

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION**

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P718/2014
PERMIT APPLICATION NO. WH/2013/516

CATCHWORDS

Section 77 of the *Planning & Environment Act 1987*; Whitehorse Planning Scheme; whether a three to four storey built form is appropriate at the interface of an activity centre and a minimal change area; impact of a Significant Landscape Overlay on built form and landscape outcomes.

APPLICANT	Project Planning & Development Pty Ltd
RESPONSIBLE AUTHORITY	Whitehorse City Council
RESPONDENT	Joan Morgan and others
SUBJECT LAND	245-247 Canterbury Road, Blackburn
WHERE HELD	Melbourne
BEFORE	Michael Deidun, Presiding Member Sue Porter, Member
HEARING TYPE	Major Case Hearing
DATE OF HEARING	11-14 August 2014
DATE OF ORDER	1 September 2014
CITATION	Project Planning & Development Pty Ltd v Whitehorse CC [2014] VCAT 1074

ORDER

- 1 Leave is granted to substitute the plans that are the subject of the Application for Review for those prepared by Orbit Architecture and dated 26 June 2014.
- 2 The decision of the Responsible Authority in relation to permit application no. WH/2013/516 is affirmed, no permit is granted.

Michael Deidun
Presiding Member

Sue Porter
Member

APPEARANCES

For Applicant

Peter O'Farrell, Barrister by direct brief.

Mr O'Farrell called expert evidence from Marco Negri (town planner) of Contour Consultants, Charmaine Dunstan (traffic engineer) of Traffix Group, John Patrick (landscape architect) of John Patrick Pty Ltd, Mark O'Dwyer (architect) of H2O Architects and Chris Goss (architect and visualisation) of Orbit Solutions.

Mr O'Farrell also called lay evidence from Khozema Kaka, a trustee of the Anjuman-E-Saifee (Melbourne) Trust.

For Responsible Authority

David Song, Town Planner of Song Bowden Planning.

For Respondents

Margaret Dymond, Roland Dymond, Anne Tan, Beth Polson and Joan Morgan all appeared in person.

INFORMATION

Description of Proposal	Construction of a new place of worship on the site of an existing mosque, in the form of a three storey building with a dome above and basement car parking. Permission is also sought to remove vegetation.
Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act 1987</i> .
Zone and Overlays	General Residential Zone Significant Landscape Overlay No 2 Special Building Overlay (part)
Permit Requirements	Clause 32.08-6 to construct a building or construct or carry out works associated with a Section 2 Use in the General Residential Zone. Clause 42.03-2 to remove, destroy or lop vegetation, and to construct a building or construct or carry out works on land affected by the Significant Landscape Overlay. Clause 44.05-1 to construct a building or construct or carry out works on land affected by the Special Building Overlay. Clause 52.34 to waive the requirement for bicycle facilities.
Key Scheme policies and provisions	Clauses 10, 11, 15, 16, 17, 19, 21, 22.03, 22.04, 22.05, 32.08, 42.03, 44.05, 52.06, 52.34 and 65.
Land Description	The land is a rectangular corner allotment with a frontage to Canterbury Road of 33.07 metres, a sideage to Forest Road of 38.4 metres, and an overall area of 1636 square metres. The land is presently supported with a converted dwelling used as a place of worship, along with an open at grade car parking area.
Tribunal Inspection	The Tribunal conducted an accompanied inspection of the review site and surrounding area on 12 August 2014.
Cases Referred To	<i>Rutherford & Ors v Hume CC</i> [2014] VCAT 786; <i>Buckerfield Architects v Boroondara CC</i> [2004] VCAT 659; <i>Williams v Whitehorse CC</i> [2006] VCAT 2148.

REASONS¹

What is this proceeding about?

- 1 An existing faith community currently worships from a converted dwelling on land at 245 -247 Canterbury Road, Blackburn (the ‘review site’). Project Planning & Development Pty Ltd (the ‘Applicant for Review’) has sought a planning permit to construct a new and much larger purpose built place of worship on the review site. As a result of this history, the Applicant for Review already holds a planning permit to use the site as a place of worship. The only approvals that are therefore before us are to construct buildings and works to replace the existing building with a bigger and newer purpose-built version, and to remove vegetation.
- 2 The Whitehorse City Council has determined to refuse to grant a permit, raising concerns relating to the built form and scale of the building and its impact on neighbourhood character. Other concerns held by Council involve the removal of vegetation and creation of off-site amenity impacts. An Application for Review of the Council’s decision has been lodged with the Tribunal.
- 3 The Application for Review is being contested by a number of nearby residents, who share the Council’s concerns, as well as raising additional concerns relating to the likely car parking and traffic impact.
- 4 The key issues or questions for determination are:
 - a. What is the Whitehorse Planning Scheme encouraging on the review site?
 - b. Is the proposal an appropriate built form that is respectful of neighbourhood character?
 - c. Does the proposal produce acceptable landscape outcomes?
 - d. Will there be any unreasonable off-site amenity impacts?
 - e. How do we view the issue of car parking and traffic?
- 5 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Whitehorse Planning Scheme, we have decided to affirm the Council’s decision, and direct that no permit be granted. Our reasons follow.

PRELIMINARY MATTER

- 6 Towards the conclusion of the hearing the Applicant for Review raised a question of law regarding the applicability of Clause 22.03 of the Whitehorse Planning Scheme. We issued oral orders at the end of the

¹ We have considered all submissions presented by the parties although we do not recite all of the contents in these reasons.

hearing, and followed up with written orders, providing for the lodgement of further written submissions by Council and the Applicant for Review addressing the question of law. On the day after the hearing the Applicant for Review wrote to withdraw the legal question and their challenge to the applicability of Clause 22.03. Therefore we have not had to determine the question of law.

WHAT IS THE WHITEHORSE PLANNING SCHEME ENCOURAGING ON THE REVIEW SITE?

- 7 The site has an interesting policy context, sitting at the interface between two precincts that have quite contrasting policy expectations. As a result, there are three policy threads that have a high degree of influence on our decision making in this proceeding.
- 8 The review site forms part of the residential surrounds to the Blackburn Lake, and thus is within a minimal change area under policy to which a Significance Landscape Overlay is applied. The first relevant policy thread relates to the location of the review site in a minimal change area, and the character outcome that is sought. The basis for applying the minimal change area to this precinct is provided as follows:

Areas of minimal change are those areas which have recognised heritage, environmental and landscape significance. For instance the Blackburn residential area is constantly subjected to strong development pressures. There is an ongoing need to ensure the environmental quality of this area is preserved and enhanced through sensitive redevelopment.²
- 9 As a result of the site being located within a minimal change area, the following policy objectives are relevant:
 - To provide certainty to the community in terms of the areas targeted and protected from increased development.
 - To encourage development to contribute to the preferred neighbourhood character where specified.
 - To ensure that new development minimises the loss of significant trees.³
- 10 The provisions of Schedule 2 to the Significant Landscape Overlay (SLO2) support this policy intent with the following objectives, which act to identify, with reference from policy at Clause 22.03-6.1 of the Whitehorse Planning Scheme, the preferred future character of this area:
 - To retain the dominance of vegetation cover in keeping with the bush character environment.

² Clause 21.06-1 of the Whitehorse Planning Scheme.

³ Clause 22.03-2.

- To encourage the retention and regeneration of native vegetation for the protection of wildlife habitat.
- To ensure that a reasonable proportion of a lot is free of buildings to provide for the planting of tall trees in a natural garden setting.
- To encourage the development of sympathetic buildings within an envelope, which ensures the maintenance of a tree-dominated landscape.
- To ensure that buildings and works retain an inconspicuous profile and do not dominate the landscape.
- To ensure that development is compatible with the character of the area.

11 The second relevant policy thread is the very deliberate way that the Whitehorse Planning Scheme seeks to guide the use and development of residentially zoned land for non-residential land uses. The intent of such policy is first identified at Clause 21.06-1 which states:

Finally, there is intermittent pressure for non-residential uses in residential areas such as clubs, hotels, medical facilities, churches, child care facilities and student accommodation facilities. It is essential that these activities and any new buildings associated with them are designed in a way that integrates these uses and their built form into their residential environments and that there is no detriment to the community or the surrounding residential amenity.

12 This policy is supported by the Non-Residential Uses in Residential Areas Policy, which contains the following guidance for the design of buildings containing such non-residential uses:

Existing residential buildings are encouraged to be retained and converted to suit the use in preference to a purpose-built premises.

The design, scale and appearance of the non-residential use are encouraged to harmonise with the housing styles and general character of the area.

Front setbacks are encouraged to be consistent with abutting residences.⁴

13 The third relevant policy thread is the range of policies that seek to encourage commercial and community land uses to locate near to activity centres. This is particularly relevant here as the land is located directly opposite the Forest Hill Activity Centre, a higher order activity centre that provides a range of retail, transport and other facilities. As such, we are particularly guided by policies like those that follow:

⁴ Clause 22.05-3.

Broaden the mix of uses in activity centres to include a range of services over longer hours appropriate to the type of centre and needs of the population served.

Provide a focus for business, shopping, working, leisure and community facilities.⁵

Non-residential uses are encouraged to be in convenient walking distance to shopping centres or other non-residential land uses or zones.

Non-residential uses are encouraged on a corner site and abutting a Road Zone Category 1 and 2.⁶

To maintain and enhance the role of activity centres as a community focus.⁷

- 14 On balance, we consider the policy applicable to the designation of the site as a minimal change area affected by the SLO2 to clearly identify that a different outcome is sought on the review site, compared to locations outside of the minimal change area. This means, in our view, that a very different built form and landscape outcome is reasonably expected on the review site, compared perhaps to what occurs on land directly opposite and further to the east on the northern side of Canterbury Road. However the extent to which the development of the review site needs to achieve all that the SLO2 and the minimal change area seeks, can be tempered having regard to:
- a. The main road and corner location of the review site;
 - b. The character of the surrounding area, including land both within and outside of the minimal change area;
 - c. The site's location almost as proximate as one can get⁸ to a higher order activity centre.

- 15 In the end our interpretation of the policy matrix indicates that a balance needs to be achieved between the competing policy objectives applying to the review site. In this respect our minds turn to the usual approach about what should occur at the interface of land within both residential and commercial zones. That usual approach is well captured by the following quote:

I refer back to my earlier comments about the appropriateness of using this site for a commercial building and the inevitability of such an outcome given the zoning of the land and the strategic direction in the MSS. I agree with Mr Bisset that in an interface situation such as this there are competing objectives on either side of the residential /

⁵ Clause 11.01-2.

⁶ Clause 22.05-3.

⁷ Clause 22.06-2.

⁸ Aside, that is, from a property immediately abutting an activity centre, without the separation of a main road.

commercial divide and that a proper planning outcome is one which balances those competing objectives taking into account all of the opportunities and constraints of the site and its neighbours. Inevitably compromises will have to be made to reach an acceptable outcome which satisfies those competing objectives. The commercial site cannot ignore that they have a residential abuttal; nor can a residential property expect the sort of residential amenity one would anticipate in an area wholly zoned for residential purposes.

I approach the task therefore of the interface issue not with a view to achieving a perfect residential amenity outcome; nor a perfect commercial outcome. If it were that simple I could favour one over the other and (say) allow a box like office building on the boundary with extensive windows as might be found in a wholly commercial area. Or I could favour a one storey commercial building well offset from the boundary with a "forest" as a buffer in deference to residential amenity. Rather, I must look for a balance which satisfies the "reasonable expectations" of all parties.⁹

- 16 Likewise, in this case, we are not expecting the Applicant to achieve an outcome entirely consistent with the SLO2 and minimal change area policy, as one might expect to achieve in the heart of land so designated. Also we can't support an outcome which mirrors that achieved on nearby sites that are located outside of the SLO2 and minimal change area policy area. Instead a balance of the two divergent expectations is a reasonable outcome for the review site. The test is whether, in our opinion, a reasonable balance has been achieved by the proposed development. We come to that assessment shortly.
- 17 We understand our position on this matter may be viewed as being not entirely consistent with that reached by the Tribunal in the decision of *Williams v Whitehorse CC*¹⁰ where the Tribunal remarked:¹¹
- Whilst some matter require greater scrutiny I consider that little should be made of the site's location on the eastern edge of the SLO2 and Minimal Change boundary. Whilst a substantial number of properties around the site are not in the same policy area the creation of the boundary seems logical and appears to respond to vegetation and neighbourhood character elements which help define the different policy areas and the SLO2.
- 18 We note that the site subject to the *Williams* decision sits in a streetscape where the SLO2 is consistently applied, but where the properties to the rear and the rear part of one of the side interfaces fall outside of the SLO2 and minimal change area. We also note that the *Williams* site does not sit close to an activity centre. On those points we distinguish our review site with that subject to the *Williams* decision.

⁹ Paragraphs 19 & 20 of *Buckerfield Architects v Boroondara CC* [2004] VCAT 659.

¹⁰ [2006] VCAT 2148.

¹¹ At paragraph 33 of that decision.

- 19 We are also mindful that we need to make an assessment of whether the proposed development achieves net community benefit, and that an acceptable outcome may entail both identified benefits and disbenefits. We will return to a net community benefit analysis later in our reasons.
- 20 Aside from the policy guidance, we also note that there is significant support in a broad range of legislation that encourages a level of freedom in the ability of faith communities to establish places of worship in Australia. This broad range of legislation was explored at depth by the Tribunal in the very recent decision of *Rutherford & Ors v Hume CC*.¹² We do not seek to repeat the analysis of that range of legislation in this proceeding, however we do adopt the findings of that Tribunal, where they state:
- All faiths are entitled to facilities and services to meet their needs, including places of worship to practise their faith. For planning purposes, a ‘place of worship’ does not discriminate between religions, nor is it incompatible (in a town planning sense) for one place of worship to be sited adjacent to another.¹³
- 21 We also note the following relevant comments from the Rutherford decision which is also relevant to our assessment of the proposed built form on the review site:
- A further part of the context is the desired style of architecture of a mosque. Different faiths have their own traditions when it comes to architectural styles. While more modern Pentecostal faiths may be content with large modern low scale buildings, all manner of faiths have their firmly held architectural styles. These include the Catholic and Anglican churches with their spires, the Coptic Orthodox Church with its domes, and the equally distinctive architecture associated with the domes or minarets of mosques. It is important, in applying planning principles to the assessment of architectural outcomes, to recognise that such architectural styles are often an important component of the expression of faith from a faith-based community.¹⁴
- 22 This analysis informs the assessment that follows.

IS THE PROPOSAL AN APPROPRIATE BUILT FORM THAT IS RESPECTFUL OF NEIGHBOURHOOD CHARACTER?

- 23 As we have identified earlier, there are competing policy objectives for the review site, and our task is to strike a balance between them. On the one hand the site’s designation as a minimal change area and within the SLO2 means that parts of the Whitehorse Planning Scheme seek a heavily vegetated outcome on the review site, with a built form that is recessed and subserviant to the landscape outcomes. Those are our words, but we consider they reflect the language particularly found in SLO2, where built

¹² [2014] VCAT 786

¹³ Paragraph 14 of that decision.

¹⁴ Paragraph 117 of that decision.

form is sought to be ‘inconspicuous.’ On our own research of the meaning of this word, we are referenced to like terms being modest, unobtrusive, low-key and unassuming.

- 24 The SLO2 also seeks outcomes, as guided by the decision guidelines, where reasonable setbacks are sought to provide for landscaping and a reasonable proportion of the lot is free of buildings and available for landscaping.
- 25 On the other hand, an outcome guided by the surrounding neighbourhood character is also sought, which in this case includes land both within and outside of the minimal change area and SLO2. In particular, the character of the surrounding area is already strongly influenced by the design of Forest Hill Chase Shopping Centre, which presents to the opposite side of Canterbury Road as a multideck above ground car park. It is also influenced by the two storey medical centre located on the north-eastern corner of Forest Road and Canterbury Road, and by the more distant views east to a four storey apartment building. We were also informed that another four storey apartment building has been approved by Council for land on the other side of the aforementioned medical centre,¹⁵ but is subject to a current Section 82 Application for Review at the Tribunal.
- 26 It is the submissions of Mr O’Farrell, supported by the evidence of various expert witnesses, that the proposal does indeed strike the right balance. In particular those that support the grant of a permit attest to the way that the building steps down with the slope of the land, owing in part to the setback third level from the northern boundary, along with the impressive landscape proposal, as indicators that an appropriate balance has been achieved. Mr O’Farrell submitted that, on the strength of the number of trees in Mr Patrick’s landscape plan, we need to find that the proposal will enhance the landscape contribution from the review site. He also submitted that the phrase ‘inconspicuous profile’ and use of the word profile must be a reference to the silhouetting of a building above the horizon, which will not occur with this proposed development. Finally, Mr O’Farrell provided a pictorial analysis of the way that other large sites within the SLO have been developed.
- 27 We accept the submissions made that a sizeable mosque is an appropriate built form outcome for the review site. We also accept that such an appropriate outcome will include architecture that is not the norm for this suburb, and built form, site coverage and landscaping outcomes that may be a bit different to that achieved in other parts of the minimal change area. We are persuaded that these outcomes are consistent with our task to balance the competing policy objectives we have already identified. They are also consistent with our recognition that places of worship are important community facilities that should be encouraged, and that, to an extent, the function of these buildings will influence their built form. We are

¹⁵ On land at 251-255 and 257 Canterbury Road, Forest Hill.

particularly cognisant of the very relevant desire for this faith community, and they are not alone, to have as its place of worship a building that represents their architectural heritage, and which draws a level of attention and pride to their community and faith.

- 28 Despite our agreement with these principles, in our view the proposal has overstepped what is an appropriate balance between the competing policy intents for the review site. In short, we are concerned in relation to what we view as two key failings with the design response. The first of these is the lack of a sufficient landscape setback from Forest Road. The proposed place of worship adopts a setback of 4.9 metres from Forest Road, to the metal screen that will form the front wall when viewed from Forest Road, and which will extend between 9.4 and 11.6 metres in height.¹⁶ The second floor sits higher again, and is setback just 1.5 metres from the metal screen wall to the floors below. The metal screen wall does not extend all the way to ground, sitting above a base of stone basalt which extends up to ground floor level. The metal screen façade will be punctuated by a protruding entry way, with a setback from Forest Road of 3.7 metres and an average height of 9.2 metres.
- 29 Sitting in front of this form will be an entry platform, setback between zero and 1.5 metres from Forest Road, and with a height of between 1.2 and 2.5 metres. Due to the slope of the land, and the angled form of this entry platform and associated stairs, it has its greatest height at the very point where it has a zero setback from the street boundary and thus the footpath in Forest Road. The location of this entry platform and stairs, along with the reflection pond at the south-eastern corner of the building, severely restricts the ability to landscape the setback provided to Forest Road.
- 30 We acknowledge that there is a design requirement for such Masjid¹⁷ that the entry point to the building must be opposite the front of the worship space, and as such must be along the eastern elevation of this building. However in our view that does not remove the importance of ensuring an appropriate setback to Forest Road, and an appropriate relationship in height between the footpath and the entry area. We also acknowledge that during the course of the hearing, Mr O'Farrell and his team offered changes to this elevation. These changes included a reduction in the size of the entry platform in Mr Patrick's landscape plans, and an offer from Mr O'Farrell to completely remove the stairs heading north from the entry platform.
- 31 While we accept that these changes will have a positive outcome, in our view they do not go far enough to reduce the scale of the development when viewed from Forest Road, or provide an appropriate series of setbacks. We view Forest Road as an important interface, not only because it provides the

¹⁶ When scaled off the east elevation.

¹⁷ Being the name given to the worship space within this type of Mosque.

public entry into this minimal change area, but also because it needs to draw a distinction with the landscape outcomes achieved on the opposite side of the road, being land outside of the SLO2. It is also an elevation that is highly exposed to angled views from residential properties further to the north along Forest Road. In this context, and for the reasons set out above, we find that the scale of the development, the extent of setbacks provided, and the extent of built form and works within the setbacks to be inappropriate and inconsistent with the guidance provided by the Whitehorse Planning Scheme.

- 32 We also find that the setbacks and scale along the eastern elevation are not justified, even having regard to the context of the review site adjacent to a higher order activity centre. They far exceed the combined scale and setbacks of the medical centre on the opposite side of Forest Road. They are also quite unlike the current condition of other land within SLO2 along this interface, including land that sits at the intersection of Canterbury Road and Boulton Road.
- 33 The second failing is the extent of built form that will be visible from land to the north of the review site. Of such land, that which is most sensitive to built form is the adjoining property to the north at 22 Forest Road, which contains a single storey detached dwelling. This adjoining dwelling is sited further west than the part of the adjoining property which directly interfaces with the review site. Adjacent to the review site is a front yard, including some outbuildings.
- 34 The proposed place of worship will have a setback of 5.6 metres from the northern boundary, to a built form which sits some 10.8 to 11.7 metres above natural ground level, and again is wrapped in a metal screen façade. Above this façade sits the second floor with a setback of 7.6 metres and a height of between 13.2 and 13.7 metres. To the west of the metal screen façade sits the angled wall of the Masjid, which at its closest point has a setback of 9.7 metres and a height of 12.5 metres. Sitting in front of the Masjid is a sizeable reflection pond, with a setback of 3.6 metres, and a height of between 1.6 and 2.2 metres.¹⁸ Other paving areas and retaining walls sit between the reflection pond and the northern boundary of the site. The driveway sits between the part of the building clad in the metal screen and the northern boundary of the site, with a landscaping strip some 1.5 metres in width proposed.
- 35 Mr Patrick recommended as part of his evidence for this entire northern elevation to be moved a further 1.4 metres to the south, thus resulting in a 2.9 metre wide landscaping strip alongside the driveway, and an increased setback to each element described above of 1.4 metres. Even considering this modification, we find that the proposed built form when visible from

¹⁸ Unfortunately most of these dimensions are not provided on the plans, and so we have had to scale off the plans, with an element of potential error.

the north will be unreasonably large. We make this finding for the following reasons. The building will essentially present a four storey scale when viewed from the adjoining residential property. As such, it will appear very large and dominating when viewed from the adjoining properties, which have a lower natural ground level. The height and scale of the proposal along its northern elevation will be far removed from the domestic scale that one might expect to find on a site in a minimal change area in a residential zone. The proposed building will also have a lack of articulation above ground floor level, primarily consisting of two large rectangular forms joined at an interesting angle, with a setback third storey to the closer of the rectangular forms.

- 36 We consider such a scale to be unreasonable for a site identified as being inside a minimal change area, within a residential zoning, and interfacing with a property used for residential purposes. We note, for example, that it is a much greater scale than what the Forest Hill Chase Shopping Centre, located within the boundaries of the activity centre and within a Commercial 1 Zone, presents to its southern boundary and thus its interface with the minimal change area.
- 37 We acknowledge that the recommendation of Mr Patrick results in an ability to create some significant landscaping, consisting of an area planted with large indigenous canopy trees, supplemented by tall shrubs which could also fairly be described as small trees. We also note that there appears a late intent from the Applicant for Review to now retain trees 5 & 6, located immediately adjacent to the northern boundary of the review site. We support the retention of these two trees, as they are the only examples of trees located within the review site that are worthy of retention. We also support the retention of tree 1, given as it is sited mostly within the adjoining property to the north.
- 38 The extent of landscaping proposed along the northern boundary also wraps around the western boundary of the site, filtering angled views to the western elevation of the place of assembly. However we consider the Whitehorse Planning Scheme to seek an outcome on the review site that combines this type of landscaping response with a more sympathetic and contextual built form. To that end we find the failure of the building to respond adequately to the changing topography across the site to be a significant failing in the overall design.
- 39 While our concern is with the scale and bulk of the proposed building, we feel we need to differentiate this with any concern about the architectural style of the proposed place of worship. This is a building that is relatively attractive, but in any case is an appropriate expression of the history and beliefs of this faith community. We consider that any redesign to accommodate a more recessive and measured built form does not necessarily need to adjust the architectural expression or language of the built form. We do note, however, that one of the materials proposed is a

white marble, which is to be finished in a way that it is not polished, and therefore will not have a glossy finish. We consider that the Applicant has some more work to do to persuade us that this material will not be too bright or contrasting with the surrounding landscape. Alternatively a more grey material can be chosen in any redesign.

- 40 Turning now to the arguments put in favour of the proposed development, we are not persuaded by the submissions from Mr O'Farrell and the evidence called by him that we have previously summarised for the following reasons:
- a. We are not persuaded that this proposed building steps down with the slope of the land in any meaningful way. While we acknowledge the second floor has an increased setback from the northern boundary of the site, it is marginal, and the main form represented by that wrapped in the metal screen fails to incorporate any step in keeping with the fall of the land. We find the heights of the building at its respective southern and northern elevations demonstrates that the building fails to step with the slope of the land in a way that assists to ameliorate the extent of scale and bulk visible along its northern elevation.
 - b. We also don't understand the objectives of the SLO2 as seeking simply an increase in the number of trees on a development site as a measure of an acceptable outcome. Instead, the objectives clearly seek an outcome of tall trees in a natural garden setting. While a garden setting may be established to some parts of the site's interfaces, we find for the reasons already given that it has failed to be achieved along the site's critical sideage to Forest Road.
 - c. In our view the words 'inconspicuous profile' cannot be narrowed to an assessment of whether the horizon is broken by the proposed built form. We are aware of many planning controls that seek to avoid such an outcome, and they are specifically worded so. In this case, when reading SOL2 as a whole, we find that the desired outcome is a building that is low scale, and not the significant visual element in a streetscape perspective, as well as in views from surrounding properties. As we have already identified above, we consider that some flexibility exists in the achievement of this desired outcome on the review site, having regard to its location on the edge of the SLO2 and minimal change area, the character of the surrounding area, and its location on the edge of a higher order activity centre. However for the reasons we have already given, we find that an appropriate built form has not been achieved.
 - d. We are also not persuaded that the examples of the built form and landscape outcomes achieved on other sites provided by Mr O'Farrell assist the case for the proposed development of the review site. Most of the examples provided do not sit within

Schedule 2 to the SLO, but either Schedule 4 or 5, the later of which specifically applies to nominated large sites. Of those examples given that are located in Schedule 2, while we agree that some have achieved poor landscape outcomes, none exhibit the extent or scale of built form that is proposed for the review site. On that basis alone we do not find the examples given comparable to the proposal that is before us.

- 41 For these reasons, we find that the proposal does not strike the right balance between the different policy intents for the review site. Having made that finding, we need to undertake a net community benefit analysis, and recognise that there are a number of benefits associated with the proposed development. The key benefit is the provision of a place of worship, education and community facility for this faith community. It is also relevant that this community facility is being provided adjacent to an activity centre, in a location where multi-purpose trips can occur. Another benefit is the economic benefit that will be derived from the construction of the proposed mosque.
- 42 In our view those benefits come close to cancelling out the significant negative, that being the failure of the proposal to adequately achieve the clear policy objectives of the Whitehorse Planning Scheme for this minimal change area. In the end we are swayed by the restrained way that the minimal change area has been applied in this municipality, coupled with the precise nature of the application of the SLO2 to this neighbourhood. As was conceded by Mr Negri, it is clear from the boundaries of the SLO2 that it has been applied in a very precise and deliberate fashion, rather than a broad brush approach as has occurred with other overlays. There has therefore been a very deliberate and conscious decision that the review site should be subject to the policies and controls that now apply.
- 43 The planning scheme seeks to provide the development and resident community confidence in likely development outcomes.¹⁹ We consider that confidence could be eroded somewhat if a development of this scale were approved for land designed for minimal change. For these reasons we are not satisfied that a net community benefit will be achieved, despite the clear benefits we have identified above. We will therefore affirm the Council's decision and direct that no permit be issued.
- 44 Given our findings on these matters, we do not need to address the other areas in dispute. However given the likelihood that a modified proposal for a smaller place of worship may be sought for the site, we make the following brief comments in relation to the illumination of the building, and the traffic and car parking matters raised by a number of the surrounding residents.

¹⁹ As identified at Clause 22.03-2.

- 45 Much of the proposed building is wrapped in a metal screen, opening up views to the coming and goings internally within the building. The proposal also includes extensive external lighting of the building and landscaping. While this has significant benefits, including activation and surveillance of the public domain, it also has the potential to detrimentally impact upon the residential interface. This is particularly the case when at night the illuminated interior of the building will be visible from land to the north of the review site. We support a modest level of night time illumination of the proposed place of worship and consider the metal screens contribute positively to the overall design. However, the proposal should be refined insofar as the extent of illumination along the northern elevation may impact on residential amenity of land further to the north.
- 46 Turning to the car parking and traffic issues, there exists a planning permit on the site for a place of worship to operate with a maximum of 90 people. The proposal before us is for a much larger place of worship, but one that will still retain its present limit of 90 people. Further, the proposal incorporates the provision of additional car parking on site, compared to that which currently exists. Therefore, the proposal will have no net impact on car parking issues in the surrounding locality.
- 47 We acknowledge the genuine concerns held by a number of locals about the difficult car parking and traffic issues that exist in this locality. Those difficulties were well presented by Ms Rolson in her submission. However, this proposal will not result in any increased traffic, and will create a reduced amount of vehicles seeking parking off-site. As such, we have no grounds on which to raise any car parking or traffic concerns with this proposed development. While we acknowledge that a much larger place of worship is being provided on site, that in part is a function of the inadequate nature of the existing building. The Applicant has stated that their current congregation size will not increase, and as such we must find that there will be no net impact on traffic and car parking in this locale.

Conclusion

- 48 For these reasons the decision of the Responsible Authority will be affirmed, and no permit granted.

Michael Deidun
Presiding Member

Sue Porter
Member