

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P877/2019
PERMIT APPLICATION NO. WH/2018/1396

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987*; Whitehorse Planning Scheme; Neighbourhood Residential Zone NRZ1; Significant Landscape Overlay SLO2; Five Dwellings; Bush Environment Area; Landscape Response; Built Form Intensity; Basement; Off-Site Amenity Impacts; Internal Amenity.

APPLICANT	Wenyu Feng
RESPONSIBLE AUTHORITY	Whitehorse City Council
REFERRAL AUTHORITY	VicRoads
RESPONDENTS	Jennifer Downes, Anthony Kjar, Alex & Margaret Shilton, Bert Alesich, Peter James Dickson, Diane Calwell, Dianne Tribe, Robyn Timmins, Blackburn & District Tree Preservation Society Inc., Blackburn Village Residents Group Inc. (BVRG), George Cox, Alison Kirk, Susan Easton-Bond, Phillip Millard, A A Warren, John & Maria Borland, Verona & Colin Gridley, E M D Inglis, Robyn Weir, Helen Taafe, Jonathan Hunter, D Parbery
SUBJECT LAND	124-126 Blackburn Road BLACKBURN VIC 3130
WHERE HELD	Melbourne
BEFORE	Margaret Baird, Senior Member
HEARING TYPE	Hearing
DATES OF HEARING	9, 10 and 11 October, 6 and 7 November 2019
DATE OF ORDER	22 November 2019
CITATION	Feng v Whitehorse CC [2019] VCAT 1799

ORDER

Amend permit application

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:



- Prepared by: Ewert Leaf.
- Drawing Nos.: TP-020.B, TP-022.C, TP-023.B, TP-024.B, TP-100.D, TP-101.D, TP-102.C, TP-150.D, TP-151.D, TP-400.C, TP-401.C, TP-402.B, TP-900.B, TP-901.B, TP-902.B, TP-903.B.
- All dated 11/9/2019.

Parties to the proceeding

- 2 As a consequence of Order No. 1, Robynne Lord ceases to be a party in the proceeding.

No permit granted

- 3 In application P877/2019, the decision of the responsible authority is affirmed.
- 4 In planning permit application WH/2018/1396, no permit is granted.

**Margaret Baird
Senior Member**

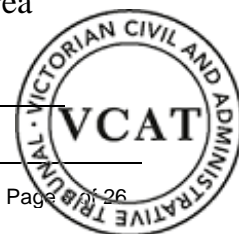
APPEARANCES

For Mr Wenyu Feng	Mr P Bisset, solicitor, Minter Ellison. He called expert evidence from: <ul style="list-style-type: none">• Mr T Vernon, landscape architect.• Mr M Bastone, town planner.• Mr D Burgess, arborist.
For Whitehorse City Council	Mr A McGuckian, Journeyman Planning. He called expert evidence from: <ul style="list-style-type: none">• Mr M Reynolds, arborist.
For Blackburn Village Residents Group Inc. [BVRG]	Mr M Taafe, President, Blackburn Village Residents Group Inc., and for Mrs H Taafe, Mr A Shilton, Ms D Tribe, Mr D Inglis, Mr P Dickson and Ms A Kirk. On Days 4 and 5, Mr Taafe also asked questions of expert witnesses on behalf of Mr Berry.
For Blackburn & District Tree Preservation Society Inc. [BDTPS]	Mr D Berry, President, Blackburn & District Tree Preservation Society Inc. (Days 1 and 2).
For Robyn Timmins	Ms R Timmins, and for Mr G Cox, A A Warren, Ms R Weir, Mr J Hunter, Mr B Alesich and Mr D Parbery.
For Jennifer Downes	Ms J Downes.
For Anthony Kjar	Mr A Kjar.
For Diane Calwell	Mrs D Calwell.
For Susan Easton-Bond	Mrs S Easton-Bond.
For John & Maria Borland	Mr J Borland.
For Verona and Colin Gridley	Mr C Gridley.

INFORMATION

Description of proposal	Multi-unit development comprising five townhouses and removal of some vegetation. The five dwellings share a common driveway and basement, where there are two car spaces per unit. Habitable floorspace is also within the basement, comprising cellars, stores/workshop and home theatres. Units 4 and 5 also have basement games rooms, retreats, bars, and (in Unit 4) a dining room. The dwellings are detached at ground level and first floor level. New landscaping is shown in a landscape plan.
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	Whitehorse Planning Scheme [scheme].
Zone and overlays	Neighbourhood Residential Zone Schedule 1 Bush Environment Areas [NRZ1]. Significant Landscape Overlay [SLO] Schedule 2 Blackburn Area 2 [SLO2]. Blackburn Road is a Road Zone Category 1 [RDZ1].
Permit requirements	Clause 32.09-6 to construct two or more dwellings on a lot. Clause 42.03-2 and clause 3.0 of SLO2 to construct a building and carry out works because not all of the specified requirements are met; to remove, destroy or lop a tree including to remove, destroy or lop a tree and to construct a building or construct or carry out works within four metres of a tree protected under the SLO; and to construct a front fence within four metres of a tree protected under the SLO. ¹ Clause 52.29 to alter access to a Road Zone Category 1.
Key scheme policies and provisions	Clauses 11, 12, 15, 16, 21, 22.03, 22.04, 32.09, 42.03, 52.06, 52.29, 55, 65 and 71.
Land description	The subject land is on the west side of Blackburn Road. It is 3,290m ² , contains a dwelling, and is well vegetated. The land abuts residential properties to its north, west and south.
Tribunal inspection	7 November 2019 (unaccompanied) comprising the subject land and properties at Nos. 14, 16 and 18 Eustace Street and Nos. 1, 1A, 3, 7, 8, 9, 11 and 13 Windermere Court. Wandinong Sanctuary and the wider SLO2 area were inspected on 10 November 2019.

¹ The applicant's submission, at paragraph 13, specifies these permissions.



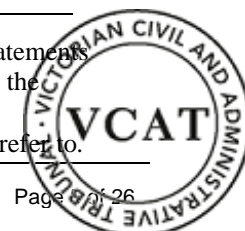
REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 Mr Wenyu Feng [**applicant**] applied to the Whitehorse City Council [**Council**] seeking a planning permit for five dwellings on the subject land. The proposal also involves tree removal, associated works and new plantings. The Council determined to refuse to grant a permit. Its decision is the subject of this review proceeding brought by the permit applicant.
- 2 The Council submits the proposal is an overly ambitious built form outcome on a site that requires a deliberate, considered and tempered response. The five substantial dwellings are out of keeping with the landscape character of the Bush Environment limited change area. Tree protection and tree planting are basic starting points, and the Council believes the large, significant trees on the land cannot successfully be retained. It argues the proposal is contrary to the landscape character objectives and decision guidelines in SLO2 and fails to achieve the preferred character that requires a more moderate, character-sensitive approach. Its grounds also raise issues in relation to off-site and internal amenity.
- 3 Respondents, and other persons who have filed statements of grounds, agree with the Council's position. They have additional concerns about the proposal's character and landscape response. They emphasise the importance of substantial tree canopy in the Bush Environment Area.
- 4 The applicant challenges all grounds and evidence presented by opposing parties. It relies on expert evidence in multiple disciplines in support of its application for review. It submits the proposal will appropriately sit within the land's surrounding context. The proposal is, the applicant contends, suitably designed for the Bush Environment Area. The proposal ensures a retention of valued trees and provides for a significant amount of new vegetation. The development will deliver a positive net result in terms of canopy planting and a density of development that is consistent with the surrounding neighbourhood and policy. The applicant submits the proposal responds appropriately to abuttals with private properties and will not result in unreasonable off-site amenity impacts.
- 5 I must decide whether to grant a permit and, if so, what conditions should apply to a permit. Will the permit application produce an acceptable outcome having regard to the relevant policies and provisions in the scheme? The key issues raised by parties in answering this question are:³
 - Does the proposal respond appropriately to SLO2?
 - Does the proposal respect neighbourhood character and contribute to the preferred character?

² The submissions and evidence of the parties, supporting exhibits given at the hearing, and statements of grounds filed have all been considered in determining this proceeding. In accordance with the Tribunal's practice, not all of this material will be cited or referred to in these reasons.

³ Many other issues are also addressed in statements of grounds and submissions which I also refer to.



- Would there be unacceptable off-site amenity impacts?
 - Do the dwellings achieve an acceptable level of internal amenity?
 - Are arrangements for parking and access acceptable?
- 6 Clause 71.02-3 requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 7 In setting out my findings, below, I do not recite all of the submissions and points made in evidence.

WHAT IS THE APPLICABLE PLANNING CONTEXT?

- 8 The subject land is in an established residential area and is identified for “limited change”. This designation is derived from the Council’s approach to managing housing and consolidation goals⁴ through its *Housing Strategy 2014* and *Neighbourhood Character Study 2014*. They identify neighbourhood character areas (Bush Environment, Bush Suburban and Garden Suburban) and areas appropriate for substantial, natural and limited change.
- 9 The subject land’s zoning, within NRZ1, and its inclusion in SLO2, seek to give effect to key policy directions that marry the nominated level of housing intensity and change with landscape character outcomes. The land is part of the larger Bush Environment Area. The zoning and SLO area are shown below.⁵



- 10 When read together, the application of NRZ1, SLO2 and policies for limited change areas emphasise the special characteristics of the location that are to be protected and reinforced with, *inter alia*, limited medium density development.⁶ Broadly, there are aims to ensure that new development minimises the loss of trees and vegetation, and to ensure that new development does not detract from the natural environment and ecological systems. Some dwelling diversity is to be provided while policy seeks to:

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.

⁴ Such as clauses 11.06-2, 15.01 and 21.06.

⁵ Extracts from the planning property report for the subject land.

⁶ Clause 21.06, specifically 21.06-3, and clause 22.03-2.

- 11 To give effect to these and related policies, the NRZ1 (The Bush Environment Areas) includes:
- A variation to Standard B13 (landscaping) that requires the provision of at least two canopy trees per dwelling that have the potential of reaching a minimum mature height of 12 metres. At least one of those trees should be in the secluded private open space of the dwelling, and the species of canopy trees should be native, preferably indigenous.
 - Other variations to Standards B8, B9, B17, B18, B28 and B32 of clause 55.⁷
 - Clause 7.0 decision guidelines that must also be considered.
- 12 Clause 55 standards should be met but there may be other acceptable ways to achieve the relevant objective. In such a case, the decision guidelines in clause 55 and NRZ1 must be considered when assessing if the outcome is acceptable. The numerical clause 55 standards are not to be applied as if they are mandatory or the only way to achieve an acceptable outcome.
- 13 Multiple clause 55 objectives require consideration of preferred character. The preferred character statement for Bush Environment Areas includes:⁸

The streetscapes will be dominated by vegetation with subservient buildings frequently hidden from view behind vegetation and tall trees. The buildings will nestle into the topography of the landscape and be surrounded by bush-like native and indigenous gardens, including large indigenous trees in the private and public domains.

Buildings and hard surfaces will occupy a very low proportion of the site. They will be sited to reflect the prevailing front, rear and side setbacks. The larger rear setbacks will accommodate substantial vegetation including large canopy trees. The bushy environs are complemented by street trees and a lack of front fencing.

This precinct is identified for the lowest scale of intended residential growth in Whitehorse (Limited Change area) and the preservation of its significant landscape character and environmental integrity is the highest priority.

[Emphasis added]

- 14 The preferred character is, through policy, to be achieved by applying the precinct guidelines from the *Neighbourhood Character Study 2014*. I have considered the character elements, objectives, design responses and “avoid” statements. Some of these are numerical considerations (such as site coverage, ground areas to accommodate substantial trees, and permeable surfaces) while others require a more subjective judgment. It is clear, however, that the objectives seek to maintain and strengthen the bush dominated setting.

⁷ Noting that the subject land fronts a Road Zone Category 1 for which the B32 standard is not varied by NRZ1.

⁸ Clause 22.03-5.

- 15 SLO2⁹, and its parent provision clause 42.03, have landscape character objectives and decision guidelines that must be considered. I have considered them fully but do not recite them all. The “*Statement of nature and key elements of landscape*” is:

The significance of the area is attributed to the quality of the environment, which includes vegetation notable for its height, density, maturity and high proportion of Australian native trees. This in turn contributes to the significance of the area as a valuable bird and wildlife habitat.

- 16 The “*Landscape character objective to be achieved*” is:

- To retain the dominance of vegetation cover in keeping with the bush character environment.
- To encourage the retention and regeneration of native vegetation for the protection of wildlife habitat.
- To ensure that a reasonable proportion of a lot is free of buildings to provide for the planting of tall trees in a natural garden setting.
- To encourage the development of sympathetic buildings within an envelope, which ensures the maintenance of a tree-dominated landscape.
- To ensure that buildings and works retain an inconspicuous profile and do not dominate the landscape.
- To ensure that development is compatible with the character of the area.

- 17 It is relevant that SLO2 is not simply about the achievement of landscape. There are evident environmental considerations, notably with respect to wildlife habitat.

- 18 A long list of decision guidelines in clause 5.0 of SLO2 includes the following:

- Whether the proposed building is set back a reasonable distance from the property boundaries to provide for landscaping.
- Whether the proposed building or works retain an inconspicuous profile and do not dominate the landscape.
- Whether a reasonable proportion of the lot is free of buildings and available for tree planting, landscaping and open space use.
- The impact of the proposed development on the conservation of trees.
- The impact of the proposed development on natural ground levels and drainage patterns which may have a detrimental impact on the health and viability of surrounding trees.

⁹ This clause expires on 30 June 2020. I was advised proposed Amendment C291 is currently being processed by the Council. Submissions are to be considered by an independent Panel in December 2019. I understand that the amendment proposes permanent controls.



- The species of vegetation, its age, health and growth characteristics.
- The location of the vegetation on the land and its contribution to the lot garden area, neighbourhood and streetscape character.
- Whether the tree is isolated or part of a grouping.
- The potential to achieve an average density of one tree reaching a height of over 15 metres to each 150 square metres of site area.
- Whether works within 4 metres of a tree propose to alter the existing ground level or topography of the land.

- 19 Throughout the hearing, multiple parties have referred to a “*requirement*” for 22 trees each reaching a height of over 15 metres to be provided as part of this application. This is calculated on the site area. It is important to understand that the calculation of 22 trees is not a mandatory requirement of the scheme. The provision of trees to this height is a decision guideline from SLO2. Each proposal must be assessed both against the decision guidelines and the objectives of SLO2, and clause 42.03, to determine whether an acceptable outcome is achieved. It is further relevant that NRZ1 varies Standard B13 and has a different numerical provision for landscaping compared with SLO2.¹⁰
- 20 Clause 22.04 addresses tree conservation. This includes tree protection and tree regeneration. Clause 22.04-4 includes performance standards that are considered to satisfy the policy objectives and statements in earlier parts of the clause. The performance standards include techniques that adopt numerical components. An example is that for a new tree, the minimum area of 50m² of open ground with a minimum dimension of 5 metres that is free of buildings and impervious surfaces and of other tree canopies, to minimise competition and facilitate normal growth. Performance measures are one way of achieving the relevant policy and objectives, but not necessarily the only way. The numerical provision is not mandatory. An assessment is required. In this case my deliberations are assisted by expert evidence called by the responsible authority and applicant.
- 21 Other policy themes and provisions relate to considerations such as internal amenity, environmental sustainability and parking, as well as the clause 65 general decision guidelines. I do not recite them but relevant clauses are listed in the ‘Information’ section of these reasons.

IS THE PROPOSAL AN ACCEPTABLE RESPONSE TO CLAUSE 42.03 AND SLO2?

- 22 A permit is triggered because not all of the requirements in clause 3.0 of SLO2 are met. I accept Mr Bisset’s point that many of the requirements are, however, met and this is a relevant matter.

¹⁰ Refer paragraph 11 above.

- 23 An example is that a permit is not required to construct a building or construct or carry out works where a building is no higher than two storeys or 9 metres. In this case, the maximum height of the dwellings is 8.92 metres.¹¹
- 24 While a number of submissions emphasise that the development extends over more than two floor levels, there are only two storeys above ground, notwithstanding habitable floor space is included in basement levels.

Issues

- 25 The focus of submissions and evidence opposing the permit application include:
- Is it appropriate to keep the trees that are shown as being retained? For example, tree no. 1 is in poor health but is shown as maintained. Some parties say that it is unlikely to remain.
 - Should more trees be kept? For example, tree nos. 20, 28, 39 and 45, as these are capable of providing the canopy sought by SLO2. The BDTPS adopted its own hierarchy for tree retention.
 - Can the trees that are proposed to be retained be so successfully?
 - Will the extent of encroachments into tree protection zones be greater than calculated in expert evidence as a consequence of, for example, the construction of basement walls, retaining walls, services and backfilling?
 - Can the basement be constructed while protecting trees, including those trees at the front of the subject land?
 - What is the impact of changed hydrology on trees to be retained on-site and trees on abutting sites? Are ground levels altered around the retained trees and are drainage patterns affected in a way that would have a detrimental impact on the health and viability of the retained trees?
 - Will the proposed landscaping grow between dwellings and to the south of the site given overshadowing by other trees and the development?
 - Is there enough space to enable the proposed canopy trees to mature and reach the heights suggested in the evidence?
 - Can there be a staged removal of *pittosporum undulatum* from the land to reduce impacts on the landscape, canopy and habitat (even though these trees are recognised as being an environmental weed)?
 - Does the landscape plan take account of an easement abutting the southern site boundary?

¹¹ Based on Mr Bastone's evidence.



- 26 Underpinning these and related submissions are questions as to whether, having considered the relevant decision guidelines, the proposal achieves the landscape character objective. Respondents emphasise the importance of the canopy and tree dominated landscape. They distinguish between canopy trees at lower heights than the many very tall trees throughout the SLO2 area.
- 27 The arborists called in this proceeding by the Council and the applicant agree upon the tree assessment undertaken by Mr Burgess. This includes the tree descriptions, retention values and other assessment criteria. The arborists agree that three high retention trees will be retained and, of 10 moderate retention trees, eight are retained. No high retention value trees are proposed to be removed in the substituted plans. The focus of Mr Reynold's evidence is the proposal's impact on tree nos. 5, 6, 27 and 47.
- 28 Several questions were put to the experts, challenging their independence and questioning their involvement (or lack thereof) in influencing the design response. I have considered the responses to the questions put by residents. In my view each expert has presented their professional opinions within the scope of their expertise and instructions.
- 29 Having fully considered but without reciting all of the expert arborist and landscape evidence and cross-examination, key matters arising from the evidence include the following:
- Mr Burgess' tree assessment appears to utilise a 2014 survey and previous work from around that time. Mrs Calwell contends that tree no. 9 has been recorded in the November 2018 tree assessment but that it fell onto her property in April 2018.
 - The tree root investigation of tree no. 47 appended to Mr Burgess' evidence is not based on the location of the building. It investigated an area to the east and south of the tree, rather than to the west where Unit 5 is proposed. Nonetheless, Mr Burgess is confident that the tree can be retained and protected.
 - There are some inconsistencies with respect to alterations to the ground surface levels in some parts of the development. However, based on the evidence, modifications to the plans can ensure such an outcome and can reduce the extent of encroachment into tree protection zones, such as by realigning pathways.
 - Greater detail has been provided through evidence about measures needed for works in or near the tree protection zones. Examples are raised permeable decking that needs to be maintained beneath the deck surface to avoid the build-up of materials.
 - Mr Vernon's evidence states that the proposal does not meet the numerical decision guideline in SLO2 of 22 trees capable of reaching 15 metres or more (including the retained and new trees). His written evidence refers to a shortfall of two trees.



- Mr Vernon’s oral evidence conceded that several additional trees may not reach that height. This is in response to submissions that the shortfall may be six trees, not two.
- The tree management plan has an important role in addressing matters such as supplementary irrigation, maintenance beneath decks that sit within tree protection zones, monitoring of soil conditions, and the role of a supervising arborist at strategic times during construction.¹²
- Expert evidence stating that the objectives of SLO2 are met must take into account that several witnesses did not look far beyond the site and immediate environs in forming their opinions whereas SLO2 covers a broad area.

Tree retention and protection

30 The applicant submits the design skilfully responds to the natural slope to minimise cut and fill beyond the building footprint. It accepts opinions expressed in evidence to minimise impacts in construction and to modify the design. Examples of the latter relate to several parts of the pedestrian path and ensuring no raised planters are constructed above tree protection zones. I accept that these matters can be addressed by permit conditions.

31 However, I agree with the Council that questions remains about:

- The extent of encroachment into tree protection zones, particularly because of construction methods. This could affect high retention value trees.
- Changes in the natural surface and ground levels that need to be defined in greater detail to have a greater level of confidence about tree protection and retention.

32 A decision guideline in SLO2 is the impact of the proposed development on natural ground levels and drainage patterns which may have a detrimental impact on the health and viability of surrounding trees. There has been no technical analysis of drainage patterns. The arborists both gave opinions about the extent to which natural ground level within tree protection zones should not be disturbed.

33 Notwithstanding that there may well be ways to manage impacts to ensure that the buildings and trees can successfully co-exist through the tree management plan as Mr Burgess and Mr Vernon indicate, it is of concern that there are doubts about the full extent of encroachments into tree protection zones and with respect to changes in surface levels. Policy such as clause 22.04 places weight on tree retention and measures during construction to ensure the long-term preservation of trees. Deferring these matters to a tree management plan may be acceptable but the extent of tree management gives rise to valid questions about the extent to which the proposal has been designed to respond to the trees.

¹² This relates to all of the trees to be retained, including several that were the subject of commentary in evidence such as tree nos. 5, 6, 12, 27 and 47.

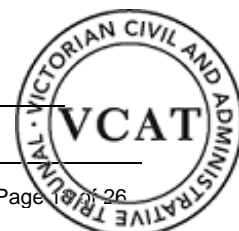


- 34 If I assume that these matters can be addressed, there remains a further issue with respect to the likely longevity of retained trees. In addition to tree no. 1 which Mr Vernon suggests could be replaced in the current design, I am concerned about tree nos. 27 and 47. Tree no. 27 is adjacent to the northern boundary. It has an estimated canopy spread of 10 metres. The canopy is, like many of the retained trees, high. The tree is positioned within 4-5 metres of the decks of Units 4 and 5. It hangs over the decks and parts of the units. The canopy of tree no. 47 is estimated to be 7 metres and sits in the wider space between Units 4 and 5. The close physical relationship between retained trees and dwellings gives rise to potential tensions, as occupants often have concerns about the extent of overhang. .
- 35 The need for clearances beneath the raised decks of Units 1, 4 and 5 is another example of an arguably onerous maintenance regime that may, or may not, be honoured by occupants. This level of micro-management to avoid compaction of the trees roots also suggests that the development has not been designed to adequately respond to the trees, notwithstanding the evidence that the trees may be able to survive with a tree management plan.

Proposed landscaping and building form in the landscape setting

- 36 The front setback of Unit 1 is less than 11 metres.¹³ However, the splayed nature of the land is a relevant factor in assessing the presentation – where much of the front setback is more than 11 metres. In addition, setbacks from other boundaries meet the requirements of SLO2.
- 37 There is an obvious emphasis in SLO2 and associated policy with respect to tall and upper canopy trees. The landscape plan provides a layering of new vegetation around the site, as explained in Mr Vernon’s evidence, complementing the trees retained on the land and trees on adjacent sites. His oral evidence suggests more trees could be provided, if necessary, such as along the southern side of the development.
- 38 SLO2 seeks a reasonable proportion of the lot to be free of buildings to provide for the planting of tall trees in a natural garden setting. Although five units may be envisaged on the subject land based on a notional lot size, it is the amount and nature of built form that becomes critical.
- 39 The landscape plan provides new trees, including trees to 12 and 15+ metres, focused around the site’s perimeter. Tree no. 47 is the only canopy tree over a length of some 50 metres of development. Planting between units is of shrubs with several medium trees. The outcome is an ordered garden setting with some retained and new canopy trees around the edges. On my assessment, the proposal does not respond to the informality and diversity in building footprints and gardens plainly evident in the locality.
- 40 Even with the spacing between the townhouses at ground level, the regularity of the built form layout and the new landscape do not sufficiently respond to the landscape character objectives to be achieved, including contributing to a tree-dominated landscape.

¹³ SLO2 requirement for a two storey dwelling.



- 41 SLO2 seeks to encourage development in a way that is compatible with the character of the area, has an inconspicuous profile and does not dominate the landscape. I am not persuaded the proposed development achieves this objective. I do not consider the proposal achieves the dominance of vegetation cover in keeping with the bush character environment. This will be apparent from other properties, notably to the south side of the subject land, as well as in the formalised landscape response to Blackburn Road. I accept, however, that the raised planter and high fencing associated with the front part of the site could be modified, as suggested in evidence.
- 42 No planting is proposed in an easement that abuts the subject land. Mr Vernon’s evidence addressed the potential for tree root barriers, or other measures, to minimise impacts on any assets in the easement.

Habitat and wildlife corridor

- 43 Neither the landscape evidence, nor the arboricultural evidence, address ecological and habitat values. A number of parties make the point, strongly, that the role of canopy trees, and the SLO2, are about this broader contribution and role which has not been investigated and assessed.
- 44 Mr Vernon, Mr Burgess and Mr Reynolds have offered some generalised comments about the role of retained and new vegetation to provide habitat. None of the witnesses are ecologists. No ecological evidence has been called by any party. While residents mention Powerful Owls and other fauna and avifauna that have been said to live and breed on or in the vicinity of the subject land, there is no independent assessment of how the proposal responds to an objective in SLO2 relating to the protection of wildlife habitat, other than in general terms. Such an assessment may be informed by the evidence of the arborists and the proposed landscape treatment but it is a different area of expertise and a different assessment.
- 45 The lack of information in this regard is relevant in my view. Notwithstanding the suburban location, the subject land and wider area is identified as being significant for reasons set out in SLO2’s “*Statement of nature and key elements of landscape*”:

The significance of the area is attributed to the quality of the environment, which includes vegetation notable for its height, density, maturity and high proportion of Australian native trees.

This in turn contributes to the significance of the area as a valuable bird and wildlife habitat.

[Emphasis not in original]

- 46 Separate to this finding, Ms Timmins refers to section 60(e) of the *Planning and Environment Act 1987* in addressing to the land’s sensitivity as part of a wildlife corridor. She submits the proposal will have a significant environmental effect.
- 47 I accept the treed canopy is valued, as expressed through SLO2, including for habitat and wildlife movement. It is relevant to consider significant environmental effects under the *Planning and Environment Act 1987*.



48 Having regard to the matters contained in sections 60 and 84B of the *Planning and Environment Act 1987*, and even though I have limited material before me to assess the extent to which tree retention and proposed vegetation cover will, in real terms, protect bird and wildlife habitat, I am not persuaded that the objectors have demonstrated significant environmental impacts as a consequence of the proposal.¹⁴

Conclusion

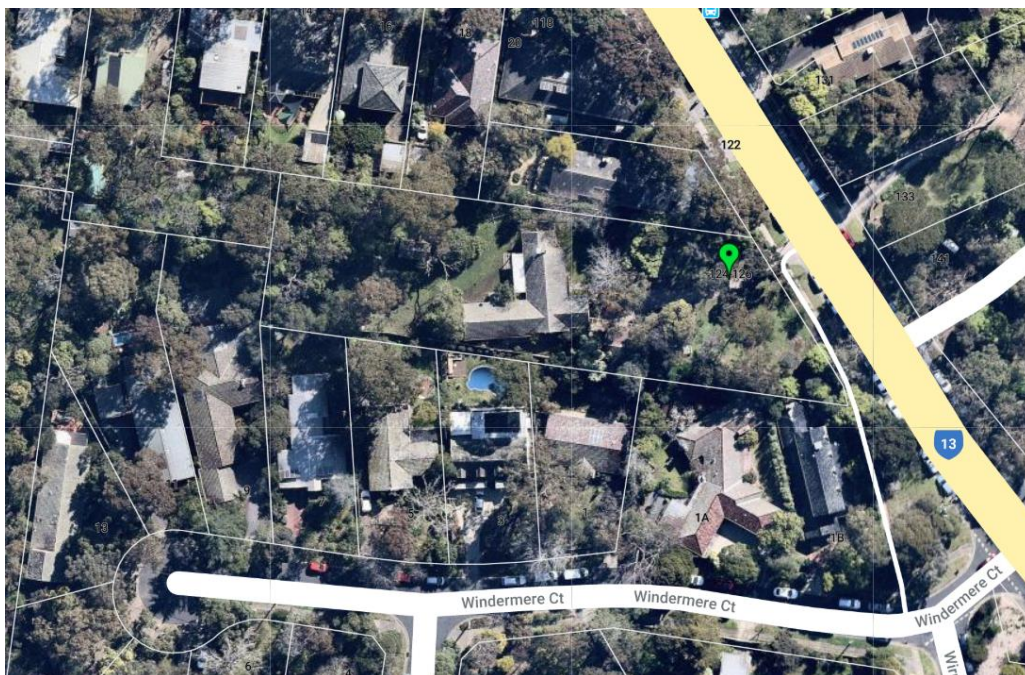
49 For the above reasons, I am not persuaded the proposal achieves an acceptable outcome when assessed against the purpose, objectives and decision guidelines of clause 42.03 and the objectives and decision guidelines in SLO2. The proposal's contribution to other scheme objectives does not outweigh these findings.

IS THE PROPOSAL AN ACCEPTABLE CHARACTER RESPONSE?

50 A range of considerations arise through clauses 22.03 and 32.09, and associated character provisions in clause 55. I have considered the proposal holistically but refer to character elements under the headings below.

Density

51 The subject land is a large site in an area that is characterised by a range of lot sizes. While within a limited change area, the proposal to develop five, two storey, dwellings is a density that is consistent with the prevailing pattern of subdivision and exceeds the numeric of 650m² minimum lot size sought for areas within the SLO. The extract from Nearmaps, below, indicates a range of lot sizes nearby.



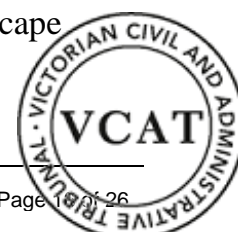
¹⁴ *Hoskin v Greater Bendigo CC and Anor* [2015] VCAT 1124.



- 52 The Council did not express concern, *per se*, about density even though it also said there should be fewer units, in the order of three or four.
- 53 The notional lot layout based on the design response would see the central units potentially on lots of around 600m². Where there are relatively similarly sized lots in the area, such as No. 13 Windermere Court, a contribution to the landscape setting is evident with upper canopy trees and other vegetation. This is the more significant point. That is, I agree with the applicant's submission that the issue here is not about density, *per se*, but about the way in which the built form and landscape outcomes manifest so as to respect the appearance of surrounding development and the environmental and neighbourhood character values of the area.

Streetscape response

- 54 I agree with the applicant that the proposal has a number of positive attributes with respect to the streetscape presentation. In addition to the retained trees, the proposal presents to the street with one dwelling which has side setbacks that give a sense of spacing to respond to the area's character. This is assisted by the splayed frontage that allows for a large landscaped area to the south-east of the land. The vegetation will contribute to the preferred character. Only one crossover is proposed.
- 55 The use of a basement was strongly criticised in some submissions. It is not a form that is found in this area. However, it does have the benefit of allowing more ground area free of driveways and car spaces to facilitate landscaping and tree retention.
- 56 The main streetscape issue, in my view, is how the 'hard' elements associated with the basement access and ramp present to the street. This includes the driveway with a passing bay, retaining walls with balustrades, as well as a raised front planter box, front fence and the pedestrian ramp.
- 57 Even though the double storey dwelling and driveway at No. 122 Blackburn Road are quite prominent, I find the proposed treatment does not respond appropriately to the preferred character statement that includes "*The bushy environs are complemented by street trees and a lack of front fencing*". I appreciate this part of the character statement must be considered in the main road context that applies here, where a number of nearby properties have high fencing. It is also relevant that NRZ1 does not vary Standard B32 with respect to front fence heights on Road Zones. Further, the applicant submits the front planter box can be removed and the fence lowered to less than 2 metres. These types of changes could be addressed by permit conditions.
- 58 But, as presented in the substituted plans, or modified in accordance with evidence and the applicant's submissions, I find that the design presents a 'hard' urban form rather than a sense of buildings nestling into the topography of the landscape. I am unable to form a view that the streetscape will be dominated by vegetation with subservient buildings frequently hidden from view behind vegetation and tall trees.



Development intensity and landscape response

- 59 The applicant emphasises that the preservation of the significant landscape character and environmental integrity is the highest priority in the Bush Environment Area. Mr Bisset submits this has been achieved by this permit application. More specifically, he refers to the proposal's compliance with numerical standards such as B8, B9 and B17 as well as the extent to which the total area of buildings, hard surfaces and impervious areas are limited. The two storey form, building spacing and setbacks allow the bush environment character to be achieved and the establishment of a bush environment setting. The buildings will be subservient to the landscape and are not, in the applicant's submission, an over-development.
- 60 The proposal meets the strategy for limited change areas because it takes the form (at ground level and above) of detached dwellings. In addition, the Bush Environment Precinct Guidelines refer to two storey dwellings, which is the design response adopted here. The principle of aligning a dwelling on the subject land with a lot to the south is a reasonable design response. These are all acceptable elements of the design response.
- 61 The issue is, instead, with the size of the units that results in an intensity of built form that is at odds with the existing and preferred character. The preferred character includes buildings that will "*nestle into the topography of the landscape*" and "*be surrounded by bush-like native and indigenous gardens*".
- 62 Various parties refer to the extent of the building footprint and amount of hard surfacing as grounds against the proposal. In response to submissions challenging the proposal's site coverage, garden area and permeability, the applicant has provided detailed site coverage calculations, based on the definition of site coverage included in the *Planning Practice Note 27* [PN27] dated 2015 and *Planning Practice Note 84* dated 2018. The applicant submits the proposal meets the varied Standards B8 and B9 in relation to coverage and permeability.
- 63 Some submissions challenge the site coverage figures provided by the applicant including having regard to definitions within clause 73. They contend PN27 is not relevant. I do not agree. Practice Notes are relevant under section 60(1A)(g) of the *Planning and Environment Act 1987*. "*Building*" is defined in section 3 of that Act. *Planning Practice Note 84* addresses the calculation of minimum garden area. Clause 73 site coverage means the "*proportion of a site covered by buildings*".
- 64 The objectors have not presented with persuasive information to demonstrate to me that the applicant's calculations should be not be relied upon. This is not a ground upon which the Council relies.
- 65 Compliance with the numerical standards means the relevant objective of clause 55 is met. The is significant because the varied standards are intended to assist to give effect to the policy outcomes being sought for the NRZ1 area. However, compliance does not and cannot presume the proposal, overall, achieves an acceptable character outcome.



66 Standards B8 and B9 do not address other considerations such as setbacks, building scale and form, and landscape response. There are other standards that address these matters, such as Standards B13 and B17. Both are varied by NRZ1. The proposal meets B17 although there may be doubt about B13, given questions about the capacity of some trees to reach 12 metres. Even if Standard B13 is satisfied, the location of the trees around the site (except for tree no. 47) does not capture the preferred character in my assessment. In this regard, I am considering Standard B1 of clause 55:

- The design response must be appropriate to the neighbourhood and the site.
- The proposed design must respect the existing or preferred neighbourhood character and respond to the features of the site.

67 Decision guidelines in clause 55.02-1 are:

Before deciding on an application, the responsible authority must consider:

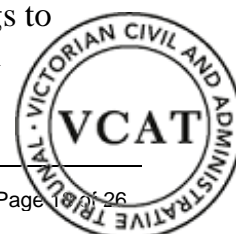
- Any relevant neighbourhood character objective, policy or statement set out in this scheme.
- The neighbourhood and site description.
- The design response.

68 For reasons that are similar as set out earlier, the orderly layout, the similarity in architecture, and landscape response do not, in my assessment, mean the proposed dwellings are nestled into the topography or that the development outcome achieves a bush-like garden setting. I do not repeat those earlier findings. I am less concerned about the sheer walls and architectural composition given the wide diversity of housing styles evident in this area. Issue, instead, are about the uniformity and intensity of the development which includes the five very large dwellings, decks, pathways and other buildings and works. In addition, the raised planters between the dwellings would allow for some shrubs and medium vegetation (to 5 metres) but are ‘hard’ elements. The retaining walls and more paling fences (as recommended in evidence) are too. Raised planters limit the potential for trees between dwellings, as referred to in the decision guidelines in NRZ1 even though the 6 metre space is greater than the ‘design response’ cited in the Bush Environment Precinct Guidelines of 3-4 metres.

Interface with other properties

69 The preferred character statement refers to buildings being “*sited to reflect the prevailing front, rear and side setbacks. The larger rear setbacks will accommodate substantial vegetation including large canopy trees*”. Clause 55 also addresses side and rear setbacks with neighbourhood character being part of the objective of clause 55.05-1.

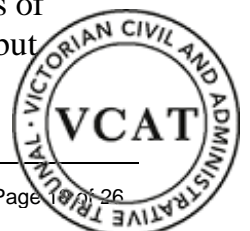
70 The subject land shares multiple abutments with the rear yards of dwellings to the west, north and south. Many of these have modest outbuildings. All have a landscaped backyard, albeit the size, orientation and extent of vegetation associated with the rear yards varies.



- 71 The Precinct Guidelines refer to rear setbacks as being from 7-20 metres, with new and infill developments having reduced setbacks. Proposed Unit 5 responds to this existing character element and also retains canopy trees in the western setback. Other proposed dwellings do not have a traditional 'rear' and instead face north and south. The setbacks along these boundaries (side boundaries of the subject land) include decks to the north and the pedestrian pathway (and sections of retaining walls) to the south. Solid fences along boundaries and between units are also proposed.
- 72 Mr Bisset submits the development will not present unreasonable bulk. In addition to far exceeding Standard B17, he submits breaks of 6 metres are provided between the proposed dwellings, and views of the townhouses will be filtered from all sides by retained and new landscaping. The applicant submits the proposed dwellings will sit in a treed setting with setbacks that respect the backyard character.
- 73 As already indicated, I accept Standard B17 is met, and exceeded. I further accept that the dwellings have been spaced, have been provided with landscaping between them, and setbacks from adjoining properties are not without comparison in this area.
- 74 On my assessment, assisted by my site inspection, the development will have a much more significant impact on properties to the south of the subject land than properties to the north. This is for a range of factors including the physical setting of the Windermere Court dwellings which are elevated above the subject land. A number have generous views into the subject land. Retained trees have high canopies. By contrast, the Eustace Street dwellings that interface with the subject land are set lower in the topography and have a stronger, existing, vegetated screen. The same is the case for properties to the west of the subject land.
- 75 I am not persuaded that the extent to which the proposed dwellings would present to properties to the south is an acceptable impact nor is it a reasonable expectation when understanding the preferred character statement. As already indicated, the layout and regularity of the proposed dwellings departs from the evident diversity and character. In addition, the proposed dwellings do not respect the way in which existing dwellings are sited and will not achieve an adequate bush-like garden setting.

Conclusion

- 76 For the above reasons, I am not persuaded the proposal achieves an acceptable outcome when assessed against the purpose of clause 32.09 and objective of clause 55.02-1. The proposal's contribution to housing goals and diversity does not outweigh my finding that the design response fails to positively contribute to the preferred character. The scale and appearance of the development does not adequately respect the appearance of surrounding development and the environmental and neighbourhood character values of the area. This is not necessarily a function of the number of dwellings, but of their size and layout.



WOULD THE PROPOSAL HAVE UNACCEPTABLE OFF-SITE AMENITY IMPACTS?

Visual bulk and loss of vegetated outlook

- 77 The owners of the properties around the subject land are concerned about the extent to which the proposed development will present significant visual bulk and result in the loss of their existing vegetated outlook.
- 78 The applicant challenges these submissions through expert evidence, which I do not recite. In short, Mr Bisset submits the development will not present unreasonable bulk. In addition to far exceeding Standard B17, breaks of 6 metres are provided between the proposed dwellings, and views of the townhouses will be filtered from all sides by retained and new landscaping, in the applicant's submission. Mr Bisset relies on expert evidence that the proposed dwellings will sit in a treed setting with setbacks that respect the backyard character.
- 79 In *Draper*,¹⁵ the Tribunal considered a proposal for a shed at the rear of No. 10 Eustace Street. The shed was 4.85 metres high and 165.7m² in area. The Tribunal refused a permit for a range of reasons that included the extent of development in the backyard realm, not in keeping with the area's character, as well as the removal of trees and inability to plant new trees.¹⁶ The proposed development is different, but the Tribunal's decision underscores the sensitivity of the interfaces with neighbouring properties.
- 80 I have referred to my concerns about the extent of built form. The proposal meets the numerical standards such as B17, however, I am not persuaded that the scale of development close to adjacent residential properties is reasonably anticipated in absence of the development also responding to the topography and achieving the bush-like setting.
- 81 The visual impact is significant for several properties, such as Nos. 1A, 3 and 5 Windermere Court. This is a consequence of the elevated position of these dwellings relative to the subject land. As already indicated, these properties are exposed to the proposed development because of this elevated outlook from rear habitable room windows and rear decks and because of the retained canopy trees with high canopies but clear trunks.
- 82 The proposed landscaping is intended to provide a layer to complement and supplement the canopy trees. I accept that the proposed vegetation could grow in the area provided, based on the expert evidence. However, I am not persuaded that the setback along the southern part of the site, south of the pathway, will be sufficient to offset the dominance of the built form that will be presented to Nos. 1A and 3 Windermere Court. The impact is reduced for No. 5 Windermere Court because of the wider spacing between Units 4 and 5 to allow for the retention of tree no. 47, evident in the plan extract below. The property further to the west, at No. 7 Windermere Court, retains an aspects to its west/north-west.

¹⁵ *J & D Draper v Whitehorse CC* [2019] VCAT 1203.

¹⁶ *Ibid.*, [25]-[26].





83 Existing dwellings borrow amenity from the subject land. The existing benefits cannot be expected to be maintained, as development of the subject land must be anticipated. However, the proposal departs from and impinges on the shared landscape that is part of a bush-like setting.

Other matters

84 Various parties oppose the permit application because of other impacts on the amenity of their properties. These additional issues include:

- Impact of solid fencing;
- Noise and security concerns arising from the location of the pedestrian path to the dwellings;
- Ventilation of the basement car park;
- Noise from the garage door;
- Overshadowing from new trees;
- Loss of privacy.

85 Given my earlier findings, I do not intend addressing these matters in detail. Any new permit application will result in a different design response that requires these types of considerations to be reviewed afresh. Suffice to set out the following conclusions:

- Overlooking can be addressed by permit conditions that may enable some screens to be re-designed or removed. Mr Bastone's evidence is that 1.8 metre high paling boundary fences are also required in some sections to limit overlooking. While Standard B22 may be able to be met, there are internal amenity implications, as I discuss below.

- Overshadowing from the proposed units meets Standard B21 and is acceptable. The canopied environment will mean trees overshadow and overhang other land. This is not an unacceptable amenity impact but an outcome that is reasonably anticipated by the scheme in achieving the broader character and environmental objectives.
- The location of the shared pedestrian pathway, serving five dwellings, is acceptable. People using the path, including to move bins to and from the kerbside, may be apparent but is not an unacceptable amenity impact. There is nothing about this design that suggests the path would cause excessive or unreasonable noise or security concerns.
- The garage door is located at the bottom of the ramp, within the ramp walls. I do not consider it is likely to cause excessive noise. I noted the background noise of traffic on Blackburn Road evident on my site visit to several Windermere Court properties.
- Details of plant and equipment would be expected to be addressed through the endorsement of plans. This includes ventilation for the basement as well as heating and cooling for the dwellings.

WOULD THE DEVELOPMENT ACHIEVE AN ACCEPTABLE LEVEL OF INTERNAL AMENITY?

86 The Council's submissions with respect to internal amenity and the related consideration of environmental sustainability include the following:

- The extensive provision of basement living space without natural outlook is a poor design response;
- The screening of nearly every first floor window severely limits natural daylight and outlook which will result in a poor internal amenity for residents;
- The entries to the dwellings are poorly identified;
- The size, depth and scale of the buildings will necessitate heavy reliance on mechanical heating and cooling resulting in substantial energy costs. The plans do not detail where these plants will be accommodated and if they will cause amenity impacts;
- The plans do not show or detail how stormwater will be managed and the location of water tanks for stormwater re-use.

87 The applicant relies on Mr Bastone's evidence in relation to the internal amenity of the development. Mr Bastone's written evidence is the proposed development provides an excellent level of internal amenity for reasons he sets out.¹⁷ This includes excellent daylight access, individual dwelling entries, secure basement car parking, generous recreation and retreat areas in the basement, expansive private open space, and limitations on overlooking within the site by the use of screening measures.¹⁸

¹⁷ Section 4.4 of the statement of evidence dated 24 September 2019.

¹⁸ *Ibid.*



- 88 At the hearing, Mr Bastone conceded that the Council had a valid point with respect to the amount of first floor window screening. He recommended several window screening devices that could be removed and suggested alternative measures to limit overlooking but achieve an outlook for future residents. The applicant also accepts a permit condition to show how details of dwelling entries will be identified along the pedestrian pathway for the purposes of wayfinding and a sense of address.
- 89 Given my earlier findings, I do not intend addressing these matters in detail. Any new permit application will result in a different design response that requires these types of considerations to be reviewed afresh. Suffice to say that I consider the Council's grounds raise legitimate issues that require review. Specifically:
- The extent of screening to first floor windows is problematic. Even if some screens can be removed or modified, on a site of this size, the extent of window screening and associated 'hard' boundary fencing outcomes are indicative of a design that has not adequately balanced the need to limit privacy impacts with the internal amenity of the proposed dwellings. This is a relevant consideration under clause 55.04-6 because a decision guideline relates to the "*internal daylight to and amenity of the proposed dwelling*". Rather than enjoy the bush setting and canopied outlook, which is part of the amenity of this area, internal amenity would be affected by screening.
 - The subterranean habitable rooms (eg. dining room in Unit 4 and retreats in Units 4 and 5) rely on a light court which is overhung by first floor balconies. I have not been provided with any information to persuade me that these rooms will achieve an acceptable level of daylight. I am less concerned about the home theatres. Even though these spaces may be regarded as secondary, the extent of habitable space below ground level, with an uncertain level of daylight access and no apparent natural ventilation, is of concern.
 - The entries to the dwellings could be improved, which I accept could be addressed by permit conditions.

ARE ARRANGEMENTS FOR PARKING AND ACCESS ACCEPTABLE?

Parking supply

- 90 No parking reduction is being sought under clause 52.06. The permit application provides the number of cars required for the size of dwellings proposed. Each dwelling is provided with a double car garage in a shared basement, accessed via a common ramp. No visitor parking is required on-site based on clause 52.06 given the land's location with respect to the mapped Principal Public Transport Network Area.
- 91 There is not, therefore, any proper basis to refuse a permit because of inadequate on-site parking. This is also the case regardless of concerns about the traffic evidence.



92 Multiple submissions refer to the potential for parking to overflow into local streets, such as Eustace Street, and other issues with parking on Blackburn Road. I note these concerns but future occupants, their guests and service-persons would be entitled to park on-street in the same way others can use the public parking resources.

Access

93 The proposal relocates the existing crossover to the land. Some submissions refer to potential conflicts and congestion on Blackburn Road including as a result of poor sightlines given the road profile at this location. Further, the relocation of the crossover aligns it with a driveway opposite and this is another potential conflict point. One party suggested VicRoads' conditional support for the permit application should not be given weight as the authority has not undertaken a site inspection.

94 Clauses 52.06-7 and 52.06-8 set out the requirement for a car parking plan and design standards. These are matters upon which the responsible authority must be satisfied assisted by decision guidelines in clause 52.06-9. These considerations do not in themselves trigger a permit.

95 It is relevant that neither the Council nor VicRoads oppose the permit application on access or traffic safety grounds, subject to conditions.

96 These professional assessments carry weight. I am not persuaded that the proposed access point is unacceptable. Moreover, the provision of a passing bay within the site (although adding to hard surfaces) assists to limit on-street conflicts.

Basement car park layout

97 Mr McGuckian explains the Council's concerns about the car park layout. This includes:

- Conflict points within the basement;
- The clunky and inefficient basement layout;
- Wall obstructions affect sightlines within the basement;
- Lack of mirrors and an intercom;
- Poor natural surveillance within the car park.

98 The applicant relies on information from MGA Traffic which states the basement meets all relevant traffic engineering specifications. In addition, the applicant disagrees with the issues raised in the Council's submission with respect to conflict points in the basement, manoeuvrability, and the need for a mirror or signal system (although one can be provided). As no visitor parking is proposed, no intercom is required.

99 The Council opposes the MGA Traffic advice being relied upon in my decision-making. I accept that the advice has not been able to be tested, as the material is not a statement of expert evidence.



- 100 Further, there is no internal referral or related material to support the Council's submissions that the requirements of clause 52.06 have been met.
- 101 On the information available, the basement layout is workable, although the need for multiple movements associated with several car spaces is not ideal. This is a function of the unusual shape of the basement, notably to accommodate the tree protection zone for tree no. 47. I have not refused a permit for this reason.

WHAT FINDINGS DOES THE TRIBUNAL MAKE ON OTHER ISSUES?

- 102 Many other matters in submissions and statements of grounds are not reasons why I have refused a permit. They include the following upon which I summarise my findings next.

Garbage collection

- 103 Objectors are concerned about arrangements for waste collection. Among the issues raised is the length that bins must be moved to and from each dwelling to the kerbside.
- 104 Waste management arrangements are typically for the Council to address. It will determine if it is satisfied with the proposed arrangements. The Council raises no concerns about the potential to service the site. Addressing the detailed arrangements for waste collection can appropriately be addressed through permit conditions.

Safety and risks

- 105 A range of issues were canvassed through submissions and cross-examination of witnesses with respect to safety, access for emergency services, disability access, and other risks. I am not persuaded that the proposal creates any inherent safety or other risks. A building permit would assess some of these matters in greater detail.
- 106 I note comments by Mrs Easton-Bond that asbestos may be present in existing structures on the land. This is addressed through specific regulations governing the removal of asbestos that are outside the scope of the planning permit process.

Construction

- 107 Two issues arise from the statements of grounds and submissions.
- 108 The first relates to concerns that adjacent properties will be damaged and there is a lack of detail about this. These matters are addressed through the building approval process, rather than through a planning permit.
- 109 The second relates to nuisance and noise associated with the construction of the proposed building, including from noise, dust and vehicle movement. It is accepted that construction will be disruptive but this is not a reason to refuse a planning permit. This matter is managed through local laws and EPA legislation.



110 A construction management plan is also proposed to be required by permit conditions. This is acceptable and would need to be linked with the tree management plan to address tree protection (tree protection zones and canopy protection measures).

Property values

111 Some parties' statements of grounds refer to the permit application adversely affecting property values. Tribunal decisions, and Council officer assessments, consistently identify that this is not a reason to refuse a planning permit. The relevance of economic impacts in planning matters relates to the contended effects on the community, not individuals and their private financial interests.¹⁹ The effects must be demonstrable,²⁰ and the effects must be 'significant', consistent with the wording in the *Planning and Environment Act 1987*. There is no valuation evidence or specific evidence in support of the grounds advanced upon which the Tribunal could conclude that the alleged economic impacts are demonstrated or significant.

WHAT IS THE TRIBUNAL'S CONCLUSION?

112 The subject land is suitable for multiple units given its size. The proposal for five dwellings would have benefits in terms of housing growth. However, the subject land is in a location designated through the scheme as having specific characteristics that are sought to be protected and reinforced through control of new housing development. The elements that contribute to its environmental and neighbourhood character are sought to be conserved and enhanced. I am not satisfied the proposal assists to achieve these outcomes. Rather, the size and scale of the proposed dwellings is too great to respect neighbourhood character, contribute to the preferred character and to achieve the objectives of SLO2. In addition, the development results in unacceptable off-site and internal amenity impacts.

113 I therefore conclude no permit should issue because, in the overall balance, the proposal does not achieve an acceptable outcome.

114 For the above reasons, the responsible authority's decision is affirmed.

Margaret Baird
Senior Member

¹⁹ *Boydell Pty Ltd v Yarra CC & Ors* [1998] VCAT 564.

²⁰ *Minawood Pty Ltd v Bayside CC* [2009] VCAT 440, [39].