is not included in this application. Whilst we supported the possibility of this land use being included in the development, we stated we cannot include it in our consideration of this proposal. The acceptability of this land use and the potential impacts of such a land use including its car parking and loading need to be considered as part of a separate planning application process. Therefore, we have not referred to the Lid Consulting Waste Management Plan in the permit conditions as it refers to one of the land uses as a convenience store. A new waste management plan will need to be submitted for approval that covers the matters contained in the Council's draft permit conditions.

31 To be clear, we have reached the decision that a design with three commercial tenancies is acceptable and we will grant permission for their use as food and drink premises as has been sought throughout this planning approval process. A separate new planning application will need to be lodged with the Council if the Applicant wishes to pursue planning approval for a convenience shop.

## **Car Parking Provision**

32 Whilst we were happy with the car parking provision in our Interim Order, we did say that the car parking provision would need to be reconsidered as part of any amended proposal.

33 Ms Dunstan provided Table 1 that compares the car parking provision between the design in our Interim Order with the amended plans now before us. We note the following:

- The provision of car parking for one bedroom apartments remains similar (0.53 spaces per apartment versus 0.5 now);

- The provision of car parking for two bedroom apartments is slightly greater (0.93 spaces per apartment versus 0.98 now);
- The provision of car parking for three bedroom apartments is the same (1 per apartment);
- The provision of visitor car parking is slightly greater (0.039 spaces per apartment versus 0.046 now); and
- The provision of commercial car parking is slightly greater (1 space per 100sqm versus 1.16 now).

34 Ms Dunstan also observes that the commercial car parking provision is acceptable whether it serves a food and drink premises or a convenience shop.

35 Given the car parking provision is similar to what we previously considered, we see no reason to depart from our earlier findings on the acceptability of the car parking provision. Hence, we adopt our earlier reasons and conclude that the proposed reduction in the standard car parking rates in the planning scheme is acceptable.

36 Ms Dunstan advises 26 bicycle spaces are required under the planning scheme, being 17 resident spaces and 9 visitor spaces. The proposal provides 47 resident spaces and 8 visitor spaces within the vehicle access alcove. The Council has proposed a condition requiring the provision of visitor bicycle parking in accordance with clause 52.34-3, meaning there needs to be an additional visitor space. This is not opposed by the Applicant, and we have imposed this requirement.

## **CONCLUSION**

37 For these reasons, the decision of the Responsible Authority is set aside. A permit is granted subject to the conditions set out in Appendix A.

**Rachel Naylor**  
Senior Member

**Ann Keddie**  
Member

## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TP274/2016
<b>LAND</b>	6 Cross Street, Footscray

### WHAT THE PERMIT ALLOWS

Construction of a seven storey mixed use building with a reduction in car parking in accordance with the endorsed plans and the following conditions. Specifically, this permit allows:

- Use of part of the land (three commercial tenancies) for the purpose of food and drink premises in the General Residential Zone;
- Construction of more than two dwellings on a lot in the General Residential Zone;
- Construction of a building and construction and carrying out of works in the General Residential Zone for the food and drink premises, in the Design and Development Overlay Schedule 8, and in the Special Building Overlay; and
- Reduction of the standard car parking requirements for the dwellings, residential visitors and food and drink premises.

### CONDITIONS

Amended plans required

- 1 Before the development starts, amended plans must be submitted to the satisfaction of 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 be provided in digital format. The plans must be generally in accordance with the plans prepared by 11 Dimensions dated October 2017, Revision 8 and drawing no.'s TP101 to TP108, TP201 to TP204, TP301 to TP303, TP505 to TP508, TP510 and TP514 to TP520 but modified to show:
  - (a) All visitor bicycle spaces provided in accordance with Clause 52.34-3 of the Maribyrnong Planning Scheme and contained on the subject land.
  - (b) The southern section of the sixth storey set back as far as the vertical element to the west of gridline G, resulting in the deletion of unit 6.06 but with the eastern end of unit 6.05 beyond this point remaining (if the permit applicant wishes).
  - (c) The corner commercial tenancy designed to include double height glazing with a distinguishing and more visually distinctive wall

treatment above to emphasise the street corner. This may necessitate changes to unit 1.10 (such as a reduction in its size or its deletion and incorporation into unit 1.11).

- (d) The east side setback should be increased to 4.5 metres on levels 1, 2, 3, 4 and 5 between gridlines 4 and 10, creating greater landscaping opportunities by way of a planting strip at level 1 capable of supporting canopy trees. This results in the opportunity for what remains of the multi-purpose room to be utilised in re-configured two storey apartments for units 2.07 and 2.10. Above this level, units 3.07, 3.10, 4.07, 4.10, 5.07 and 5.10 will require reconfiguration into one bedroom apartments, and the entries to the adjacent northeast and southeast apartments modified.
- (e) Visual interest needs to be introduced into all elevations of the building without impacting on the overall design. This requires a complete reconsideration of the materials and finishes and may include, for example, introducing a change of material to one or more of the vertical elements, having a dark plinth and emphasising the solidity through both changes in materials and the regular recessed elements between them (as explained in the VCAT final order in P1998/2016).
- (f) A schedule of construction materials, external finishes and colours, including a coloured set of elevations depicting the materials and finishes chosen to the satisfaction of the responsible authority. All materials to be clearly specified and referenced on elevations including soffits and reveals.
- (g) The northern end of the western refuse area with the waste chutes to have a solid wall with high level glazing to introduce natural light into this area.
- (h) Nomination of the each of the commercial tenancies as food and drink premises.
- (i) The extent of window along commercial tenancy 3's east wall increased to enhance the outdoor paved area.
- (j) Removal of the access from the ground floor of units 1.05 and 1.06 to the adjacent open space.
- (k) A notation that the open space area adjacent to the northern boundary is communal open space.
- (l) The inclusion of a fence and gate that allows maintenance access to the northern communal open space area in a location that is set back from the edge of the paved area around commercial tenancy 3 to enable some landscaping to soften this area.
- (m) The security gate across the vehicle access point set back from Hocking Street a minimum of 6 metres with an intercom that visitors

can operate, and changes to the areas and design of the electrical and other services and meters, the bicycle parking and removal of the small landscaping area on the north side of the vehicle access point.

- (n) Extension of the living room glazing to the full width of the living room façade in units 1.01, 1.04 to 1.09, 2.07 and 4.06.
- (o) Deletion of any solid framing element around the balcony openings of units 1.01, 1.04 to 1.09, 2.07 and 4.06.
- (p) Increasing the size of the kitchen window in units 1.06, 1.07, 2.06 and 2.11 to 1600mm by 1600mm.
- (q) Reinstatement of any redundant vehicle crossovers and relocation of any affected street assets.
- (r) Notation to state the relocation or removal of Jemena assets to be undertaken by the applicant/developer, in accordance with Jemena requirements and at no cost to Council.
- (s) A landscape plan to the satisfaction of the Responsible Authority (refer to condition below).
- (t) Any modifications arising from the revised assessment of Internal daylight and amenity (refer to condition below).
- (u) Any modifications arising from the revised Waste Management Plan (refer to condition below).
- (v) Any modifications arising from the Acoustic report (refer to condition below).

#### General conditions

- 2 The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clause 62 of the Maribyrnong Planning Scheme. NOTE: This does not obviate the need for a permit where one is required.
- 3 Once the development has started, it must be continued and completed to the satisfaction of the Responsible Authority.
- 4 11 Dimensions or an experienced architect must be engaged to oversee the design intent and construction quality to ensure that the design and quality is to the satisfaction of the Responsible Authority.
- 5 All visual screening and measures to prevent overlooking to adjoining properties must be erected prior to the occupation of the buildings to the satisfaction of the Responsible Authority.
- 6 All pipes, fixtures, fittings and vents excluding downpipes, servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

- 7 No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building(s) without the written consent of the Responsible Authority.
- 8 The walls on the boundary of the adjoining properties shall be cleaned and finished to the satisfaction of the Responsible Authority.
- 9 All boundary walls must be cleaned and finished using a graffiti proof finish or alternative measure to prevent or reduce the potential of graffiti. Any graffiti that appears on the wall must be cleaned or removed as soon as practicable to the satisfaction of the Responsible Authority. The cost of any clean-up or removal of the graffiti from the wall must be paid for by the developer and/or future owners of the land.
- 10 Prior to the occupation of the development or subdivision of the land, public realm upgrade works are to be constructed to Council's standards and satisfaction. Detailed engineering plans are to be submitted to Council's City Design and Civil Design and Transport teams for checking and approval. All costs associated with the works, including plan checking and supervision fees, are to be borne by the permit holder.
- 11 No advertising signs shall be erected, painted or displayed on the land without the permission of the Responsible Authority unless in accordance with the provisions of the Maribyrnong Planning Scheme.

#### Landscape Plan

- 12 Concurrent with the endorsement of plans, landscape plans generally in accordance with the City of Maribyrnong Landscape Guidelines dated August 2005 must be submitted and be to the satisfaction of the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the landscape concept plans prepared by Hansen (drawing nos. LCD-001 and LCD-002 dated 24/02/2017) and must show:
  - (a) The eastern side setback planting to occur at level 1 rather than level 2 with planting capable of supporting canopy trees.
  - (b) Consequential changes to layout of the planting in the communal courtyard on level 2.
  - (c) Introduction of street trees adjacent to the site in consultation with Council's Street Tree Coordinator.
  - (d) Details of the surface finish to the kerb outstands.
  - (e) Street tree planting in accordance with Council's Street Tree strategy.
- 13 Before the occupation of the development starts or by such later date as is approved by the Responsible Authority in writing, the landscaping works (including street trees) shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.

- 14 The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, this includes the replacement of any dead, diseased or damaged plants.

#### Acoustics

- 15 Concurrent with the endorsement of plans, an acoustic report prepared by a qualified Acoustic engineer must be submitted and endorsed to form part of the permit. The report must consider the external and internal impacts of railway and other relevant noise sources on the proposed dwellings and provide solutions to mitigate these impacts. All of the recommendations of the acoustic report must be implemented prior to the occupation of the building, to the satisfaction of the Responsible Authority.

#### Internal daylight and amenity condition

- 38 Concurrent with the endorsement of plans, an internal daylight and amenity assessment report for the development must be prepared and be to the satisfaction of the Responsible Authority. The report must demonstrate the internal daylight penetration is generally consistent with that contained in the Internal Daylight and Amenity Report prepared by Ark Resources dated 27 October 2017.

#### Waste condition

- 16 Concurrent with the endorsement of plans, a waste storage and collection management and recycling plan for the development must be prepared and be to the satisfaction of the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The management plan must be provided in digital format (where possible) and have regard to the following matters:-
  - (a) Bin storage areas for the proposed dwellings.
  - (b) Owners Corporation waste management plan.
  - (c) Odour control from bin storage areas.
  - (d) Access for removal of waste bins.
  - (e) Delivery of bins to waste collection points and retrieval of bins once collected.
  - (f) Arrangements for collection.
  - (g) Location and detail of organic waste collection.
  - (h) Work cover authority safety matters.
- 17 Waste management must be carried out in accordance with the approved Waste Management Plan to the satisfaction of the Responsible Authority.



## Construction Management Plan

- 18 Prior to the commencement of the permitted buildings or works a detailed Construction Management Plan (CMP) must be prepared and be to the satisfaction of the Responsible Authority. The CMP must include the following details:
- 19 Staging of construction;
- (a) Management of public access and linkages around the site during construction;
  - (b) Site access, parking and traffic management;
  - (c) Any works within the street reserves;
  - (d) Any impacts on public transport operations;
  - (e) Sediment control and site drainage;
  - (f) Hours of construction;
  - (g) Control of noise, dust and soiling of roadways;
  - (h) Discharge of polluted waters;
  - (i) Demolition & excavation;
  - (j) Storage of construction materials;
  - (k) Location of site offices and cranes;
  - (l) Public safety;
  - (m) Management of potentially contaminated materials
  - (n) Collection and disposal of building and construction waste;
  - (o) Methodology for responding to complaints associated with the construction works and provide site manager contact details.
- 20 All development must be carried out in accordance with the approved Construction Management Plan to the satisfaction of the Responsible Authority.

## General amenity conditions

- 21 The use and/or development must be managed so that the amenity of the area is not detrimentally affected, through the:
- (a) Transport of materials, goods or commodities to or from the land.
  - (b) Appearance of any building, works or materials.
  - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
  - (d) Harbourage and/or presence of vermin
- All to the satisfaction of the Responsible Authority.
- 22 All food and drink premises uses may operate only between the hours of:

7am and 11pm Sunday to Thursday,

7am and 12 midnight Friday and Saturday

except with the written permission of the Responsible Authority.

- 23 Any kitchen(s) mechanical exhaust system must be constructed in accordance with the Australian Standard number 1668 and/or to the satisfaction of the Responsible Authority.
- 24 Deliveries to and from the site must occur outside peak demand periods for on-street parking and between the following hours:
  - 7am to 10pm (inclusive) Monday to Saturday
  - 9am to 10pm (inclusive) Sunday and/or public holidays
- 25 External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the Responsible Authority.
- 26 Noise levels emanating from the premises must not exceed the noise levels as determined by the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. N-1.

#### Mechanical stackers

- 27 The mechanical stackers must be routinely serviced and maintained to the satisfaction of the Responsible Authority to ensure satisfactory access to all car spaces and to prevent any adverse effect on adjoining land by the emission of noise.

#### Infrastructure conditions

- 28 Vehicular crossing(s) must be constructed and/or modified to the road to suit the proposed driveway(s) to the satisfaction of the Responsible Authority.
- 29 All disused or redundant vehicle crossings must be removed and the area reinstated with either/or footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.
- 30 The site must be drained to the satisfaction of the Responsible Authority. Storm water run-off from the site must not cause any adverse impact to the public, any adjoining site or Council asset. Stormwater from all paved area has to be drained to underground storm water system. Any cut, fill or structure must not adversely affect the natural storm water runoff from and to adjoining properties.
- 31 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development.
- 32 Prior to the commencement of any works on the site and/or subdivision of the land, the owner must submit for approval to the Responsible Authority

drainage plans to the requirements outlined in the Stormwater Discharge Permit.

#### Environmental Audit

33 Before the construction of the development authorised by this permit commences an Environmental Auditor appointed under Section 53S of the Environment Protection Act 1970 (EP Act) must undertake an Environmental Audit in accordance with the provisions of the EP Act and issue:

- (a) a Certificate of Environmental Audit for the land in accordance with Section 53Y of the EP Act (Certificate); or
- (b) a Statement of Environmental Audit for the land in accordance with Section 53Z of the EP Act (Statement),

and the Certificate or Statement must be provided to the Responsible Authority

34 If, pursuant to condition 34, a Statement is issued:

- (a) the development authorised by this permit must not be undertaken unless the Statement of Environmental Audit clearly states that the land is suitable for the sensitive use for which the land is being developed;
- (b) the development authorised by this permit must not be undertaken until compliance is achieved with the terms and conditions that the Statement states must be complied with prior to development commencing;
- (c) prior to the construction of the development authorised by this permit, a letter prepared by an Environmental Auditor appointed under Section 53S of the EP Act which states that the terms and conditions contained in the Statement have been complied with must be submitted to the responsible authority; and
- (d) if any term or condition of the Statement requires any ongoing maintenance or monitoring, the Owner must enter into an agreement with Council pursuant to section 173 of the Planning and Environment Act 1987 (Agreement). The Agreement must:
  - i provide for the undertaking of the ongoing maintenance and monitoring as required by the Statement; and
  - ii be executed before the sensitive use for which the land is being developed commences.

The Owner must pay all expenses involved in the drafting, negotiating, lodging, recording and execution of the Agreement, including those incurred by the responsible authority.

#### Melbourne Water conditions

- 35 Pollution and sediment laden runoff shall not be discharged directly or indirectly into Melbourne Water's drains or waterways.
- 36 Finished floor levels of the ground floor must be constructed no lower than 25.7 metres to Australian Height Datum (AHD).
- 37 Imported fill must be kept to a minimum on the property and must only be used for the sub floor areas of the building.
- 38 The ground floor levels shown on the endorsed plans must be confirmed. The confirmation of the ground floor level must take place no later than at the time of the inspection of the subfloor of the development required under the *Building Act 1993* and the Building Regulations. This confirmation must be in the form of a certified survey plan, showing finished ground floor levels (as constructed) reduced to the Australian Height Datum. It must be submitted to Melbourne Water and the Responsible Authority to demonstrate that the ground floor levels have been constructed in accordance with Melbourne Water's requirements.

#### Expiry of permit for use & development

- 39 This permit as it relates to use will expire if the use does not commence within four (4) years after the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the period referred to in this condition.

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

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

**– End of conditions –**