

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P701/2016  
PERMIT APPLICATION NO. WH/2014/1156

**CATCHWORDS**

Section 82 of the *Planning and Environment Act 1987*, Whitehorse Planning Scheme, Residential Growth Zone, Side setbacks, Visual bulk, Dwelling entry, Private open space, Neighbourhood character

<b>APPLICANT</b>	Scott Anthony Postma & Others
<b>RESPONSIBLE AUTHORITY</b>	Whitehorse City Council
<b>RESPONDENT</b>	Sky Architects Pty Ltd
<b>SUBJECT LAND</b>	20 Vine Street, Blackburn
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Tracey Bilston-McGillen, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	21 September 2016
<b>DATE OF ORDER</b>	21 October 2016
<b>CITATION</b>	Postma v Whitehorse CC [2016] VCAT 1740

**ORDER**

- 1 The decision of the Responsible Authority is set aside.
- 2 In permit application WH/2014/1156 no permit is granted.

Tracey Bilston-McGillen  
**Member**

## APPEARANCES

For Applicant for Review	Mr Scott Postma. He was also assisted by Ms Sydney Gordon.
For Responsible Authority	Mr Dezarn Um, town planning consultant.
For Respondent	Mr John Joyner, town planning consultant.

## INFORMATION

Description of Proposal	It is proposed to construct a four storey building comprised of 17 dwellings and basement car parking.
Nature of Proceeding	Application under Section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Zone and Overlays	Residential Growth Zone – Schedule 2 (RGZ2).
Permit Requirements	Clause 32.07-4 a permit is required to construct two or more dwellings.
Relevant Scheme, policies and provisions	Clauses 11, 15, 16, 21.05, 22.03, 22.04, 52.06, 55 and 65.
Land Description	<p>The subject site is located on the western side of Vine Street, Blackburn. The site has a frontage of 16.15 metres, a depth of 45.72 metres and a total site area of 732 square metres. The site is currently occupied by a single storey dwelling with outbuildings. A garage is located along the southern boundary and is accessible from the laneway.</p> <p>A laneway abuts the site to the south. The laneway provides access to the subject site and to the adjoining residential dwellings. A second laneway exists to the west. This laneway is adjoined by an aged care facility. Two dwellings adjoin the site to the north.</p>

## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application for review of the decision of the Whitehorse City Council (Council) to grant a notice of decision to grant a permit in respect of a permit application for the construction of a four storey building at 20 Vine Street Blackburn. The objectors lodged the review raising matters of concern including neighbourhood character, site layout and building mass, amenity impacts, landscape and tree protection and issues of boundary fencing.
- 2 Council put to me that the proposed development is appropriate given the statutory and strategic framework of the planning scheme. Council further put that the proposed development is consistent with the vision of change for the area.
- 3 The Permit Applicant put that the review site and immediate surrounds is in the process of renewal and the proposed development is consistent with the vision of change for the area.
- 4 This is primarily a case about the expectations of change in this location and if the proposed development is too ambitious for the site. It also raises issues about internal amenity for future occupants.
- 5 The review site is located in an area that is identified for change by the zoning and the planning policy framework. I have concluded that whilst change is anticipated and encouraged in this area, the proposed building is too ambitious for the site. As a consequence there are issues with the built form particularly the treatment of the southern elevation which is lacking articulation and will present as visually bulky and issues with internal amenity of units. My reasons for these conclusions are set out below.

### BASIS OF DECISION

- 6 It was agreed by all Parties that the policy framework and zoning of the site provide for increased densities and housing diversity in this location. The acceptability of the scale of the proposed development is influenced by the planning scheme's policy framework as it applies to the review site and location. The site is zoned RGZ2. The purposes of this zone are in part:
  - To provide housing at increased densities in buildings up to and including four storey buildings.
  - To encourage a diversity of housing types in locations offering good access to services and transport including activities areas.
  - To encourage a scale of development that provides a transition between areas of more intensive use and development and areas of restricted housing growth.

---

<sup>1</sup> I have considered the submissions of all the parties that appeared, all the exhibits tendered by the parties, and all the statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons.

- 7 The future development of this site is articulated in the local planning policy framework at clauses 21.06 (Housing) and 22.03 (Residential Development).
- 8 Clause 21.06 identifies that the Council's *Housing Strategy 2014* identifies areas of substantial, natural and limited growth which essentially aim to direct housing growth across the municipality which reflect community aspirations while balancing future housing needs. The review site is located within a substantial change area which is described as:
- Substantial Change areas provide for housing growth with increased densities, including inside designated structure plan boundaries and opportunity areas, in accordance with the relevant plans as well as around most train stations, adjoining tram routes and around larger activity centres.
- 9 Clause 21.06 also establishes a number of key objectives relating to substantial change areas including (as relevant):
- Support increased residential densities.
  - Support increased housing choice by allowing for a diversity of dwelling types, sizes and tenures to suit a range of household types.
  - Facilitate achieving a new, preferred character for these areas over time through quality developments.
  - Provide space for planting, communal spaces and rooftop gardens to improve the amenity and liveability of dwellings.
- 10 Clause 22.03 also identifies the site to be located within a Substantial Change area and establishes a number of policies and objectives when considering development proposals. In summary, a number of key strategies that apply to the review site include:
- Encourage the following forms of housing in Substantial Change areas:
    - Townhouses.
    - Units.
    - Flats and apartments.
  - Locate new development in the form of flats and apartments in Substantial Change Areas only.
  - Provide a range of dwelling types, sizes and tenures, including affordable housing, in larger developments.
  - Ensure buildings interfacing sensitive areas and uses have a scale and massing appropriate to the character and scale of their context.
  - Create a new, higher density urban character in areas located away from sensitive interfaces.

- Ensure new development provides space for planting, communal spaces and rooftop gardens to improve the amenity and liveability of dwellings.
  - Ensure adequate infrastructure is in place to support substantial change areas.
- 11 There is no doubt that this site is located within an area identified for change. I agree with Council and the Permit Applicant that the Planning Policy Framework supports increased housing within established urban areas with good access to a range of services and facilities. I further agree with the Council and the Permit Applicant that the zoning anticipates higher built forms and that development up to four storeys will become more prevalent in the future.
- 12 However, as the policies identify above, whilst an increase in housing density and diversity is encouraged, so too is development that provides for planting and improved amenity and liveability of dwellings. The proposed development does not fail because of the lack of planning policy support. It fails for reasons of built form, character and internal amenity as detailed below.

### **Neighbourhood character**

- 13 In terms of neighbourhood character, the *Neighbourhood Character Study 2014* identifies the site to be within a Garden Suburban Area 13. At clause 22.03, the preferred character statement for this area includes as relevant:

The area will retain its classic garden suburban characteristics of low set, pitched roof dwellings set in spacious garden settings, with a backdrop of large native and exotic trees. The established pattern of regular front and side setbacks from both side boundaries will be maintained, allowing sufficient space for planting and growth of new vegetation.

Infill development including unit developments will be common, however new buildings and additions will be set back at upper levels to minimise dominance in the streetscape. Low or open style front fences will provide a sense of openness along the streetscape, and allow views into front gardens and lawn areas.

Areas within the Blackburn / Megamile West Urban Design Framework and nearby (Substantial Change) will undergo change to accommodate new medium density dwellings with more compact siting, while retaining space for landscaping including trees.

Areas with good access to the train stations at Laburnum and Blackburn (Substantial Change) will accommodate more dwellings with slightly more compact siting than the remaining residential areas, but with space for large trees and gardens.

Some of this precinct is contained within the Blackburn Neighbourhood Activity Centre, and the Nunawading/Megamile Major Activity Centre.

- 14 I agree with both the Council and Applicant for Review that it is an unreasonable expectation for the proposed development to meet the existing character as the zoning and planning policy for this area encourages change. What therefore does the planning scheme inform us of the vision for the area?
- 15 Clause 21.06 establishes the following objective for substantial change areas:
- Facilitate achieving a new, preferred character for these areas over time through quality developments
- 16 The preferred character statement for Garden Suburban Area 13, seeks for development to be set back at upper levels to minimise dominance in the streetscape, allow views into front gardens and retain space for trees and gardens.
- 17 At present, there has been little change to the west side of Vine Street with much of the development comprising of villa units and townhouses. There has been more recent development when you move in an easterly direction, towards the activity centre.
- 18 I find that the proposed development fails to meet Council's preferred character policy as the form will be dominant to the streetscape. The upper levels are marginally setback from the lower levels and with the proposed vertical detailing, presents as a highly visible form. The proposed development appears to take its design cues from recent development further east of the site closer to the activity centre. However as you move further east, the zoning changes and development expectations also change.
- 19 In terms of neighbourhood character, I acknowledge the conflict of having a neighbourhood character policy which seeks upper level setbacks to minimise dominance in the streetscape, the desire for front gardens and landscaping when the purpose of the RGZ seeks to provide housing at higher densities and encourage a diversity of housing. The RGZ also however also seeks:
- To encourage a scale of development that provides a transition between areas of more intensive use and development and areas of restricted housing growth.
- 20 I therefore consider that a balance needs to be struck, between achieving a transition scale of development whilst respecting the neighbourhood character vision for the area. As proposed, I find that the scale of the development is too ambitious for its neighbourhood context and the development of the site needs to be tempered.

## **Internal amenity**

- 21 I have concerns with the internal amenity of the proposed development. In particular, I have concerns with unit 12 being only 39.6 square metres and unit 14 being 54.4 square metres. I have also have concerns on the reliance of screening to the units.
- 22 The Permit Applicant put to me that unit 12, being 39.6 square metres has a north facing large balcony of 11.7 square metres, offers housing diversity and a good level of internal amenity. I agree that the unit has a larger balcony than most others in the development and that it does offer housing diversity, but I am not persuaded it offers a good level of internal amenity. Apartment size is often raised as a concern. In this case, I find that despite the larger than average balcony (for this development), the size of the unit is inappropriate. Each window, being the bedroom, the living/dining and kitchen room, is either screened or the room has its outlook to the balcony which is screened. I do not consider that unit 12 would offer a high level of internal amenity for future occupants.
- 23 Unit 14 is 54.4 square metres with an 8 square metre balcony. This unit is another example of screening provided on all windows or the balcony. Another example is unit 13, a 70.3 square metre unit with a west facing balcony of 8.9 square metres. This unit has screening on each of the north facing living room and bedroom windows with the balcony also provided with screening to a height of 1.7 metres.
- 24 This proposal is a 'tick the box' development. In many of the units, it provides the minimum standard 8 square metre balcony including units 11, 14, 15 and 16. Most of the upper units have screening in some form or other to either the windows or the balconies. There are very few windows within the development without screening to a height of 1.7 metres.
- 25 The proposed development has not considered any innovative measure of preventing overlooking or improving internal amenity. It fails to consider design techniques such as the introduction of recesses or variation to setbacks to allow for balconies and or windows without screening. In the case of unit 6 whilst it is provided with a 13 square metre ground level courtyard and 8.6 square metre balcony, the balcony overhangs the courtyard so effectively the courtyard is only open to the sky for a width of 2 metres. Within those 2 metres, a canopy tree is proposed, therefore reducing the area available as private open space.
- 26 The proposed development overall fails to provide a high level of internal amenity for future occupants. This is an issue that requires further attention.

## **Built form**

- 27 I am primarily concerned with the extent of built form particularly along the side boundaries. The southern boundary form is approximately 35.5 metres

with a setback varying from 1.53 metres to 2.2 metres at the ground floor. At the first floor the length of form is effectively the same with the setback ranging from 2.5 metres to unit 2 to 2 metres down to 1.2 metres to the lift core. There is a slight modification to the form at the second and third floors but the setbacks to the south are generally in the range of 1.5 metres to 2.5 metres.

- 28 It was put to me that the building was a highly articulated form. Whilst I agree that the building uses a range of materials and finishes, a change in materials cannot resolve what is a long extent of built form with little room left available for landscaping.

#### Building height and setbacks

- 29 Council put to me that the proposed development at a maximum building height of 12.66 metres, complies with the allowable height under clause 32.07-7 of 13.5 metres.

- 30 In terms of setbacks, the objective under clause 55.04-1 (Side and rear setbacks) reads:

To ensure that the height and setback of a building from a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.

- 31 The proposed building fails to comply with the side setbacks to the southern boundary. The proposed wall height of 11.4 metres with a side setback of 2.5 metres fails to provide the Standard requirement of 5.5 metres. The architectural feature also fails to meet the Standard requirement by 5.24 metres. The issue is whether the proposed setback achieves the objective as stated above and respects the character of the area and limits the impact on the amenity of existing dwellings.

- 32 I find that there needs to be further recognition of the required setback to the southern boundary in particular. In reviewing the east elevation, there is little variation, it appears as a dominant sheer wall to both the streetscape and to the south. It is fair to expect that any future form on this site will be larger, bulkier and more imposing than what currently exists. As I have stated earlier, policy calls for change. However, the development in my view has pushed the envelope with the failure to provide any meaningful setback to the southern boundary. There is insufficient recessed form to the elevations, which results in a visually dominating form and one that fails to achieve the objective of clause 55.04-1.

#### Impact on adjoining properties

- 33 As to the impact on adjoining properties, the proposed form fails to acknowledge the adjoining dwellings.
- 34 To the north, concern was raised regarding the impact of a courtyard that sits on the shared boundary. During the hearing, the Applicant for Review



suggested to increase the height of the boundary fence to prevent overlooking between units 6, 7 and 8 and unit 1/18 Vine Street. This issue requires further consideration.

- 35 To the south, concern was raised regarding the proposed level of overshadowing that the built form is visually overwhelming and dominating. I share the concern regarding the visual impact of the proposed development. It is appropriate that the proposed development takes advantage of the laneway. However, whilst the laneway provides a setback between the review site and adjoining properties, the lack of variation to the southern setback results in a long visually dominating form. The variation in materials does not reduce the visibility of the form nor does the provision of trees along the two metre setback to the laneway. I find that the development will be visually overwhelming to the south.
- 36 As to the proposed level of overshadowing, I note that the development complies with the overshadowing provisions.
- 37 It is to be expected that there will be a difference in the built form as planning policy encourages higher density and form. However, the development of the site cannot ignore the built form that currently exists to the south.

#### Dwelling entry

- 38 The dwelling entry objective at clause 55.05-2 seeks '*to provide each dwelling or residential building with its own sense of identity*'. Standard B26 states that entries should be visible and easily identifiable and provide a sense of address.
- 39 Concern was raised that the dwelling entry was unacceptable. In principle I consider the use of the laneway can be a positive outcome. I find that the direct entries to the units where the front door opens to the laneway is an opportunity to provide a level of surveillance and activation.
- 40 The entry to the dwellings is provided from the laneway with the exception of units 1 and 2. Units 1 and 2 have their entries to Vine Street. The ground floor units 3, 4, 6, 7, 8 and 9 have a front door to the laneway. They have a transition space being a small garden entry which provides a sense of address. The units on the second and third floor levels have their access either from the basement or from a common entry to the laneway. This entry is not as identifiable or resolved. In comparison with the ground floor units, this common entry is not provided with a sense of address or entry. The southern elevation details an opening which forms part of the lift core to provide access to the lift and/or stairs.
- 41 If the laneway is to be used as the key entry to the upper floor units, then the entry needs to be better resolved or perhaps consideration should be given to providing an entrance to Vine Street. This issue requires further

resolution. As it is proposed, I find that the proposed development fails to provide each dwelling with its own sense of identity.

### Landscaping

- 42 I acknowledge that this is a site where new built form will be quite different from what typically exists. A four storey apartment building is a very different form from single and two storey villa units and townhouses. The planning scheme encourages the intensification of this area but clause 21.06 Substantial Change Areas supports increased residential densities, supports a diversity of dwelling types and sizes, seeks to facilitate a new preferred character but in doing so also seeks to *‘provide space for planting, communal spaces and rooftop gardens to improve the amenity and liveability of dwellings’*.
- 43 The proposed form extends along the length of the site providing for planting in the southern setback entries to units 3 to 9, provides planting in the front setback, permitter planting along the northern boundary and along a 1.7 metre setback along the rear or western boundary.
- 44 I am not refusing the proposed development because of a lack of landscaping but make the observation, that even in areas of substantial change, opportunities for landscaping exist.

### **CONCLUSION**

- 45 There is no question that the redevelopment of the site is supported by the zoning of the land and both State and local planning policy framework. However, in this case, whilst the planning scheme allows a four storey building and acknowledges that the character of the area will change over time, there are too many issues that need to be addressed. In any future proposal, the issues that need to be addressed include:
- i Side setbacks particularly to the south.
  - ii Sense of entry particularly the use of the laneway.
  - iii Size of units.
  - iv Internal amenity.
  - v Provision of open space.
  - vi Provision of landscaping.
- 46 For the reasons explained above, the decision of the Responsible Authority is set aside. No permit is to issue.

Tracey Bilston-McGillen  
**Member**