

## 有哪些关键因素？

6. 我必须解决以下问题：
  - 这个建筑不符合这个地方的特征和相关法律？
  - 这个建筑是否会对居民造成不可接受的影响？
  - 是否会造成交通和停车问题？
  - 这个建筑能否为周围居民提供合理的舒适度？
7. 反对者提出了别的问题，比如说没有先例，对房产价值的影响，申请者不是这个社区的一员而且这个工程可能会对周围的居民造成伤害，但是我认为这个都不是影响我做判决的主要原因。
8. 我必须决定是否批准这个申请，如果批准了，有哪些附加条件。在考虑了所有的因素之后，我决定废除 Glen Eira 市政厅拒绝这个申请的决定，并且需要符合附录 A 设立的条件，我批准了这个申请。我的原因如下：

## 相关事项和条例

9. 申请者已经根据相关法令对建筑计划做出了调整：计划将建筑从原来的四层三十五户降低为三层三十户。有三位专家的评估报告。
10. 第二套方案是根据 Iles 先生的专家意见而修改的。两套方案相似，最大的区别包括户数和屋顶等。
11. 在 2016 年 12 月 1 号，负责机构和反对者拒绝更改方案。他们说他们对收到两套方案感到很困惑，而且他们没有时间仔细的分析第二套方案。
12. 法庭认为专家根据他们的专业意见对申请计划提出重大的改变是不合适的。但是我认为在法庭前提供的专家意见对于修改方案是非常有建设性的。因此，我认为这个申请是可接受的并且可以被包括在申请条件中。
13. 我认定在听证会的时候我会决定 2016 年 12 月 1 号提出的建筑方案是否何以接受。我这个替代方案的决定是基于以下几个原因的：
  - 申请者非常积极的想要进行这个项目。
  - 通过听证会前的一个强制性的会议，这个修改过的方案没有什么不寻常的地方。
  - 和之前的计划相比，申请者已经把楼层和户数降低了，所以这已经变成了一个密度较低的建筑。
  - 修改过的计划符合法令。
  - 专家意见符合法令。
  - 所有人员都在听证会上确认了他们已经看过修改后的计划

- 听证会的判决是公正的
- 因为没有人认为四层楼的公寓是可以接受的，包括申请人在内，所以花这么多天听证这个四层楼的计划是没有意义的。

## 主要的考虑因素

这个建筑是否符合当地的特征和法律？

双方怎么说？

14. 负责机构和反对者觉得这个拥有 30 户的公寓太密集。
15. 负责机构和反对者觉得这个房屋的设计太死板。邻居认为这对当地的街道的景观有极大的影响。
16. 反对者也说将来的居民不会积极的参加社区活动，因为公寓无法支持他们和邻居的社交。

计划政策提供了什么指导？

17. 计划政策证明对于这个地方的改变是合理的。
18. Glen Eira 规划计划对住宅发展的首选位置有高度针对性的计划。
19. 这些被选到的地方都属于房屋多样性区域。
20. 他们被包括在普通居住区域内。
21. 这个计划提供了一些和高度，规模等的指导。相关的政策指导包括：
  - 建筑物限高 10.5 米（除非有土地斜坡）
  - 建筑发展需要提供居民房的多样性。
  - 建筑发展需要考虑和尊重邻居特征的政策。
  - 建筑发展的密集度，体积和规模可以根据在不同房屋多样性区域内做出改变。
22. 法令 22.07 也给出了房屋多样性建筑区域的指导。
23. 法令 22.07 也鼓励房屋多向性建筑由中心向周边发展。
24. 法令 22.07 没有具体到邻居的相关事宜。

法庭提供了什么有关于房屋多样性的指导？

25. 法庭在最近几年判过很多这样的案件，并且有很多是由我主审的，这些案件都有很多相似的地方，包括：
  - 设立房屋多样性区域是市政厅用来满足房屋多样性目标的一部分。
  - 这个房屋多样性区域在 Glen Eira 改变首选地点等级的中间。

- 这个区域被政府选为了高密度开发区因为这里有足够的空间来满足这些要求。
- 这个区域大部分是一层楼的特点不应该被保留或者复制，所以限制宽度应该作为保留现有特征的一个措施。
- 这个政策鼓励建造相对更加密集的房子。
- 在房屋多样性区域，各种各样的房子都可以被建造，包括公寓。
- 公寓在房屋多样性区域内是可以接受的，但是必须有很好的设计能够为邻居和将来的居民提供很高的舒适度。

26. 根据法令 22.07 里鼓励在商业中心和低密度开发区的交界处增加房屋的建筑密度的条款，法庭认为：

- 这个区域的限高是 10.5 米。
- 这个区域的计划表没有改变 55 号法令去改变高度，建筑形式和密集度。
- 因此在这个房屋多样性区域内做出改变是有限的。
- 接近小部分的低密度居民区不会破坏建立更多的住户在房屋多样性区域的强有力政策。
- 扩大范围和增强密度可以依次增加，并且在房屋多样性区域内的有些区域应该有所缓和的而不是在计划内允许。
- 鼓励在密集方面做出改变包含了一个政策声明是涉及到许多的，并且这个改变平衡了整个计划政策包括多样性房屋建设，娱乐设施建设和特征。
- 当考虑每个发展计划的时候，鼓励改变政策的普片性让做决定的人做的决定是相对有限的价值。

27. 我认为仲裁庭已经大概认识到在房屋多样性区域内将会有有一个重大程度的改变。

#### 针对政策和内容的评估

28. 首先是要去评估这个地的特征和环境。这块地是适合去重新建造一些房屋给许多不同的居民的。这块地用很大的面积和规整的形状和规模。

29. 这个被评估的地只有一个特征束缚它的重建。在 8 号 Bevis Street 的后院有一棵 14 米的树，大概距离后院篱笆 10 米。我同意反对者的观点，从邻居的角度来讲这棵树增添了这条街的风景。这棵树的保留会对这块地的重建有极大的影响。

30. 两个专业的报道表明，虽然这棵树有相对中等的保留价值，但是这棵树的结构有问题和这棵树的内部已腐烂。

31. 我对这块地会很好的分配相关服务感到满意。步行 350 米可以到达各种各样的商店和服务中心。

comply with clause 21.04, clause 22.07 and various objectives of clause 55. They also say traffic and waste collection would cause traffic and parking problems. Their amenity would be affected through visual bulk, noise, overlooking and overshadowing.

- 5 The applicant says the development would provide greater housing choice and affordability. It would be located in a Housing Diversity Area (HDA) where modest change is encouraged. He says it would provide acceptable amenity to its neighbours and future residents. He says it would not cause traffic or parking problems for its neighbours.

### **WHAT ARE THE KEY ISSUES?**

- 6 I must determine the following key issues in this matter:
- Does the development respond to its site features and its built form and policy contexts?
  - Would the development impose unacceptable amenity impacts on its neighbours?
  - Would the development cause unacceptable traffic or parking problems?
  - Would the development provide acceptable amenity for its future residents?
- 7 To the extent that other issues are raised by the respondents in their statements of grounds and submissions such as precedent, effects on property values, the applicant not being a member of the community and damage to nearby dwellings due to construction works, I consider these matters are peripheral to the key issues in this case and do not require specific consideration in making this decision.
- 8 I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Glen Eira Planning Scheme, I have decided to revoke the decision of the responsible authority and a permit can be granted in accordance to the conditions set out in Appendix A. My reasons follow.

### **PROCEDURAL ISSUES AND RULINGS**

- 9 The applicant has circulated amended plans in accordance with Practice Note PNP9. The amended plans propose a three storey building accommodating thirty dwellings and comprise a less intensive development than the application plans lodged with the Council (four storeys and thirty-five dwellings). The three expert evidence statements comment on the amended development.
- 10 A second set of plans was circulated with Mr Iles' expert evidence. The built form of the two proposals is similar, with the main differences relating to the number of dwellings, roof form, and the eastern elevation. Mr Morello also included plans in his expert evidence that show changes to the basements and ramps.

- 11 The responsible authority and the respondents objected to the substitution of the plans dated 1 December 2016. The respondents said they were confused by receiving two sets of plans and they did not have sufficient time to closely analyse the second set of plans. The responsible authority said the application for review should be struck out for want of prosecution.
- 12 The Tribunal has found that it is inappropriate for experts to recommend substantial changes to a development and effectively seek to amend the application plans through their expert evidence. Amendments to plans put forward in expert evidence are not subject to public notice in accordance with Practice Note PNP9. However, the opinions provided by the expert witnesses before the Tribunal are constructive for improving the development and thus I seek it as acceptable and can be include as the permit conditions.
- 13 I confirmed at the hearing that I would determine whether the development shown in the plans dated 1 December 2016 is acceptable. I ordered at the Hearing that the plans described as *VCAT Submission*, dated 01/12/2016 be the decision plans for this review (a development of thirty dwellings in a three storey building). My reasons for substituting the plans were:
- The applicant is actively pursuing the proposal, shown by participating in a compulsory conference, preparing amended plans, engaging expert evidence and being represented by legal counsel.
  - There is nothing unusual in the applicant circulating amended plans after a compulsory conference and prior to a hearing, with the aim of addressing the matters raised by the parties.
  - The amended plans reduce the size and density of the development by deleting a storey and reducing the number of dwellings from thirty-five to thirty, hence it is a less intensive development than the proposal considered by the responsible authority.
  - The amended plans were circulated in accordance with PNP9.
  - The expert evidence was circulated in accordance with PNVCAT 2.
  - All parties confirmed at the hearing that they have reviewed the plans dated 1 December 2016, have prepared submissions based on these plans and were prepared for a hearing.
  - No party would be prejudiced by proceeding with the hearing.
  - There is little point conducting a multi-day hearing regarding a four storey apartment building that no party, including the applicant, regards as being acceptable.

## CONSIDERATION OF THE KEY ISSUES

### Does the development respond to its site features and its built form and policy contexts?

#### What do the parties say?

- 14 The responsible authority and the respondents say an apartment building accommodating thirty dwellings in a local residential street is too dense. It says the building should be located on the periphery of the Commercial 1 Zone along Centre Road or East Boundary Road. It could be a transition between the more intensive built form in the commercial centre and the one and two storey dwellings in the nearby residential area.
- 15 The responsible authority and the respondents also say the proposed three storey form would be unduly bulky, boxlike and imposing. It would comprise a building that would be imposing and a dramatic change from the prevailing neighbourhood character. They do not necessarily oppose a three storey building, but say the second storey should be more recessive and the number of dwellings reduced. They also say there are few development sites left in this area, hence the character of the area is largely established and unlikely to change.
- 16 The respondents also say the future residents of an apartment building would be less likely to participate in informal community interaction than residents of other dwellings because apartment buildings do not facilitate casual interaction with neighbours.

#### What guidance is provided by planning policy?

- 17 Planning policy guides the change that can be reasonably expected in this area. At the general level, clauses 9, 11.02, 11.04, 16.01, 32.08, and 21.04 include broad planning objectives that generally encourage Melbourne to have a greater diversity of dwellings in the established suburbs to provide more housing choice. *Plan Melbourne* encourages approximately half of Melbourne's future dwellings to be accommodated within the established suburbs. This aspiration aims to reduce the need to build new suburbs on the fringes of the metropolitan area. Accommodating more people in the established suburbs can reduce the amount of non-urban land with agricultural and/or landscape value that has to be transformed to new suburbs. It can also ensure that the infrastructure in the established suburbs is used efficiently, enhance access to employment and reduce long distance car based commuting.
- 18 The Glen Eira Planning Scheme includes highly targeted strategies regarding the preferred locations for residential development. Nearly 80 percent of the municipality's area is expected to have minimal change. New residential development is directed to a limited number of preferred locations. The areas that are expected to undergo the most substantial change are urban villages and the Phoenix precinct, followed by the commercial parts of neighbourhood centres, local centres and properties along tram routes.

- 19 Following these preferred locations are housing diversity areas (HDAs). These are the residential areas around neighbourhood activity centres. They are identified in the scheme as the preferred locations for tempered redevelopment.
- 20 They are included in the General Residential Zone. A purpose of the zone is to provide a diversity of housing types and moderate housing growth in locations that offer good access to services and transport. The purposes of the GRZ are also to implement adopted neighbourhood character guidelines and to ensure that development respects the existing or preferred neighbourhood character.
- 21 The scheme provides limited guidance as to the height, scale and massing of development within the HDA's. The relevant policy directions include:
  - Buildings are limited to 10.5 metres height (unless the land slopes).
  - A development should provide a diversity of dwellings.
  - Development should implement neighbourhood character policy and respect the neighbourhood character.
  - The density, massing and scale of development is likely to vary in different housing diversity areas.
- 22 Clause 22.07 also guides development in a HDA. It encourages the density, massing and scale of a development to be appropriate to its location, responding to existing development on adjoining sites.
- 23 Clause 22.07 also encourages development to transition from the core of the centre to the edge of the HDA. The clause includes a strategy that development should have a lesser density and scale as the distance from the core of the centre increases. Furthermore, it should not dominate the streetscape.
- 24 Clause 22.07 does not specify a neighbourhood character for the HDAs in general or for particular HDAs, unlike clause 22.08 that includes a description of the character of each of the sixteen neighbourhoods that comprise the areas nominated for minimal change.

#### What guidance has been provided by the Tribunal in the HDA's?

- 25 The Tribunal has, over recent years, considered many developments in the HDA's. Many decisions were provided to me through this hearing that helpfully set out some consistent key findings that are relevant to this review<sup>2</sup>. These include:
  - Housing diversity areas are part of Council's targeted approach to meeting its housing diversity objectives. Housing diversity areas need to serve their

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<sup>2</sup> *A to Z Investment Group Pty Ltd v Glen Eira CC* [2016] VCAT 1934, *Buildstruct Group Pty Ltd v Glen Eira CC* [2016] VCAT 970, *PPBS Architects v Glen Eira CC* [2012] VCAT 763, *Mimosa Road Carnegie Pty Ltd v Glen Eira CC* [2016] VCAT 1664, *The Town Hall Consulting Group Pty Ltd v Glen Eira CC* [2016] VCAT 1800, *Stellar Construction v Glen Eira CC* [2015] VCAT 826, *A to Z Investment Group v Glen Eira CC* [2016] VCAT 1934, *BKMA Development v Glen Eira CC* [2016] VCAT 433, *Stellar Elite v Glen Eira CC* [2015] VCAT 1762, *The Town Hall Consulting Group Pty Ltd v Glen Eira CC* [2015] VCAT 1972, *RWBL v Glen Eira CC* [2016] VCAT 113

purpose of accommodating change, so that 78 percent of the municipality can experience only minimal change.

- Housing diversity areas are in the middle of the hierarchy of the preferred locations for change in Glen Eira, between the substantial change areas and the minimal change areas in the Neighbourhood Residential Zone.
- The housing diversity areas designated in the scheme have been selected by the Council because they meet the criteria of being well serviced locations with the capacity to accommodate additional dwellings, hence new development should be expected within these areas. The extent of change in these areas can be expected to be significant, and more than is occurring in the NRZ.
- The mostly single storey suburban character should not be expected to be retained or replicated, therefore limited weight is to be given to preserving the existing character.
- The scheme encourages the housing diversity areas to be developed more intensively than areas in the NRZ, hence their emerging built form can be expected to be taller and more intensive than seen in NRZ areas.
- A range of dwelling types can be accommodated in the housing diversity areas, including apartment buildings.
- Apartment buildings are an acceptable form of housing in housing diversity areas, but apartment buildings have to be well designed in terms of responding to their context and providing a high level of amenity to neighbours and future residents

26 With regard to the policies in clause 22.07 that encourage a transition in density and scale between the commercial core and a boundary with the NRZ, the Tribunal has found:

- The height limit in the GRZ1 of 10.5 metres or three storeys is itself a transition between the taller heights that are generally allowed within the commercial areas and the two storey height limit that is applicable in the Neighbourhood Residential Zone.
- The schedule to the zone does not vary the standard of clause 55 to require transition in height, built form or intensity. Schedule 2 to the GRZ that is applied at the interface of the GRZ and the NRZ only varies the setback to the rear boundary and does not reduce the allowable height in the NRZ.
- Hence the need for transition within the housing diversity area is limited.
- Proximity to a minimal change area (NRZ) does not diminish the strong policy support for more dwellings in the housing diversity areas. A street can provide an effective transition between three storey built form in the GRZ and two storey built form in the NRZ on the other side of the street.



- A transition in scale and density should be applied contextually, and there may be areas within some of the housing diversity areas where a development should be more tempered than is allowable under the scheme.
  - The encouragement of transition in density comprises one policy statement amongst many and is to be balanced with the entirety of policies in the scheme including diversity of dwelling, amenity and character.
  - The generality of the policy that encourages transition makes it of limited value to decision makers when considering specific development proposals.
- 27 I consider that the Tribunal has generally found that a significant level of change should be expected throughout the HDAs. However, being within an HDA is not a blank cheque to maximise the development capacity of a site. A proposed development is expected to respond to its emerging context, comprise a high design quality and to provide acceptable amenity for its future residents and neighbours. I now apply these considerations to the development before me.

My assessment regarding response to policy and context

- 28 The starting point is to assess the features and context of the site<sup>3</sup>. I am satisfied that it is appropriate to redevelop the review site for multiple dwellings. The site is a generous size with a regular shape and dimensions. Its slope of approximately 1.5 metres from west to east is a site feature to which a design can readily respond. The existing dwellings have no heritage value. The site has two road frontages and access to the usual urban infrastructure services. A 1.83 metre wide easement abuts the southern boundary which is only a limited constraint. The existing vegetation has limited landscape and no heritage value.
- 29 The review site has only one feature that might constrain its redevelopment. A 14 metre tall Liquidamber tree is located in the rear yard of no.8 Bevis Street, approximately ten metres from the rear boundary. I agree with the respondents who say that it is prominent in the streetscape and in views from neighbouring properties. Its retention would significantly constrain the redevelopment of no.8 Bevis Street.
- 30 Two consultant arborist reports advise that while the tree has a moderate retention value, its structure is poor because it has a structural defect and it also has decay in its trunk. It has a limited life expectancy. Council's arborist agreed with this assessment and did not object to its removal. I cannot reasonably conclude that the Liquidamber should be retained.
- 31 I am also satisfied that the site is well located to services. It is within 350 metres walking distance to a wide array of shops and services along Centre Road. It is close to high quality schools, and there are multiple parks and other community facilities in the area. It is close to a regional health care centre and a major aquatic/fitness centre.
- 32 I accept the level of public transport service is less than is available near Bentleigh and other train stations. Whilst limited, it is available and it is

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<sup>3</sup> Clauses 15.01, 16.01, 21.04, 55.01