

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2802/2017
PLANNING APPLICATION NO. 606/2017

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| APPLICANT | Palmerston Crescent Developments Pty Ltd |
| RESPONSIBLE AUTHORITY | Port Phillip City Council, Melbourne Water |
| RESPONDENTS | George and Maureen Swinburne, Karen Baynes, Daivd MacGowan, John Tabart and Others |
| SUBJECT LAND | 8 Palmerston Crescent SOUTH MELBOURNE VIC 3205 |
| WHERE HELD | Melbourne |
| BEFORE | Nicholas Hadjigeorgiou, Member |
| HEARING TYPE | Compulsory conference |
| DATE OF HEARING | 23 March 2018 |
| DATE OF ORDER | 13 April 2018 |

ORDER

- 1 The decision of the Responsible Authority is set aside.
- 2 In permit application 606/2017 a permit is granted and directed to be issued for the land at 8 Palmerston Crescent, South Melbourne in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
 - the construction of a building and the carrying out of works for a multi-storey building containing dwellings;
 - the use of the land for office and
 - food and drink premises (café and restaurant); and
 - reduction of the car parking requirements
- 3 The hearing scheduled to commence on 7 May 2018 for 5 days is vacated.

Nicholas Hadjigeorgiou
Member

APPEARANCES:

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| For Palmerston Crescent Developments Pty Ltd | Mr Phil Bisset and Mr Jarryd Gray, solicitors, of Minter Ellison Mr Nicolas Crema, Mr Peter Kennon and Mr Hugh McKenzie |
| For Port Phillip City Council | Ms Teresa Bisucci, solicitor, of Best Hooper Lawyers |
| For George and Maureen Swinburne & Others | Mr George Swinburne, in person |
| For Karen Baynes and Others | Ms Karen Baynes, in person |
| For David MacGowan & others | Mr David MacGowan, in person |
| For John Tabart and Others | Mr John Tabart, in person |

REASONS

- 1 This order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 2 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
 - the responsible authority is of the opinion that the permit or amended permit is appropriate having regard to the matters it is required to consider under section 60 of the Act, including the balanced application of the strategies and policies of the relevant planning scheme and is otherwise in conformity with the provisions of the planning scheme and the *Planning and Environment Act* 1987;
 - the proposed orders will not result in any change to the proposed use or development which would materially affect any person other than the parties to the proceeding.
- 3 Based on the information available to the Tribunal, I consider it is appropriate to make these orders.

Nicholas Hadjigeorgiou
Member

APPENDIX A

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| VCAT REFERENCE NO: | P2802/2017 |
| PERMIT APPLICATION NO: | 606/2017 |
| LAND: | 8 Palmerston Crescent, South Melbourne. |
| WHAT THE PERMIT ALLOWS: | |
| <ul style="list-style-type: none"> • the construction of a building and the carrying out of works for a multi-storey building containing dwellings; • the use of the land for office and • food and drink premises (café and restaurant); and • reduction of the car parking requirements, <p>in accordance with the endorsed plans.</p> | |

CONDITIONS

1. Amended Plans Required

Before the development commences, amended plans and elevation drawings to scale and fully dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and an electronic copy must be provided. The plans must be generally in accordance with the plans identified as those drawn by Elenberg Fraser 'Rev B' dated 18 September 2017 but modified to show:

- a) The changes shown on the plans tabled at the VCAT compulsory conference dated 23 March 2018 prepared by Elenberg Fraser plans A0099 and A0100 'Rev C'.
- b) Any changes required by Melbourne Water conditions.
- c) A notation on the plans that written confirmation by a Licensed Land Surveyor will be provided to the Responsible Authority verifying that the development does not exceed 60 metres in height above natural ground level (excluding building services as described at 4.0 of Schedule 26 of the Design and Development Overlay). This must be provided at frame stage inspection and at final inspection.
- d) Screening to the north facing windows of the podium floors that have direct outlook of less than 9 metres towards habitable rooms or balconies. Screening must be installed to a minimum sill height of 1.7m above the finished floor level or screened to 1.7m above FFL by obscure glazing or louvres allowing upward and horizontal views but not downward overlooking of adjacent properties. If louvred screens

are proposed, a cross section elevation drawing of screens to the windows must be provided which detail the following:

- i. Be drawn to scale and fully dimensioned;
 - ii. Clearly delineate any solid parts of the screen and any louvre parts of the screen;
 - iii. Clearly illustrate how any louvre system may allow upward and horizontal views but will prevent downward views to neighbouring properties;
 - iv. Show the exact width and thickness of each louvre, the exact spacing between each louvre and a section detail from behind the screen demonstrating that direct views of adjacent private open space are precluded, while allowing outlook horizontally and upward from the window.
- e) Cross sectional diagrams that indicate how overlooking will be limited for north facing windows of the tower element adjacent to No. 21-27 Park. If downward views to neighbouring properties occur within 9 metres, appropriate screening is required to relevant windows as per the requirements of Condition 1d.
- f) One car space to be shown as a car share space for the office use.
- g) A minimum of 3 scooter/motorbike spaces provided at Basement Level 1.
- h) Dimensions of car space 1 in Basement level 1.
- i) Vertical Clearance Diagram demonstrating sufficient ground clearance is provided when a waste vehicle accesses Basement Level 1.
- j) Swept path diagrams that demonstrate waste vehicles are able to perform safe manoeuvres into Millers Lane from Park Street.
- k) Dimensions of the access path between the area between the bin holding room and the car lift within Basement Level 1 to allow safe access for bicycles.
- l) Details of the lengths of ramp grades that are used to access Basement Level 01 as well as the RL at grade changes.
- m) Demonstrate the ability to comply with Standard D17 (Accessibility) of Clause 58 of the Port Phillip Planning Scheme.
- n) All external glazing and the plant enclosure to be no more than 20% reflectivity when measured at an angle of 90 degrees to the glass or material surface.
- o) Nominate openings in the windows at podium level to allow access to planter boxes.
- p) Marked pedestrian paths in Basement Level 1.
- q) The design of external lighting so as to be incorporated to the façade.

- r) Any changes required by the Sustainable Management Plan at Condition 3.
- s) Any changes required by the Water Sensitive Urban Design Reports at Conditions 4 and 5.
- t) Any changes required by condition 7 (Landscape Plan).
- u) Any changes required by condition 10 (Waste Management Plan).
- v) All plant, equipment and domestic services (including air conditioning, heating units, hotwater systems, etc.) which are to be located externally and specify to the satisfaction of the Responsible Authority how they will be acoustically treated on both the Podium and the rooftop.
- w) All plan and elevation drawings fully dimensioned, including natural ground level, floor levels, and incremental and total wall and building heights and lengths, with heights to be expressed to Australian Height Datum (AHD) and/or reduced levels.
- x) Urban Art to be included in accordance with Council's Urban Art Strategy and must be clearly indicated on the drawings, as per Condition 11.
- y) Notation on plan to change reference from 'retail premises' to 'food and drink premises'.
- z) The following changes generally in accordance with the plans identified as those drawn by Elenberg Fraser 'Rev C' dated 16 March 2018:
 - a. A loading / passing zone in Matthews Lane.
 - b. Four visitor car spaces in Basement Level 1.
 - c. A loading zone in Basement Level 1.
 - d. Parking for three motorcycles in Basement Level 1.
 - e. The relocation of bicycle hoops on the Palmerston Crescent and Kings Place frontages.
 - f. A flood proof apex to the basement car park set no lower than 2.7 metres to AHD.
- aa) The bathroom areas including access passageways of each office tenancy modified to show the inclusion of accessible sanitary facilities and the allocation of male / female sanitary facilities.

2. No Alterations

The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority, unless the Port Phillip Planning Scheme exempts the need for a permit.

3. Sustainable Management Plan

Before the endorsement of plans under condition 1, an amended Sustainable Management Plan that outlines proposed sustainable design initiatives must be submitted to and be to the satisfaction of and approved by the Responsible Authority. When approved, the Plan will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed

4. Water Sensitive Urban Design

Before the endorsement of plans under condition 1, an amended Water Sensitive Urban Design Report that outlines proposed water sensitive urban design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The report must demonstrate how the development meets the water quality performance objectives as set out in the Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) or as amended.

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

5. Maintenance Manual for Water Sensitive Urban Design Initiatives

Before the endorsement of plans under condition 1, a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority. The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:

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

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

6. Vehicle Crossing

Before the occupation of the development allowed by this permit, vehicle crossings must be constructed in accordance with Council's current Vehicle Crossing Guidelines and standard drawings to the satisfaction of the Responsible Authority.

All redundant crossings must be removed and the footpath, nature strip kerb and road reinstated as necessary at the cost of the applicant/owner and to the satisfaction of the Responsible Authority.

7. Landscape Plan

Before the development starts (other than demolition or works to remediate contaminated land), a detailed Landscape Plan must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When the Landscape Plan is approved, it will become an endorsed plan forming part of this Permit. The Landscape Plan must incorporate:

- a) A survey plan, including botanical names, of all existing vegetation/trees to be retained;

- b) Buildings and vegetation (including botanical names) on neighbouring properties within 3m of the boundary;
- c) Significant trees greater than 1.5m in circumference, 1m above ground;
- d) All street trees and/or other trees on Council land;
- e) A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways;
- f) Landscaping and planting within all open space areas of the site;
- g) Water sensitive urban design;
- h) Details of access to podium level landscape areas.
- i) Details of levels on the ground floor landscape areas.

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

8. Completion of Landscaping

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

9. Landscaping Maintenance

The landscaping as shown the endorsed Landscape Plan must be maintained, and any dead, diseased or damaged plant replaced in accordance with the landscaping plan to the satisfaction of the Responsible Authority.

10. Waste Management

Before the development starts (other than demolition or works to remediate contaminated land), an amended Waste Management Plan (by Leigh Design dated 21 September 2017) based on the draft “Best Practice Guidelines for Kerbside Recycling at Multi-Occupancy Residential Developments (Sustainability Victoria June 2006) must be prepared by a Waste Management Engineer or Waste Management Planner to the satisfaction of the Responsible Authority and endorsed as part of this permit. The Plan must include reference to the following:

- a) The estimated garbage and recycling generation volumes for the whole development.
- b) The garbage and recycling equipment to be used and the collection service requirements, including the frequency of collection.
- c) The location of, proximity, screening of and space allocated both to the garbage and recycling storage areas and collection points.
- d) The path of access for both users and collection vehicles.

- e) How noise, odour and litter will be managed and minimised.
- f) Approved facilities for washing bins and storage areas.
- g) Who is responsible for each stage of the waste management process.
- h) How tenants and residents will be regularly informed of the waste management arrangements.
- i) Provision of hard waste.
- j) Location of waste collection within the basement level.

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

11. Urban Art Plan

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

12. Noise Attenuation for Apartments

The building must be designed and constructed to achieve the following noise levels:

- a) Not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am.
- b) Not greater than 40dB(A) for living areas, assessed LAeq,16h from 6am to 10pm

Noise levels should be assessed in unfurnished rooms with a finished floor and the windows closed. The noise influence area should be measured from the closest part of the building to the noise source.

13. Green Transport Plan

Before the development starts (other than demolition or works to remediate contaminated land), a green travel plan to the satisfaction of the Responsible Authority, prepared by a suitably qualified professional, must be submitted to and approved by the Responsible Authority. The green travel plan must provide detailed advice regarding how traffic movements and staff parking will be managed and ensure an alternative, non-private vehicle transport modes will be encouraged. The plan should also identify specific opportunities for the provision of more sustainable transport options and encouragement of their use. The plan must include but not be limited to:

- a) Tram, train and bus timetables be installed in prominent locations in lifts and public areas (on noticeboards, etc);
- b) Bicycle parking areas to be installed in well secured and prominent locations;
- c) Install signs in prominent locations advising of the location of existing and proposed share car schemes, bicycle parking facilities

for residents and visitor, tram stops, taxi ranks, railway stations, bus stops and bicycle paths.

- d) Ensure that access to the on-site parking is restricted and controlled.
- e) Specific targets to guide the plans ongoing implementation;
- f) Identify persons responsible for the implementation of actions;
- g) Estimate timescales and costs for each action;
- h) Include a plan for monitoring and review of the Travel Plan on an annual basis for at least three years.

14. Car and Bicycle Parking Allocation and Management Plan

Without the further written consent of the Responsible Authority car parking for the approved development must be allocated in a Car and Bike Parking Management Plan and on any Plan of Subdivision as follows:

- a) Minimum two (2) car spaces for each three bedroom dwelling;
- b) Minimum one (1) car space for each two bedroom dwelling.
- c) Minimum forty (40) car spaces for office except on weekends as required by condition 14(f));
- d) Two (2) car spaces (one to each tenancy) for food and drink premises (café and restaurant);
- e) Four (4) car spaces allocated exclusively to visitors at Basement 1 Level;
- f) Four (4) car spaces allocated for office from Monday to Friday and residential visitors on Saturdays and Sundays;
- g) Fourteen (14) spaces allocated either for residential or office use at the election of the permit holder;
- h) One car share space;
- i) The use of the multipurpose area at Basement 1 Level for DDA car park (as first priority) intermittent tradesperson / resident deliveries and / or the manoeuvring of waste vehicles;
- j) A minimum thirteen (13) bicycle parking spaces to the residential component; and
- k) A minimum thirteen (13) bicycle parking spaces to the office component.
- l) No fewer than 114 car parking spaces to be provided on-site.

All to the satisfaction of the Responsible Authority.

15. Street Bicycle Parking

All bicycle rails/hoops must be installed to Council satisfaction and at a cost to the applicant.

16. Number of Dwellings

Without the further written consent of the Responsible Authority, no more than 44 dwellings may be constructed on the land.

17. Rooftop and Podium Terraces

The rooftop and podium terraces must not be used between 11 pm and 7 am on any day (with the exception of New Year's Eve) and on particular occasions with the further consent of the Responsible Authority the rooftop and podium terraces may be used between 6am and 12am.

18. Amplified Music and Lighting of Rooftop Terrace

No amplified live music to be played and any other music played must not be unreasonably audible at any residential building beyond the subject land.. Lighting on the rooftop terrace must be designed to minimise light spill beyond the terrace.

19. Alteration/Reinstatement of Council or Public Authority Assets

Before the occupation of the development allowed by this permit, the Applicant/ Owner shall do the following things to the satisfaction of the Responsible Authority:

- a) Pay the costs of all alterations/reinstatement of Council and Public Authority assets necessary and required by such Authorities for development.
- b) Obtain the prior written approval of the Council or other relevant Authority for such alterations/reinstatement.
- c) Comply with conditions (if any) required by the Council or other relevant Authorities in respect of reinstatement.

20. Walls on or facing the Boundary

Prior to the occupation of the building(s) allowed by this permit, all new walls on or facing the boundary of adjoining properties and/or the laneway must be cleaned and finished to a uniform standard. Unpainted or unrendered masonry walls must have all excess mortar removed from the joints and face and all joints must be tooled or pointed to the satisfaction of the responsible authority. Painted or rendered or bagged walls must be finished to a uniform standard to the satisfaction of the responsible authority.

21. Piping and Ducting

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

22. No Equipment or Services

No plant, equipment or domestic services (including any associated screening devices) or architectural features, other than those shown on the endorsed plan are permitted, except where they would not be visible from the primary street frontage (other than a lane) or public park without the written consent of the Responsible Authority.

23. Privacy Screens Must Be Installed

Privacy screens as required in accordance with the endorsed plans must be installed prior to occupation of the building to the satisfaction of the Responsible Authority and maintained thereafter to the satisfaction of the Responsible Authority.

24. Lighting Baffled

All lighting of external areas both during construction and after completion must be suitably baffled so as not to cause nuisance or annoyance to nearby properties or roads, to the satisfaction of the Responsible Authority and all illuminated advertising lighting on cranes must be turned off between the hours of 10pm and 7am.

25. Services to be underground

All basic services to the property including water, electricity, gas, sewerage, telephone and telecommunications (whether by means of a line or cable) must be installed underground and located in a position approved by the responsible authority.

26. Level 5

The internal spaces located on Level 5 must only be used by residents or office employees and must not be used for any commercial purposes.

26. SEPP N-1

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

27. Car Parking Stacker Maintenance and Provision

The basement mechanical car stacker is to be maintained in a good working order and be permanently available for the parking of vehicles in accordance with their purpose, to the satisfaction of the Responsible Authority.

28. Parking Areas must be available

Car parking areas and access lanes must be kept available for those purposes at all times and must not be used for any other

Melbourne Water Conditions

- 29 The ground floor of the building must be constructed with finished floor levels set no lower than 2.7 metres to Australian Height Datum (AHD), which is 300mm above the applicable flood level of 2.4m to AHD.
- 30 Finished Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the AHD, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.

- 31 All doors, windows, vents and openings to the basement car park must be set no lower than 2.7 metres to AHD including a flood proof apex to the basement.
- 32 All Electrical system, including components for the DDA access lift, must be set no lower than 2.65m AHD.

Melbourne Metro Rail Authority Conditions

- 33 Before development starts, including demolition and bulk excavation, three (3) copies of a Construction Management Plan must be submitted to the satisfaction of Melbourne Metro Rail Authority. The Construction Management Plan must include details of (but not be limited to) management proposals to minimise impacts to the construction of the Metro Tunnel project, and must set out objectives and performance and monitoring requirements for:
 - a) The demolition and construction program;
 - b) Preferred arrangement for vehicles delivering to the land, including delivery and unloading and expected duration and frequency;
 - c) Requests to occupy public footpaths or roads, or anticipated disruptions to local services;
 - d) Measures to ensure that all works on the land will be carried out in accordance with the Construction Management Plans.
- 34 All demolition and construction works must be carried out in accordance with the approved Construction Management Plan. The Construction Management Plan must be implemented at no cost to Melbourne Metro Rail Authority.

35 Time for Starting and Completion

This permit will expire if one of the following circumstances applies:

- a) The development is not started within three years of the date of this permit.
- b) The development is not completed within four years of the date of commencement of works.
- c) The use is not commenced within two (2) years of the completion of the development.

The Responsible Authority may extend the periods referred to if a request is made in writing before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet started; and within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

--- End of Conditions ---