

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P351/2017

APPLICANT	15 Park Street Pty Ltd
RESPONSIBLE AUTHORITY	Port Phillip City Council
RESPONDENTS	David McGowan, John Tabart and Others, Karina Reynolds and Others, George and Maureen Swinburne and Others
SUBJECT LAND	200 Wells Street SOUTH MELBOURNE VIC 3205
WHERE HELD	Melbourne
BEFORE	S. R. Cimino, Member
HEARING TYPE	Compulsory conference
DATE OF HEARING	27 June 2017
DATE OF ORDER	27 June 2017

ORDER

- 1 In application no. P351/2017, the decision of the Responsible Authority is set aside.
- 2 In permit application no. 906/2016 a permit is granted and directed to be issued for the land at 200 Wells Street SOUTH MELBOURNE VIC 3205 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

Use of land for the purpose of shops, construction of a multi-stoey mixed use building over basement levels containing dwellings and shops, reduction in the car parking requirements and a waiver of the loading bay requirements.
- 3 The hearing listed to commence on 10 July 2017 is cancelled and the dates vacated.

S. R. Cimino
Member

APPEARANCES:

For Applicant	Mr P Bisset, solicitor, Minter Ellison (24 May 2017) Mr J. Dabschenck, solicitor, Minter Ellison (26 May and 27 June 2017)
For Responsible Authority	Ms R. Davidov, solicitor, Best Hooper (24 May 2017) Ms T. Bisucci, solicitor, Best Hooper, (26 May and 27 June 2017)
For Respondents	Mr D McGowan in person (24 and 26 May 2017) Mr J. Tabarth for John Tabarth and Others (24 and 26 May 2017) Ms K. Reynolds for Karina Reynolds and Others (24 May 2017). Mr D, McGowan appeared for Karina Reynolds and Others on 26 May 2017. Ms G. Swinburne appeared for George Swinburne and Others (24 and 26 May 2017)

REASONS

- 1 This matter involves an application under Section 79 of the *Planning and Environment Act 1987* against the Port Phillip City Council's failure to grant a permit within the prescribed time for the construction of a multi-storey building on the subject land.
- 2 The matter was the subject of two compulsory conferences before Member Benz. At the second compulsory conference, on 26 May 2017, the parties signed settlement documents. The detail of the settlement documents was subsequently amended by way of an addendum signed by all parties.
- 3 The agreement was subject to two provisos. The first was that the Responsible Authority would confirm its consent to the settlement by 22 June 2017. The second was that no new parties arise from the giving of notice of amended plans.
- 4 I issued procedural orders on 1 June 2017 to progress this matter including directions for notice of amended plans, administrative mention and setting the matter down for a further compulsory conference in the event that new parties arise from notice of amended plans.
- 5 By email to the Registrar dated 22 June 2017, the Responsible Authority's solicitor confirmed that the Responsible Authority agrees to the settlement reached at the compulsory conference.
- 6 I have also been advised that no other persons have sought to be joined as parties arising from notice of amended plans.
- 7 Accordingly, all parties to the proceeding have reached agreement and seek orders by consent. This order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 8 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 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.
- 9 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:	906/2016
LAND:	200 Wells Street SOUTH MELBOURNE VIC 3205
WHAT THE PERMIT ALLOWS:	Use of land for the purpose of shops, construction of a multi-storey mixed use building over basement levels containing dwellings and shops, reduction in the car parking requirements and a waiver of the loading bay requirements.

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 two copies must be provided. The plans must be generally in accordance with the plans identified as ‘architectural drawings prepared by Artisan Architects and circulated for the purposes of the compulsory conference dated 24 May 2017 (Plans TP00A, TP01B, TP02A – TP20A), but modified to show:
 - (a) Minimum setback of 6 metres for Levels 6 and above to the northern title boundary (Little Bank Street).
 - (b) The ground and first floor podium level set back 2.2m from Little Bank Street to allow for a passing/waiting lane on the site.
 - (c) Levels 3, 4 and 5 setback 3 metres from Little Bank Street;
 - (d) Openable habitable room windows facing each street at podium levels.
 - (e) Lighting scheme for the building façade including ground floor and podium levels.
 - (f) An additional pedestrian access to the shop along Park Street and the introduction of mullions or similar features on the facade of the shops to reflect the fine grain pattern of shop fronts along Park and Wells Street.
 - (g) Redesigned residential lobbies that are clearly identifiable from proposed commercial spaces.
 - (h) Permeable material for the proposed garage door with the setback of the garage door to Little Bank Street to the satisfactory of the Responsible Authority.

- (i) All balconies having a minimum width of 1.6m.
- (j) delete occupiable part of the rooftop terrace at TP10 including the 1.7 metre high glass balustrade;
- (k) Minimum 25% of car stackers with a clearance height of 1.8 metres.
- (l) Minimum headroom for car parking in accordance with Design Standard 1 of Clause 52.06-8.
- (m) Minimum 20, on-site bicycle parking spaces accessible for visitors.
- (n) Minimum finished floor levels of the ground floor at 3.5 metres AHD.
- (o) Any changes required by conditions 4, 5, 6, 7, 8 and 9.
- (p) The introduction of an additional basement level to provide not less than 32 additional car parking spaces (having regard to any parking spaces which may be lost on other levels to enable access to that additional basement level).
- (q) The allocation of not less than 15 visitor car parking spaces.
- (r) The setback of dwellings 301, 312, 313, 314, 401, 413, 414, 415, 501, 513, 514 and 515 4.5 metres from the centre line of Little Bank Street.
- (s) The setback of dwellings 409, 410, 411, 412, 509, 510, 511 and 512 and the relevant section of 413 and 513 not less than 5 metres from the western boundary.
- (t) The replacement of the bedroom window with a highlight window in the south facing wall of the bedroom to dwellings 312 413 and 513.
- (u) The deletion of the terraces to dwellings 309, 310, 311 and the redesign of those dwellings to include a balcony/terrace setback not less than 5 metres from the western boundary.
- (v) The redesign of dwelling 312 to provide a balcony/terrace facing towards Little Bank Street.
- (w) Increase in the width of the planter adjacent to the western boundary or other screening device to prevent downwards views to the property at 36 – 38 Park Street to the west.
- (x) The redesign of the floor plates to the tower floor levels from level 6 – 20 (inclusive) generally in accordance with the attached plans TP07 Rev B dated 26.5.17, TP08 Rev B dated 26.5.17, TP20 Rev B dated 26.5.17 and the redesign of the floor plates of:
 - (i) podium levels 2, 4 and 5 generally in accordance with the attached plans TP02, TP04 and TP05 all Rev B dated 26.5.17; and
 - (ii) podium level 3 generally in accordance with the attached plan TP03 Rev B dated 26.5.17 subject to the deletion of the landscaped area on the western boundary to the satisfaction of the responsible authority.

- (y) Changes to the layout of the car parking areas and the shops and apartment layouts in the podium as a consequence of the plan changes required by this condition 1.
- (z) the ground floor plan to provide details of the final dimensions and typical internal layout of each shop in conjunction with the redesign of the parking area on the ground floor as required by this condition 1.
- (aa) modification of all communal corridors to ensure that they are DDA compliant.
- (bb) the provision of a typical bathroom layout for a one, two and three bedroom apartment to demonstrate the ability for those bathrooms to be adapted for disability access;
- (cc) all external glazing must be of a type that does not reflect more than 20% of visible light when measured at an angle of incidence normal to the glass surface.

No Alterations

- 2 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.

Walls on or facing the boundary

- 3 3. Before the development is occupied, all 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.

Plant and equipment on roof

- 4 The only plant or equipment shown on the endorsed plan must be erected on the roof top level and the area occupied by all plant and equipment must be in accordance with DDO26.

Project architect

- 5 Unless otherwise agreed by the Responsible Authority, Artisan Architects must be retained as the supervising architect for the development.

Sustainable Management Plan

- 6 Before the development starts (other than demolition or works to remediate contaminated land) a Sustainable Management Plan generally in accordance with the Plan prepared by Simpson Kotzman Consulting Engineers dated 22 September 2016 that outlines proposed sustainable design initiatives must be submitted to, be to the satisfaction of and

approved by the Responsible Authority. When approved, the Sustainable Management Plan will be endorsed and will then form part of the Permit. The development must incorporate the sustainable design initiatives listed in the approved Sustainable Management Plan to the satisfaction of the Responsible Authority. The plan must be revised to include:

- (a) A minimum of 70% overall score and 50% minimums in Energy, Water, Stormwater and IEQ categories in BESS.
- (b) A preliminary NatHERS assessment of sample units (including FirstRate, Accurate and BERS Pro) or provide information on how energy efficiency requirements will be achieved.
- (c) Confirmation that all major common area services are separately sub metered.
- (d) External shading devices to all unprotected northeast and northwest facing glazing.
- (e) 20% improvement in efficiency for maximum power density.
- (f) All inputs provided in the STORM report and connected treatments.
- (g) IEQ related initiatives to improve score to 50% in BESS.

Water Sensitive Urban Design

- 7 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 Water Sensitive Urban Design 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) as amended from time to time.

When approved, the Water Sensitive Urban Design Report will be endorsed and will then form part of the permit. The development must incorporate the sustainable design initiatives listed in the approved Water Sensitive Urban Design Report to the satisfaction of the Responsible Authority.

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

- 8 Before the development starts (other than demolition or works to remediate contaminated land) a Maintenance Manual for Water Sensitive Urban Design Initiatives to the satisfaction of the Responsible Authority must be submitted to, and approved in writing by, the Responsible Authority. 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 Maintenance Manual for Water Sensitive Urban Design Initiatives 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. The approved Maintenance Manual for Water Sensitive Urban Design Initiatives must be implemented to the satisfaction of the Responsible Authority.

Site Management Water Sensitive Urban Design

- 9 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; and
 - (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
- all to the satisfaction of the Responsible Authority.

Waste Management

- 10 Before the development starts (other than demolition or works to remediate contaminated land), a Waste Management Plan must be submitted to, and approved by, the Responsible Authority. The Waste Management Plan must be based on the draft "Best Practice Guidelines for Kerbside Recycling at Multi-Occupancy Residential Developments" (Sustainability Victoria June 2006) and be prepared by a Waste Management Engineer or Waste Management Planner. Once approved, the Waste Management Plan will be endorsed and will then form part of this Permit. The Waste Management 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 a loading area adjacent to the bin room for waste collection.
- (j) waste collection from within the building.

The approved Waste Management Plan must be implemented to the satisfaction of the Responsible Authority

Landscape Plan

- 11 Before the development starts (other than demolition or works to remediate contaminated land), a detailed Landscape Plan for the roof top terrace must be submitted to, be to the satisfaction of and approved by 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) all street trees and/or other trees on Council land;
 - (b) 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;;

Completion of Landscaping

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

Landscaping Maintenance

- 13 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.

Urban Art Plan

- 14 Before the development is occupied, 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 Urban Art Plan must be installed before the development is occupied to the satisfaction of the Responsible Authority.

Parking and Loading Areas must be available

- 15 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.

Vehicle Crossings

- 16 Before the development is occupied, 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.

Applicant to pay for Reinstatement

- 17 Before the development is occupied, the applicant/owner must do the following 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

- 18 Before the development is occupied, 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.

Car Parking Allocation

- 19 Without the further written consent of the Responsible Authority car parking for the approved development must be allocated as follows:
- (a) A maximum two spaces for the Shop.
 - (b) A maximum of two spaces for each three bedroom dwelling.
 - (c) A maximum of one space for each two bedroom dwelling.
 - (d) No less than fifteen car parking spaces for visitors with any additional spaces to be allocated for the purposes of visitor parking.
 - (e) Provision of parking for the one bedroom dwellings at a rate not less than 0.8 spaces per one bedroom dwelling.

No equipment and services

- 20 Except with the written consent of the Responsible Authority, no equipment, services and exhausts other than those shown on the endorsed plan must be erected above the roof level of the building.

Lighting baffled

- 21 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.

Privacy screens must be installed

- 22 Before the development is occupied, privacy screens in accordance with the endorsed plans must be installed to the satisfaction of the Responsible Authority. The privacy screens must be maintained to the satisfaction of the Responsible Authority.

Green Transport Plan

- 23 Before the development starts (other than demolition or works to remediate contaminated land), a Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to, and approved in writing by, the Responsible Authority. The Green Travel Plan must be prepared by a suitably qualified professional and must provide detailed advice regarding how traffic movements and staff parking will be managed and how any alternative, non-private vehicle transport modes will be encouraged. The Green Travel Plan should also identify specific opportunities for the provision of more sustainable transport options and encouragement of their use. The Green Travel Plan must include, but not be limited to:
- (a) a requirement that tram, train and bus timetables be installed in prominent locations in lifts and public areas (on noticeboards, etc);
 - (b) a requirement that bicycle parking areas be installed in well secured and prominent locations;
 - (c) provide a 'Share Car' parking space within the development for use by residents of the proposed development;
 - (d) the installation of signs in prominent locations advising of the location of existing and proposed share car schemes, bicycle parking facilities for residents and visitors, tram stops, taxi ranks, railway stations, bus stops and bicycle paths;
 - (e) a requirement that access to the on-site parking is restricted and controlled;
 - (f) establishment of a car-pooling database for residents;
 - (g) specific targets to guide the plans ongoing implementation;
 - (h) identification of persons responsible for the implementation of actions;

- (i) estimate timescales and costs for each action;
- (j) a plan for monitoring and review of the Green Travel Plan on an annual basis for at least three years.

The approved Green Travel Plan must be implemented to the satisfaction of the Responsible Authority.

SEPP N1

- 24 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 Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 to the satisfaction of the Responsible Authority.

Noise Attenuation for Dwellings

- 25 External traffic noise intrusion within 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* must 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)

to the satisfaction of the Responsible Authority.

PTV Conditions

- 26 The permit holder must take all reasonable steps to ensure that disruption to tram operation along Park Street is kept to a minimum during the construction of the development. Foreseen disruptions to tram operations during construction and mitigation measures must be communicated to Yarra Trams and Public Transport Victoria fourteen days prior.
- 27 The permit holder must ensure that all track, tram and overhead infrastructure is not damaged. Any damage to public transport infrastructure must be rectified to the satisfaction of Public Transport Victoria to the full cost of the permit holder

Expiry

- 28 This permit will expire if one of the following circumstances applies:
- (a) The development is not started within three years of the issued date of this permit.
 - (b) The development is not completed within two years of the date of commencement of works.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

--- End of Conditions ---