

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1045/2017
PERMIT APPLICATION NO. 348/2016/P

CATCHWORDS

Application under Section 77 of the *Planning and Environment Act 1987*; Frankston Planning Scheme; General Residential Zone; Conversion of Existing Building into Dwellings; Internal Amenity; Reduction in Car Parking; Affordable Housing; Management.

APPLICANT	Owners Corporation PS409045Y
RESPONSIBLE AUTHORITY	Frankston City Council
RESPONDENTS	Linnea Gosewinckel, Dianeme Rasmussen & Others
SUBJECT LAND	14 Sandpiper Place FRANKSTON VIC 3199
WHERE HELD	Melbourne
BEFORE	Margaret Baird, Senior Member
HEARING TYPE	Hearing
DATES OF HEARING	3 and 15 November 2017
DATE OF ORDER	27 November 2017
CITATION	Owners Corporation PS409045Y v Frankston CC [2017] VCAT 1926

ORDER

No permit granted

- 1 In application no. P1045/2017, the decision of the Responsible Authority is affirmed.
- 2 In permit application no. 348/2016/P, no permit is granted.

Margaret Baird
Senior Member

APPEARANCES

For applicant	Mr L English, solicitor, Mornington Legal. He called the following expert witnesses: <ul style="list-style-type: none">• Mr V Gnanakone, traffic engineer.• Mr H Smyth, town planner.
For responsible authority	Ms A Sorensen, Major Projects Planner.
For respondents	Ms L Gosewinckel in person. Ms D Rasmussen with Ms A Briggs.

INFORMATION

Description of proposal	Buildings and works to re-use the existing residential building for 45 dwellings.
Nature of application	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Frankston Planning Scheme [scheme].
Zone and overlays	General Residential Zone [GRZ] Schedule 1. Special Building Overlay (street frontage).
Permit requirements ¹	Clause 32.08 for buildings and works for dwellings. Clause 52.06 to reduce car parking (residents and visitors).
Key scheme policies and provisions	Clauses 9, 10, 11, 12, 15, 16, 18, 19, 21, 22.08, 32.08, 44.05, 52.06, 54, 55, 62 and 65.
Land description	The subject land is on the south side of Sandpiper Place. It is approximately 4,470m ² . It contains a single storey building that was constructed in the late 1990s. It has 44 bedsit units (each ensuite with all-ability access) and communal facilities including a large central garden courtyard. A three-bedroom manager's residence is in a first floor level. The property was subdivided in c.1998 into a complex series of titles. It has been used for various supported residential services. At-grade parking is at the front of the land with 23 spaces. ² A pedestrian path, via a carriageway easement, leads to Cranbourne Road.
Tribunal inspection	27 October 2017 as parties were advised at the start of the hearing (unaccompanied). An accompanied inspection occurred on 15 November 2017.

¹ Permit triggers are discussed below. Transitional provisions apply in clause 32.08.

² The plan show 22 spaces but it is agreed that there are 23 on-site today.

REASONS³

WHAT IS THIS PROCEEDING ABOUT?

- 1 Adapting a building formerly used for supported residential services to create individual dwellings sounds like a good way to re-use and re-purpose existing assets. However, this is not without challenges. In the current case, this is particularly so with respect to parking demands for the proposed dwellings. Conversion of modestly-sized bedsit rooms previously associated with a residential institution to individual dwellings also raises issues about the acceptability of internal amenity.
- 2 Owners Corporation PS409045Y comprises a large number of persons who own lots that form part of the subject land. There is also extensive common property. Owners Corporation PS409045Y proposes internal alterations, including installing kitchenettes, to convert the existing bedsit rooms into self-contained dwellings. Effectively, in the applicant's words, studio apartments. A number of other modifications to the existing building are proposed, including re-using communal areas for internal informal recreation, creating storage areas, installing bicycle parking, and fencing some proposed private open spaces. Owners Corporation PS409045Y will continue to manage the building including communal spaces.
- 3 As the Frankston City Council refused to grant a permit, the permit applicant asks the Tribunal to do so. Multiple respondents in this proceeding support the Council's position.
- 4 I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the scheme. Clause 10.04 of the scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 5 The reasons that follow explain why I find that adaptation of the existing building for dwellings is potentially acceptable in terms of neighbourhood character, off-site amenity impacts, and the amount of traffic likely to be generated. I also accept that it responds to policy ambitions for more diverse and affordable housing stock in a well-located area. The more problematic matters are:
 - Whether the proposed reduction in car parking for 45 dwellings is acceptable; and
 - Whether an acceptable level of internal amenity is achieved for the proposed dwellings.
- 6 These reasons also address many other issues raised by people opposing the permit application.

³ 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.

WHAT IS THE APPLICATION FOR?

Permit triggers

- 7 The Council's grounds refer to the permit application as being for a change of use through internal works. The change of use is from a residential building to dwellings. It is correct that the proposal comprises buildings and works to create individual dwellings⁴ but no planning permit is required to use the subject land for dwellings in the GRZ.⁵ A planning permit is required under clause 52.06 (parking) before the use of the land commences for dwellings.
- 8 The proposal has been assessed under clause 32.08 as a multi-unit development by the Council and planning witness called for the applicant. Mr English submits that, because of the lot configuration, the proposal is more properly one dwelling on a lot of less than 300m², triggering multiple clause 54 assessments, rather than the development of a lot for multiple dwellings, triggering a clause 55 assessment. The Council and planning witness subsequently concur. They all agree that clause 55 provides a useful guide given the way in which the many lots all comprise the subject land, and that clause 55 requires consideration of many of the same matters as clause 54. I accept the practical position adopted in the unusual and complex lot configuration involved albeit not all of matters in clause 55 are replicated in clause 54. Ultimately, my decision in this proceeding would be the same whether only applying clause 54 and/or if applying clause 55.

Affordable housing and management of the dwellings

- 9 The Council and respondents are particularly concerned about the management of the subject land. The Council's submission emphasises that the applicant has failed to demonstrate it can appropriately manage the use of the site in a manner that will ensure the health and well-being of occupants and adequately manage the risk of anti-social behaviour. The Council is critical that no information has been provided to demonstrate that the applicant has a strategy to ensure that each individual owner will rent their dwelling at an affordable rate to disadvantaged persons. The Council submits that no information has been presented that outlines eligibility criteria or client selection processes for future residents. It further submits that provision of affordable housing for socio-economically disadvantaged persons is a complex matter and a responsibility that is normally coordinated across a range of service providers. Among other things, it contends that provision of affordable housing comes with varying levels of ongoing responsibility and support. Ongoing management is a critical component ensuring the well-being of residents, access to essential support services and responsible behaviour.

⁴ Each bedsit room is proposed to become a single dwelling with the manager's residence retained intact as another single dwelling. Other works are also proposed as set out in the application.

⁵ Clause 32.08. I do not agree with the Council's assessment that an amendment is required to an existing permit that applies to the land. Moreover, no such amendment application is proposed. The application before me is for a new permit relating to the land.

- 10 I agree with the applicant's submissions in response to these and related submissions by the Council. The permit application is not a proposal to use or develop the land for any form of managed accommodation such as a rooming house, social housing or crisis accommodation. There is no proposed management regime, other than the standard owners corporation rules and regulations.
- 11 There was much discussion over the course of the hearing as to the applicability of phrases such as affordable housing, social housing and low-cost housing in this case. The Council tendered documents relating to homelessness and the role it is taking to facilitate accommodation access.
- 12 There is no definition of affordable housing in the scheme. Affordable housing is referenced in *Plan Melbourne 2017-2050* as follows:⁶

WHAT IS AFFORDABLE HOUSING AND WHAT IS SOCIAL HOUSING?

Affordable housing is housing that is appropriate for the needs of a range of very low to moderate income households, and priced (whether mortgage repayments or rent) so these households are able to meet their other essential basic living costs.

Social housing is a type of rental housing that is provided and/or managed by the government (public housing) or by a not-for-profit organisation (community housing). Social housing is an overarching term that covers both public housing and community housing.

- 13 This meaning of affordable housing is consistent with the applicant's position. The proposal that is the subject of this development application is not for public or social housing operated under the auspices of the State government, community housing, not-for-profit or a registered provider. It is not for emergency housing by any agency, provider or association. The applicant, and planning witness, describe the proposal as a private unit or apartment development (albeit on one floor level).
- 14 With respect to the concerns raised in the Council's and respondents' submissions I summarise my findings as follows:
 - As private dwellings, available for rent or occupation by the owner, management via an owners corporation is a standard arrangement. I agree with Mr Smyth that it would be most unusual for an on-site manager for a private housing project of this scale and type.
 - As private dwellings, available for rent or occupation by the owner, it is not appropriate to suggest that eligibility criteria or client selection process for future residents are required or that each individual owner must rent the dwelling at an affordable rate to disadvantaged persons.
 - The modestly-sized studio apartments would be available for rent or purchase and are likely to be low cost, or more affordable, than other housing because of that small size. The size of the dwellings would be important in the price at which they are sold or rented.

⁶ *Plan Melbourne 2017-2050* at page 55.

- I agree with Mr Smyth’s comments that the scheme does not contemplate special treatment for different types of housing such as that the subject of this proposal. The scheme does not distinguish between private dwellings for rental or owner occupier purposes. Criticisms that the proposal will give rise to “*mixed demographics*” and “*undesirable characters*” are not reasons to refuse a permit for the proposed housing development.
- There is no obligation to provide or direct occupants of the proposed dwellings to support and other services.
- Definitions to which Ms Gosewinckel refers relating, for example, to the *Residential Tenancies Act 1997* or obligations under the *Public Health and Wellbeing Act 2008*, have no bearing on the definition of dwelling under the scheme for the purposes of this permit application.

15 Several other matters require comment.

16 First, it is apparent that submissions about management arise from activities that respondents allege or describe as occurring including incidents with police attendance. Some respondents describe their concern about a communal living environment where people are unsupervised. Further, Ms Gosewinckel and Ms Briggs refer to the social impact and effect on their quality of life. The Council officer’s report also refers to social effects under section 60 of the *Planning and Environment Act 1987*, contending residents could suffer material detriment as a result of the proposed use. It says that the absence of an on-site manager to address poor and disruptive behaviour of residents of the building could impact on the amenity of nearby residents, particularly those close and abutting. It will fall “*on the shoulders of residents to deal with the issues either by contacting the Police, Council’s Local Laws or members of the Body Corporate*”.

17 As Mr Smyth states, issues can arise with neighbours anywhere, other legislation may regulate some behaviours (such as noise), an owners corporation itself has responsibility for some matters, and police attendance may be necessary if unlawful behaviour is alleged. The fact that the proposed development might be occupied by persons of modest means is not a reason to assume an escalation of alleged anti-social behaviour and nuisance to adjacent residents nor to tarnish future occupants as a result of some experiences. As I have said, it is not usual for a development of the scale proposed and associated with private dwellings to require on-site management and it is not appropriate to impose the types of restrictions being suggested by the Council to control the residential environment. A degree of self-regulation may occur as other residents within the development may be impacted as much, or more, by noise or nuisance than neighbours.

18 More broadly, the relevance of social impacts in planning matters relates to the contended effects on the community. The effects must be demonstrable and ‘significant’ consistent with section 60(1)(f) of the *Planning and Environment Act 1987*.

- 19 I appreciate the genuine and significant concern about the way in which the proposal is perceived to potentially alter the experience of residents. But there is no basis upon which I would conclude that there are demonstrable or significant social effects or impacts that warrant refusal of a permit.
- 20 Second, and linked to the above, is an apparent fear that the proposal will have impacts alleged to have arisen at the Ambassador Hotel. I do not recite alleged incidents reported in newspapers tendered by respondents and concerns about unfamiliar persons in the street. Mr English tendered information relating to a section 173 agreement and a Tribunal decision about the Ambassador which, among other things, does not allow permanent occupation. There are clear differences between the proposal before me and the Ambassador example on the facts. In any event, each permit application must be assessed on its own facts and circumstances.
- 21 Third, notwithstanding that no permit is triggered for the use of the land in this case, some respondents refer to the proposal as a commercial venture. This is not a matter that has any bearing on my decision.
- 22 Fourth, Ms Gosewinckel challenges the concept of private rental property to resolve homelessness and affordable housing. This is not a matter into which I have enquired because the proposal is not advanced as a project to target homelessness, notwithstanding the ‘need’ argument to which I refer next. Mr English agrees that the proposal is not for social housing but it does provide an affordable low-cost alternative.

WHAT IS THE RELEVANCE OF NEED?

- 23 It is common ground that scheme encourages diversity in housing stock both generally and specifically in the Frankston municipality. Key issues identified in the Municipal Strategic Statement include decreasing household size primarily due to the ageing of the population and declining housing affordability. A related issue is achieving a variety in housing types, sizes and costs to provide diversity from the predominance of detached dwellings.⁷
- 24 The applicant submits the proposal will provide affordable housing for which there is a clear need. I agree that a need is demonstrated in the 2013 *Frankston Housing Strategy*, a reference document in the scheme. This strategy refers to household incomes, affordability, and various trends, that support the applicant’s case that there is a need for affordable housing.
- 25 The applicant submits need is a relevant factor which should influence the balance to be struck between competing policy considerations.⁸ I see need as relevant to the balance that I must undertake (per clause 10.04). The type of housing product that would result if a permit is granted would be unusual. The dwellings are very small on any assessment and could potentially assist with the housing objectives expressed in the scheme for Frankston. But this need is not an overriding consideration in my view.

⁷ Clause 21.07.

⁸ Relying on *Tulcaney Pty Ltd v Knox CC* [2003] VCAT 1627, [[11] – [13]].

IS A REDUCTION IN PARKING ACCEPTABLE?

- 26 There are currently 23 car spaces on the subject land. Based on the number of parking spaces set out in clause 52.06-5, 55 car spaces are required on the land for the 45 dwellings.⁹ This includes nine visitor car spaces.
- 27 The application seeks to retain existing parking, except the area adjacent to a ground floor entry to the manager's residence may be useful for waste collection/bin storage. The evidence proceeds on 22 spaces being available on-site. Therefore, the applicant seeks a reduction under the provisions of clause 52.06 of 33 spaces. In assessing any application to reduce car parking from the number of spaces set out in clause 52.06-5, I must consider the matters set out in clause 52.06-7, including a Car Parking Demand Assessment.
- 28 The applicant relies upon expert traffic evidence that the reduction in parking is appropriate and reasonable in the circumstances and that there will not be adverse traffic impacts arising from the proposal. Occupants of the proposed development are likely to comprise one person per bedsit and, because the units are likely to be geared toward low cost housing, the residential parking demands will be lower than the standard rate of one car space per dwelling. The traffic evidence relies on case study data from 2008 by Cardno and GTA traffic consultants for the City of Port Phillip researching and updating social housing land use parking rates within inner Melbourne. The evidence states that the study examined 56 social housing sites with parking rates of 0.19 spaces per single bed units and 0.35 spaces per family unit (2-4 beds). Mr Gnanakone's analysis adopts the higher rate for reasons explained in his written and oral evidence even though most units are, he says, unlikely to house more than one person. Mr Gnanakone's analysis also relies on the visitor parking rate from a 2004 low cost housing study of 0.05 spaces per dwelling. In total, there is an estimated demand of 17 spaces, below the on-site supply. He recommends a management regime for the parking spaces.
- 29 The applicant cites a range of other considerations in support of the acceptability of reduced parking including pedestrian access (via the carriageway easement) to Cranbourne Road and public transport, the ability to add bicycle parking on-site, and the proximity to the Karingal Major Activity Centre.
- 30 The Council and respondents challenge this evidence. Among their concerns are that the assessment is based on social housing in inner Melbourne rather than dwellings in Frankston without the same level of public transport access. The likely extent of overflow parking into Sandpiper Place is not acceptable. Residents' submissions refer to the extent to which the car park on the subject land is used even though only around 12 units are currently occupied. They also challenge the availability of on-street, noting parking by residents and associated with the nearby Ballam Park. They fear the proposal will prevent others from parking. They criticise the expert evidence approach and analysis compared with other traffic reports they tendered.

⁹ One for each single bedroom/bedsit/studio and two for the three bedroom (former manager's) dwelling.

- 31 I have considered the proposed reduction of more than 30 car spaces for these private dwellings. Even though the studio apartments may be small, I have no data to demonstrate to me why the rate applied to social housing projects in inner Melbourne should be adopted in the current circumstances. Mr Gnanakone states that ABS data with respect to bedsit accommodation in Frankston was not useable for his analysis; there was not a sufficient sample size. I appreciate the difficulty but do not consider this justifies parking rates for a different model or housing concept where lower car parking demands are highly likely. (This proposition is accepted in Tribunal decisions to which Ms Sorensen refers).¹⁰ The applicant emphasises that the proposal in this application is not for any form of managed or social housing. Rather, the proposal is for individual dwellings operating under owners corporation rules and legislation. Many occupants may have modest means but there would be no way to be more certain about the very low level of car ownership or parking demands akin to social housing.
- 32 I therefore agree with the Council that the demand for on-site parking will be different from a supported residential service facility and a social or public housing project. The rate adopted by in the traffic evidence of 0.35 spaces per unit which is not significantly above 0.3 spaces per lodging room for a residential building.
- 33 A proposed management regime, other locational attributes of the subject land, and measures to encourage alternatives such as bicycle parking on-site do not overcome my concern about the likely prospect of overflow parking into Sandpiper Place. Even if only half the occupants (at one person per bedsit and two car spaces for the three bedroom unit) require parking, plus some visitor parking, an overflow would occur. Sandpiper Place is a no-through road with limited parking, albeit with availability based on the parking surveys. I am concerned that an overflow of resident parking from the proposed development will occupy a disproportionate amount of the public supply. Having considered the matters in clause 52.06-7, I am not persuaded by the evidence that an appropriate number of car spaces are provided on-site having regard to the likely demand to be generated and the specific characteristics of Sandpiper Place and the locality.

IS AN ACCEPTABLE LEVEL OF INTERNAL AMENITY ACHIEVED?

- 34 It is common ground that the proposal does not meet multiple numerical standards in clause 55. These include:
- Standard B28 relating to private open space provision;
 - Standard B29 relating to solar access to some private open spaces;
 - Standard B30 relating to external storage.
- 35 There are also various submissions as to whether the proposal satisfies non-numerical standards such as Standard B10 relating to energy efficiency and Standard B33 relating to common property.

¹⁰ For example, *Affordable Housing Association Inc v Maribyrnong CC* [2010] VCAT 302.

- 36 Clause 54 mirrors some but not all of these matters. I have considered the applicable clause 54 matters such as Standards A7, A17 and A18 on the same topics.
- 37 The applicant submits that the relevant objectives are met in each case. It relies on Mr Smyth's evidence in support of this submission. I do not repeat the analysis provided in the statement of evidence but record a number of recommendations made in that evidence to improve the internal amenity so as to represent an acceptable outcome. These include the provision of 1.4 metre high semi-permeable fencing to private open spaces facing into the central courtyard, adapting some internal spaces to provide storage, and installing an intercom. Some of these recommendations are shown in plans attached to the statement of evidence. In addition, Mr Smyth recommends a Communal Spaces Management Plan. A number of other suggestions discussed at the hearing were said by Mr Smyth as being able to be achieved, but not recommended by him. These include providing external storage space; fencing to private open spaces around the perimeter of the land where they abut, for example, dwellings to the north; and installing security.
- 38 Some submissions proceed on the erroneous understanding that the standards in clauses 54 and 55 are mandatory. The standards are one way in which the stated objective is deemed to be met but not the only way to achieve the objective. Alternatives are assessed against the decision guidelines in the clause to determine if the specified objective is met. Ms Gosewinckel's submission makes a range of comments on the standards, many of which are unrelated to the standard itself, albeit they itemise her concerns about the proposal. My focus is the matters relevant to the wording of the standards, and if not met, the decision guidelines and objectives.
- 39 Adapting a building constructed for aged/supported accommodation built around 20 years ago is unlikely to meet current scheme expectations for individual dwellings. That does not mean the outcome is unacceptable but it does mean that aspects of internal amenity may be compromised. I must decide if the compromises result in an acceptable outcome.
- 40 Here, 14 dwellings have a sole southerly orientation and several others in corners are confined in their outlook. The numerical requirements of Standard B28 in relation to private open space are not met and Standard B29 is also not met for multiple units. The Council describes the proposed private open spaces as unacceptable, being, among other things, too small and with compromised access to daylight and sunlight. The applicant submits the spaces are acceptable and meet the objective of clause 55.05-4, particularly having regard to the extensive communal open space on the land. Conversely, the Council submits that the communal space should not be considered as sufficient to vary the requirements of Standards B28 and B29.
- 41 I think the private open spaces are compromised but the external and internal communal open spaces are an asset to which the dwellings have ready access. Overall, however, the outcome for a significant proportion of dwellings is plainly compromised in terms of private open space and solar access, accentuated by the small size of the units.

- 42 Unless lots are consolidated, there is little scope to increase the size of the bedsits. The application material refers to the bedsits being between 22 and 25m². Calculating from dimensions shown on plans attached to Mr Smyth's evidence, the two dwelling layouts have total floor areas of 22.62 and 28.22m². All have ensuite bathrooms that are suitable for all-ability access.
- 43 The amenity of the units is compromised by the small size and, for 14 of the dwellings, their southern aspect. However, the spaces to which the units look into are well landscaped and attractive. No delineation of private open space is proposed around the perimeter and that leaves each without its own designated area in visual terms. I think this is potentially an issue but spaces could be fenced if necessary.
- 44 There is an ability to achieve storage, as shown in plan attached to Mr Smyth's statement of evidence, as well as some external opportunities should that be regarded as necessary.
- 45 The Council criticises the lack of individual access to each dwelling. The dwellings are accessed through the main entry and then corridors. This is not an unusual situation for a unit development albeit more typical of a multi-level apartment format. The corridors are quite long but some daylight access is available where there are communal spaces and access to the exterior. I do not consider this a reason to find the proposal is unacceptable. I find the objective of clause 55.05-2 is met.
- 46 Overall, notwithstanding that the dwellings provide all the necessary components and have access to communal open spaces and facilities, I am concerned about the level of amenity associated with a significant proportion of the dwellings.

IS THE BUILT FORM OUTCOME ACCEPTABLE?

Current scheme provisions

- 47 A purpose of Clause 32.08 is encourage development that respects the neighbourhood character of the area. Clauses 54 and 55 include multiple objectives ensuring that the design respects the existing neighbourhood character or contributes to a preferred neighbourhood character.
- 48 Clause 22.08 is a local policy relating to neighbourhood character and includes the subject land in Frankston Precinct 9. It includes objectives and design responses that I have considered. The preferred character statement is:
- The sense of openness, the views between buildings, and the backdrops of native trees will be maintained.
- 49 The proposal does not materially alter the external appearance of the building as appreciated from the street. Works within the site, for example relating to the delineation of private open spaces, would not be seen from the public realm. I do not consider there are any specific issues with respect to the proposal's response to the neighbourhood character.

- 50 One statement of grounds describes the proposal as not in keeping with the types of houses in the street and not enhancing the area. Other criticisms include the ‘ugly’ mail boxes, fallen fencing, and poor garden maintenance. None of these concerns are reasons to refuse the proposed development.

Future planning for the Karingal Major Activity Centre

- 51 The applicant refers to structure planning being undertaken by the Council for the Karingal Major Activity Centre [MAC]. The 2013 *Frankston Housing Strategy* recognises the MAC structure plan area.¹¹ The 2013 *Karingal Major Activity Centre Structure Plan* is an adopted Council strategic plan. It seeks to establish a long-term vision for the MAC. The adopted structure plan is a relevant matter under sections 60(1A)(g) and 84B of the *Planning and Environment Act 1987*. The implementation of the plan has not yet proceeded to a scheme amendment that has been exhibited or adopted by the planning authority. The structure plan is not referenced in the scheme. The south side of Sandpiper Place is within the boundaries of the activity centre, whereas the north side is not.
- 52 The 2013 *Frankston Housing Strategy* includes the subject land in a substantial change area. These areas are generally located within or close to identified activity centres and/or train stations, allowing for an increase in medium density development close to existing services. The *Karingal Major Activity Centre Structure Plan* includes indicative built form profiles, at a level of detail not in the *Housing Strategy*. The northern part of the subject land, generally where it aligns with the boundaries of dwellings fronting the south side of Sandpiper Place, is within an area identified for residential incremental change. Part of the car park and the buildings are within an area identified for medium density consolidation.
- 53 This strategic work cannot be given influential weight in this proceeding even though, on one view, the proposal could potentially be considered an under-development of the land if the strategic work is advanced by the planning authority. However, the adopted structure plan is indicative of the Council’s current strategic thinking and particularly the suitability of the subject land for a more substantive residential development outcome than proposed in this application. Mr English acknowledges this when raised by me at the hearing. He refers, in part, to the significant issues arising from the multiple lots and owners with respect to sale of the subject land as a single entity to allow a new building to be developed. He also describes other options that have been investigated and previous failures relating to the use of the subject land. I appreciate the challenges arising from the manner in which the bedsits were subdivided and individually titled. Notable is the fact that the dividing walls between each bedsits are common property. Ultimately these challenges do not lead me to a different conclusion when balancing all relevant matters.¹²

¹¹ For example, figure 15 – Frankston Housing Framework Plan at page 49 and figure 16 – Frankston Activities Structure Plan Areas at page 51.

¹² I record that Mr English did not submit that the circumstances with respect to the complex title and common property arrangements should carry influential weight in the planning assessment.

- 54 The strategic planning exercise is also a contextual consideration when considering submissions by residents that the density of the proposed development is too high for a low density area. As I have indicated, if the structure plan is pursued to implementation via a scheme amendment, more development can be expected. Even under the existing GRZ, more units could be contemplated. The density of the proposal is not an issue that causes the permit to be refused.

DO ANY OTHER MATTERS WARRANT REFUSAL OF A PERMIT?

- 55 A range of other matters have been raised in submissions, statements of grounds and evidence to which I briefly refer.

Alternatives

- 56 The Council's submission includes that conversion of the building into individual dwellings will deplete an already scarce housing stock that has attributes making it suitable for housing special needs groups within the Frankston community. It supports re-use of the building for social or affordable housing and has worked with the applicant to explore such options.
- 57 I have not examined alternative uses or projects. It is not the role of the Tribunal in assessing the permit application afresh, to determine if there is a better or ideal solution.¹³ Rather, my task is to decide whether the proposal will produce an acceptable outcome.

Noise and lighting

- 58 Ms Gosewinckel refers to a range of issues with respect to the interface between the development and dwellings to the north. These include noise, lighting, strangers using a gate to access the land, washing being hung over fence lines, privacy and safety.
- 59 I appreciate the neighbours' concerns about an interface with multiple dwellings. However, the relationship of backyards to one another is a common occurrence. Issues between neighbours need to be approached co-operatively.
- 60 There is no opportunity for unreasonable overlooking from the single storey dwellings and landscaping and fencing limit inter-viewing. It would be possible to enhance lighting in the car park and to adjust lighting to the external faces of some proposed units. It may be possible to modify the gate.

Increased traffic and safety

- 61 Although I have not been persuaded to accept the extent of parking reduction this permit application seeks, I find increased traffic associated with the proposal would be acceptable. I reach that view on the basis of the traffic evidence. That is notwithstanding more traffic would be generated than estimated as a consequence of my conclusion that the proposal would demand and require more parking than set out in the traffic evidence.

¹³ *Knox City Council v Tulcan Pty Ltd* [2004] VSC 37.

62 No concern about the ability of Sandpiper Place to accommodate more traffic is raised by the Council's traffic engineer. While I have considered residents' objections about the safety of vehicle movement, particularly with bends in the road, I am not persuaded that additional traffic associated with 45 dwellings would be beyond the capacity of the street. I find no basis to submissions that emergency service access will be compromised even with parking in the street. It is open to the Council, as road manager, to restrict parking if required.

Fire safety, health risks and other building matters

- 63 Respondents contend that the unsupervised laundry will be a health risk, as might also be the case with self-contained kitchens. They express concern about the safety of occupants including with respect to fire.
- 64 These are not matters that I need to enquire into. Some are addressed under the *Building Act 1993* and others are governed by further legislation.

Aboriginal cultural heritage

- 65 Reference is made by Ms Gosewinckel to impacts on Aboriginal cultural heritage as a consequence of letterboxes being placed on the footpath.
- 66 The whole of the subject land is located within an area of Aboriginal cultural heritage sensitivity. The proposal is a high impact activity for the purposes of the *Aboriginal Heritage Act 2006* and associated regulations. This application proceeded on the basis that the proposal is for internal works and that significant ground disturbance would have occurred when the building was originally constructed. The recommendations contained in evidence may result in works external to the building, if, for example, fencing was erected. I have not considered it necessary to review this matter further given my overall conclusion about the merits of the application.

Waste collection

- 67 Residents express concern about current and future arrangements for waste collection. Among those concerns are inadequate collection, vermin, dumped shopping trolleys, and rubbish in the street and from the letterboxes.
- 68 Mr English refers to an existing private waste collection service which is intended to continue. There is space for waste storage and bin storage facilities on-site. Although not supported by the applicant, I would prefer a waste management plan for the proposal. This could be addressed by conditions. Matters raised by residents are not reasons to refuse a permit.

Enforcement and works alleged to have commenced

- 69 The Council and some residents refer to enforcement proceedings being pursued by the responsible authority and allege works have been undertaken unlawfully.
- 70 I have not enquired into allegations of unlawful works or occupation of the subject land. As explained at the hearing, I am considering an application for a planning permit not enforcement proceedings.

71 I agree with Mr English that I must assess the permit application on its merits. Even if works or occupation have occurred unlawfully, the usual approach is that this would give no party an advantage, or place any party at a disadvantage, in my consideration of the merits of the permit application. My approach is consistent with principles referred to by the Supreme Court:

The permit applicant should neither be punished nor rewarded for undertaking work before a permit was obtained.¹⁴ [Tribunal emphasis added]

... the paradox that unlawful commencement of a use (or construction of a development) may enable a better appreciation of its impact on its context and plans or other descriptions of a proposal ever could.¹⁵

Property values

72 Statements of grounds contend the proposal will create impacts that will devalue properties in Sandpiper Place.

73 Various Tribunal decisions identify that the relevance of economic impacts in planning matters relates to the contended effects on the community, not individuals and their private financial interests. The effects must be demonstrable, and the effects must be ‘significant’, consistent with the wording in the *Planning and Environment Act 1987*.

74 There is no valuation evidence or specific evidence in support of the grounds advanced. This is not a reason why I have refused a permit.

WHAT IS THE TRIBUNAL’S CONCLUSION?

75 For the above reasons, I will affirm the responsible authority’s decision. I find various outcomes of the proposal to be acceptable or to result in no significant change, such as with respect to neighbourhood character. I have had regard to submissions about the need for housing of the type proposed. Despite accepting that there is a need for affordable and lower cost housing, my findings about the inadequate amount of on-site parking provision for the proposed dwellings in this location and some poor elements of internal amenity, are the primary reasons why, when balancing all relevant matters and objectives, I conclude that no permit should be granted.

Margaret Baird
Senior Member

¹⁴ *Knox City Council v Tulcanly Pty Ltd* [2004] VSC 375 citing *Van Egmond v City of Knox, Bassett & Ors* (1985) 3 PABR 249 and 250.

¹⁵ *Knox City Council v Tulcanly Pty Ltd* [2004] VSC 375 at paragraph 13(b).