

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NOS. P2079/2016 & P147/2017
PERMIT APPLICATION NOS. PLN16/0434 &
PLN16/0732.

CATCHWORDS

Section 79 of the Planning & Environment Act 1987; Yarra Planning Scheme; Mixed Use Zone; Heritage Overlay; Design & Development Overlay; Construction of 263 dwellings in a 10-storey building; Construction of 3 three-storey townhouses; Heritage; Built form; Amenity

APPLICANT	Gurner 26-56 Queens Parade Pty Ltd
RESPONSIBLE AUTHORITY	Yarra City Council
REFERRAL AUTHORITIES (P2079/2016)	Public Transport Victoria, VicRoads & Melbourne Water
RESPONDENTS (P2079/2016)	Each of the persons listed in Appendix A
RESPONDENTS (P147/2017)	Nicholas Hutchins & Victoria Politoff, Marlene Hayhoe, John Hayhoe, Julie Contole, Glen McCallum, Diana Carroll & Linda Woo, Colin Riess, Anne Coveny, Colin Hopkins
SUBJECT LAND (P2079/2016)	26-56 Queens Parade, North Fitzroy
SUBJECT LAND (P147/2017)	Rear 26-56 Queens Parade, North Fitzroy
WHERE HELD	Melbourne
BEFORE	Geoffrey Code, Senior Member Ann Keddie, Member
HEARING TYPE	Hearing
DATES OF PREVIOUS HEARINGS	4, 5, 6, 7, 8, 11, 12, 13, 14 & 15 September 2017; 15 May 2018
DATES OF PREVIOUS ORDERS	7 October 2016; 15 November 2016; 24 November 2016; 29 March 2017; 6 April 2017; 26 October 2017; 17 November 2017; 2 March 2018; 1 May 2018; 15 May 2018 & 15 June 2018
DATE OF HEARING	7 June 2018
DATE OF ORDER	6 July 2018
CITATION	Gurner 26-56 Queens Parade Pty Ltd v Yarra CC [2018] VCAT 1047

ORDER

APPLICATION P2079/2016

Decision set aside

1 The decision of the responsible authority is set aside.

Permit granted

2 In permit application PLN16/0434 a permit is granted and directed to be issued for the land at 26-56 Queens Parade, North Fitzroy on the conditions set out in Appendix B. The permit allows—

- Construction of two or more dwellings on a lot in a 10-storey building plus two basements in the *Mixed Use Zone* under clause 32.04-6
- Use of part of the land for the sale and consumption of liquor (on-premises) under clause 52.27
- Partial demolition or removal of a building in a *Heritage Overlay* under clause 43.01-1
- Construction of a building or construction or carrying out of works in a *Heritage Overlay* under clause 43.01-2
- Reduction of the car parking requirements under clause 52.06-2
- Alteration of access to a road in Road Zone Category 1 under clause 52.29

in accordance with the endorsed plans.

APPLICATION P147/2017

Decision set aside

3 The decision of the responsible authority is set aside.

Permit granted

4 In permit application PLN16/0732 a permit is granted and directed to be issued for the land at rear 26-56 Queens Parade, North Fitzroy on the conditions set out in Appendix C. The permit allows—

- Construction of three dwellings on a lot in a in the *Mixed Use Zone* under clause 32.04-6
- Partial demolition or removal of a building in a *Heritage Overlay* under clause 43.01-1
- Construction of a building or construction or carrying out of works in a *Heritage Overlay* under clause 43.01-2

- Provision of all the car parking spaces on another site (being 26-45 Queens Parade, Fitzroy North) under clause 52.06-3 in accordance with the endorsed plans.

Geoffrey Code
Senior Member

Ann Keddie
Member

APPEARANCES

(7 June 2018)

For Gurner 26-56 Queens
Parade Pty Ltd

Mr Jeremy Gobbo QC, instructed by Mr Mark Naughton, Planning & Property Partners Pty Ltd, Lawyers and Consultants

For Yarra City Council

Ms Susan Brennan SC, instructed by Ms Kristin Richardson, Maddocks Lawyers

For Public Transport Victoria

No appearance

For VicRoads

No appearance

For Melbourne Water

No appearance

For Diana Carroll & Linda
Woo, Anne Coveny

Mr Daniel Epstein of Counsel

For Glen A McCallum, John
Michael Hayhoe, Marlene
Maree Hayhoe

Glen A McCallum

For Michael Bonadio

No appearance¹

For each of the persons listed
in Appendix A

No appearance

¹ Mr Bonadio's representative sent a submission by email to the Tribunal at 10.14 am on 7 June 2018. The submission did not reach us until 8 June 2018. The submission was not served on all parties entitled to be heard on 7 June 2018. The parties did not bring the submission to our attention at the hearing on 7 June 2018. We gave the applicant and the Council an opportunity to respond to the submission.

INFORMATION

Brief and informal description of proposal in the substituted plans (Application P2079/2016)

Mixed use development containing 295 dwellings (281 apartments and 14 townhouses) in a 10-storey building comprising 4 tower elements above a 3-storey podium, plus 2 basement levels

Brief and informal description of proposal in the amended plans submitted in accordance with the Tribunal's interim order dated 17 November 2017 (Application P2079/2016)

Mixed use development containing 263 dwellings (247 apartments and 16 townhouses) in a 10-storey building comprising 3 tower elements above a 3-storey podium, plus 2 basement levels

Brief and informal description of proposal in the substituted plans (Application P147/2017)

4 townhouses in a 3-storey building

Brief and informal description of proposal in the amended plans submitted in accordance with the Tribunal's interim order dated 17 November 2017 (Application P147/2017)

3 townhouses in a 3-storey building

Nature of proceeding (Application P2079/2016)

Application under section 79 of the *Planning and Environment Act 1987* to review the failure to grant a permit within the prescribed time²

Nature of proceeding (Application P147/2017)

Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time

Planning scheme

Yarra Planning Scheme

² Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.

Zone and overlays
(Application P2079/2016 &
Application P147/2017)

Mixed Use Zone (**MUZ**)
Design & Development Overlay Schedule 16
(**DDO16**) (*Queens Parade (West)*)
Heritage Overlay Schedule 327 (**HO327**) (*North
Fitzroy Precinct*)
Environmental Audit Overlay (**EAO**)
Special Building Overlay (**SBO**)³
The scheme provides that DDO16 expires on 30
March 2019

The land in Application P2079/2016 adjoins a
road in a Road Zone Category 1 (**RDZ1**)
(*Queens Parade*)

Permit requirements
(Application P2079/2016)

Clause 32.04-1 (use of land in MUZ for food and
drink premises with a floor area exceeding 150
square metres)
Clause 32.04-2 (use of land in MUZ for a shop
(shown as a 'deli') with a floor area greater than
150 square metres)
Clause 32.04-6 (construction of two or more
dwellings on a lot in MUZ)
Clause 32.04-8 (construction of buildings and
works for a shop on a lot in MUZ)
Clause 43.01-1 (demolition of a building in
HO327)
Clause 43.01-1 (construction of buildings and
works in HO327)
Clause 43.02-2 schedule 16 clause 2.0
(construction of buildings and works in DDO16)
Clause 52.06 (reduction in parking requirements
for food and drinks premises & shop)
Clause 52.06 (reduction in parking requirements
for dwellings)
Clause 52.27 (sale or consumption of liquor)
Clause 52.29 (alteration to access to a road in
RDZ1)

³ The SBO only applies to that part of Queens Parade affected by the proposed vehicle crossover. Otherwise, the SBO does not affect the land in the proceeding.

Permit requirements
(Application P147/2017)

Clause 32.04-6 (construction of two or more dwellings on a lot in MUZ)
Clause 43.01-1 (construction of buildings and works in HO327)
Clause 43.02-2 schedule 16 clause 2.0 (construction of buildings and works in DDO16)
Clause 52.06 (provision of parking requirements on other land)

Relevant scheme policies and provisions (both applications, combined)

Clauses 9, 10, 11, 13, 15, 16, 17, 18, 21.02, 21.03, 21.04, 21.05, 21.06, 21.07, 21.08, 22.02, 22.03, 22.05, 22.07, 22.09, 22.10, 22.12, 22.16, 22.17, 32.04, 43.01, 43.02, 52.06, 52.07, 52.27, 52.29, 52.34, 55 & 65

Under clause 21.04, the land in both applications forms part of a 'strategic redevelopment site'

Main relevant reference and incorporated documents (both Applications)

Yarra City Council, *Review of Heritage Areas* (2007)
Yarra City Council, *Stormwater Management Plan* (2000)
Yarra City Council, *Development Guidelines for Heritage Places* (1999)
Yarra City Council, *Clifton Hill Built Form Review* (2017)
Department of Environment, Land, Water & Planning, *Urban Design Guidelines for Victoria* (2017)
Department of Environment, Land, Water & Planning, *Apartment Design Guidelines for Victoria* (2017)

Land description (Application P2079/2016)

The land (in these reasons, the **main site**) is on the north-west side of Queens Parade, mid-block between Brunswick Street and Napier Street, and about 78 metres east of Brunswick Street. It is irregular in shape with a frontage of about 119 metres to Queens Parade and an area of about 7,990 square metres. It comprises 8 separate titles. It is developed in part with brick, part single-storey and part double-storey factory/warehouse buildings. It has two laneway frontages to the rear. One separates the main site from the rear site. The other runs off Coleman Street. The western end contains a 46 metres-long row of 3 two-storey industrial buildings with an integrated 2 to 3 storey decorative façade with an undulating castellated parapet.

Land description (Application P147/2017)

The land (in these reasons, the **rear site**) abuts a no-through laneway that is about 120 metres from Brunswick Street. It is irregular in shape with three of the five sides of the land abutting lanes. It has an area of about 233 square metres. It is vacant. Opposite one arm of the lane is the main site.

Inspection

The Tribunal conducted a further unaccompanied inspection of the main site, rear site and surrounding lanes on 14 June 2018

REASONS⁴

WHAT IS THIS PROCEEDING ABOUT?

- 1 In our order dated 26 October 2017 we set out our main findings in this proceeding that the proposed development of the subject land in both applications was not a satisfactory response to the relevant provisions of the *Yarra Planning Scheme* (the **scheme**). This order followed 10 days of hearings of submissions and evidence in September 2017. We invited Gurner 26-56 Queens Parade Pty Ltd (the **applicant**) to prepare amended plans that responded to the reasons for our findings.
- 2 On 28 February 2018, the applicant filed and served amended plans (the **amended plans**). We gave Yarra City Council and all respondents leave to make written submissions as to the merits of the amendments included in the amended plans in relation to our findings. We also gave the Council leave to file amended without prejudice permit conditions for both permit applications that would assist us if we ultimately determined permits should be granted in respect of the amended plans.
- 3 The Council made a written submission and filed amended without prejudice permit conditions (the **amended conditions**). The Tribunal received seven submissions from respondents.⁵ The applicant filed a response opposing specified amended conditions and seeking amendment (including deletion) of specified amended conditions.
- 4 As some respondents wished to be heard in relation to their submissions, and as the applicant wished to be heard in relation to its response, we gave an opportunity for the applicant, the Council and the respondents who filed the seven submissions to be heard at the hearing held on 7 June 2018.
- 5 We find the amended plans, subject to conditions to be included in two permits that vary the Council's amended conditions, are a satisfactory response to the main findings in our reasons dated 26 October 2017 (the **October reasons**). Our reasons follow.
- 6 We will accordingly set aside the Council's decisions to refuse the permits and grant those permits subject to conditions.
- 7 In outlining our reasons in a convenient way, we will organise our findings in relation to subject matter.

⁴ The submissions and evidence of the parties, any supporting exhibits tendered at the hearings (including the hearing on 7 June 2018) and the statements of grounds (including submissions on the amended plans) 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.

⁵ We identified these submissions in order 4 of our order dated 15 May 2018.

INTERFACES

- 8 Before turning to the first of the subject matters, it is to be recalled that the main site is irregular in shape and fronts Queens Parade which is aligned to the north-east. Interfaces are therefore not easy to identify. In our October reasons, we characterised the interfaces as follows:
- (a) The **northern interface** - the 5 two-storey townhouses at 12-20 Grace Lane, the lane and the 4 single-storey terrace houses at 18-24 Coleman Street that back on to the lane.
 - (b) The **north-eastern interface** - the 4-storey apartment block at 497 Napier Street.
 - (c) The **eastern interface** - the 5-storey apartment block at 58 Queens Parade.
 - (d) The **western interface** – the two-storey terrace at 24 Queens Parade, the rear lane & the single-storey and two-storey terraces at 484-494 Brunswick Street (all but two which back on to the lane) & the 6-storey apartment block at 496 Brunswick Street.
- 9 We will adopt this characterisation in these reasons.

HEIGHT AND NUMBER OF TOWERS

- 10 In the October reasons, we found that Towers 1, 2 & 3 on the main site should be set back further from the existing heritage street wall and from the proposed street wall so that there was general compliance with the mid-level discretionary setback requirement in DDO16. Specifically, we called for the towers to 'largely align' with the setbacks whilst retaining their curvilinear form.
- 11 We found the incursions into the DDO16 requirement at the higher levels of Towers 1 & 2 should be minor, in the range of no more than about 2 metres and that the incursions at the middle and higher levels of Tower 3 could be greater towards the corner adjoining the 5-storey form of 58 Queens Parade.
- 12 The Council and some of the respondents consider the amended plans do not represent general compliance with the October reasons. However, we find that Towers 1, 2 & 3 have been set back from the street wall and result in general compliance with DDO16.
- 13 Tower 1 is behind the more sensitive heritage sensitive street wall and is comfortably within the DDO16 setbacks at all levels. At various points in the curvilinear form, the set back is up to 5 metres more than that specified in DDO16. Tower 2 is set back comfortably inside the DDO16 requirement at levels 3 & 4 and there are minor incursions of up to about 700 mm at levels 5 to 9. The incursion in the corner of Tower 3 at levels 3 to 8 at the eastern interface (next to 58 Queens Parade) has been reduced by about half at these levels to generally about 2.5 metres. Otherwise, the incursion is no more than about 700 mm at levels 5 to 8.

- 14 In the October reasons, we found Towers 1 & 3 should be reduced by one level with the topmost levels more recessive from their closest interfaces. The amended plans respond appropriately to these findings.

TOWER 2

- 15 In the October reasons, we found that Tower 4 on the main site had an unsatisfactory relationship with the northern interface, north-eastern interface and part of the western interface (being 492-496 Brunswick Street) and should be moved south and merge with Tower 2. We also found this change was also necessary to create ground level communal open space of around 20 metres depth. Finally, we also found that the combined tower be stepped down to the rear by one or two levels.
- 16 The Council contends the amended plans do not respond to the October reasons because the amended plans show the merged Tower 2 with a reduced setback to the rear boundary with 496 Brunswick Street. The Council seeks the inclusion of a condition in a permit that requires the tower to be no closer to 496 Brunswick Street than as shown in the plans substituted by our order dated 26 October 2017 (the **substituted plans**).
- 17 The applicant opposes the condition and seeks its deletion.
- 18 Mr Bonadio owns several of the apartments including the penthouse apartment at 496 Brunswick Street. In effect, he supports the Council's condition.
- 19 The Council contends that if the condition is deleted, all of the owners and occupiers of the apartments at 496 Brunswick Street other than Mr Bonadio should be first given notice of the amended plans because all other owners and occupiers are not parties and were not given notice of the amended plans.
- 20 The amended plans have responded to the October reasons. First, Tower 4 is moved and now merges with tower 2 to create a new enlarged Tower 2 and this creates the 20 metres deep open space at ground level. Second, the north-facing wall of the top 2 levels of the new Tower 2 are stepped back about 12.2 metres from the floor below.
- 21 The movement of curvilinear tower forms has an impact on setbacks from interfaces. The Council is correct that some setbacks from 496 Brunswick Street have been reduced. For example, at level 3, 4 & 5, the closest point of the external wall of the curving tower form of Tower 4 was about 11.8 metres from the boundary in the substituted plans and the closest point of the curving tower form of the new Tower 2 is 9.6 metres in the amended plans. At levels 6 & 7, the closest point has been reduced from about 17.8 metres to 15.2 metres. However, at level 8 the closest point has been increased from about 17.9 metres to 26.1 metres.
- 22 We find the new relationship at this interface to be acceptable for the following reasons.

- 23 First, the apartment building at 496 Brunswick Street has balcony and window outlooks to the north and south (ie away from the new Tower 2) at all levels except the topmost level. At the lower levels, the wall facing the main site is essentially blank and the marginal change therefore has no additional impact. Accordingly, we find there is no need to give notice to the owners and occupiers of the lower level apartments at 496 Brunswick Street who are not parties to the proceeding.
- 24 Second, the walls curve away from the boundary relative to the closest points, especially so to the south.
- 25 Third, the penthouse level has extensive balconies and enjoys an outlook across the main site, including towards Tower 2. It is not adversely affected in an overall sense because Tower 4 has been removed and the outlook towards where Tower 4 was previously located is now unrestricted.

HERITAGE FAÇADE

- 26 The former industrial buildings on the main site include a 46 metres-long somewhat quirky decorative façade built mainly in the 1930s. It is 2 storeys high but has a castellated profile that ranges in height between about 8 metres and 12 metres. In the October reasons, we were not satisfied with some features of the works to the façade and with some of the new works behind the façade.

Fenestration

- 27 There have been significant changes to the original openings in the façade, especially at the ground level, since the façade was constructed. The upper level windows are large, but vary in size, and are steel-framed with panes typically about 500 mm square.
- 28 The amended plans retain the upper level openings, but insert new steel framed windows. There are 3 types – fixed pane with a single awning or centre-opening bi-folds (for bedrooms and some terraces) and part fixed pane and part casements (for one bedroom). The level 2 floor slab runs behind 9 of the 12 upper floor windows. The floor slab is set back 400 mm behind a fixed opaque glass section of window. The slab upstand is proposed to be painted to match the façade colour.
- 29 The amended plans provide for 12 new openings at the ground level to replace rolladoors, single doors, plant room vents and equipment and solid walls. The sills are uniformly about 300 mm above the internal floor level and about 800 mm above footpath level. They contain fixed panes and awning windows or bi-fold doors, depending on their location. The lowest of the 4 lines of panes (the top of which is 1.6 metres above footpath level) is obscure glazed to provide privacy to bedrooms and screening for terraces.

- 30 The Council opposes the changes to the openings and fenestration. Its conditions seek no changes to the remaining original openings in bays 3, 7 and 8 on the ground floor, although allowing replacement of the fenestration to match existing.
- 31 The Council's request for conditions that retain the original openings is reasonable. We see no basis for altering these 3 existing unaltered ground floor windows. The existing sill height of around 800mm from the ground is reflected in the proposed new windows, although all windows appear to have been increased in height.
- 32 However, matching the original fenestration is impracticable. The design of the new windows should respond to and respect the originals. We agree with Mr Lovell, whose written opinions were filed with the amended plans that, in the context of heritage policy, an interpretive response is appropriate for the fenestration system.
- 33 The Council's conditions sought the retention of the existing framing patterns in the ground and first floor. It submitted that openings could be provided by sliding glazing behind the frames. The applicant agrees to adopt the steel framed window system, but seeks to insert a variety of opening window types within it.
- 34 Mr Lovell's opinion is that the addition of an additional vertical division (the bi-fold windows) in the traditional glazing bar layout is an acceptable heritage response. The Council's heritage adviser does not agree. Her written opinion, filed as part of the Council's submissions, was that the bi-fold windows will give the appearance of 'holes' in the façade where windows would be expected.
- 35 We observe that although there is a logic displayed in the disposition of awning sashes within the windows, bi-fold windows have been proposed seemingly randomly in openings of differing dimensions in both width and height.
- 36 Overall, the amended plans give us no confidence that sufficient thought has gone into the alterations proposed to the heritage façade.
- 37 For example, the existing canopy to be retained over the central doorway, is shown at a height of around 3.7m on the existing south façade, but drawn at 4.5m on the proposed elevation on the same drawing A-61-29 revision 1. Nor is the canopy projection noted on plan. As another example, in the retained Bay 9, the double pilasters to each side appear to have been reduced to one only, on the west side.
- 38 It is also unclear why the glazing to the upper level window in Bay 9 is shown projecting above the otherwise uniform height of the adjacent upper level windows. We assume this is an error, as the detailed section shows an infill panel above the glazing in this location. We agree with Mr Biles' opinion that a 'more well considered design response' is required for the heritage facade. A more uniform appearance to the window glazing types is

required, using either awning, hopper or pivot sash windows. We will include a condition to this effect.

- 39 In addition, the Council seeks a design response that further reduces the visibility of the level 2 floor behind the heritage façade. The applicant seeks to delete the condition. The detail drawings show a setback of 400 mm from the façade glazing to the slab edge where a terrace with a glass balustrade is proposed (sections A, B, C) or the slab is set down (section D). When these conditions occur, it is proposed to use obscure glazing to mitigate the visual impact of the slab/setdown and paint the slab edge or upstand to match the colour of the heritage façade.
- 40 Mr Lovell's opinions are that the use of obscure glazing, coupled with the setback, will largely conceal views of the slab from the street, and will have little adverse impact on the significance of the significance of the façade. Whilst this latter opinion may be correct, the façade colour (currently proposed as dark grey) cannot be finalized until there is further investigation and discussions with the Council. To reinforce the outcome sought, we will include a condition to minimize the visual impact of the slab.
- 41 The Council is concerned about the safety of the use of awning windows at ground floor level, where they may project into the public realm. The detailed sections show the awning window projections to be confined to within the site. We will include a condition to require this outcome.

Presentation of walls

- 42 In the October reasons, we required all walls, dividing rooms and apartments to be at 90 degrees to the façade. The amended plans incorporate this change.

Bay 9

- 43 The decorative façade comprises a number of 'bays'. The substituted plans provided for the demolition of the 4 metres-wide, eastern-most bay known as Bay 9. In the October reasons, we sought the retention of Bay 9. The amended plans show its retention, with the café at ground level occupying the space behind the facade.
- 44 Bay 9 is flanked with double rendered pilasters (four in total, each about 400 mm wide) topped with pyramid-shaped forms that match the decoration at the top of the rest of the façade. As noted above, the amended plans are unclear but appear to show the removal of 3 of the pilasters to facilitate the incorporation of a somewhat wider and taller window at the upper level and a new window at the ground level.
- 45 We do not support removal of the pilasters and the enlargement of the upper floor window opening. The new ground level window should have the same width as the existing upper floor window in the bay. The height of the upper level opening must match other upper level openings. The width

of the upper level opening should not be increased. The new ground level opening must match, in height and width, other new window openings. We will include appropriate conditions.

Colours and finishes

- 46 The decorative heritage façade is currently painted largely a garish pink. The substituted plans and photomontages show the façade a painted charcoal colour.
- 47 In the October reasons, we considered there was currently insufficient evidence to conclude that the brickwork beneath the paint was of such poor quality as to require a painted finish. We found the brickwork should be stripped and exposed if practicable, and the rendered pilasters and decorative crenellation restored to reference the original presentation.
- 48 The amended plans and the amended photomontages still depict the decorative heritage façade a charcoal colour.
- 49 The Council opposes any re-painting of the façade and seeks conditions that requires a façade scheme to be prepared and approved and that the scheme include investigating the possibility of restoring the façade to its original condition. The applicant does not oppose the need for further investigation but considers the Council's condition to be overly-prescriptive. The applicant also does not want the condition to include investigations to restore the 'original' condition because that is unknown. The applicant does not want the condition to expressly propose restoration, subject to the investigation.
- 50 The Council's conditions more closely align to the October reasons and we will include the gist of them. We will fine-tune the condition so that it refers to 'original condition, based on the best available evidence'. The evidence of Mr Lovell and some of the respondents during the September hearings included representations of the original façade treatment. That evidence is a good start. More might become available before the Council will need to make decisions under the condition.

Canopy

- 51 In the October reasons, we encouraged the retention of the centrally-located canopy over an original single door in the facade. The amended plans retain the canopy.

COLOURS AND FINISHES OF TOWERS

- 52 The Council seeks conditions that require the colours and finishes of Towers 2 & 3, behind the non-heritage street wall, to be recessive in appearance and the street wall to have a lighter colour. The Council relies on a DDO16 design requirement that a new building above a non-heritage street wall should be recessive in appearance and a DDO16 built form outcome that maintains the visual dominance of the heritage façade.

- 53 The applicant opposes these conditions and seeks a condition that requires the non-heritage street wall to be 'in an alternative colour'. The applicant's alternative is unclear and as the Council's conditions reflects the provisions of the scheme, we will include a condition requiring the colour to be to the Council's satisfaction.

INTERNAL AMENITY

- 54 In the October reasons, we observed there were some rooms with odd shapes, partly due to the curvilinear tower design, including some triangular shaped bedrooms. We encouraged redesign of bedrooms to have more functional and efficient dimensions and shapes.
- 55 The amended plans have responded to this finding in part but some odd shaped bedrooms remain, especially in Tower 3.
- 56 The Council opposes the amended plans because some odd shaped bedrooms remain and it seeks a condition that requires all bedrooms to have minimum dimensions of 3 metres by 3 metres and all changes to be absorbed within the building envelope. The applicant opposes what it considers is the inflexibility of the Council's condition and seeks an alternative minimum dimension of 9 square metres if one dimension is under 3 metres.
- 57 As there appears to be at least 19 bedrooms⁶ that do not have minimum dimensions of 3 metres by 3 metres and as a minimum area of 9 square metres does not ensure adequate shape, we will include the Council's condition with modification.

UNDERCROFTS

- 58 In the October reasons, we found the undercrofts were too low and we sought a height of 'around 4 metres'. The amended plans show the deletion of the undercroft of most concern. A floor to floor height of 4 metres is shown for the remaining two undercrofts. The amended plans do not satisfy our concern. In the eastern undercroft, the clear height of 3.7 metres is eroded by edge beams projecting into it by around 400 mm. In addition, the ground level rises by 800 mm on the other side of the security gate. This further constricts the outlook available to anyone using the undercroft.
- 59 This constriction also applies to the western undercroft. Although we acknowledge that it may be used by fewer residents, it is both narrower and considerably longer than the eastern one. In addition, the land rises by 1.4 metres to the entry to the three proposed townhouses on the west side of the laneway beyond, with steps and a ramp proposed to provide access to the laneway. The rise to the north-west clearly limits the outlook when traversing the undercroft. We consider that these covered accessways

⁶ The bedrooms are in townhouse 09 and apartments C10302, C10301, C30305, C30306, C10402, C10401, C20401, C30406, C30503 (2 rooms), C10604, C20607, C30603 (2 rooms), C30604, C30701 (2 rooms) & C30702.

should be as unconstrained as possible. We will require a minimum unobstructed clearance of 3.8 metres. We will also require that a high level of lighting is provided in these areas.

PEDESTRIAN CONNECTION TO COLEMAN STREET

- 60 The substituted plans provided no connection between the main site and the lane to the rear accessed off Coleman Street. In the October reasons, we found a connection would give better access for residents to the Edinburgh Gardens and we encouraged access from the townhouses abutting the lane and from the communal open space 'through a passage between or under the townhouses ... possibly near townhouse 10'.
- 61 The amended plans provide a 3 metre wide passage under the townhouses to the west of what was townhouse 10 in the substituted plans but is now townhouse 8 in the amended plans. The amended plans show a solid security door where the passage meets the lane and a standard width door with solid surrounds at the entrance to the passage off the communal open space. The applicant submitted it located the connection further west along the lane to avoid creating a 'dead end' section of the lane west of the connection.
- 62 The Council and some of the respondents opposed the amended plans because it preferred the connection between the townhouses rather than under them to encourage use of the connection and for safety reasons and it preferred the connection to be 4 metres wide. The Council also correctly observed that the width of the connection in the amended landscape plans was narrower than in the amended plans.
- 63 We find an enclosed passageway passage under the townhouses is satisfactory provided it is no less than 4 metres wide and is located generally adjacent to the north-east corner of the site, between townhouses 8 and 9. We would not oppose a narrower link, were it to be open to the sky as the Council's urban designer suggested.
- 64 We do not share the Council's concern about safety. There are already 6 gates to the lane from the rear of Coleman Street homes and from the courtyard of 16 Grace Lane at the western 'dead' end. Although there is a bend in the lane, there is a power pole at the bend on which a light could be installed and the 4-storey apartments at 497 Napier Street overlook and provide surveillance to the lane.
- 65 There is considerable potential for a useful and activated lane. It would be consistent with activation of the lane to also provide visual transparency to the communal open space on the main site. We will require an open-style steel security fence and gate at the lane end of the passage matching the height of the townhouse fences.
- 66 The applicant must also appropriately light the entrance to the passage in the lane and the passage itself. There is also the opportunity to plant small canopy trees on either side of the laneway, for example *Pyrus Calleryama*

as shown on the landscape plans, within the terrace areas of townhouses 8 and 9. The link should be fully open where it meets the communal courtyard and integrated into the landscape treatment, as indicated on the landscape plans. We will include appropriate conditions.

WESTERN INTERFACE

- 67 In the October reasons, we expressed concern that, in the substituted plans, apartment C10212 on level 2 abutted the decorative heritage façade at the main site and the two-storey heritage dwelling at 24 Queens Parade.
- 68 We were aware that, in the informal amended plans tendered at the hearing (the **informal plans**), the apartment was set back 4.4 metres from the decorative heritage façade at the main site but remained abutting 24 Queens Parade, albeit 4.4 metres from Queens Parade. The informal plans did not allay our concerns, based on heritage impacts. We found the apartment should be set back from 24 Queens Parade.
- 69 The amended plans include no changes to the informal plans. The applicant contends nothing will be achieved by a setback from 24 Queens Parade and relies on the photomontage CEO4. During the hearing, we told the applicant we were puzzled by the apparent presence of a gap between the south-east facing corner of the apartment (now renumbered C10201) and the north-east-facing side wall of 24 Queens Parade. We asked the applicant to ask Mr Flood, who prepared the photomontage, to re-check the photomontage. The applicant filed a declaration by Mr Flood that there is no inconsistency between the photomontage and the plans of the apartment. The applicant invited us to reconsider the issue.
- 70 The Council and some of the respondents oppose the amended plans and oppose any reconsideration of the issue. The Council urged on us to require removal of the western-most bedroom and ensuite to create what it considered was an effective gap.
- 71 We have reconsidered the issue. We have reviewed the survey plan, the aerial photographs, the amended plans and the photomontage. We have also revisited the main site to again inspect the boundary. Our inspection shows the survey plan appears to be incomplete because it does not show a fall in the height of the north-facing wall to the rear of the front chimney at 24 Queens Parade.
- 72 The chimney is about 2 metres from Queens Parade, and well within the 4.4 metres setback of the apartment from the façade. The elevation drawing A-30-05 rev 2 in the amended plans also does not show either the fall behind the chimney or the further fall behind what appears to be a vent about 3 metres behind the chimney. We have stood in Queens Parade at the photomontage CEO4 viewing location.
- 73 We are not persuaded that the October reasons warrant reconsideration. Assuming the photomontage to be accurate, it shows that over 2 metres of the top of the street-facing wall of the apartment is apparent from within the

angled location within Queens Parade. The whole of that wall is visible, although significantly reduced in height at the north-eastern end of the wall where it adjoins the abutting apartment. Greater appreciation of that wall would be available from viewing points directly opposite the apartment.

- 74 The impact of the apartment on the appreciation of the decorative heritage façade is unsatisfactory, even with a 4.4 metres setback from the façade. An increased setback is not feasible if the apartment is to be retained. The Council's condition requiring deletion of the room in the apartment closest to the boundary does not suffice.
- 75 We will include a condition requiring removal of the apartment. We will allow consequential changes. One minor one is to the length of the passage behind the abutting apartment. a more significant one is to use part of the area vacated by apartment C10212 as terrace for one or both of the adjoining apartments C10205 & C10202. If additional terrace is provided for apartment C10205, the existing small terrace in that apartment could be deleted and the bedrooms enlarged.

TOWNHOUSES

- 76 In the October reasons, we expressed concern about the extent of screening of the first floor of many of the 12 townhouses on the main site along the northern and north-eastern interface in the substituted plans. We also encouraged the first floor terraces to be set back from the rear boundary at least 3 metres.
- 77 The amended plans now include 10 townhouses along these two interfaces. Eight of the 12 townhouses had outward-facing terraces in the substituted plans. In the amended plans, only two of the 10 townhouses have outward-facing terraces. Each of the 10 townhouses in the amended plans are now set back at least 3 metres from the rear boundary at all levels. This is an acceptable response.
- 78 The amended plans include additional sections showing revised screening details. The remaining 2 outward-facing, first-floor terraces have one metre high planters plus 700 mm high 60 degree angled louvres. The outward facing habitable rooms at the first and second floors have either a 1.7 metres high solid wall with 1150 mm high glazing above or full height glazing with a solid 1.7 metres high wall 250 mm outside of the glazing or 60 degree angled louvres to 1.7 metres. We are satisfied this has introduced greater variety in the screening while maintaining satisfactory privacy to nearby dwellings.
- 79 The redesign of these townhouses has resulted in some reductions in the setback of part of townhouse 6 from the rear boundary and, beyond it across the lane, to the dwelling at 16 Coleman Street. In townhouse 6, the roof deck at level 3 was set back 7.4 metres from the rear boundary. In the amended plans, the roof deck is set back 5.9 metres from the rear boundary and 8.7 metres from 16 Coleman Street. Consequently, a 1.3 metres deep

and 2 metres wide part of the roof deck is now outside the DDO16 preferred setback.

- 80 The Council opposes the redesign of townhouse 6 and the small enlargement of the roof deck footprint because it encroaches into the DDO16 preferred setback and because the potentially affected party, the owner and occupier of 16 Coleman Street, is not a party and was not given notice of the amended plans.
- 81 We find the roof deck design acceptable because the only built form in the encroached area comprises a terrace upstand, the extent of encroachment is minor, and the additional sections show the roof deck sufficiently set back from the level 2 below to effectively mitigate any unreasonable overlooking. The owner and occupiers of 16 Coleman Street are not so materially affected by the amended plans to warrant a requirement for further notice.

LANDSCAPING

- 82 In the October reasons, we generally supported Mr Patrick's evidence that the landscaping plans associated with the substituted plans needed changes. Amended landscaping plans prepared by Mr Merlo were filed with the amended plans. A statement by Mr Patrick tendered by the applicant confirmed that the plans now address his original concerns but that a condition should be included on the permit to require detailed soil mix specifications for different components of the project to be provided. This information does not seem to form part of Mr Merlo's soil, irrigation and maintenance program notes. We will include a condition requiring this information.
- 83 There are some inconsistencies between the amended (architectural) plans and the amended landscaping plans. This is not unusual. For example, the size and location of the pedestrian link to the Coleman Street lane on the amended landscaping plans does not match the architectural plans. As stated, we will require amendments to both, although we support the amended landscaping plans showing a consistent paving of the link with the adjacent communal open space and the modest landscaping integrating the two.
- 84 We also observe that on the landscaping plans the number of trees shown on plan is not always reflected in the larger scale sections. For example, the two trees shown in plan immediately to the north of the arbour/security point do not appear on the section F-F.

FLOOD RISK

- 85 The main site is not subject to a *Special Building Overlay*. However, based on the scheme maps, this overlay extends over part of Queens Parade and touches the boundary of the main site where the basement ramp is located.
- 86 Melbourne Water considered the amended plans and repeats its earlier comments that the applicable 1% AEP flood event for the main site is 24.13

metres AHD and the footpath at the basement entry is 24.00 metres AHD. As Melbourne Water seeks a 300 mm freeboard, including for basements, it seeks a permit condition requiring the basement be protected to 24.43 AHD with conditions to address the flood vulnerability by, among other things, incorporating a flood proof apex and associated bunding at the basement entry to 24.43 metres AHD.

- 87 The applicant does not oppose the conditions provided they are amended to allow a self-closing automatic flood barrier as an alternative to the apex and provided the survey plan of levels is required to be approved by Melbourne Water so that it includes a dispute resolution mechanism. We will include those amendments.

COMMUNAL OPEN SPACE/GROUND PLANE

- 88 In the October reasons, we encouraged removal of the communal open space on level 3 adjoining 496 Brunswick Street and that the ground level communal open space between the merged Tower 2 and the townhouses at the northern interface be enlarged to have a minimum dimension of 20 metres.

- 89 We record that both these changes have been included in the amended plans. The applicant has included significant internal communal areas adjoining the enlarged communal open space, such as a gym, 3 dining rooms, 2 play rooms, a games rooms, a yoga studio and a library. We support these changes and note the applicant's submission that all these ground level internal communal areas will be available to all residents and not just the residents in Tower 2 that is above these areas.

QUEENS PARADE/NAPIER STREET INTERSECTION WORKS

- 90 Ms Hayhoe brought to our attention that, in December 2017, VicRoads released a public information bulletin of a 'Preston to CBD Safety Improvement Project' that included a proposal to install new traffic lights at the intersection of Queens Parade and Napier Street and to close the Queens Parade east and west service roads.

- 91 If this proposal were to proceed, the left in and left out movements into the basement from and to the service road would be replaced with left in and right out movements from and to the service road. Ms Hayhoe contends the right out movement will be hazardous because vehicles would face oncoming vehicles in the narrow service road, albeit for a distance of about 20 metres, and would then have to make a 180 degree turn into Queens Parade from the break in the median.

- 92 VicRoads and the Council made no submissions about this proposal. We do not consider it necessary to change any of our findings in October about traffic matters. If the proposal were to proceed during or after construction of development of the main site, VicRoads would need to amend the proposal or agree to other arrangements to ensure existing access or

approved access to all affected land can be maintained in a way that ensures the safety and efficiency of Queens Parade. In other words, this may be an issue or problem to be addressed at the time that Vic Roads' proposals are implemented.

AGREEMENT TO SECURE SERVICES FOR REAR SITE

- 93 The Council seeks a condition requiring the owner to enter a section 173 agreement to secure the ongoing provision of car spaces, bicycle spaces, stores and a bin area and access to them (and generally through the land) for the residents of the proposed townhouses, if approved and constructed.
- 94 The Council also wants the agreement to secure fire-fighting arrangements for the proposed townhouses from the land. Further consideration of this obligation is unnecessary because MFB correspondence tendered in the September hearings indicated the MFB could satisfactorily occupy the main site to fight a fire on the rear site.
- 95 We understand the Council prefers that the obligation is imposed only on the owners corporation that would be established to manage the common property in that part of the building where the car spaces, bicycle spaces, stores and a bin area are provided.
- 96 The applicant opposes the condition as an undesirable future encumbrance on the titles of all lots in the future subdivision of the main site. We agree.
- 97 However, we are unable to discern any other way of securing the services. We are unaware of an instance in which the agreement is to apply to a part of the land being common property that will vest in the relevant owners corporation at a future date. It may be novel and have some uncertainties but we will include it. One reason is that the alternate imposition of the obligation as a permit condition is likely to offend the provisions of sections 62(5)(c) & 62(6) of the *Planning and Environment Act 1987*.
- 98 Accordingly, we will include a condition requiring an agreement. We will leave it to the Council and the owner to consider the best way of drafting the agreement and, if necessary, to amend the obligation under the permit in the future to ensure any necessary fine-tuning.

REAR SITE

- 99 In our October reasons, we found the living areas of the 4 townhouses on the rear site to be insufficient and required a re-design to provide for no more than 3 townhouses all with larger living areas. The amended plans have responded accordingly.
- 100 The October reasons, at paragraph 129, also identifies 5 other shortcomings. These have also been responded to accordingly in the amended plans.
- 101 The applicant submitted in relation to a condition in the Council's original draft conditions in relation to the substituted plans that there should be additional ground floor windows facing the south-east lane and there should

be lower entry gates to improve passive surveillance. While the scope for additional windows is limited to a high-light window bathroom in both townhouse 1 & 2, those additional windows would add to a sense of surveillance particularly with lighting in the evening. We will retain the Council's condition.

CONDITIONS

- 102 In settling the conditions, we have considered the parties submissions in September 2017 on the Council's original without prejudice permit conditions and the parties submissions on the Council's amended conditions at the hearing on 7 June 2018. We have not included all the Council's amended conditions. We have not included all the applicant's requested amendments to those conditions. We have amended some of the Council's requested conditions that we decided to retain.
- 103 In settling the conditions, we observed that the conditions for the rear site permit included land contamination investigation conditions. The Council did not include those conditions for the main site permit. The basis for inclusion is the same as the rear site having regard to its history of industrial use. We have therefore included those conditions for the main site permit.

CONCLUSION

- 104 For all the above reasons, we will now set aside the Council's decisions and grant permits subject to conditions in respect of both the main site and the rear site.

Geoffrey Code
Senior Member

Ann Keddie
Member

APPENDIX B

PERMIT APPLICATION NO.	PLN16/0434
LAND	26-56 Queens Parade, Fitzroy North

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two or more dwellings on a lot in a 10-storey building plus two basements in the *Mixed Use Zone* under clause 32.04-6
- Use of part of the land for the sale and consumption of liquor (on-premises) under clause 52.27
- Partial demolition or removal of a building in a *Heritage Overlay* under clause 43.01-1
- Construction of a building or construction or carrying out of works in a *Heritage Overlay* under clause 43.01-2
- Reduction of the car parking requirements under clause 52.06-2
- Alteration of access to a road in Road Zone Category 1 under clause 52.29

CONDITIONS

Amended plans

- 1 Before the development commences, 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 this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the plans substituted by the Victorian Civil and Administrative Tribunal by its order dated 26 October 2017 in Proceeding P2709/2016 but modified in accordance with the plans prepared by Cox Architecture drawings nos. A-21-08 rev 2, A-21-09 rev 2, A-21-10 rev 8, A-21-11 rev 8, A-21-12 rev 8, A-21-13 rev 3, A-21-14 rev 2, A-21-15 rev 2, A-21-16 rev 2, A-21-17 rev 2, A-21-18 rev 2, A-21-19 rev 2, A-21-20 rev 2, A-30-01 rev 2, A-30-02 rev 2, A-30-03 rev 2, A-30-04 rev 2, A-30-05 rev 2, A-30-06 rev 2, A-30-07 rev 2, A-30-08 rev 2, A-30-09 rev 2, A-40-10 rev 2, A-40-11 rev 2, A-61-29 rev 1, A-61-31 rev 1, A-61-32

rev 1, A-61-40 rev 1, all dated 21 February 2018 and drawing nos. A-SK-08 rev 2 dated 24 May 2018, A-SK-11 rev 1 dated 30 May 2018, A-SK-07 rev 2 dated 24 May 2018, A-SK-09 rev 2 dated 30 May 2018 & A-SK-10 rev 1 dated 30 May 2018 but further modified to show:

Demolition

- (a) Demolition plans and elevations.

Notations of towers

- (b) The tower behind the decorative heritage façade notated as ‘tower 1’, the tower above the restaurant notated as ‘tower 2’, and the tower above the basement entry notated as ‘tower 3’.

Notation of bays in heritage façade

- (c) Each of the bays in the decorative heritage façade notated as ‘Bay 1’ (at the south-west end of the facade) to ‘Bay 9’ (at the north-east end of the facade).

Survey information regarding heights

- (d) Survey information included on all elevations to confirm that the following:
 - (i) overall building height does not exceed 31m; and
 - (ii) the new façade height to Queens Parade (podium element) does not exceed 10m.

Services details

- (e) Details of the vehicular entrance door, fire booster cupboards and services.

Heritage façade – Bay 9 and its pilasters

- (f) Retention of the entire Bay 9 façade, including the upper level window and the two narrow, full-height pilasters on either side of the Bay (four in total), but excluding the part for the new lower level window opening.

Heritage façade fenestration

- (g) If required to be openable, the windows must use traditional steel framed systems including only hopper, awning, or pivot sash arrangements.
- (h) The elevation in drawing no. A-61-29 rev 1 to match section D as shown in drawing no. A-61-32 rev 1.
- (i) The new lower level opening in Bay 9 matching in height and width with the other new ground floor openings.

Air conditioning units

- (j) The location of air conditioner units on balconies (where applicable), along with balustrade details to confirm they will be reasonably screened (ie not clear glass).

Pedestrian link

- (k) The pedestrian link to the laneway behind Coleman Street with a minimum width of 4 metres and relocated to between townhouses 8 & 10.

Undercrofts

- (l) The ground floor undercrofts beneath tower 1 and between towers 2 & 3 with unobstructed floor to ceiling heights of no less than 3.8 metres, and any consequential changes to ground floor, including external paths, ramps and stairs, and overall building height.

Consistency with landscape plan

- (m) Any changes to ensure consistency with the approved landscape plans.

Bedroom dimensions

- (n) Each bedroom with either minimum dimensions of 3 metres by 3 metres or a minimum area of 9 square metres provided one side of a rectangle that fits in the bedroom is no less than 2.8 metres. Each change to the dimensions or area of a bedroom must be absorbed within the building envelope.

Restaurant seating

- (o) Details of how the seating area south of the restaurant will be illuminated and secured when the restaurant is not open.

Planter at deli/shop entrance

- (p) Deletion of the planter south of the deli/shop entrance.

Bicycle park

- (q) Details of the bicycle park west of the deli/shop, confirming the path would not be unreasonably impeded when in use.

Gated entries

- (r) The gates at the secure entries off Queens Parade with a maximum height of 2.1 metres. The gates to the lane off Coleman Street and to the lane off Brunswick Street must match the height of adjoining fences and must be at least 75% visually transparent.

Bicycle storage door

- (s) A door to the bicycle storage area at the ground floor of building.

Boundary dimensions

- (t) Boundary dimensions consistent with the dimensions in the certificate(s) of titles.

Apartment C10201

- (u) The deletion of apartment C10201 and consequential changes to the adjoining passage and consequential optional provision of additional terrace for one or both of adjoining apartments C10205 & C10202 provided the terrace is at least 3 metres from 24 Queens Parade and consequential optional deletion of the terrace on the south side of two of the apartment C10205 bedrooms and consequential internal re-arrangement of that apartment.

Café

- (v) The café as a 'food and drinks premises (café)'.

Screening

- (w) Screening to habitable room windows, balcony or terrace to address internal and external overlooking within a 9 m radius and 45 degree arc of an adjacent habitable room windows or private open space area to the satisfaction of the Responsible Authority, including the proposed townhouses at rear of 26-56 Queens Parade. Screens must be designed and/or of a material to minimise views and still permit reasonable daylight to enter the treated dwellings and must also provide a variety of heights and treatments to create visual interest.

Materials

- (x) A schedule of external colours and materials, including samples (where appropriate). The schedule must show:
 - (i) A durable finish to timber.
 - (ii) Minimisation of the visibility of the upstand behind the heritage façade glazing and the paint colour chosen accordingly.
 - (iii) Construction of the eastern return wall of bay 9 to match the heritage façade in either brickwork or, if investigation of the original façade brickwork results in the retention of a painted render finish to the façade, a painted render finish or similar to match the main façade.
 - (iv) Details of the plant level screens, to be integrated with the overall design of the building.
 - (v) Exterior glazing to the building to achieve a VLT of at least 70%.

Coloured elevations

- (y) Coloured elevations and perspectives.

Internal amenity

- (z) Extension of the living room in apartment C30207 to the balcony edge to increase daylight to the apartment.

Lighting

- (aa) A lighting plan addressing all entries and public spaces within the development.

Footpath edging

- (bb) Sections detailing the edging detail between the footpath and the front setbacks to the site.

Communal areas access

- (cc) A notation confirming all residents will have access to both the level 8 tower 1 communal area and the ground level tower 2 communal areas.

Landscape plan

- (dd) A modified landscape plan generally in accordance with the landscape plan prepared by Jack Merlo design and landscape and dated 31 January 2018 but modified to show:
 - (i) The use of a Crepe Myrtle along apartment terraces.
 - (ii) Soil volumes for planters that demonstrate the capability to achieve intended canopy volumes to the satisfaction of the responsible authority.
 - (iii) Planters carrying shrubs must be no less than 600 mm deep.
 - (iv) Crepe Myrtle on the private terraces on level 3 planted in masonry planters with planter depths increased from 500 mm up to 800 mm.
 - (v) For a tree with a 3 metres canopy spread where shrubs and groundcovers are also proposed in the planter the provision of a planter with minimum soil volume of 5.5 cubic metres or 4.5 cubic metres for the tree alone. Where larger trees are proposed; a tree with a 4 metres canopy would require 10 and 7.5 cubic metres of soil in similar situations.
 - (vi) Level 8 planters increased in volume (minimum depth of 600 mm) and constructed of masonry.
 - (vii) Any details required by the Irrigation Management Plan approved under condition 40.
 - (viii) Any specified growing medium in planters must have a high sand component (rather than an organic mix).
 - (ix) Any planters external to terrace screens must include safety devices and must be maintained by the Owners Corporation.
 - (x) Deletion of the planter in front of the deli/shop entrance.

- (xi) Type, location, quantity, pot size, height at maturity and botanical names of all proposed plants. Species within the landscape buffer must be shade tolerant and must provide clear visual links with the pedestrian link (low level shrubs/plants).
- (xii) Cross sections showing the depth of planter boxes and planting, including growing media, irrigation, drainage, water proofing and tree anchors.
- (xiii) Location of all areas to be covered by lawn, paving or other surface materials.
- (xiv) Specification of works to be undertaken prior to planting. This must include detailed soil mix specifications for different components of the overall landscaping works.
- (xv) Watering and maintenance.
- (xvi) Garden bed dimensions.
- (xvii) Areas of paving and proposed materials.
- (xviii) Location of proposed tree planting – distances from buildings and other infrastructure, planting proposed over the basement levels or under the overhanging built form.
- (xix) Clear definition of terraced spaces, retaining walls, seating elements and other structures independent of paving treatments.
- (xx) Water sensitive urban design [WSUD] features.
- (xxi) Removal of street tree 8 (*Ulmus*). A notation must confirm that the Permit Holder will pay the Responsible Authority \$8,960 to undertake these works, including the reinstatement of 2 trees after development plus 2 years tree establishment maintenance by City of Yarra contractors.
- (xxii) A detailed section of a green roof/non-accessible planter bed, confirming or detailing the vegetation layer; the growing substrate and depth (plants should not be supplied as 100 mm pots, but grown in the media to be used on the roof/planter bed); load bearing weights for saturated bulk density that have been supported by suitably qualified engineers; irrigation; filter sheet; drainage layer (the Elmich product, or similar must be specified); protection mat; root barrier; and waterproofing.
- (xxiii) Deletion of the pavers used in the communal lawn area.
- (xxiv) Ground level tree selection should not just be limited to species that grown in a columnar shape.
- (xxv) A safe maintenance program for all planters.

- (xxvi) A tree management plan showing TPZs for trees in the nature strip and outer separator.
- (xxvii) Three additional street trees (*Ulmus procera* 'English Elm') where the existing crossovers are to be removed. A notation must confirm that the Permit Holder will pay the Responsible Authority \$2,798 to undertake these works, including the reinstatement of 2 trees after development plus 2 years tree establishment maintenance by City of Yarra contractors.
- (xxviii) Details of plantings associated with the pedestrian access to the laneway off Coleman Street.

Use

- (ee) Red line plans showing the sale and consumption of liquor limited to the internal area of the westernmost food and drinks premises (café), and the restaurant.
- (ff) The 'café' and 'restaurant' shown as a 'food and drinks premise (café)'.

Maximum floor areas

- (gg) The shop (deli) with a maximum leasable floor area of 201m².
- (hh) The food and drinks premises (cafe and restaurant) with a maximum leasable floor area of 295m² in total.

Driveway convex mirror

- (ii) Installation of a convex mirror to service vehicles exiting the driveway (no audible devices are to be installed).

Vehicle entrance

- (jj) 1 in 20 scale cross sectional drawings of the development's vehicular entrances, showing the actual reduced levels (not interpolated levels from the application drawings) of the road profile, the lip of the channel, the invert of the channel, the top of kerb and the existing building line. The existing road profiles of the Queens Parade service lane (from the kerb line to the centre line of the road) and the access ways inside the property must be accurately drawn. The cross section must demonstrate that vehicles can traverse the new vehicle crossing and ramp without scraping or bottoming out, using a B99 design vehicle.

Bicycles

- (kk) Bicycle signage in accordance with clause 52.34-5 of the *Yarra Planning Scheme*.
- (ll) Details of bicycle storage/parking systems, demonstrating they can provide space for a bicycle of minimum dimensions of 1.7 metres in

length, 1.2 metres in height and 0.7 metres in width at the handlebars or as per AS2890.3-2015.

- (mm) Accessways to bicycle parking spaces a minimum width of 1.5 metres.
- (nn) Details of the visitor 'bicycle park' at the ground floor.
- (oo) Bicycle parking positioned adjacent to the pedestrian gate in the north-west corner of the site or adjacent to allocated car spaces for the three townhouses on land known as the rear 26-56 Queens Parade (being lot 1 on Title Plan 806921X).

Basement

- (pp) Ramp width dimensions (from kerb to kerb).
- (qq) Minimum headroom clearances throughout the basement dimensioned.
- (rr) Car park columns setback 750mm from the aisles.
- (ss) Loading bay dimensioned on the drawings, including minimum overhead clearance. The plan must also include a note confirming details of the vehicles permitted to use this space, along with swept path diagrams provided for ingress and egress;

Vehicle entry

- (tt) The east edge of the crossover must be perpendicular to the Queens Parade service road.
- (uu) The headroom clearance of the vehicular doorway a minimum headroom of 3.6 metres provided along the access ramp and 3 metres within the loading and waste collection bays.
- (vv) Visitor intercoms to the pedestrian and vehicular entries to the development.
- (ww) A note confirming the design and construction of the new vehicle crossing must satisfy Yarra City Council's Infrastructure Road Materials Policy, Yarra City Council's Standard Drawings and engineering requirements.

Redundant crossings

- (xx) Demolition and reinstatement of all redundant vehicle crossings to Yarra City Council's satisfaction.

Loading bay

- (yy) Dimensions of the loading bay and waste pick up bay.

Reports

- (zz) Changes (as may be necessary) for consistency with the Structural Report, Wind Assessment Report, Acoustic Report, Sustainable Management Plan Report and Waste Management Plan Report.

Endorsed plans not altered

- 2 The development and uses as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

Architectural services

- 3 As part of the ongoing consultant team, Cox Architecture or an architectural firm(s) to the satisfaction of the Responsible Authority must be engaged to oversee design and construction of the development, and to ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.

Finished floor levels

- 4 Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.

Screening

- 5 Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to limit overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority.
- 6 All screening and other measures to prevent overlooking as shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority.

Wall cleaning

- 7 Before the buildings are occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.

Maintenance

- 8 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.

Concealing pipes etc

- 9 All pipes (excluding downpipes), fixtures, fittings and vents servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

Graffiti

- 10 Before the buildings are occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.

External lighting

- 11 Before the buildings are occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating access to the basement car park, pedestrian walkway, laneway and dwelling entrances must be provided. Lighting must be located, directed, shielded, and of limited intensity, all to the satisfaction of the Responsible Authority

Noise

- 12 The use and development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
- 13 The use and development must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).

Heritage facade

- 14 Before either the development starts or the paint on the decorative façade is removed (except for the purposes of investigation), a decorative facade treatment scheme must be submitted to and approved by the Responsible Authority. The treatment scheme must be informed by and include the results of an investigation of the existing and original decorative treatments to the façade and an assessment of non-destructive paint removal techniques. The treatment scheme must include an investigation of the possibility of restoring the façade to its original condition based on the best available evidence. The treatment scheme must also include the Bay 9 return wall and colour proposed for the level 2 upstand behind the façade glazing. When approved, the decorative façade treatment scheme will be endorsed and will then form part of this permit.
- 15 The approved decorative façade treatment scheme must be carried out by or under the supervision of a suitably qualified consultant to the satisfaction of the Responsible Authority.

Amenity

- 16 The amenity of the area must not be detrimentally affected by the development and uses including through:
 - (a) the transport of materials, goods or commodities to or from land;
 - (b) the appearance of any buildings, works or materials;
 - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; or
 - (d) the presence of vermin;to the satisfaction of the Responsible Authority.

Sale and consumption of liquor

- 17 Except with the prior written consent of the Responsible Authority, no more than 50 patrons are permitted in the westernmost food and drinks premises (café) at any one time.
- 18 Unless with the further consent of the Responsible Authority, the sale and consumption of liquor in association with the westernmost food and drinks premises (café) and the restaurant may only occur between the hours of 12 noon to 11 pm, any day.
- 19 Before the use of the land for the sale and consumption of liquor starts, a Noise and Amenity Action Plan (NAAP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the NAAP will be endorsed and will then form part of this permit. The NAAP must include the details required by clause 22.09-4.3 of the *Yarra Planning Scheme*.
- 20 The sale and consumption of liquor uses must be managed in accordance with the endorsed NAAP.
- 21 The sale and consumption of liquor as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
- 22 Before the sale and consumption of liquor starts, a sign at the exit of the licensed premises must be displayed to the satisfaction of the Responsible Authority advising patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.
- 23 Emptying of bottles and cans into bins may only occur between 7 am and 5 pm on any day.

Structural report

- 24 Before the demolition starts, a structural report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The structural report must be prepared by a suitably qualified structural engineer and must demonstrate the means by which the retained portions of the buildings on-site will be supported during demolition and construction works to ensure their retention. When approved, the structural report will be endorsed and will form part of this permit.
- 25 The provisions, recommendations and requirements of the endorsed structural report must be implemented and complied with to the satisfaction of the Responsible Authority.

Public Art Management Plan

- 26 By no later than 6 months after the development starts, a Public Art Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved,

the Public Art Management Plan will be endorsed and will then form part of this permit. The Public Art Management Plan must include, but not be limited to:

- (a) Details of the commissioned artist(s).
- (b) A description of art work, including materials, colours, dimensions, content, special features (eg lighting), details of the installation process, and details of an art work maintenance schedule.

27 Before the buildings are occupied, or by such later date as approved in writing by the Responsible Authority, the public art in the endorsed Public Art Management Plan must be completed. Once completed, the public art must be maintained in accordance with the endorsed Public Art Management Plan to the satisfaction of the Responsible Authority.

Car spaces etc and access for nearby residents

28 Before the development starts, the owner (or another person in anticipation of becoming the owner) must enter into an agreement with the Responsible Authority under section 173 of the *Planning and Environment Act 1987* providing for:

- (a) The ongoing provision of 6 car parking spaces, 3 bicycle parking spaces, 3 stores and a bin area for the residents of the three townhouses on land known as the rear 26-56 Queens Parade, being lot 1 on Title Plan 806921X.
- (b) The ongoing pedestrian access and egress through the land for the residents of and visitors to the three townhouses on land known as the rear 26-56 Queens Parade, being lot 1 on Title Plan 806921X.
- (c) The obligations under the agreement only applying to that part of land that is or will become common property under the relevant plan of subdivision and to the owners corporation in which the common property has vested or will vest on registration of the plan of subdivision.

The agreement must be registered on title. The owner, or other person in anticipation of becoming the owner, must meet all of the reasonable expenses of preparing, reviewing, registering and recording the agreement, including the Responsible Authority's costs and expenses (including legal expenses) incidental to preparing, reviewing, registering and recording the agreement.

Wind

29 Before the plans under condition 1 are endorsed, an amended Wind Assessment Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Wind Assessment Report will be endorsed and will form part of this permit. The amended Wind Assessment Report must be generally in

accordance with the Wind Assessment Report prepared by Windtech and dated 30 June 2016, but modified to:

- (a) reflect the decision plans; and
- (b) demonstrate acceptable wind levels will result from the development (on and off the site land); and
- (c) identify which balustrades could be reduced to 1 metre or 1.7 metres (dependent on overlooking requirements) and continue to achieve the relevant wind criteria.

30 The provisions, recommendations and requirements of the endorsed Wind Assessment Report must be implemented and complied with to the satisfaction of the Responsible Authority.

Acoustic report

31 Before the plans under condition 1 are endorsed, an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority.

When approved, the amended Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the Acoustic Report prepared by Wood and Grieve Engineers, dated 29 June 2016 and include an assessment of how the requirements of the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade, No. N-1) (SEPP N-1), the State Environment Protection Policy (Control of Music Noise from Public Premises No. N-2) (SEPP N-2) and relevant Australian Standards will be met. The report must:

- (a) Address the decision plans and any relevant condition 1 requirements.
- (b) Detail the location and time of road traffic noise measurements.
- (c) Include adoption of appropriate indoor noise levels with regard to road traffic noise.
- (d) Target internal noise levels with regard to the impact of voice noise from the communal outdoor areas and food and drink premises.
- (e) Include maximum music noise levels in the food and drinks premises (cafés) and shop, to comply with SEPP N-2.
- (f) Include the installation of a music noise monitor.
- (g) An assessment of voice noise from patrons within the food and drinks premises (cafés) and shop to the proposed dwellings.

32 The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.

33 Within 3 months of the development or any part of it being occupied, an updated acoustic report prepared by a suitably qualified acoustic consultant

to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The report must demonstrate the required level of noise attenuation has been achieved. The report must also:

- (a) Confirm compliance with relevant conditions of the permit.
 - (b) Provide measurement data taken from inside the dwellings of the development demonstrating compliance with SEPP N-1, SEPP N-2 or any other relevant requirement.
- 34 The recommendations and any works contained in the approved acoustic report must be implemented and completed and where there are recommendations of an ongoing nature must be maintained all to the satisfaction of the Responsible Authority.

Sustainable Management Plan

35 Before the development starts, an amended Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this permit. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by Wood and Grieve Engineers dated 17/08/2017, but modified to show/reflect/demonstrate:

- (a) The incorporation of any combination of the following:
 - (i) extraction fans to all kitchen range hoods and bathrooms;
 - (ii) ceiling fans;
 - (iii) trickle vents;
 - (iv) energy efficient mechanically assisted natural ventilation with flow rates 50% in excess of AS 1668 levels.
- (b) Confirm glazing details (a VLT of at least 70%).
- (c) A different stormwater management treatment (not the SPEL treatment proposed), demonstrating compliance with clause 22.17 of the *Yarra Planning Scheme*.
- (d) The 40,000L (minimum) rainwater tank used for toilet flushing and landscape irrigation, if possible.
- (e) Clear, unambiguous wording, with clear commitments and no disclaimers.
- (f) A commitment to achieve a minimum NatHERS 6.5 star average rating (not 'targeted to achieve').
- (g) That no dwellings exceed the 30MJ/m² cooling loads threshold, using the NatHERS thermal energy rating software.

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

Waste Management Plan

- 37 Before the development starts, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Leigh Design and dated 9 August 2017, but modified to include/reflect:
- (a) the decision plans;
 - (b) details on how bin store will operate/be managed by operator;
 - (c) how appropriate management of the waste and recycling will be ensured;
 - (d) detail of the bin store plan showing path of access, hard waste area etc;
 - (e) details/justification on ensuring recycling collected is compacted to ensure industry standard and not compromise recovery of recyclables;
 - (f) details on path of access from the street to the bin collection point;
 - (g) details on how the chutes operate to ensure appropriate use by tenants;
 - (h) details on how the development will be managed by the operator; and
 - (i) show how the WMP will work in practice for residents, operator and waste contractors.
- 38 The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Irrigation

- 39 Before the plans under condition 1 are endorsed an Irrigation Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Irrigation Management Plan will be endorsed and will form part of this permit. The Irrigation Management Plan must include recommendations for:
- (a) Differential demands of the vegetation within the site complying with the provisions, recommendations and requirements of the endorsed Landscape Plan.
 - (b) Programmed maintenance for the irrigation system including flushing, checking systems integrity, monitoring sensors and calibration settings.

Landscaping

- 40 Before the building is occupied, or such later date as is approved by the Responsible Authority, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.
- 41 The landscaping shown on the endorsed plans must be maintained by:
- (a) implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan;
 - (b) not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose; and
 - (c) replacing any dead, diseased, dying or damaged plants, all to the satisfaction of the Responsible Authority.

Street trees

- 42 Before the development starts, a Tree Management Plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified Arborist and must be submitted to and approved by the Responsible Authority. When approved the Tree Management Plan will be endorsed and will form part of this permit. The Tree Management Plan must include recommendations to the satisfaction of the Responsible Authority for:
- (a) The protection of the nature strip trees adjacent to the site along the Queens Parade frontage before construction starts, during construction and after construction is complete.
 - (b) The provision of any barriers.
 - (c) Any necessary pruning.
 - (d) Watering and maintenance regimes.
- 43 The provisions, recommendations and requirements of the endorsed Tree Management Plan must be complied with and implemented to the satisfaction of the Responsible Authority.
- 44 Before the development starts, a security bond must be given to the Responsible Authority to secure the 8 street trees adjacent to the site along Queens Parade. The security bond must cover the amenity value of each tree and:
- (a) must be an amount to be agreed with the Responsible Authority;
 - (b) must be provided in a manner, and on terms, to the satisfaction of the Responsible Authority; and
 - (c) may be held by the Responsible Authority until the construction works are completed to the satisfaction of the Responsible Authority.

When the construction works are completed to the satisfaction of the Responsible Authority, the Responsible Authority must inspect the trees

and provided they are found to be in good condition, the security bond must be refunded.

- 45 Before the buildings or any part of them are occupied, or by such later date as approved in writing by the Responsible Authority, any damaged street trees must be replaced:
- (a) in accordance with any requirements or conditions imposed by Yarra City Council;
 - (b) at no cost to Yarra City Council; and
 - (c) to the satisfaction of the Responsible Authority.

Car parking

- 46 Before the development starts, a Car Park Management Plan prepared to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Car Park Management Plan will be endorsed and will then form part of this permit. The Car Park Management Plan must include, but not be limited to, the following:

- (a) The allocation of 6 car parking spaces to the residents of the three dwellings at the rear of 26-56 Queens Parade, Fitzroy North (planning permit PLN16/0732).
- (b) The allocation of 7 car parking spaces for the commercial tenancies, including the number and location of car parking spaces allocated to each commercial tenancy.
- (c) Management details for residential loading/unloading when moving.
- (d) The management of the 9 visitor car parking spaces and security arrangements for occupants of the development, including details on how residential visitors are to access car parking.
- (e) Details of way-finding, cleaning and security of end of trip bicycle facilities.
- (f) Any policing arrangements and formal agreements.
- (g) A schedule of all proposed signage including directional arrows and signage, informative signs indicating location of disabled bays and bicycle parking, exits, restrictions, pay parking system etc.
- (h) The collection of waste and garbage including the separate collection of organic waste and recyclables, which must be in accordance with the endorsed Waste Management Plan required.
- (i) Details regarding the management of loading and unloading of goods and materials.
- (j) Confirmation that delivery vehicles entering the land will be restricted to a height no greater than 3.5 metres.

- (k) Details of the loading bay use, including hours and potentially using a lighting system to improve the safety of this area.
- 47 The provisions, recommendations and requirements of the endorsed Car Park Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
- 48 Before the building or any part of it is occupied, the area set aside on the endorsed plans for the car parking spaces, access lanes, driveways and associated works must be:
- (a) constructed and available for use in accordance with the endorsed plans;
 - (b) formed to such levels and drained so that they can be used in accordance with the endorsed plans;
 - (c) treated with an all-weather seal or some other durable surface; and
 - (d) line-marked or provided with some adequate means of showing the car parking spaces,
- all to the satisfaction of the Responsible Authority.

Traffic, roads and footpaths

- 49 All redundant vehicle crossings along the land's road frontages must be demolished and reinstated with paving, kerb and channel to Yarra City Council's satisfaction and at no cost to the Council.
- 50 Any damaged roads, footpaths and other road related infrastructure adjacent to the land as a result of the construction works, including trenching and excavation for utility service connections, must be reconstructed to Yarra City Council's satisfaction and at no cost to the Council. The cross-fall of reconstructed footpaths must be no steeper than 1 in 40.
- 51 Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the owner's expense after seeking approval from the relevant authority.

Engineering documentation

- 52 Within three months of the date the development starts, Detailed Engineering Documentation to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Detailed Engineering Documentation will be endorsed and will then form part of this permit. The Detailed Engineering Documentation must be drawn to scale with dimensions, and three copies must be provided. The Detailed Engineering Documentation must include:
- (a) The reconstruction of that part of the laneway off Brunswick Street that abuts the rear of the land in pitched bluestone.
 - (b) Subject to the approval of VicRoads, the reinstatement of the footpath outside the Queens Parade frontage of the land, once all building

works and underground utility services have been completed/installed. All pedestrian access must be constructed to a level no steeper than 1 in 40 from the building line.

- (c) The nature strips directly outside the land's Queens Parade service road frontage must be cultivated, top dressed and be provided with instant turf.
 - (d) If material damage to the Queens Parade service road is caused as a result of the carrying out of the development including the provision of ancillary utility services, the service road must be reinstated to the satisfaction of the Responsible Authority.
 - (e) The capping of all redundant property drains.
- 53 Unless with the prior written consent of the Responsible Authority, all development referenced in condition 52 must be completed to the satisfaction of the Responsible Authority before the building or any part of the building is occupied.
- 54 The details and requirements of the endorsed Detailed Engineering Documentation must be implemented and complied with to the satisfaction of the Responsible Authority.
- 55 Before the development starts, a one-off contribution of \$8,960 must be paid to the Responsible Authority to be used for new street tree plantings that are required as a result of the development (reinstatement of 2 trees after development plus 2 years tree establishment maintenance).

Green Travel Plan

- 56 Before the occupation of the development or any part of the development, a Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Green Travel plan will be endorsed and will form part of this permit. The Green Travel Plan must include, but not be limited to, the following:
- (a) A description of the location in the context of alternative modes of transport.
 - (b) Employee and resident welcome packs (eg provision of Met cards/Myki cards).
 - (c) Appointment of a person as 'manager' or 'champion' responsible for co-ordination and implementation.
 - (d) Details of bicycle parking and bicycle routes.
 - (e) Details of GTP funding and management responsibilities.
 - (f) An obligation to update the Plan not less than every 5 years.
- 57 The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Construction

- 58 Before the development starts, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must include:
- (a) A street tree management plan (including TPZs).
 - (b) A pre-conditions survey (dilapidation report) of the land and all adjacent Yarra City_Council roads frontages and nearby road infrastructure.
 - (c) Works necessary to protect road and other infrastructure.
 - (d) Remediation of any damage to road and other infrastructure.
 - (e) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land.
 - (f) Facilities for vehicle washing, which should be located on the land.
 - (g) The location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street.
 - (h) Site security.
 - (i) A lighting plan, which must include:
 - (i) If any existing public lighting assets require temporary disconnection, details of alternative lighting to maintain adequate lighting levels. A temporary lighting scheme must be approved by Yarra City Council and the relevant power authority.
 - (ii) Confirmation that existing public lighting would only be disconnected once temporary alternative lighting scheme becomes operational.
 - (iii) Confirmation that the temporary lighting scheme will remain operational until a permanent lighting scheme is reinstated.
 - (j) Management of any environmental hazards including, but not limited to:
 - (i) contaminated soil;
 - (ii) materials and waste;
 - (iii) dust;
 - (iv) stormwater contamination from run-off and wash-waters;
 - (v) sediment from the land on roads;
 - (vi) washing of concrete trucks and other vehicles and machinery;and

- (vii) spillage from refuelling cranes and other vehicles and machinery.
 - (k) The construction program.
 - (l) Delivery and unloading points and expected duration and frequency.
 - (m) Parking facilities for construction workers.
 - (n) Measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan.
 - (o) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services.
 - (p) An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced.
 - (q) The provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.
 - (r) A Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
 - (i) using lower noise work practice and equipment;
 - (ii) the suitability of the land for the use of an electric crane;
 - (iii) silencing all mechanical plant by the best practical means using current technology;
 - (iv) fitting pneumatic tools with an effective silencer; and
 - (v) other relevant considerations.
- 59 During construction, any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines.
- 60 During construction, stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the stormwater drainage system.
- 61 During construction, vehicle borne material must not accumulate on the roads abutting the land.
- 62 During construction, the cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads.

- 63 During construction, all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.
- 64 Before the buildings or any part of them are occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Yarra City_Council infrastructure resulting from the development must be reinstated to the satisfaction of the Responsible Authority.
- 65 Any service poles, structures or pits that interfere with the proposal must be adjusted or removed with approval from the relevant authorities and to the satisfaction of the Responsible Authority.
- 66 Before the buildings or any part of the buildings are occupied, or by such later date as approved in writing by the Responsible Authority, any new vehicle crossings must be constructed in accordance with any requirements or conditions imposed by Yarra City Council to the satisfaction of the Responsible Authority.
- 67 Except with the prior written consent of the Responsible Authority, Yarra City Council assets must not be altered in any way.
- 68 Pit lids and levels are to be readjusted to match the surface of the footpath, to the satisfaction of the Responsible Authority.
- 69 No parking restriction signs must be removed, adjusted, changed or relocated without approval or authorisation from the Responsible Authority.
- 70 Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
 - (a) before 7 am or after 6 pm, Monday-Friday (excluding public holidays);
 - (b) before 9 am or after 3 pm, Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday); or
 - (c) at any time on Sundays, ANZAC Day, Christmas Day and Good Friday.

Public lighting plan

- 71 Before the development starts, a public lighting plan must be submitted to and approved by the Responsible Authority. When approved, the public lighting plan will be endorsed and will form part of this permit. The public lighting plan must include:
 - (a) Lighting at the entrance to and within the northern laneway linking to Coleman Street and within the reconstructed part of the laneway abutting the land off Brunswick Road.
 - (b) Confirmation that all primary pedestrian access to a residential/multipurpose development will be lit by public lighting installations at least to lighting level P4 as specified in the Australian Standard AS 1125.3.1:2005 Lighting for roads and public spaces -

Pedestrian area (Category P) lighting - Performance and design requirements.

- (c) Confirmation that any new poles and luminaires required for the development will be sourced from CitiPower/Jemena standard energy efficient luminaires list and comply with relevant CitiPower/Jemena technical requirements.
 - (d) Confirmation that light spillage into the windows of any existing and proposed residences will be avoided or minimised and must comply with the requirements of Australian Standard AS 4282 – 1997 Control of the obtrusive effects of outdoor lighting.
 - (e) Confirmation that the locations of any new light poles will not obstruct vehicular access into private property.
 - (f) Include a commitment that the Permit Holder will ensure (by contacting relevant power authority) that the existing or proposed power supply conforms to “No Go Zone” requirements from the relevant power authority;
 - (g) Confirmation that the owner will fund the supply and installation of any additional or upgraded lighting, electrical hardware and poles.
- 72 The provisions, recommendations and requirements of the endorsed public lighting plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Flood impact mitigation

- 73 The entry/exit to the basement carpark must incorporate either a flood proof apex and associated bunding or a self-closing automatic flood barrier constructed no lower than 24.43 metres to Australian Height Datum (AHD), which is 300 mm above the applicable flood level or 24.13 metres to AHD. These entry/exit requirements must be shown on the plans endorsed under condition 1.
- 74 Any external openings to the basement including windows and vents must be constructed no lower than 24.43 metres to AHD. The plans endorsed under condition 1 must be consistent with this requirement.
- 75 Before an Occupancy Permit is issued, a certified survey plan, showing finished levels (as constructed) reduced to AHD, must be submitted to and approved by Melbourne Water to demonstrate that the levels have been constructed in accordance with Melbourne Water’s requirements.

Land contamination

- 76 Before the construction of the development authorised by this permit starts, an assessment of the land to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The assessment must be prepared by an environmental professional with

suitable qualifications to the satisfaction of the Responsible Authority and must include:

- (a) A description of previous land uses and activities on the land.
- (b) An assessment of the level, nature and distribution of any contamination within, or in close proximity to, the land.
- (c) Details of any provisions, recommendations and requirements (including but not limited to, clean up, construction, ongoing maintenance or monitoring) required to effectively address and manage any contamination within the land.
- (d) Recommendations as to whether the land is suitable for the use for which the land is proposed to be developed and whether an Environmental Auditor should be appointed under section 53S of the *Environment Protection Act 1970 (EP Act)* to undertake an Environmental Audit in accordance with the provisions of the EP Act.

77 If the assessment required by condition 76 does not result in a recommendation that an Environmental Auditor be appointed under section 53S of the EP Act to undertake an Environmental Audit in accordance with the provisions of the EP Act, all provisions, recommendations and requirements of the assessment must be implemented and complied with to the satisfaction of the Responsible Authority.

78 If the assessment required by condition 76 results in a recommendation that an Environmental Auditor be appointed under section 53S of the EP Act to undertake an Environmental Audit in accordance with the provisions of the EP Act, before the construction of the development authorised by this permit commences, the Environmental Auditor appointed under section 53S of the 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 (a **Certificate**); or
- (b) Statement of Environmental Audit for the land in accordance with section 53Z of the EP Act (a **Statement**),
- (c) and the Certificate or Statement must be provided to the Responsible Authority.

79 If, pursuant to condition 78, a Statement is issued:

- (a) The development authorised by this permit must not be undertaken unless the Statement 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 before the development commences (pre-commencement conditions).

- (c) Before the construction of the development authorised by this permit commences, a letter prepared by the Environmental Auditor appointed under section 53S of the EP Act which states that the pre-commencement conditions have been complied with must be submitted to the responsible authority.
- (d) If any term or condition of the Statement requires any ongoing maintenance or monitoring, the owner of the land (or another person in anticipation of becoming the owner of the land) must enter into an agreement with the Responsible Authority 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.
- (e) The owner of the land, or other person in anticipation of becoming the owner, must pay all costs and expenses (including legal expenses) of, and incidental to, the Agreement (including those reasonably incurred by the Responsible Authority).

Expiry

- 80 This permit will expire if any of the following circumstances apply:
- (a) The development is not started within 4 years of the issued date of this permit.
 - (b) The development is not completed within 6 years of the issued date of this permit.
 - (c) All the uses do not start within 6 years of the issued 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 -

APPENDIX C

PERMIT APPLICATION NO.	PLN16/0732
LAND	Rear 26-56 Queens Parade, Fitzroy North

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of three dwellings on a lot in a in the *Mixed Use Zone* under clause 32.04-6
- Partial demolition or removal of a building in a *Heritage Overlay* under clause 43.01-1
- Construction of a building or construction or carrying out of works in a *Heritage Overlay* under clause 43.01-2
- Provision of all the car parking spaces on another site (being 26-56 Queens Parade, Fitzroy North) under clause 52.06-3

CONDITIONS**Amended plans**

- 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 this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the plans substituted by the Victorian Civil and Administrative Tribunal by its order dated 26 October 2017 in Proceeding P2709/2016 but modified in accordance with the plans prepared by Cox Architecture drawings nos. A-11-30 rev 1, A-11-31 rev 1, A-21-30 rev 1, A-21-31 rev 1, A-21-32 rev 1, A-30-30 rev 1, A-30-31 rev 1, A-30-32 rev 1, A-30-33 rev 1, A-40-30 no rev & A-40-31 no rev_dated 21 February 2018 but modified to show:
 - (a) Boundary dimensions in accordance with the certificate of title.
 - (b) A maximum overall building height of 9 metres.
 - (c) Fences/gates adjacent to the dwelling entrances a maximum height of 1.5 metres and minimum transparency of 50%.
 - (d) The location of letter boxes and street numbering.
 - (e) Lighting to dwelling entrances.

- (f) Details of the screens between courtyards/terraces and to habitable room windows, confirming:
 - (i) a minimum height of 1.7m;
 - (ii) a maximum permeability of 25%; and
 - (iii) that they are fixed.
- (g) An additional window to the ground floor, eastern elevation of dwelling 1.
- (h) A schedule of colours and materials, including samples (where relevant).
- (i) Items as per the Sustainable Design Assessment, where relevant to show on the plans.
- (j) A 1 metre high balustrade to the level 1, southern terrace.
- (k) Windows and doors to be shown on the elevations.

Layout not altered

- 2 The development as shown on the endorsed plans must not be altered (unless the *Yarra Planning Scheme* specifies that a permit is not required) without the prior written consent of the Responsible Authority.

Land contamination

- 3 Before the construction of the development authorised by this permit starts, an assessment of the land to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The assessment must be prepared by an environmental professional with suitable qualifications to the satisfaction of the Responsible Authority and must include:
 - (a) A description of previous land uses and activities on the land.
 - (b) An assessment of the level, nature and distribution of any contamination within, or in close proximity to, the land.
 - (c) Details of any provisions, recommendations and requirements (including but not limited to, clean up, construction, ongoing maintenance or monitoring) required to effectively address and manage any contamination within the land.
 - (d) Recommendations as to whether the land is suitable for the use for which the land is proposed to be developed and whether an Environmental Auditor should be appointed under section 53S of the *Environment Protection Act 1970* (EP Act) to undertake an Environmental Audit in accordance with the provisions of the EP Act.
- 4 If the assessment required by condition 3 does not result in a recommendation that an Environmental Auditor be appointed under section 53S of the EP Act to undertake an Environmental Audit in accordance with

the provisions of the EP Act, all provisions, recommendations and requirements of the assessment must be implemented and complied with to the satisfaction of the Responsible Authority.

5 If the assessment required by condition 3 results in a recommendation that an Environmental Auditor be appointed under section 53S of the EP Act to undertake an Environmental Audit in accordance with the provisions of the EP Act, before the construction of the development authorised by this permit commences, the Environmental Auditor appointed under section 53S of the 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) Statement of Environmental Audit for the land in accordance with section 53Z of the EP Act (Statement),
- (c) and the Certificate or Statement must be provided to the Responsible Authority.

6 If, pursuant to condition 5, a Statement is issued:

- (a) The development authorised by this permit must not be undertaken unless the Statement 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 before the development commences (pre-commencement conditions).
- (c) Before the construction of the development authorised by this permit commences, a letter prepared by the Environmental Auditor appointed under section 53S of the EP Act which states that the pre-commencement conditions have been complied with must be submitted to the responsible authority.
- (d) If any term or condition of the Statement requires any ongoing maintenance or monitoring, the owner of the land (or another person in anticipation of becoming the owner of the land) must enter into an agreement with the Responsible Authority 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.
- (e) The owner of the land, or other person in anticipation of becoming the owner, must pay all costs and expenses (including legal expenses) of,

and incidental to, the Agreement (including those incurred by the Responsible Authority).

Facilities on adjoining land

- 7 Before any one of the dwellings is occupied, the following must be provided to the satisfaction of the Responsible Authority on adjoining land at 26-56 Queens Parade, Fitzroy North as shown in Planning Permit No. PLN16/0434 and plans endorsed under Permit No. PLN16/0434:
- (a) 6 car parking spaces constructed and made available for use by the occupiers of the dwellings.
 - (b) 3 bicycle parking spaces constructed and made available for use by the occupiers of the dwellings.
 - (c) 3 stores (a minimum 6m³ store for each) constructed and made available for use by the occupiers of the dwellings.
 - (d) The waste storage area is constructed and made available for use by the occupiers of the 3 dwellings.
 - (e) The pedestrian link from Queens Parade to the development authorised by this permit is constructed.

Screening

- 8 Before any one of the dwellings is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to limit overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.

Walls

- 9 Before any one of the dwellings is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
- 10 Before any one of the dwellings is occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.

Sustainable Design Assessment

- 11 Before the development starts, an amended Sustainable Design Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Design Assessment will be endorsed and will form part of this permit. The amended Sustainable Design Assessment must be generally in

accordance with the Sustainable Design Assessment prepared by WGE and dated 9 September 2016, but modified to reflect the decision plans.

- 12 The provisions, recommendations and requirements of the endorsed Sustainable Design Assessment must be implemented and complied with to the satisfaction of the Responsible Authority.

Public Lighting

- 13 Before the development commences, a Public Lighting Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Public Lighting Plan must address lighting along the laneways adjoining the land. When approved, the Public Lighting Plan will be endorsed and will form part of this permit. The Public Lighting Plan must provide for:

- (a) A lighting scheme designed for the adjoining laneways and within the curtilage of the land that complies with uniformity requirements as per standard AS1158.3.1.
- (b) The control of light spillage into the windows of existing and proposed residences to comply with the requirements of AS 4282 – 1997, "Control of the obtrusive effects of outdoor lighting".
- (c) The locations of any new light poles so as not to obstruct access into private garages/off and on street parking places.
- (d) Lighting to all primary pedestrian access points to each dwelling to satisfy at least level P4 as per AS 1158.3.1.
- (e) A maintenance regime for the lighting scheme within the curtilage of the property.
- (f) The use of energy efficient luminaries and/or solar lighting technologies to reduce carbon emission if possible.

- 14 The provisions, recommendations and requirements of the endorsed Public Lighting Plan must be implemented and complied with at no cost to Yarra City Council and to the satisfaction of the Responsible Authority.

Construction Management Plan

- 15 Before the development starts, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for:

- (a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure.
- (b) Works necessary to protect road and other infrastructure.
- (c) Remediation of any damage to road and other infrastructure.

- (d) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land.
 - (e) Facilities for vehicle washing.
 - (f) the location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street;
 - (g) Site security.
 - (h) Management of any environmental hazards including, but not limited to:
 - (i) contaminated soil;
 - (ii) materials and waste;
 - (iii) dust;
 - (iv) stormwater contamination from run-off and wash-waters;
 - (v) sediment from the land on roads;
 - (vi) washing of concrete trucks and other vehicles and machinery; and
 - (vii) spillage from refuelling cranes and other vehicles and machinery;
 - (i) The construction program.
 - (j) Preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency.
 - (k) Parking facilities for construction workers.
 - (l) Measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan.
 - (m) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services.
 - (n) An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced.
 - (o) The provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.
- 16 The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Works hours

- 17 Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
- (a) Monday to Friday (excluding public holidays) before 7 am or after 6 pm;
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

Infrastructure

- 18 Except with the prior written consent of the Responsible Authority, Yarra City Council assets must not be altered in any way.
- 19 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Yarra City Council infrastructure resulting from the development must be reinstated to the satisfaction of the Responsible Authority.
- 20 Before the development starts, detailed design drawings of all road infrastructure works and drainage works associated with this development (outlined in condition 21) must be prepared and submitted for assessment and endorsement to the satisfaction of the Responsible Authority.
- 21 Before any dwelling is occupied, or by such later date as approved in writing by the Responsible Authority, the segment of the laneway to the east of the land must be reconstructed in pitched bluestone to the satisfaction of the Responsible Authority:

Expiry

- 20 This permit will expire if one of the following circumstances applies:
- (a) The development is not started within 4 years of the date of this permit.
 - (b) The development is not completed within 6 years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards for starting the development or within twelve months afterwards for completing the development.

- End of Conditions -