

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P754/2015
PERMIT APPLICATION NO.WH/2014/851

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987*. Whitehorse Planning Scheme. Neighbourhood Residential Zone
Schedule 7. Eight dwellings in a three storey building. Policy support. Neighbourhood character.

APPLICANT	Dev Raj of Premier Projects Pty Ltd
RESPONSIBLE AUTHORITY	Whitehorse City Council
REFERRAL AUTHORITY	VicRoads
RESPONDENTS	Paul and Kathryn Harman, Shandelle Goldsmith, Blackburn Village Residents Group Inc.
SUBJECT LAND	208 Canterbury Road, Blackburn South
WHERE HELD	Melbourne
BEFORE	Cindy Wilson, Member
HEARING TYPE	Hearing
DATE OF HEARING	30 September 2015
DATE OF ORDER	5 November 2015
CITATION	

ORDER

- 1 The decision of the Responsible Authority is affirmed.
- 2 In permit application WH/2014/851, no permit is granted.

Cindy Wilson
Member

APPEARANCES

For Applicant	Mr Tim Radisich, town planner of Associated Town Planning Consultants
For Responsible Authority	Ms Irene Plakidis, town planner of SongBowden Planning Pty Ltd
For VicRoads	No appearance
For Paul & Kathryn Harman and Shandelle Goldsmith	Mr William Bromley, town planner of Bowden Planning
For Blackburn Village Residents Group Inc.	No appearance. A written submission was emailed to the Tribunal and parties prior to the hearing.

INFORMATION

Description of Proposal	Construction of a three storey building containing eight dwellings in two levels over a semi-basement car park.
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	Neighbourhood Residential Zone, Schedule 7 No Overlays
Permit Requirements	Clause 32.09-5 – A permit is required to construct two or more dwellings on a lot.
Relevant Scheme, policies and provisions	Clauses 9, 10, 11, 15, 16, 18, 21, 22.03 and 22.04 of the State and Local Planning Policy Framework. Clauses 32.09, 52.06, 52.29, 55 and 65.
Land Description	The review site is located on the south side of Canterbury Road, Blackburn South approximately 46 metres east of the Blackburn Road intersection. The land is rectangular with a frontage of 15.24 metres and a site area of 783 square metres. A single storey dwelling currently exists on the land. The land slopes from the south east corner down to the north west corner falling some 1.6 metres and canopy tree is located adjacent to the street frontage. To the immediate west and east are medical centres contained in single storey buildings with car parking located in the front setbacks. To the south are detached

dwellings facing Lavelle Street. Canterbury Road adjacent to the site contains six traffic lanes divided by a median strip containing well established trees. On the opposite side of Canterbury Road is residential development including single houses, medium density development and an aged care facility. The Forest Hill Chase activity centre is some 500 metres to the east and bus routes traverse Canterbury and Blackburn Roads.

Tribunal Inspection

An inspection of the site and surrounds, including a view from 1 and 3 Lavelle Street, was undertaken on 26 September 2015.

REASONS¹

- 1 Whitehorse City Council has refused an application to construct a three storey building containing eight dwellings at 208 Canterbury Road, Blackburn South. The applicant seeks a review of that decision.
- 2 Council submits that the proposal is inconsistent with neighbourhood character due to inadequate areas for tree planting and inappropriate built form and fails to provide adequately for internal amenity in terms of safety, dwelling entry and private open space.
- 3 Respondent objectors² support Council's position and submit the proposal is an inappropriate response to the existing and emerging neighbourhood character, incorporates excessive site cover and will result in unreasonable visual bulk.
- 4 VicRoads raised no objection to the proposal subject to inclusion of permit conditions addressing the provision of vehicle access to Canterbury Road.
- 5 The applicant refutes the grounds raised by other parties and submits the site context justifies the built form proposed, the design achieves a high degree of compliance with the Planning Scheme and will not result in any significant amenity impacts on neighbouring properties.
- 6 Having considered the proposal, the applicable provisions of the Planning Scheme and the submissions and having inspected the site and surrounds, I have decided that no permit should issue. The key questions I have addressed in reaching that decision are:
 - Does planning policy support the proposal?
 - Is the proposal an acceptable response to neighbourhood character?
 - Will the proposal unreasonably impact the amenity of adjoining dwellings?
 - Is the internal amenity provided acceptable?
- 7 Before addressing these questions I describe the physical and planning context.

PHYSICAL CONTEXT

- 8 The site is located in what could be described as a cluster of medical centres. To the immediate east is a medical centre with car parking in the front setback. Adjoining that site to the east is a dwelling

¹ I have considered the submissions of the parties that appeared, all the exhibits tendered by the parties, and all the statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons.

² Three statements of grounds were received by the Tribunal advising that they wished their Statement of Grounds to be considered but would not be attending the hearing. Pursuant to Clause 56(6) of Schedule 1 to the *Victorian Civil and Administrative Act 1999* they are not a party.

converted to medical centre use with car parking in the front and rear setback. To the immediate west there is a medical centre with car parking in the front setback and further west there is a radiology and pathology clinic on the corner of Blackburn Road. Diagonally to the southwest of the review site is another medical centre on a site that faces Blackburn Road.

- 9 Nearby is the Bellbird Hospital on the southwest corner of Canterbury and Blackburn Roads with an aged care facility on the north east corner of that intersection. Elsewhere along Canterbury Road in the vicinity of the site is a mix of single dwellings and medium density housing in garden settings with various extent of vegetation.
- 10 Adjoining the site to the rear is the secluded private open space of a double storey detached dwelling at 1 Lavelle Street. The rear yard of a dwelling at 3 Lavelle Street is to the southeast of the site.
- 11 Canterbury Road in this location contains six lanes of traffic divided by a median strip. The review site has limited visual connection with the residential development on the north side of Canterbury Road due to its width, treed verges, the median strip and traffic volumes.
- 12 Approximately 520 metres to the east is the Forest Hill Chase activity centre. A number of bus routes traverse Canterbury and Blackburn Roads.

PLANNING CONTEXT

- 13 The review site was zoned General Residential when the permit application was lodged with Council in August 2014. On 14 October 2014 Amendment C160 was gazetted which rezoned the land to a Neighbourhood Residential Zone Schedule 7 (NRZ7). There are a number of significant changes under the NRZ7 and if the permit application had been lodged after the rezoning the proposal would be prohibited by provisions that mandate no more than two houses per lot and a maximum height for a residential building of no more than 8 metres (or 9 metres on a sloping site).
- 14 Transitional provisions apply to permit applications that were lodged prior to the new zones being applied and these allow variation from the restriction on number of dwellings per lot and the building height. No party disputed that the transitional provisions apply to this application and there were submissions made on how they should be considered. I adopt the findings of the Tribunal in *360 New Street Brighton Pty Ltd v Bayside CC*³ in dealing with a permit application relying on the transitional provisions of the NRZ:

....We do not believe it to be contentious that:

³ [2014] VCAT 1322

- An application must respond to its physical and strategic contexts.
- The Zone purpose must be considered in assessing an application.
- Compared with the former Residential 1 Zone, the language of the purpose of the Neighbourhood Residential Zone with respect to neighbourhood character has raised the obligation to respond positively to, and implement, the preferred character.
- Different outcomes can be contemplated for proposals relying on the transitional provisions (because they are not bound by the mandatory limitations such as the number and height of dwellings) but the response to the preferred neighbourhood character is an important consideration in an assessment of the merits.

15 Key themes of State and local policy that are relevant to the application include the following:

- Opportunities for consolidation, redevelopment and intensification of existing urban areas are important to accommodate urban growth. In Whitehorse this includes an additional 12,997 dwellings to house the projected population growth in the City to 2036⁴.
- A diversity of housing is sought to meet the changing demand for housing⁵.
- Location of dwellings in accessible locations is desirable to contribute to the creation of a ‘20 minute neighbourhood’ where people can access a range of services by foot, public transport or bicycle contributing to affordability, sustainability, safety and health⁶.
- New housing development is to be well designed, respond to context and positively contribute to preferred neighbourhood character⁷.
- Development is to respond to landscape and the valued leafy character of the municipality, to minimise loss of vegetation and provide for gardens consistent with the preferred neighbourhood character⁸.

16 Local policy identifies areas of substantial, natural and limited growth and aligns these with neighbourhood character statements and zoning aiming to direct housing growth in a manner that balances future housing needs against neighbourhood character issues.

17 Under local policy the review site is within a limited change area⁹ where strategies include:

⁴ At Clauses 11.02-1 and 21.06-2

⁵ At Clauses 9, 11.04-2, 11.04-4, 16.01-4, 21.06-2 and 21.06-4

⁶ At Clauses 9, 11.04-2, 11.04-4, 15.02-1, 16.01-4, 18.01-2, 21.05-3, 21.06-2 and 21.06-3

⁷ At Clauses 15.01-2, 15.01-5, 21.06-6, 22.03 and 22.04.

⁸ At Clauses 15.01-1, 15.01-2, 15.01-5, 21.06 and 22.03.

⁹ Also referred to as a limited ‘growth’ area.

- Ensure residential development is of a scale, form and character that is consistent with the surrounding area, and will predominantly comprise:
 - Detached dwellings
 - Semi-detached dwellings
- Provide some diversity of dwelling sizes and tenures, including affordable housing, where feasible.
- Ensure the scale and appearance of new housing respects the appearance of surrounding development and the environmental, heritage and neighbourhood character values of the area.
- Encourage the retention of older dwellings in areas where these buildings dominate, and limit new development to two dwellings per lot.

18 Local policy applies the Preferred Character Statement of Bush Suburban 3 (BS3) to the review site where, as relevant:

The low scale, pitched roof dwellings will sit within established garden settings that contain substantial vegetation including native and exotic canopy trees. The dominance of remnant indigenous eucalypts is retained and enhanced. ...

New buildings will occasionally be built to one side boundary, however the rhythm of dwelling spacing appears regular from the street. In areas where timber predominates, new buildings utilise complementary materials. The impression of the streetscape will be of informality and openness due to a frequent lack of front fencing or low, unobtrusive fences, and the landscaped setting.

The landscape character of the area will be enhanced through the planting and growth of new vegetation, including large shrubs and tall canopy trees.

- 19 Guidelines that provide objectives, appropriate design responses and outcomes to avoid for various character elements in the BS3 are contained in a reference document¹⁰.
- 20 A policy relating to tree conservation is relevant and seeks to ensure new development minimises the loss of significant trees and promote the regeneration of tall trees through the provision of adequate landscaping areas in new development.
- 21 The purpose of the NRZ includes:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To recognise areas of predominantly single and double storey residential development.

¹⁰ Whitehorse Neighbourhood Character Study 2014.

To limit opportunities for increased residential development.
To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
To implement neighbourhood character policy and adopted neighbourhood character guidelines....

- 22 Schedule 7 to the NRZ contains no variations to the requirements of the zone or clauses 54 or 55.
- 23 Amendment C174 to the Whitehorse Planning Scheme proposes to include the land in a NRZ Schedule 3 referred to as Traditional Bush Suburban Areas. The proposed Schedule 3 specifies a minimum lot size for subdivision of 320 square metres and includes variations to Clause 54 and 55 standard relating to site cover, permeability, landscaping, side and rear setbacks, private open space and front fence height. This and other Schedules have been exhibited. Submissions on the Schedules were heard by a Residential Zones Standing Advisory Committee concluding on 2 April 2015. No report has yet been issued by that Committee. Given the status of this amendment and its unknown final form, I give it only limited weight. I note that some of the proposed provisions in NRZ3 are consistent with the BS3 guidelines that are referred to in the Planning Scheme and are therefore relevant to my decision.

DOES PLANNING POLICY SUPPORT THE PROPOSAL?

- 24 The applicant submits the locational characteristics of the review site that include proximity to an activity centre and public transport together with the absence of landscape or environmental constraints makes it highly suitable for increased density of housing. I agree with this submission and find that increased dwelling density is supported by the policies promoting urban consolidation and that the provision of apartment style dwellings in this location would contribute to the diversity of housing types as sought in local and State planning policy.
- 25 The applicant says that the review site and immediate surrounds should not be included under local policy in the limited change area and Bush Suburban character area. This is due to the particular characteristics of the site that include the surrounding non-residential uses, the location on a main road, proximity to an activity centre and public transport, the large site size, the limited vegetation cover, the absence of significant landscape, heritage or environmental constraints and the lack of overlay controls. The application of the NRZ, in the submission of the applicant, does not accord with Plan

Melbourne¹¹ that seeks such zone to apply to areas of recognised neighbourhood character, environmental or landscape significance.

- 26 The policy support for increased dwelling density and diversity is tempered by the inclusion of the review site in an area where local policy seeks only limited housing change. Areas within this category represent the lowest degree of change of intended residential growth in Whitehorse and objectives include ensuring new development protects and reinforces the preferred neighbourhood character. Whether or not the review site is correctly included in the NRZ or the limited change area and classified as a bush suburban precinct under local policy is not before me. I must apply the Planning Scheme as it exists and that includes clear direction to limit housing growth and implement the identified preferred neighbourhood character in this area.
- 27 In this strategic context I do not agree with the applicant that the urban consolidation policies of the Planning Scheme outweigh the policy settings regarding neighbourhood character. Instead I consider the proposal must achieve an acceptable response to neighbourhood character which includes both the existing context and the identified preferred character and such an approach is consistent with my findings on how the transitional provisions should be applied. I address the response to neighbourhood character next.

IS THE PROPOSAL AN ACCEPTABLE RESPONSE TO NEIGHBOURHOOD CHARACTER?

- 28 It is the applicant's submission that the proposal responds appropriately to the immediate neighbourhood that comprises single storey medical centres with large hard paved areas and minimal landscaping. The applicant submits that the following design features will ensure the development achieves respect for neighbourhood character:
- A generous front setback of 10.6 metres.
 - A rear setback of 4 metres (4.72 metres at upper level) that allows for landscaping adjacent to the rear boundary.
 - A height (a maximum of 9.2 metres to the ridge and wall heights of 7.5 to 8.2 metres) that will not be intrusive in a main road setting.
 - Use of pitched roofs and eaves.
 - Wide vehicle access that is consistent with the character of adjacent medical centres that are dominated by vehicle access and hard paving.

¹¹ Referred to at Clause 9 of the Scheme.

- Setbacks from side boundaries, including an increased inset centrally.
 - No front fencing
 - Opportunity for enhancement of landscape character.
- 29 Council submits that the proposal would result in a visually imposing and discordant building mass in the streetscape, the scale and breadth of the building would not sit comfortably with its single storey neighbours especially to the rear and there is inadequate space for landscaping with a continuous built form and inadequate side setbacks.
- 30 Respondent objectors support the Council submission and criticise the extent of hard paving in the front setback, inadequate articulation to side elevations and the elevated nature of the building design resulting in a dominant built form.
- 31 As referred to earlier the review site is within a limited growth area and included in a Bush Suburban 3 precinct where a preferred character is clearly enunciated. I accept that the review site with its main road and medical cluster context is not an obvious fit to the characteristics described in policy as applying to these areas. However the point of this policy is to direct housing growth in a manner that achieves an identified preferred character. In the context of this review site the policy may be considered aspirational rather than reinforcing existing character elements.
- 32 I find the proposal does not respond sufficiently to the neighbourhood character sought for this area. I say this for the following reasons.
- 33 The scale and mass of the proposal does not respect the appearance of surrounding development. Even though the adjoining sites to the east and west are occupied by medical centres, the buildings present with a low scale and recessive manner. The proposed development at a maximum height of 9.2 metres combined with a breadth of some 12 metres and a depth of over 36 metres will result in a built form that is incongruous in its context.
- 34 The design incorporates a semi-basement that elevates the building and results in lower level walls being unusually high. Towards the front of this building this results in side walls over 5 metres in height that are unrelieved by fenestration or other forms of articulation that will be intrusive in the context of surrounding low scale development. The opportunities along side setbacks for landscaping to soften this appearance are limited, especially to the east due to a pedestrian footpath providing access to the building entry. This outcome is not consistent with the low scale form within established gardens that is part of the preferred character for this precinct.

- 35 The site layout fails to respond acceptably to the landscape character sought for the bush suburban precinct. A relatively high site coverage (58.7% compared to the 40% sought in the precinct guidelines), a relatively low level of permeability (30.49% compared to the 40% sought for the precinct), limited side setbacks and a significant portion of the front setback set aside for access limits opportunities for strengthening the garden setting and the tree canopy of the neighbourhood as desired for the precinct.
- 36 The layout has not responded well to existing vegetation. The design results in the loss of an existing canopy tree located in the northeast corner of the site, adjacent to the frontage. This tree is identified as of high retention value with good health and fair structure in the arborist report accompanying the permit application. The arborist report also identified that the development has the potential to adversely impact six trees on the adjoining property to the east. These outcomes do not reflect an appropriate design response, especially in a precinct where the retention of established trees is a key part of preferred character.

WILL THE PROPOSAL UNREASONABLY IMPACT THE AMENITY OF ADJOINING DWELLINGS?

- 37 Respondent objectors criticised the extent to which the built form projects above the natural ground level and submitted that the proposal will present as an unreasonably dominant and visually bulky form when viewed from the private open spaces of the residential properties to the rear.
- 38 Although the building presents with a high ground level wall due to the elevated construction, I think the 4 metre setback at ground level, the articulation provided by the upper level recessed to 4.7 metres, the side setbacks of 3.1 metres and the opportunity for planting would avoid unreasonable visual bulk.

IS THE INTERNAL AMENITY PROVIDED ACCEPTABLE?

- 39 Council and respondents raised concerns about the proposal failing to meet Planning Scheme objectives relating to safety, dwelling entry and private open space.
- 40 The applicant submits that the front entry is well defined, easily identifiable and will be well lit in a manner that will ensure compliance with objectives relating to dwelling entry and safety. In the applicant's submission the entry could be accentuated by a pergola treatment. It is further submitted that the provision of a balcony with a minimum area of 8 square metres for each dwelling meets the standard relating to private open space.
- 41 I agree with the applicant that the balconies provided ranging in area from 8.7 square metres to 17.9 square metres and all accessible from

living rooms meet the standard set in the Planning Scheme, subject to a requirement to provide a minimum width of 1.6 metres.

- 42 It is unclear how the ground level open space to the side and rear of the building will be used. The balconies associated with the ground level dwellings are elevated above the ground level and no connection with the at-grade spaces is indicated. The applicant advised that the spaces would be common property and could be gravelled to side boundaries and planted to the rear boundary. Such a layout is a missed opportunity for landscaping to side boundaries and could result in internal overlooking issues since shared use of the setback areas to side boundaries would allow visibility to the lower level dwelling windows and balconies.
- 43 I share Council concern about the dwelling entry. It is located between dwellings 1 and 3 some 25 metres from the frontage, recessed behind dwelling 1 and flanked by a section of high wall containing no windows. This layout results in an entry that is obscured and isolated from the street, limits passive surveillance of the walkway and fails to provide a clear sense of address.

CONCLUSION

- 44 For the reasons explained above, the decision of Council is affirmed. No permit is to issue.

Cindy Wilson
Member