

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO.P182/2016  
PERMIT APPLICATION NO. D/461/2015

<b>APPLICANT</b>	Paragon Property Holdings Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Darebin City Council
<b>RESPONDENTS</b>	Maria Poletti, Lisa Mastroianni, Antonio and Teresa Mastroianni, Michael Calyvopoulos, Mustafa Kocak and Clare and David Barit
<b>SUBJECT LAND</b>	27 Murphy Street, Preston
<b>WHERE HELD</b>	55 King Street, Melbourne
<b>BEFORE</b>	H. McM. Wright QC, Senior Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	11 July 2016
<b>DATE OF ORDER</b>	19 July 2016
<b>CITATION</b>	Paragon Property Holdings Pty Ltd v Darebin CC [2016] VCAT 1209

**ORDERS**

- Pursuant to section 127 and clause 64 Schedule 1 *Victorian Civil and Administrative Tribunal Act* 1998 the permit application is amended by substituting for the permit application plans the following plans filed with Tribunal:
  - Prepared by: Beyond Design Group Pty Ltd
  - Drawing Nos. TP1-TP6 inclusive, Revision B dated 24 May 2016 and landscape plan prepared by John Patrick Landscape Architects Pty Ltd, Revision VCAT Issue dated 24 June 2016
- The application for review is disallowed.
- In Application for Permit No. D/461/2015 the decision of the Responsible Authority is affirmed and no permit is granted.

**H. McM. Wright QC**  
**Senior Member**

## APPEARANCES

For Applicant	<p>Mr Dom Scally, solicitor, Best Hooper Lawyers. Mr Scally called the following witnesses:</p> <ul style="list-style-type: none"><li>• Mr Damian Iles, town planner, of Hansen Partnership</li><li>• Mr Jason Walsh, traffic engineer, of Traffix Group</li><li>• Ms Leanne Dowey, landscape architect, of John Patrick Landscape Architects Pty Ltd</li></ul>
For Responsible Authority	Mr Robert Phillips, solicitor
For Respondents	Ms Lena Mastroianni, town planner, appeared for herself, her parents Antonio and Teresa Mastroianni, and Maria Poletti. Ms Fatima Conceicao, town planner, appeared for Michael Calyvopoulous. Ms Alif Kocak appeared for Mustafa Kocak. Ms Clare Barit appeared for herself and David Barit.

## INFORMATION

Description of Proposal	<p>The application before the Responsible Authority was for a permit to construct twelve dwellings on land at 27 Murphy Grove Preston.</p> <p>As the result of the substitution of amended plans, the number of dwellings for which permission is sought was reduced to ten.</p> <p>The dwellings are to be constructed in a townhouse style. They are proposed to be double storey, and four are in a reverse living configuration.</p> <p>Basement carparking will be provided for 12 vehicles. A dispensation is sought for the two visitor spaces required by the planning scheme.</p>
Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act 1987</i> (to review the refusal to grant a permit).
Zone and Overlays	The land is located in the General Residential Zone-Schedule 2. It is affected by Development Contributions Plan Overlay.

Permit Requirements	Permits are required under clause 32.08-4 to construct two or more dwellings on a lot, and under clause 52.06 to waive the visitor carparking requirements.
Relevant Scheme, policies and provisions	<p>State Planning Policy Framework Clauses 15.01, and 16.01</p> <p>Local Planning Policy Framework Clauses 21.01-1, 21.01-4, 21.03-1, 21.03-2, 21.03-4 and 22.02</p>
Land Description	<p>The subject land is located on the west side of Murphy Grove between Margaret Grove to the south and Josephine Grove to the north.</p> <p>It is rectangular in shape save for a 2.74 metre x 14.02 metre rectangular strip attached to the south-west side of the land.</p> <p>The main allotment has a frontage of 27.43 metres, a depth of 45.72 metres and an area of 1292.4 square metres.</p> <p>The site is currently occupied by a detached two storey dwelling with a brick extension to the rear. A crossover is located along the southern boundary to provide access to a garage, and there is a second crossover on the northern side of the land.</p>

## REASONS

### THE PROCEEDING

- 1 This is an application by Paragon Property Holdings Pty Ltd to review the decision of the Darebin City Council to refuse a permit to construct ten double storey dwellings with basement carparking on land at 27 Murphy Grove Preston.
- 2 The application is also opposed by a number of local residents who are Respondents to the proceeding.

### THE SUBJECT LAND AND ENVIRONS

- 3 The subject land is a large rectangular site having an area of 1292.4 sq.m. The site is presently occupied by a two storey Californian bungalow. There is a two storey brick extension to the rear.
- 4 The subject land forms part of an established residential neighbourhood characterised by single and double storied dwellings on allotments of between 600 and 700 sq.m. The presentation of the area is enhanced by grassed nature strips with mature paperbarks providing an attractive landscape setting. There is some medium density residential development in the area with a predominate density of three dwellings per allotment.
- 5 The land is reasonably served by public transport with the No. 86 tram route approximately 30 m. to the west and bus routes a similar distance to the south. It forms part of the residential hinterland. It is not particularly convenient to other services and facilities.

### PLANNING CONTROLS

- 6 The land is located in the General Residential Zone- Schedule 2. The schedule contains no variation to clause 55 of the planning scheme, which incorporates ResCode. It is also subject to a Development Plan Contribution Overlay which is not material to this case.

### PLANNING POLICY

- 7 Under the VPP planning regime, the exercise of discretion is to be guided by planning policy as set out or incorporated into the planning scheme. The relevant statements of policy in this case are as follows.
- 8 The objectives of the General Residential Zone include:
  - 9 *“(b) To encourage development that respects the neighbourhood character of the area.*
  - 10 *“(d) To provide a diversity of housing types and moderate housing growth in locations offering good access to services and transport.”*
- 11 The planning authority’s housing policy is set out in clause 21.03. The policy divides the residential part of the municipality into three housing

change areas: minimal change, incremental change, and substantial change. The subject land is located in an incremental change area.

12 Policy says of this area:

13 *“Incremental Housing Change*

14 *Residential and commercial areas that have the capacity to accommodated level of residential development over time. It is expected that the general character of Incremental Change Areas will evolve over time as new yet modest types of development are accommodated. Incremental Change Areas generally display one or more of the following characteristics:*

- *A diversity of housing stock, diversity of lot sizes and a more varied neighbourhood character. Typically areas include some medium density and small apartment development, but the predominant dwelling stock is single to double storey dwellings.*
- *Are located:*
  - *within an 800 metre walkable catchment of an activity centre*
  - *generally within an 800 metre walkable catchment of train, tram or SmartBus services.”*

15 The policy lays down the following strategy:

16 *“In Incremental Housing Change Areas, encourage housing development in diversity that is generally consistent with the character of the area and responsive to varying local conditions, allowing for moderate housing growth and diversification over time.”*

17 In relation to housing density policy states:

18 *“Support low scale medium housing development that respects existing neighbourhood character in Incremental Housing Change Areas, particularly areas that are in proximity to shops, facilities, services and transport.”*

## **ANALYSIS**

19 It is to be noted that there is frequent use of the words “modest” and “moderate” as a description of the type of change envisaged. The use of the word “incremental” by way of contrast with “minimal” and “substantial” underscores the theme of modest redevelopment.

20 It seems to the Tribunal that the redevelopment of a 700 sq.m. allotment for three dwellings, or even four with the application of imaginative architectural input, could legitimately be described as modest or moderate

redevelopment. To go beyond this stretches these words beyond breaking point. In fact, it is noted that what medium density development has occurred is generally three dwellings on a site of approximately 700 sq.m.

- 21 In short, the Tribunal considers that the redevelopment of a single detached house with ten dwellings is not modest, moderate or incremental within the meaning that the context gives to the word.

### **NEIGHBOURHOOD CHARACTER**

- 22 Viewed from another angle, that of neighbourhood character, the proposed development would introduce into the neighbourhood a build form that strikes a dissonant chord with the existing build form. This is particularly so given the present ambiance created by the street planting. The proposed development, although generally well designed, is not a development that respects existing neighbourhood character.

### **TRIBUNAL OBSERVATIONS**

- 23 Using recent multi-dwelling development in the area as a guide, and fitting in with the ordinary and natural meaning of the words used in the statements of policy, the Tribunal is of the opinion that with imaginative architectural input this site could accommodate seven or eight dwellings.
- 24 In terms of ResCode, the Tribunal is satisfied that apart from Standard B1 and B2 (Neighbourhood Character) the proposal is sufficiently compliant with clause 55. There is noncompliance with Standard B6 relating to the front setback, but this is not a major concern given that to the north the land adjoins the rear of the property which fronts on to Josephine Grove.
- 25 The Tribunal would also comment that it would be prepared to grant a dispensation from the visitor carparking requirements given that the kerb along the frontage can accommodate three parked cars. There is a conventional entitlement to use on street car spaces which abut the property in question.

### **CONCLUSION**

- 26 For these reasons the application for review will be disallowed and no permit will issue.

**H. McM. Wright QC**  
**Senior Member**