

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2605/2017
PLANNING APPLICATION NO. 239/2017

APPLICANT	Creelman Development (South Melbourne) Pty Ltd
RESPONSIBLE AUTHORITY	Port Phillip City Council
RESPONDENT	Xin Chen, Helen Loersch, Craig Bridge, Owners Corporation RP no. 3532 79-139 Park Street (89-95 Eastern Road), Andrew Moulding, Janice Boyd, Kam Wei Leong, Peter Bone, Peter Anscombe
SUBJECT LAND	77 Park Street & 286 Kings Way, South Melbourne
WHERE HELD	Melbourne
BEFORE	Nicholas Hadjigeorgiou, Member
HEARING TYPE	Compulsory conference
DATE OF HEARING	14 March 2018
DATE OF ORDER	17 April 2018

ORDER

- 1 The decision of the Responsible Authority is set aside.
- 2 In permit application 239/2017 a permit is granted and directed to be issued for the land at 77 Park Street & 286 Kings Way, South Melbourne in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
 - Buildings and works associated with the construction of a multi-storey residential building plus two basement levels, and
 - reduction in car parking requirements from the planning scheme.
- 3 The hearing scheduled to commence on 30 April 2018 for 4 days is vacated.

Nicholas Hadjigeorgiou
Member

APPEARANCES:

For Applicant	Mr Tyrone Rath, Solicitor, Planning and Property Partners P/L
For Responsible Authority	Mr Grant Logan, Mr Scott Parkinson, Town Planners in person
For Xin Chen	Mr G Barkla in person authorised by Xin Chen
For Helen Loersch	Ms Helen Loersch Proxy for Andrew Moulding and For Owners Corporation RP no. 3532, 79-139 Park Street (89-95 Eastern Road) Group
For Mr Craig Bridge	Mr Craig Bridge in person
For Andrew Moulding	Ms Helen Loersch
For Janice Boyd	Ms Janice Boyd
For Kam Wei Leong	Kam Wei (Joe) Leong in person
For Peter Bone	Proxy Joe Leong
For Peter Anscombe	Mr Peter Anscombe in person

REASONS

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

Nicholas Hadjigeorgiou
Member

APPENDIX A

VCAT REFERENCE NO:	P2605/2017
PERMIT APPLICATION NO:	239/2017
LAND:	77 Park Street & 286 Kings Way, South Melbourne
WHAT THE PERMIT ALLOWS:	
<ul style="list-style-type: none"> • Buildings and works associated with the construction of a multi-storey residential building plus two basement levels, and • reduction in car parking requirements from the planning scheme. <p>in accordance with the endorsed plans.</p>	

CONDITIONS

Amended Plans Required

1. Before the development commences, 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 without prejudice plans drawn by Jackson Clements Burrows Architects and dated 13 March 2018, but modified to show:
 - a) Modification to vehicle ramp entrance to allow for the queuing of one vehicle.
 - b) Provision of three visitor spaces (including a multi-purpose loading bay in basement level 2).
 - c) A minimum 5 bicycle parking spaces nominated as visitor spaces.
 - d) All apartments to have balcony spaces with minimum widths of 1.6 metres.
 - e) Location of flashing lights adjacent to the entrance to the vehicle basement ramp.
 - f) Revised vehicle swept path diagrams that demonstrate show suitable egress with a B85 vehicle and a minimum 300mm clearance is maintained from structures.
 - g) Any changes required by the Sustainable Management Plan at Condition 8.

- h) Any changes required by the Water Sensitive Urban Design Reports at Conditions 9 and 10.
- i) Any changes required by condition 8 (Landscape Plan).
- j) Any changes required by condition 11 (Waste Management Plan).
- k) Any changes required by Condition 12 (Acoustic Report)
- l) All plant, equipment and domestic services (including air conditioning, heating units, hotwater systems, etc.) which are to be located externally.
- m) All plan and elevation drawings fully dimensioned, including natural ground level, floor levels, and incremental and total wall and building heights and lengths, with heights to be expressed to Australian Height Datum (AHD) and/or reduced levels (RL).
- n) A reduction in floor area of the ground floor 'home office', associated with Apartment 0.05, to comply with clause 52.11 of the Port Phillip Planning Scheme.
- o) Urban Art to be included in accordance with Council's Urban Art Strategy and must be clearly indicated on the drawings, as per Condition 18.

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.

Tree Management Plan

- 3. Before the endorsement of plans under condition 1, a Tree Management Plan that outlines the following tree protection and management procedures identified in the arboricultural report prepared by John Patrick Landscape Architects dated March 2017 must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The Plan must include the following information:
 - a) A services plan that details construction impact to ensure that services installation impacts on retained trees are avoided.
 - b) Adherence to AS 4970 2009 – Protection of Trees on Development Sites.

When approved, the Plan will be endorsed and will then form part of the permit and the project must incorporate the requirements listed above.

Sustainable Management Plan

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

Water Sensitive Urban Design

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

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

Maintenance Manual for Water Sensitive Urban Design Initiatives

6. Before the endorsement of plans under condition 1, a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority. The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:
 - a) inspection frequency
 - b) cleanout procedures
 - c) as installed design details/diagrams including a sketch of how the system operates

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

Vehicle Crossing

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

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

Landscape Plan

8. Before the development starts (other than demolition or works to remediate contaminated land), a detailed Landscape Plan must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When the Landscape Plan is approved, it will become an endorsed plan forming part of this Permit. The Landscape Plan must incorporate:
 - a) A survey plan, including botanical names, of all existing vegetation/trees to be retained;
 - b) Buildings and vegetation (including botanical names) on neighbouring properties within 3m of the boundary;
 - c) All street trees and/or other trees on Council land;

- d) Provision of two street trees;
- e) A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways;
- f) Landscaping and planting within all open space areas of the site;
- g) Water sensitive urban design;
- h) Details of access to roof level and other vertical landscape areas; and
- i) Details of levels on the ground floor landscape areas.

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

Completion of Landscaping

- 9. 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

- 10. 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.

Waste Management

- 11. 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 Leigh Design dated 14 December 2016 but modified to address the following:
 - a) Waste collection to occur via private means.

Noise Attenuation for Apartments

- 12. Prior to occupation of the development, an amended acoustic report based on the report prepared by Acoustic Logic dated 12 May 2017 must be submitted to, approved by and be to the satisfaction of the Responsible Authority. The report must confirm that the building has been designed and constructed to achieve the following noise levels:
 - b) Not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am.
 - c) Not greater than 40dB(A) for living areas, assessed LAeq,16h from 6am to 10pm

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

Urban Art Plan

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

Green Transport Plan

14. Before the development starts (other than demolition or works to remediate contaminated land), a green travel plan to the satisfaction of the Responsible Authority, prepared by a suitably qualified professional, must be submitted to and approved by the Responsible Authority. The green travel plan must provide detailed advice regarding how traffic movements and staff parking will be managed and ensure an alternative, non-private vehicle transport modes will be encouraged. The plan should also identify specific opportunities for the provision of more sustainable transport options and encouragement of their use. The plan must include but not be limited to:
 - a) Tram, train and bus timetables be installed in prominent locations in lifts and public areas (on noticeboards, etc);
 - b) Bicycle parking areas to be installed in well secured and prominent locations;
 - c) Install signs in prominent locations advising of the location of existing and proposed share car schemes, bicycle parking facilities for residents and visitor, tram stops, taxi ranks, railway stations, bus stops and bicycle paths.
 - d) Ensure that access to the on-site parking is restricted and controlled.
 - e) Funding by the applicant of the purchase of a bicycle as part of the sale for each of the apartments.
 - f) Establishment of a car-pooling database for residents
 - g) Establishment of seed funding for the Owners Corporation to allocate for the purchase of public transport fares and on-line shopping deliveries.
 - h) Specific targets to guide the plans ongoing implementation;
 - i) Identify persons responsible for the implementation of actions;
 - j) Estimate timescales and costs for each action;
 - k) Include a plan for monitoring and review of the Travel Plan on an annual basis for at least three years.

Car Parking Allocation and Management Plan

15. Without the further written consent of the Responsible Authority car parking for the approved development must be allocated on any Plan of Subdivision as follows:
 - a) A minimum of one (1) car space for each two bedroom and three bedroom dwelling; and

- b) Three car spaces with 2 hour parking restrictions during 8am to 11pm including one that can be used as a multi-purpose loading bay with increased width clearance.

All to the satisfaction of the Responsible Authority.

Number of Dwellings

16. Without the further written consent of the Responsible Authority, no more than 50 dwellings may be constructed on the land.

Walls on or facing the Boundary

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

Piping and Ducting

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

No Equipment or Services

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

Privacy Screens Must Be Installed

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

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.

Services to be underground

22. All basic services to the property including water, electricity, gas, sewerage, telephone and telecommunications (whether by means of a

line or cable) must be installed underground and located in a position approved by the responsible authority.

SEPP N-1

23. 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.

Parking Areas must be available

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

Melbourne Water Conditions

25. Finished floor levels of ground floor residential dwellings must be constructed no lower than 3.0 metres to Australian Height Datum (AHD) which is 600mm above the applicable flood level of 2.4 metres to AHD. (climate change/ sea-level rise)
26. Finished floor levels of ground floor residential private open space (outdoor) must be constructed no lower than 2.96 metres to Australian Height Datum (AHD) which is over 300mm above the applicable flood level of 2.4 metres to AHD. (climate change/ sea-level rise)
27. Finished floor level of the main entry lobby area to main stair & lift shown at 2.7 metres to AHD must be protected by a flood barrier to the approval and satisfaction of Melbourne Water and the Responsible Authority. The flood barrier is to protect the main entry area to a level no lower than 3.0 metres to Australian Height Datum (AHD).
28. Finished surface level of Entry to the basement/ car lift shown at 2.85 metres to AHD must be protected by a flood barrier to the approval and satisfaction of Melbourne Water and the Responsible Authority. The flood barrier is to protect the basement entry to a level no lower than 3.0 metres to Australian Height Datum (AHD).
29. All other habitable areas of the development (town houses and lift entry lobby) must be constructed no lower than 3.0 metres to Australian Height Datum (AHD) which is 600mm above the applicable flood level of 2.4 metres to AHD.
30. Utility areas which are mandatory to be located lower than 3.0 metres to AHD (eg. at street level) must be to the approval/ satisfaction of their relevant authorities (including the any glass/glazing window panels) below the applicable flood level of 2.4 metres to AHD.
31. Prior to the commencement of construction, engineering computations and detailed construction plans of the proposed flood barriers must be submitted to Melbourne Water for consideration and approval.
32. Prior to the completion of works, a maintenance plan for the flood barriers must be submitted to Melbourne Water and the Responsible Authority. The maintenance plan must be treated the same as any

other essential services with mandatory annual reporting and maintenance checks.

33. Prior to the commencement of works, a Flood Risk Management Plan prepared by an accredited risk management professional must be provided to the satisfaction and approval of Melbourne Water and the Responsible Authority. The Flood Risk Management Plan must be binding to successors in title to provide for ongoing effective management of flood risks. The Flood Risk Management Plan is to include, but not be limited to:
 - a) Site Specific Flood Risks;
 - b) General Principles of Operation of the Flood Barriers; c. An Operational Risk Assessment;
 - c) Flood Barrier Rise Times; and
 - d) Maintenance and Reporting Schedule.
34. The drainage system for the development is to be constructed so that external flooding is unable to penetrate the basement/sub-floor area.
35. Prior to the commencement of work, the landowner/s must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987 with the Responsible Authority and Melbourne Water Corporation. All costs associated with the creation of an agreement must be borne by the permit holder. The agreement must be registered on title and run with the land, and must provide, to the satisfaction of the Responsible Authority and Melbourne Water, for:
 - a) Prospective and future owners of the property to be informed that the Land is subject to inundation;
 - b) Indemnifying Melbourne Water against any loss or damages associated with flooding;
 - c) Identify the use of the passive Self Closing Flood Barriers to provide protection to a level no lower than 3.0 metres to AHD.
 - d) Identify the ongoing maintenance requirements for the life of the passive Self Closing Flood Barrier. The maintenance plan must be treated as any other essential service with mandatory annual reporting and maintenance servicing.
36. Prior to the commencement of works, a separate application direct to Melbourne Water must be made for approval of any new or modified storm water connection to Melbourne Water's drains or watercourses.

Time for Starting and Completion

37. This permit will expire if one of the following circumstances applies:
 - e) The development is not started within four years of the date of this permit.

- f) The development is not completed within four 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 ---