CHAPTER 6

‘Beauty is in the Eye of the Worshipper’
_The Preservation of the Visual Amenity of an Area and its Impact on the Right to Establish and Maintain Places of Worship_

6.1 Introduction

This chapter continues the analysis of the engagement of religious groups with the local councils in Australia in their applications to build, extend or renovate places of worship. In this chapter, the focus is on the other primary component of the concept of amenity in Australian local planning – that is, ‘visual amenity’ which is the feeling of pleasure or satisfaction that an area evokes as a result of factors including, for instance, the congruence of building designs, the evenness of the height and bulk of structures, the harmony of colours, and the general aesthetic character of an area.¹ As the case studies in this chapter illustrate, a proposed place of worship may be assessed by a local council as likely to damage or harm the ‘visual amenity’ of its surrounding area and therefore the application for its construction should be rejected.

This chapter is in three parts. First, it discusses the concept of ‘visual amenity’ and unmasks its highly subjective nature. The categorisation ascribed to a proposed structure as being ‘out of character’ with an area is carefully scrutinised. What does ‘character’ mean? Is the area whose visual amenity is to be preserved comprised of the street, block, neighbourhood or the entire suburb? Second, this chapter analyses nine case studies involving proposed places of worship where alleged ‘intrusions’ upon an area’s visual amenity played a pivotal part in planning decisions. It examines the decisions of local councils as regards these visual amenity issues and their conformity with the international standards on religious freedom, including the right to establish and maintain places of worship. In the process, this chapter unmasks the purported neutrality of the local planning system in Australia by demonstrating that the majority’s Anglo-Celtic culture is actually embedded in local planning regulations, thus rendering the system inherently discriminatory against non-Christian religions or beliefs in Australia. Finally, this chapter concludes that the right to establish and maintain places of worship is highly vulnerable to being infringed by a regulatory system which is geared towards the preservation of the visual

¹ David L. Smith, _Amenity and Urban Planning_ (Granada Publishing Limited, 1974), 11–29; See the discussion in Section 5.2 on the distinction between physical and visual amenities.
amenity of Australian localities – a planning concept which is laden with imprecision, arbitrariness and subjectivity.

6.2 ‘Visual Amenity’ and its Subjective Nature

Proposals to construct places of worship are sometimes rejected by local councils on the ground that they are likely to produce an adverse impact upon an area’s visual amenity. Expressed in various ways, such a ground has been cited by local councils to justify rejections of applications to build, extend or renovate places of worship. For example, proposed places of worship have been determined to be: ‘inappropriate having regard to the character of the area’; inconsistent with the ‘nature of the locality and the neighbourhood character’; has ‘an adverse impact on the rural character and appearance of the area’; ‘not in keeping with the predominantly residential area’; not ‘an acceptable response to the streetscape and neighbourhood context’; against ‘the neighbourhood character of the area’; has an adverse ‘impact on the visual outlook and character of the area’; inconsistent with the ‘residential character of the area’; or spoils the ‘agricultural nature of the valley’.

Such determinations of a negative impact upon an area’s visual amenity ultimately arise from an individual’s subjective feelings when his or her aesthetic sensibility is somehow offended by a structure, which he or she considers different, alien or even exotic, and is proposed to occupy physical space alongside structures that the individual regards as normal, pleasant or beautiful.

In Australian local planning practice, ‘visual amenity’ is typically defined as:

a measure of the visual quality of a site or area experienced by residents, workers or visitors. It is the collective impact of the visual components which make a site or an area pleasant to be in. [T]he term assumes a

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3 Ibid., [15].
5 Highfield Gospel Trust v Devonport City Council [2010] TASRMPAT 135 (6 July 2010) [7].
6 Wheeler v Kingston City Council (Correction) [2012] VCAT 1094 (24 August 2012) [46].
7 Blackburn Community Church v Whitehorse City Council [2004] VCAT 2623 (20 December 2004) [78].
8 City Gospel Trust v Nillumbik Shire Council [2010] VCAT 517 [12].