

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2139/2016 AND
P2392/2016

APPLICANT

P2139/2016 Port Phillip City Council

P2392/2016 Bruce Allen and Others

RESPONSIBLE AUTHORITY Port Phillip City Council

RESPONDENTS

P2139/2016 Le Tet Property Group Pty Ltd
Owners Corporation PS701488H

P2392/2016 Le Tet Property Group Pty Ltd

SUBJECT LAND 157-161 Eastern Road
SOUTH MELBOURNE VIC 3205

WHERE HELD Melbourne

BEFORE S. R. Cimino, Member

HEARING TYPE Compulsory conference

DATE OF HEARING 30 January 2017

DATE OF ORDER 15 May 2017

ORDER

Application No. P2139/2017

- 1 The application is allowed.
- 2 Pursuant to Section 87 of the *Planning and Environment Act 1987*, planning permit no. 1140/2015 issued by the Responsible Authority on 12 August 2016 relating to land at 157-161 Eastern Road SOUTH MELBOURNE VIC 3205 is amended and the Tribunal directs that an amended permit be issued. The permit is amended as follows:
 - (a) The description of what the permit allows is amended to read:
Use of the land for dwellings; construction of mixed use building, plus 3 basement levels, containing offices at ground level and dwellings at the upper levels; a reduction in the statutory car parking requirements

and a waiver of the provision of a loading bay in accordance with the endorsed plans.

- (b) The conditions of the permit are amended to read as set out in Appendix A.

3 No order as to costs.

Application No. P2392/2016

4 The application is allowed.

5 Pursuant to Section 89 of the *Planning and Environment Act 1987*, planning permit no. 1140/2015 issued by the Responsible Authority on 12 August 2016 relating to land at 157-161 Eastern Road SOUTH MELBOURNE VIC 3205 is amended and the Tribunal directs that an amended permit be issued. The permit is amended as follows:

- (a) The description of what the permit allows is amended to read:

Use of the land for dwellings; construction of mixed use building, plus 3 basement levels, containing offices at ground level and dwellings at the upper levels; a reduction in the statutory car parking requirements and a waiver of the provision of a loading bay in accordance with the endorsed plans.

- (b) The conditions of the permit are amended to read as set out in Appendix A.

6 No order as to costs.

Hearing vacated

7 The listed for 25 May 2017 is cancelled and the date vacated.

S. R. Cimino
Member

APPEARANCES:

For Port Phillip City Council	Ms Romy Davidov, solicitor, Best Hooper
For Le Tet Property Group Pty Ltd	Mr David Vorchhemier, solicitor, HWL Ebsworth
For Bruce Allen and Others	Mr Bruce Allen and Mr Trevor Nink
For Owners Corporation PS701488H	Mr Peter O'Farrell, barrister, instructed by Gadens

REASONS

- 1 This matter relates to two related proceedings seeking to amend planning permit no 1140/2015 which allows the construction of a multi-level mixed use building on the land. Application no. P2139/2016 is brought by the Responsible Authority under Section 87 of the *Planning and Environment Act 1987* to amend the permit while application no. P2392/2016 is brought jointly by a group of neighbouring property owners under Section 89 of the Act to cancel the permit. The applications have been lodged following the failure of the applicant to give proper notice of the application for review.
- 2 The matter was the subject of a compulsory conference on 30 January 2017 at which time the parties made substantial progress toward settlement of both proceedings. However, further time was required to allow for changes to the plans to facilitate settlement. These matters have been set down for administrative mention on a number of occasions to give the parties opportunities to file settlement documents.
- 3 The parties have now filed documents to settle both matters. They seek orders by consent to amend the permit as agreed. The agreements involve changes to both the conditions of the permit which, in turn facilitate changes to the plans to be endorsed.
- 4 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
 - the responsible authority is of the opinion that the amended permit is appropriate having regard to the matters it is required to consider under section 60 of the Act, including the balanced application of the strategies and policies of the relevant planning scheme and is otherwise in conformity with the provisions of the planning scheme and the *Planning and Environment Act 1987*;
 - the proposed orders will not result in any change to the proposed use or development which would materially affect any person other than the parties to the proceeding.
- 5 Based on the information available to the Tribunal, including the discussion at the compulsory conference and the details set out in the settlement documents, 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:	1140/2015
LAND:	157-161 Eastern Road SOUTH MELBOURNE VIC 3205
WHAT THE PERMIT ALLOWS: Use of the land for dwellings; construction of mixed use building, plus 3 basement levels, containing offices at ground level and dwellings at the upper levels; a reduction in the statutory car parking requirements and a waiver of the provision of a loading bay in accordance with the endorsed plans.	

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 amended plans by KUD Architects, Drawing Nos. VCO6 to VC13 and VC18 to VC26 (inclusive), marked either Revision C or D and all dated 12 April 2017, but modified to show:
 - (a) The building height must not exceed 30m excluding building services which may have a maximum height of 4m above the building height.
 - (b) The service area above the top level of the building not exceeding 10 per cent of the gross floor area of the top building level or 50 square metres whichever is the greater. This limit does not apply to soar panels.
 - (c) Details of treatment to windows in the light court to ensure appropriate daylight and prevent internal overlooking.
 - (d) Deletion of the notation 'proposed new concrete pedestrian crossover to made good in accordance with the conditions of RA' and the pedestrian crossover on plan.
 - (e) A storage space for each apartment

- (f) Urban Art to be included in accordance with Council's Urban Art Strategy and must be clearly indicated on the drawings, as per Condition 12;
- (g) 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;
- (h) Details of any screening required by this permit including conditions 22 and 22A;
- (i) Any changes required by condition 23 (Green Transport Plan);
- (j) Any changes required by condition 9 (Landscape Plan);
- (k) Any changes required by condition 4 (Sustainable Management Plan);
- (l) Any changes required by condition 5 (Water Sensitive Urban Design);
- (m) Any changes required by condition 8 (Waste Management Plan).
- (n) The northern lightcourt amended to minimum dimensions of 2.5 metres (width) by 5 metres (depth) in the location illustrated in 'VCAT Plan A' dated 30/1/17 without otherwise increasing the envelope of the building, AND
- (o) Any changes required by condition 25A.

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.

Walls on or facing the boundary

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

Sustainable Management Plan

- 4 Before the development starts (other than demolition or works to remediate contaminated land) 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 development starts (other than demolition or works to remediate contaminated land) a Water Sensitive Urban Design Report that outlines proposed water sensitive urban design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The report must demonstrate how the development meets the water quality performance objectives as set out in the Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) or as amended.

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

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

- 6 Before the development starts (other than demolition or works to remediate contaminated land) a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority. The program must include, but is not limited to:
- (a) inspection frequency;
 - (b) cleanout procedures; and
 - (c) as installed design details/diagrams including a sketch of how the system operates.

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

Site Management Water Sensitive Urban Design

- 7 The owner 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.

Waste Management

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

- (a) The estimated garbage and recycling generation volumes for the whole development;
- (b) The garbage and recycling equipment to be used and the collection service requirements, including the frequency of collection;
- (c) The location of, proximity, screening of and space allocated both to the garbage and recycling storage areas and collection points;
- (d) The path of access for both users and collection vehicles;
- (e) How noise, odour and litter will be managed and minimised;
- (f) Approved facilities for washing bins and storage areas;
- (g) Who is responsible for each stage of the waste management process, and
- (h) How tenants and residents will be regularly informed of the waste management arrangements.

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

Landscape Plan

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

- (a) A survey plan, including botanical names, of all existing vegetation/trees to be retained;
- (b) Buildings and vegetation (including botanical names) on neighbouring properties within 3m of the boundary;
- (c) Significant trees greater than 1.5m in circumference, 1m above ground;
- (d) All street trees and/or other trees on Council land;

- (e) A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways;
- (f) Landscaping and planting within all open space areas of the site, and
- (g) Water sensitive urban design;

Trees are not to be sited over easements. All species selected must be to the satisfaction of the Responsible Authority.

Completion of Landscaping

- 10 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

- 11 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

- 12 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.

Number of Dwellings

- 13 Without the written consent of the Responsible Authority, no more than 54 dwellings may be constructed on the land.

Parking and Loading Areas must be available

- 14 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

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

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

Applicant to pay for Reinstatement

- 16 Before the occupation of the development *allowed by this permit*, the applicant/owner must do the following things to the satisfaction of the Responsible Authority:
- (a) Pay the costs of all alterations/reinstatement of Council and Public Authority assets necessary and required by such Authorities for the development.
 - (b) Obtain the prior written approval of the Council or other relevant Authority for such alterations/reinstatement.
 - (c) Comply with conditions (if any) required by the Council or other relevant Authorities in respect of alterations/reinstatement.

Public Services

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

Car Parking Allocation

- 18 Without the further written consent of the Responsible Authority car parking for the approved development must be allocated as follows:
- (a) Maximum of 1 space per 1 bedroom dwelling;
 - (b) At least 1 space allocated to each 2 bedroom dwelling;
 - (c) No more than five spaces for the offices, and
 - (d) No visitor spaces.

On-Site Bicycle Parking

- 19 Before the development is occupied, bicycle racks must be provided on the land to the satisfaction of the Responsible Authority.

No equipment and services

- 20 No equipment, services and exhausts other than those shown on the endorsed plan must be erected above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.

Lighting baffled

- 21 All lighting of external areas must be suitably baffled so as not to cause nuisance or annoyance to nearby properties or roads.

Privacy screens must be installed

- 22 Prior to the occupation of the development allowed by this permit, privacy screens as required in accordance with the endorsed plans and condition 22A must be installed, and maintained thereafter to the satisfaction of the Responsible Authority.

22A Prior to the endorsement of plans, either:

- (a) Plans showing fixed privacy screens (not including obscure glazing or organic screening) to a height of 1.7 metres to all windows, terraces and balconies of the subject building which overlook (including downward looking) any private open space, habitable room window, balcony or terrace of 97 and 99 Palmerston Crescent to prevent overlooking (including downward looking) of any private open space, habitable room window, balcony or terrace of 97 and 99 Palmerston Crescent; or
- (b) An assessment illustrating how fixed privacy screens (not including obscure glazing or organic screening) will be installed to prevent overlooking (including downward looking) of any private open space, habitable room window, balcony or terrace of 97 and 99 Palmerston Crescent. This assessment must include:
 - (i) Cross sections and elevation drawings of the proposed screens drawn to scale and fully dimensioned;
 - (ii) Clear design details of proposed screens including materials;
 - (iii) Clearly illustrate how any screen will prevent overlooking (including downward looking);
 - (iv) Show the exact width and thickness of any louver or batten, the exact spacing of any louver or batten;
 - (v) a section detail from behind the screen demonstrating that the screens will prevent overlooking (including downward looking);

must be submitted to satisfaction of the Responsible Authority.

Upon being satisfied that the techniques selected will prevent overlooking (including downward looking) of any private open space, habitable room window, balcony or terrace of 97 and 99 Palmerston Crescent the Responsible Authority must endorse the screening technique as the approved screens.

The approved screens must be installed prior to the occupation of the development allowed by this permit, and thereafter 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, 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 that 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) The installation of signs in prominent locations advising of the location of existing car share schemes, bicycle parking facilities for residents and visitor, tram stops, taxi ranks, railway stations, bus stops and bicycle paths;
 - (d) Ensuring 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) Establishing a car-pooling database for residents;
 - (g) Establishing 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 ongoing implementation of the plan;
 - (i) Identifying persons responsible for the implementation of actions;
 - (j) Estimating timescales and costs for each action; and
 - (k) The inclusion of a plan for monitoring and reviewing the plan on an annual basis for at least three years.

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 Apartments

- 25 External traffic noise intrusion within apartment bedrooms and living areas (upon completion, with furnishing within these spaces and with windows

and doors closed and measured in accordance with AS/NZS2107/2000 Acoustics – Recommended Design Sound levels and Reverberation Times for Building Interior) shall comply with the following:

- (a) Between 10pm and 7am in bedrooms areas must not exceed LAeq, 9hour 40dB(A), and
- (b) Between 7am and 10pm in living rooms must not exceed LAeq (15hour) 45dB(A).

25A Prior to the endorsement of plans, a report by a suitably qualified acoustic consultant to the satisfaction of the Responsible Authority, must be submitted to the Responsible Authority. The report must assess the acoustic impact of the plant and equipment of 97 and 99 Palmerston Crescent and provide any recommendations to ensure that the subject building on the land is designed so that the amenity experienced on the subject land is not adversely affected by any plant and equipment on 97 and 99 Palmerston Crescent. The report must be to the satisfaction of the Responsible Authority and upon being endorsed, will form part of this permit. Any recommendations in the report must be incorporated into the design of the building and implemented to the satisfaction of the Responsible Authority at the cost of the permit holder.

Treatment of Fumes

26 Fumes from any café/restaurant kitchen(s) must be treated within a mechanical exhaust system to ensure that any discharge does not create a nuisance (as defined under the *Public Health and Wellbeing Act 2008*). Options available include carbon filters, ultra violet ozone producing lamps, electrostatic precipitation, odour neutralising system or other suitable method. The method of treatment must be designed, installed, operated and maintained to the satisfaction of the Responsible Authority.

Time for starting and completion

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

- (a) The development is not started within three (3) years of the date of this permit.
- (b) The development is not completed within two (2) 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 ---