

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1433/2016
PERMIT APPLICATION NO. TP-2016-240

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987*; Melbourne Planning Scheme; Proposal for 22 storey building with a waiver of on-site car parking, providing for a ground level shop and office and the upper levels to be used for apartments; Development Overlay DDO61; Haymarket; Flemington Road vista; Relationship to existing heritage former bank on land; Merits of design response; Amenity impacts on future occupants of the adjoining permit approved building to the east.

APPLICANT

Jobs Australia Pty Ltd

RESPONSIBLE AUTHORITY

Melbourne City Council

SUBJECT LAND

696-708 Elizabeth Street, Melbourne

WHERE HELD

Melbourne

BEFORE

Philip Martin, Presiding Member

Ann Keddie, Member

HEARING TYPE

Major Cases List Hearing

DATE OF HEARING

7-10 November 2016

DATE OF ORDER

15 December 2016

DATE OF CORRECTION ORDER

13 June 2018

CITATION

Jobs Australia Pty Ltd v Melbourne CC
(Corrected) [2016] VCAT 1915

ORDER

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

- Prepared by: ARM Architecture
- Drawing numbers: Architectural Plans:
TP-1001[08] Basement, TP-1000[08], TP-1001[08] Level 1,
TP-1002[08] -TP1021[08] inclusive, TP-1022 [08] Plant Level Plan, TP-1022 [08] Roof Plan, TP-2000 [08], TP-2001[08], TP-

2003[08],
TP-2004[08],
TP-3000[08]-TP-3002[08] inclusive,
TP-4003[08]-TP-4005[08] inclusive,
TP-4010[08], TP-5001[08],
at pages 24-59 of the A3 Booklet utilised at
the hearing.

All dated 03-Oct-2016

- 2 The decision of the responsible authority is set aside.
- 3 In planning permit application No. TP-2016-240, a permit is granted and directed to be issued for the land at 696-708 Elizabeth Street, Melbourne, in accordance with the endorsed plans and the conditions set out in the Appendix to this decision. The permit shall allow:
 - The partial demolition of the building and demolition of the existing sign above the parapet and construction of a multi storey mixed use development including a waiver of car parking and loading requirements.

Philip Martin
Presiding Member

Ann Keddie
Member

APPEARANCES

For applicant

Mr Chris Townshend QC and Mr Peter O'Farrell of Counsel, instructed by Planning and Property Partners. They called the following expert witnesses:

- Mr Mark Sheppard, Urban designer.
- Mr Roger Poole, Dr Graeme Gunn and Mr Robert McBride, Architects.
- Mr Andrew Biacsi, Town Planner.
- Mr Bryce Raworth and Mr Peter Lovell, Heritage consultants.

The project architect, Mr Ian McDougall, presented an overview of the proposal at the commencement of the hearing.

For responsible authority: Mr Simon Martyn of Fulcrum planners, who called the following expert witness:

- Ms Meredith Gould, Heritage Consultant.

INFORMATION

Description of proposal	The partial demolition of an existing building including an existing sign above the parapet. Construction of a multi storey mixed use development, including a waiver of car parking and loading requirements.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Melbourne Planning Scheme
Zone and overlays	Capital City Zone Schedule 5 (CCZ5). Design and Development Overlay Schedule 61A5 (DDO61A5). Heritage Overlay HO1124 (HO1124). Parking Overlay Schedule 1.
Permit requirements	Clause 37.04-4 (CCZ): To construct a building or carry out works, to demolish or remove a building or works under Schedule 5. Clause 43.02-2 (DDO): To construct a building or carry out works, and to exceed the preferred maximum building height of 60 metres specified for Area 5. Clause 43.01-1 (HO): To demolish a building, to construct a building or carry out works, and to externally alter a building. Clause 43.02-2 to construct a building or carry out works. Clause 52.07 to waive a loading bay.
Relevant scheme policies and provisions	Clauses 9, 10, 11, 15, 16, 17, 18 of the SPPF. Clauses 21.02, 21.03, 21.04, 21.06, 21.07, 21.09, 21.14 and 22.05 of the LPPF. Clauses 52.06, 52.34, 52.35, 52.36, and 65.

Land description

The subject land is on the south-east corner of the intersection of Elizabeth and Pelham Streets, opposite the Haymarket roundabout, just north of the central city. It is improved by a Victorian-era 'B' graded one and two-storey former bank building. The irregularly shaped site has an area of 380m². To its east there is a 12 metre long bluestone dead-end laneway, accessed from the north. Across the lane, and also on the southern side are the 'Royal Elizabeth' apartments, a 20 storey tower which is now almost constructed.

Tribunal inspection

The Tribunal inspected the subject land and surrounds on 8 November 2016.

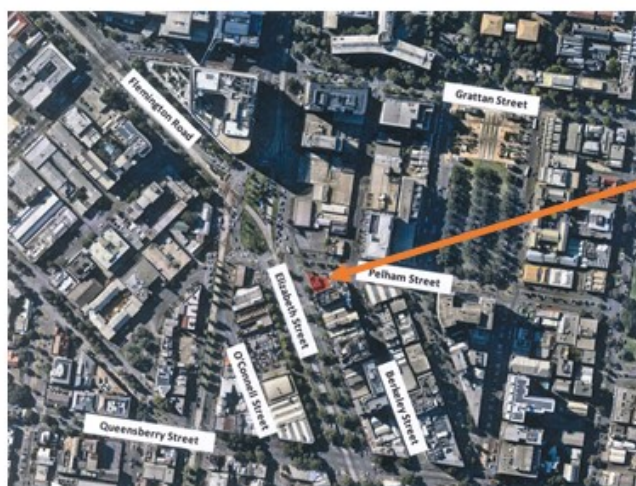
REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Jobs Australia Pty Ltd, the owner of the subject land at 696 – 708 Elizabeth Street, Melbourne wishes to build a major apartment tower on its land whilst retaining the majority of a Victorian-era former bank building on the site. In 2015 it sought planning approval for a similar project which was opposed by Council and (on review) refused by the Tribunal. The owner has modified the design response and seeks a new planning permit. This has also involved planning negotiations with the owner of the abutting 20 storey Royal Elizabeth apartment tower, now almost constructed, resulting in an agreement between the parties.
- 2 Council opposes the fresh proposal. Apart from the design changes to the proposal, the relevant planning framework has also changed since the previous review in 2015. On the basis of the evidence before us, submissions made and our site inspection, we have concluded that the new proposal is an acceptable heritage and design response to the site and should be granted a permit, subject to conditions.

Site context, relevant planning framework and the proposal

- 3 The subject land is on the south-east of the Haymarket roundabout. A Victorian-era one and two-storey former bank building, protected by Heritage Overlay (HO1124) and graded 'B'² occupies the whole of the site. The description of the site as a 'gateway' or 'landmark' is apt. Any building on it will be highly visible from many viewpoints. Site context



Subject Site

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- ¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.
 - ² Pursuant to the City of Melbourne Heritage Place Inventory, June 2016, a 'B' graded building is described as "...of regional or metropolitan significance, and stand as important milestones in the architectural development of the metropolis. Many will be either included on, or recommended for inclusion in, the Register of the National Estate".

- 4 This is an interesting and dynamic part of inner city Melbourne and the location is overtly targeted for urban renewal in both Plan Melbourne and the local policy framework.³ The recently completed Victorian Comprehensive Cancer Centre is on the opposite side of the Haymarket. Other nearby under-developed sites such as Bob Jane T-Marts to the west and the City Ford site to the north of the subject land are ripe for redevelopment. The prominent Melbourne University multi-storey Law School and Economics buildings lie to the east of the subject land. The 20 storey Royal Elizabeth (RE) apartment tower is now mostly constructed and wraps around the site, siting along both the eastern and south side of it.
- 5 The proposal is for a 22 storey building. The ground level of the retained part of the former bank building is to be used as an office and small café facing Pelham Street, with the remainder, together with the new tower, used for 77 one and two bedroom dwellings.
- 6 The new building is designed to cantilever over the old. The street setbacks vary as the tower rises, with no setback along the majority of the Elizabeth Street façade. Above the 14th storey, the building projects over the street alignment for a small portion at the northern end of that façade. Setbacks along Pelham Street vary from 3.6 metres to zero at the corner of the laneway.
- 7 It is significant that the three main planning controls have all been recently updated. The primary planning control is now the Capital City Zone Schedule 5 (CCZ5). There are a Design and Development Overlay Schedule 61A5 (DDO61A5) and a Heritage Overlay HO 1124 (HO1124). In addition a Parking Overlay is nominally applicable.
- 8 DDO61A5 prescribes a preferred maximum height for built form on the review site of 60 metres, with a 24 metre street edge height combined with a 6 metre setback above that height for buildings fronting Pelham and Berkeley Streets. It also seeks a 4 metre setback above a podium of 10.5 metres from laneway frontages.
- 9 HO1124, the Elizabeth Street North (boulevard) Precinct, includes the subject site and other properties to its south along Elizabeth Street, in a Level 2 streetscape.⁴

Previous tower proposal refused by Tribunal

- 10 The applicant put forward a previous, somewhat similar, proposal for this site to Council, whose lack of support was appealed to the Tribunal. The Tribunal, comprising Senior Member Baird and Member Keddle, heard the appeal over 14 – 16 September 2015.⁵ At that stage, the subject land was

³ See Clause 21.04, Clause 21.04-2, the City North Structure Plan 2012 and the 'Expanded Central City' Map 10-CNSP of Plan Melbourne.

⁴ Pursuant to the City of Melbourne planning Scheme, Level 2 streetscapes '...are of significance because they still retain the predominant character or scale of a similar period or style, or because they contain individually significant buildings'.

⁵ See *Jobs Australia Pty Ltd v Melbourne CC* [2015] VCAT 1525.

zoned Mixed Use, subject to a different Design and Development Overlay Schedule, DDO44, and affected by a differently configured Heritage Overlay Schedule, HO54. There was, however, discussion and anticipation of the impending new planning controls to which we refer below.

- 11 In its decision the Tribunal affirmed the Council's Notice of Refusal. It was not persuaded that the proposed tower form achieved an acceptable urban design outcome. Key issues identified in the decision were the compatibility of the proposed 21 storey contemporary tower with the partially retained former bank building, the extent of the demolition of that building, and whether the interface with the (then) proposed Royal Elizabeth building had been acceptably resolved.

Previous proposal for the site



- 12 In addition to expressing concern at the extent of the proposed demolition of the former bank building. At [69], the Tribunal stated:

We do not consider the proposed tower inserted above and behind the retained form of the bank achieves an acceptable heritage outcome. It does not integrate the old and new in a manner that conserves and enhances the 'B' graded building. Rather, we find that the height and position of the tower dominates the host building in a manner that adversely affects the significance of the heritage place. There is too much building brought too close to the street frontages in a way that overwhelms the bank appearing to penetrate and visually crush the host building.

13 Furthermore, at [101] it states as follows:

...while we appreciate the beautiful and striking architectural composition that is offered by this application, our concerns about the proposal's heritage and urban design outcomes have caused us to refuse a permit, specifically because:

- The marriage of the tower building and the retained sections of the bank overwhelm the heritage structure and do not integrate the new with the old in a manner sought by Clause 43.01 or local policy.
- The relationship between the proposed development and the Royal Elizabeth apartment building, in that the two buildings appear to be attached and the proposed building presents a 70+ metre high blank wall within 2.7 metres of the north-western face of the Royal Elizabeth apartment building.

Negotiations concerning the Royal Elizabeth apartments

14 Since the previous Tribunal hearing, the abutting RE apartments are now largely built. Mr Townshend advised us that the current applicant, Jobs Australia Pty Ltd (JA) had had an interest in the planning permit application that led to the granting of the planning permit for the RE building, owned by PDG. In particular, following the division of the land previously proposed to be developed as one parcel into two, Jobs Australia had challenged the validity of the PDG permit, asserting that it failed to take due regard of the JA owned site now before us.

15 The resolution of that dispute resulted in modifications to the design of the RE building and a 173 Agreement regarding the interface of the northern face of that building and the subject site. There was a consensus at the hearing that these modifications have been duly made to the as-built northern façade of the RE tower.

16 In addition, it has been agreed between Council and JA that for the purposes of this proceeding, Council will not raise any objection to the way in which the southern façade of the proposed new tower on the subject land interfaces with the north-facing apartments of the RE tower. We note that this agreement does not extend to the west facing RE apartments situated along the laneway between the two sites.

HEARING BEFORE US AND SUMMARY OF OUR FINDINGS

17 At the commencement of the hearing of this matter we:

- Substituted the further updated plans prepared by ARM Architecture, which had been circulated by the applicant in the lead up to the hearing and set out in the helpful consolidated booklet provided to us by JA at the hearing.

- Discussed with the parties a Statement of Grounds dated 4 November 2016 forwarded to the Tribunal by PDG, and how the Tribunal should deal with it. We explain below how this matter was resolved.
- 18 We heard submissions from the two parties and received the evidence from the experts listed above. We inspected the subject land and surrounds on the second day of the hearing.
- 19 To summarise our findings:
- We are satisfied that the extent of heritage fabric being retained, and remaining visible to the passer-by, is reasonable.
 - We consider the 'void' space between the roof of the retained bank building and the lowest level of the new tower building provides a thoughtful, polite and respectful interface between these two main elements of the building, and is acceptable.
 - We find that the interface between the Elizabeth Street section of the RE development and the proposal on the subject site has successfully addressed the concerns about the 'awkward and unresolved'⁶ interface noted by the previous Tribunal.
 - In summary, we consider the proposed design has addressed the failings identified by the previous Tribunal in an acceptable way. We have concluded that the building, as a striking example of high quality contemporary architecture, will contribute to the urban realm and the revitalisation of the Haymarket.
- 20 The three planning issues on which this proceeding has turned are:
- Whether the proposal is an acceptable heritage outcome.
 - Whether the design response is otherwise acceptable. Notably, is there a reasonable resolution of the interface between the proposed new tower and the nearly completed RE building?
 - Whether there would be any unreasonable external amenity impacts on the future occupants of the RE apartments facing the eastern side of the proposed new tower.

Role of the 4 November 2016 PDG letter in the hearing

- 21 Notwithstanding the settlement negotiated between the applicant (JA) and the owner of the RE tower (PDG), PDG submitted a letter dated 4 November 2016 enclosing a Statement of Grounds opposing the proposal before us. This is in the context of:
- A compulsory conference for this proceeding on 21 September 2016, conducted by Member Nelthorpe.

⁶ At paragraphs [86]–[87].

- His orders dated 26 September 2016 including order 7, which provides that PDG would not be joined as a party to this P1433/2016 proceeding, because of its lack of previous involvement and its failure to attend the compulsory conference.
- 22 However, the last sentence of order 7 states in relation to PDG that ‘*Their statement of grounds will be taken into consideration at any hearing of the proceeding...*’
- 23 PDG is clearly is not a party to this hearing, but the Tribunal confirmed that its views can be considered. The PDG letter sets out various submissions against the proposal and includes a two page Heritage Statement prepared by a heritage architect, Mr Andrew Barrett. PDG’s objections (supported by Mr Barrett’s statement) are that the proposed JA tower would be an over-development, would cause unreasonable external amenity impacts on the future occupants of the RE apartments, would fail to provide adequate spacing between the two buildings, would be too tall, and that it fails to provide any on-site car parking. It is also alleged that the proposal would be contrary to the relevant strategic planning framework, would provide poor internal amenity, and otherwise would be such a poor heritage outcome in relation to the former bank building that a permit should not be granted.
- 24 Mr Townshend addressed us at the beginning of the hearing regarding the role of the PDG letter. In summary, he:
- Highlighted that, other than consideration of the heritage merits, all other relevant planning controls creating permit triggers expressly exclude third party objections and merits appeal rights;
 - Submitted that, when assessed correctly, the Tribunal has no jurisdiction to consider any planning merits objection from PDG, apart from on heritage grounds; and
 - Indicated that JA is content for the Tribunal to take into consideration the heritage aspects of the PDG letter and the heritage statement by Mr Barratt, on the basis that these are objections being made by an ‘interested person’.
- 25 Mr Martyn indicated that Council agrees with this position.
- 26 As indicated at the hearing, we accept the position put forward by Mr Townshend as to the standing of PDG and those aspects of the PDG letter the Tribunal can validly take into account. We have made our findings on this basis.

Further details of the proposal

- 27 We have set out below paragraphs [33]-[34] of the Council’s written submission, which describes the proposal in more detail.

[33] It is proposed to partially demolish the existing former bank building and construct a multi-storey building containing 77 apartments and a combined commercial floor space of 183 sum within the ground and first floor levels, along with a basement services area.

[34] Details of the proposal (as amended) are summarised as follows:

- The construction of a 22 storey building, plus basement level, extending to a height of approximately 75.6 metres (RL 108.5).
- The Basement Level contains 45 storage cages, building services (substation, fire pump room, water meters) rain water tanks.
- At Ground Level the building contains two commercial premises (43 sqm café and 140 sqm office/showroom), a stair/lift core providing access to all levels, residential lobby, storage for 25 residential bike spaces, waste collection room for apartments (accessed via CL1194), fire booster and gas meter cupboards.
- Level 1 comprises 2 x 1 bedroom units and 1 x 2 bedroom unit within the retained wall of the existing B-graded building. A waste room and storage cages (7) are provided within a new section of building.
- Levels 2 & 3 comprise 1 x 1 bedroom unit, waste room and storage cages to each level.
- Levels 4 – 21 comprise 3 x 1 bedroom units and 1 x 2 bedroom unit to each level.
- Level 22 (plant level) includes boiler plant, fire storage tank, dry coolers, domestic hot water and office air conditioning.
- Apartments range in size from 47 sqm to 73.8 sqm. Except for two apartments (Units 1.02 and 1.03), each is provided a private balcony, ranging in size from 4.3 sqm to 8.1 sqm with a minimum dimension of 1.2 metres.
- No communal open spaces are proposed.
- A contemporary design consutrected in a variety of finishes including a diagonal (“diagrid”, “woven mesh”, “diamond shaped”), façade frame, glazing (grey, bronze and black mirror) and precast concrete. A “wind amelioration” skirt structure extends below Level 4 over the existing heritage building (approximately 5.0m above the roof of the bank) and footpaths of Elizabeth and Pelham Streets.
- The setbacks of the tower’s façade from both Elizabeth and Pelham Street frontages vary through the curvature of the tower, with the lower levels (Levels 4 – 12) generally aligned with Elizabeth Street and a maximum of approximately 2.4m – 3.6m from Pelham Street. At Level 13 and above, a curved portion of

the Elizabeth Street façade extends approximately 1.4m beyond the site boundary.

- Setbacks to the southern boundary vary between 0.3m and 1.0m, and 0m to 0.6m to the laneway to the east.

What aspects of the proposal are not contentious?

28 Council raised three Grounds of Objection to the substituted plans, as follows:

- The proposed development by virtue of its height and insufficient setbacks would significantly overwhelm and detract from the heritage character and significance of the heritage place and would be contrary to the relevant provisions of Clause 22.05 and Clause 43.01 of the Melbourne Planning Scheme.
- The proposed development by virtue of its height and insufficient setbacks would be contrary to the design objectives, preferred building form outcomes and design requirements of Schedule 61 to the Design and Development Overlay of the Melbourne Planning Scheme.
- The proposed development by virtue of its height and insufficient setbacks would detract from the internal amenity of adjoining residential properties and would be contrary to the provisions of the Design Guidelines for Higher Density Residential Development reference at Clause 15.01-2 of the Melbourne Planning Scheme and Schedule 61 to the Design and Development Overlay of the Melbourne Planning Scheme.

29 There are some planning issues which we are satisfied are either inapplicable here or otherwise uncontentious.

30 Firstly, Council accepts that the proposed extent of demolition of the former bank building is reasonable, and we agree. A far greater amount of original fabric than in the previous proposal is to be retained and able to be appreciated by the passer-by.

31 Second, there was no dispute at the hearing that there is a very strong level of strategic planning support for a substantial and high building on the site. Again we agree. This is reflected in the CCZ5 zoning, which anticipates more intense development and larger buildings in locations in or on the edge of the main CBD grid. Likewise, the DDO61A5 sets a preferred height limit of 60 metres, rather than setting a mandatory limit, providing the Tribunal with discretion to approve a lower, or higher, building.

32 Both State and local policies, and *Plan Melbourne*, promote higher residential densities in locations in or close to the CBD or to an activity centre. Such locations can take advantage of favourable existing public transport, infrastructure, parks and retail services. The subject land is next to a tram-line into the city and has excellent proximity to Melbourne University, the medical precinct and the northern end of the CBD. A short

distance to the north is University High School, Royal Park and Princes Park. The Lygon Street restaurant strip is a short distance to the east and a new Melbourne Metro station is proposed in nearby Grattan Street.

- 33 Clause 21.04 (Settlement) in the local policy framework nominates the area around the subject land as being the 'City North' precinct, which is described as follows:

City North is identified for proposed renewal given its existing role as a specialised activity centre, the proposed Parkville Station as part of the Melbourne Metro project and its proximity as an extension of the central city. The City North Structure Plan 2012 has been adopted by the City of Melbourne and will be implemented into the planning scheme via a planning scheme amendment.

- 34 Similarly in Clause 21.04-2 dealing with 'Growth', Strategy 2.3 promotes planning for urban renewal in certain areas including City North. Clause 21.14 (Proposed urban renewal areas) further describes the City North area as follows:

City North is an area in transition and change is already underway. The University of Melbourne, RMIT University, hospitals and research institutions are investing in expansions and renewal of their facilities and the redevelopment of the former Carlton United Brewery site has commenced. Further potential for urban renewal exists between the existing Central City and the world renowned knowledge precinct in the south area of Parkville.

- 35 Plan Melbourne identifies a number of Urban Renewal Areas that include City North.⁷

- 36 The 2012 City North Structure Plan is a reference document under the Melbourne Planning Scheme. It anticipates renewal of this area. As with many planning documents, certain aspects of its provisions support more intense development and greater building heights, but there is some tension with other provisions suggesting a more restrained approach.

- 37 For example, the 'Urban structure and built form' objective at Clause 3.2 of the Structure Plan to '*Increase building heights along primary streets to enhance the stature of these streetscapes*', is apt here, particularly as this is a gateway location. However another objective is that '*New building heights respect the rich heritage fabric of the area and new buildings that adjoin heritage buildings have regard to their height, scale, character and proportions*'. This tension is also evident at page 37 of the Structure Plan where City North is described as '*...generally underdeveloped considering the proximity to the Central City*', yet it also refers to '*...a trend in recent development permits to approve building heights several storeys above the recommended height limit*', implying that this trend has unacceptable results.

⁷ See Expanded Central City Map 10-CNSP.

- 38 Thirdly, the lack of on-site car parking for future occupants is unusual by metropolitan-wide practices, but entirely consistent with Melbourne City Council's active discouragement of on-site car parking for new developments such as this. In its place, parking for 25 bicycles is provided.
- 39 Fourthly, we accept that there are no external amenity impacts of the proposal to assess, other than the interface between the eastern wall of the proposed building and the RE tower apartments across the laneway. This reflects the benefit to the review site of having a street or laneway interface on three out of the four sides of the site. The only conventional interface is the southern interface to the RE tower, the amenity impacts of which have been resolved by agreement.

FINDINGS OF THE TRIBUNAL

Would the proposal be an acceptable heritage outcome?

- 40 It was common ground between the three heritage experts that the former Victorian Bank building is graded 'B', and that, since the previous hearing, the streetscape grading of Elizabeth Street frontage has been lifted from 3 to 2. The external fabric is substantially intact and in relatively good condition. It was also agreed that the 1925 former showroom which was used as part of the bank does not contribute to its significance, and that the interior of the building has been demolished, and some elements, the roof and chimneys included, have been reconstructed.
- 41 Ms Gould remains unconvinced that a building of the height and mass of that proposed could ever complement or respect the existing heritage building. In her opinion, the proposal would dominate and overwhelm the bank and have an adverse effect on the significance of the heritage place. She says that, as the former bank is one of the seven notable buildings that define the 8 corners within the precinct HO1124, its prominence should remain a high priority. She contends that, were the proposal to proceed, no viewpoints would remain where the former bank retained this necessary prominence.



Montage of proposed interface of former bank and tower

- 42 When cross-examined on this point, Mr Lovell described the new precinct HO 1124 as 'weak'. His evidence is that only the corners at the intersection of Queensberry and Elizabeth Streets would be able to retain this particular characteristic as development occurs.
- 43 In relation to the subject site, Mr Lovell identified the integration of the new structure and the old and whether it respected the original building as the key heritage issue. In his assessment the proposed design maintains the significance of both the host building and the heritage place. He noted that the revised response maintains the readily visible fabric at both ground and first floor level, with the relationship between the two largely unchanged. His opinion is that in retaining its three dimensional form the former bank maintains the heritage values which contribute to the heritage place HO 1124.
- 44 Mr Raworth also supports the proposal. He says that the historical value of the building will be maintained insofar as the building remains legible in views from the street. His opinion is that, in seeking to find an appropriate balance between the objectives encouraged by heritage and other outcomes pursued by Council, in particular the DDO, the proposal is acceptable. He suggested a schedule of conservation works that could be included as a condition of permit. Both other heritage experts agreed, suggesting some modifications and additions to the list. These will be incorporated in the conditions. The proposed works include:
- investigation into the feasibility of removing the current paint finish;
 - determining an appropriate historic colour which is also complementary to the whole 'diagrid' of the new part of the building;

- ensuring water penetration is prevented;
- removal of the panels over the original lettering;
- investigations with respect to the retention/restoration of the oculus window above the corner doorway and blind window to Pelham Street; and
- restoration/replacement of the southern door on the Elizabeth Street façade.

- 45 Ms Gould considers that there is now an opportunity to restore the roof and chimneys to a near-original configuration. Mr Lovell and Mr Raworth disagree, saying that it is sufficient to restore that part of the second storey slate roof that can be appreciated from either Pelham or Elizabeth Streets, as there is no longer any remnant of the rest of the roof, which in any event would remain unseen. They agree, however, that the parapet, cornice and string course running around the building should be restored, and that the section returning around the south west corner of the original bank building, and which will be visible above the new residential entry canopy, should be included.
- 46 The Tribunal agrees that where new buildings encroach on old, and there are many examples in Melbourne of this situation, it is important that the original building can be understood in three dimensions. We think that this is the basis of Ms Gould's desire to retain the ability to 'read' the former bank against the sky.
- 47 The reality is, however, that the RE development wrapping around the site already distracts from and confuses the legibility of the building. We have concluded that the around five metre high void, the dark fins which constitute the wall at this level, well setback to the rear of the existing building, together with the punctuation achieved by the wind amelioration device, will allow a three dimensional reading of the existing building from both Elizabeth and Pelham Streets.



Existing conditions



Montage of proposed development

- 48 We are persuaded by the evidence, supported by the images presented that, even from some distance away across the Haymarket, the visual separation of the old and new parts of the building is made clear by the combination of dark void and the light skirt of the wind device. This serves to emphasize the importance of the existing building as a component of the architectural composition. We agree with Mr Raworth that the architects have taken a constraint (the wind effects of towers) and turned it into a clever component of the design. We consider that by highlighting the three dimensionality of the corner building, the new tower atop it will not prevent an understanding of its heritage significance by a passer-by. We find the architectural treatment of the building, given the transformative nature of the proposal, responds to and respects the existing building. It remains a legible part of the heritage of Elizabeth Street, and a building which remains of note within a precinct:

... of historic significance as the carriageway (which) was designed as one of a group of such boulevards defining key entry points to Melbourne...of historic significance because of its use and development as a supply/light industrial zone, initially evolving to cater for farmers and prospectors on their way to the western and northern parts of the State, especially the gold fields.⁸

- 49 It is for these reasons that we prefer the evidence of Mr Lovell and Mr Raworth and have concluded that the current proposal represents an acceptable balance between heritage and the urban renewal aspirations for the site. The values which contribute to the significance of HO 1124 will be maintained.

Is the proposal otherwise an acceptable design response?

- 50 Council remains of the view that, despite the strong strategic support for intensive residential development on this site, the proposal fails not only in its response to the heritage place, but also in its respect for existing urban context, the streetscape and neighbourhood character. It also contends that offsite amenity impacts remain unacceptable.
- 51 Council acknowledges the need to balance issues of broader context with the need to contribute to local character. It says, however, that constructing a 75.6 metre high tower cannot be justified in this location. Among other things, it does not respond appropriately to specific built form outcomes such as the consistent streetscape built form that is integral to Elizabeth Street, is not complementary to the proposed built form of its surrounds, or of a scale which provides an appropriate transition to Pelham and Berkeley Streets. Council's urban design team would prefer a 'single massing gesture' to avoid the perception of an object mounted atop the heritage form. It asserts that the proposal should transition to the RE building which already offers a sufficient corner definition.

⁸ Statement of significance for HO 1124 Elizabeth Street North (Boulevard) Precinct in the City North Heritage Review 2013, revised June 2015.

- 52 This view was opposed by Mr Sheppard. He says that considering the recent prominent developments in the vicinity of the site, its location immediately abutting the Haymarket and its role in terminating the vista along Flemington Road, a high built form is appropriate from an urban design perspective. He emphasises the building's contribution to the special definition of the Haymarket. He says that higher buildings ringing the Haymarket give a necessary emphasis to the node and reflect the 'massive' scale of the space (approximately 170 x 105 metres).
- 53 Mr Sheppard's evidence about the height of the building was supported by that of the three architects called by the applicant. All agreed that the building was well resolved and a high quality architectural response to an important corner location. Mr Poole is strongly supportive of the building's role in the 'clarity and presentation of the Haymarket'. Dr Gunn emphasized its impact when 'viewed from the associated major boulevards'. Mr McBride described the building as of a scale which redressed the weakness of the current corner ensemble. All design witnesses disagreed with Council's urban design team that the RE building achieved a successful urban design outcome by wrapping around the existing heritage building. Dr Gunn's evidence was unequivocal, saying that 'it would be a travesty if the rather bland north and western facades of the building were left exposed as a backdrop for the more refined bank building'. All agreed that the current ensemble is a poor response to the Haymarket in architectural and urban design terms.
- 54 We agree with this analysis. The shiny, expansive, colourful, convex form of the RE building seems to envelope and trivialize the finely detailed former bank. In contrast, the pale geometric grid encasing the proposed glazed tower not only presents an elegant termination to Flemington Road and contributes to the Haymarket, but also it restores the identity of the former bank building which forms part of the total composition. As discussed above, we consider that the 'void' element between the two parts of the architectural composition unambiguously and successfully separates them.
- 55 The new design has also sought to address the previous Tribunal's criticisms of the interface of the proposal with the Elizabeth Street façade of the RE building. The new proposal shows a recessed glazed façade, devoid of its gridded overlay, forming a clear visual separation between the two buildings. It politely reveals the curved north-west balcony elements of the RE building whilst also terminating the surface mesh on the façade of the proposal by wrapping it around to meet the recessed façade. At ground level, the residential entrance is defined by a curved canopy, the design of which reflects the dark vertical fin detailing, which masks the columns in the 'void' atop the bank. This is an interesting and successful addition to Elizabeth Street pedestrian realm.

Are there unacceptable amenity impacts arising from the proposal?

- 56 Council identified three unacceptable external amenity impacts resulting from the proposal – the impact of the additional height above the preferred height of 60 metres set out in DD061, the impact of the amelioration ‘skirt’ and other building projections outside the title boundary, and the lack of setback from the lane which runs off Pelham Street, which it says impacts adversely on the west facing windows of the RE building on the other side of the lane.

Height

- 57 In his evidence, Mr Biacsi concludes that the additional height will not result in any unreasonable amenity consequences to the RE building or to the public realm, based on his analysis of the strategic and physical context.
- 58 In supporting a height greater than the RE building (around 64 metres) design witnesses pointed to the need to provide appropriate emphasis to the Haymarket and the importance of the proposal as a ‘marker’ terminating the vista along Flemington Road. Mr Sheppard noted that, even at around 75 metres, the height would retain a clear distinction from the towers within the Hoddle grid.
- 59 Mr McBride, as did Ms Gould, emphasized the importance of the corner. His evidence, however, spoke of it as a characteristic not just of HO 1124, but of the city of Melbourne generally, which also has traditionally placed more prominent buildings on axis. The Victorian Comprehensive Cancer Centre visually terminates Elizabeth Street in the same way that this proposal will terminate Flemington Road. Mr Poole stressed the need to consider the emerging character of the Haymarket as an urban space surrounded by tall buildings, but also with the incessant traffic calmed and landscaping inserted within it. He described the proposal as ‘bold and uplifting’. Dr Gunn praised the proposal for the visual integration of the former bank, the new tower and the RE apartment street facades. He described it as ‘an exciting, inspired resolution that is both adventurous and persuasive in its expression’.
- 60 Our assessment aligns with this evidence. We accept the need for a taller element in the centre of such a composition and acknowledge that the subtle twisting of the tower, the well-considered tapering top and the contrast between the dark glass and light mesh of the ‘diagrid’, all contribute to the feeling of lightness generated by the design treatment.
- 61 One of Council’s objections to the increase in height of the proposal above that of the RE building was the visual impact on Elizabeth Street of the blank wall of the lift core in views from the south. Design witnesses agreed that close attention should be paid to the materials and finishes employed and we will impose a condition requiring close consideration of the wall surface.

- 62 If the design as proposed is successfully realized, we consider that the corner and indeed the Haymarket will be enhanced. On a difficult site where there is a need to balance a variety of planning objectives, the architects have succeeded in producing a high quality design, as sought by the Planning Scheme, and which reinforces the significance of the site.

Wind amelioration device

- 63 Council is concerned at the trend for developments which exceed the preferred height limit and are built without a podium. It says that the project is too ambitious and that Council's strategic vision for this locality can be achieved utilizing a lower built form. As discussed above, we have concluded that on this particular site the Tribunal should exercise its discretion to allow this taller building.
- 64 We are also persuaded by the evidence of Mr Lovell, Mr Raworth and the design witnesses that the peeling away from the façade of the mesh sheath to address the wind downdraft from the building also adds to its design resolution by its role in terminating what might be described as the 'existing building zone' by capping the dark void area which allows the former bank to be seen in three dimensions. Under cross-examination Mr Lovell said that the 'skirt' had had many iterations, but that its current flat profile caps the void space. Because of its elevation above the former bank, it holds the eye from viewpoints close to the building and directs it downwards to the existing building.
- 65 In Mr McBride's opinion this 'zone', by the clarity of the separation of parts of the building effected by its volume, dark colour and detailing, serves as a podium to the tower. We accept this view – the new tower, variously setback from the Pelham Street frontage appears to hover above the old, in contrast to the crushing weight apparent in the previous scheme.

Impact on the RE apartments facing west

- 66 Mr Biasci's evidence addressed the amenity of the RE apartments which face the laneway. He noted that both the RE apartments and those in the proposed tower have their primary outlook towards Pelham Street to the north. However, additional glazing to the open plan living areas wraps around both buildings, terminating about half way down the lane. Council maintains that the 2.7 metre wide lane fails to provide a 'polite' interface, or to meet the setbacks to laneways sought by DDO61.
- 67 The 'diagrid' mesh which sheaths the building terminates by curving back against the concrete core. In the RE façade design, the projecting variously splayed elements continue from Pelham Street down the lane to form the balustrading of a curved balcony which projects across the end of the laneway. Mr Biasci's opinion is that the proposed combination of a variety of materials and setbacks has addressed the previous Tribunal's concern about the appropriateness of a blank wall facing the 17 apartments facing onto the lane. He noted that as the primary outlook is to Pelham Street, and

considered that the glazing to the laneway only provides secondary light to rooms which already have generous glazing to the north. As for the laneway itself, he highlighted that it is a short lane used for access to services, not intended for use as a public thoroughfare.

- 68 We accept this analysis. It is supported by the permit which has been granted to the RE apartments without a setback from the lane, and is consistent with the guidelines for Higher Density Residential Development which advises that side setbacks should only be used 'where they are important to private amenity'.⁹ We concur with Mr Biasci's conclusion that the proposal maintains acceptable access to daylight and outlook from the west facing apartments in the RE development.
- 69 In terms of the internal amenity of the proposed apartments, Mr McBride had undertaken a comprehensive analysis and found it satisfactory. We agree with his conclusions with the exception of his suggestion to use the rooftop of the former bank as communal open space. We consider that this important element of the design should be left as a dark void and that alone. We note and support the submissions made at the hearing regarding the necessity to reconfigure the northwest wall of the store on Levels 1 – 3 to allow for the round headed window of the heritage building to be fully revealed.

Colours Materials and Finishes

- 70 The Tribunal was shown a sample board of the proposed materials, including samples of the dark glazing, super grey and black mirror, together with white and charcoal precast concrete, matte black powder coated aluminium for use in the 'fin' elements and white anodised finish to the grid. However, as usual, at planning permit stage, assumptions about the construction detailing are necessary. We assume that the façade glazing sections are also matte black.
- 71 The selection of materials and finishes is fundamental to the proposed design in far more ways than its appearance, for example, its effect on daylighting, ventilation and control of heat load. All these factors impact on the amenity of the apartments. Thus it is that we agree with Mr McBride's observation that:¹⁰
- The ongoing engagement of the design Architect, and the continued development of the scheme through the design development, documentation and construction stages by them, is essential to the successful realisation of this high quality architectural concept.
- 72 The relationship of the colour of the former bank and the tower element was also the subject of evidence. Ms Gould wishes for an accurate repainting of the original colours if they can be determined. Mr Lovell and Mr Raworth

⁹ *Design Guidelines for Higher Density Residential Development*: Design Objective 2.5 – DSE 2004.

¹⁰ Robert McBride, Expert Architectural Evidence, 14.

are of the view that a pale wall colour typical of the era would be acceptable. Mr Lovell says that it is important that a traditional scheme is used which emphasises the building's presence by painting the window frames in a darker colour. He says the relationship between the white colour proposed for the tower mesh and that of the former bank is a key element of the design of the proposal.

- 73 Mr Poole's evidence is that it is important that the former bank is painted in a light colour but it does not need to match that of the grid above it. He was also concerned that the south facing core wall that rises above the RE building should receive the same design consideration as the other materials, as it will be prominent from the south in the foreseeable future. He sees a high level of finish as a determinate factor in the successful realisation of the design.



Montage of view north along Elizabeth Street

CONCLUSION

- 74 For the reasons explained above, it is the Tribunal's conclusion that the decision of the responsible authority should be set aside and a permit issue, subject to the final version of the permit conditions set out in the Appendix to this decision.
- 75 In deciding the conditions to be included on the permit, the Tribunal has had regard to the draft conditions provided to the Tribunal by the responsible authority, the submissions and evidence of the parties in addition to the matters which arise from these reasons.

Philip Martin
Presiding Member

Ann Keddie
Member

APPENDIX A

PERMIT APPLICATION NO:	TP-2016-240
LAND:	696-708 Elizabeth Street Melbourne
WHAT THE PERMIT ALLOWS: <ul style="list-style-type: none"> Partial demolition of the building and demolition of the existing sign above the parapet and construction of a multi storey mixed use development including a waiver of car parking and loading requirements in accordance with the endorsed plans.	

CONDITIONS

- 1 Prior to the commencement of the development hereby approved, including demolition, the applicant must submit to the responsible authority two copies of plans drawn to scale generally in accordance with the plans prepared by ARM Architects dated October 2016 but amended to show:
 - (a) The outward opening doors projecting into Elizabeth Street redesigned such that they do not project beyond the street alignment when open, when closed or when being opened or closed.
 - (b) The proposed visitor bicycle spaces to be clearly identified on the plans.
 - (c) Details of any proposed measures to the eastern apartments (up to level 17) to prevent any unreasonable overlooking into the adjoining property.
 - (d) Any changes as required as a result of condition 9 – Heritage Report.
 - (e) Any modifications required to achieve the energy and water efficiency measures of the approved Environmentally Sustainable Development Plan as required by condition 14.
 - (f) Any modifications required to the plans in association with the revised Waste Management Plan in condition 15.
 - (g) Any modifications to the building required as a result of condition 27.
 - (h) On TP-1001, the arched head of the window on the eastern wall of the first floor exposed;
 - (i) Plant and equipment on the roof of the former bank building not to be visible above the parapet;
 - (j) The soffit of the tower shown as the same colour as the metal fins;
 - (k) Corrections to the plans generally in accordance with the plan described as TP-1001[9] showing the return at the south-western corner of the heritage building.

- (l) Reconfiguration of the wall of the store rooms shown on TP-1001[08], TP-1002[08] and TP-1001[08] to allow full exposure of the arched headed window on the eastern wall of the first floor, as shown on elevation TP-2000[08].
- (m) Details of the southern wall above 690-695 Elizabeth Street to be consistent with or equal to the materiality of other elevations.

These amended plans must be to the satisfaction of the responsible authority and when approved shall be the endorsed plans of the permit.

Compliance with endorsed plans

- 2 The development as shown on the endorsed plans must not be altered or modified without the prior written consent of the responsible authority.

Detailed matters

- 3 No advertising signs shall be erected, painted or displayed on the land without the permission of the responsible authority unless in accordance with the exemption provisions of the Melbourne Planning Scheme.
- 4 No architectural features and services other than those shown on the endorsed plans shall be permitted above the roof level unless otherwise approved in writing by the responsible authority.
- 5 Glazing materials used on all external walls must be of a type that does not reflect more than 20% of visible light, when measured at an angle of 90 degrees to the glass surface, to the satisfaction of the responsible authority.

Design Materials, Finishes and Architectural delivery

- 6 Prior to the endorsement of plans, detailed elevations and a schedule of materials and finishes must be prepared showing the resolution of the façade (including assessment of the reflectivity effects of the glass and a complementary light tone for the heritage building) that will achieve at least the degree of materiality, design intention and visual interest as represented in the photomontages prepared by Orbit and Floodslicer in VCAT Proceeding P1433/2016. In relation to glazing colours, colouration is to be in accordance with the Floodslicer images. When approved, the schedule of materials and finishes will be endorsed and will then form part of the permit.
- 7 Except with the consent of the responsible authority, ARM Architecture must be retained to complete and provide architectural oversight during all phases of documentation and construction of the design as shown in the endorsed plans and endorsed schedule of materials to the satisfaction of the responsible authority.

Heritage

- 8 Prior to the commencement of the development, including demolition, a report prepared by a suitably qualified Structural Engineer, or equivalent,

must be submitted to the responsible authority, demonstrating the means by which the retained portions of building will be supported during demolition and construction works to ensure their retention, to the satisfaction of the responsible authority. The recommendations contained within this report must be implemented at no cost to City of Melbourne and be to the satisfaction of the responsible authority.

- 9 Prior to commencement of the development, including demolition, a report prepared by a suitably experienced Conservation or Heritage Consultant, must be submitted to, and approved by the responsible authority. The report must set out the scope of conservation and reconstruction works for the heritage building generally in accordance with the Conservation Works at paragraph 45 of the "Statement of Evidence to VCAT" prepared by Bryce Raworth (dated October 2016) but modified to include:
 - (a) The retention and continuation of the parapet and cornice line of the first-floor of the heritage building at the south end of the Elizabeth Street elevation around the return and up to the face of apartment 1.01, as shown on TP-1001[09];
 - (b) Reconstruction in slate of the east facing section of the hipped roof roof on the first floor of the heritage building;
 - (c) The wall colour of the heritage building to be a light tone complementary to that of the 'diagrid' colour;
 - (d) The window frames of the heritage building to be a contrasting colour to the main colour; and
 - (e) A suitable replacement design for the chimneys;
 - (f) Measures to prevent water penetration into the heritage building.

When approved, the report will form part of the permit. Building and works to the building approved under this permit must be undertaken in accordance with the report to the satisfaction of the responsible authority.
- 10 The buildings and works associated with the approved development must be planned and constructed in a manner which prevents damage to the heritage fabric to be retained. Where hidden original or inaccessible details of the buildings area uncovered, works are to cease until the appropriate further record has been made. Where unanticipated original detail is discovered the responsible authority is also to be notified prior to re-commencement of the works.
- 11 Prior to demolition, the permit holder must satisfy the responsible authority that substantial progress has been made towards obtaining the necessary building permits for the development of the land generally in accordance with the development of the land proposed under this permit and that the permit holder has entered into a bona fide contract for the construction of the development.

Construction Management Plan

- 12 Prior to the commencement of the development, including demolition or bulk excavation, a detailed construction and demolition management plan must be submitted to and be approved by the responsible authority. This construction management plan is to be prepared in accordance with the City of Melbourne - Construction Management Plan Guidelines and is to consider, but not be limited to, the following:
- (a) public safety, amenity and site security;
 - (b) operating hours, noise and vibration controls;
 - (c) air and dust management;
 - (d) stormwater and sediment control;
 - (e) waste and materials reuse; and
 - (f) traffic management.
 - (g) staging of development.

Projections

- 13 Prior to the completion of the development (excluding any demolition and/or bulk excavation) on the land, the owner of the land must enter into an agreement pursuant to Section 173 of the *Planning and Environment Act 1987*. The agreement must provide the following:
- (a) Liability and maintenance of those parts of the development projecting more than 300 mm into airspace or sub-soil of land under the care and management of Council ('Projections').
 - (b) A disclaimer of any right or intention to make or cause to be made at any time any claim or application relating to adverse possession of the land occupied by the Projections.

The owner of the land must pay all of the City of Melbourne's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.

Environmentally Sustainable Design

- 14 The performance outcomes specified in the Environmentally Sustainable Design (ESD) Statement prepared by Simpson Kotzman, dated 29 January 2016 to achieve a 5-star rating under the current version of the Green Star – Multi Unit Residential Rating tool or equivalent and one point for a Wat-1 Credit under the current version of the GBCA Green Star – Multi-Unit rating tool for the development, must be implemented prior to occupancy at no cost to the City of Melbourne and be to the satisfaction of the responsible authority.

Any change during detailed design, which affects the approach of the endorsed ESD Statement, must be assessed by an accredited professional.

The revised statement must be endorsed by the responsible authority prior to the commencement of construction.

Waste Management

- 15 Prior to the commencement of the development, a revised Waste Management Plan (WMP) shall be prepared and submitted to the City of Melbourne - Engineering Services. The WMP should detail waste storage and collection arrangements and be prepared with reference to the City of Melbourne Guidelines for Preparing a Waste Management Plan. Waste storage and collection arrangements must not be altered without prior consent of the City of Melbourne - Engineering Services.
- 16 All garbage and other waste material must be stored in an area set aside for such purpose to the satisfaction of the responsible authority.
- 17 No garbage bin or waste materials generated by the permitted use may be deposited or stored outside the site and bins must be returned to the garbage storage area as soon as practical after garbage collection, to the satisfaction of the responsible authority - Engineering Services.

Civil engineering

- 18 Prior to the occupation of the permitted development, the splay corner (being the corner of Elizabeth and Pelham Streets, back to the stairs) must be vested in Council as a Road on a Plan of Subdivision.
- 19 The approved buildings and works must not result in structures that impact upon the functional use of the Council lane to the satisfaction of the Responsible.
- 20 Prior to the commencement of the development, a stormwater drainage system, incorporating integrated water management design principles, must be submitted to and approved by the responsible authority – Engineering Services. This system must be constructed prior to the occupation of the development and provision made to connect this system to the City of Melbourne's underground stormwater drainage system.
- 21 Prior to the commencement of the use/occupation of the development, all necessary vehicle crossings must be constructed and all unnecessary vehicle crossings must be demolished and the footpath, kerb and channel reconstructed, in accordance with plans and specifications first approved by the responsible authority - Engineering Services.
- 22 The footpath(s) adjoining the site along Elizabeth Street and Pelham Street must be reconstructed in sawn bluestone together with associated works including the reconstruction or relocation of kerb and channel and/or services as necessary at the cost of the developer, in accordance with plans and specifications first approved by the responsible authority – Engineering Services.

- 23 Existing street levels in Elizabeth Street, Pelham Street and laneway CL1194 must not be altered for the purpose of constructing new vehicle crossings or pedestrian entrances without first obtaining approval from the responsible authority - Engineering Services.
- 24 Existing public street lighting must not be altered without first obtaining the written approval of the responsible authority - Engineering Services.
- 25 All street furniture such as street litter bins recycling bins, seats and bicycle rails must be supplied and installed on Elizabeth Street and Pelham Street footpaths outside the proposed building to plans and specifications first approved by the responsible authority - Engineering Services.

Trees

- 26 Any existing trees in the adjoining streets and land must not be removed, lopped or pruned within the prior consent of the City of Melbourne. All costs in connection with the removal / relocation or replacement of the trees, including any payment for the amenity value of the tree(s) to be removed, must be met by the developer / owner of the site(s).
- 27 Prior to commencement of development, a detailed Tree Protection Management Plan (TPMP), prepared in accordance with the Australian Standard for tree protection on development sites (AS-4970-2009) and in consultation with the City of Melbourne's Tree Planning Team, must be submitted to and approved by the City of Melbourne (Tree Planting Team). The TPMP shall include the steps necessary to protect existing street trees during the construction of the development.

Interface with building to the south

- 28 Prior to the endorsement of plans, the applicant must submit to the Council a report prepared by a suitably qualified daylight expert (or equivalent) to:
 - (a) describe the existing lightcourt on the building to the south in terms of the deemed-to-satisfy and alternative assessment with regard to BCA daylight access performance requirements for the two bedrooms facing onto the northern light well of that building. In this respect, the report must make reference to the report by ARUP titled PDG 690 Elizabeth Street, Melbourne, Expert Statement – Daylight (dated 31 October 2014);
 - (b) make any recommendations to modify the subject building by way of building setbacks, or provision of a lightwell, or a combination of both, to provide for a level of daylight amenity for the two bedrooms facing the lightwell of the building to the south and the living room of the apartment to the east of the lightcourt is acceptable.
 - (c) The proposed building to be provided with a minimum 1 metre setback from the western edge of the light court to the building to the south in accordance with the 'VCAT compulsory conference without

prejudice discussion plans' prepared by ARM Architecture and titled 'Alternative Plans'

The report must be to the satisfaction of the responsible authority.

Assisted accommodation

- 29 Prior to the occupation of the dwellings approved under this permit, the permit holder may in its discretion submit a report showing how the development will include a program for assisted accommodation generally as follows:
- (a) Setting aside a minimum of 3 x 1 bedroom dwellings to be retained in the ownership of the permit holder or an approved entity;
 - (b) A minimum program period of 10 years;
 - (c) engagement with medical institutions in the precinct to offer housing or short stays to :
 - i key workers, and /or
 - ii families of medical patients in need of assistance;
 - iii other categories of persons as appropriate;
 - (d) rent free accommodation;
 - (e) details of applicable lease or license arrangements;
 - (f) implementation measures;
 - (g) reporting measures.

If the responsible authority approves the Plan it will then form part of the permit and must be implemented to the satisfaction of the responsible authority.

Time Limit

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

The responsible authority may extend the permit if a request is made in writing before the permit expires, or within six months afterwards. The responsible authority may extend the time for completion of the development if a request is made in writing within 12 months after the permit expires and the development started lawfully before the permit expired.