

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P90/2021
PERMIT APPLICATION NO. 488/2019/03P

APPLICANT	Architectual Home Design
RESPONSIBLE AUTHORITY	Nillumbik Shire Council
SUBJECT LAND	51-53 Beard Street ELTHAM Vic 3095
HEARING TYPE	Hearing
DATE OF HEARING	7 May 2021
DATE OF ORDER	13 July 2021
CITATION	Architectural Home Design v Nillumbik SC [2021] VCAT 748

ORDER

No permit granted

- 1 In application P90/2021 the decision of the responsible authority is affirmed.
- 2 In planning permit application 488/2019/03P no permit is granted.

Peter Gaschk
Member

APPEARANCES

For applicant	Mr Mathew Buckmaster, Director with Buckmaster Town Planning Pty Ltd
For responsible authority	Mr Esmond Angeles, Senior Statutory Planner



INFORMATION

Description of proposal	The development of two double storey dwellings in a side by side layout immediately south of the existing dwelling located at the corner of Beard Street and Park Road. The new dwellings will have direct frontage to Beard Street.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Nillumbik Shire Council (council)
Zone and overlays	General Residential Zone, Schedule 1 (GRZ1) Significant Landscape Overlay, Schedule 3 (SLO3)
Permit requirements	Clause 32.08-6: Construct two or more dwellings on a lot. Clause 42.03-2: Construct a building or construct or carry out works over 7.5m in height above the natural surface of the ground directly below it.
Relevant scheme policies and provisions	Clauses 13.02, 15.01-1S, 15.01-5S, 16.01-1S, 16.01-2S, 16.01-3S, 21.05-1, 22.01, 22.12, 32.08, 42.03, 65 and 72.01



Land description

The review site has a 41.6m wide frontage to Beard Street, a 70.0m frontage to Park Road, with a central splay of 4.9m to the corner. The site has a combined area of 2,719sqm, and represents one of the largest allotments in the immediate neighbourhood. The land is irregular in shape and located on the south west corner of Beard Street and Park Road.

The site contains a single storey weatherboard dwelling that fronts Beard Street. An existing concrete crossing from Beard Street provides access to the site. A 1.8m wide easement extends along the rear/western boundary of the site. The land falls from the rear boundary across the site towards Beard Street, with an approximate 7.0m contour change from the south east corner down to the north west corner of the site. The land effectively *sits above* the properties located directly opposite the review site in Beard Street. There are approximately 5 medium sized trees on site, including numerous lower formed shrubs and vegetation.

Opposite the site (Park Road) are two dwellings at 55 Beard Street and 65 Park Road. A dual occupancy development is located at 80 Park Road and 62A Beard Street, with a further dual occupancy development at 62 Beard Street. The site abuts a three dwelling development to the south at 49 Beard Street. This development has its driveway abutting the review site. The site abuts a dwelling at 70 Park Road to the rear/west. This single dwelling forms part of a battle-axe subdivision, with the dwelling at 70 Park Road located on the front portion of the site.

The area exhibits a variety of lot sizes and dwelling style and types. Predominately displaying a combination of single and some double storey, detached dwellings, with some modest medium density housing developments also evident.

The area has an established and mature vegetation character that includes various canopy trees and other indigenous vegetation. The area overall is undulating with many

dwellings set within sloping sites and established landscaped/native vegetation settings.

The subject site is located outside the walkable 400m catchment associated with the Eltham Town Centre. However, a public bus terminus is located approximately 157m to the south, with the Eltham Train Station a further 1.4km to the south west.

Tribunal inspection

Undertaken unaccompanied on 25 June 2021.

REASONS¹

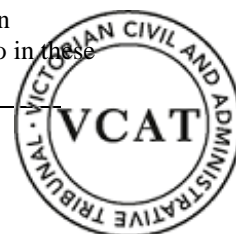
WHAT IS THIS PROCEEDING ABOUT?

- 1 This is a review application by Architectural Home Design (**the applicant**) under section 77 of the *Planning and Environment Act 1987*, against the Nillumbik Shire Council's (**council**) refusal to grant a permit (**Application No. 488/2019/03P**) for construction of two, double storey dwellings on a lot (**the proposal**) at 51-53 Beard Street, Eltham (**the review site**).
- 2 Council refused Application No. 488/2019/03P on the following grounds:
 1. The proposal is not responsive to the neighbourhood character objectives set out at Clauses 22.01 Medium Density Housing Policy, 22.12 Neighbourhood Character Policy and 55.01 (ResCode – Neighbourhood Character) of the Nillumbik Planning Scheme due to the dominate built form and insufficient landscaping opportunities.
 2. The proposal does not achieve the purpose of Clause 32.08 'General Residential Zone' as the proposal fails to respect the existing and preferred neighbourhood character of the area.
 3. The proposal does not achieve the purpose of Clause 42.03 'Significant Landscape Overlay' (Schedule 3) as the proposal fails to achieve the landscape character objectives to be achieved by virtue of its massing and scale, dominance of garaging and driveways, and limited opportunities for suitable landscaping.
 4. The proposal does not provide adequate opportunity for sufficient replacement planting to maintain and enhance the existing 'Bush Garden' character of the subject site and surrounding area, as required by Clause 22.12 – Neighbourhood Character Policy of the Nillumbik Planning Scheme.
 5. The proposal does not meet the objectives of Standards B1, B2, B5, B6, B7, B10, B13, B17, B18 and B31 of Clause 55.
 6. The piecemeal nature of development on this highly prominent and sensitive site does not represent orderly planning of the site and is an unacceptable planning outcome for the site and surrounding area.

The council submits the key concern with this development centres around the issues of preferred neighbourhood character and landscape setting.

- 3 The applicant disagrees with this assessment and submits the proposed development:

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.



- Is consistent with the established character of the area by providing an additional dwelling that follows the topography of the site and is well recessed from the boundaries.
- Provides landscaping within the site that includes the provision of new in canopy trees.
- Provides adequate vehicle access to the site and garages.
- Meets the standards and objectives of clause 55 of the Nillumbik Planning Scheme.

THE PROPOSAL

4 Features of the proposal from the council delegate report are:

- Development of two double storey dwellings in a side by side layout, immediately south of the existing single storey dwelling (this will be retained on the site).
- The rear of the existing and proposed dwellings that forms part of the review site will be fenced and remain vacant. This portion of the site is irregular in shape with an area approximately 1,315sqm.
- Dwelling 1 is two-storey. The ground level comprises a double garage, entry point, lounge area, kitchen, meals, and family room with amenities. Three bedrooms are located at first floor. Rear and side open space is provided at ground level of approximately 51.9sqm.
- Dwelling 2 is also double storey with similar layout to Dwelling 1. However, the first floor contains an additional retreat area with side and rear open space of approximately 99sqm.
- Each dwelling has a double car garage accessed from Beard Street by individual driveways. Dwelling 1 has a 6.4m garage wall on the southern boundary with an average height of 3.2m.
- The development has a site coverage of 20.1%, permeability of 73.9% and garden area of 73.9% (based on total site area). The building has a maximum height of 9.2m with an average cut and fill of approximately 600mm at various locations across the site.
- The development displays a contemporary design with proposed parapet forms at ground level, pitched roof form and first floor with large windows. Material include render, cladding and weatherboard with roof tiles.

WHAT ARE THE KEY ISSUES?

5 Having considered the submissions and supporting material, including photos, reports and plans submitted by the parties (including my site inspection and observations of the surrounding neighbourhood), I consider the key issues I need to determine are:

- Does the proposed development provide an appropriate neighbourhood character outcome?



- Does the development provide adequate landscaping, including the provision of canopy trees sought under SLO3?
- Does the proposal satisfy the objectives of Clause 55 and appropriately address amenity impacts?

6 I address each of these issues below in context of relevant Scheme provisions, including the written and verbal submissions from the parties.

7 I find the proposed development does not provide an acceptable neighbourhood character outcome on the review site as sought under the relevant zone and overlay provisions of the Scheme. I consider the design has failed to adequately address important local policy objectives at Clause 22.12 that seek:

- To ensure buildings do not dominate the streetscape.
- To ensure that car parking areas, garages and carports do not dominate sites when viewed from the street.
- To maintain and enhance the continuous flow of the garden settings and the openness of the front boundary treatment.

I find this is a determinative matter that requires an overall redesign of the proposed development on the review site.

8 It is significant in my findings that the proposed development seeks to retain the existing corner located dwelling on the site. In my view, retaining the existing dwelling as part of the design approach has hampered the location and setting of the new dwellings and missed an opportunity to create a more holistic and acceptable response to existing and preferred neighbourhood character and streetscape setting.

9 Additionally, the lack of master planning for the rear of the site has also created some design uncertainty. Particularly for longer term design layouts and amenity impacts that may arise from future development on the remainder of the site. In my view it is equally important and relevant to determine how this new development will respond to adjoining and surrounding properties, including achieving meaningful landscape setbacks and character settings, for any new dwellings proposed on the site.

DOES THE PROPOSED DEVELOPMENT PROVIDE AN APPROPRIATE NEIGHBOURHOOD CHARACTER OUTCOME?

10 Council considers the proposal does not achieve an appropriate or preferred neighbourhood character outcome. Particularly referring to council's local planning policy (Neighbourhood Character) at Clause 22.12. It also submits that landscape character objectives sought under SLO3 and reinforced by clause 55 objectives, adds support to its refusal on this ground. It submits:

The landscape character objectives to be achieved as required by Clause 42.03 'Significant Landscape Overlay' (Schedule 3) has not been met due to the proposed massing and scale, dominance of garaging and driveways, and limited opportunities for suitable landscaping.



- 11 The review site is located within the *Bush Garden Precinct* which is found under Clause 22.12. A key design outcome and objective under this policy seeks to ensure that new residential development is responsive to the preferred future character of the area. Additionally, that identified elements that contribute to that character, are retained, and enhanced.
- 12 The *Statement of Preferred Future Character* for Bush Garden Precincts, expresses these design outcomes in the following statements:
- Development is sited to minimise disruption to landform and vegetation. Buildings maintain the pattern of orientations and setbacks of adjoining properties and the streetscape. Some variation occurs where innovative higher density housing has and will develop in areas close to activity centres and transport routes. Driveways and car storage areas should occupy the minimum functional area.
- Residential development is set among predominantly indigenous trees, although there are some locations where native or exotic trees are present. Hillsides of residential development viewed from a distance appear to be lushly vegetated. There is little or no physical evidence of the boundary between private and public property at the front of the house, and no solid front fence. Solid side fences stop level with the front of the building.
- 13 The council also referred to the Bush Garden Precinct G1 Guidelines in support of its position. Highlighting new residential development should demonstrate:
- Buildings and other development that minimise the impact on the natural slope of the site by following the topography of the site.
 - Front and side setbacks that match the predominant setback and orientation to the street of nearby dwellings.
- 14 In addition, council says any design response for the review site should avoid:
- Insufficient side setbacks that inhibit appropriate landscaping.
 - Large areas of hard paving in the front yard; and
 - Garages or carports that visually dominate the site when viewed from the street.
- 15 The applicant submits it has addressed these design objectives in the following manner:
- The two new dwellings have been designed to follow the natural topography of the site. The ground floor of each of the dwellings is split level, with the rear section of the dwellings stepping down from the front section.
 - The proposed dwellings also follow the topography of the site with each providing a split level at the ground floor. Appropriate retaining walls and landscaping will also ensure that the site will not experience erosion.

- Earthy tones are proposed, although it is noted that the proposed driveway treatment (light grey concrete) could be enhanced using a coloured concrete with an exposed aggregate finish.
 - The visual presence of car parking (in the form of a double garage to each dwelling), has been integrated into the design of the dwellings and occupies the minimum area necessary to provide vehicle access.
- 16 The applicant also says its design response results in a significant improvement on existing development immediately adjoining the review site at 1/49 Beard Street. It notes this development includes substantial area in front of the existing dwelling set aside for car parking, with a long vehicular drive to access the dwelling to the rear. It also says its landscaping plan proposed for the site can provide new canopy trees on the review site to ensure the development will sit amongst vegetation when growth maturity is achieved.
- 17 I agree and accept there are some positive design outcomes associated with the proposed development. This includes the additional canopy trees, use of earthy design tones for the building facades and a split-level design that helps reduce the appearance of excessive height of the double storey form to the rear.
- 18 However, focusing on the design shortcomings of adjoining development at 49 Beard Street, fails to acknowledge the important weighting placed on ensuring new development achieves the preferred neighbourhood character and landscape outcomes sought for this precinct.
- 19 In this regard the following Design Objectives and Responses under Clause 22.12-3 are applicable to all neighbourhood character precincts and are particularly relevant here:
- To ensure buildings do not dominate the streetscape.
 - To ensure that car parking areas, garages and carports do not dominate sites when viewed from the street.
 - To maintain and enhance the continuous flow of the garden settings and the openness of the front boundary treatment.
- 20 I am particularly concerned with the scale, massing and built form length proposed to the street. Directly resulting from the use of a side by side design response chosen for the new dwellings. I do not consider this design response is appropriate here as it results in approximately 24.0m of unbroken built form across the entire width of the site. I acknowledge a 2.7m separation has been proposed between the existing dwelling and Dwelling 1. However, this does not enable a meaningful landscaped side setback between the two dwellings, as it will be separated by boundary fencing proposed along the common boundary between the existing and new dwelling. The new dwellings also do not have any side separation due to double car garages proposed on side boundaries, again losing any opportunity to create important side setbacks for landscaping to compliment the front landscaped area.
- 21 I accept the applicant's submission that the 9.0m setback to the front will provide an opportunity for some important canopy tree planting. However, this



does not negate the need for side setbacks that is sought for built form separation and further landscaping between the new dwellings. It is the combination of front and side setbacks that creates the strong built form rhythm and character that is preferred for this precinct.

- 22 I find the design approach for this site has not achieved a continuous flow of garden settings that needs to form a part of the new developments' presentation to the street. This unbroken building form at ground level, is further exacerbated visually by the location of the dwellings on the higher side of the street. Again, visual bulk and massing is further accentuated by a lack of clear upper level articulation of the double storey form proposed above each dwelling. I find these design outcomes are inconsistent with the character and built form outcomes expressed above in Clause 22.12.
- 23 During my inspection, I observed most dwellings (apart from the dwellings referred to by the applicant at 49 Beard Street) were generally set within and amongst substantial and mature landscape treatment. Most properties also displayed strong and regular, landscaped spacings between detached dwellings. I find this design outcome is integral to the existing and preferred character sought under Clause 22.12 for new development in the Bush Garden Precinct. Significantly, this landscaped outcome and setback combination is also reinforced through relevant design objectives expressed in SLO3 that I discuss below.
- 24 The extent of attached built form along the street frontage at ground level is also exacerbated by the angled street alignment and amount of hard stand driveway proposed in front of each dwelling. In my view, the size and location of the double garage forms to the street will be visually dominant. I accept the double storey form is proposed to be recessive to some degree over the garage forms. However, the recessive upper level proposed above the ground level garages, is then negated visually by the upper level bedrooms that are located toward the frontage.
- 25 I am also concerned with the narrow separation proposed at the upper levels between the new dwellings (a minimum of 2.0m). In my view, this is too narrow to create a clear sky view between the upper levels of the two dwellings, particularly when viewed obliquely along Beard Street and opposite the review site.
- 26 Council expressed concerns the design response did not satisfactorily address objectives under Clause 22.12 that *seek to ensure new buildings and works, including driveways fit within the landscape and topography of the land*. I accept submissions from the applicant that there has been some attempt to build the new development form into the site by using a split-level form to each dwelling. Nevertheless, I remain concerned the physical setting of this site, located on the high side of the street, does extenuate the visual impact of the side by side form of the proposed dwellings to the street. I do not consider the design response has gone far enough to address council's concerns on this matter.



- 27 The effectiveness of the 9.0m front setback to provide strong visual screening and filtering through landscaping of built form, is also reduced due to the angled alignment of the street and the higher positioning of the land to this side of Beard Street. I say this as the angled road alignment has resulted in two, angled crossovers that widen out towards the double car garages to each dwelling. They also adjoin the elevated porch structures required to address the slope of the site. I find the combination of this angled road alignment has increased the amount of hard stand to the frontage and reduced the opportunity to add important landscape screening and filtering of street views of the double car garages and double storey form.
- 28 Given my comments and concerns expressed above, I find the proposed design response falls short of the key design elements and preferred character outcomes expressed at Clause 22.12. As I have also noted below, these character outcomes are further reinforced through landscape design objectives found in the SLO3 and supported by objectives under Clause 55. I therefore find this is a determinative matter and requires a redesign of the proposal as submitted.

DOES THE DEVELOPMENT PROVIDE ADEQUATE LANDSCAPING, INCLUDING THE PROVISION OF CANOPY TREES SOUGHT UNDER SLO3?

- 29 Schedule 3 to the SLO provides the following *Statement of Nature and Key Elements of Landscape*:

The Shire of Nillumbik Neighbourhood Character Study identifies the importance of vegetation and the relationship between the buildings and the landscape to the character of an area. The areas covered by this overlay have a bush garden character that is dominated by mature native and indigenous trees and planted bush style gardens. Dwellings in these areas are set among the trees and are sited so as to minimise disruption to the landform and vegetation. Buildings maintain the patterns of orientations and setbacks of adjoining properties and the streetscape. There is usually little or no delineation of front property boundaries.

- 30 The Schedule includes reference to the following matters that are relevant to this matter:

- The visual dominance of vegetation including large native and indigenous trees and bush garden planting.
- The way in which the majority of development sits within the landscape with minimal excavation, and dwellings are partly obscured from view.
- The hillsides appear to be covered by trees even when developed with houses.
- Dwellings with colours that blend with the landscape.
- A general lack of front fencing.

- 31 The applicant submits the proposed development achieves these key landscape objectives under the SLO3. It says the design response has achieved an *acceptable* landscape outcome. The applicant notes the landscape plan that was

submitted to and assessed by Council, provides for six trees, including two within the front setback of the proposed dwellings.

- 32 I accept submissions from the applicant that the submitted landscape plan will provide for more landscaped treatment, including some canopy trees to the front, as part of the development response. This is a positive part of the design as it will enable additional canopy tree planting that is sought through local policy and the SLO3. Noting I have expressed concerns around excessive hardstand areas that result from the angled driveways proposed to each dwelling. I also note a front fence is not proposed. This will assist in providing a more open aspect to the streetscape.
- 33 However, I support council's concerns there are shortcomings in the landscape opportunities created by the proposed design response to the side and rear of the site. The rear courtyards for each dwelling are relatively narrow (4.0m building setbacks respectively). In addition, each of these areas include large outdoor alfresco areas that are raised above ground level. I do not consider this design approach enables sufficient width to accommodate the level of vegetation envisaged by the SLO3. Dwelling 1 has side boundary setbacks of 1.2m that serve as pedestrian pathways and offers no opportunities for meaningful planting. This issue is repeated within the southern setback of Dwelling 2.
- 34 I find this design outcome is not conducive to the *bush garden character dominated by mature native and indigenous trees and planted bush style gardens* expressed in Schedule 3 to the SLO.
- 35 During the hearing the applicant suggested the rear landscape treatment could be increased by realigning the rear boundary, thereby providing an increased open space area for each dwelling that could be landscaped. I accept this would improve the landscaped setting for the use of future occupants. However, as I indicated at the hearing, I remain concerned that there has been a lack of longer term thinking to how this proposed development will interface with future development on the remainder of the vacant land. This includes how future development would interface with existing development located along the south, east and western boundaries of the review site.
- 36 I indicated a master plan for this area would have been a useful addition here to appropriately address this matter. The applicant indicated that discussions had been held around this matter, but no master planning resulted. I think this is a missed opportunity for a significant parcel of land in this location of the neighbourhood. Irrespective, I find the rear interface open space area proposed to each of the new dwellings is insufficient in width and area to provide for meaningful landscape treatment that is sought under SLO3.

DOES THE PROPOSAL SATISFY THE OBJECTIVES OF CLAUSE 55 AND APPROPRIATELY ADDRESS AMENITY IMPACTS?

- 37 Council's ground of refusal listed Clause 55 provisions that it says have not been satisfied by the proposed development. Given my determinative findings in respect to neighbourhood character and landscaping, I do not intend to provide a



detailed analysis and assessment of Clause 55 provisions that relate to these matters. In any event, many of these concerns will be addressed through redesign that may arise from this decision.

- 38 I accept the review site is quite some distance from the Eltham Town Centre. However, I do not consider this is a fatal flaw that suggests the site is not suitable for some level of medium density development. The review site is serviced by public bus services nearby for any future occupants coming into the area. This is a positive element. In my view, this provides support for the proposition that some form of residential redevelopment can take place on the review site. However, as I have discussed above, this redevelopment must consider the neighbourhood character and landscape objectives.
- 39 I am satisfied the overall height presentation (9.2m), being in double storey form, is an appropriate design response in this location (see Clause 55.03-2). However, I will qualify this support, noting my comments that the design response has not provided sufficient attention to clear sky separation and articulation at upper levels. This lack of separation has resulted in what I consider to be a bulky appearance at upper level. Nevertheless, this does not correlate to the proposed height of the double storey form which I find is satisfactory.
- 40 I also note council is generally satisfied the proposed development addresses Standards B17 (side and rear setbacks) and B18 (walls on boundaries). I agree the failings in the design response around these standards relates to shortcomings in responses to neighbourhood character and landscaping opportunities to sides and rear.
- 41 The slope and presentation of the site to the street is also relevant in these matters and requires further consideration in any subsequent redesign of the submitted proposal. As does a broader site analysis that in my view, needs to provide further consideration how future redevelopment to the rear of the site, could adversely impact the amenity and setting of adjoining properties to the south, east and west.

CONCLUSION

- 42 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

Peter Gaschk
Member

