

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1557/2015
PERMIT APPLICATION NO. PA2014/4649/1

CATCHWORDS

General Residential Zone and Planning Policies Support for Medium Density; Neighbourhood Character; Street Tree; Streetscape.

APPLICANT	T & S Kibar
RESPONSIBLE AUTHORITY	Melton City Council
SUBJECT LAND	13 Wordon Court, Kurunjang
WHERE HELD	Melbourne
BEFORE	Rachel Naylor, Member
HEARING TYPE	Hearing
DATE OF HEARING	15 February 2016
DATE OF ORDER	30 March 2016
CITATION	

ORDER

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998* the application for review and the permit application are amended by changing the name of the applicant for review and the permit applicant to:
T & S Kibar
- 2 The decision of the Responsible Authority is affirmed.
- 3 In permit application PA2014/4649/1 no permit is granted.

Rachel Naylor
Member

APPEARANCES

For Applicant	Mr A Thompson, planning consultant of Clause 1 Property Planning and Development Services
For Responsible Authority	Mr M Edwards, town planner and Mr T Sergiacomi, urban designer

INFORMATION

Land Description	<p>The land is on the corner of Wordon Court and Christina Crescent. It is rectangular with a splay adjacent to the street corner. The Christina Crescent frontage is 31.5m, the Wordon Court frontage is 17.0m and the land area is 672 square metres.</p> <p>The land is vacant, generally flat and contains no vegetation. There are street trees in the road reserves, including one in Wordon Court that will need to be removed for this proposal to proceed. At present, there is a single width crossover near the northwest corner of the site in Wordon Court.</p>
Description of Proposal	Two double storey dwellings attached at ground level and fronting Wordon Court with a shared new crossover; and one single storey dwelling fronting Christina Crescent. Each double storey dwelling contains three bedrooms, a single garage and a tandem car space in front. The single storey dwelling contains two bedrooms and a single carport.
Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Zone and Overlays	<p>General Residential Zone (GRZ)</p> <p>No overlay controls apply</p>
Permit Requirements	Clause 32.08-4 To construct two or more dwellings on a lot in GRZ

REASONS¹**WHAT IS THIS PROCEEDING ABOUT?**

- 1 Planning permission is sought to construct three dwellings on the lot at the corner of Christina Crescent and Wordon Court in Kurunjang. The Council refused the permit application because there is a lack of policy support for medium density housing in this location; the design is not respectful of the neighbourhood character; and the design will necessitate the removal of a street tree in Wordon Court.
- 2 One statement of grounds was received from the adjoining property to the east, who is concerned about the number of dwellings proposed and the potential for overlooking of their property.
- 3 The Applicant submits the zoning of this area supports moderate housing growth; there are no overlay controls that affect the development potential of this site; and the planning policies do not mean that medium density housing is unacceptable in this neighbourhood. The Applicant also submits that this design is respectful of the existing character of the neighbourhood.
- 4 The General Residential Zone purpose seeks development that implements planning policy; respects the neighbourhood character and implements neighbourhood character policy and associated guidelines.
- 5 The two key issues in this case are the guidance in the planning policy framework for new medium density housing development; and whether this design is respectful of the neighbourhood character.
- 6 For reasons that I will explain, this site is a suitable location for an increased density of residential development, but this particular design is not acceptable. There are a number of changes that need to be made to the design, which will fundamentally change the layout and appearance of the development. Hence, I have refused this proposal but with guidance about those aspects of the design that need to change.

WHAT IS THE GUIDANCE IN THE PLANNING POLICY FRAMEWORK FOR NEW MEDIUM DENSITY HOUSING DEVELOPMENT IN THIS NEIGHBOURHOOD?

- 7 The Council's submission strongly opposes this proposal on a fundamental basis – that the proposal is contrary to the strategic planning guidance about where medium density housing in the municipality is acceptable. Various planning policies and documents were referred to, but in an individual manner that did not give a clear picture about this planning scheme and adopted Council documents are seeking. Hence, after the hearing, I reviewed the entirety of the local planning policy framework to gain a

¹ I have considered the submissions of the parties, all the exhibits tendered by the parties, and the statement of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons.

better understanding of how the Council's policies and associated documents work together.

- 8 Clause 21.03-1 of the planning scheme acknowledges that Melton is growing steadily. Clause 21.04 explains the Council's adopted Housing Diversity Strategy (HDS) is a 20 year comprehensive plan guiding housing growth across the municipality, including suitable locations to accommodate different rates of housing change. Objective 5 is to retain existing housing character in appropriate locations by managing existing residential precincts through housing policy. One of the associated strategies is to develop guidelines and incorporate relevant requirements into residential zone schedules. Another strategy of clause 21.04 is to apply the residential zones in accordance with the HDS. It goes on to explain at clause 21.04-4 of particular types of locations where the Residential Growth Zone (that provides for greater growth) and the Neighbourhood Residential Zone (that provides for limited growth) will be applied. It then says the General Residential Zone (which applies in this case) will be applied to the balance of the residential land. The HDS is dated March 2014 and clause 21.04 and clause 22.12 (discussed next) were last updated in July 2014. The HDS is a reference document to these clauses, which means it provides background information to these policies.
- 9 The objectives of the Housing Diversity local planning policy at clause 22.12 include "to protect and enhance neighbourhood character, where appropriate" and to "support increased residential densities in locations with high levels of access to infrastructure, services and transport". The policies include encouraging a range of housing options and not adversely impacting on "areas of recognised neighbourhood character". The decision guideline of this policy is whether a proposal is consistent with the objectives of the HDS.
- 10 The HDS objectives are:
 - 1 To recognise the important role of housing diversity.
 - 2 To promote affordable housing options for households of all income levels.
 - 3 To provide a sufficient range of social, retirement, aged-care and special needs housing types throughout the City of Melton in appropriate locations.
 - 4 To encourage initiatives and investment that promote the City of Melton's established residential areas as places to live and invest.
 - 5 To retain the existing housing character in appropriate locations by managing existing residential precincts through housing policy.

- 6 To promote opportunities for site consolidation and support more intensive residential development close to activity centres and major public transport nodes.
 - 7 To encourage innovative housing design and development.
- 11 The HDS explains on page 12 that the development outcome expected in a General Residential Zone (GRZ) is incremental change. In other words, it envisages some change in housing density and housing type. The HDS emphasises that neighbourhood character is not static and will change and evolve over time, so the HDS provides guidance to appropriately manage the evolution of neighbourhood character. The expected housing type in the GRZ is “a mixture of single dwellings, dual occupancies with some villa units and in limited circumstances townhouses, where appropriate”. The type of housing proposed in this case is consistent with the expected housing type. So, the GRZ is not a pristine area where there will be limited or no housing growth. Rather, the HDS clearly identifies it as an area where some change, including change of the nature proposed in this case, is expected. I agree with the Council that the site is some distance from the nearest activity centre and has limited public transport. If the Council considers this area is not suitable for incremental housing growth, then it needs to consider changing the GRZ. At present this area is in the GRZ where some change in housing density and type is expected. The planning policy framework and the HDS guidance about housing density and housing type are not reasons to refuse this proposal.

IS THE DESIGN RESPECTFUL OF THE NEIGHBOURHOOD CHARACTER?

- 12 This area contains an established subdivision pattern with lots generally of similar sizes and dimensions. The Council points out that this neighbourhood was previously affected by a single dwelling covenant, but this restriction expired in 2010. Generally, the dwellings are single storey with generous rear setbacks. There are similar front setbacks and no side boundary or front fencing around the front gardens.
- 13 The Council’s submission says the HDS identifies this site within Character Area 1, which presents “average subdivision lot sizes of approximately 650sqm. There are pockets of medium density housing throughout the area, which consist of significantly smaller lot sizes, however the character and era remain consistent”. This character area actually appears to be derived from the House Rules Character Statements & Guidelines document tabled by the Council at the hearing, rather than being contained in the HDS. The Council’s submission appears to link these two documents in its concerns about non-compliance with the Housing Diversity policy at clause 22.12. It must be remembered that, at this stage, only the HDS is referenced in the planning scheme. The House Rules document is relatively recent (September 2015) and the Council has adopted it for inclusion in an amendment to propose schedules to the residential zones. In other words, it does not form part of the planning scheme. Also, it was finalised after the

Council decided to refuse this proposal, so it did not form part of the Council's consideration of this permit application. The Applicant expressed concern about it being given weight in this case. As it is a relatively recent document finalised after Council's refusal of this proposal, I have given it limited weight as a Council adopted document.

- 14 In the House Rules document, this neighbourhood is included in a Compact Suburban 1 area that is described as having higher site coverage, smaller backyards and reduced front and side setbacks. The document says this area retains a spacious feel because of the landscaped setting between the houses and the roads. The essential components of this sense of spaciousness to be maintained are front gardens, having no front fencing and limited visual separation between dwellings. With changes in housing, sufficient space for a canopy tree in the front setback and minimising driveways so as to retain or plant regular spaced street trees is encouraged.
- 15 The Council submits this proposal contains too many dwellings; has limited separation between the dwellings; and creates small lots. It also considers the street tree is a defining characteristic of the area as the street contains all the same species of a similar height, so its removal is a loss to the neighbourhood character.
- 16 The Council highlights lot frontages in this neighbourhood are predominantly 15 to 20 metres wide whereas this proposal creates Wordon Court frontages of 10 metres, thereby conflicting with the established streetscape character. This is not a fair comparison as it is inevitable that a greater density of development on existing lots will necessitate smaller frontages. This is evident in the Council's figure 5 as the few dual occupancies (side by side and corner developments) that do exist in this neighbourhood have smaller street frontages. This site is on a corner, so smaller lot frontages would be similar to other dual occupancy developments.
- 17 The Council suggests a dual occupancy development would be more responsive to the neighbourhood character. I have not considered this because this is not what the proposal is seeking. Rather, I must consider whether two double storey dwellings, attached at ground level, fronting Wordon Court and one single storey dwelling fronting Christina Crescent is acceptable.
- 18 The Council submits the lot sizes are generally around 650 square metres and a number of the dual occupancy developments have created lots of 300 to 400 square metres. I am not persuaded lot size is a reasonable comparison as, again, a greater density on existing lots will necessitate smaller lot areas. The neighbourhood and site description requirement of clause 55 identifies a great range of factors that can contribute to a neighbourhood's characteristics. In this case, I agree with the Council that the streetscape presentation is a significant characteristic, and in my view a more important factor than lot size or frontage width.

- 19 This proposal is not respectful of either streetscape. Units 1 and 2 are mirror images of each other. This means unit 2 has ground and first floor blank wall expanses, which is not acceptable on a corner in a neighbourhood setting that has open front gardens with houses oriented to have an outlook over these garden areas. Of the proposed three units, this is the one that is most prominent therefore its design needs to be respectful of the existing streetscape character. Some boundary fencing along Christina Crescent may be acceptable as the adjoining property to the east has side fencing presenting to the street. However, fencing to the street frontage associated with the service courtyard, then fencing setback to the private open space and then no fencing to the frontage of unit 3 is not respectful of the existing open front garden setting in this neighbourhood. The design of unit 2 and any associated fencing needs to change to improve its overall presentation to the street corner.
- 20 The street tree that needs to be removed in Wordon Court is a peppermint gum tree about 7 metres high that the Council says is of fair health and structure and of a similar height to other street trees in the area. I agree with this. The Applicant has sought to provide a combined central crossover to units 1 and 2 and that necessitates the removal of the street tree. This is not a good design outcome, and the design should be modified to enable the retention of the existing street tree. There is an existing crossover in the northwest corner of this site that unit 1 can utilise. Perhaps the access to unit 2 could be from Christina Crescent instead. This may provide some further opportunities to open up the front garden area, which is a common characteristic in this neighbourhood. This may also assist in limiting the amount of side boundary fencing visible along this frontage.
- 21 I agree with the Council's concern about the setback of unit 3's garage from the Christina Crescent frontage. The setback is sufficient for someone to wish to park a car in front of the garage, but with insufficient room such that any vehicle would extend over the footpath. This is not a good planning outcome. As suggested by the Council, the garage needs to be set further back from the street frontage. A problem associated with this is that it reduces the private open space area below 40 square metres. During the hearing, options discussed included reducing the living/kitchen area and shifting the proposed boundary between unit 3 and the private open space areas of units 1 and 2 further southwest (as the private open space areas of units 1 and 2 are greater than the minimum). Whatever the design solution, it needs to work with the other changes required for unit 2, in particular.
- 22 If the changes to units 2 and 3 in particular become too tight, it may be that three dwellings on this site is just too much. However, it is a matter for the Applicant and the designer/architect to resolve.

- 23 The adjoining property to the east expressed concern about overlooking. On the basis that unit 3 remains single storey with the existing paling boundary fence, I am satisfied there is no unreasonable overlooking. There are no other unacceptable amenity impacts arising from this proposal.

CONCLUSION

- 24 For the reasons explained above, the decision of the Responsible Authority is affirmed. No permit is to issue.

Rachel Naylor
Member