

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO.P1595/2016, P2596/2016
PERMIT APPLICATION NO.KP-519/2012/A, KP-
519/2012

CATCHWORDS

Section 81(1) *Planning and Environment Act 1987* – permit extension of time - warehousing

Section 77 *Planning and Environment Act 1987* – amendment to permit – additional dwellings – total dwellings 85 – overdevelopment – bulk and scale – safety and traffic

P1595/2016

APPLICANT BC39 Pty Ltd
RESPONSIBLE AUTHORITY Kingston City Council
RESPONDENTS Pretlock Pty Ltd, Ken Carney, Andrew Bearsley & Others, Natasha Byrne, Peter Carr, Aspendale Gardens Community Service Inc, Aspendale Residents Association Inc

P2596/2016

APPLICANT BC39 Pty Ltd
RESPONSIBLE AUTHORITY Kingston City Council
SUBMITTOR Pretlock Pty Ltd
SUBJECT LAND 11-33 Narelle Drive, Aspendale Gardens
WHERE HELD Melbourne
BEFORE Jeanette G Rickards, Senior Member
Stephen Axford, Member
HEARING TYPE Hearing
DATE OF HEARING 20, 21, 22 & 23 February 2017
DATE OF ORDER 6 April 2017
CITATION BC39 Pty Ltd v Kingston CC [2017] VCAT 482

ORDER

P2596/2016

Extension of Time

- 1 The decision of the responsible authority is set aside.
- 2 Pursuant to section 85(1)(f) of the *Planning and Environment Act 1987*, we direct that:
 - the time within which the development described in Permit No KP-519/2012 is to be started is extended to 6 April 2018.
 - the time within which the development is to be completed is extended to 6 April 2020.

P1595/2016

Permit amended

- 1 In application P1595/2016 the decision of the responsible authority is set aside.
- 2 Planning permit KP-519/2012/A is amended and an amended permit is directed to be issued for the land at Lot S2 PS504835M, 11 – 33 Narelle Drive, Aspendale Gardens in accordance with the endorsed plans and the conditions set out in Appendix A. The permit is amended as follows.
 - (a) What the permit allows is amended to read as follows:
 - The development of the land Lot S2 and Common Property on PS504835M for 82 dwellings in a Commercial 1 Zone.

Jeanette G Rickards
Senior Member

Stephen Axford
Member

APPEARANCES

For applicant	<p>Ms Joanne Lardner of Counsel, Direct Brief</p> <p>She called as witnesses:</p> <ul style="list-style-type: none">• Ms D Williams, Acoustic Consultant• Mr B Young, Traffic Engineer• Mr C Czarny, Urban Design• Mr R Jamieson's witness statement was tendered. He was not called to give evidence.
For responsible authority	<p>Mr James Lofting, Solicitor, HWL Ebsworth Lawyers.</p> <p>Mr Mark Bartley, Solicitor, HWL Ebsworth Lawyers on 22 March 2017</p>
For respondent	<p>Ms Louise Hicks of Counsel on behalf of Pretlock Pty Ltd instructed by DAW Legal</p> <p>She called as witnesses:</p> <ul style="list-style-type: none">• Mr A J Busse, Surveyor• Mr R Milner, Town Planner• Mr D J Robertson, Traffic Engineer <p>Mr K Carney in person and on behalf of Aspendale Residents Association Inc.</p> <p>Mr J Whalan on behalf of Aspendale Gardens Community Service Inc.</p>

INFORMATION

Description of proposal	<p>Amend Permit KP-519/2012 issued by the Responsible Authority on 11 December 2013. The Permit allows for the development of the land for 23 apartments. The amendment seeks to add an additional 62 dwellings to a total of 85. 28 x one bedroom dwellings; 28 x two bedroom dwellings; 6 x three bedroom dwellings. A new upper parking level providing 72 parking spaces with car stacker spaces and 5 car parks beneath the access ramp.</p>
Nature of proceeding	<p>Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to amend a permit.</p> <p>Application under section 81 of the <i>Planning and Environment Act 1987</i> – to review the decision to refuse an extension of time for the permit.</p>
Planning Scheme	Kingston Planning Scheme
Zone and overlays	Commercial 1 Zone
Permit requirements	<p>Clause 34.01-1 – use of the site for a dwelling where the frontage at ground level exceeds 2 metres;</p> <p>Clause 34.01-4 – construct a building construct or carry out works</p> <p>Clause 52.06-3A - reduction of the number of car parking spaces in connection with the exiting use after the new use commences</p>
Relevant scheme policies and provisions	Clauses 11, 13, 15, 16, 17, 18, 19, 21.03, 21.04-3, 21.05, 21.06, 22.11 and 65
Land description	<p>The land is the Aspendale Gardens Shopping centre which is a designated Neighbourhood Activity Centre. The development is to be constructed in a defined lot in the airspace above the existing ground floor retail development. The Shopping centre is bound by Hickman Avenue, Narelle Drive and LL Stevenson Reserve. To the south-west of the land is a primary school and to the south-east the land is used as a public park and community centre.</p>
Tribunal inspection	10 March 2017 (unaccompanied)

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Two applications have been lodged with the Tribunal by BC39 Pty Ltd (BC39). Application P2596/2016 seeks review of the refusal of Kingston City Council (the Council) to refuse to extend Permit KP-519/2012 issued on 11 December 2013 following a decision by the Tribunal in *BC39 Pty Ltd v Kingston CC*². The permit allows for the development of the land for 23 shop-top dwellings in two floors generally to the north-east above an existing part single-storey and part double-storey shopping centre known as Aspendale Gardens with a reduction in car parking.
- 2 The permit was extended once for twelve months and was due to expire in December 2016 unless work commenced.
- 3 BC39 applied for a further twelve-month extension in October 2016 submitting construction work had been delayed due to a number of legal and technical issues.
- 4 The Council refused to extend the permit on the ground that the Permit is being warehoused.
- 5 Application P1595/2016 seeks review of the refusal of the Council to amend Permit KP-519/2012 to allow an additional 62 dwellings making a total of 85 dwellings and a reduction in car parking. The additional 62 dwellings are to be located generally to the south-west in a three and four storey addition, and as with the 23 dwellings already approved above the existing part single –storey and part double-storey shopping centre.
- 6 The Council’s grounds of refusal relate to the proposal being an overdevelopment of the site; failing to satisfy State and Local Policy provisions; having a negative impact on the existing ground floor tenancies; creating safety issues; offsite amenity impacts and the provision of inadequate car parking spaces.
- 7 Several grounds of objection were lodged with the Tribunal including an objection from Pretlock Pty Ltd (Pretlock) the owner of the majority of the ground level being Lots 1 and 2A with BC39 being the owner of Lot 2 the airspace above. Pretlock’s objections relate to the impact the proposal will have on the operation of the shopping centre, the overdevelopment of the proposal, as well as off-site and on-site amenity impacts, particularly in relation to noise, car parking and traffic.
- 8 Objections were also received from several nearby residents as well as the Aspendale Gardens Community Service Inc. and Aspendale Residents Association Inc. The main objections from these objectors centred on the

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

² [2013] VCAT 2095

bulk and scale of the proposal, traffic and safety issues, as well as the disruption to the area likely to be caused by the construction.

BACKGROUND

- 9 The Aspendale Gardens Shopping Centre (the shopping centre) is located in the south-eastern suburbs of Melbourne. It is a small scale, free-standing shopping centre comprising a largely single storey retail building set within an at-grade car park. The present uses include a small supermarket and a collection of convenience shops with a total ground floor leasable area of approximately 4,400 sq. m. There is a centrally located second storey component with a floor area of approximately 1,100 sq. m that is presently vacant.
- 10 The shopping centre is within a 'town centre' that also comprises a community centre and public open space to its south; and a primary school and kindergarten to its west. It addresses low density housing to its north and east across Narelle Drive and Hickman Avenue respectively.
- 11 The town centre is set within the heart of Aspendale Gardens, a relatively isolated development of well-established single and two storey houses and garden lots. It is accessed via Wells Road and is served by a bus route that runs along this road that at its closest point is approximately 300m from the shopping centre.
- 12 The shopping centre was developed in the early 1990's and apart from minor changes of tenancy and signage has remained largely unchanged.
- 13 The following issues are required to be determined by the Tribunal:
 - Whether an extension of time should be granted for Permit KP-1519/2012?
 - Whether an amendment to Permit KP-1519/2012 should be allowed?

EXTENSION OF PERMIT

- 14 Condition 15 of Permit KP-512/2012 provides:

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

- (a) The development is not started within two years from the date of permit issue.
- (b) The development is not completed within four years from the date of permit issue.

In accordance with section 69 of the Act, the Responsible Authority may extend the periods referred to if a request is made in writing either –

- (c) before the permit expires; or

- (d) within six months after the permit expires, if the development allowed by the permit has not yet started; or
 - (e) within twelve months after the permit expires, if the development allowed by the permit has lawfully started before the permit expires.
- 15 Following a request by BC39 to extend the permit on 27 October 2015, the Council on 25 November 2015 granted an extension of time:
The development must be commenced by 30 December 2016 and completed by 30 December 2018.
- 16 On 12 July 2016, BC39 requested a further 12 month extension of time to commence the development. On 1 December 2016 the Council refused to extend the time. Council refused the application on the ground that in its view BC39 is ‘warehousing’ the permit.
- 17 This issue must first be determined before consideration is given as to whether Permit KP-512/2012 should be amended (application P1595/2016).
- 18 Warehousing has been generally defined as a permit holder having no intention to act on a permit, but rather wishes to extend the permit in order to increase the value of the site for sale to others.
- 19 The parties referred to the Supreme Court decision *Kantor v Murrindindi Shire Council*³ which set out guidelines and principles when exercising discretion as to whether a permit should be extended.
- 20 These principles provide that the Responsible Authority and in turn the Tribunal, when considering a request:
- a. Should treat the applicant as being obliged to advance some reason or material in support of the grant of an extension; and
 - b. May rightly consider:
 - i. Whether there has been a change in Planning Policy;
 - ii. Whether the applicant is seeking to warehouse the permit;
 - iii. Whether there are intervening circumstances bearing upon the grant or refusal of the request;
 - iv. The total lapse of time;
 - v. Whether the time limit originally proposed was adequate;
 - vi. The economic burden imposed on the applicant by the permit; and
 - vii. The probability of a permit issuing should a fresh application be made.
- 21 Council submitted the *Kantor* tests are not definitive or exclusive but provide guidance and critically allow other matters to be taken into

³ (1997) 18 AATR 285

consideration, whilst acknowledging the principles are guidelines rather than a rigid set of definitive requirements⁴.

- 22 Whilst the Council submits the application for extension was made in a timely manner it considers the case for an extension fails, on the basis that there is nothing on the face of the material suggesting BC39 has experienced considerable or unreasonable economic burden, but rather highlights the legal dispute that required a caveat on title to be withdrawn and the fact that the builder appointed to the work had withdrawn, requiring the selection of a new builder to be undertaken.
- 23 BC39 relied upon the reasons for delay contained in Mr Ronald Jamieson's statement of evidence. Mr Jamieson's statement was tendered but he was not called to give evidence.
- 24 Mr Jamieson is a Senior Consultant with BC39. He states he was engaged in June 2014 to provide project management services, 'including but not limited to, construction management, marketing, funding involvement, contract negotiations with potential purchasers and planning co-ordination'.
- 25 In his statement Mr Jamieson sets out a number of steps undertaken firstly by the previous project manager Mr Grant Wharington and then by himself from January 2014 through to October 2014. Mr Wharington's involvement ceased in September 2014. During December 2014 and February 2015 discussions were undertaken with a builder and in March 2015 an Environmental Management & Waste Management Plan, a Waste Management Plan and an acoustic report were submitted to the Council as required in conditions 3, 5 and 6 of the permit. These plans were endorsed by the Council on 7 May 2015.
- 26 From early 2015 through to November 2015 a contract and construction program was discussed with the builder. Discussions became frustrated due in part to issues surrounding protection works (discussed with Pretlock) and a caveat placed on the land. Discussions in April 2016 commenced with several other builders with detailed discussions with one builder which have been put on hold awaiting the extension of the permit and proposed amendment to the permit.
- 27 In July 2014 caveats were lodged over the property in relation to the bankrupt Estate of Mr Grant Wharington. Following the commencement of proceedings for the removal of the caveats. The caveats were removed by consent on 29 September 2015. Another caveat was lodged over the property on 28 September 2015 with an additional caveat lodged on 6 November 2015, both relating to the bankruptcy of Grant Wharington. On 21 October 2015 BC39 commenced proceedings to remove both caveats. The Court ordered both caveats be withdrawn on 23 November 2015.
- 28 We have considered Mr Jamieson's statement and accept the details set out relating to the legal dispute, the issues with the caveats and the inability to

⁴ *Vile v Stonington CC* [2011]VCAT 234

secure a builder during this time, given the uncertainty raised by the caveats on the title to the land.

- 29 BC39 also submitted they had been unable to carry out any site works, including site preparation or other preliminaries, because access was restricted due to the site being effectively air rights located over an existing building, with only a small area equivalent to the ramp footprint at ground level. The complexity of arranging site access they say was a major factor in delaying the commencement.
- 30 BC39 advised they had made offers to Pretlock to withdraw the 'stage two' application if agreement could be reached to allow construction of stage one to commence. This was not disputed in the hearing.
- 31 Mr Jamieson referred to the unresolved issues relating to protection works between BC39 and Pretlock that occurred during April and August 2016 with a Protection Works Determination issuing on 9 August 2016. A condition included in this determination was that 'alteration to parts of the existing building is not permitted without the consent of the adjoining owners. This includes relocation of mechanical equipment and extension of the kitchen exhausts ducts through the new building'. Pretlock and the Owners' Corporation lodged an appeal in the Building Appeals Board. BC39 determined not to press the matter before the Building Appeals Board. The matter was dismissed and the determination cancelled.
- 32 In relation to the services, referred to above, the 'trespass of the Services into BC 39's airspace is the subject of a Supreme Court proceeding commenced in November 2016'.
- 33 We conclude that the reasons and material advanced support an extension.
- 34 Council acknowledged that there has been no substantial change to planning policy that would have a negative implication for the extension of the stage one permit.
- 35 Council also submitted the application to amend the stage one permit to significantly increase the scale of the development was a strong indication that there was no intention to proceed with stage one.
- 36 The submission by Pretlock also places great weight on the application to amend the permit as an indication of warehousing.
- 37 The Tribunal did not find this argument persuasive for the following reasons
 - a. No evidence was provided to indicate how amending the permit restricts the stage one development from commencing. We note that the stage one design has been retained in entirety save for a minor change at the top of the ramp.
 - b. Additionally, BC39 submitted they had intended to apply for stage two as a separate permit, but were advised by Council to instead apply to amend the first (stage one) permit. This was not contested

by either party and appears to be confirmed in the Council submission at 3.1(g): *“Application KP558/2014 was withdrawn on 6 January 2016. The application sought to develop the Land in accordance with an application for a s72 amendment to the planning permit. Council suggested that the application be considered as an amendment to the existing planning permit as some changes to the car park were required to facilitate stage 2.*

- 38 Whilst the Council and Pretlock submit the passage of time is an indication of an intention to warehouse the permit, noting this is the second application for an extension to the permit, we consider the number of applications for extension are not necessarily helpful in assessing the question of time. We accept the explanation from BC39 for the multiple applications noting the first application for extension was for only twelve months, and the second (current application) for a further twelve months, effectively being equivalent to the typical practice of applying for a two-year extension.
- 39 Returning to the question of time, we find that a delay of two years is not unreasonable given the complexity of this application involving developing in air rights over existing uses in different ownership, and with site access dependent on access across common property.
- 40 We find there is sufficient evidence to confirm that BC39 has encountered unforeseen delays. We accept the site is complex by nature, and the inability to commence on site within the current time frame does not lead to the inevitable conclusion there is no intention to proceed with stage one. We find the permit is not being ‘warehoused’ and determine that in planning permit application KP 519-/2012 the decision of the Responsible Authority is set aside. The time within which a development or use must be started and completed is extended to be within one year of the date of this decision for commencement and within a further two years from the date of this decision for completion.

AMENDMENT TO PERMIT

- 41 BC39 has applied to amend Permit KP-519/2012 achieved for stage one to allow for the development of a further 62 dwellings and associated car parking within a three and four storey structure over the existing retail building. The new structure adjoins the proposed stage one structure that is itself two storeys, and removes and replaces the existing upper floor office component.
- 42 Permit KP- 519/2012 has come to be referred to as stage one as discussion about a possible stage two was raised before the previous Tribunal hearing, discussed above, although without any specific detail.
- 43 The approval of the amendment will result in the shopping centre being raised to three and four storeys, with the taller stage two elements at the western end of the building. The overall height of the approved

development is 13.1m and the proposed development is to have an overall height of 18.1m.

- 44 Council submits the proposed stage two development is excessively large and bulky, and too dense for a Neighbourhood Activity Centre. Council expressed concern about the internal amenity of a number of apartments and about the amenity of the entrances and circulation generally. They also say the proposed additions would restrict the operation of the shopping centre and raised concerns regarding the arrangement of car parking, vehicular access and the reduction in parking provisions.
- 45 Pretlock as a major owner of the retail building also submits the proposal is out of scale with the scale of the Neighbourhood Activity Centre. They also raise concerns regarding the design of the acoustic enclosure over the loading bay which they submit will unduly restrict the ability to carry out deliveries to the supermarket. A reduction in visitor parking will impact upon the operation of the retail use and they also raise concerns about the ramp design and the extent of development onto the common property.
- 46 The residents raise particular concerns about the impacts on the school, kindergarten and community centre, including overlooking of the children's play area. They say school drop-off and pick-up times are already filling the western end of the car park; they are concerned about the loss of sun to a meeting room of the community centre that adjoins the acoustic enclosure over the loading bay; and raise concerns about the safety of pedestrian movements in these areas. They are particularly concerned about the visual bulk of the proposal and say it will overwhelm the predominantly low scale residential suburb.
- 47 Considering the above, we find that the key issues for determination in this proceeding are:
 - a. Is the scale and form of the amendment appropriate for a Neighbourhood Activity Centre?
 - b. Will the proposed scale and form of the amendment create unacceptable visual impacts on the surrounding context?
 - c. Will the proposed amendment unduly limit the operations of the shopping centre or other functions of the Activity Centre?
 - d. Will the proposed amendment provide an acceptable level of internal and external amenity?
 - e. Will the proposed amendment provide an acceptable outcome with respect to traffic and parking?

Is the scale and form of the proposed amendment appropriate for a neighbourhood Activity Centre?

- 48 Aspendale Gardens Shopping Centre is referenced under the Land Use Framework at Clause 21.04 of the Kingston Planning Scheme as a 'Neighbourhood Activity Centre'. Whilst the subject land is located within

the Neighbourhood Activity Centre the surrounding predominately residential land is only designated for ‘incremental housing change’ which promotes the retention of single dwellings and provides for the development of dual occupancies.

- 49 In contrast to the surrounding residential area which is unlikely to provide for a substantial increase in housing, the proposed development of an additional 62 dwellings is encouraged under Clause 21.05-3 which ‘encourages residential development within activity centres via shop-top housing’.
- 50 The Council and objectors submit the intensity of the proposal is out of keeping with the small scale of the shopping centre and the proposed size and density would be more appropriate for a higher order centre. Although Council submits there is strong policy support for medium to higher density housing within a Neighbourhood Activity Centre. We note there appears to be no distinction drawn between activity centres in Clause 21.05. Council points to Clause 21.05-3 that also provides ‘the intensity and scale of such development will need to be in keeping with the scale of the centres’.
- 51 Council and the respondents say that given the activity centre is surrounded by an incremental change area, and is poorly served by public transport (a bus service is located on Wells Road approximately 300m away), the intensity of development should be tempered to no more than medium density housing. They point to the decision of the previous Tribunal that approved stage one⁵ which stated at paragraph 20:
- However we do acknowledge that policy seeks for new development to be commensurate with the scale and character of an activity centre, and so in some way requires the new development respond to the size of an activity centre.
- 52 Council submits the Tribunal in supporting the 23 dwelling proposal did so on the basis that it was a medium density outcome :
- 26 BC39’s choice of pursuing a proposal of medium and not higher density housing responds to the scale of the commercial centre, being another consideration under the purpose of the zone.
- 53 Mr Milner on behalf of Pretlock submitted a higher density of residential development on the subject site would be appropriate as part of a mixed-use development. He accepted that within the context of Clause 16, relating to housing, the Aspendale Gardens is a ‘*strategic development site*’ and an appropriate location for integrated housing.
- 54 He noted there would be commercial merit in the activity centre having access to a larger and proximate population catchment with the proposal also being seen as relieving some pressure from the surrounding low rise ‘incremental change areas’ to be developed for more intensive medium density housing. He says that there was no basis to conclude that the

⁵ Ibid

approved development for 23 dwellings absorbed the capacity of the site for residential growth.

- 55 Mr Milner acknowledged a greater residential density is achievable on this site and would align with the intent of planning policy ‘provided the urban design and architectural response is appropriate’. However he noted in this instance the remote location and limited public transport service ‘are not grounds to be bullish about optimising yield in this activity centre’.
- 56 Mr Czarny on behalf of BC39 agreed there is policy support for this site to support medium to higher density development, particularly as the site is an island site where the mixed use development is well separated from the incremental change areas, with close access to community services and facilities.
- 57 The Tribunal accepts there is strong policy support for medium to higher density housing on this site. In particular it was evident in the site visit that the site is very well integrated with the community facilities in the Activity Centre and is well served by high quality public open space. We see these attributes as mitigating somewhat the limited public transport access.
- 58 We noted that the shopping centre, whilst modest in size has a good range of convenience stores and business services, and is served by a small but essentially full service supermarket. In our view this would place Aspendale Gardens at the upper level of Neighbourhood Activity Centres, with its focus on both local and weekly shopping.
- 59 We agree with the submissions of BC39 that the proposal meets state and local policy objectives by adding to housing diversity in an area that presently lacks diversity or affordable housing options. They say it is a recognised fact that Neighbourhood Activity Centres are not expected to be well served by the Public Transport Network and that undue emphasis is placed on this by the Council and objectors while failing to give sufficient weight to the proximity to amenity this location offers, including access to retail, the Community Centre and its services and programmes including child minding; the Kindergarten; the Primary School and the open space that includes sports fields, recreational space, walking and riding trails and extensive wetlands.
- 60 We consider the Council’s overemphasis on the availability of public transport does not warrant refusal of the proposal. In many respects the increase in residences above the shopping centre may encourage public transport to be brought to or closer to the shopping centre.
- 61 We note that at Clause 21.03 of the Kingston Planning Scheme there is highlighted a need for ‘future housing’

Kingston’s population is continuing to age at a faster rate than the metropolitan average. The ageing population, coupled with the metropolitan wide trend towards smaller household size, may lead to a significant imbalance in future decades between the type of housing

stock available in Kingston and the actual housing needs of the population.

- 62 We consider this proposal to provide future housing in an excellent location in close proximity to facilities and well separated from the surrounding low density residential area which is unlikely to significantly contribute to future housing needs.

Will the proposed scale and form of the amendment create unacceptable visual impacts on the surrounding context?

- 63 BC39 submits the scale and bulk of the proposal is appropriate for the neighbourhood activity centre. Whilst the Council submits the proposal fails to respond appropriately to the neighbourhood character and is too high in relation to the predominantly single storey residential context, resulting in excessive visual bulk.
- 64 Pretlock and the residents support Council's submissions and say they are concerned the bulk and form of the proposed stage two will overwhelm the residential setting.
- 65 Mr Milner appeared to be less concerned with the height and bulk of the proposed development, and instead focussed on what he considered to be a lack of integration with stage one leading to a discordant design. He noted the floor levels in stage two are different from stage one and this is reflected in the façade, along with a quite different architectural expression.
- 66 In contrast Mr Czarny expressed the view that the architectural expression of stage two is clearly an evolution from the expression of stage one, adopting similar materials and colours with a similar use of vertical window treatments. He noted the upper level of stage two is well recessed so that the scale of the built form from the pedestrian viewpoint would be similar to stage one.
- 67 Mr Czarny noted that where the visual bulk is largest it addresses the delivery bay, the rear of the Community Centre and playing fields; he was therefore comfortable with this relationship as it is the most robust context and would not be visible from the low-density housing. Where the built form of stage two is visible from the established houses, towards Narelle Drive, the car park and its perimeter planting provides an effective buffer.
- 68 We agree with Mr Czarny that the separation from the low scale residential area surrounding the shopping centre is significant and note that stage two is further removed from the existing housing than is stage one. We agree the car park and planting provides an effective buffer from the most sensitive interface. We find that the differentiation between stages one and two is a potential benefit, expressing how the design has evolved while retaining a relationship with the earlier design.
- 69 We also agree with Mr Milner that the already approved 23 dwellings of stage one cannot be seen as having absorbed the capacity of the site, noting

that it is located on only a part of the defined title available for shop-top housing.

70 We also note that the proposed development while effectively one storey higher than the stage one development, is essentially similar in format to stage one rather than being either a podium and tower format or a substantial lift in the number of levels.

71 We agree with the previous Tribunal's comments at paragraph 32 that:

There can be no doubting the fact that this proposed development is entirely different in form, scale and height to the surrounding predominately single storey detached housing stock. But this should not be a surprising outcome of itself, given the role of the review site as an activity centre comprising predominately a retail shopping centre. Indeed the same could be said of the existing shopping centre building on the land, which is of a scale, including its height, that is entirely foreign to the examples of detached housing found in the surrounding community. Likewise the adjoining community centre, and the nearby primary school, are different building forms again.

72 As a result, the Tribunal finds that the scale and form of the development is appropriate for this neighbourhood activity centre, while agreeing with Mr Milner that this is dependent on an appropriate urban design and architectural response.

73 For these reasons we find that visual impacts on the surrounding context will be acceptable.

Will the proposed amendment unduly limit the operations of the shopping centre or other functions of the Activity Centre?

74 Pretlock in its submissions appears to consider the proposal is a perceived threat to the viability of the supermarket. The residents also raised issues of disruption and serious impact on the operation of the shopping complex. We consider these issues to be somewhat exaggerated.

75 There may be some disruption during the construction phase but such disruption can be appropriately managed. Overall we consider the bringing onto the site of additional residents can only add benefit to the supermarket, as well as the other retail uses within the shopping centre, and as such will have a wider community benefit.

76 We agree however with Pretlock that the location of the supporting column for the acoustic bay in the delivery area is likely to have an impact on deliveries. Despite both Mr Young and Mr Robertson expressing the view that a large semitrailer could manoeuvre around the column when backing into the unloading area, we consider it would be more acceptable, in design terms, if this column was removed.

77 There are two proposed entries for residents of the dwellings one at the front of the site next to the main entry to the shopping centre. This provides entry for residents to stage one and forms part of Permit KP-519/2012. The

other entry for stage two is proposed to be to the south off the common property opposite the Community Centre.

- 78 Pretlock relied upon the evidence of Mr Busse which it submitted clearly shows the extent of use of common property resulting in interference with the commercial operations of the centre. Mr Busse also highlighted that a small part of the residential entry for stage two encroaches into Lot 2A owned by Pretlock.
- 79 Mr Busse also demonstrated that significant parts of the development in the airspace extend beyond the title boundary, effectively over the top of common property. This includes the 'gap' between the area defined for the ramp and the bulk of the title at the upper floor area. The Tribunal accepts that this creates a difficulty for the proposal in that it will need to obtain appropriate agreements from the other land owners. However we cannot assume that such arrangements are impossible into the future, so make no finding in this regard.
- 80 We note that a number of the services located on the current roof area are located within the airspace owned by BC39. As this is the subject of current Supreme Court proceedings we will make no further comment.
- 81 Noting these potential difficulties, with the exception of the removal of the supporting column in the delivery bay we find that the proposed amendment will not unduly limit the operations of the shopping centre or other functions of the Activity Centre.

Will the proposed amendment provide an acceptable level of internal and external amenity?

- 82 Mr Milner found the proposal had a multiplicity of failings that he said combine to make the development unacceptable. He submitted the complicated entry arrangements and changes in levels with a need to use steps suggests stage two has not been well integrated with stage one and that this is a case of incremental design. He says the original shopping centre was not designed for housing above and this is evident in the design, with two separate entries and the ramp up that he says is attached uncomfortably to the southern elevation. We note the vehicle ramp was approved under stage one.
- 83 In the hearing Mr Milner acknowledged that ramps are provided at the key level changes, integrated within the lift lobby design.
- 84 Although there is a difference in levels for stage one and stage two we do not consider this results in a refusal of the proposal for stage two. Steps are provided in various locations but ramps are also provided in close proximity to the main lifts allowing for level changes to be accessed without the need to rely upon the stairs.
- 85 We consider the provision of communal open space on levels 3 and 4 to be appropriate providing good orientation and access for the internally located

apartments, as well as the outward facing apartments around the external façade of the building.

86 In relation to internal amenity Mr Czarny referred to the bedrooms at the rear of dwellings 27, 28, 29 and 31 whose rear windows are completely covered by a corridor above. A Revision E plan referred to by Mr Czarny reconfigured the dwellings resulting in fewer in number and the outlook of the bedrooms towards Kearney Drive rather than internally. We consider this is a better outcome and adopt this reconfiguration. We also agree with Mr Czarny that dwellings 40-43 at level 3 and 59-62 at level 4 with aspects to the internal courtyards have a more open profile which benefit from dual aspect and cross ventilation.

87 We note that by adopting the Revision E plan the total yield of units is reduced by 3. The revised breakdown will be as follows:

(Original yield in parenthesis)	1 bed: 23 (20)
	2 bed: 30 (28)
	3 bed: <u>6</u> (<u>6</u>)
	Total: <u>59</u> (<u>62</u>)

88 Dwelling 39 is located within close proximity of existing refrigeration plants. This dwelling as well as dwellings 37 and 38 on level 3 and dwellings 56, 57 and 58 on level 4 are located in close proximity to the loading bay.

89 Ms Williams provided acoustic evidence on behalf of BC39 in relation to the number of stage two dwellings that will be exposed to noise from the existing ground level supermarket loading bay and truck access route and to noise from mechanical plant on the roof of the supermarket.

90 The loading bay is to have a roof installed over the loading bay drive – through area extending to the property boundary. We accept Ms Williams proposed acoustic treatment of the roof over the loading bay and drive-through area will comply with SEPP N-1 for the day and evening periods.

91 Ms Williams also made recommendations regarding the relocation of the mechanical plant on the roof of the supermarket. This is however a matter of agreement between BC39 and Pretlock. Dwellings 38 and 39 on level 2 and 67 and 68 on level 3, in particular the balconies of dwellings 38 and 68 would be impacted the most from the mechanical equipment. We accept the recommendations of Ms Williams regarding semi-enclosure of the balconies to these two dwellings by the use of solid full height partitions to the north east end of the balconies and a full height balustrades for the first 6m of the balconies with a solid roof over the first 6m of the balcony of dwelling 68.

92 Mr Whalan raised concern that the installation of the roof over the drive-through area with the south-eastern side of the drive-through area along the

property boundary enclosed all but for the lower part of 1.2m will affect the natural light into a meeting room in the Community Centre.

- 93 Two windows in the Community Centre face north to the drive-through area and are located opposite the proposed pedestrian access to the stage two dwellings. On our site inspection these windows were closed and covered with closed internal blinds. A window facing west is also located in the Community Centre. This window was also covered with a blind and it was not clear if this window also provided light to the meeting room mentioned by Mr Whalan.
- 94 The installation covering the loading bay will sit approximately 1m out from the windows. It will not impede any access to air ventilation if the windows are opened. The covering of the loading bay will certainly reduce the noise of the trucks unloading nearby, as well as the collection of waste in this area. There will however be a reduction in light to the two windows.
- 95 The applicant agreed in the hearing that it would be possible to insert roof and wall translucent sheeting opposite these windows in order to maximise daylight to them. Any reduction of acoustic treatment to the underside of the roof would be made up on the wall surfaces.
- 96 During the site visit the Tribunal observed that this would also be beneficial to ensure reasonable day lighting for the delivery bay.
- 97 For these reasons we will require the introduction of translucent sheeting proximate to the meeting room windows sufficient to provide a reasonable level of daylight to the north end of the community centre and to the delivery bay.
- 98 The rest of the Community Centre turns its back on the drive-through area and presents as a two storey brick wall. We do not consider there will be any impacts to the functioning of the Community Centre as a result of the proposed stage two development.
- 99 To the south of the Community Centre is the outdoor play area of a child care centre. Mr Whalan raised concerns that the dwellings at levels 3 and 4 facing south will overlook this area. During the site visit we observed that the playground is located on the far side of the tall gymnasium building and at a distance in excess of 40m. We find there is no potential for overlooking of this playground.

Will the proposed amendment provide an acceptable outcome with respect to traffic and parking?

- 100 It is acknowledged that for this type of air rights development the provision of vehicle access and parking can be a challenge. An approved ramp for stage one provides access to 29 car spaces at level 1 for the 23 apartments approved in stage one. The ramp is to be utilised for access to car parking for stage two for 72 car parking spaces to be provided in a new upper level accessed from the existing ramp via a second ramp which has a gradient of

1.8m and a width of 6.35m allowing for simultaneous two-way vehicle movements. An additional 5 car spaces are to be located externally beneath the access ramp.

- 101 Unlike stage one, the parking for stage two is mostly provided in car stackers around the perimeter of the structure, with a small number of at grade car parks in the central space.
- 102 The car park layout, impact on the surrounding road network, bicycle provision and stacker queuing were not contested by the parties, and we note that Council's traffic engineer did not object to the proposal subject to conditions.
- 103 Pretlock queried the provision of car parking, particularly the under provision of visitor parking submitting this was likely to have an impact on the shopping centre car park.
- 104 Mr Robertson for Pretlock gave evidence that in accordance with Clause 52.06-5 of the Planning Scheme the development would generate a total demand for 80 additional car parking spaces. He says there is a shortfall of eight visitor spaces, since the five visitor spaces under the ramp were shown in the stage one permit and should not be counted. In any case he says these spaces are already used so there restriction to visitors would reduce parking availability.
- 105 Mr Young for the applicant gave evidence that the five spaces were only shown in stage one for convenience, but were not counted in the stage one application as they were not needed. He presented parking surveys that indicated there is excess capacity in the shopping centre car park to absorb excess visitor parking, particularly since the peak times for visitors are after hours when retail demand tends to be less.
- 106 The Tribunal accepts Mr Young's evidence, and notes that Council, while querying how the visitor parking will work, accepted that there is capacity within the surrounding streets and shopping centre car park to absorb any overflow. In any case, the Tribunal thinks it would be quite likely for visitors to also at times be customers of the shopping centre - for example, to meet in one of the cafes or to purchase food or wine.
- 107 As the Tribunal has determined to require the adoption of the Revision E Plan to address matters of internal amenity, which has resulted in a reduction of 3 dwellings there is now one additional car space. Therefore there is no reduction required for car parking.
- 108 Mr Robertson also raised concerns about the adequacy of the proposed car stackers. His concern centred on the definition of "vehicle clearance height" and the suitability of the model of stacker being proposed, although he noted there were alternative models that would meet his definition.
- 109 Mr Young disagreed with the way Mr Robertson equates 'vehicle height' with 'vehicle clearance height'. He says the selected model is well accepted in other projects and provides better flexibility. The Tribunal

accepts this explanation, and feels Mr Robertson's interpretation of the term 'vehicle clearance height' is excessively narrow, leaving the word 'clearance' with no work to do. We will not require a change to the selected vehicle stacker system.

- 110 Mr Robertson also queried the headroom in the loading bay that is to be partly enclosed with the 'acoustic tunnel'. He says the proposed headroom of 8.61m could limit the future opportunity to make use of front lift waste collection vehicles. The underside of the roof over the loading bay/drive-through area was said to be at a height of 8.6m, although there appears to be no indication of the height on the plan.
- 111 Mr Young advised that there are no front lift vehicles in use at present on this site, but that in any case he is aware of a number of front lift vehicles capable of operating within the proposed headroom. We accept this evidence and will not require a change to the headroom of the loading bay.
- 112 Issues were raised regarding vehicles entering and leaving the access ramp and potential conflicts with vehicles using the shopping centre car park or vehicles exiting from the loading bay area. Although this arrangement was established under stage one, they say the increased number of users could lead to unacceptable conflicts.
- 113 The wall height of the access ramp was raised with some expressing concern that vehicles exiting the loading bay area will not be visible. Mr Young agreed that this could be so, but suggested that as the ramp had been set back by 3m as a result of the first decision for stage one it would be possible to relocate the give-way sign to the approximate limit of the title, ensuring good visibility. We accept this recommendation.
- 114 Mr Young's evidence was that the users of the ramp would generally be familiar with the arrangement and would be aware that care would need to be taken when merging with the service road. He pointed out that the driveway at this point is wider than standard, and that movement speeds would be slow.
- 115 We do not consider this to be an issue with vehicles likely to be exiting at low speed from not only the access ramp but also from the loading bay area. Vehicles will be going in the same direction and merging can readily occur. We do not consider the necessity, as recommended by Mr Robertson, that all vehicles exiting the ramp should turn right.
- 116 Mr Young also advised that the location of the intercom at the top of the ramp, as shown on the drawing, was an error, and that the intercom should be shown relocated to the bottom of the ramp as required under the permit for stage one.
- 117 Both Mr Carney and Mr Whalen raised concerns about the safety for pedestrians moving between the shopping centre and the Community Centre, making use of the existing crosswalk. They say that the

combination of the new entrance and the ‘acoustic tunnel’ together with vehicles seeking to access the Community Centre could create conflict.

- 118 Mr Carney raised concerns that with the proposed roofing over part of the drive-through area that will stop halfway along the first parking bay to the Community Centre, this will impede the views of vehicles exiting the road way immediately to the west.
- 119 Mr Whalan expressed the view that the safety of parents with children coming to and from the child care centre to the shopping centre will be impacted upon. Mr Whalan also noted the car park area of the shopping centre, particularly to the west was heavily utilised at school pick up and drop off times with the area heavily populated with parents and children.
- 120 There are pedestrian line marked walkways in various locations from the car park to the shopping centre. One such walkway is from the southern entry of the shopping centre providing access across the drive-through area to a car park located next to the Community Centre.
- 121 The Tribunal notes that the experts and the Council Traffic advisers did not raise these issues as concerns. During our site visit we gave careful consideration to this issue, and observed that the present arrangement is quite unusual in that the pedestrian crossing leads to a driveway and not a pedestrian path. However we concluded that the pedestrian path and shopping centre entry would remain visible, and we consider there is scope for the local authority to introduce traffic management measures such as further defining the pedestrian crossing and pathway should concerns emerge in the future.
- 122 Both Mr Robertson and Mr Young did not consider a column in the loading bay posed an issue. They however both agreed that the column should be provided with some form of protection. As stated above we disagree with their assessment and consider the removal of the column in the loading bay area will provide for more efficient use of this area.
- 123 Mr Whalan and Mr Carney raised concerns regarding the impact on school pick-up and drop-off times. They said that during these periods the western end of the car park is often full.
- 124 The Tribunal notes this is a typical situation that occurs for a short duration. We note that neither traffic expert nor the Council raised concerns, and that the time of pick-up and drop-off does not coincide with peak visitor demand. We conclude that there is sufficient overflow parking in the car park and surrounding streets to cope with this short term issue.

WHAT CONDITIONS ARE APPROPRIATE?

- 125 Draft conditions were provided by the Council prior to the hearing. The parties provided comments with regard to the conditions at the end of the hearing. We have considered the comments made as well as a number of

issues raised during the hearing and where we have considered appropriate have either added, amended or deleted proposed conditions.

CONCLUSION

126 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Jeanette G Rickards
Senior Member

Stephen Axford
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	KP – 519/2012/A
LAND	11 – 33 Narelle Drive, Aspendale Gardens Lot S2 on PS504835M

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- The development of the land Lot S2 and Common Property on PS504835M for 82 dwellings in a Commercial 1 Zone.

CONDITIONS

- 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 three copies must be provided. The plans must be generally in accordance with the plans prepared by Eliza Designs Pty Ltd entitled ‘Proposed Apartments Aspendale Gardens Shopping centre’ drawing nos 1 (Revision C dated 25-2-14), 2 (Revision F dated 25-2-14), 3 (Revision G dated 25-2-14), 4 (Revision G dated 25-2-14), 5 (Revision G dated 25-2-14) 6 (Revision G dated 25-2-14) & 7 dated 25-2-14 (Stage 1) and Finnis Architects, ‘proposed plans’ drawing numbers TP4.0 Rev D, TP4.1 Rev D, TP4.2- Rev E, TP4.3 Rev A, TP4.4 Rev A, TP6.0 Rev D, TP6.1 to TP6.02 Rev A, TP6.3 and TP7.0 Rev D, TP8.0-TP8.1 and TP9.0 (Stage 2), but modified to show—
 - (a) An amended internal layout for apartments 17 to 23 (inclusive) generally in accordance with the sketch plan prepared by the Victorian Civil and Administrative Tribunal in Proceeding P682/2013 and marked ‘VCAT Draft Plans 28/11/13’ which depicts the following changes—
 - (i) Relocation of the corridor from the south-western side of apartment 19 to between apartments 17 & 18.
 - (ii) Relocation of the corridor from the south-western side of apartment 23 to between apartments 21 & 22 and returning along the south-eastern wall of the building to the proposed stair access.
 - (iii) Relocation of the bedroom in apartments 17 & 18 to the north-western end of these apartments with a light court adjacent to each bedroom.

- (iv) Relocation of the bedroom in apartment 19 to the western corner of the apartment with provision of a light court adjoining the relocated bedroom, and provision of windows in the living area along the south-western wall.
 - (v) Provision of a light court adjacent to the second bedroom to apartment 20.
 - (vi) Provision of a light court adjacent to each of the second bedrooms in apartments 21 & 22 and deletion of bedroom 1 from each of these two apartments.
 - (vii) Relocation of bedroom 2 in apartment 23 to the southern corner of the apartment and the provision of a light court for this bedroom and the provision of windows to the living room on the external wall.
 - (viii) Provision of openable windows into the light courts, with suitable acoustic treatment of the light courts to ensure that noise inside the apartments with the windows open will comply with SEPP N-1.
- (b) The provision of acoustically treated walls, roofs, ceilings and windows to achieve noise levels within the apartments in accordance with SEPP N-1, generally in accordance with the recommendations set out in the statement of evidence of Ms Dianne Williams of SLR Consulting Australia:
- (i) For Stage 1, dated 11 November 2013 and filed with the Victorian Civil and Administrative Tribunal in Proceeding P682/2013; and
 - (ii) For Stage 2, dated 6 February 2017 2013 and filed with the Victorian Civil and Administrative Tribunal in Proceeding P1595/2016;
- (c) Any recommended changes arising from the Urban Design report prepared by Hansen Partnership dated February 2017 and filed with the Victorian Civil and Administrative Tribunal in Proceeding P1595/2016;
- (d) Any recommended changes arising from the Traffic Report prepared by Ratio Consultants dated 6 February 2017 and filed with the Victorian Civil and Administrative Tribunal in Proceeding P1595/2016;
- (e) The provision of a landscape plan for the open courtyard area in accordance with the submitted development plan and the City of Kingston Landscape Plan Checklist, with such plans to be prepared by a suitably qualified landscape professional and incorporating:
- (i) Details of the specifications of the planter boxes to be used.

- (ii) Provision of an irrigation system connected to a water tank that collects rainwater to service the raised planted boxes.
 - (iii) Relocation of the stage 1 planter boxes on the side of the glazed acoustic screens at either end of the communal courtyard, so that the planter boxes sit inside the communal courtyard.
 - (iv) an associated planting schedule showing the proposed location, species type, mature height and width, pot sizes and number of species to be planted on the site. The schedule must be shown on the plan;
 - (v) the delineation of all garden beds, paving, grassed areas, retaining walls, fences and other landscape works including areas of cut and fill throughout the development;
 - (vi) a range of plant types from ground covers to large shrubs and trees.
- (f) Increase the setback of the wall to level 3 from Hickman Avenue, so that it is setback 5.0 metres from the line of the north-eastern wall of the ground floor shops below.
 - (g) The provision of a full colour, finishes and building materials schedule (including samples) for all external elevations and driveways of the development. The schedule must show the materials, colour and finish of all external walls, roof, fascias, window frames, glazing types and doors.
 - (h) The windows facing north-east, south-east and south-west to Apartments 16, 19 to 21 (inc) and 23 (not including those facing the light courts) as not openable.
 - (i) For Stage 1, the relocation or replacement, at the developer's cost, of the mechanical plant marked as C1 to C8 and S1 to S6 in the statement evidence of Ms Dianne Williams of SLR Consulting Australia dated 11 November 2013 filed with the Victorian Civil and Administrative Tribunal in Proceeding P682/2013 in a manner which achieves noise levels within the apartments in accordance with SEPP N-1 and does not adversely affect the efficient operation of that mechanical plant, or the operations of the ground level car park, loading areas and common property, or the safety of pedestrians.
 - (j) For Stage 2, the relocation, replacement or acoustic treatment, at the developer's cost, of the mechanical plant marked as P4 & P5, Q1, Q2 & Q3, S7 to S12 and C10 to C24 in the statement evidence of Ms Dianne Williams of SLR Consulting Australia dated 6 February 2017 filed with the Victorian Civil and Administrative Tribunal in Proceeding P1595/2016 in a manner which achieves noise levels within the apartments in accordance with SEPP N-1 and does not adversely affect the efficient operation of that mechanical plant, or the

operations of the ground level car park, loading areas and common property, or the safety of pedestrians.

- (k) If any mechanical plant referred to in conditions (i) and (j) is on common property, the developer must first obtain the permission in writing of Owners Corporation PS504835M before it is relocated, replaced and or acoustically treated.
- (l) An increase in the setback of the ramp from Kearney Drive by three metres, to be achieved by adjusting the ramp grades.
- (m) The ramp and car park area designed in accordance with clause 52.06-7 and clause 52.06-8 of the Kingston Planning Scheme and AS2890.1:2004, where appropriate, including ramp grades and widths, column placement and car spaces against obstructions.
- (n) A notation that a minimum of 2.2 metre headroom clearance is achieved throughout the upper level car parks.
- (o) The provision of bollards at any stairwells and lifts to shield pedestrians from reversing cars without affecting the accessibility of car spaces or vehicle movements along access ways.
- (p) Corrections to the elevations so that they align with the floor plans in all respects.
- (q) The location of all plant and equipment associated with the apartment development. It is acceptable if such plant and equipment be located on the roof of the apartment building in a location appropriately setback from the side walls, in a manner that is appropriately screened.
- (r) Provision of RLs for the proposed development, including the finished floor levels, parapets and vehicle ramp.
- (s) Relocation of the intercom system to allow for entry to the car park from the bottom of the vehicle ramp.
- (t) Provision of storage, external of each apartment, of at least 6 cubic metres for each apartment.
- (u) Provision of bicycle parking in accordance with clause 52.34 of the Kingston Planning Scheme.
- (v) Details of all screening and acoustic treatments of external plant and equipment.
- (w) A maximum building height of 18 metres above ground.
- (x) A covered loading bay structure of no more than 27m in length (running east to west) and no less than 8.6 metres clear headroom.
- (y) Deletion of the support column(s) in the supermarket loading area.
- (z) The addition of translucent glazing panels to the roof and walls of the delivery bay acoustic enclosure sufficient to provide reasonable

daylight levels to the north facing windows of the Community Centre and to the delivery bay operations.

- 2 The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
- 3 Before the dwellings are occupied, all buildings and works and the conditions of this permit must be complied with, unless with the further prior written consent of the Responsible Authority.

Acoustic report

- 4 Before the development starts, a modified report prepared generally in accordance with the report prepared by SLR Global Environmental Solutions dated 6 February 2017 and the SLR report endorsed as part of Stage 1, to address any further changes to the development proposal as required in conditions. The report must be to the satisfaction of the Responsible Authority and must demonstrate:
 - (a) The acoustic barriers and the façade upgrade works in accordance with section 8 and appendix E of the statement evidence of Ms Dianne Williams of SLR Consulting Australia dated 11 November 2013 filed with the Victorian Civil and Administrative Tribunal in Proceeding P682/2013 as modified, if required, in accordance with the changes to the layout in condition 1.
 - (b) The acoustic barriers and the façade upgrade works required for the light courts required to be included in the apartments under condition 1(a).
 - (c) A concept design for the mechanical plant referred to in conditions 1(b), (i), (j) and (k); and
 - (d) The achievement of noise levels inside the apartments from existing external noise sources that complies with SEPP N-1. When approved, the acoustic report will be endorsed and will then form part of the permit.
- 5 Within three (3) months of completion of the development, a final report must be prepared by an independent suitably qualified acoustics engineer, to measure and record the acoustic emissions of all mechanical plant and loading activities operating at maximum capacity, from affected apartments, and filed with the Responsible Authority. If necessary, further acoustic controls must be implemented by the developer, at the developer's cost, to achieve compliance with SEPP N-1 to the satisfaction of the Responsible Authority.

Car Parking and Traffic

- 6 Prior to the endorsement of the plans pursuant to condition 1 of the permit, a Parking Management Plan (PMP) must be submitted to and approved by the responsible authority. The PMP must address the following:

- a. Visitor car parking should be clearly marked or signed
 - b. Allocation of spaces to ensure that any vehicles that do not fit in the car stackers can be accommodated elsewhere on the upper level car parks.
 - c. Maintenance of the car stackers is to be included in an owner's corporation agreement.
 - d. Adequate lighting in accordance with AS/NZS 1158.4:2015, 1158.3.1 and AS1680.2.1 as applicable should be provided at the car park ramp entrances, at pedestrian entrances, all crossings and at the zebra crossing near the ramp.
 - e. The use of colour or wheel stops at the pedestrian access next to spaces 33 and 38 to ensure drivers using these spaces do not block pedestrian access to the car park.
 - f. Signage at the entrance ramp is to describe in clear terms (with dimensions) that:
 - i. the use of the loading bay under the ramp is limited to a B99 vehicle (i.e. a van); and
 - ii. The maximum height of vehicle (allowing for 200mm clearance between the top of the vehicle and the bottom of the structure or any fittings above) that can park in the upper level car parks.
 - g. Kerb heights in circulation roadways, ramps and parking spaces should be no more than 150mm in height.
 - h. Resident loading requirements.
 - i. Any other required modifications to the layout of the car park as recommended by other conditions.
- 7 The developer/owner must contact the Responsible Authority and arrange traffic management plans and 'Works Zone' for any works that may affect traffic (both vehicular and pedestrian) or parking in any of the surrounding streets. Works vehicles will not be able to stop in the streets surrounding the property if they cannot provide at least 3 metres clearance for other vehicles to pass or if parking restrictions already apply. The developer will be responsible for the costs of arranging a 'Works Zone' and reinstatement of parking restriction signs, to the satisfaction of the Responsible Authority.
- 8 Car parking and bicycle areas and access lanes must be kept available for those purposes at all times and must not be used for any other purpose such as storage.

Construction Management

- 9 Prior to the commencement of any buildings and works on the land (including demolition), a Construction Management Plan (CMP), to the satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority. The CMP must be prepared in

accordance with the City of Kingston Construction Management Policy, July 2015 and Construction Management Guidelines, 1 November 2015 (and any superseding versions and / or documents). The CMP must specify and deal with, but is not limited to, the following elements:

- a. Public Safety, Amenity and Site Security
- b. Traffic Management
- c. Stakeholder Management
- d. Operating Hours, Noise and Vibration Controls
- e. Air Quality and Dust Management
- f. Stormwater and Sediment Control
- g. Waste and Materials Re-use
- h. Parking of trade vehicles
- i. The consent in writing of Owners Corporation PS504835M to each the aforementioned elements.

When approved, the plan will be endorsed and will then form part of the permit and shall thereafter be complied with during the undertaking of all works.

- 10 Before the development starts, a Site Management Plan be prepared to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Site Management Plan will be endorsed and will then form part of the permit. The Site Management Plan must clearly set out measures to prevent amenity loss to surrounding properties during the construction period. The Site Management Plan must include, but is not limited to, measures to control the emission of dust/sand, rubbish on site, loading/unloading times, construction times, and parking of builder's vehicles etc. The approved Site Management Plan must not be varied without the prior written approval of the Responsible Authority. The approved Site Management must be implemented to the satisfaction of the Responsible Authority.

Waste Management

- 11 Before the development starts, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Waste Management Plan will be endorsed and will then form part of the permit. Three copies of the Waste Management Plan must be submitted. The Waste Management Plan must include, but is not limited to—
 - (a) The collection of waste being carried out from the upper level car parks;
 - (b) A swept path diagram should be provided to show a 6.4m waste vehicle can exit from the loading bay in a forwards direction.

- (c) The manner in which waste will be stored and collected including type, size and number of containers.
- (d) Spatial provision for on-site storage.
- (e) Details whether waste collection is to be performed by Kingston City Council or a private contractor.
- (f) The size of the collection vehicle and the frequency, time and point of collection.

The approved Waste Management Plan must be implemented to the satisfaction of the Responsible Authority. The approved Waste Management Plan must not be varied without the prior written approval of the Responsible Authority.

Water, Drainage & Sewer

- 12 All stormwater drainage of the development must be provided to a legal point of discharge to the satisfaction of the Responsible Authority.
- 13 A separate property service with water meter must be provided in an accessible location for maintenance and reading purposes, for lot S2 and each apartment in the development.
- 14 A separate property connection sewer must be provided for lot S2.

Roads

- 15 Any footpath, car park surface and other infrastructure on or immediately adjacent to the land that is damaged by the development must be reinstated by the owner to the satisfaction of the Responsible Authority.
- 16 Property boundary and footpath levels must not be altered without the prior written consent from the Responsible Authority.

Other

- 17 All piping and ducting above the ground floor storey of the development (other than rainwater guttering and downpipes) must be concealed to the satisfaction of the Responsible Authority.
- 18 No equipment, services and exhausts other than those shown on the endorsed plans must be erected above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
- 19 Before the development starts, the developer must obtain permission in writing from all land owners affected by the development.
- 20 The developer must bear and meet all costs relating to and associated with the development, including any alterations or upgrade that may be required to the existing building on Lot 1 and Lot 2A on PS504835M.
- 21 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

- 22 Before the dwellings are occupied, the landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. Thereafter, the landscaping shall be maintained to the satisfaction of the Responsible Authority.

Expiry of amended permit

- 23 In accordance with section 68 of the Planning and Environment Act 1987 this permit will expire if one of the following circumstances applies:
- (a) The development, as amended, is not started within two (2) years from the date of the issue of the amended permit.
 - (b) The development, as amended, is not completed within four (4) years from the date of the issue of the amended permit.

In accordance with section 69 of the Planning and Environment Act 1987, the Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

– End of conditions –