

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO.P112/2018

APPLICANT	Virgate Property (South Melbourne) Pty Ltd
RESPONSIBLE AUTHORITY	Port Phillip City Council
RESPONDENTS	David MacGowan, Karina Reynolds, John Tabart and Others
SUBJECT LAND	41-49 Bank Street SOUTH MELBOURNE VIC 3205
WHERE HELD	Melbourne
BEFORE	S. R. Cimino, Member
HEARING TYPE	Compulsory conference
DATE OF HEARING	3 and 9 May 2018
DATE OF ORDER	6 June 2018

ORDER

- 1 In application no. P112/2018, the Responsible Authority's decision is varied.
- 2 The Tribunal directs that Permit No. 1186/2016 must contain the conditions set out in the permit issued by the Responsible Authority on 16 January 2018 but with condition 15 deleted, conditions 1, 3, 8, 23 and 24 modified as set out in Appendix A.
- 3 The Responsible Authority is directed to issue a modified permit in accordance with this order.
- 4 The hearing listed to commence on **20 June 2018** is cancelled and the dates vacated.

S. R. Cimino
Member

APPEARANCES:

For Applicant

Mr Paul Little, planning consultant, Planning
& Property Partners Pty Ltd

For Responsible Authority

Ms Romy Davidov, solicitor, Best Hooper

For Respondents

Ms David McGowan

Mr John Tabart for John Tabart and Others
and for Karina Reynolds.

REASONS

- 1 This matter involves an application under Section 80 of the *Planning and Environment Act 1987* to review the Greater Dandenong City Council's decision to refuse a permit for a multi-dwelling development on the subject land.
- 2 At the compulsory conference the parties reached agreement, subject to the Council confirming its consent at a later date.
- 3 The Council has subsequently advised that it consents to the agreement reached at the compulsory conference subject to the inclusion of an additional part (x) in condition 1. The applicant and the other parties have advised that they consent to this change.
- 4 Accordingly, all parties to the proceeding have reached agreement.
- 5 This order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 6 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 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.
- 7 Based on the information available to the Tribunal, including the discussion at the compulsory conference, I consider it is appropriate to make these orders pursuant to Section 93 of the *Victorian Civil and Administrative Tribunal Act 1998*.

S. R. Cimino
Member

APPENDIX A

PERMIT APPLICATION NO:	1186/2016
LAND:	41-49 Bank Street SOUTH MELBOURNE VIC 3205
What the permit allows: Construction of a mixed use building and a reduction in the statutory parking, generally in accordance with the endorsed plans and subject to the following conditions:	

CONDITIONS

Amended Plans Required

- 1 Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and an electronic copy must be provided. The plans must be generally in accordance with the advertised plans (identified as those drawn by Bruce Henderson Architects and received by Council 22 February 2017) but modified to show:
 - (a) Delete
 - (b) The dark tinted glass of the architectural feature in the podium replaced with a glass of a lighter or warmer colour. The glazing material must be of a type that does not reflect more than 15% of visible light, when measured at an angle of 90 degrees to the glass surface.
 - (c) The finished floor level (FFL) of the habitable component of the ground floor to be a minimum 2.604m AHD and the finished floor level (FFL) of the non-habitable component of the ground floor to be a minimum 2.454m AHD
 - (d) The east facing terraces/ balconies to apartments 2.08, 2.09 and 3.10 setback a minimum 4.5m from the eastern boundary.
 - (e) Delete
 - (f) The west facing terraces/balconies to apartments 3.08 and 3.09 to be setback a minimum 4.5m from the centre line of the private lane to the west.
 - (g) The south facing terraces/balconies to apartments 3.09 and 3.10 setback a minimum 2.72m (4.5m from the centerline of Little Bank Street) from the southern boundary.

- (h) All one bedroom apartments to have a minimum internal floor area of 50sqm, excluding the balcony/terrace areas.
- (i) The provision of not less than 127 car parking spaces and their allocation as required under condition 24.
- (j) The ground and first floor setback 2.2m from the southern boundary (Little Bank Street).
- (k) Delete
- (l) Details of the proposed car stackers including dimensions for individual parking bays and clearance heights of the stackers (with a minimum 25% of car stackers to provide a clearance height of 1.8m), a sight distance triangle to Bank Street, swept path diagrams and the height clearance for the vehicle access ramps, in accordance with Clause 52.06.
- (m) The vehicle crossing to Bank Street reduced to a maximum width of 5.5m.
- (n) The provision of an onsite loading facility within the ground floor car park.
- (o) Details of an apex or flood barrier provided to all access to the basement.
- (p) Details of Urban Art contribution.
- (q) Details of external shading devices to the north, east and west facing apartments and the gym and common dining area.
- (r) All plant, equipment and domestic services (including air conditioning, heating units, hot water systems, etc.) which are to be located externally.
- (s) Booster cupboard incorporated into the design of the building.
- (t) Any changes required by Conditions 3, 9 and 12.
- (u) At least 10% of all dwellings to have a minimum of three bedrooms.
- (v) Balcony areas to have a minimum depth of 1.6m and a minimum area of 8m².
- (w) An updated development summary which includes the overall number of dwellings, mix of dwelling sizes and allocation of parking for residential visitors and retail use with the balance for residents.
- (x) Basement, ground floor and level 1 car parking and vehicle access arrangements to be in accordance with plans TP-201 to TP-203, all Rev 5 and ramp and stacker sections to be in accordance with plan TP-305, Rev 1, all dated 15 May 2018 and prepared by Bruce Henderson Architects.

No Alterations

- 2 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.

Sustainable Management Plan

- 3 Before the development starts a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority. Amendments to the SMP must be incorporated into plan changes required under Condition 1. The report must be generally in accordance with the SMP prepared by ADP consulting submitted with the application but updated to address the following:
 - (a) BESS report updated to correctly refer to the number of apartments;
 - (b) Details of practical ventilation should be included.
 - (c) NatHERS modelling – An insufficient number of apartments modelled. The height of the building, the nature of corner, and aligned apartments, changes in the number of bedroom, varied orientations, and the variations in location in height on the podium and tower provide at 9-15 significant thermal scenarios.
 - (d) The STORM assessment shown indicates the approximate 80% reliability for reuse of rainwater from non-trafficable roofs for toilet flushing. Please confirm this includes the full roof area including, the lift roof, and plant area, and revise STORM assessment accordingly.
 - (e) Planters are shown on Level 2 and 3 apartment courtyards that appear to have access only via individual apartments. Please clarify the access and maintenance regime for these.
 - (f) Considerable planters are indicated on the north-facing terraces adjacent to the Resident Lounge and Dining areas on Level 6. Should consider:
 - (i) The reconfiguring the planters and bench seating adjacent to the Resident Lounge to provide a productive garden which potentially will allow access to residents.
 - (ii) The provision of low (similar to planter height) garden storage locker to support the use of these planters.

Water Sensitive Urban Design

- 4 Before the development starts (other than demolition or works to remediate contaminated land) a Water Sensitive Urban Design Report that outlines proposed water sensitive urban design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The report must demonstrate how the development meets the

water quality performance objectives as set out in the Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) or as amended.

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

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

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

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

- (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 Building User's Guide or a Building Maintenance Guide.

Site Management Water Sensitive Urban Design

- 6 The developer must ensure that:
- (a) No water containing oil, foam, grease, scum or litter will be discharged to the stormwater drainage system from the site;
 - (b) All stored wastes are kept in designated areas or covered containers that prevent escape into the stormwater system;
 - (c) The amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads is minimised when vehicles are leaving the site.
 - (d) No mud, dirt, sand, soil, clay or stones are washed into, or are allowed to enter the stormwater drainage system;
 - (e) The site is developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants in accordance with currently accepted best practice.

Walls on or Facing the Boundary

- 7 Before the occupation of the development allowed by this permit, all new or extended walls on or facing the boundary of adjoining properties and/or a laneway must be cleaned and finished to a uniform standard to the satisfaction of the Responsible Authority. Unpainted or unrendered

masonry walls must have all excess mortar removed from the joints and face and all joints must be tooled or pointed also 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.

Urban Art Plan

- 8 Before the development starts (other than demolition or works to remediate contaminated land), an urban art plan which addresses the visual response to Bank Street, must be submitted to the satisfaction of and approved by 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.

Waste Management Plan

- 9 Concurrent with the endorsement of plans, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan must be generally in accordance with the Waste Management Plan submitted with the application prepared by Sustainable Transport Surveys Pty Ltd and dated 18 April 2016 but modified to address the following:
 - (a) Council 240L bins can only be supplied if the retail outlets are being used for office space or something similar. Council will not issue 240L bins for retail food outlets. There will be an additional cost as Council normally only provides 120L bins.
 - (b) Under 6.2, p. 10 'Bin Usage' a distinction will need to be made about different practices for the disposing of waste and recycling. Residents will need to bag their garbage, and recyclables will need to be loosely dropped into chutes because bagged recycling is contamination in the recycling stream. This will be important especially because residents are going to receive a copy of this WMP.
 - (c) In the bin room on the plan, the two 240L retail garbage are being stored in the bin room. This will need to be removed and they are to be stored in the retail space as specified by the WMP. Additionally, two extra 1100L bins are shown on the plans. Extra bins are allowed on site as back-up but best to remove from the plans to match the WMP allocation of 6 total 1100L bins for residents.
 - (d) There will need to be a consideration for the volumes of hard waste that will need to be stored in between the 6 free hard waste collections per year. Some of the changes to the bin room mentioned in these comments are likely to provide more space to store this hard rubbish.

SEPP N1

- 10 All air conditioning and refrigeration plant must be screened and baffled and/or insulated to minimise noise and vibration to ensure compliance with noise limits determined in accordance with State Environment

Noise Attenuation for Apartments

- 11 External traffic noise intrusion within apartment bedroom and living areas (upon completion; with furnishing within the spaces and with windows and doors closed) and measured in accordance with AS/NZS2107/2000 Acoustics – Recommended Design Sound levels and Reverberation Times for Building Interior shall comply with the following:
- (a) Between 10pm and 7am in bedrooms areas must not exceed LAeq, 9hour 40dB(A);
 - (b) Between 7am and 10pm in living rooms must not exceed LAeq (15hour) 45dB(A).

Landscape Plan

- 12 Before the development starts (other than demolition or works to remediate contaminated land), an amended 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) Details of landscaping to the communal terrace area;
 - (b) A survey plan, including botanical names, of all existing vegetation/trees to be retained;
 - (c) Buildings and vegetation (including botanical names) on neighbouring properties within 3m of the boundary;
 - (d) Significant trees greater than 1.5m in circumference, 1m above ground;
 - (e) All street trees and/or other trees on Council land;
 - (f) 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;
 - (g) Landscaping and planting within all open space areas of the site;
 - (h) Water sensitive urban design;
 - (i) Trees are not to be sited over easements.

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

Completion of Landscaping

- 13 The landscaping as shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority before the occupation of the development and/or the commencement of

the use or at such later date as is approved by the Responsible Authority in writing.

Landscaping Maintenance

- 14 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.

Number of dwellings

- 15 Deleted

Parking and Loading Areas Must Be Available

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

Lighting

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

No equipment or services

- 18 Any plant, equipment or domestic services visible from the primary street frontage (other than a lane) or public park must be located and visually screened to the satisfaction of the Responsible Authority.

Vehicle Crossings

- 19 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, naturestrip, kerb and road reinstated as necessary at the cost of the applicant/owner and to the satisfaction of the Responsible Authority.

Vehicle Crossings – Removal

- 20 Before the occupation of the development allowed by this permit, all disused or redundant vehicle crossings must be removed and the area reinstated with footpath, nature strip and kerb and channel at the cost of the applicant/owner and to the satisfaction of the Responsible Authority.

Applicant to Pay for Reinstatement

- 21 Before the occupation of the development allowed by this permit, the applicant/owner must 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 the 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 alterations/reinstatement.

Public Services

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

Visitor Car Parking

- 23 The number and location of visitor car parking spaces as shown on the endorsed plans may only be altered with the written consent of the Responsible Authority. Prior to the occupation of the building, all visitor car parking spaces must be line marked and designated as visitor car parking to the satisfaction of the Responsible Authority and must be designated as common property on any plan of subdivision.

Car Parking Space Allocation

- 24 A minimum of 127 car parking spaces must be provided on the land for the development/use, including 2 spaces for the shops, 5 spaces for visitors and 120 car spaces for the dwellings to the satisfaction of the Responsible Authority. The spaces for the shops and the visitors must be clearly marked for these uses to the satisfaction of the Responsible Authority. The loading bay required under condition 1(n) may be allocated for shared use as a visitor car space, to the satisfaction of the Responsible Authority.

On-Site Bicycle Parking

- 25 Before the development starts, bicycle racks must be provided on the land to the satisfaction of the Responsible Authority.

Privacy Screens Must be Installed

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

Time for Starting and Completion

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

- (a) The development is not started within two (2) years of the date of this permit.
- (b) The development is not completed within four (4) years of the date of commencement of works.

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