



8.8	SECTION 72 AMENDMENT - 161 BUCKHURST STREET, SOUTH MELBOURNE
LOCATION/ADDRESS:	161 BUCKHURST STREET, SOUTH MELBOURNE
RESPONSIBLE MANAGER:	GEORGE BORG, MANAGER CITY DEVELOPMENT
AUTHOR:	SIMON GUTTERIDGE, PRINCIPAL PLANNER FBURA
TRIM FILE NO.:	PI253/2011
ATTACHMENTS:	<ol style="list-style-type: none">1. S72 Amended Elevations2. S72 Amended L1 to L5 Floor plans3. S72 Amended Ground Floor plans4. Original Elevations5. Original L1 to L5 floor plans6. Original Ground Floor plans
WARD:	Gateway
TRIGGER FOR DETERMINATION BY COUNCIL:	Use and/or development for Accommodation in the Fishermans Bend Urban Renewal Area
APPLICATION NO:	PI253/2011/A
APPLICANT:	Materia Project Group P/L C/- Jewell Partnership P/L
EXISTING USE:	Offices
ABUTTING USES:	Offices, industry and warehouses
ZONING:	Capital City Zone (CCZ1)
OVERLAYS:	Design and Development Overlay (DDO30) Heritage Overlay (HO1) Development Contributions Plan Overlay (DCPO2) Parking Overlay (PO1)
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired

PROPOSAL

Amend the permit preamble to delete reference to use of land for office; amend permit conditions to consistently exempt demolition and bulk excavation; and amend the plans to reduce the area of the ground floor café, add one car space, delete the office use, change the dwellings from three x 1BR and three x 2BR to five x 3BR, and consequential and minor building footprint and façade changes.



I. EXECUTIVE SUMMARY

- 1.1 Council has received an application to amend the permit preamble to delete reference to use of land for office; amend permit conditions to consistently exempt demolition and bulk excavation; and amend the plans to reduce the area of the ground floor café, add one car space, delete the office use, change the dwellings from three x 1BR and three x 2BR to five x 3BR, and consequential and minor building footprint and façade changes.
- 1.2 The change to the preamble would be a 'house-keeping' consequence of the proposed changes to the plans.
- 1.3 The changes to Conditions 3, 10, 15, 16 and 29 would bring them into line with the other conditions of the permit that require matters to be done before the development starts, and would resolve an inconsistency between the two Waste Management Conditions (Nos. 5 and 29).
- 1.4 The addition of Condition 31 to provide for a developer contribution would resolve an inconsistency between the permit and Clause 45.06 of the Planning Scheme, and provide funds for infrastructure in Fishermans Bend.
- 1.5 The change to the plans to extend the green wall to the north-east side wall is not supported because the associated structure would project beyond the site boundary and would be contrary to Condition 3(d) of the permit.
- 1.6 The other changes to the plans, including reducing the amount of commercial floor area and the number of small dwellings in favour of a lesser number of larger dwellings would:
- Not increase building height;
 - Slightly reduce the footprint and envelope of the proposal;
 - Still achieve a mix of uses on the land;
 - Be broadly consistent with the strategic ambitions for the site and the Fishermans Bend Urban Renewal area in general.
- 1.7 It is recommended that Council approve the amendments, with the exception of the change to the plans to extend the green wall to the north-east side wall.

KEY ISSUES

1. Consistency with Fishermans Bend Strategic Framework Plan.
2. Changes to Planning Scheme.
3. Land use and building design.



2. RELEVANT BACKGROUND

- 2.1 On 05 December 2011, planning permit application P1253/2011 was received by Council proposing demolition of the existing buildings and construction of a **four-storey** office building.

Council officers raised a number of concerns and requested further information which was duly provided on 29 March 2012. Officers subsequently internally referred and gave notice of the application. No third party objections were received.

- 2.2 On 05 July 2012, Amendment C102 changed the Planning Scheme to include the land in the Capital City Zone and make the Minister for Planning, the responsible authority for buildings of four storeys or more in height.

The application was transferred to the Department of Planning and Community Development (DPCD) (now Department of Environment, Land, Water and Planning or DELWP) on behalf of the Minister, who in turn informally referred it back to Council for comment.

- 2.3 On 17 September 2012, the application was considered under delegation, and it was resolved to advise the Minister that Council did not support the proposal because of concerns:

- The proposal would demolish a heritage graded former dwelling;
- The four-storey building would be an underdevelopment in the context of the Capital City Zone;
- The four-storey building would be an underdevelopment in the context of Council's adopted Montague Precinct Structure Plan which recommended a street wall height of five levels and a maximum height of eight levels on the land; and
- The proposal would prejudice the comprehensive urban renewal of the Fishermans Bend Urban Renewal Area.

As per standard practice, Council provided a set of without prejudice draft conditions for the Minister's consideration should he determine to approve the application.

- 2.4 The Minister did not make a decision on the application.

- 2.5 On 14 March 2013, an amended application for a **six level** mixed use development was lodged with the Department, and subsequently informally referred to Council for comment.

- 2.6 On 21 May 2013, Council's Statutory Planning Committee considered the amended application, and determined to advise the Minister for Planning:

- That the Council did not support the application because of concerns that it would demolish the heritage graded former dwelling on the land;
- The design of the new building would be generally consistent with the Council's adopted Montague Precinct Structure Plan and the Fishermans Bend Urban Renewal Area;
- In the event the Minister determines to grant a permit, that permit should include draft conditions proposed by Council.



- 2.7 On 28 January 2014, the Minister for Planning determined to grant a permit subject to conditions and issued a Notice of Decision to Grant a Permit subject to conditions. Council did not object to the NOD.
- 2.8 On 17 March 2014, the Minister for Planning issued a permit for a **six storey** building. The permit allowed:
- Ground (Level 00): A 58m² café, four car spaces, bicycle parking, bin stores etc.;
 - Levels 1 and 2: 321m² of office floor area;
 - Levels 3, 4 and 5: One x 1BR and one x 2BR dwelling per floor.
- 2.9 On 07 August 2014, Amendment GC7 changed the Planning Scheme, including to make Council the Responsible Authority for the four and eight-storey height areas in the Montague Precinct and along the southern perimeter of the FBURA, including the subject site.
- 2.10 On 17 April 2015, Amendment GC29 changed the Planning Scheme including to introduce interim mandatory height controls for new applications, including a four-storey height limit on the subject site. On 14 November 2016, Amendment GC50 extended the interim controls to 31 March 2018.
- 2.11 The height limits do not apply to permits already granted.
- 2.12 The time to start the development expired on 17 March 2017. The applicants have lodged an application to extend the time to commence and complete the development. This application is the subject of a concurrent separate report to Council.

3. SUBJECT SITE AND SURROUNDS

- 3.1 The subject site is located on the south-east side of Buckhurst Ferrars, between Boundary Street and Montague Street, South Melbourne.
- 3.2 The subject site is rectangular and has a frontage width of 10.06m and a depth of 21.34m for an overall areas of approximately 215m².
- 3.3 The land is developed with a single-storey double fronted Victorian period dwelling which is currently used as an office. The rear yard is used for informal parking of up to three cars
- 3.4 The site abuts and enjoys access rights over a concrete right-of-way along its southerly side and a bluestone lane at the rear.
- 3.5 Surrounding land is developed as follows:
- **North (side):** Single-storey industrial and warehouse buildings.
 - **South (side):** A right-of-way, a two-storey commercial building and former dwelling, and a three-storey commercial building at the corner of Boundary Street.
 - **East (rear):** A bluestone lane and the rear of single-storey industrial and warehouse buildings addressed to Thistlethwaite Street and a three-storey office building.
 - **West (front):** Buckhurst Street and one storey industrial and two and three-storey commercial buildings.
- 3.6 The overall character of the area is industrial and commercial.



4. PLANNING CONTROLS / PERMIT TRIGGERS

- 4.1 On 05 December 2011, when the application was originally lodged with Council, the land was in the Industrial 1 Zone and Heritage Overlay (HO1).
- 4.2 On 05 July 2012, the land was rezoned to Capital City Zone (CCZI) and included in the Parking Overlay (PO1) and Development Contributions Plan Overlay (DCPO2) in addition to HO1.
- 4.3 The planning controls applicable when the application was determined were as follows:

Planning Scheme Provision	Why is a planning permit required?
Clause 37.04 - Capital City Zone (CCZI)	<p>Pursuant to Section 2 of the Table of uses at Clause 37.04-1 of the CCZI and Clause 1 of the Schedule to the CCZI, a planning permit is required to use land for use not in Section 1 or 3 of the Schedule to the zone, including Accommodation if it does not meet the threshold distance from industrial and/or warehouse uses referred to in the Table to Clause 52.10. The land is proximate to warehouse and industrial uses and thus requires a permit under this clause.</p> <p>Pursuant to Clause 37.04-4 of the CCZI and Clause 3.0 of the Schedule to the CCZI, a permit is required to construct a building or construct or carry out works in the Capital City Zone.</p> <p>Pursuant to Clause 37.04-4 of the CCZI, and Clause 4.0 of Schedule 1 to the CCZI, a permit and prior approval for the redevelopment of the site are required to demolish or remove a building or works.</p> <p>An application to</p> <ul style="list-style-type: none"> • Use land (other than for a nightclub, a tavern, a brothel or an adult sex bookshop); • Construct a building or construct or carry out works; • Demolish or remove a building or works; or • Erect or construct or carry out works for an advertising sign; <p>is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.</p> <p>Pursuant to Clause 6.0 of Schedule 1 to the CCZI:</p> <p>Before a sensitive use (residential use, child care centre, pre-school centre, primary school, education centre or informal outdoor recreation) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, the developer must obtain either;</p> <ul style="list-style-type: none"> • A certificate of environmental audit issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or • A statement in accordance with Part IXD of the Environment Protection Act 1970 by an accredited auditor approved under that Act that the environmental conditions of the land are suitable for the sensitive use. <p>A planning permit is required under this clause.</p>



<p>Clause 43.01 - Heritage Overlay (HO1)</p>	<p>A Planning Permit is required to demolish a building, construct a building, internally and externally alter the building, construct or carry out works, externally paint a building and externally paint an unpainted surface in the Heritage Overlay. A planning permit is required under this clause.</p>
<p>Clause 44.05 - Special Building Overlay (SBO1)</p>	<p>A Planning Permit is required to construct a building, and construct or carry out works in the Special Building Overlay. A planning permit is required under this clause.</p>
<p>Clause 45.06 - Development Contributions Plan Overlay (DCPO2)</p>	<p>Pursuant to Schedule 2 to the DCPO, a permit may be granted to subdivide land, construct a building or construct or carry out works before a precinct wide development contributions plan has been prepared to the satisfaction of the responsible authority if any of the following apply:</p> <ul style="list-style-type: none"> • A site specific development contributions plan has been prepared by the developer to the satisfaction of the Minister for Planning; • An agreement under Section 173 of the Planning and Environment Act 1987 has been entered into with the responsible authority that makes provision for development contributions. • The permit contains a condition requiring an agreement under Section 173 of the Planning and Environment Act 1987 that makes provision for development contributions to be entered into before the commencement of development. • The permit allows for the construction of a building or construction or carrying out works for; <ul style="list-style-type: none"> - Additions or alterations to a single dwelling or development ancillary to use of land for a single dwelling. - A single dwelling on a lot - An existing use of land provided the gross floor of the existing use is not increased by more than 1000 square metres. - A sign. • The permit only allows the consolidation of land or a boundary realignment. <p>A permit is required under this clause.</p>
<p>Clause 45.09 - Parking Overlay (PO1)</p>	<p>Use for Dwelling is listed in Schedule 1 to the Parking Overlay. The proposed parking provision for the dwellings does not exceed the measures set out in the Overlay. A permit is not required under this clause.</p>
<p>Clause 52.10 - Uses with Adverse Amenity Potential</p>	<p>The threshold distances from industrial and/or warehouse uses referred to in the table to Clause 52.10 are required to be met. A permit is required under this clause.</p>
<p>Clause 52.06 - Car Parking</p>	<p>Car parking should meet the design requirements of Clause 52.06-8. A permit may be granted to vary any dimension or requirement of Clause 52.06-8 (Design standards for car parking). A permit is required under this clause.</p>



<p>Clause 52.29 - Land adjacent to a Road Zone, Category I, or a Public Acquisition Overlay for a Category I road.</p>	<p>A planning permit is required to create or alter access to a road in a Road Zone Category I. A permit is required under this clause.</p>
<p>Clause 52.34 - Bicycle Facilities</p>	<p>A new use must not commence or the floor area of an existing use must not be increased until the required bicycle facilities have been provided on the land pursuant to Clause 52.34-1. A planning permit is required to vary, reduce or waive any bicycle facilities requirement of Clause 52.34-3 and Clause 52.34-4. A permit is required under this clause.</p>
<p>Clause 52.35 - Urban Context report and Design response for residential development of five or more storeys</p>	<p>An application for a residential development of five or more storeys must be accompanied by:</p> <ul style="list-style-type: none"> • An urban context report. • A design response.

4.4 Since the permit was issued on 17 March 2014, the planning controls have changed as follows:

4.4.1 In July 2014, the Minister amended the Planning Scheme to include the *Fishermans Bend Strategic Framework Plan July 2014* (FBSFP) as an incorporated document to guide development within the Fishermans Bend precinct.

The subject site was identified in the July 2014 FBFSP as having a preferred height of four storeys (15m).

4.4.2 On 17 April 2015, the Minister amended the Planning Scheme and the Strategic Framework Plan, including to introduce interim (until 17 April 2017) mandatory height limits throughout the FBURA for all permit applications lodged from that date onwards, while the State Government carried out a review of heights and other strategic planning matters.

The interim height controls limited new applications on the site to four storeys, but included transition provisions which allowed applications lodged before 17 April 2015 to be determined under the earlier discretionary preferred height regimen.

The interim height limits do not apply to permits already granted.

4.4.3 On 14 November 2016 and 22 November 2016, the Minister approved Amendments GC50 and GC59 to further amend the Planning Scheme and the Strategic Framework Plan, including to introduce revised interim (until 31 March 2018) mandatory podium and tower height limits and minimum tower



setbacks. These amendments did not include any transition provisions for applications already lodged.

4.4.4 New permit requirements pursuant to DDO30 are:

<p>Clause 43.02 - Design and Development Overlay (DDO30)</p>	<p>A Planning Permit is required to construct a building, and construct or carry out works (with some exemptions) in the Design and Development Overlay.</p> <p>An application to construct a building or construct or carry out works in the Design and Development Overlay is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.</p> <p>A planning permit is required under this clause.</p>
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4.4.5 DDO30 introduced new mandatory street wall (podium) and tower height limits and minimum tower setback requirements, and a four storey maximum building height for the subject site and surrounds for applications lodged after 19 January 2017.

4.4.5 The approved permit is not affected by the new DDO30 provisions.

5. REFERRALS

The application was not required to be internally or externally referred.

6. PUBLIC NOTIFICATION/OBJECTIONS

- 6.1 Notice of the original application was given by Council (when the land was zoned Industrial 1 and in the Heritage Overlay) by letter to 11 abutting and nearby land owners and occupiers. No objection was received.
- 6.2 Following the rezoning of the land to Capital City Zone etc. and the transfer of the application to the Department of Planning and Community Development, the Department resolved that it would rely on the notice carried out by Council and gave no further notice.
- 6.3 It is noted that under the Capital City Zone, the application is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3), and the review rights of Section 82(1) of the Act under the Capital City Zone, but that notice requirements still apply relative to the Heritage Overlay.
- 6.4 The proposed amendments do not relate to any Heritage Overlay matter and thus notice of the proposed amendments is not required.

7. OFFICER'S ASSESSMENT

Amended Permit Conditions

7.1 The application seeks to amend Conditions 10 (Contaminated Land), 15 (3D model), 16 (Drainage / Recycled Water / Infrastructure) and 29 (Waste Management Plan) to include the words "Before the development starts, excluding demolition and bulk excavation ..."

The effect of the amendment(s) would be to defer the time in which these four conditions would need to be satisfied until after the demolition of the buildings on the land and any bulk excavation of the site.



- 7.2 It is common for permit conditions to include this exemption and it is noted that Conditions 5 (Waste Management), 6 (Legal Agreement - Windows on Boundaries), 7 (Sustainable Design Assessment) and 22 (Noise Attenuation) of the permit already include the wording.

Further, Condition 10 already includes an exemption for "... any works required by the Auditor ..." which would allow for demolition and excavation to remove contaminated soil if required as part of site remediation.

- 7.3 The addition of the words to Conditions 10, 15, 16 and 29 would improve the consistency of the conditions of the permit.
- 7.4 For consistency, Condition 3 (Amended plans) should also be amended to include the exemption.
- 7.5 The proposed amendments to the permit conditions would not conflict with other conditions of the permit noting Condition 2 (Demolition Plans) which requires (officer emphasis added):

Demolition must not commence unless the Responsible Authority is satisfied that the permit holder has made substantial progress towards obtaining the necessary building permits for the development of the land general in accordance with the development proposed under this permit and the permit holder has entered into a bona fide contract for the construction of the development, or otherwise as agreed with the Responsible Authority.

has been satisfied. The applicant has provided a copy of the signed contract for the construction of the development (which is retained as a confidential item on file).

- 7.6 It is noted that the permit as issued by the Department includes two conditions requiring the submission of a Waste Management Plan (Conditions 5 and 29), and a third (Condition 1.(m)) which requires the plans for endorsement be amended to incorporate any modification required by the Waste Management Plan.

It is further noted that there is an inconsistency between the Condition 5 requirement to provide a Waste Management Plan which includes the words 'Before the development starts, excluding demolition and bulk excavation ...' and the Condition 29 requirement to provide a Waste Management Plan which does not.

The addition of the exemption to Condition 29 would resolve this inconsistency.

New Permit Condition

- 7.7 The permit as issued by the Minister for Planning did not include a condition requiring a development contribution.

A condition requiring a development contribution is a mandatory requirement pursuant to Schedule 2 of Clause 45.06 - Development Contributions Plan Overlay (DCPO2) of the Planning Scheme.

Council officers brought the omission to the permit holders attention and recommended the matter would be best remedied by seeking an amendment pursuant to S87(1)(c) and (f) (i.e. an application to VCAT). The applicants have instead sought to amend the permit pursuant to S72.



It is considered that the permit could be reasonably amended pursuant to S72 because:

- The applicant’s written submission acknowledges the omission of the condition was an error;
- The applicant’s written submission acknowledges voluntarily requests the permit be amended to include the condition; and
- The applicant’s written submission acknowledges Council’s preferred process.

Amended Plans

7.8 An assessment of the proposed amendments to the plans is as follows:

Proposed Amendment	Officer Assessment
Drawing TPIF	
<u>Proposed Ground floor plan/site plan</u>	
1. Café floor area reduced from 58m ² to 40m ² .	No objection: The change would be minor.
2. Increase number of car spaces for the dwellings from four (0.66/dwelling) to five (1.0/dwelling).	No objection: A variation is supported because: <ul style="list-style-type: none"> • The change would be minor. • Whilst the increase to 1.0 space/dwelling would exceed the Strategic Framework Plan target rate of 0.5/dwelling, it would not exceed the parking rate threshold of the Parking Overlay. • The provision of 1 space for 3BR dwellings would be consistent with previous FBURA approvals.
3. Bin enclosure increased to accommodate the number of apartments as per councils Waste Management’s requirements.	No objection: The change would be minor and is required to satisfy Council requirements.
4. Switchboard and fire equipment recess has been deleted on west side of building and relocated to inside the foyer.	No objection: The change would be minor and internal.
Drawing TP2F	
<u>Proposed First and second Floor Plans</u>	
1. Office deleted in lieu of 1 x 3BR dwelling.	No objection: The building would still incorporate a mix of uses.
2. Original terrace at the front of building built over and void now converted into a terrace	No objection: The change would match the approved design of the Level 3, 4 and 5 dwellings above.
3. New terrace added on S-W corner of building	No objection: The change would match the approved design of the Level 3, 4 and 5 dwellings above.
4. Building setback from western boundary to match the upper floors (i.e. less building)	No objection: The change would match the approved design of the Level 3, 4 and 5 dwellings above.
5. Extent of windows on south and west sides reduced.	No objection: The changes would match the approved design of the Level 3, 4 and 5 dwellings above and would be appropriate for the change of use from office to dwelling.
<u>Proposed Third, Fourth and Fifth Floor Plans</u>	

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1. Delete 1 x 1BR and 1 x 2BR dwelling per floor and replace with 1 x 3BR dwelling per floor (i.e. reduce total number of dwellings in building from six to five).	No objection: The provision of all three bedroom dwellings would provide accommodation for a range of family sizes.
Drawing TP3F	
North-West Elevation (front)	
1. External louvers on building extended on each level	No objection: The louvres would provide sun control to the exposed westerly façade.
2. Terrace on level 1 deleted and void converted into a terrace	No objection: The change would match the approved design of the Level 3, 4 and 5 dwellings above.
South-West Elevation (side)	
1. External doors to car spaces adjusted.	No objection: The change would be minor.
2. Windows on levels 1 and 2 adjusted.	No objection: The change would be minor and consequential to the change from office to residential.
3. Void area on level one converted into a terrace	No objection: The change would be minor and would match the approved design of the Level 3, 4 and 5 dwellings above.
South-East Elevation (rear)	
1. Windows on levels 1 and 2 amended	No objection: The change would be minor and consequential to the change from office to residential.
2. Balcony on level one relocated from the front to the corner.	No objection: The change would be minor and would match the approved design of the Level 3, 4 and 5 dwellings above.
North-East Elevation (side)	
1. Windows have been adjusted on each level to suit apartment layout.	No objection: The change would be minor and consequential to the change from office to residential.
2. Green wall has been extended to level 1	Not supported: The frame for the green wall would project beyond the Title boundary and would be contrary to Condition 1.(d) of the permit.

7.9 The amendments would not increase the height of the building, and would slightly reduce the footprint of the building at the rear.

7.10 Subject to deletion of the green wall frame projecting beyond the Title boundaries, the amendments would not result in detriment to any adjoining property.

8. COVENANTS

The applicant has completed a declaration that the subject land, being all that land contained within Volume 07223, Folio 413, commonly known as Lot 1 on Title Plan 532396Q is not encumbered by a restrictive covenant or Section 173 Agreement or other obligation such as an easement or building envelope.

9. OFFICER DIRECT OR INDIRECT INTEREST

9.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.



10. OPTIONS

- 10.1 Approve as recommended
- 10.2 Approve with changed or additional conditions
- 10.3 Refuse - on key issues

11. CONCLUSION

- 11.1 The change to the preamble would be a 'house-keeping' consequence of the proposed changes to the plans.
- 11.2 The changes to Conditions 3, 10, 15, 16 and 29 would bring them into line with the other conditions of the permit that require matters to be done before the development starts, and would resolve an inconsistency between the two Waste Management Conditions (Nos. 5 and 29).
- 11.3 The addition of Condition 31 to provide for a developer contribution would resolve an inconsistency between the permit and Clause 45.06 of the Planning Scheme, and provide funds for infrastructure in Fishermans Bend.
- 11.4 The change to the plans to extend the green wall to the north-east side wall is not supported because the associated structure would project beyond the site boundary and would be contrary to Condition 3(d) of the permit.
- 11.5 The other changes to the plans, including reducing the amount of commercial floor area and the number of small dwellings in favour of a lesser number of larger dwellings would:
 - Not increase building height;
 - Slightly reduce the footprint and envelope of the proposal;
 - Still achieve a mix of uses on the land;
 - Be broadly consistent with the strategic ambitions for the site and the Fishermans Bend Urban Renewal area in general.
- 11.6 It is recommended that Council approve the amendments, with the exception of the change to the plans to extend the green wall to the north-east side wall.



12. RECOMMENDATION - APPROVE

It is recommended that:

- 12.1 In relation to Application No. P0253/2011/A, the Council issues an Amended Planning Permit for **Demolition buildings and works within a Heritage Overlay, buildings and works for the construction of a multi-storey building for the purposes of dwellings, restaurant and associated car parking** in accordance with the endorsed plans at 161 Buckhurst Street, South Melbourne with the following amendments:

Amended conditions

The amended conditions would read as follows:

3. Amended Plans

Before the development starts, **excluding demolition and bulk excavation**, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority in consultation with the City of Port Phillip. 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 two copies must be provided. The plans must be generally in accordance with the plans submitted with the application (Paul Delany Architects Pty Ltd, dated March 2013) but modified to show:

- (a) Car parking spaces and access that complies with the requirements of Clause 52.06 of the Port Phillip Planning Scheme;
- (b) Bicycle spaces and facilities that comply with the requirements of Clause 52.06 of the Port Phillip Planning Scheme;
- (c) Detailed plans and elevations that show the exact location of the proposed building in relation to the title boundary;
- (d) Deletion of all projections outside of the title boundary (including green wall frames, terrace area on the fifth floor, and excluding the ground level canopy);
- (e) Dimensions of the canopy along Buckhurst Street, with a minimum clearance of 2.7 metres to the underside of the canopy and 500mm to the kerb;
- (f) The terrace open space areas to the third, fourth and fifth floor rear apartments increased to at least 6 square metres with a minimum dimension of 2.0m;
- (g) The third, fourth and fifth floor north-east side windows deleted or notated as non-required windows that must be removed should the adjacent property be developed to the same or greater height, as required by the corresponding condition below;
- (h) Details of any external building plant and equipment, including any flues etc. for the restaurant tenancy;
- (i) The provision of an external store of at least six cubic metres for each dwelling;
- (j) All plan and elevation drawings to be 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;
- (k) A coloured schedule of the materials, colours and finishes to be used on the main external surfaces, including roofs, walls, windows, doors and canopy;



- (l) Any modifications required by the Sustainable Design Assessment required by the corresponding condition below; and
- (m) Any modifications required by the Waste Management Plan required by the corresponding condition below.

10. Contaminated Land

Before the development starts (or the certification or issue of a Statement of Compliance under the Subdivision Act 1988), **excluding demolition and bulk excavation**, with the exception of any works required by the Auditor, the Responsible Authority must be provided with:

- (a) A Certificate of Environmental Audit in accordance with Section 53Y of the Environment Protection Act 1970; or
- (b) A Statement of Environmental Audit in accordance with Section 53YZ of the Environment Protection Act 1970. A Statement must state that the site is suitable for the use and development allowed by this permit.

Where a Statement of Environmental Audit is provided, all the conditions of the Statement of Environmental Audit must be complied with to the satisfaction of the Responsible Authority, prior to commencement of use of the site. Written confirmation of compliance must be provided by a suitably qualified environmental professional or other suitable person acceptable to the responsible authority. In addition, sign off must be in accordance with any requirements in the Statement conditions regarding verification of works.

If there are conditions on a Statement of Environmental Audit that the Responsible Authority considers require significant ongoing maintenance and/or monitoring, the applicant must enter into a Section 173 Agreement under the Planning and Environment Act 1987. The Agreement must be executed on title prior to the commencement of the use and prior to the issue of a Statement of Compliance under the Subdivision Act 1987. The applicant must meet all costs associated with drafting and execution of the Agreement, including those incurred by the Responsible Authority.

15. 3D Model

Before the development starts **excluding demolition and bulk excavation**, a 3D model of the overall development and its immediate surrounds, as appropriate, must be submitted to the Responsible Authority and be to the satisfaction of the Responsible Authority in conformity with the Department of Planning and Community Development Advisory Note - 3D Digital Modelling.

In the event that substantial modifications are made to the overall development a revised 3D digital model must be submitted to and be to the satisfaction of the Responsible Authority.

16. Drainage / Recycled Water / Infrastructure

Before the development starts **excluding demolition and bulk excavation**, a detailed plan showing the proposed Stormwater drainage system design must be submitted to and approved by the City of Port Phillip. The plan must have regard to the Best Practice Environmental Management Guidelines for Urban Stormwater and incorporate water sensitive urban design principles. The Stormwater drainage system must be constructed for the development and provisions made to connect the system to accept the discharge



from the site in accordance with plans and specifications first approved by the City of Port Phillip.

- 29.** Before the development starts **excluding demolition and bulk excavation**, or as otherwise agreed by the City of Port Phillip, a waste management plan must be submitted and be to the satisfaction of the City of Port Phillip. This plan must be prepared in consultation with the City of Port Phillip. Waste storage and collection arrangements must be adhered to and must not be altered within the prior written consent of City of Port Phillip.
- Sufficient garbage storage facilities shall be provided within the property boundary. Garbage facilities shall be to the satisfaction of the City of Port Phillip.
 - No garbage bin or surplus materials generated by the permitted use may be deposited or stored outside the site and bins must be returned to the garbage storage areas as soon as practicable after garbage collection to the satisfaction of the City of Port Phillip.
 - All garbage and other waste material must be stored in an area set aside for such purpose to the satisfaction of the City of Port Phillip.
 - No garbage bins or waste materials generated by the permitted use shall be deposited or stored outside the site and bins must be returned to the garbage storage area as soon as practicable after garbage collection, to the satisfaction of the City of Port Phillip.

New conditions

The following conditions will be added:

31. Agreement under Section 173 of the Planning and Environment Act 1987 Re: Developer Contribution

Before the development starts (other than demolition or works to remediate contaminated land in accordance with an Auditors direction, or site preparation works), the applicant must:

- Enter into an agreement under Section 173 of the *Planning and Environment Act 1987* with the Responsible Authority;
- Register the agreement on the title(s) for the land in accordance with Section 181 of the *Planning and Environment Act 1987*; and
- Provide the Responsible Authority with the dealing number confirming the registration of the title.

The agreement must be in a form to the satisfaction of the Responsible Authority, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expense (including legal expenses) incidental to the preparation, registration, enforcement and ending of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:

- The developer to pay a development contribution of:
 - \$15,900 per dwelling;
 - \$180 per sqm of gross commercial floor area;



- \$150 per sqm of gross retail floor area;
or other amount outlined within an approved development contribution plan to the satisfaction of the Responsible Authority.
- (b) Require that development contributions are to be indexed quarterly from 1 July 2015 using the Price Index of Output of the Construction Industries (Victoria) by the Australian Bureau of Statistics.
- (c) Require registration of the Agreement on the titles to the affected lands as applicable.
- (d) Include a schedule of the types of infrastructure to be delivered by the Development Agency using development contributions.
- (e) Confirm that contributions will be payable to the Metropolitan Planning Authority.
- (f) Confirm that the contributions will be used by the Development Agency as stipulated by the Metropolitan Planning Authority to deliver the schedule of types of infrastructure.
- (g) Require that a bank guarantee to the value of 50% of the development contribution must be deposited with the Responsible Authority prior to the commencement of any works. The bank guarantee will be returned upon full payment of the development contribution.
- (h) Confirm the procedure for reducing the contribution paid if the permanent development contributions plan for the area is less than the amount stipulated in the Section 173 Agreement.
- (i) Require that payment of 10% of the contribution is at the time of issue of the building permit and 90% to be made prior to the issue of a Statement of Compliance in accordance with the *Subdivision Act 1988*.
- (j) The agreement must make provision for its removal from the land following completion of the obligations contained in the agreement.

Amended plans

The amended plans incorporate the changes as set out in Section 2 of this report, with the exception of the extension of the green wall on the north-east side wall:

That the decision be subject to the following conditions:

1. Demolition Plan

Before the development starts a detailed Demolition Management Plan must be submitted to and approved by the City of Port Phillip. This Demolition Management Plan may be staged and is to consider the following, as applicable:

- The proposed methods of demolition and how retained buildings and works will be protected.
 - Operating hours, noise and vibration controls.
 - Hoardings and site security.
 - Air and dust management.
 - Stormwater and sediment control.
 - Waste and material reuse.
 - Traffic management.
 - Public safety, amenity and site security.
2. Demolition must not commence unless the Responsible Authority is satisfied that the permit holder has made substantial progress towards obtaining the necessary building permits for the development of the land generally in accordance with the development proposed under this



permit and the permit holder has entered into a bona fide contract for the construction of the development, or otherwise as agreed with the Responsible Authority.

3. Amended Plans

Before the development starts, **excluding demolition and bulk excavation**, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority in consultation with the City of Port Phillip. 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 two copies must be provided. The plans must be generally in accordance with the plans submitted with the application (Paul Delany Architects Pty Ltd, dated March 2013) but modified to show:

- (a) Car parking spaces and access that complies with the requirements of Clause 52.06 of the Port Phillip Planning Scheme;
- (b) Bicycle spaces and facilities that comply with the requirements of Clause 52.06 of the Port Phillip Planning Scheme;
- (c) Detailed plans and elevations that show the exact location of the proposed building in relation to the title boundary;
- (d) Deletion of all projections outside of the title boundary (including green wall frames, terrace area on the fifth floor, and excluding the ground level canopy);
- (e) Dimensions of the canopy along Buckhurst Street, with a minimum clearance of 2.7 metres to the underside of the canopy and 500mm to the kerb;
- (f) The terrace open space areas to the third, fourth and fifth floor rear apartments increased to at least 6 square metres with a minimum dimension of 2.0m;
- (g) The third, fourth and fifth floor north-east side windows deleted or notated as non-required windows that must be removed should the adjacent property be developed to the same or greater height, as required by the corresponding condition below;
- (h) Details of any external building plant and equipment, including any flues etc. for the restaurant tenancy;
- (i) The provision of an external store of at least six cubic metres for each dwelling;
- (j) All plan and elevation drawings to be 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;
- (k) A coloured schedule of the materials, colours and finishes to be used on the main external surfaces, including roofs, walls, windows, doors and canopy;
- (l) Any modifications required by the Sustainable Design Assessment required by the corresponding condition below; and
- (m) Any modifications required by the Waste Management Plan required by the corresponding condition below.

4. Layout Not Altered

The use and development must not be altered without the written consent of the Responsible Authority.

5. Waste Management

Before the development starts, excluding demolition and bulk excavation, a Waste Management Plan must be prepared in accordance with the City of Port Phillip's Community Amenity Local Law No. 3 and submitted to and approved by the City of Port Phillip. Waste Management must be carried out in accordance with the approved Waste Management Plan.



6. Legal Agreement - Windows on Boundaries

Before the development starts, excluding demolition and bulk excavation, the applicant must enter into an agreement under Section 173 of the *Planning and Environment Act 1987* with the City of Port Phillip. The agreement must be in a form to the satisfaction of the City of Port Phillip, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including the City of Port Phillip's reasonable costs and expense (including legal expenses) incidental to the preparation, registration and enforcement of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:

- (a) That any Vendor Statement pursuant to Section 32 of the Sale of Land Act 1962 with respect to the subject property must advise that the use of the windows third, fourth and fifth floor levels on the north-east side elevation may be lost in the event that the adjacent property at 155-159 Buckhurst Street is developed.

The agreement will be registered on Title in accordance with Section 181 of the *Planning and Environment Act 1987*. A dealing number must be provided to the Responsible Authority.

7. Sustainable Design Assessment

Before the development starts excluding demolition and bulk excavation, a Sustainable Design Assessment that outlines proposed sustainable design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. When approved, the Assessment will be endorsed and will then form part of the permit. The sustainable design initiatives must be implemented prior to the occupation of the development and at no cost to the Responsible Authority. The details of the Assessment must not be altered unless with the prior written consent of the Responsible Authority.

8. Number of Restaurant Patrons

No more than 40 patrons must occupy the restaurant premises during operating hours, unless otherwise agreed in writing by the City of Port Phillip.

9. Car Park

Before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:

- (a) Constructed;
- (b) Properly formed to such levels that may be used in accordance with the plans;
- (c) Surfaced with an all weather surface or seal coat (as appropriate);
- (d) Drained and maintained; and
- (e) Line marked to indicate each car space, loading bay and/or access lane.
- (f) Clearly marked to show the direction of traffic along access land and driveways

All to the satisfaction of the City of Port Phillip.

10. Contaminated Land

Before the development starts (or the certification or issue of a Statement of Compliance under the Subdivision Act 1988), with the exception of any works required by the Auditor, the Responsible Authority must be provided with:

- (a) A Certificate of Environmental Audit in accordance with Section 53Y of the Environment Protection Act 1970; or



- (b) A Statement of Environmental Audit in accordance with Section 53YZ of the Environment Protection Act 1970. A Statement must state that the site is suitable for the use and development allowed by this permit.

Where a Statement of Environmental Audit is provided, all the conditions of the Statement of Environmental Audit must be complied with to the satisfaction of the Responsible Authority, prior to commencement of use of the site. Written confirmation of compliance must be provided by a suitably qualified environmental professional or other suitable person acceptable to the responsible authority. In addition, sign off must be in accordance with any requirements in the Statement conditions regarding verification of works.

If there are conditions on a Statement of Environmental Audit that the Responsible Authority considers require significant ongoing maintenance and/or monitoring, the applicant must enter into a Section 173 Agreement under the Planning and Environment Act 1987. The Agreement must be executed on title prior to the commencement of the use and prior to the issue of a Statement of Compliance under the Subdivision Act 1987. The applicant must meet all costs associated with drafting and execution of the Agreement, including those incurred by the Responsible Authority.

11. Construction Management Plan

Before the development starts a detailed Construction Management Plan (CMP) must be prepared and be approved to the satisfaction of the City of Port Phillip. The CMP must address the following, where applicable:

- Staging of construction.
- Management of public access and linkages around the site during construction.
- Site access and traffic management (including any disruptions to adjoining vehicular and pedestrian access ways).
- Any works within the adjoining street network road reserves.
- Sediment control and site drainage.
- Hours of construction
- Control of noise, dust and soiling of roadways.
- Discharge of polluted waters.
- Street trees.
- Collection and disposal of building and construction waste.

12. Schedule of Finishes

Before the development starts a sample board including a colour, rendered and notated plan / elevation that illustrates the location and details of all external materials and finishes must be submitted to and be to the satisfaction of the Responsible Authority and when approved will form part of the endorsed plans. All finishes and surfaces of all external buildings and works, including materials and colours must be in conformity with the approved schedule to the satisfaction of the Responsible Authority.

13. Building Appurtenances

All building plant and equipment on the roofs, balcony areas, common areas, public through fares are to be concealed to the satisfaction of the Responsible Authority. The construction of any additional plant, machinery or other equipment must include appropriate screening to the satisfaction of the Responsible Authority.



14. Any satellite dishes, antennas or similar structures associated with the development must be designed and located at a single point on each building in the development to the satisfaction of the Responsible Authority, unless otherwise approved to the satisfaction of the Responsible Authority.
15. **3D Model**

Before the development starts a 3D model of the overall development and its immediate surrounds, as appropriate, must be submitted to the Responsible Authority and be to the satisfaction of the Responsible Authority in conformity with the Department of Planning and Community Development Advisory Note - 3D Digital Modelling.

In the event that substantial modifications are made to the overall development a revised 3D digital model must be submitted to and be to the satisfaction of the Responsible Authority.
16. **Drainage / Recycled Water / Infrastructure**

Before the development starts a detailed plan showing the proposed Stormwater drainage system design must be submitted to and approved by the City of Port Phillip. The plan must have regard to the Best Practice Environmental Management Guidelines for Urban Stormwater and incorporate water sensitive urban design principles. The Stormwater drainage system must be constructed for the development and provisions made to connect the system to accept the discharge from the site in accordance with plans and specifications first approved by the City of Port Phillip.
17. The construction of the development must comply with the provisions of any agreements between the owner and the relevant water authority relating to the supply of water, recycled water or the provision of sewerage as appropriate. All works in relation to the supply of water, recycled water or sewerage must be completed prior to the issue of a Statement of Compliance unless an alternative arrangement is set out in any agreement with the relevant water authority.
18. The construction of the development must comply with the provisions of any agreements between the owner and relevant energy authority relating to the supply of energy as appropriate. All works in relation to the supply of energy must be completed prior to the issue of a Statement of Compliance unless an alternative arrangement is set out in any agreement with the relevant energy authority.
19. The development must include dual reticulation and a connection point to connect to a potential future precinct scale alternative water supply via a third pipe network to the satisfaction of the relevant water authority to the satisfaction of the Responsible Authority.
20. The development must have a finished floor level of 3.0m AHD for dwellings or as otherwise agreed with Melbourne Water.
21. **Advertising Signs**

No further advertising signs shall be erected, painted or displayed on the land without the permission of the Responsible Authority unless in accordance with the provisions of the port Phillip Planning Scheme.
22. **Noise Attenuation**

Before the development starts, excluding demolition and site preparation works, an acoustic report prepared by a qualified acoustic consultant must be submitted to and be to the satisfaction of the Responsible Authority. The report must provide for noise attenuation measures to achieve a maximum noise level of 45dB(a)Leq in unfurnished and uncarpeted



habitable rooms with all windows and doors closed, unless there is no suitable air conditioning and/or mechanical ventilation, in which case the maximum noise level of 45dB(A)Leq in unfurnished and uncarpeted habitable rooms must be achieved with all the windows half open and the doors closed. The report must be based on average external noise levels measures as part of a noise level assessment. The recommendations in the approved acoustic report must be implemented, at no cost to the Responsible Authority, prior to the occupation of the dwellings.

23. Municipal requirements

Before the development is occupied, the Applicant/Owner must do the following things to the satisfaction of the City of Port Phillip:

- (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; and
 - (c) Comply with conditions (if any) required by the Council or other relevant Authorities in respect of alterations/reinstatement.
24. No street tree adjacent to the site may be removed, lopped, pruned or root pruned and no tree pits may be altered without prior written consent from the City of Port Phillip.
25. No garbage bin or surplus materials generated by the permitted use may be deposited or stored outside the site and bins must be returned to the garbage storage areas as soon as practicable after garbage collection.
26. All public lighting should conform to AS1158, AS3771 and the Public Lighting Code September 2001 and must be designed, baffled and located to the satisfaction of the City of Port Phillip.
27. The owner of the subject land must reconstruct the footways adjacent to the subject land in accordance with plans and specifications first approved by the City of Port Phillip.
28. Before the occupation of the building(s) allowed by this permit, all new or extended walls on or facing boundary of adjoining properties and/or a laneway must be cleaned and finished to a uniform standard to the satisfaction of the City of Port Phillip. 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 City of Port Phillip. Painted or rendered or bagged walls must be finished to a uniform standard to the satisfaction of the City of Port Phillip.
29. Before the development starts **excluding demolition and bulk excavation**, or as otherwise agreed by the City of Port Phillip, a waste management plan must be submitted and be to the satisfaction of the City of Port Phillip. This plan must be prepared in consultation with the City of Port Phillip. Waste storage and collection arrangements must be adhered to and must not be altered within the prior written consent of City of Port Phillip.
- (a) Sufficient garbage storage facilities shall be provided within the property boundary. Garbage facilities shall be to the satisfaction of the City of Port Phillip.
 - (b) No garbage bin or surplus materials generated by the permitted use may be deposited or stored outside the site and bins must be returned to the garbage storage areas as soon as practicable after garbage collection to the satisfaction of the City of Port Phillip.
 - (c) All garbage and other waste material must be stored in an area set aside for such purpose to the satisfaction of the City of Port Phillip.



- (d) No garbage bins or waste materials generated by the permitted use shall be deposited or stored outside the site and bins must be returned to the garbage storage area as soon as practicable after garbage collection, to the satisfaction of the City of Port Phillip.

30. Expiry of Permit

In accordance with Section 68 of the Planning and Environment Act 1987, this permit will expire if one of the following circumstances applies:

- The development is not started within three (3) years of the date of this permit.
- The development is not completed within five (5) years of the date of this permit.
- The use does not start within two years of completion of the development.
- The use is discontinued for a period of two years.

In accordance with Section 69 of the Planning and Environment Act 1987, 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.

31. Agreement under Section 173 of the Planning and Environment Act 1987 Re: Developer Contribution

Before the development starts (other than demolition or works to remediate contaminated land in accordance with an Auditors direction, or site preparation works), the applicant must:

- (a) Enter into an agreement under Section 173 of the *Planning and Environment Act 1987* with the Responsible Authority;
- (b) Register the agreement on the title(s) for the land in accordance with Section 181 of the *Planning and Environment Act 1987*; and
- (c) Provide the Responsible Authority with the dealing number confirming the registration of the title.

The agreement must be in a form to the satisfaction of the Responsible Authority, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expense (including legal expenses) incidental to the preparation, registration, enforcement and ending of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:

- (a) The developer to pay a development contribution of:
 - \$15,900 per dwelling;
 - \$180 per sqm of gross commercial floor area;
 - \$150 per sqm of gross retail floor area;or other amount outlined within an approved development contribution plan to the satisfaction of the Responsible Authority.
- (b) Require that development contributions are to be indexed quarterly from 1 July 2015 using the Price Index of Output of the Construction Industries (Victoria) by the Australian Bureau of Statistics.
- (c) Require registration of the Agreement on the titles to the affected lands as applicable.



- (d) Include a schedule of the types of infrastructure to be delivered by the Development Agency using development contributions.
- (e) Confirm that contributions will be payable to the Metropolitan Planning Authority.
- (f) Confirm that the contributions will be used by the Development Agency as stipulated by the Metropolitan Planning Authority to deliver the schedule of types of infrastructure.
- (g) Require that a bank guarantee to the value of 50% of the development contribution must be deposited with the Responsible Authority prior to the commencement of any works. The bank guarantee will be returned upon full payment of the development contribution.
- (h) Confirm the procedure for reducing the contribution paid if the permanent development contributions plan for the area is less than the amount stipulated in the Section 173 Agreement.
- (i) Require that payment of 10% of the contribution is at the time of issue of the building permit and 90% to be made prior to the issue of a Statement of Compliance in accordance with the *Subdivision Act 1988*.
- (j) The agreement must make provision for its removal from the land following completion of the obligations contained in the agreement.

Notes:

- The development must provide for and meet the requirements of the Australian Government Department of Broadband, communications and Digital Economy publication *Fibre in new developments; policy update* dated 22 June 2011 (as amended).

Expiry Date

The words “date of this permit” in condition No. 30 refers to 17 March 2014 being the date of planning permit P1253/2011.

REFERENCE ONLY - NOT TO BE REMOVED