

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**ADMINISTRATIVE DIVISION****PLANNING AND ENVIRONMENT LIST**VCAT REFERENCE NO. P1854/2018
PERMIT APPLICATION NO. PA2018/6021/1**CATCHWORDS**

Section 77 of the *Planning and Environment Act 1987*; Melton Planning Scheme, General Residential Zone; Proposed four double storey dwellings on a corner lot; design response to neighbourhood character.

APPLICANT	Dejan Filipovski
RESPONSIBLE AUTHORITY	Melton City Council
RESPONDENT	Roderick Borg and others
SUBJECT LAND	15 Empress Way, Melton West
WHERE HELD	Melbourne
BEFORE	Christina Fong, Member
HEARING TYPE	Hearing
DATE OF HEARING	27 March 2019
DATE OF ORDER	5 April 2019
CITATION	Filipovski v Melton CC [2019] VCAT 484

ORDER

- 1 In application P1854/2018 the decision of the responsible authority is affirmed.
- 2 In planning permit application PA2018/6021/1 no permit is granted.

Christina Fong
Member

APPEARANCES

For applicant	Luka Mrkonjic, town planner, Luka Mrkonjic Town Planning Services
For responsible authority	Shane Trenerry, town planner, City of Melton



For respondent Sophie Lodd, town planner, Acorn Planning

INFORMATION

Description of proposal	Four double storey detached dwellings.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Melton Planning Scheme
Zone and overlays	General Residential Zone and no overlay
Permit requirements	Clause 32.08-6 for construction of two or more dwellings on a lot
Relevant scheme policies and provisions	Clauses 11, 15, 16, 21.04, 22.12, 52.06, 55 and 65.01.
Land description	<p>The land is located on the southeast corner of Empress Way and Odette Place, Melton West. It is almost regular in shape, with a long frontage to Empress Way, a curved frontage to Odette Place, and a total site area of 829 square metres. It is occupied by a single storey brick veneer house.</p> <p>The land is located in an established residential area of Melton West developed in the 1980's. Characteristics of the area are the layout of the subdivision in curving streets with courtbowls off these streets and detached housing mostly single storeyed.</p> <p>Adjoining the land are single storey detached houses. The dwelling on the opposite corner of Empress Way and Odette Place is a two storey detached house.</p>
Tribunal inspection	30 March 2019, not accompanied by the parties.



REASONS¹**WHAT IS THIS PROCEEDING ABOUT?**

- 1 The permit applicant seeks to develop four double storey dwellings on this corner lot, with one facing Odette Place and the others facing Empress Way. Council has refused the application and on the grounds of excessive density and built form; design not addressing the objectives and standards of ResCode with respect of neighbourhood character; and over development. This refusal was contrary to council officer's recommendation to approve subject to permit conditions, none of which requires a fundamental change to the design of the development.

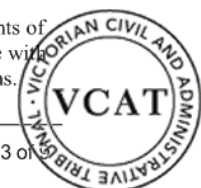
WHAT ARE THE KEY ISSUES?

- 2 The key issue of this review is whether the proposal's design is an acceptable response to the zoning and relevant planning policies affect the site, and the neighbourhood character of the area.
- 3 A proposal for additional dwellings is consistent with the general thrust of increased housing diversity and making better use of fully serviced land in the established residential areas of Melbourne. The issue here is whether the design is acceptable to the neighbourhood character of the area. In this case, I find the extent of building massing and siting of built form excessive, even when balanced against the objectives of housing diversity.

WHETHER THE DESIGN IS AN ACCEPTABLE RESPONSE TO THE ZONING, RELEVANT PLANNING POLICIES OF THE SITE, AND THE NEIGHBOURHOOD CHARACTER OF THE AREA

- 4 The land is in the General Residential Zone. The purpose of this zone, as far as residential development is concerned, is to:
 - Encourage development that respects the neighbourhood character of the area.
 - To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- 5 This theme is repeated in the Planning Policy Framework of the planning scheme.
- 6 The Local Planning Policy Framework sheds further light for the Melton Municipality. Clause 21.04 (housing within the Established Residential Areas) spells out seven objectives, such as investing in Melton's established residential areas as places to live and invest, retaining the existing housing character by managing existing residential precincts through housing policy, and promoting site consolidation and supporting more intensive development close to activity centres and major public transport nodes.

¹ The submissions 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.



- 7 Clause 22.12 (Housing Diversity Policy) again reaffirms the objective to protect and enhance the neighbourhood character of residential areas, and encourage housing design that is adaptable, site responsive and environmentally sustainable. It is policy under this clause to ensure that development does not impact adversely on areas of recognised neighbourhood character, for higher density to be in locations with high levels of accessibility to infrastructure and services, and for redevelopment of well-located infill sites. The strategic work underpinning this policy is Melton's *Housing Diversity Strategy*, a reference document in the planning scheme. One core intention of this policy is to ensure that new development does not impact adversely on areas of recognised neighbourhood character.
- 8 Council also advises that it has prepared a further document, *House Rules, Housing Character Assessment & design Guidelines, September 2015*. In this document, the land is in the Garden Court (GC1) character area. The nominated preferred housing types are detached single dwellings, villa units (diagrammatically shown as detached units), duplexes where pairs of dwellings present as a single house to the street, and dual occupancies comprising of two detached tandem dwellings. One of the preferred character for this character type is to provide "*ample visual separation between dwellings*".
- 9 The *House Rules, Housing Character Assessment & Design Guidelines* is not yet part of the planning scheme. It has no statutory status.
- 10 The assessment of the proposal's design response hence rests on how it responds to the existing neighbourhood character.
- 11 Council's submission regarding neighbourhood character is that the proposal does not respect the existing character. It notes that the immediate surrounding area is characterised by low scale buildings and of a detached nature, which are generally separated between buildings, and with only carports or garages constructed on side boundaries. It submits that the four double storey dwellings on a corner lot will be highly visible and will dominate the streetscape in comparison to other dwellings that contribute to the current low-scale established character. Council considers such a design contrary to the preferred character according to the *House Rules – Housing Character Assessment and Design Guidelines*.
- 12 It also contends that the proposal will reduce the sense of openness in the streetscape and is contrary to the current sense of openness and spaciousness, due to existing large setbacks and almost no construction on boundaries of buildings in the area. It submits that the lack of openness in the proposal as exacerbated by the non-transparent fence for the secluded private open space for Unit 1 along Empress Way. It describes the design as more akin and preferred for the Garden Suburban 1 precinct, which is a characteristic of new estates where there are reduced setbacks and the presence of boundary-to-boundary construction.



- 13 Acknowledging that the current design is for four double detached houses instead of four attached houses as originally proposed, council submits that the small separation between buildings would present the dwellings as clustered and bulky to the streetscape. Further, the narrow width of the dwellings, especially for Townhouse 2, 3 and 4, council contends, is a significant change compared to dwellings in the area, and that this has the appearance of being crammed and as many dwellings onto the land as possible.
- 14 Council suggests that four dwellings would be an overdevelopment, and that three would be more responsive to the site and surrounds, in which case, there would be more separation between dwellings and larger frontages with more prominent entries.
- 15 Ms. Loddo, on behalf of respondent objectors, residents adjoining the land and nearby, notes that the proposed front setback to Odette Place should be 7.98 metres in order to meet standard B6 of ResCode for street setback, instead of the proposed staggered setback of 5.6 metres to 6.9 metres. She said that Unit 1 (both ground and first floors) will sit forward of the adjoining house at 5 Odette Place and highly visible when viewed from Odette Place. As for the front setback to Empress Way, she notes that the typical setback is greater than 7.5 metres, that the proposed setback from Empress Way ranging at around 3.2 metres is inconsistent with the setback of buildings in the street.
- 16 She further submits that the presentation of the development to Empress Way is crowded and characterised by four dwellings with a one metre separation between each. Further, she argues that the separation at ground floor between buildings is token, and the development will read as one of attached dwellings.
- 17 She notes that development in the area is one of openness, and that corner lots at intersections in the area (1 Odette Place, 13 Empress Way, 12 Empress Way) have large open frontages, which have the ability to be landscaped. She said that the proposal, instead fails to achieve this openness. Due to the fall of land from Odette Place to Empress Way, she was concerned that the proposal will have a substantial presence when viewed from Odette Place. Together with the minimal setback from the eastern boundary (common boundary with NO. 5), she was concerned that the proposal will create a dominant two storey element in the Odette Place streetscape.
- 18 Against the preferred character for the Garden Court 1 area, she notes the following discrepancies from the preferred character of this area:
- Secluded private open space to TH1 is provided to the Empress Way frontage and including high fencing to the street which is inconsistent with the majority of dwellings in the neighbourhood.



- No ample visual separation between dwellings (1 metre separation at ground floor);
- Majority of front setback interrupted by 3 crossovers and driveways to Empress Way and one to Odette Place;
- Limited landscaping to the front gardens due to number of dwellings proposed;
- Insufficient space for canopy trees at the rear of dwellings;
- Blank façade for the east elevations of TH1, 2 and to some extent TH3, which are highly visible from Odette Place and from an oblique angle;
- The limited separation between buildings will cause the townhouses to read as attached; and
- Limited opportunity for meaningful landscaping (no landscaping plan has been submitted) due to limited setbacks and separation between buildings.

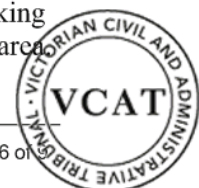
19 On the other hand, Mr. Mrkonjic explained that the design is very much a negotiated outcome with council officers, resulting in council officer supporting the proposal and recommending approval. Unfortunately, this recommendation was not accepted by council.

20 For the various design deficiencies identified by the parties, his submission is:

Inadequate front setback: The front setback of the two storey house on the opposite side of the intersection of Empress Way and Odette Place (No. 1 Odette Place) is 4.55 metres from Odette Place, which is less than the proposed front setback of the development at 5.639 metres. A compliant front setback of TH1 to match the front setback of 5 Odette Place would have no greater or lesser impact on the character of this area. He reiterated that this reduced front setback was supported by council's planning department as satisfying ResCode objectives.

The current design exhibits: Visual separation between dwellings. The majority of the front setbacks can be used as permeable garden landscaping. Further, there is room in the rear setback for canopy tree planting, with minimal interruption to the nature strips to enable regularly spaced street trees to be planted. Garages and carports in the development occupy a minor portion of the dwelling frontage, and which are recessively sited.

21 As for the criticism of a lack of separation between buildings, his argument is that there is physical separation for all the dwellings, with the separation even wider between first floors. He also commends the choice of external materials, such as the use of darker, heavier looking masonry cladding for ground level walls, lighter looking painted walls and weatherboard looking cladding for first floor walls, all of which, to him, are respectful of the area.

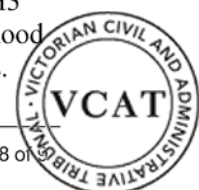


- 22 My inspection of the site and area confirms the low density and openness of streetscape in this part of Melton West, and the predominant development of single detached dwellings. There is an absence of medium density development in the immediate area. The dual occupancy at No. 28 Empress Way is discreet, with a single storey dwelling at the rear of the existing single storey dwelling. The rear house has little streetscape presence. This inspection also confirms a strong single building rhythm of the area.
- 23 The proposal is for four double storey dwellings, with one facing Odette Place and the other three Empress Way. There will be one new crossover from Odette Place, two new and one existing crossovers from Empress Way. All dwellings are detached, with one metre separation on the ground floor between buildings, and varying separations between the first floors. For example, the separation of the first floors between TH3 and 4 vary between 1.3 metres from the stairwells to 2.26 metres at the front, not including overhanging eaves. The separations between TH1 and 2 and between 2 and 3 are wider.
- 24 The development has a setback of 5.69 metres at its narrowest to 6.917 metres at the entry porch in Odette Place. The setbacks from Empress Way are generally 3 metres, except for garages which have deeper setbacks. This deeper setback facilitates the provisions of an open tandem car space in front of the single width garages. The first floors are generally setback from the ground floor.
- 25 The strength of the applicant's argument is that the design was supported by Melton's planning department, and the design from four attached dwellings was changed to four detached dwellings as recommended by this department.
- 26 For a design to respond appropriately to the existing neighbourhood character, it needs to be more than having all separate houses: it is also about setbacks, building massing, and the way the buildings are separated. On these three features, I find the design lacking.
- 27 I first turn to street setbacks. Standard B6 recommends the front dwelling TH1 to be the same as the front setback of No. 5 Odette Place, the adjoining dwelling or 9 metres whichever is the lesser. The proposed front setback is 5.939 metres increased to 6.917 metres at the front porch. This setback is well below the standard. Within this reduced front setback is the garage on the ground floor and bedroom 2 on the first floor. This part of the dwelling of TH1 is highly visible when viewed from Odette Place. This is obtrusive when viewed from Odette Place, as the dwelling at No. 5 Odette Place, although setback 7.98 metres, has a deeply setback appearance at the end of with the review site, due to the curve of Odette Place and the stepping in of the dwelling at 5 Odette Place.
- 28 Mr. Mrkonjic's justification for the reduced setback is that this setback aligns with the setback of the house at 1 Odette Place, a two storey house



on the opposite side of Odette Place, which is setback 4.55 metres from Odette Place.

- 29 The setback of 4.55 metres at 1 Odette Place is not the typical or common setbacks in that street, which are in the vicinity of 9 and 10 metres. Further, the house at 1 Odette Place has a setback of 8.43 metres from Empress Way. It gives an impression that the orientation of the house is to Empress Way despite its proper frontage, as indicated by the entry, is Odette Place. If the design of the development is to orientate to Odette Place, the front setback should be the setback of No. 5 or the predominant setback of buildings in Odette Place, and then 3 metres to Empress Way according to standard B6.
- 30 In the area of setbacks, I am not persuaded that the discrepancies in front setback in Odette Place for both the ground and first floor of TH1 as sympathetic to the streetscape of Odette Place.
- 31 A second character issue is the building massing of the dwellings. TH 1 and 2 are equivalent to two double fronted detached dwellings separated by one metre on the ground floor and 3.2 metres on the first floor except for the stairwell of TH2 which narrows the separation to 2.2 metres. TH2 and TH3 are separated 1 metre on the ground floor and 3.4 metres on the first floor. TH3 and TH4 are separated 1 metre on the ground floor and 1.3 metres up to 2.26 metres for the first floors. The first floors of TH3 and TH4 are recessed from the ground floor facing the street for the depth of one room. TH4, due to its one room width for both the ground and first floor (despite the carport of the dwelling being enclosed with a garage door) presents as a single fronted dwelling.
- 32 My concern is the relationship of building massing between TH3 and TH4. The narrow building massing of these two dwellings at the front, and the limited separation of built form, which is one metre for the ground floor, 1.3 metres for the first floor and widened to mostly 1.7 metres but 2.26 metres at the front, within which is the encroachment of the overhanging eaves, the design leaves an impression of narrow and enclosed built form between buildings. This degree of proximity of built form is alien to the double and triple front single buildings in the area as well as the single dwelling building rhythm of the area. The one metre separation between dwellings on the ground floor is not a useful area, particularly for landscaping which may soften the development.
- 33 I consider the single fronted appearance and limited separation between TH3 and TH4 as not complementary to the scale and building rhythm of the area, and the closeness of built form incompatible with the low scale and detached house character of the area.
- 34 In my mind, the lack of setback from Odette Place, the placement of built forms and the visual impact of the narrowness of buildings between TH3 and TH4 as design deficiencies and contrary to the existing neighbourhood character area, something that cannot be managed by permit conditions.



- 35 Urban consolidation and respecting neighbourhood character go hand in hand in the General Residential Zone. It is not one over the other. As far as increased housing is concern, a reduction in yield due to character consideration does not mean urban consolidation is not achieved.

ARE THERE ANY OTHER ISSUES?

- 36 On behalf of respondents, Ms. Loddo set out their other concerns: visual bulk, loss of on-street parking due to the three crossovers in Empress Way, and inadequate sightlines for crossovers.
- 37 As these reasons do not support the proposal, these other issues can be taken into account in a future redesign of a development on the land.

CONCLUSION

- 38 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

Christina Fong
Member

