

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NOS. P1009/2020 &
P1004/2020
PERMIT APPLICATION NO. PA2020/6886

APPLICANT	St John of God Health Care
RESPONSIBLE AUTHORITY	Melton City Council
SUBJECT LAND	73 The Regency Rise, Hillside
HEARING TYPE	Hearing
DATE OF HEARING	16 December 2020
DATE OF ORDER	15 February 2021

ORDER**APPLICATION P1009/2020 AND P1004/2020**

- Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Stoll Long Architecture
 - Drawing number: TP03 Revision 6
 - Dated: 1 December 2020
 - Prepared by: John Patrick Architects Pty Ltd
 - Drawing numbers: TP01
 - Dated: 3 December 2020
- Pursuant to clause 127 of the *Victorian Civil and Administrative Tribunal Act 1998*, the development plan is amended by substituting the following plans filed with the Tribunal:
 - Prepared by: Stoll Long Architecture
 - Drawing number: TP11 Revision 5
 - Dated: 1 December 2020
- In application P1004/2020 the decision of the responsible authority is set aside. The Tribunal directs the responsible authority to approve the development plan in application DP2020/001.



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- 4 In application P1009/2020 the decision of the responsible authority is set aside.
- 5 In planning permit application PA2020/6886 a permit is granted and directed to be issued for the land at 73 The Regency Rise, Hillside in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - The construction of buildings and works in accordance with the endorsed plans
 - Use of the land for accommodation in a Melbourne Airport Environs Overlay

Jane Tait
Member

APPEARANCES

For St John of God Health
Care

Ms Sarah Varney, of Counsel, instructed by Ms Kristie Alderson, legal counsel for St John of God Health Care and Ms Robyn Gray of Gray Kinnane. She called the following witness:

- Mr Sam D'Amico, town planner, Ratio Consultants Pty Ltd

For Melton City Council:

Mr Barnaby McIlrath, solicitor



INFORMATION

Description of proposal

Application P1004/2020

To approve a development plan for the construction of two community care accommodation units on a lot pursuant to the Development Plan Overlay – Schedule 1 (DPO1).

Application P1009/2020

To construct two community care accommodation units on the land. The site layout includes both units facing the street with a driveway along the south boundary that leads to a double garage and double carport in the south-west corner of the site.

Unit 1 (southern unit) comprises four bedrooms, open plan living, kitchen, laundry and four en-suites. Unit 2 (northern unit) includes three bedrooms, living and service areas. The secluded open space is provided in the northern setback for both buildings with access from the living area. This includes 66 square metres for Unit 1 and 172 square metres for Unit 2.

The development has site coverage of 41.5%, permeability of 37.2% and garden area of 45.8%. The units have a maximum overall height of 4.9 metres. A 1.5 metre high metal picket fence and gate are proposed along the frontage of both units. The units have a contemporary design that includes flat, pitched and skillion roofing. Materials include use of face brickwork, render and aluminium window frames.

Nature of proceeding

Application P1009/2020

Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.

Application P1004/2020

Application under section 149 (1) of the *Planning and Environment Act 1987* – to review a refusal to approve a development plan



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Planning scheme	Melton Planning Scheme
Zone and overlays	General Residential Zone - Schedule 1 (GRZ1) Urban Floodway Zone (UFZ) Development Plan Overlay – Schedule 1 (DPO1) Melbourne Airport Environs Overlay – Schedule 2 (MAEO2)
Permit requirements	Clause 32.08-6 – to construct or extend a residential building on land in a GRZ1 Clause 37.03-2 – to construct a building or construct or carry out works, including a fence on land in a UFZ Clause 45.08-1 – use of the land for accommodation in a MAEO2 Clause 45.08-2 – to construct a building or construct or carry out works for any building for which a permit is required on land in a MAEO2
Land description	The subject site is located on the west side of The Regency, Hillside. It is an irregular shaped lot with a curved frontage of 29.3 metres, depth of 45.7 metres and site area of 1341 square metres. The subject site is vacant and contains no vegetation. The subject site has a slope of approximately 1.4 metres from the north-west to south-east across the site and there is a vehicle crossover located at the southern end of the frontage. The UFZ is located at the north-east end of the site and is approximately 9.3 metres wide. The site is located in an established residential area that contains a mixture of single and two storey detached houses.
Tribunal inspection	An unaccompanied inspection of the subject site and surrounding area was conducted after the hearing.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 St John of God Health Care (the 'Applicant') applied to Melton City Council (the 'Council') to develop two community care accommodation units² (the 'units') at 73 The Regency, Hillside. It also concurrently applied for approval of a development plan for the construction of the two units in accordance with the DPO1.
- 2 Council resolved to refuse to grant a permit and refused to approve the development plan. The grounds of refusal are that the development plan does not satisfy Clause 43.03-4 of the planning scheme as it fails to satisfy the requirements of Clauses 1.0 and 2.0 of the DPO1. It argues the development fails to address or respond to the DPO1, and more specifically, the Melton East Strategy Plan (MESP). It submits the location of the site is at odds with policy for community care facilities as it is remote from an activity centre, public transport and community facilities.
- 3 Council also refused the planning permit on grounds the proposal is out of character with the surrounding area and it does not satisfactorily address the objectives and standards of Clause 55 of the planning scheme. It says there is no proper justification for the two units on a single lot with a markedly different design to the surrounding dwellings.
- 4 The applicant has lodged an application to review Council's decisions in relation to the development plan and planning permit. It argues the development will deliver purpose built, long term housing for people with disabilities. It submits there is strategic support for this form of housing at state and local level as it will provide housing for disabled persons that is located close to open space, shops and services. It relies on the evidence of Mr D'Amico who considers the two single storey units are modest in scale and will comfortably integrate into the existing neighbourhood character.

PROCEDURAL ISSUES & RULINGS

Section 149A Declaration – Application P1005/2020

- 5 In October 2020, the Tribunal heard application P1005/2020³ under Section 149A of the *Planning and Environment Act 1987*. This application was made for a declaration that no planning permit was required for use and development of the land for community care accommodation in accordance with Clause 52.22 – Community Care Accommodation.

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 Whilst Council has described the buildings as dwellings, they fall within the definition of 'community care units' in Clause 73.03 of the planning scheme.

³ *St John of God Health Care v Melton CC* [2020] VCAT 1263.



- 6 The Tribunal declared the proposed use is exempt under the Melton Planning Scheme but the buildings and works aspect of the application needed planning approval.

Parties to the Proceedings

- 7 Prior to the hearing, abutting and nearby residents submitted Statements of Grounds to the Tribunal opposing the development. Council advised there was 'informal' notice of the permit application and over 200 objections were received. This notice was given notwithstanding that Clause 43.04-3 of the planning scheme states:

If a development plan has been prepared to the satisfaction of the responsible authority, an application under any provision of this planning scheme is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.

- 8 The residents requested to become parties to the proceedings because they lodged objections with the Council who informally gave notice of the permit application. I heard submissions from the applicant who opposed this request. It argued the objectors had no third party rights as the DPO1 clearly states there is to be no notification and thus participation in the hearing.
- 9 I gave oral reasons at the hearing not to join the persons who lodged Statement of Grounds with the Tribunal. My oral reasons were consistent with previous Tribunal decisions that rejected such applications in a DPO where it was noted:

So far as formal notice under section 52(1) is concerned, it should not be given in any circumstances where a Development Plan Overlay applies because:

- If the application is generally in accordance with the development plan, it is exempt from notice requirements under clause 43.04-2.
- If the application is not generally in accordance with the development plan, the responsible authority must refuse the application and if it does so, pursuant to section 52(1) it does not have to comply with the notice requirements of section 52(1).⁴

- 10 I also concur with the following Tribunal comments:

There is a very clear scheme in the *Planning and Environment Act 1987* and planning schemes based on the Victoria Planning Provisions that certain classes of applications for permits are exempt from third party notice and appeal rights. In such circumstances, the objectors must rely upon the responsible authority to possibly address their concerns in its submission to the Tribunal at the hearing. It would be contrary to the purpose underlying this scheme if, by submitting an

⁴ *Saunders v Frankston CC* (includes summary) (Red Dot) VCAT 144- para 9.



objection to the council and/or a statement of grounds to the Tribunal, a person could thereby gain rights to be heard by the Tribunal or to have their submission considered by the Tribunal.⁵

Amended Plans

- 11 Prior to the commencement of the hearing, the applicant circulated amended plans in accordance with the Tribunal Practice Note PNPE9. These amendments include a revised development plan that showed the building envelope and landscape plans. Amended plans were also submitted that removed a small portion of Unit 2 from the UFZ.
- 12 Having reviewed the amended plans, Council advised that it had no objection but it maintained its opposition to the proposal based on inconsistencies with the DPO1, state and local policies and non-compliance with Clause 55 standards. There being no objection, I substituted amended plans for the application plans in both the planning permit application and the development plan and these now form those on which my decision is reached.

Melbourne Airport Environs Overlay

- 13 By order dated 11 November 2020, in application P1005/2020, the Tribunal made the following declaration (in part) pursuant to Section 149A of the *Planning and Environment Act 1987*:

In relation to the proposed use of the land at 73 The Regency, Hillside for Community Care Accommodation as shown in the documents provided in association with Planning Application PS2020/6886, this use is exempt from needing a planning permit under the Melton Planning Scheme.
- 14 The Tribunal's reasons confirm that this declaration was made in respect of the provisions of clause 52.23 of the Melton Planning Scheme ('Planning Scheme').
- 15 The subject land is partly within the Melbourne Airport Environs Overlay – Schedule 2 ('MAEO2'). The submissions and evidence of the parties confirm that pursuant to Clause 45.08-1 of the Planning Scheme, a planning permit is required to use land within the MAEO2 for accommodation. It appears from the Tribunal's reasons, specific consideration was not given to the need for this use permission.
- 16 Council and applicant have subsequently advised that they have no objection to this division of the Tribunal considering and determining the use permission required pursuant to the MAEO2.

WHAT ARE THE KEY ISSUES?

- 17 Based on the submissions, I find the key issues in this matter are:

⁵ *Rescom Building Group v Melton SC* [2011] VCAT 509- para 6.



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- Does the development respond to its planning policy context?
- Is the development generally in accordance with the DPO1?
- Is the development an acceptable response in this neighbourhood?

18 Having considered the submissions presented regarding the applicable policies and provisions of the planning scheme and assisted by my inspection, I have decided to set aside the Council's decisions. My reasons follow.

WHAT TYPE OF HOUSING IS PROPOSED?

19 The applicant is proposing to construct two community care accommodation units on the land. The use is defined in Clause 73.03 as:

Land used to provide accommodation and care services.

It includes permanent, temporary and emergency accommodation. It may include supervisory staff and support services for residents and visitors.

- 20 Whilst Senior Member Martin declared the use does not require planning approval in accordance with the planning scheme, it is important to describe how it operates as it affects the built form outcome proposed for the site.
- 21 The applicant described the units as providing long term accommodation for individuals with an intellectual or physical disability to enable them to live in a supported living arrangement with funding provided from the National Disability Insurance Scheme (NDIS). Each single storey unit is designed to accommodate three residents with their own bedroom. There will also be a support worker/staff housed in Unit 1 who will be on-site overnight. The applicant says that approximately two other support workers are likely to attend the site daily to assist the residents at the start and end of each day. This assistance is dependent upon the level of care each resident needs.
- 22 The applicant advises there will be one car allocated to the units that will be driven by staff. This car is a shared resource for the residents of both units to provide transportation to daytime activities, medical appointments etc.

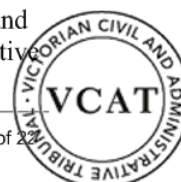
DOES THE DEVELOPMENT RESPOND TO ITS PLANNING POLICY CONTEXT?

- 23 The applicant argues the proposal is in accordance with the purposes of the GRZ1 which is to encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport. Whilst Council acknowledges this, it says the site is not located in close proximity to public transport, community facilities and activity centres that should be available for residents.
- 24 The site is within an UFZ. Prior to determination by Council, the plans were amended to ensure the footprint of Unit 2 did not encroach into this



overlay. The application was also referred to Melbourne Water who had no objection to the proposal.

- 25 The site is partially within the MAEO2. A permit is required for use and development of the units in this overlay. It contains decision guidelines to consider whether the proposal will increase the number of dwellings and people affected by aircraft noise. No arguments were presented by Council in relation to this overlay.
- 26 Council identified a number of relevant policies in the Planning Policy Framework (PPF) that relate to housing. These include Clause 16.01-1S that has an objective to facilitate well located, integrated and diverse housing that meets the needs of the community. Strategies include to ensure the appropriate quantity, quality and type of housing that includes supported accommodation for people with a disability.
- 27 Council also noted that Clause 16.01-4S – Community Care Accommodation has an objective:
- To facilitate the establishment of community care accommodation and support their location being kept confidential.
- 28 Strategies to achieve this include:
- Planning schemes should not require a planning permit for or prohibit the use of land in a residential area for community care accommodation that accommodates no more than 20 clients and that is funded by, or conducted by or on behalf of, a government department or public authority, including a public authority established for a public purpose under a Commonwealth Act. Facilitate the confidential establishment of community care accommodation through appropriate permit, notice and review exemptions.
- 29 Clause 52.22 relates to Community Care Accommodation. This clause implements the objectives of Clause 16.01-4S and has a purpose to facilitate the establishment of community care accommodation and to support its confidentiality.
- 30 Council argues that construction of the two purpose-built units will ‘stand out’ from its surrounds. It says this is contrary to the purpose of Clause 52.22 as it will highlight the different nature of the use and thus it will not be ‘confidential’ in the neighbourhood.
- 31 Whilst I acknowledge the built form response is designed to cater for the specific needs of its residents, I find the design is not institutional in nature and will not be highly obvious in the neighbourhood. I will expand on these matters further as they relate to my neighbourhood character findings discussed below.
- 32 The Local Planning Policy Framework (LPPF) includes similar objectives and strategies to promote housing diversity. Clause 21.02-2.3 contains an objective to ensure a range of housing is available to meet the demand and to improve affordability and accessibility in established suburbs. Objective



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3 of Clause 21.08-3 also notes that a sufficient range of special needs housing types should be provided throughout the municipality.

33 Clause 22.12- Housing Diversity Strategy is applicable to development in a GRZ and is derived from the *Melton Housing Diversity Strategy May 2014*. This policy encourages the development of a range of housing options to meet the needs of a diverse population. It is policy to:

- Encourage the development of a range of housing options throughout the municipality.
- Ensure that new development does not impact adversely on areas of recognised neighbourhood character.
- Encourage higher density development to locate in areas with high levels of accessibility to infrastructure and services.
- Encourage the redevelopment of well located infill sites.

34 I am satisfied the units will expand the range of housing available in the Hillside area. I accept the applicant's submissions that there is a high demand for this type of accommodation to enable disabled adults to live close to their families who live nearby. However, there are a number of other policy issues that need to be considered. These include whether the built form response will adversely impact the existing neighbourhood character and whether increasing the residential density at this location provides an acceptable level of accessibility to services and public transport for residents. I will discuss these issues further below

IS THE PROPOSAL IN ACCORDANCE WITH THE DEVELOPMENT PLAN OVERLAY?

35 The subject site is located in a DPO1 that relates to the Melton East Growth Area. In accordance with Clause 43.04-2, a permit must not be granted to construct a building or carry out works until a development plan has been prepared to the satisfaction of the responsible authority. A permit granted must be generally in accordance with the development plan and include any conditions or specific requirements specified in the schedule to the overlay.

36 The applicant prepared a development plan for the subject site as there is currently no approved plan. This plan shows the siting of the units, location of adjoining dwellings, the driveway, double garage, double carport and landscaping. I am satisfied the development plan provides adequate information which meets the requirements of Clause 1.0 of the DPO1.

37 Clause 2.0 of DPO1 states that before deciding on whether to approve a development plan, the responsible authority must consider:

- The existing and possible future development and use of the land and of contiguous or adjacent land.
- The need for appropriate setbacks from residential areas.



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- The provision of water, sewerage, drainage and electricity services.
- The orderly planning of the zone, including the management of traffic, the provision of pedestrian ways and open space.
- The need for financial or other contributions towards the provision of reticulated service infrastructure, community and social facilities and services, transport infrastructure and services.
- The provisions of the Melton East Strategy Plan and municipal planning policy

38 In terms of the above criteria, many relate to greenfield/estate planning and are not particularly relevant to an infill development site such as this. However, I have considered all the requirements in my decision including the existing and future development of the land. I am satisfied the subject site and surrounding properties will remain residential due to the GRZ1 zoning of the land in this area.

39 I note the site is within an established residential area that contains services such as water, sewerage, drainage and electricity. My site inspection revealed the surrounding area is fully developed and the existing street network contains footpaths to accommodate pedestrian movements throughout the neighbourhood. There is also public open space opposite the subject site.

40 In terms of traffic management, I find a double garage and double carport for the two units satisfactory as this level of provision is consistent with the requirements of Clause 52.06 for two dwellings. Based on the information supplied by the applicant, I am satisfied the potential increase in traffic generated from the site can be accommodated in the existing road network. I have come to this conclusion as the subject site is within an established residential area that includes a series of local and collector roads. I consider the existing road network will cope with the potential increased traffic movements created by staff and visitors associated with the six residents on the subject site.

41 I note Clause 2.0 requires consideration of whether there is a need for setbacks from residential areas. I find this consideration is of limited relevance as the subject site is to be used for residential purposes and adjoins residential uses and therefore there are no residential areas to be set back from.

Melton East Strategy Plan 1997 (MESP)

42 Clause 2.0 of the DPO1 requires consideration of the MESP and the LPPF. The Structure Plan identifies the subject site is within a low density residential edge area that recommends an average density of 1:1000 square metres.



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43 Council argues the development may result in future subdivision into two lots that are well below the recommended density. Whilst it acknowledges the amended plans have removed a subdivision line that was originally shown on the development plan, it says the proposal could facilitate future subdivision into smaller lots, even if it is not proposed at this time. The applicant, however, advises subdivision is not part of this application as it is not proposed in the foreseeable future.

44 Mr D'Amico questioned the usefulness and relevance of the DPO1 and the MESP as it was approved 23 years ago. He says:

In my opinion, the overlay has become somewhat redundant given the already developed nature of the area it covers. I am instructed that Council is currently investigating the removal of the overlay to avoid absurd situations such as this, where the development plan is required for a single site.⁶

45 He considers other policies, such as the Housing Diversity Policy at Clause 22.12, are more relevant as they encourage development of a range of housing options throughout the municipality to meet the needs of the diverse population.

46 I agree with Mr D'Amico that the MESP may be nearing the end of its policy life. However, the DPO1 still requires consideration of the MESP. I acknowledge the proposed density is less than 1000 square metres but it is an infill development site within an established residential area. Therefore factors such as the existing neighbourhood character are important considerations. In this case, I observed the surrounding area is generally in accordance with the recommendations of the MESP as it is predominately low density, detached housing.

47 I note the MESP contains statements that provide flexibility to consider alternative land uses and development structures. The introduction states:

It is possible and even likely that alternative approaches to development use and management of the area will be envisaged by various parties. If any party proposes to pursue an alternative approach to that set out in the Plan and expressed in the Strategic Principles, they must prepare a comprehensive justification to Council. This justification must demonstrate that the alternative will meet the Strategy Plan goals and objectives as well as satisfying the criteria set out in each section.⁷

48 I am satisfied the applicant's submission and evidence presented by Mr D'Amico, demonstrate that construction of the two units on the subject site will not significantly detract from the low density character of the area that is recommended in the MESP due to the layout and setbacks from boundaries. I will discuss specific aspects of the design in my findings below.

⁶ Ratio evidence – para 5.4.5.

⁷ *Melton East Strategy Plan 1997* – page 6.



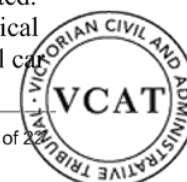
- 49 I note the DPO1 not only requires consideration of the MESP but also the LPPF. Therefore I agree with Mr D'Amico that newer policies, such as Clause 22.12, must also be considered. This policy includes objectives to respond to the diverse housing needs of its residents and to protect and enhance the neighbourhood character.

Conclusion

- 50 No permit can issue unless the proposal is generally in accordance with the approved development plan. I agree with Mr D'Amico that preparation of a development plan for a single lot in an existing developed area can be applied to the extent of detail required to enable consideration of development of two community care units on this site.
- 51 I consider the development plan meets the requirements of DPO1 and satisfies the relevant goals and objectives of MESP. I will therefore direct the Council to approve the development plan.

LOCATIONAL ARGUMENTS

- 52 Council refused the planning permit application on grounds the proposal is inappropriately located in an established residential area which is not in proximity to public transport, activity centres and community facilities. It argues there is no obvious justification for approval of a development plan for the two units in a location that is remote from the nearest activity centre. It argues the proposal fails to meet MESP goals and objectives that encourage higher densities in close proximity to activity centres, community facilities and public transport routes. It submits the proposal is contrary to recommendations in the MESP that encourages a structure to allow equitable access to community facilities and services for residents.
- 53 Council argues the proposal is also contrary to the LPPF that contains strategies at Clause 21.01-2 to support medium density housing that is close to public transport and services. It considers the proposal fails to meet strategies in Clause 21.08-3 that encourage more intensive residential development close to activity centres and major public transport nodes. It notes this clause contains an objective to provide equitable access to services and opportunities that meets the needs of all residents. It also says the location of the units on the outer edge of the residential area is contrary to Clause 22.12 that contains an objective to encourage increased residential densities in locations with high levels of access to infrastructure, services and transport.
- 54 The applicant refutes this proposition and says infill development at this location is appropriate. It argues the subject site has close access to public open space (opposite the site), is approximately 560 metres from the nearest bus stop, and shops and services are located within 1.5 kilometres. It relies on the evidence of Mr D'Amico who considers the location is not isolated. He says residents will have a variety of transport options to access medical facilities and other services. He says this includes use of the communal car



that is driven by a staff member, taxi services and buses that are located nearby. He says:

I do not consider it imperative for the development of these community care units to be in close proximity to an activity centre, public transport and community facilities. Certainly, the surrounding community and dwellings are able to function in an appropriate manner that was originally master planned through the Melton East Strategy Plan. Nevertheless, the site is located within an established residential area that is serviced by buses, it comprises a range of community facilities such as parks, and there are shopping centres in reasonable proximity.⁸

- 55 I consider the residents of the units will have a satisfactory level of access to public transport and services which is consistent with other residents who live in this neighbourhood. This includes a bus service that provides connection to Watergardens and the Hillside Activity Centre that is located 1.5 kilometres from the subject site.

IS THE DEVELOPMENT AN ACCEPTABLE RESPONSE IN THIS NEIGHBOURHOOD?

- 56 Council refused the application on grounds the development fails to respect neighbourhood character. It says the housing form is atypical for the area due to its flat roof form, the location of car parking to the rear and provision of front fencing.

What is the Preferred Neighbourhood Character?

- 57 The *Housing Assessment and Design Guidelines September 2015* (the 'Guidelines') are a reference document at Clauses 21.02-2.4 and 21.08-4 of the scheme. These clauses contain strategies to protect the preferred neighbourhood character. The subject site is located in a 'Compact Suburban 1' area (CS1) that contains the following preferred neighbourhood character:

Compact Suburban 1 areas have higher site coverage, smaller backyards, reduced front and side setbacks, and (apart from principal streets) narrower roadways, compared with typical Garden Suburban and Garden Court areas. However the street spaces (including the front setbacks) retain a spacious feel because of the near continuous landscaped setting between dwelling front and street kerb. The essential components of this sense of spaciousness, which will be maintained into the future, are:

- Majority of the front setback used as permeable garden landscape
- Absence of front fencing
- Limited visual separation between dwellings⁹

⁸ Ratio evidence – paragraph 5.2.13.

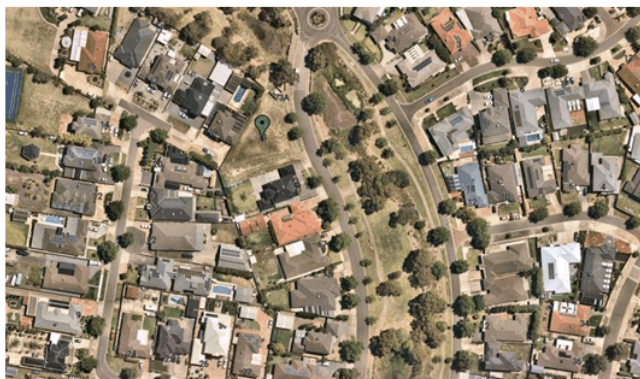
⁹ At page 39.



- 58 This statement notes typical compact suburban dwellings have garages that occupy a minor proportion of the frontage and dwellings have a visually dominant roof structure. It recommends that medium density housing should respect the existing neighbourhood character and reflect the design character of the area.

What is the physical context of the area?

- 59 My inspection of the neighbourhood reveals it is an established residential area that contains a mixture of double and single storey detached dwellings that were developed in the 1990's. There is a sense of openness in the street due to the absence of front fencing which provides uninterrupted views of the front gardens that contain low vegetation and mid-sized canopy trees. Driveways and garages are part of the dwelling facades and are a visible presence within the streetscape. The subject site faces a linear park that contains numerous mature Eucalypts. This parkland enhances the landscaped, low scale qualities of the neighbourhood.
- 60 Dwellings are generally set back 6 to 10 metres from the frontage and abut at least one side boundary. They have rear setbacks of 10 to 15 metres which provides space for a generous rear yard. Dwelling design in the area is predominately brick with hipped tiled roofing and eaves and front verandas are common features of façades.



Source: Nearmap 8 January 2021

Layout/Intensity

- 61 Council argues the design guidelines for CS1 emphasise the rhythm of building spacing in the streetscape which is to be achieved by providing similar setbacks to existing dwellings in the street. It says two dwellings on this lot will interrupt this rhythm particularly given the density of the development is higher than the existing density in the area. Council also considers the location of the car parking at the rear of the site is inconsistent with nearby dwellings that have garages and driveways visible in the streetscape.

- 62 I find the proposed layout of the units an acceptable response to the existing and preferred neighbourhood character for the following reasons:
- The subject site has a wide frontage of 29.3 metres which allows the units to read as detached houses in the streetscape. This will maintain the existing dwelling spacing;
 - The units will reflect the existing double-fronted dwellings nearby as each dwelling has its own entrance and windows facing the street;
 - Unit 1 is set back 4.5 metres from the south boundary which provides a suitable break to the garage on the adjoining dwelling at 71 The Regency;
 - The curvilinear road configuration creates a sense of space to the north boundary as Unit 2 is set back 9.72 metres;
 - There is a 2.5 metre separation between the units that is wide enough to accommodate landscaping. This has been shown on the landscape plans;
 - The dwellings are set back 6.3 metres and 8.8 metres from the frontage. These setbacks are consistent with the range of frontage setbacks found in the area and provide enough space for a garden which will maintain the landscape character of the neighbourhood;
 - The units are single storey and propose a maximum height of approximately 5.3 metres. This scale is consistent with existing single storey dwellings nearby which will ensure the units do not dominate the streetscape;
 - The location of one driveway along the south boundary will minimise the amount of hard paving in the frontage of both units; and
 - The provision of a double carport and garage at the rear will be a site responsive design that minimises the visibility of the structures in the streetscape.

Materials

- 63 Council is concerned that the colours and materials of the units will emphasise the contrast between the new and old development. It says this is contrary to the CS1 guidelines that recommend use of colours and materials that are already a common feature in the area.
- 64 I am satisfied proposed materials are satisfactory as it includes use of face brickwork (Lygon Coffee or similar) and render (Biscotti). I acknowledge the façade contains a greater proportion of render than the neighbouring dwellings but is acceptable as brick is the main feature of the facade and therefore consistent with the existing dwellings nearby.



Roof forms/ Contemporary Design

- 65 Council says the flat roofing of the units is discouraged in the CS1 guidelines that seek to maintain a dominant roof form. It says the inclusion of significant expanse of flat roof is completely at odds with the roof forms evident in the street as it will be clearly visible in the north and east elevations
- 66 I am not persuaded by this argument and find the inclusion of flat, pitched and skillion roofing acceptable as it is reflective of existing roof forms nearby. I note the roof is not fully flat but contains dominant pitched roof elements that are found in dwellings nearby. I also note the subject site is not within a Neighbourhood Character Overlay that contains requirements for roof forms to match existing dwellings in the street.
- 67 I consider the contemporary design of the dwellings that includes flat roof elements is reflective of the changing nature of dwelling styles over time. This design includes the use of varying materials, setbacks and window openings to create visual interest in the streetscape and for the abutting properties.

Front fencing

- 68 Council is concerned about the erection of a 1.5 metre high metal picket front fence and gate. It argues this is contrary to the CS1 guidelines that recommend no front fencing.
- 69 I agree front fencing is not a common feature of this neighbourhood. However, I find the fence and gate acceptable as there is a high level of permeability to allow views of the front garden which will not be a jarring element in the streetscape.

OTHER MATTERS

Melbourne Airport – Condition 7

- 70 A planning permit is required for use and development of the land for accommodation in the MAEO2. Council referred the application to Melbourne Airport in accordance with Clause 45.08-6. They advised the following:

The subject site falls outside the 20 contour of the Melbourne Airport Long Range Australian Noise Exposure Forecast (ANEF) endorsed in 2018. Table 2.1 Australian Standard AS 2021-2015 designates a house is acceptable outside the 20 ANEF noise contour. This site is, however, located within the airports N-above contours, as shown on the Melbourne Airport Noise Tool.¹⁰

¹⁰ Melbourne Airport letter dated 10 January 2020.



- 71 Melbourne Airport has reviewed the application and advised it has no objection to the proposal subject to the inclusion of the following standard condition on the permit:

Any building for which a permit is required under this overlay must be constructed so as to comply with any noise attenuation measures required by Section 3 of Australian Standard AS 2021-2015, Acoustics - Aircraft Noise Intrusion - Building Siting and Construction, issued by Standards Australia Limited.

- 72 I must consider whether use and development of the land for accommodation satisfies the purposes of the overlay that includes ensuring the use and development is compatible with the operation of the airport and assists in shielding people from the impact of aircraft noise by requiring appropriate noise attenuation measures in dwellings and other noise sensitive buildings. This includes consideration of the following decision guidelines at Clause 45.08-4:

- The Municipal Planning Strategy and the Planning Policy Framework.
- Whether the proposal will result in an increase in the number of dwellings and people affected by aircraft noise.
- Whether the proposal is compatible with the present and future operation of the airport in accordance with the current Melbourne Airport Master Plan approved in accordance with the Airports Act 1996.
- Location of the development in relation to the criteria set out in Table 2.1 Building Site Acceptability Based on ANEF Zones in Australian Standard AS 2021-2015.

- 73 I acknowledge the proposal will increase the number of people living in an area that may be affected by aircraft noise. However I am satisfied the inclusion of the standard condition, which requires the implementation of sound attenuation measures in the design of the units, will assist in shielding residents from the impact of aircraft noise. This is in accordance with one of the purposes of the overlay.

WHAT CONDITIONS ARE APPROPRIATE?

- 74 Conditions were discussed at the hearing and any changes to the permit conditions contained in Appendix A of this order reflect those discussions plus further consideration by the Tribunal. These include the deletion of conditions relating to the use of the land for community care accommodation purposes.

Item 12.15 Planning Application PA 2020/6886 & Development Plan DP2020/001 - Development of two dwellings on the land, use of the land for accommodation (Community Care Accommodation) and construct buildings and works on land in an Urban Floodway Zone At 73 The Regency, Hillside

Appendix 2 VCAT Decision - dated 15 February 2021

CONCLUSION

75 For the reasons given above, the decision of the responsible authority is set aside. I will direct Council to approve the development plan and grant a permit subject to the conditions in Appendix A.

Jane Tait
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	PA2020/6886
LAND	73 The Regency Rise, Hillside

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- The construction of buildings and works in accordance with the endorsed plans
- Use of the land for accommodation in a Melbourne Airport Environs Overlay

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 submitted with the application but modified to show:
 - (a) Corner splays (pedestrian sight triangles) at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage are to be provided and shown on the plan, to provide a clear view of pedestrians on the footpath of the frontage road. The area clear of visual obstructions may include an adjacent entry or exit lane where more than one lane is provided, or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.
 - (b) The on-site detention system.
- 2 Before the development starts, a landscape plan prepared by a person suitably qualified or experienced in landscape design 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 plan must be drawn to scale with dimensions and three copies must be provided. The plan must be generally in accordance with the plan prepared by John Patrick Landscape Architects Pty Ltd dated 3 December 2020 and shows:
 - (a) Location and identification of all proposed plants.



- (b) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
 - (c) A survey (including botanical names) of all existing vegetation to be retained and/or removed.
 - (d) Details of surface finishes of pathways and driveways.
 - (e) A canopy tree in the front setback of both dwellings.
- 3 Before the development starts, drainage plans and design calculations for the proposed development must be submitted to and approved in writing by the responsible authority.
 - 4 The maximum storm water discharge rate from the proposed development is 13.37 litres per second. An on-site stormwater detention system must be installed in accordance with plans and specifications approved by the responsible authority.

The following design parameters for the on-site detention system must be used:

- Time of Concentration for the catchment: $T_c = 7.10$ minutes.
- Travel time from the discharge point to the catchment outlet: $T_{so} = 0.5$ minutes.
- Weighted coefficient of runoff at the initial subdivision: $C_w = 0.45$.

All on-site stormwater must be collected from the hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The on-site drainage system must prevent discharge from the driveway onto the footpath.

- 5 The development layout as shown on the endorsed plans must not be altered without the written consent of the responsible authority.
- 6 Before the development is occupied or within two (2) months of the completion of the development, all existing conditions affected by the development works must be reinstated at no cost to and to the satisfaction of the responsible authority.

Melbourne Airport – Condition 7

- 7 Any building allowed by this permit must be constructed so as to comply with any noise attenuation measures required by Section 3 of Australian Standard AS 2021-2015, Acoustics - Aircraft Noise Intrusion - Building Siting and Construction, issued by Standards Australia Limited.
- 8 Before the development is occupied, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the responsible authority.



- 9 The landscaping shown on the endorsed plans must be maintained to the satisfaction of the responsible authority and used for no other purpose, including that any dead, diseased or damaged plants are to be replaced.
- 10 Before the on-site detention system is covered (by concrete and the like), the permit-holder must contact the responsible authority to organise an inspection of the property to verify the instalment, as per the endorsed drainage plans.
- 11 Stormwater must not be discharged from the site other than by means of an underground pipe drain discharged to a legal point of discharge to the satisfaction of the responsible authority.
- 12 No permanent structure is to be located above an easement unless approval is granted by the relevant authorities.
- 13 Construction activities must be managed so that the amenity of the area is not detrimentally affected:
 - (a) By the transport of materials, goods or commodities to or from the land.
 - (b) By the inappropriate storage of any works or construction materials.
 - (c) By the hours of construction activity.
 - (d) By the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste and storm water runoff, waste products, grit or oil.
 - (e) By the presence of vermin.
 - (f) In any way as determined by the responsible authority.
- 14 This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within two years of the date of this permit.
 - (b) The development is not completed within four years from the date of this permit.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards (for a request to extend the time to commence the development) or twelve months after the permit expires (for a request to extend the time to complete).

– End of conditions –

