



## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

### ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST      VCAT REFERENCE NO. P217/2015  
PERMIT APPLICATION NO. D/900/2013

#### CATCHWORDS

Section 77 of the *Planning & Environment Act 1987*; Darebin Planning Scheme; Priority Development Zone Schedule 2; Development Contributions Overlay Schedule 1; Construction of a four storey apartment building; Planning Policy; Design Response; Impact on the amenity of adjoining owners

APPLICANT	Archiscale
RESPONSIBLE AUTHORITY	Darebin City Council
REFERRAL AUTHORITY	VicRoads
RESPONDENTS	Helen Young, Martin Young, Tas Topalidis
SUBJECT LAND	283 Bell Street Preston
WHERE HELD	Melbourne
BEFORE	Katherine Paterson, Member
HEARING TYPE	Hearing
DATE OF HEARING	2 July 2015
DATE OF ORDER	8 September 2015
CITATION	Archiscale v Darebin CC [2015] VCAT 1404

### ORDER

- I. The decision of the Responsible Authority is affirmed. No permit is to issue.

Katherine Paterson  
Member

### APPEARANCES

For Applicant	Mr Chris Mackenzie, Town Planner, Planning Appeals Pty Ltd
For Responsible Authority	Mr Robert Phillips, Town Planner, Darebin City Council
For Referral Authority	No appearance
For Helen and Martin Young	Mr Martin Young, in person
For Tas Topalidis	No appearance

## INFORMATION

Description of Proposal	Construction of a four storey apartment building to contain ten dwellings containing one and two bedrooms. The ground floor will contain a semi basement car park containing 12 spaces, including two visitor spaces. The architectural style of the building could be described as contemporary and includes a flat roof form and a variety of materials including brick and rendered finishes.
Nature of Proceeding	Application under Section 77 of the <a href="#">Planning and Environment Act 1987</a> – to review the refusal to grant a permit.
Zone and Overlays	Priority Development Zone Schedule 2 Development Contributions Overlay Schedule 1
Permit Requirements	Clause 37.06-1 – To use land for dwellings Clause 37.06-4 – Construct a buildings and to construct and carry out works Clause 52.20 – To create and alter access in the Road Zone Category 1
Land Description	The subject site has an area of 453 square metres with a frontage of 28.7 metres to Bell Street. The site currently contains a single storey dwelling and garage, with access to Bell Street via a single crossover. The site has a battle-axe extension to its north side which contains a sewerage easement. The application proposes to use this section for landscaping and visitor bicycle parking. Between the site and Bell Street there is a six metre wide section of land which is owned by the Country Roads Board (now Vic Roads).
Tribunal Inspection	3 July 2015

## REASONS [\[1\]](#)

### WHAT IS THIS PROCEEDING ABOUT?

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[\[1\]](#) I have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons.

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1. The owners of land at 283 Bell Street, Preston wish to develop the site by constructing a four storey apartment building which will contain ten dwellings The Council refused the application for the development. The reasons for the refusal relate to concerns that

the proposed building will have an unreasonable impact on the amenity of adjoining owners, particularly through visual bulk, loss of light, overshadowing. Council are also concerned that the proposed development will have a poor level of internal amenity for the future occupants of the building.

2. Mr and Mrs Young live at the property that adjoins the subject site to the south. They share Council's concerns but also consider that the proposed density of the development is excessive. They are particularly concerned that the proposed development will adversely affect their amenity through overshadowing of their private open space and visual bulk. They consider that the development may affect the security of their property. Finally they are concerned that the parking arrangements will not enable cars to enter and exit the site safely.
3. The key questions for determination in this matter are:
  - Is the design an acceptable response to the Darebin Planning Scheme?
  - Will the proposal adversely affect the amenity of adjoining properties?
  - Will the proposal provide an acceptable level of amenity for the future occupants of the dwellings?
  - Are the proposed parking arrangements acceptable?
4. To the extent that other issues were raised by the parties during the hearing, I consider these matters are peripheral to the key issues in this case and do not require specific consideration in making this decision.
5. I have decided to refuse to grant a permit for the following reasons:
  - The development is inconsistent with the vision for the Preston Central Activity Centre, particularly as it will not provide an active façade at street level; and
  - The proposed development will unreasonably affect the amenity of the adjoining properties.

#### **IS THE DESIGN AN ACCEPTABLE RESPONSE TO THE DAREBIN PLANNING SCHEME?**

##### **State Planning Policy Framework**

6. It is State Planning Policy to create a city of 20 minute neighbourhoods.<sup>[2]</sup> It seeks to increase the proportion of new housing built within the existing urban area of Metropolitan Melbourne, particularly on sites that are within or close to activity centres, and are well served by public transport.<sup>[3]</sup>

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<sup>[2]</sup> Clause 11.04-4

<sup>[3]</sup> Clause 16.01

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7. The subject site is located within the Preston Central Activity Centre, [\[4\]](#) 150 metres from trams that operate along Plenty Road and 400 metres from the Bell Street Railway Station. It is a site that the state planning policy framework strongly encourages to be developed for more intensive housing forms.

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[\[4\]](#) Clause 21.05

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#### Local Planning Policy Framework

8. The Municipal Strategic Statement (MSS) indicates that there is a need to accommodate an additional 7000 people within the municipality by 2021, many of whom will be over 70. [\[5\]](#) Additional housing is required to accommodate this increase in population. [\[6\]](#)

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[\[5\]](#) Clause 21.05-2

[\[6\]](#) Clause 21.02-6

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9. A key concern of Council is providing more housing to meet the housing needs of the population whilst conserving and enhancing the valued character and heritage qualities of the residential areas of the municipality. [\[7\]](#)

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[\[7\]](#) Clause 21.05-2

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10. To achieve this goal, higher density housing forms are specifically encouraged within activity centres such as the Preston Central Activity Centre. The activity centre has been divided into various precincts, with the subject site located within Precinct I “Southern Gateway.” Apartments and showrooms are proposed to be established within this precinct, with a maximum height of six storeys. [\[8\]](#)

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[\[8\]](#) Clause 21.05

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11. The design of a four storey building should be consistent with the Residential and Mixed Use Development of Four or More Storeys local policy found at Clause 22.10 of the scheme.

12. Amendment C138 to the Darebin Planning Scheme proposes to introduce a new municipal strategic statement and change a number of the local planning policies.
13. The amendment is currently with the Minister for Planning for approval. As such, it is considered a seriously entertained planning proposal.
14. Within the new MSS, the policy directions for the subject site remain essentially the same. It is proposed to include the site within the Preston Central Activity Centre, which is designated for substantial change including higher density housing forms. A new policy direction within the document for the substantial change areas is to discourage the underdevelopment of the key activity centres, including Preston Central.

#### **Priority Development Zone Schedule 2**

15. The purpose of the Priority Development Zone Schedule 2 is:

To recognise or provide for the use and development of land for projects and areas of regional or State significance.

To provide for a range of uses and the development of land in accordance with a plan incorporated in this scheme.

16. Since the hearing, Amendment C133 to the Darebin Planning Scheme was approved on 13 August 2015, which (amongst other matters) amended Schedule 2 to the Priority Development Zone. The purpose of the amendment was to:

Amend various provisions of the Darebin Planning Scheme to correct mapping anomalies and ordinance errors and delete redundant controls.

[\[9\]](#)

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[\[9\]](#) Amendments Online

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17. The only change of any substance to the schedule appears to be two changes to the table of uses, neither of which relate to the proposal before me. For this reason, I did not consider it necessary to hear from the parties on the revised schedule prior to making my decision on this application.

#### **Land Use**

18. The schedule requires the use of the land to be consistent with the Preston Central Incorporated Plan. A planning permit is required for a ground floor use that is not generally in accordance with the incorporated plan.
19. The incorporated document states the following under the heading 'land use' for Precinct I:

- Large format retail/showrooms are located at the ground floor level facing Bell Street;
  - Offices are located at any level;
  - Residential apartments are located principally above ground floor level;
  - Taverns are located principally above ground floor level.
20. Mr Mackenzie submitted I should consider the proposed uses with the term “if proposed” in front, I disagree with this approach. Whilst I agree that Council is not envisaging a tavern at every site within Precinct I, the Incorporated Plan needs to be read in conjunction with the directions specified in the local planning policy framework which clearly anticipates the establishment of showrooms as well as apartments within the precinct. Given the local policy direction, it is not surprising that the planning scheme requires a planning permit to establish a use that deviates from this plan.
21. The application before me proposes to establish a purely residential building, with the ground floor containing the car park for the building. The ground floor will present as a 2.4 metre wall with an opening for a garage door and entry. A window was shown on the advertised plan but this was deleted in the revised plan circulated by Mr MacKenzie prior to the hearing, although the ground floor wall was reduced in height so that it ranged from 1.3 meters to 2.5.
22. One of the objectives of Schedule 2 to the Priority Development Zone is:
- To encourage high quality urban design that is responsive to the site’s environs, provides active frontages, and facilitates built-form scale and design outcomes appropriate to a Principal Activity Centre.
23. Whilst it is not essential that every site within Precinct I is developed with a show room or office, I consider that each development should provide an active frontage.
24. The site to the east of the site has been developed with a townhouse style development. Whilst this development is not the most shining example of architecture, it does provide a series of entry doors and windows to the streetscape which provides that level of activation desired by the policy.
25. In contrast this development proposes a car park at ground level, which will provide very little activation to the street, and is reflected in the blank design treatment at ground floor.

### Built Form

26. The incorporated document provides a maximum height of six stories for Precinct I, with a minimum height of three storeys. Buildings which contain dwellings should be setback three metres from the front boundary. The top storey of a three to five storey building should be setback at least three metres from the storey below.

27. This application is for a four storey building. Due to the section of road reserve at the front of the site, it is proposed to be setback six metres from Bell Street. The fourth storey is proposed to be generally setback nine metres from Bell Street, however the stair well will maintain the six metre setback. The built form will present as a four storey sheer wall to the street at this point.
28. The balconies to the four floor apartments will also intrude into the six metre setback.
29. Whilst I do not consider it necessary that a building complies with every setback requirement to achieve a satisfactory design, I do consider that a development should achieve the objective of the setbacks, which is to provide a building with a recessive upper level. I find that the sheer 13.35 metre stair well element fails to achieve this objective. Whilst the plans circulated by Mr Mackenzie prior to the hearing show this element at a reduced height of 11.4 metres, I consider that even at this height the element would remain imposing and inconsistent with the directions of the incorporated plan.

#### **WILL THE PROPOSAL ADVERSELY AFFECT THE AMENITY OF ADJOINING PROPERTIES?**

30. Clause 22.10 of the Darebin Planning Scheme has the following objective:

To ensure that multi-level development is on a site large enough to minimise unreasonable overshadowing and overlooking of residential development.

31. The policy requires consideration of some of the amenity provisions of Clause 55 of the Darebin Planning Scheme, also known as Rescode. I will consider each in turn.

#### **Side and rear setbacks**

32. Clause 22.10 states that the side and rear setback provisions need only be considered for the rear boundary, as this is the only boundary that adjoins residential properties in a residential zone (in this case the General Residential 2 Zone).
33. The setback of the third floor of the proposed development is less than that specified by the Rescode Standard. Whilst the standard needs to be balanced with the policy directions of the scheme calling for six storey development on this site, if a development is setback less than the standard, consideration needs to be given to the impact of the development on the amenity of the habitable room windows and private open space of adjoining dwellings.[\[10\]](#)

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[\[10\]](#) Clause 55.04-1

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34. Care should also be taken that the development does not affect the amenity of adjoining properties through visual bulk. I acknowledge that the planning scheme is



calling for taller, more robust forms on this site, which are inherently bulky. I agree with Council that the planning scheme is not calling for a 'forest' type landscape response at the rear of this property.

35. However, this development exacerbates its visual bulk by constructing a wall along the entirety of its southern boundary, eliminating the ability of the rear boundary to provide any landscaping at ground level, which could help to soften any impact created by a larger form. Whilst some landscaping is proposed along the first floor balcony, this is in the form of a creeper, which in my view will do little to mitigate any visual bulk created by the development.
36. The overall design could be described as utilitarian with long expanses of walls with little in the way of articulation along its rear. I consider that whilst any building on this site will be bulky, it needs to be more sensitive to the interface with the residential properties to the rear.

#### Daylight to existing windows

37. Council raised concerns about the impact of the proposal on the daylight to the existing windows for the existing dwellings at 285 Bell Street. To assist in assessing this impact I requested that Council provide a copy of the endorsed plan for this development.
38. The affected windows are small square windows, shown as frosted on the endorsed plan, but constructed in clear glazing, have a primarily decorative purpose, but they do provide some additional light to the first floor living room, and therefore care needs to be undertaken to ensure that the development does not adversely affect these windows through loss of light.
39. The proposed development has not been setback in accordance with the standard from these windows, and I am concerned that the proposed development will adversely affect the amenity of loss of light to these windows. Any redesign should ensure that the daylight to these existing windows is protected.

#### North facing windows

40. Mr Young was concerned that the proposed development would result in loss of northern light to his living room window and frying room window. As these windows are more than seven metres away from the boundary, they should not be affected through loss of light.

#### Overshadowing

41. Mr Young was concerned that the proposed development would result in overshadowing to his private open space, which he uses to grow chinese vegetables. During the hearing he submitted that the shadow diagrams did not show the existing shadows that were already cast into his property by the existing development at 285 Bell Street.
42. Following the hearing I required the permit applicant to submit shadow diagrams showing the shadows cast by the existing built form, boundary fences and the proposed development into the private open space areas of 12, 14 and 16 Garnet Street,

all located to the south of the site. I also provided an opportunity for the other parties to make submissions on the shadow diagrams.

43. The shadow diagrams indicate that whilst the development will overshadow the adjoining properties to the south, the level of shadow cast will not exceed the amount allowed for under the standard for the properties at 12 and 16 Garnett Street.
44. Mr Young's property is the most affected by shadowing, with the development significantly overshadowing his property in the early morning period. Mr Mackenzie calculated that this private open area would receive adequate daylight for 4.75 hours, rather than the five hours specified by the standard [\[11\]](#) between 9am and 3pm.

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[\[11\]](#) Clause 55.04-5

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45. Whilst the standard here is to be applied as a guide, and again needs to be balanced with the policy objectives which seek to achieve a six storey development on the site, I consider that it should be possible to develop a taller built form on this site without adversely affected the amenity of the adjoining property. Mr Mackenzie submitted that if I considered it necessary the building could be redesigned to achieve compliance with only minor modifications to the built form. If I was of a mind to grant a permit, I would have required the changes to the rear wall as a permit condition.
46. However, the amount of shadow cast by the development is another indicator that this proposal is a poor response to the site and its context.

#### Overlooking

47. The plans show that building has been designed to prevent overlooking through the use of obscured glazing to all habitable room windows that have the potential to overlook adjoining properties. Whilst this is an approach that is consistent with the planning scheme standard, I am concerned that this will result in a poor level of amenity for the future occupants of the dwellings.
48. The revised plans circulated by Mr Mackenzie show the use of highlight windows, which is a better design response. Another approach could have been the use of blades which enable a full outlook, whilst preventing downward views.
49. Again, whilst this could be dealt with via a permit condition, it is another example of the design approach undertaken for this development, which I find to be unacceptable.

#### Noise Impacts

50. Clause 55.04-8 requires designs to take into account noise sources when designing dwellings. This development has responded to the noise from Bell Street by placing the apartments at first floor level. Any redesign of the site needs to be sensitive to the noise from the road and activity centre whilst providing the level of activation required by planning policy.

51. I am less concerned about the potential to adversely affect the adjoining properties through noise. This is a residential building and is unlikely to generate a significant amount of noise.

#### **ARE THE PROPOSED PARKING ARRANGEMENTS ACCEPTABLE?**

52. Whilst Mr Young raised concerns about traffic safety, I do not share these concerns. Council's traffic engineers and VicRoads both supported the application, subject to standard conditions. Whilst the application will result in additional traffic, I am satisfied that the road network should be able to accommodate this increase. I am also satisfied that the car park has been designed to enable vehicles to enter and exit safely.

#### **CONCLUSION**

53. Whilst the subject site is located within an area designed for higher building forms, the design before me is flawed, and needs a significant redesign to ensure that it is an acceptable response to both the streetscape and the interface with the adjoining properties.
54. For the reasons explained above, the decision of the responsible authority is affirmed. No permit is to issue.

Katherine Paterson  
Member