

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P961/2021  
PERMIT APPLICATION NO. 816/2020/03P

### CATCHWORDS

Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.

<b>APPLICANT</b>	Andrew Ramage
<b>RESPONSIBLE AUTHORITY</b>	Nillumbik Shire Council
<b>RESPONDENT</b>	Darren Brown and Lisa Brown
<b>SUBJECT LAND</b>	8 Inglis Street DIAMOND CREEK VIC 3089
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	1 February 2022
<b>DATE OF ORDER</b>	23 March 2022
<b>CITATION</b>	Ramage v Nillumbik SC [2022] VCAT 31

### ORDER

- 1 Pursuant to section 60 of the *Victorian Civil and Administrative Tribunal Act 1998*, the following person is joined as a party to the proceeding:  
Ms Jessica Higgins
- 2 In application P961/2021 the decision of the responsible authority is affirmed.
- 3 In planning permit application 816/2020/03P no permit is granted.

Laurie Hewet  
**Senior Member**



## APPEARANCES

For applicant	Mr A Atkins, town planner
For responsible authority	Ms L Zhao, town planner
For respondent	Mr D Brown and Ms J Higgins appeared on their own behalf.



## INFORMATION

Description of proposal	The construction of six dwellings. One of the dwellings has a height of two storeys and the balance of the dwellings are three storeys in height. The dwellings provide two bedroom accommodation in a 'reverse living' arrangement.
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 Planning Scheme
Zone and overlays	Clause 37.08: Activity Centre Zone (ACZ2). Clause 42.03: Significant Landscape Overlay (SLO6) Clause 45.09: Parking Overlay (PO2)
Permit requirements	Clause 37.08-5: A permit is required to construct a building or construct or carry out works.  Clause 42.03-2 and Clause 3.0 of Schedule 6: a permit is required to construct a building or carry out works within five (5) metres from the base of any substantial tree.  Clause 42.03-2 and Clause 3.0 of Schedule 6: a permit is required to remove, destroy or lop any vegetation.



## Land description

The subject site is located on the eastern side of Inglis Street opposite Diamond Creek Primary School. It is a regular configured lot with a frontage dimension of 19.5m, and depth of 40.23m and an area of 790 m<sup>2</sup>. The site is currently vacant,

The site is part of an established area of Diamond Creek, and forms part of the Diamond Creek Activity Centre.

The site sits behind a strip of commercial buildings that front Chute Street. A ROW runs off Inglis Street over a distance of about 20m along the site's southern boundary.

Abutting the site to the north is a dual occupancy development, consisting of two single storey dwellings. Further to the north there are two dwellings on the eastern side of the street

Abutting the site to the east (rear) is a single storey dwelling which is located on an irregular shaped allotment. Further to the east is Nillumbik Park which comprises active open space (sporting oval) surrounded by vegetated parkland

Inglis Street is fully constructed between Chute Street and the southern boundary of the subject site. Beyond that point the road is formed but not constructed.

## Tribunal inspection

I inspected the site and the surrounding area after the hearing.



## REASONS<sup>1</sup>

### WHAT IS THIS CASE ABOUT?

1 This is an application to review the decision of the Responsible Authority to refuse permission for the construction of six dwellings at 8 Inglis Street, Diamond Creek. The Responsible Authority issued a Notice of Refusal to Grant a Permit for the following reasons:

1. The proposed development is contrary to the requirements of the Activity Centre Zone (Schedule 2), and the Significant Landscape Overlay (Schedule 6), of the Nillumbik Planning Scheme with regard to:
  - a) The height, scale and continuous built form of the proposal;
  - b) The strong verticality of the built form;
  - c) The excessive use of cantilevered forms;
  - d) The lack of landscaping opportunities provided on the site, in particular to respective front (north west), side (north east) and rear (south east) boundaries in that the design offers insufficient space for landscaping, including canopy trees;
  - e) The poor quality of the design;
  - f) The proposal causes significant impact on adjacent trees and is contrary to the landscape character objectives and decision guidelines.
2. The proposed development is contrary to the requirements of Clause 55 (ResCode) of the Nillumbik Planning Scheme as:
  - a) The proposal fails to comply with Clause 55.01-2 – Design Response as the proposal does not respond to the opportunities of the site presented by the right of way to the south west.
  - b) The proposal fails to comply with Clause 55.02-1 - Standard B1 as the proposed development fails to respect the existing neighbourhood character or contribute to the preferred neighbourhood character;
  - c) The proposal fails to comply with Clause 55.03-8 – Standard B13 as the proposed level of landscaping provided is not in keeping with the landscape character of the surrounding neighbourhood.
  - d) The proposal fails to comply with Clause 55.02-5 – Standard B5, Clause 55.03-7 – Standard B12, and Clause 55.05-2 – Standard B26 as the dwellings are poorly

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<sup>1</sup> The submissions 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.



integrated with the street, dwelling entrances offer a poor sense of address due to the narrow access along the south west boundary, and poor surveillance due to the narrow entry points, screened ground floor windows and limited downward views of upper floor windows.

- e) The proposal fails to comply with Clause 55.04-1 – Standard B17 as the Side and Rear Setbacks impact detrimentally upon the character of the area
  - f) The proposal fails to comply with Clause 55.04-6 – Standard B22 as the proposal offers overlooks adjacent secluded private open space.
  - g) The proposal fails to comply with Clause 55.06-1 – Standard B31 as the design detail is contrary to the character outcomes of the Activity Centre Zone.
3. A compromised level of internal amenity is provided for future occupants due to the enclosure of, and reliance on high screening to the main living area balconies of dwellings 5 to 6, and the general reliance on screening to windows.
  4. The proposal represents an over-development of the site.
- 2 There are objectors to the application who broadly support the Council’s grounds of refusal.
  - 3 The applicant submits that the proposal to provide medium density housing on this site is encouraged by planning policy. It is further submitted that the design of the proposal responds well to the development guidelines applicable in the Activity Centre Zone.
  - 4 Having considered the submissions and having inspected the site and the neighbourhood I have concluded that the design of the proposal does not achieve an acceptable response to the character of the area or to the policies and planning scheme provisions that inform the future development of this locality.
  - 5 My reasons for affirming the Council’s decision are set out below.

## **BASIS OF DECISION**

- 6 The review site is located in an Activity Centre Zone. The relevant purpose of the zone is, in addition to implementing Planning Policy:

To encourage a mixture of uses and the intensive development of the activity centre:

- As a focus for business, shopping, working, housing, leisure, transport and community facilities.
- To support sustainable urban outcomes that maximise the use of infrastructure and public transport.

To deliver a diversity of housing at higher densities to make optimum use of the facilities and services.



To create through good urban design an attractive, pleasant, walkable, safe and stimulating environment.

To facilitate use and development of land in accordance with the Development Framework for the activity centre.

- 7 Schedule 2 to the Zone contains the Framework Plan for the Diamond Creek Activity Centre. The Schedule provides more specific guidance about land use and development outcomes for this Activity Centre including built form objectives that relevantly include the following:
- To retain the semi-rural township character of Diamond Creek by clustering new development and activity in existing key locations that remain visually segregated by open spaces and vegetation.
  - To develop a local Diamond Creek architectural style that complements and reflects its natural landscape setting and ensure new or redeveloped buildings are of high architectural quality appropriate to the character of the centre.
  - To design new buildings with well articulated facades, roof forms, fenestration, parapet treatments and other detail and materials to provide interest at street level and reinforce the human scale of shopping areas.
  - To guide development to meet the township's character with low scale buildings, roof styles that are respectful to existing buildings, materials that complement the setting and a treed landscape of predominantly local indigenous trees.
  - To increase surveillance and activity in the main retail and mixed use areas with more consistent street setbacks and active retail or business frontages.
  - To ensure that development sites with front, side or rear setbacks are extensively landscaped with indigenous vegetation.
  - To reduce the visual dominance of car parking and ensure the design of parking and access areas is safe, practical and attractive.
- 8 The review site is in Precinct 1 under the Framework Plan which contains objectives to enhance the historic role and character of Chute Street as the earliest part of the town centre. Low scale buildings that help define the street space and allows views to surrounding tree canopy is encouraged. In Precinct 1D a mandatory maximum height of 3 storeys (10.5m) and preferred minimum setbacks of 5.5m (front) and a third storey setback of 3m from the first floor frontage are specified.
- 9 Higher density development in and around the Chute Street node is encouraged.

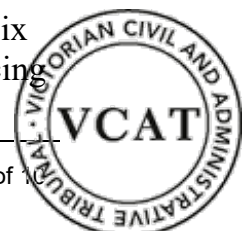


- 10 The site is also affected by SLO6. The combination of the *Statement of nature and key elements of landscape* and the *Landscape Character objectives to be achieved* encourage buildings to be site and designed to integrate with the landscape settings and ensure development is sensitive to the natural characteristics of the land. The distinct rural township image is also referenced.
- 11 There is no dispute between the parties that the development of the review site for medium density housing is consistent with policy and the zoning of the land.
- 12 I agree with the parties in that respect. The site is very well located in strategic terms being proximate to a range of services and facilities. The Activity Centre zoning of the land reinforces the site's suitability for medium density housing.
- 13 The applicant submits that the proposal's design also accords with the precinct 1 guidelines with respect to building height and setbacks and consequently the proposal can be regarded as being a low scale development in accordance with the objectives for the activity centre.
- 14 The applicant also submits that the proposal demonstrates substantial compliance with the objectives and standards of Clause 55 and does not contribute to unacceptable off-site amenity impacts in the form of overlooking, overshadowing and loss of daylight.
- 15 With respect to the proposal's response to neighbourhood character, the applicant points out that the review sits at the rear of commercial buildings, opposite a school. Consequently, it is submitted that the neighbourhood lacks any definable character that the proposal should respond to. The proposal's articulation and architectural treatment, combined with the proposed landscaping, represents an acceptable neighbourhood character response.
- 16 I acknowledge the proposal can demonstrate compliance with the quantifiable requirements of the planning scheme. I also acknowledge that this part of the activity centre has a very mixed character with a 'back of house' element deriving from the rear of the commercial buildings facing Chute Street to the south of the review site.
- 17 The review site however sits at the interface between the rear of the commercial buildings and the more residential character to the north on the eastern side of Inglis Street.
- 18 The planning scheme provides some useful guidance about the form of development encouraged in this locality. Those provisions included in the zone and accompanying schedule emphasise the importance of developments being site responsive in their designs. Developments are encouraged to complement and contribute to the treed landscape of the township's character





- 19 I am not persuaded that the proposal's design responds in an acceptable manner to those provisions.
- 20 My concerns about the proposal are summarised below:
- The proposal is a single, unbroken building presenting a sheer, two storey side elevation to the street with the side elevation of the three storey form clearly visible albeit setback from the front dwelling. The front entrance to dwelling 1 shown in the side elevation does not successfully offset the visual impact of the proposal's streetscape presentation.
  - While there is proposed a mix of materials that differentiate the upper levels from the ground floor, this does not successfully mediate the sheer two storey west elevation.
  - The visual impact of the unbroken continuous three storey built form as the building extends down the length of the block and presents to the neighbouring dwellings to the north, is not successfully articulated or mediated by the use of different materials. In addition, the visual impact of that continuous built form is barely softened by the minimal landscaping opportunity along the review site's northern boundary.
  - The visual bulk associated with the continuity of built form is exacerbated by the cantilevered balconies extending over the driveway.
  - The long, straight, unbroken driveway extending down the length of the northern boundary introduces a large area of hard paving. The minimal landscaping along the northern boundary and in the 'pods' on the south side of the driveway are not sufficient to break down the impact of the hard paving.
  - Apart from the front setback, there is limited opportunity within the proposal for the provision of effective landscaping that responds to the encouragement for developments to contribute to the desired landscape settings for the locality.
- 21 In broad terms therefore, the planning scheme encourages developments that adopt a landscaping theme in their design response which is lacking in this proposal. In this proposal landscaping is an element in the design that is secondary to the extensive, largely unarticulated built form. This is an outcome that does not respond well to the policy settings for this locality,
- 22 I have reached this conclusion notwithstanding the Activity Centre zoning of the land, and the encouragement for increased residential densities. Those outcomes do not justify a development that has been designed without due regard to the landscape and character policies that also apply.
- 23 Finally, it is appropriate that I comment on an aspect of the proposal's internal amenity I consider unacceptable. At the ground floor there are six habitable rooms (1 x bedroom and 5 x 'sitting rooms') that are south facing



with one window to an external wall facing a narrow pedestrian path. The window is screened to a height 1700mm, ensuring these rooms have limited daylight access and poor outlook opportunities.

### **CONCLUSION**

- 24 It follows from the above reasons that it is my conclusion that the decision of the responsible authority should be affirmed and no permit issued

Laurie Hewet  
**Senior Member**

