

West of Elgar Residents' Association Inc.

A.N.:A0031410U

Submission VCAT Reference No: P355 / 2014

City of Whitehorse Planning application WH/2013/1000

Application for construction of a two storey apartment building with basement car parking,
comprised of 10 dwellings
20 Louise Avenue, Mont Albert

Hearing commencing 20 October 2014

INTRODUCTION

West of Elgar Residents Association (WERA) is a resident association representing the community in the western part of Whitehorse. We have 200 members including residents of Louise Avenue; Mont Albert. WERA is also affiliated with other community groups on planning matters.

WERA's objectives are to lead and to respond to resident needs and concerns at Local and State Government levels. As such we have been directly involved with Whitehorse Council in the development of its Heritage Study; Housing and Neighbourhood Character Reviews 2003 and 2014; Neighbourhood Activity Centre Design Guidelines and Open Space Strategy.

The Mont Albert area [site of application] is in the Elgar Ward of the City of Whitehorse. WERA's interest in this matter is as an incorporated body representing residents in the western part of Whitehorse, and in particular our local members, and their concerns for the maintenance of the character and amenity of their neighbourhood.

WERA supports responsible, appropriate development, which respects residential amenity and character, but opposes the proposal put forward by the applicant for the reasons given in the following submission.

SUBMISSION

WERA supports the City of Whitehorse refusal to grant a planning permit for this proposal.

WERA objects to the proposal because:

- Fails to respect neighbourhood character, both the existing and preferred.
- Is an over-development of the site
- New residential growth zones and neighbourhood activity centres are designated as appropriate areas for apartment development.

Neighbourhood Character

Whitehorse housing strategy has designated different development areas. The aim is" *To provide certainty to the community in terms of the areas targeted and protected from increased development. To encourage development to contribute to the preferred neighbourhood character where specified.* [WPS Cl 22.03.2]

Neighbourhood character is:

- a mandatory starting point for all developments.
- fundamental to the sense of place in established residential communities.
- not the imposition of design styles but about recognising the distinctive characteristics of different urban forms, and their relationship to topography and vegetation.

Getting this right is the best way of maintaining and enhancing the sense of place of long established residential areas.

The site is an area of *Natural Change* which the Whitehorse Planning Scheme (WPS) defines “... *as an area that will undergo a modest level of change*”. Sites within activity centres are in “*substantial change areas*”, and are the locations where an apartment building, as with this proposal, can be developed. The nearby Box Hill Major Activity Area is designated in the planning scheme for substantial change in residential density and this change has been occurring for many years.

The WHPS CI 32.08 amended on 1 July 2014 VC116 places this site temporarily into a General Residential Zone being designated as R1Z on the zone map. The purpose of this zone however still requires that:

- *development respects the neighbourhood character of the area*
- *to implement neighbourhood character and adopted neighbourhood character guidelines*
- *provide for moderate housing growth*

The Whitehorse Neighbourhood Character Study 2014 updated the study done in 2003 being a reference document in the WPS. This Study was *adopted* by the Whitehorse Council at the council meeting on 28 April 2014.

The key characteristics of the area have changed very little over the past decade and identifies that most buildings are detached or low density. Furthermore the Garden Suburban Precinct 3 Mont Albert preferred character also reinforces the prevalent character by stating that “...*combination of heritage and quality older style dwellings and well-designed contemporary buildings set within large gardens will continue to form the key characteristic of this area*”.

The formal garden settings of the area are comprised of tall canopy trees, shrubs, garden beds and lawn areas. This pattern is evident on both sides of Louise Avenue including the application site.

It is as described a pattern of mixed housing; predominantly single storey; low density layouts with private garden areas both back and front of each property providing spines of tree vegetation. *The proposal for an apartment block* does not respect the neighbourhood character of the area.

Furthermore the Whitehorse Housing Strategy February 2014 (page 48) also *adopted* by Council on 28 April 2014 under section 5.4 Natural Change states:

“Natural Change areas allow for modest housing growth and a variety of housing types, including medium density housing (no apartments) provided they achieve the preferred future neighbourhood character.”

This proposal to replace a single detached dwelling with 10 dwellings is contrary to the intended modest development of the area which is for a maximum of two (2) dwellings per lot under the State Governments new neighbourhood residential zone.

The recommended strategies for residential development in Natural Change Areas (WHS Feb 2014 (page 49) are:

New residential development should predominantly comprise low and medium density housing in the following forms -

- Detached dwellings*
- Semi-detached dwellings, townhouses, row or terrace houses*
- Units or townhouses*

Apartments are not included in the housing strategy for this area of Mont Albert.

The current WHPS reference document Whitehorse Neighbourhood Character Study 2003 preferred neighbourhood statement of community values in the Area WH 3 encompassing Mont Albert are:

- *Diverse dwelling styles that respect pre WW11 era dwellings – rather than respect this proposal imposes because of the bulk solid form of the apartment block.*
- *Sit within established gardens and large trees – proposal is to clear the site of all existing vegetation. This is contrary to WHPS Areas of Natural Change Clause 22.03.5.1 Garden Suburban Design Response to retain large established trees.*
- *Generous side setbacks to allow vegetation to flow around the building – There is limited areas for the planting of additional canopy trees on the site because of the footprint required for the building; basement driveway and provision for side access paving. The narrow southern setback prevents viable vegetation planting on this boundary.*
- *Rear setback – no provision for canopy trees which is contrary to Clause 22.03.5.1 Garden Suburban Design Response to provide setback on the rear boundary to accommodate substantial trees and other vegetation. Instead this proposal relies on borrowed airspace of the laneway at the rear eastern boundary and borrowed views of the vegetation in the rear of neighbouring properties to the east.*

In *Jeremic v Whitehorse CC (Correction)* [2014] VCAT 992 (13 August 2014) which considered a proposed townhouse and apartment block development in the same residential R1Z as this matter the Tribunal there stated:

“... we consider the primary issue on which this case rests is whether the proposal has adequately addressed its built form environs, which is a garden suburban setting, against any competing policies to direct greater housing choice and adding to housing availability in established urban areas of Melbourne. ... For reasons we explain below we find the proposal does not sufficiently suit its site context and therefore fails to adequately address the balance of State and local policy toward respecting the garden suburban setting of this neighbourhood.”

and

“ ... primary weight must be given to the existing provisions of the planning scheme. For reasons we outline below, we find the proposal fails to meet these current planning scheme provisions. If the new provisions were to apply, these would only strengthen the provisions that we find the proposal fails.”

Over-development

Over-development of the site is reflected in the following aspects of the proposal:

- 1) Clearance of all existing trees contrary to Whitehorse Planning Scheme Clause 22 to retain existing.
- 2) Majority of replacement plantings are primarily confined to narrow perimeter boundaries where soil depth/width will limit growth and the intended role of canopy trees in amenity screening and contributing to garden suburban character.
- 3) The provisions of WHPS Clause 22.04 and 22.03 place considerable emphasis on retention of existing trees, the provision of sufficient space for regeneration of new trees and achieving a landscape response that strengthens garden settings. Much of the area provided for canopy trees and screen vegetation is:
 - a) Over-shadowed narrow southern boundary and hard paving for car parking on neighbouring fence line
 - b) Limited by access paving and paved private open spaces; and
 - c) Relies on future occupiers of ground floor dwellings maintaining canopy trees in relatively small areas where there will be competing demand for use.

It is WHPS Policy that new trees have sufficient space and separation from buildings and impervious surfaces to successfully obtain their optimum height and avoid any damage to property in the future.

- 4) The April 2014 adopted neighbourhood character guidelines for Whitehorse continue to identify the site in Garden Suburban - Precinct 2. The existing and preferred character statement is updated but continues to refer to maintenance of open and large garden settings as the key characteristic for the area. It comments that "*New dwellings will be sited in generous gardens to reflect the spacious qualities and the dominance of planting in the streetscapes.*"
- 5) The objectives of WHPS Clause 55.03 and 55.04 are to ensure that the setbacks of buildings respect the existing or preferred neighbourhood character. The proposal relies on substantive perimeter planting to soften the form. This does not create an informal and open garden setting but simply seeks to plant out around the edges of the apartment building to soften its form.
- 6) Extensive use of opaque windows and screens to avoid overlooking hence limiting the internal amenity for occupants. These expansive screening measures are indicative of the difficulty associated with such a large development in close proximity to adjoining private open space areas.
- 7) Parking is provided for 13 car parking spaces including 2 visitor spaces (all below ground level) yet 9 apartments are 2 bedrooms and 1 is for 3 bedrooms. Provision for this number of bedrooms increases the likelihood of there being more than 1 car per apartment. The availability of street parking in Louise Avenue on weekdays is limited because of 1 hour restriction on the east side and daily train commuters; activity centre employees and shoppers using the west side unrestricted daily parking spaces.

Clearly the proposal is of an intensity (and associated scale) that is inconsistent with the built form that has evolved, expected and accepted with modest level change in this neighbourhood residential area.

The apartment building to the south has site coverage of approximately 46 percent and the units to the north an approximate coverage of 37 percent. In contrast the applicant is seeking 60 percent coverage which is more than the new general residential zone schedule in garden suburban areas of Whitehorse that permits only 50 percent coverage.

Activity Centre proximity

The site is near but not adjacent to or within the Mont Albert neighbourhood activity centre. The State Planning Provisions adopted into the Whitehorse Planning Scheme on 30/05/2014 VC106 at Clause 16.01-2 Location of residential development; Strategies are to:

*“Increase the proportion of housing in Metropolitan Melbourne to be developed within the established urban area, **particularly at activity centres**, employment corridors and at other strategic sites.”*

Whitehorse Council on the 28 April 2014 adopted amendment C162 for Neighbourhood Activity Centre Urban Design Guideline. The Mont Albert NAC is categorised as 1b “... *a large neighbourhood centre on a standard width road.*” The built form guidelines for this centre allow for 4-storey development over the existing mostly single storey shops most of which have heritage overlay.

The Council earlier this year approved re-development of the existing 3-storey office building at 3-7 Hamilton Street, Mont Albert to be re-developed by the addition of a 4th floor for 55 residential apartments.

A planning permit has also been granted for a 3-storey apartment development at 343 Mont Albert Road, Mont Albert (adjacent to rail crossing) on the south-west corner of the activity centre.

Residents acknowledge the need for change to residential dwelling densities within established urban areas to reduce the outward expansion of Melbourne. The designation of the boundaries of existing major centres and neighbourhood activity centres; e.g. Box Hill activity centre and other smaller centres such as Mont Albert; to provide for these increases in housing density whilst protecting the neighbourhood character of the surrounding established neighbourhood residential areas is central to the Whitehorse Council and State Government approach.

If the Tribunal contemplates that the boundaries of the existing neighbourhood centre should be incrementally extended then the encroachment of higher density developments into surrounding residential neighbourhood will eliminate the certainty of the zones promised to residents by the State Government in announcing the new residential zones.

I refer again to *Jeremic v Whitehorse CC (Correction)* [2014] VCAT 992 (13 August 2014) where the Tribunal states:

“We have reviewed Plan Melbourne from which this direction is made and note that it refers to 20 minute neighbourhoods across metropolitan Melbourne with an aim to “encourage targeted infill development”.... “They include the establishment of new housing and mixed use zones and planning changes to encourage small lot construction, infill and mixed use development.”

There is nothing in the existing local section planning scheme that we were directed to, or that we can identify, that targets this area as one for infill development, beyond that directed by the housing policies for a natural change area.

The changes to the planning scheme that Council is seeking to introduce for the establishment of new housing and mixed use area is via Amendments C160 and C162. These Amendments, if approved in their current form, will further limit development of this site, as part of Council's targeted approach to new development. Whilst we agree that the concept of a 20 minute city is to support greater use of neighbourhood centres as walkable nodes, we do not see that the existing or proposed planning scheme provisions identify this site as part of a targeted infill area."

New residential zones

During 2012 the Minister for Planning announced Reformed Zones for Victoria: New and improved residential zones. These zones are to achieve:

- ... greater clarity about the type of development that can be expected in any residential area
- ... assist in identifying appropriate areas where urban densification will occur

After extensive community consultation through 2013 to February 2014 Whitehorse Council adopted proposed new zones on 28 April 2014.

The Whitehorse Housing Strategy Fig 4 Housing Framework Plan (page 43) has the Mont Albert precinct in a **Limited Change Neighbourhood Residential Zone**.

The Table on the DTP&LI fact sheet specifies for Neighbourhood Residential Zone that:

- *Role of zone is to restrict housing growth in areas identified for urban preservation*
- *Used where single dwellings prevail ... such as areas of neighbourhood character*
- *Maximum building height of 9 metres.*

WERA understands that this application is being considered under the WHPS as at the date the application was rejected by Council. The intentions of the Whitehorse draft new planning zones have previously been noted by a VCAT Tribunal as quoted above.

Whilst the findings in this matter are still to be determined WERA asks the Tribunal to give some consideration to the decision of Council in respect to this site being within a limited change neighbourhood residential zone and the Minister for Planning intentions for neighbourhood zones. The timelines of the Council zone review consultation process and applicant applying for planning permit on this site substantially overlap and as such the applicant in occupying the house has had the same access as the rest of the Mont Albert neighbourhood to the evolving intentions for the area zoning.

- February 2013 Council's 1st consultation draft housing strategy & neighbourhood character
- August 2013 Council 2nd consultation housing strategy and neighbourhood character.
- 9 December 2013 Council meeting minutes record that Council endorsed the updated draft Housing Categories of Change Map and the Neighbourhood Character Precinct Map which were combined into a single map and show the proposed zone translation of these maps into the draft Residential Zones. The Mont Albert area including Louise Avenue was designated as a Neighbourhood Residential Zone.
- 24 December 2013 application lodged for 2-storey 10 dwelling apartment

- February 2014 Council 3rd consultation housing strategy and neighbourhood character
- February 2014 permit refused being contrary to neighbourhood character
- April 2014 Council adopts new residential zones and schedules C160 and neighbourhood activity centre design guidelines C162
- April 2014 applicant lodges appeal with VCAT
- September 2014 applicant proposes amended plans
- 14 October 2014 Whitehorse Planning Scheme C160 amendment gazetted.

The Whitehorse Council minutes of 28 April 2014 report that “...Senior Council officers have *met representatives of DTPLI and the Minister for Planning’s office about the process undertaken and the feedback has been positive ... to translate the Housing and Neighbourhood Character Review 2014 into the Whitehorse Planning Scheme ... due to the considerable community consultation that has already been undertaken across the three phases of engagement and the quality of the methodology and work presented in the three documents.*”

The Council proposed new zone neighbourhood residential (NRZ5) and accompanying Schedule for GS 5 specifies in part no more than 2 dwellings per lot; maximum building height of 9 metres; 50% site coverage and 30% site permeability. The gazetted NR7 specifies in part no more than 2 dwellings per lot; maximum building height of 8 metres. These requirements preclude apartment buildings in a neighbourhood residential zone.

Conclusion

Whitehorse Council, applying its Planning Scheme, refused to issue a planning permit for this proposal. WERA believes that the Council decision and the Whitehorse Planning Scheme should be respected.

The proposed site is in an area of *natural change*. A proposal of this intensity is required by the Planning Scheme to be placed in areas of *substantial change*.

The proposal itself is of such bulk, height and density that it fails the criteria of neighbourhood character as expressed in the WHPS. The bulk design detracts and diverges from the preferred neighbourhood character; present and proposed. Neighbouring resident amenity is negatively impacted because of future overlooking and possibility of increased on-street parking.

On behalf of its members WERA seeks to achieve the best possible outcomes from development proposals. In this case, WERA believes that the application has failed important clauses of the Planning Scheme, as described above.

WERA strongly supports the refusal by the Responsible Authority.

WERA requests that the Tribunal refuse granting of a planning permit for this application.