

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1393/2020  
PERMIT APPLICATION NO. WH/2019/1291

### CATCHWORDS

Whitehorse Planning Scheme; Section 77 of the *Planning and Environment Act 1987*; Neighbourhood Residential Zone - Schedule 1 (NRZ1); Significant Landscape Overlay - Schedule 2 (SLO2); Dwelling, works and vegetation removal; Setbacks; Neighbourhood character; Impact on vegetation; Adequacy of landscaping.

<b>APPLICANT</b>	Rodney Storey
<b>RESPONSIBLE AUTHORITY</b>	Whitehorse City Council
<b>RESPONDENTS</b>	Bertram Alesich, Colin Menhennet, George Cox, Janice Ruby Fletcher, Jeannie Jean Chien Hall, Jennifer Anne Downes, Robert Bonifacio, Robyn Lea Timmins, Timothy James Heywood, Stephanie & Glenn Rodwell, Blackburn Village Residents Group Inc (BVRG), The Blackburn & District Tree Preservation Society Inc.
<b>SUBJECT LAND</b>	18 Masons Road BLACKBURN 3130
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	24 May 2021
<b>DATE OF ORDER</b>	3 February 2022
<b>CITATION</b>	Storey v Whitehorse CC [2022] VCAT 133

### ORDER

#### No permit granted

- 1 In application P1393/2020 the decision of the responsible authority is affirmed.
- 2 In planning permit application WH/2019/1291 no permit is granted.

Mary-Anne Taranto  
**Member**

## APPEARANCES

For R Storey	Mr D Scally, solicitor of Best Hooper He called the following witnesses: <ul style="list-style-type: none"><li>• Mr Dean Simonsen, on arboricultural matters, of Treemap Arboriculture</li><li>• Mr Robert Thomson, landscape architect of Habitat landscape, environmental design consultants</li></ul>
For Whitehorse City Council	Mr G Simkus, town planner of Direct Planning
For R Timmins	In person
For D Tribe, R Bonificio, J Fletcher, T Heywood, G Rodwell, S Rodwell, The Blackburn & District Tree Preservation Society Inc.	Ms D Tribe
For Blackburn Village Residents Group Inc.	Mr M Taaf
For G Cox	In person
For Mr B Alesich	In person
For J Downes	In person
For Mr C Menhennet	In person

## INFORMATION

Description of proposal	Construction of a dwelling, outbuilding, works and vegetation removal. Adopting the tree numbering system referred to in the arborists' reports referred to by the parties, <sup>1</sup> trees proposed for removal are Trees 2, 3, 4, 6, 7, 12, 13, 14, 15, 16 and 19.
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 1 Bush Environment Areas ( <b>NRZ1</b> ). Significant Landscape Overlay - Schedule 2 Blackburn Area 2 ( <b>SLO2</b> ). Land in Masons Road opposite the site is within an SBO. Notice of the application was given to Melbourne Water. It does not object to the proposal subject to the provision of a flood-proof apex in the driveway at RL89.5m AHD to protect the basement garage from 1:100 flood events. <sup>2</sup>
Permit requirements	Clause 42.03-2 and clause 3.0 of SLO2 to construct a building and carry out works as not all of the specified requirements are met, namely, because: <ul style="list-style-type: none"><li>• the dwelling has a front boundary set back and a side (west) boundary set back less than the specified minimums:</li><li>• works are proposed within 4m of trees protected under the SLO2;<sup>3</sup></li></ul> Clause 42.03-2 and clause 3.0 of SLO2 to remove, destroy or lop 10 trees (being all of the trees proposed for removal except Tree 2).
Relevant scheme policies and provisions	Clauses 11, 12, 15, 16, 21, 22.03, 22.04, 32.09, 42.03, 52.06, 65 and 71.

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<sup>1</sup> Including the evidence statement *Arboricultural Statement - Expert Witness Report 18 Masons Road, Blackburn VCAT Ref No. P1393/2020* dated May 2021 by Mr Simonsen, his earlier report titled *Arboricultural Assessment and Report 18 Masons Road, Blackburn* dated January 2021.

<sup>2</sup> Letter dated 17 January 2020 to Whitehorse City Council with reference MWA-1160823.

<sup>3</sup> Various proposed for removal or retention (in the case of the latter both on the review site and on neighbouring land).

## Land description

Located on the south side of Masons Road, Blackburn opposite The Ridge, this 998.68sqm rectangular site has a frontage of 16.76m and depth of 59.57m. The site has a moderate fall from the rear towards the front of about 4m and an easement runs along the rear boundary. The land is developed with a modest single storey timber dwelling with a front setback of about 12.9m. It has a driveway and carport on its west side. Three small sheds are located at the rear. Numerous trees including a group of trees adjacent to the rear boundary, a large 22m high Eucalypt – a Yellow Box – known as Tree 1 adjacent to the existing dwelling's south-east corner, a Kanooka (Tree 17) partly on the front boundary and road reserve and a Melaleuca (Tree 18) a street tree in front of the site are relevant to the issues in this proceeding. Except for Tree 2 – a Loquat which is an exotic species, all of the trees on the site or in the road reserve in front of the site are either native or indigenous.

## Tribunal inspection

Unaccompanied prior to the hearing (roadside) and subsequent to the hearing (roadside and back yard).

## REASONS<sup>4</sup>

### INTRODUCTION

- 1 Rodney Storey (the **applicant**) is seeking a review of the Whitehorse Council's decision to refuse a permit for a new dwelling, an outbuilding at the rear, works and vegetation removal.
- 2 The council's reasons for refusal are primarily based on concerns that the proposal does not respond acceptably to policy and the SLO2 in terms of front and side boundary setbacks, landscaping opportunities such that the development does not maintain an inconspicuous profile.
- 3 The respondent objectors largely support the council's reasons for refusal but they also take issue with a number of other matters including the number of trees proposed for removal, the extent of works, impacts of changed hydrological conditions on tree health and adequacy of information in relation to underground services including drainage.
- 4 The applicant, through its submissions and the evidence of Mr Simonsen and Mr Thomson on arboricultural and landscape matters respectively, asserts that the proposal responds acceptably to the provisions of the SLO2 and features of the physical context.
- 5 Many issues were raised in this case but those which I regard as determinative are whether:
  - the proposed setbacks, scale and visual appearance of the dwelling would be acceptable;
  - the proposal is designed to provide for an acceptable landscaping response;
  - the proposal would cause unacceptable impacts on vegetation to be retained;
  - the extent of vegetation removal is acceptable.
- 6 Assisted by my inspections and having considered all material made available to me including other Tribunal decisions which I do not recite here in full, I have decided to affirm the council's decision and refuse the grant of a permit. This is primarily because the combination of the scale, siting and design of the dwelling would not respond in an acceptable way to the planning scheme's policy directions, SLO2 and physical context. There also remains some uncertainty about the impact of works associated with the provision of underground services and the dwelling in respect of Trees

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<sup>4</sup> The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

1, 17 and 18 that I also consider require resolution before a permit is granted. My reasons follow.

## THE PHYSICAL CONTEXT

7 The following aerial image shows the review site and its surrounds.



8 The review site is situated within the north-east quadrant of land intersected by Blackburn Road (west) and Canterbury Road (south). Masons Road is a no-through road terminating to the east with a vegetated reserve (Masons Road Basin). Blackburn Lake Sanctuary is located further north-east about 470m away as the crow flies.

9 In terms of abutments, the nearest single storey unit to the west fronting Masons Road in a group of eight, has a minimum front setback of about 6.85m and side setback of approximately 2.6m. The density of vegetation varies throughout this neighbouring unit complex at 14-16 Masons Road with trees and shrubs along the frontage, the central driveway and intermittently along the boundary in common with the review site.

10 To the east, No 20-24 Masons Road is developed with a single storey dwelling set on a large site in excess of 3000sqm equivalent to three standard lots. This neighbouring dwelling has a front set back of about 16m. Its garage is sited on the common boundary and within the TPZ of Tree 1.

This garage and works received a permit from the Tribunal in *McLellan v Whitehorse CC* [2018] VCAT 792 (*McLellan*).<sup>5</sup>

- 11 Abutting land to the south (187-189 Canterbury Road) is a large lot with a centrally located dwelling. This site has similar planning controls to the review site but is also affected by a Heritage Overlay (HO201).
- 12 In *McLellan*,<sup>6</sup> the Tribunal described the surrounding neighbourhood's character as one that overall, is reflective of the SLO2 as an area that is noted for its Australian native trees many that are mature. I agree.
- 13 Buildings are at times visible from the street and between neighbouring sites but less so at the eastern portion of the street, particularly the south side in which this site is located. The front yard of No. 20-24 Masons Road noticeably more open than others. The south side of the road reserve in Masons Road also has no footpath which frequently accommodates vegetation in the form of shrubs and native or indigenous canopy trees. These add to the area's informal vegetated character where built form is subservient to the landscape with development nestled into a vegetated setting.

## THE PLANNING CONTEXT

- 14 The review site and surrounding land are within a long established residential area which planning scheme policies identify as accommodating 'limited change' – the lowest level of housing growth and change in the municipality as distinct from 'substantial' and 'natural' change areas.
- 15 Neighbourhood character types and preferred character outcomes throughout the municipality are also identified, comprising Garden Suburban, Bush Suburban and Bush Environment areas. The review site and surrounding land are within a Bush Environment area.
- 16 These descriptions are underpinned by two strategic studies which are reference documents in the planning scheme – the Council's *Housing Strategy 2014* and *Whitehorse Neighbourhood Character Study 2014*.
- 17 There is a strong emphasis on trees in Whitehorse which are described as integral to the municipality's neighbourhood character<sup>7</sup>. According to the policy basis for Tree Conservation at clause 22.04-1, 'The retention of existing trees and the provision of sufficient space for regeneration and replanting are ... key strategies to preserve and enhance the amenity of the City.'
- 18 Council's residential development policy at clause 22.03 is also applicable. Strategies for limited change areas ask for residential development that 'is of a scale, form and character that is consistent with the surrounding area'

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<sup>5</sup> Member Bilston-McGillen. The Tribunal set aside the council's decision to refuse a permit.

<sup>6</sup> [2018] VCAT 792 [19].

<sup>7</sup> Clause 21.05.

and will predominantly comprise detached or semi-detached dwellings. A further strategy is 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.

19 This policy also sets out preferred character statements and refers to precinct guidelines under the Character Study. It is policy to apply these to all applications for dwellings and subdivisions.<sup>8</sup>

20 I do not recite them here fully but I have taken them into account and otherwise provide the preferred character statement<sup>9</sup> for Bush Environment areas:

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. Properties abutting and close to creeks and lake environs will contain more indigenous trees and shrubs that act in part as wildlife corridors.

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. [Tribunal's underlining]

21 Under the SLO2, and its parent control at clause 42.03, there are landscape character objectives and decision guidelines that must be considered.

22 In Schedule 2 to the SLO, the 'Statement of nature and key elements of landscape' is as follows:

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.

23 The 'Landscape character objective' to be achieved at clause 2.0 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.

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<sup>8</sup> Clause 22.03-3.

<sup>9</sup> Clause 22.03-5.

- 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.

24 Decision guidelines include amongst others:

- 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.
- 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.
- The availability of sufficient unencumbered land to provide for replacement planting.
- Whether works within 4 metres of a tree propose to alter the existing ground level or topography of the land.

25 Decision guidelines under the parent control at clause 42.03-5 also refer to:

- The impact of the proposed buildings and works on the landscape due to height, bulk, colour, general appearance or the need to remove vegetation.
- The extent to which the buildings and works are designed to enhance or promote the landscape character objectives of the area.

## OUTLINE OF CONTENTIONS

- 26 The Council does not take issue with the proposed materials of the dwelling, its hipped roof form and the extent of vegetation removal proposed. Nor in-principle is there opposition to the construction of a replacement dwelling on the site from the Council and respondents. Rather, it is the particular design response that has drawn opposition from the Council and respondents.
- 27 They variously submit that the development is too big, will not retain an inconspicuous profile and will dominate rather than nestle into the landscape. They raise particular concerns about the overall scale and form of the dwelling including its reliance on a basement garage. The proposed dwelling's setbacks, particularly to the frontage and on the west side are said to be inadequate.
- 28 They also say that the amount of available space in the front yard and along side boundaries is insufficient to provide for a suitable amount and type of landscaping with large trees that is expected by planning scheme policies, the NRZ1 and SLO2 for this location in a bush environment area.
- 29 The respondents variously submit that the extent of encroachment by the proposal into the Tree Protection Zone (**TPZ**) of Tree 1 is excessive and concerns are raised about the adequacy of information to demonstrate that the proposed buildings and works will not have adverse impacts on this tree and others proposed for retention.
- 30 The respondents also express concerns with the proposed outbuilding at the rear of the site and the potential that additional works such as a swimming pool might be constructed in the future. The respondents also lament the incremental loss of vegetation in this area with consequential impacts on its valued bushland character and variously assert that more trees should be retained than the number proposed. They variously raise concerns that the proposal is likely to cause alterations to hydrological conditions with consequential adverse impacts on tree health.
- 31 The applicant submits that the proposed buildings would be subservient in the landscape due to the combination of vegetation proposed for retention in front of the site and on the road reserve (Trees 17 and 18), proposed new planting recommended by Mr Thomson and the 2-storey setbacks of the dwelling. The siting of the garage on the boundary and 2-storey dwelling forms are features which are said to be commonplace in this context and acceptable. Mr Scally referred to other more recent developments nearby which he described as successful outcomes including a 2-storey dwelling at No. 8 Masons Road for which Mr Thomson prepared a landscaping plan.
- 32 Mr Thomson opines that the landscaping he proposes throughout the review site, will grow to provide an effective screening of the proposal. This planting includes two Blackwood trees in the front yard, two Eumundi Quandong trees along the west edge of the driveway, Lillypilly trees along

parts of both side boundaries, Blueberry Ash trees along part of the east side boundary and two new Yellow Box eucalypts at the rear also along the east boundary.

- 33 In terms of Tree 1, the applicant supports retention of this tree with Mr Scally submitting that ‘everyone wants this tree to be retained and for it to survive’. It is Mr Simonsen’s evidence that the proposal would allow for this tree’s satisfactory retention, highlighting that the proposed dwelling would cover less of Tree 1’s TPZ than the existing dwelling. Measures he recommends include the use of root sensitive footings for the dwelling using piers or screw piles with space to install or hang services from the sub-floor. While assigning Tree 1 with a ‘moderate’ rather than ‘high’ retention value he believes this tree is not showing signs of stress as a consequence of neighbouring works to the east in late 2016 associated with a garage in this tree’s TPZ. He expressed the opinion that if Tree 1 is to be retained, the lesser front setback should be permitted for the dwelling as proposed.
- 34 Mr Simonsen also expressed the view that the extent of vegetation removal and retention is acceptable having regard to the lesser value he considers is appropriate to assign to other trees on the site. He is also satisfied that the proposal would not have adverse impacts on the health and TPZ of other vegetation on the site and surrounding land including Trees 17 and 18 at the front, the Liquidambar tree in the front yard of the neighbouring site to the east and trees near the rear boundary as a consequence of the proposed outbuilding. While not qualified in hydrological matters, he expressed the opinion that drainage flows should be allowed to permeate beneath the proposed dwelling to vegetation on downslope land, while also supporting the provision of a garden bed on the south side of the dwelling as shown on Mr Thomson’s landscape plan.

## **ASSESSMENT OF ISSUES**

### **Acceptability of the design response**

#### Introduction

- 35 Before turning to the findings on the substantive issues for consideration, I affirm that I must assess this proposal in the form that it has been presented to me.
- 36 Thus, although some respondents are concerned that the space between the dwelling and outbuilding is being kept aside for a future swimming pool, the proposal does not include a swimming pool in this application. My assessment proceeds on this basis.
- 37 I also find that the proposal would not have adverse impacts on the neighbouring site to the south or the two rear-most units at No. 14-16 Mason Street.

- 38 In principle, I also accept that redevelopment of the site with a new single dwelling is acceptable including a building that has a 2-storey scale form. It is apparent that some 2-storey scale buildings are present in this area. On some lots, as is the case to the east, buildings – garages or carports – are sometimes sited on side boundaries, but these tend to be well set-back from the front street.
- 39 I also find that if retention of Tree 1 is to be pursued as is proposed in this application, that there is a legitimate basis for seeking some flexibility in the siting and design of a new dwelling relative to site boundaries. On this I should add that the setbacks that give rise to planning permissions under SLO2 are just that – permit triggers – rather than being ‘absolute’ metrics that if departed from must lead to the failure of a proposal.
- 40 Further, the achievement of an average tree density with a height of over 15m to each 150sqm of site area is a decision guideline and not a mandatory requirement. I note that with the addition of two Eucalypts proposed in the back yard, the proposal would provide seven 15m+ high trees, thus meeting this guideline. However, compliance or otherwise with this metric alone is not determinative of this proposal’s overall acceptability particularly in the circumstances where multiple permissions are required including for buildings and works under SLO2.
- 41 I also consider that while Tree 1 does pose some constraints on new development, the indicative building envelope in the *Tree Assessment and Management plan (14 August 2018)*<sup>10</sup> (the **2018 Tree Logic report**) prepared for the applicant identifies the development opportunities around Tree 1. It contemplates additional development at the rear allowing a larger front setback than that sought by this proposal while also envisaging the retention of Tree 6 at the rear – also a Yellow Box (remnant indigenous) tree that is 12m in height – which is proposed for removal.
- 42 Thus, I find that Tree 1 is not such a constraint that its retention must inevitably lead to a proposal in the *form, mass and scale* of the dwelling that appears before me with the front and side setbacks proposed.
- 43 The proposed dwelling is generously proportioned. It is to contain four bedrooms each with ensuites, a study, separate retreat, formal living room and open plan family/kitchen/meals area. A lift will provide access from the basement garage, cellar and store to all levels above. The dwelling is to be supplemented by a separate outbuilding (6m x 9m), which although described as a ‘BBQ area’ is fully roofed and enclosed in part with walls, containing a bar, separate bathroom with a sauna and store in addition to an undercover unwallled area in which a BBQ is shown.
- 44 The real question for determination as I have foreshadowed is whether the particular design response proposed is an acceptable one in the circumstances. This brings into play a consideration of both the physical

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<sup>10</sup> Page 5.

and planning contexts. The latter includes the SLO2, including the statement of nature and key elements of landscape, landscape character objectives to be achieved, decision guidelines and planning scheme policies including the preferred character statement for the Bush Environment area.

- 45 I am also mindful of the need for decision makers to adopt an integrated approach to decision making which balances conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.
- 46 In concert with the NRZ1, planning policies and controls place a strong emphasis on the special environmental and landscape characteristics of the location that is to be protected, conserved and enhanced. As highlighted in the closing sentence of the preferred character statement for this precinct:
- ... the preservation of its significant landscape character and environmental integrity is the highest priority.
- 47 I consider that the direction set by the policy framework and applicable controls, set a high bar for permit applications to preserve the significant landscape character and environmental qualities of this location.
- 48 I have approached my assessment of this proposal with these considerations in mind.

#### Interface to front and sides of proposed dwelling

- 49 I find that the siting and design of the proposed dwelling would not respond in an acceptable way to the predominant features of this area's character and the preferred character statement for Bush Environment areas.
- 50 Proposed front setbacks to the dwelling range from a minimum of 5m to the front portico, and 6.15m to the front façade. All of these building elements will sit forward of both neighbouring dwellings and front setbacks that typically prevail in the area. As I have said, I accept that some flexibility in the siting and design of a new dwelling is a reasonable approach in the circumstances. However, I find that there are numerous features of the proposal that when combined with these proposed setbacks, would not be acceptable. These are:
- the elevated floor level of the dwelling which at ground level will rise 2.2m above street level;
  - provision of a basement garage and associated concrete retaining wall structures on either side of the driveway which rise to an overall height of between 2.1m (east side) and 2.6m (west side);
  - amount and configuration of hard paving associated with the driveway;
  - the proposed setback of the driveway retaining wall from the west site boundary;

- provision of a pedestrian pathway variously shown alongside much of the driveway between the front entry stairs and front boundary on Mr Thomson's plan which the applicant submits is the preferred response rather than the centralised path extending towards Tree 18 on the architectural plans;
- the front stair structure extending 3.83m from the front boundary;
- the garage wall with a length of approximately 7.4m sited on the west boundary and commencing 6.4m from the front boundary;
- the 1.3m set back of the dwelling's ground level footprint above and south of this garage, and proposed provision of a pedestrian path along this boundary adjacent to an on-boundary retaining wall;
- upper level buildings elements sited above and to the south of the garage and ground level footprint;
- the 2-storey form of the building above elevated ground floor elements which although indicated at a maximum of 8.99m, will rise to approximately 10m relative to street level when viewed from Mason Street in front of the site.<sup>11</sup>

51 I find that the reliance on a basement garage sited on the boundary and the appearance and siting of associated retaining walls and the driveway are particularly problematic elements of this proposal. They will present as hard urban structures that are uncharacteristic for this location and incompatible with the informal character that is a feature of this bushy environs.

52 Combined with the design and setbacks of the dwelling and associated works, I consider that the appearance of the dwelling will not retain an inconspicuous profile when viewed from surrounding land, including from the street and from neighbouring properties to the east and west.

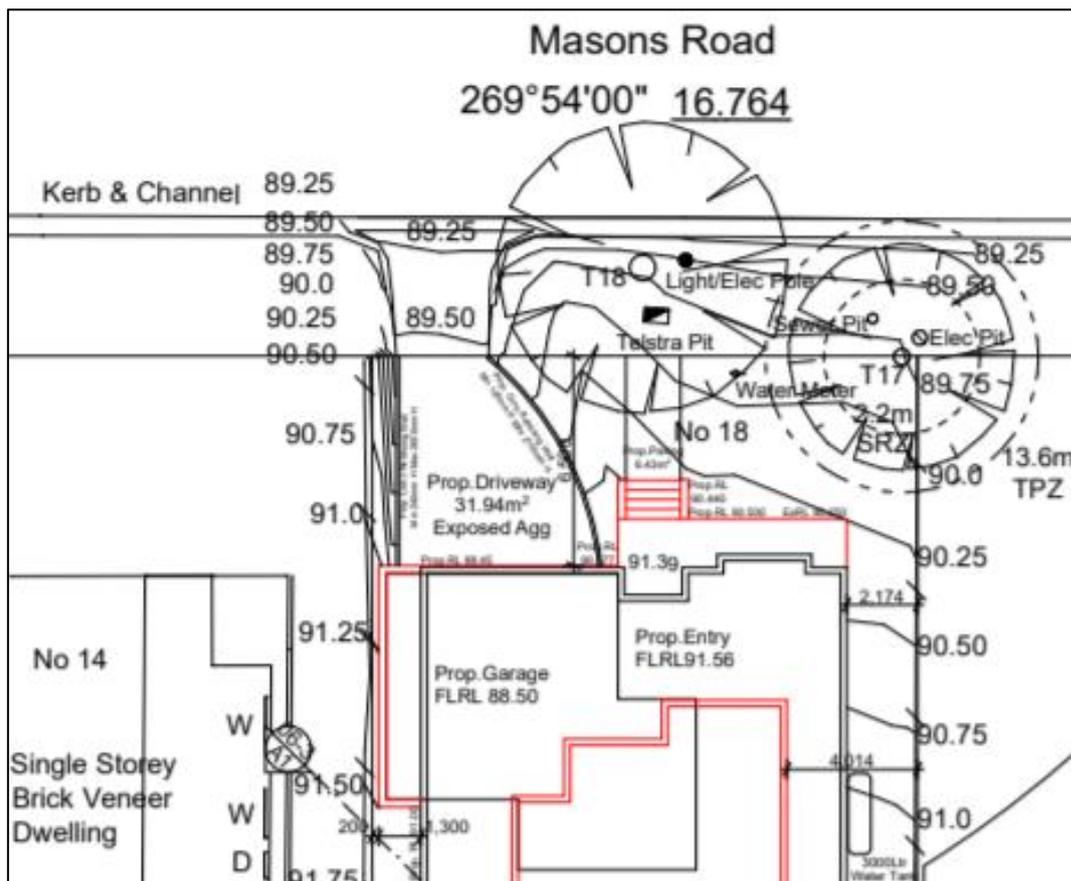
53 Further, I am not persuaded that the available spaces along the west boundary and in the front yard between the proposed dwelling, driveway and east boundary are setback a reasonable distance to provide for an ultimate landscape response that enables the development to nestle into the landscape. This is particularly so at the interface with Unit 1 14-16 Masons Road. Nor am I persuaded by Mr Thomson's suggestions that neighbours could plant trees in their properties or that vegetation could be installed atop the roof of the garage to mitigate the visual effect of the proposed dwelling. This is not what the planning scheme calls for – the SLO2 and preferred character statement variously ask for buildings with setbacks that are a reasonable distance from property boundaries to provide for landscaping and with a sympathetic envelope surrounded by bush-like native and indigenous gardens including large indigenous trees. Buildings and works are to retain an inconspicuous profile and not dominate the landscape. I take

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<sup>11</sup> I calculate the top of the roof level to be approximately RL100

this to mean that new development should be sited to enable it to absorb its own impacts within its own site boundaries.

- 54 The totality of these development features would produce an outcome that runs counter to the landscape character objectives of SLO2.
- 55 I accept that Trees 17 and 18 will offer some screening of the development from some vantage points in the street and this factor is heavily relied upon by the applicant. These trees do not however satisfactorily offset the shortcomings with this proposal. In-principle, both the design of buildings and works and landscaping must be acceptable in their own right.
- 56 Moreover, I consider that the proposal's impacts on Trees 17 and 18 have not been satisfactorily considered. Arrangements for utility services remain too uncertain such that I am able to conclude that these trees will not be adversely affected by works or even require removal as a consequence of works for the provision of necessary utility services.
- 57 I say this being cognisant of service pits (Telstra, sewer and electricity) located in a concentrated area between these two trees. The following extract of the proposed site plan shows these conditions.



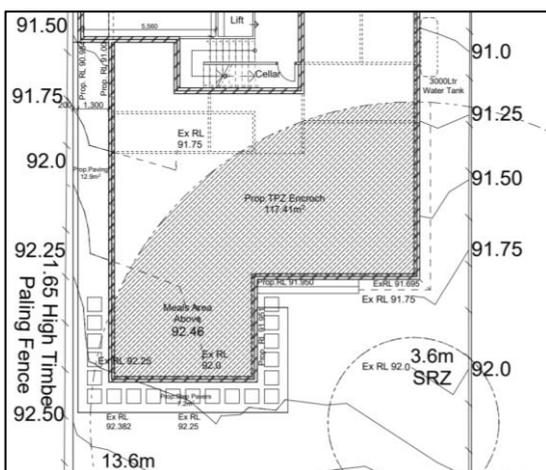
- 58 Details of storm water drainage infrastructure – existing and proposed – also remain undocumented and not clearly resolved. This information,

particularly for drainage, assumes a higher level of importance given the topographical conditions of the site, extent of site works and associated drainage management required for the basement garage, substantial retaining walls, proposed hard surfacing of the driveway and Melbourne Water’s design requirements in light of the SBO in Masons Road.<sup>12</sup> 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 is also a decision guideline in SLO2.

- 59 I regard the absence of information about the provision of underground services and their connection to existing service pits or otherwise their relocation as unfortunate and important omissions. I find that the circumstances are such that the provision of this information should not be deferred to a later stage by way of conditions on a permit. While it may well be that underground boring rather than open trenching is necessary to limit the impact on the TPZ of these trees, the implications of doing so with consideration to practical servicing requirements including connection points/pits needs to be properly understood before a permit is granted.
- 60 It is primarily for these reasons that I find that a permit must not be granted and I provide only brief findings on the remaining issues which may assist in the consideration of any revised proposal.

Rear of dwelling and proposal's response to Tree 1

- 61 The proposed extent of encroachment into the TPZ of Tree 1 is greater than 10% and is regarded as a major encroachment under the *Australian Standard AS 4970, 2009 Protection of trees on development sites*.<sup>13</sup> (the **Australian Standard**).
- 62 The two following extracts from the development plans show the existing and proposed extent of encroachment into this tree’s TPZ.



- 63 Taking into account the similar extent of encroachment into the TPZ associated with the existing dwelling and paving and proposed distance

<sup>12</sup> Letter dated 17 January 2020.  
<sup>13</sup> Standards Australia.

from the Structural Root Zone of this tree, in-principle I find that the proposal's impacts on this tree has the potential to be acceptable if all of the measures accepted by Mr Simonsen as necessary for this tree's retention, are adopted. These measures include the provision of root sensitive footings (screw pile footings) and the mounting of services to the underside of the ground floor in the sub-floor space.

- 64 I should add that in relation to the latter, information in any revised proposal should be provided to show the implications of necessary clearances above natural ground level to accommodate the required services and any excavation to accommodate the path around the meals area. I say this noting that the cross-sections relied upon by Mr Simonsen<sup>14</sup> do not include the most critical area in both axes through the south-western portion of the dwelling (meals area) and their relationship with proposed finished site levels outside. The effects of drainage infrastructure including any cut-off drains and other changes to the soil conditions associated with works that may change hydrologic conditions are similarly uncertain.
- 65 Plan details of all required works are required to enable a proper assessment of the proposal's impacts to be undertaken. As this information may have implications for planning permissions associated with the dwelling's design, associated works and extent of encroachment into the TPZ, deferral of this information to a later stage – as a permit condition if one were to be granted – is not an appropriate course of action in the circumstances.
- 66 I otherwise do not have any issues with the appearance of the outbuilding *per se* nor its likely impact on Tree 5 whose TPZ would be encroached upon by this building in the order of 13% including retaining walls.<sup>15</sup> I note the applicant's suggestion that the retaining wall could be dispensed with or this building could be moved slightly to the north but again the consequences of doing so on the TPZ of Tree 1 and for the building's design, finished floor levels and any required earthworks/finished ground levels are uncertain and would require further review. Any services between the outbuilding and dwelling within Tree 1's TPZ should also be installed through underground boring rather than trenching.
- 67 Finally, adherence to the recommended tree management practices should also be followed including the measures described in the *Tree Impact and Management Plan* for the review site dated 7 April 2020 by Tree Logic<sup>16</sup> including the specific measures for Tree 1.

#### Extent of vegetation removal

- 68 I do not agree with the 'low' retention rating given by Mr Simonsen to other trees on the land proposed for retention which I consider make an

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<sup>14</sup> Attachment B in Mr Simonsen's statement of evidence and the 'Proposed garage floor plan' with TPZ section marker locations circulated by email by Best Hooper on 24 May 2021 at 10:54pm.

<sup>15</sup> The outbuilding is located within 4m of Tree 6 and associated works at the rear are located within 4m of Tree 11 which trigger a permit requirement under SLO2.

<sup>16</sup> See in particular pages 6 to 23.

important and valuable contribution to the area's landscape character for which it is significant. This is particularly so for vegetation along the rear boundary and Tree 6 (now proposed for removal) which are assigned a 'moderate' rating in both the 2018 and 2020 reports by Treelogic. Tree 6 is a remnant indigenous tree whose retention and management with weight reduction pruning rather than removal was recommended in the 2018 Tree Logic report, despite some trunk decay. The indicative building envelope plan in this report that I have referred to earlier is sited to avoid this tree. Its removal or retention will need to be re-evaluated in the context of any revised proposal.

- 69 Aside from the findings I have made above about the buildings and works elements of this proposal and Trees 1, 5, 17 and 18, I find that the proposed extent of vegetation retention and removal is otherwise acceptable subject to the provision of suitable replacement planting including the provision of at least two new trees capable of reaching a height of at least 15m.

## **CONCLUSION**

- 70 For the reasons outlined above, the decision of the responsible authority is affirmed.
- 71 No permit is granted.

Mary-Anne Taranto  
**Member**