

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2216/2016
PERMIT APPLICATION NO. 1021/2014

CATCHWORDS

Section 82 of the *Planning and Environment Act 1987*; Port Phillip Planning Scheme; General Residential Zone Schedule 1, Heritage Overlay Schedule 444; Alterations to existing dwelling; impact on heritage values, neighbourhood character, amenity impacts

APPLICANT	Owners Corporation Plan No. PS 35378
RESPONSIBLE AUTHORITY	Port Phillip City Council
RESPONDENT	Mark and Emmanuelle Dal Pra
SUBJECT LAND	1/27 Patterson Street Middle Park
WHERE HELD	Melbourne
BEFORE	Katherine Paterson, Member
HEARING TYPE	Hearing
DATE OF HEARING	6 June 2017
DATE OF ORDER	12 October 2017
CITATION	Owners Corporation Plan No. PS 35378 v Port Phillip CC [2017] VCAT 1661

ORDER

- 1 In application P2216/2016 or the decision of the responsible authority is varied.
- 2 In planning permit application 1021/2014 a permit is granted and directed to be issued for the land at 1/27 Patterson Street Middle Park in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Partial demolition of the existing dwelling.
 - Alterations to the existing dwelling including a new front fence and garage.

Katherine Paterson
Member

APPEARANCES

For applicant	Ms Nancy De Losa and Mr Damian Hancock, in person
For responsible authority	Ms Polly Edwards, Town Planner, Port Phillip City Council
For respondent	Mr Peter Barber, Town Planner, Urban Edge Consultants

INFORMATION

Description of proposal	Alterations and additions to an existing dwelling, so that the dwelling will now contain four bedrooms, with ground floor amenities such as a home theatre, playroom and massage room. The existing carport is proposed to be converted to a single garage.
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Port Phillip City Council
Zone and overlays	General Residential Zone Schedule 1, Heritage Overlay Schedule 444
Permit requirements	Clause 32.08-5 – To extend a dwelling on a lot between 300 and 500 square metres; Clause 43.01-1 – To demolish a building and to construct a building and to construct and carry out works.
Land description	The subject site has an area of 309 square metres and currently contains a two storey dwelling. The dwelling is one of a set of two dwellings constructed in a one-behind-the-other arrangement.
Tribunal inspection	6 June 2017, accompanied by all parties.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 The owners of the land at 1/27 Patterson Street Middle Park wish to alter their dwelling by extending the dwelling at the ground and first floor levels closer towards the street so that it contains four bedrooms, a massage room, home theatre, living areas, and kitchen and bathroom facilities.
- 2 The owners corporation for the adjoining land at 29-31 Patterson Street Middle Park have requested that the Tribunal review Council's decision to grant a permit for the proposed works. They are primarily concerned that the proposed additions will have an unreasonable impact on the amenity of the adjoining dwellings through visual bulk, overshadowing, loss of daylight, overlooking and noise. They are also concerned that the proposed design is inconsistent with the neighbourhood character and heritage values of the area.

What are the key issues?

- 3 Having considered all the submissions and evidence and inspected the subject land and its locality I am of the opinion that the key issues in this proceeding are:
 - Is the proposal respectful of the neighbourhood character?
 - Is the proposal an acceptable response to the heritage values of the precinct?
 - Does the proposal create unacceptable amenity impacts?

Summary of findings

- 4 I have decided to grant a permit for the following reasons:
 - The design of the altered dwelling is generally consistent with the neighbourhood character of the area.
 - With the changes I have made, I am satisfied that the proposed dwelling will not negatively affect the heritage values of the area.
 - With the changes I have required to the built form, the impact on the amenity of the adjoining properties is reduced to a level that I find to be acceptable.

My reasons follow.

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.

PROCEDURAL ISSUES AND RULINGS

- 5 My order of 6 June 2017 required the submission of revised shadow diagrams showing the level of shadow cast by the existing buildings and the shadows cast by the proposed development into the secluded private open spaces of the dwellings at 25 and 29-31 Patterson Street. Amended shadow diagrams were provided by the permit applicant on 4 August 2017. Following concerns raised by Ms De Losa that the plans were still inaccurate, a revised set was submitted on 18 August 2017. Whilst Ms De Losa remains concerned that the shadow diagrams are inaccurate, I consider that there is sufficient detail for me to make a decision on this application and I have based my decision on these plans. I consider her concerns regarding the impact on the amenity of the property at 29 Patterson Street in my decision.
- 6 On 29 August 2017, Amendment VC139 to the Port Phillip Planning Scheme was gazetted. This amendment made a number of changes to the state planning policy framework. Given the nature of the changes made, I found it was appropriate to provide the parties with an opportunity to make a further written submission on any implications for the proposal before me. No submission was made in response to my order.

IS THE PROPOSAL RESPECTFUL OF THE NEIGHBOURHOOD CHARACTER?

- 7 Clause 54.02-1 of the Port Phillip Planning Scheme requires the design of new dwellings to either respect the existing character or respond to a preferred character. Council's Neighbourhoods policy at clause 21.06-3 seeks to ensure that the strong heritage character and substantially low rise form of existing residential areas within Middle Park are maintained.
- 8 Patterson Street is a residential street that contains dwellings from the Victorian and Edwardian period right up to the present day. As such the built form within the street is eclectic with considerable variety in terms of building styles, roof forms and materials. The architectural style of the proposed addition has borrowed design elements found within the streetscape, particularly the adjoining dwelling at 29-31 Patterson Street. I am satisfied that the overall form of the altered dwelling is generally consistent with this streetscape.
- 9 The application proposes to convert the existing garage into a carport, which has the potential to have an impact on the streetscape. However, there are examples of garages within the street and the presence of the garage door will be softened by the use of timber for the garage door.
- 10 The altered two storey dwelling will have an overall height of 7.6 metres, which I find is consistent with the desired low rise character for the area, and is considerably lower in scale than the adjoining development at 29-31 Patterson Street.

- 11 The objectors raised concerns that the extended dwelling was inconsistent with the character of Patterson Street due to its front setback and site coverage. I will consider each in turn.

Front setback

- 12 Based on the setbacks provided in the survey plan provided to the Tribunal at the hearing, standard A3 of clause 54.03-1 of the Port Phillip Planning Scheme requires a dwelling on this site to be set back 4.69 metres from the street frontage. The application is proposing a setback of 4.075 metres to the garage and first floor terrace, and as such is seeking a variation to the standard.
- 13 Before deciding on an application to vary a standard the planning scheme requires me to consider, amongst other matters, the prevailing setbacks within the streetscape. The setbacks of buildings fronting the street range from zero to six metres, with an average front setback of 3.4 metres. The proposed front setback is therefore greater than the average setback within the street. Furthermore, the proposed setback is greater than the current 3.93 metre setback to the carport and will provide a transition between the setbacks of the two adjoining dwellings.
- 14 I find that the proposed front setback is therefore acceptable to the streetscape. I consider whether the proposed setbacks are acceptable from a heritage perspective later in my decision.

Site coverage

- 15 Standard A5 of clause 54.03-3 states that the site coverage of a dwelling should not exceed 60%. The Council officer's report assessed the site coverage of the proposal to be 52%, less than the maximum allowed under the standard. I am satisfied that the proposed site coverage is an acceptable response to the neighbourhood character of the area particularly given the fact that the subject site is located within the inner city where buildings have a significantly greater site coverage than their middle and outer suburban counterparts.

IS THE PROPOSAL AN ACCEPTABLE RESPONSE TO THE HERITAGE VALUES OF THE PRECINCT?

- 16 The subject site is located within the Middle Park and St Kilda West Heritage Precinct.² It was common ground that the existing dwelling makes no contribution to the heritage values of the precinct. However, the adjoining dwelling at 25 Patterson Street is identified as a contributory building.
- 17 Council's heritage policy at clause 22.04 of the Port Phillip Planning Scheme encourages new development to be respectful of the scale, form,

² Heritage Overlay Schedule 444

siting and setbacks of nearby significant and contributory buildings. The policy contains a number of performance measures including:

New development, with a significant or contributory heritage place on one adjacent site, has an equivalent frontage setback to the heritage place or a setback configuration that maintains a reasonable vista to the heritage place.

- 18 Council's urban designer made the following comments with respect to the design:

Whatever the aesthetic merits of the design, it is clear an attempt was made to ensure the building was responsive to its context and sat comfortably amongst the other houses. At present, it has a neutral/recessive presence in the streetscape. The proposal would radically change the appearance of the house and make it a more visually prominent within the streetscape. While the current, amended plans (which incorporate a hipped roof and a window to the first floor facing the street) are an improvement on the originally submitted plans I believe the first floor, which projects forward to the ground floor, is too dominant in the streetscape. I would like to see an increased setback at first floor level, which may require the deletion of one of the bedrooms (it appears the reason for the projection is to enable direct access to the terrace above the garage). Setting back this part of the addition would provide a more appropriate transition between the single storey house at 25 and the rather dominant flats at No. 29. Apart from the above, the proposal is generally appropriate.

- 19 Council officers did not require the additional setback to the overhang, as in their view it added to the articulation of the building and this element of the building will be set back behind the front façade of the heritage building. Whilst I agree that this feature adds some visual interest to the building, I agree with Council's heritage advisor that a greater setback to the upper level of the building is required to reduce its prominence in the streetscape and the adjoining heritage building. Based on a sightline diagram, the dominance of the first floor terrace could be reduced by increasing the setback to the first floor terrace by 800mm and increasing the front setback to the third bedroom by 300mm. Whilst relatively minor increases in setbacks, I consider that this increase will reduce the dominance of the upper level and ensure that the development responds better to the adjoining contributory building whilst still providing the articulation desired by Council. I have required this change as a condition of permit.

DOES THE PROPOSAL CREATE UNACCEPTABLE AMENITY IMPACTS?

- 20 The adjoining building at 29-31 Patterson Street contains five, two storey attached dwellings. Each dwelling has been provided with a west facing courtyard which is accessed via a living room and a first floor balcony, accessed via a large bedroom. Dwelling 1 also has an area of private open space at the front of the property, which is also used for car parking.

- 21 The dwellings most likely to be affected by the proposal are dwellings 1 and 2 which have a direct outlook to the proposed addition.
- 22 During the site inspection I observed the private open space and living room arrangements for both dwellings 1 and 2. The ground floor courtyards and first floor terraces for both dwellings have been landscaped and are clearly used to meet the recreational needs of the residents.
- 23 The objectors to the proposal are primarily concerned that the proposed additions will have an unreasonable impact on the amenity of the adjoining dwellings through visual bulk, overshadowing, loss of daylight, overlooking and noise. I will consider each in turn.

Visual Bulk

- 24 Between the subject site and the property at 29-31 Patterson Street there is an area of common property which is used to provide pedestrian access to the dwelling at 2/27 Patterson Street.
- 25 The applicant for review was critical of the proposal to utilise this area to provide the required side setback to the dwelling, saying that the setback should be taken from the boundary of the subject site and not the common property.
- 26 The decision guidelines for standard A10 of clause 54.04-1 allow me to consider whether the property abuts a side or rear lane when considering whether a side setback is appropriate. I find that the area of common property essentially serves the same role as a named laneway would and it is therefore entirely appropriate that this section of land is taken into account when providing the required setback. When this section of land is taken into account the setbacks of the proposed development comfortably meet the requirements of standard A10.
- 27 However, that is not the whole story with this application. The existing dwelling has a sheer two storey wall which is proposed to be extended as a part of this proposal, albeit set back a further 600mm from the side boundary. An additional window will be added to the existing wall, which will assist in breaking up the blank façade. During the hearing the permit applicant offered to further soften the impact of this wall by planting a Boston Ivy along the wall. I agree that this will assist in mitigating the overall bulk of the wall.
- 28 There is no doubt that the extension of the wall will change the outlook from the ground floor and upper level terraces of dwellings 1 and 2. However, the separation between the two buildings will still enable a view to the sky and I find that the wall is acceptable given this inner city location. I have required the provision, implementation and ongoing maintenance of a landscape plan as conditions of permit.

Overshadowing

- 29 Clause 54.04-5 of the Port Phillip Planning Scheme seeks to ensure that buildings do not unreasonably overshadow existing secluded private open space. Standard A10 requires:

Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September.

If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.

- 30 The revised shadow diagrams submitted in response to my order of 6 July 2017 indicate that the proposed additions will cast shadow into the private open space of dwellings 1 and 2 of 29-31 Patterson Street from 12pm at the September equinox.
- 31 Whilst the shadow diagrams provided by the permit applicant do not show the existing shadows cast by the existing buildings at 29-31 Patterson Street into the private open space of dwellings 1 and 2 between 9am and 3pm, given the orientation of the lot, I consider it to be highly likely that these spaces would currently receive less sunlight than the amount specified by the standard. In these circumstances, the planning scheme states that no additional shadow should be cast into these spaces.
- 32 Due to the use of these spaces, particularly at ground level for dwelling 2 which is an extension of their living room, I find that the amenity of these dwellings may be unreasonably compromised by the amount of shadow that will be cast by the proposed development.
- 33 Given the site's inner city location, I am prepared to accept some additional shadow cast into these spaces in the late afternoon, however the development should be redesigned to ensure that no additional shadow is cast into the dwellings between the hours of 9am and 1pm at the equinox. This will provide five hours where the existing situation of the adjoining private open spaces is maintained. This may be achieved through a variety of methods such as a reduction in the overall height of the dwelling, increase in setbacks or modification to the roof form. Any of these options would have the added benefit of further reducing the overall bulk of the wall. I have required this as a condition of permit.

Loss of daylight

- 34 Based on the survey plan submitted at the hearing, the existing building at 29-31 Patterson Street is set back 2.4 metres from the western boundary, and the common property immediately adjacent to the subject site has a width of 1.5 metres. When combined these setbacks provide sufficient separation between the proposed built form and the existing dwellings to

ensure that the existing dwellings at 29-31 Patterson Street will still receive an acceptable level of daylight in accordance with the planning scheme standard.³ I note that my requirement to reduce the level of shadow cast by the built form will further increase the amount of daylight received by the adjoining habitable room windows.

WHAT CONDITIONS ARE APPROPRIATE?

- 35 The conditions on the Notice of Decision were discussed at the hearing and any changes to those conditions reflect those discussions as well as further consideration by the Tribunal.
- 36 I have required all dimensions to be accurately shown as a condition of permit, including the distance of the adjoining dwelling at 29-31 Patterson Street to the site boundary, which is currently shown at 2.1 metres, and not 2.4 metres as per the survey plan.

CONCLUSION

- 37 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions.

Katherine Paterson
Member

³ Clause 55.04-3

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	1021/2014
LAND	1/27 Patterson Street Middle Park

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Partial demolition of the existing dwelling.
- Alterations to the existing dwelling including a new front fence and garage.

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 prepared by Leon Moulton Pty Ltd dated August 2014 but modified to show:
 - (a) All new habitable room windows at first floor level on the east and west side of the dwelling to be shown as fixed and unopenable to a height of 1.7 metres above FFL with obscure glazing.
 - (b) The setback of the first floor terrace to the front boundary increased by a minimum of 800mm and the setback of the third bedroom to the front boundary increased by a minimum 300mm.
 - (c) The development modified to ensure that no additional shadow is cast by the dwelling into the secluded private open space of 1/29-31 and 2/29-31 Patterson Street Middle Park between the hours of 9am and 1pm at the September equinox.
 - (d) Any subsequent modifications to the built form and internal layout to comply with 1(a), (b) and (c).
 - (e) The side setback of the property at 29-31 Patterson Street shown at 2.4 metres (as per the plan prepared by Landair Surveyors dated 1 March 2017).
- 2 The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the responsible authority, unless the Port Phillip Planning Scheme exempts the need for a permit.

- 3 Before the development starts, a landscape plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plan 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 show:
- (a) a survey (including botanical names) of all existing vegetation to be retained and/or removed
 - (b) buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary
 - (c) details of surface finishes of pathways and driveways
 - (d) 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
 - (e) landscaping and planting within all open areas of the site
 - (f) a climbing species such as Boston Ivy planted to grow up the eastern wall of the dwelling.

All species selected must be to the satisfaction of the responsible authority.

The landscape plan must also indicate that an in-ground irrigation system is to be provided to all landscaped areas.

- 4 Before the occupation of the development or by such later date as is approved by the responsible authority in writing, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the responsible authority.
- 5 The landscaping shown on the endorsed plans must be maintained to the satisfaction of the responsible authority, including that any dead, diseased or damaged plants are to be replaced.
- 6 Before the development starts (other than demolition or works to remediate contaminated land) a Sustainable Design Assessment that outlines proposed sustainable design initiatives must be submitted to, be to the satisfaction of and approved by the responsible authority. When approved, the assessment will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed.
- 7 The project must incorporate the sustainable design initiatives listed in the endorsed Sustainable Design Assessment to the satisfaction of the responsible authority.
- 8 Before the development starts (other than demolition or works to remediate contaminated land) a Water Sensitive Urban Design Report that outlines proposed water sensitive urban design initiatives must be submitted to, be to the satisfaction of and approved by the responsible authority. The report must demonstrate how the development meets the water quality

performance objectives as set out in the Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) or as amended.

- 9 When approved, the report will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed.
- 10 Before the occupation of the development approved under this permit, the project must incorporate the water sensitive urban design initiatives listed in the endorsed Water Sensitive Urban Design Report to the satisfaction of the responsible authority, and thereafter maintained to the satisfaction of the responsible authority.
- 11 All piping and ducting (excluding down pipes, guttering and rainwater heads) must be concealed to the satisfaction of the responsible authority.
- 12 No plant, equipment or domestic services (including any associated screening devices) or architectural features, other than those shown on the endorsed plan are permitted, except where they would not be visible from a street (other than a lane) or public park without the written consent of the responsible authority.
- 13 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
 - (a) The development is not started within two (2) years of the issue date of this permit.
 - (b) The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

– End of conditions –