

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION**

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1133/2016

APPLICANT	King and Godfree Pty Ltd
RESPONSIBLE AUTHORITY	Melbourne City Council
RESPONDENTS	Carlton Residents Association Inc. John Bryson; Ian and Greta Bird.
SUBJECT LAND	291-299 Lygon St and 222-224 Faraday Street CARLTON VIC 3053
WHERE HELD	Melbourne
BEFORE	S. R. Cimino, Member
HEARING TYPE	Compulsory conference
DATE OF HEARING	15 August 2016
DATE OF ORDER	17 August 2016

ORDER

- 1 Pursuant to section 87 of the *Victorian Civil and Administrative Tribunal Act* 1998 and with the agreement of all parties present at the compulsory conference, the following persons are struck out as parties to the proceeding because they failed to attend the compulsory conference as directed by the Tribunal:
Gennaro Mastroianni
- 2 The decision of the Responsible Authority is set aside..
- 3 In permit application TP-2016-188 a permit is granted and directed to be issued for the land at 291-299 Lygon St and 222-224 Faraday Street CARLTON VIC 3053 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
Partial demolition, construction of buildings and works, waiver of car parking and loading requirements and use of the land for the sale and consumption of liquor in accordance with the endorsed plans.
- 4 The hearing listed to commence on the 19 September 2016 is cancelled and the dates vacated.



S. R. Cimino
Member

APPEARANCES:

For Applicant

Mr P Connor, barrister instructed by Russell Kennedy.

For Responsible Authority

Mr B. Rebakis, town planner

For Respondents

For Carlton Residents Association Inc – Mr M Foo; For John Bryson – Mr P Cusack; For Ian and Greta Bird – Mr Ian Bird



REASONS

- 1 This matter relates to an application under Section 79 of the *Planning and Environment Act 1987* against the Melbourne City Council's failure to grant a permit within the prescribed time for partial demolition of existing buildings alterations and extension to buildings to facilitate the use of land for food and drink premises including the sale and consumption of alcohol.
- 2 At the compulsory conference, the parties who attended parties reached agreement. They agree that a permit should issue subject to the inclusion of conditions as set out in Appendix A of this order. They also agree that any party who did not attend the compulsory conference should be struck out as a party.
- 3 Accordingly, this order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 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 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, 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:	TP-2016-188
LAND:	291-299 Lygon St and 222-224 Faraday Street CARLTON VIC 3053
WHAT THE PERMIT ALLOWS:	Partial demolition, construction of buildings and works, waiver of car parking and loading requirements and use of the land for the sale and consumption of liquor in accordance with the endorsed plans.

CONDITIONS

- 1 Prior to the commencement of the use and / or development on the land, two copies of plans, drawn to scale must be submitted to the Responsible Authority generally in accordance with the plans by Herbert and Mason, all drawings nominated as ‘VCAT Submission’ and dated 3 August 2016 but amended to show:
 - (a) Details of bollard/s to limit loading, deliveries and waste collection to non-peak pedestrian times.
 - (b) Details of the security lighting to improve safety to King and Godfree and Faraday Lanes.
 - (c) Measures to prevent patrons using the roof top terrace from either sitting or standing within 1 metre of the parapet to the southern and eastern facades.
 - (d) Details of rooftop terrace roof structure to comprise lightweight materials;
 - (e) Written confirmation on plans stating that there will be no temporary or permanent shading structures or any similar structures on the rooftop at any time of year as per Condition 3.
 - (f) Revised orientation of the “Sirena Tuna” sign.

These amended plans must be to the satisfaction of the Responsible Authority and when approved shall be the endorsed plans of this permit.
- 2 The use and development as shown on the endorsed plans must not be altered or modified unless with the prior written consent of the Responsible Authority.



- 3 There must be no temporary or permanent shading structures, or any similar structures, to the rooftop at any time to the satisfaction of the Responsible Authority.
- 4 Prior to the commencement of the use of the land, the applicant must submit to the Responsible Authority an amended Venue Management Plan generally in accordance with the Venue Management Plan submitted with the application on 11 March 2016, but revised as follows:
 - (a) The ways in which staff are to be made aware of the conditions attached to this permit.
 - (b) Operating hours to reflect planning permit.
 - (c) Details on how to reduce anti-social behaviour, in particular to the new through block link, after hours.
 - (d) Removal of any reference to DJs unless playing background music only.
 - (e) Details of the management of patrons in outdoor areas to minimise impacts on the amenity of nearby properties. This includes the management of smokers and is particularly important to the rooftop and courtyard.
 - (f) No music to the ground floor courtyard at all times.
 - (g) No umbrellas or other shading devices to the roof top.

The management plan must be to the satisfaction of, and be approved by, the Responsible Authority. Once approved, the management plan will form a part of the endorsed documents under this permit. The operation of the use must be carried out in accordance with the endorsed operational management plan unless with the prior written consent of the Responsible Authority.

- 5 Prior to the commencement of the use of the land, revised traffic advice by a suitably qualified professional providing:
 - (a) Exact time and frequency of loading, deliveries and waste collection to the satisfaction of the Responsible Authority.
 - (b) Details of the operation of the bollard/s to prevent loading, deliveries and waste outside of non-peak pedestrian times to the satisfaction of the Responsible Authority.
- 6 The use of any land or building or part thereof as shown on the endorsed plan(s) must not be altered or modified unless with the prior written consent of the Responsible Authority.
- 7 Except with the prior written consent of the Responsible Authority, the ground floor restaurant must only be open to public and be used for the sale and consumption of alcohol between the following hours:
 - (a) Indoor areas: 7.00am to 12 midnight



(b) Ground floor courtyard: 10.00am to 10.00pm

- 8 The maximum number of patrons to the ground floor restaurant must be no more than 170 persons at any one time unless with the prior written consent of the Responsible Authority.
- 9 Except with the prior written consent of the Responsible Authority, the rooftop terrace must only be open to the public and be used for the sale and consumption of alcohol between the following hours:
 - (a) Sunday to Thursday: 12 noon to 11.00pm
 - (b) Friday and Saturday: 12 noon to 12 midnight
- 10 The maximum number of patrons to the rooftop tavern must be no more than 200 persons at any one time unless with the prior written consent of the Responsible Authority.
- 11 There must be no music to the courtyard between 9pm and 10am the following day (7 days a week). Music noise in all other outdoor areas must only be played at background levels to the satisfaction of the Responsible Authority.
- 12 At all times when the premises is open for business, a designated manager must be in charge of the premises.
- 13 A sign must be attached to an internal wall in a prominent position adjacent to the entry/exit point to advise patrons to leave the premises in a quiet and orderly fashion.

The sign must be to the satisfaction of the Responsible Authority.
- 14 The waste storage and collection arrangements must be in accordance with the Waste Management Plan (WMP) prepared by Ratio dated 29 Feb 2016. The submitted WMP must not be altered without prior consent of the City of Melbourne – Engineering Services
- 15 No bottles or other waste material may be removed from the site between the hours of 9.00pm and 7.00am the following morning, seven days a week.
- 16 Empty bottles from the operation of the premises must be placed into a bag and deposited into recycling bins quietly so as not to cause disturbance to adjoining and nearby residents, to the satisfaction of the Responsible Authority.
- 17 The noise generated by the premises must at all times comply with the requirements of the State Environment Protection Policy, (Control of Noise from Commerce, Industry and Trade) No. N-1, and State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2, to the satisfaction of the Responsible Authority.
- 18 Prior to the endorsement of plans under condition 1 of this permit, an acoustic report prepared by a suitably qualified acoustic consultant must



submitted to and approved by the Responsible Authority. When approved the report will be endorsed and will form part of the permit. The report must:

- (a) identify all potential noise sources, sound attenuation work and any management/operational measures required to ensure that the noise levels generated by the activities on the land will comply with the *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*, and
- (b) demonstrate that background noise levels used are measured in accordance with the schedule C of *State Environment Protection Policy No. N-1*

to the satisfaction of the Responsible Authority.

The recommendations of the report must, as appropriate, be shown on the plans submitted for endorsement, and thereafter be implemented to the satisfaction of the Responsible Authority.

- 19 The use must not detrimentally affect the amenity of the area or the amenity of persons living in proximity of the site by reason of the emission of noise.
- 20 Except with the prior written consent of the Responsible Authority noise levels from the premises (both the ground level and rooftop) must be background music only at all times.
- 21 Management must take all reasonable steps to ensure appropriate patron behaviour in and around the premises at all times the premises is operating.
- 22 Sexually explicit entertainment must not be provided on the premises at any time. Sexually explicit entertainment is that provided by a person or persons who are nude, display sexual organs or are topless females. Entertainment includes "table-top" dancing "lap" dancing, topless bar serving staff, live strip tease shows and their equivalent.
- 23 All projections over the street alignment must be drained to a legal point of discharge in accordance with plans and specifications first approved by the Responsible Authority – Engineering Services.
- 24 Prior to the commencement of the development, a stormwater drainage system incorporating integrated water management design principles must be submitted to, and approved, by the Responsible Authority - Engineering Services. This system must be constructed prior to the occupation of the development and provision made to connect this system to the City of Melbourne's stormwater drainage system.
- 25 Prior to the commencement of the use/occupation of the development, all necessary vehicle crossings must be constructed and all unnecessary vehicle crossings must be demolished and the footpath, kerb and channel reconstructed, in accordance with plans and specifications first approved by the Responsible Authority – Engineering Services.



- 26 The footpath(s) adjoining the site along Lygon Street and Faraday Street must be reconstructed together with associated works including the reconstruction or relocation of kerb and channel and/or services as necessary at the cost of the developer, in accordance with plans and specifications first approved by the Responsible Authority – Engineering Services.
- 27 Existing street levels in Lygon Street and Faraday Street must not be altered for the purpose of constructing new vehicle crossings or pedestrian entrances without first obtaining approval from the Responsible Authority – Engineering Services
- 28 Existing public street lighting must not be altered without first obtaining the written approval of the Responsible Authority – Engineering Services.
- 29 Existing street furniture must not be removed or relocated without first obtaining the written approval of the Responsible Authority – Engineering Services.
- 30 This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within two years of the date of this permit.
 - (b) The development is not completed within four years of the date of this permit.
 - (c) The use is not started within four years of the date of this permit.

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.

--- End of Conditions ---

