

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11152/2021
PERMIT APPLICATION NO.407/2020/03P

CATCHWORDS

Application under Section 77 of the *Planning and Environment Act 1987* to review a refusal to grant a permit; Nillumbik Planning Scheme; General Residential Zone; Significant Landscape Overlay; three part-triple storey dwellings; native vegetation removal; neighbourhood and landscape character; amenity and visual bulk.

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| APPLICANT | Jibin Hou |
| RESPONSIBLE AUTHORITY | Nillumbik Shire Council |
| SUBJECT LAND | 11 Porter Street, ELTHAM VIC 3095 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 25 February 2022 |
| DATE OF ORDER | 12 May 2022 |
| CITATION | Hou v Nillumbik SC [2022] VCAT 508 |

ORDER

- 1 Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998*, the grounds of the responsible authority are amended as follows:
 - (a) Amend Ground 1(b) to read:

The failure to adequately integrate the existing trees on site into the design.
 - (b) Amend Ground 2(f) to read:

The proposal fails to comply with Clause 55.03-8 – Standard B13 as the proposed level of landscaping provided is not in keeping with the landscape character of the surrounding neighbourhood and the proposal fails to adequately integrate the existing trees on site into the design.
 - (c) Include the following additional Ground 2(j) to read:

The proposal fails to meet the objective of Clause 55.05-4 Private Open Space.



- 2 In application P11152/2021 the decision of the responsible authority is affirmed.
- 3 In planning permit application 407/2020/03P no permit is granted.

Christopher Harty
Member

APPEARANCES

For Jibin Hou

Mr William Chow, Town Planner from ZoneWorks Planning and Design. He called the following witnesses:

- Mr Joe Kellett, Arborist from Joe Kellett Arboriculture
- Mr Robert Thomson, Landscape Architect from Habitat Landscape Environmental Design Consultants

For Nillumbik Shire Council Mr Craig Smith, Town Planner



INFORMATION

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| Description of proposal | The construction of three part-triple storey dwellings and the removal of native vegetation consisting of one native tree. |
| Nature of proceeding | Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit. |
| Planning scheme | Nillumbik Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 1 – <i>General Residential Areas (GRZ1)</i> Significant Landscape Overlay Schedule 2 – <i>Bush and Semi-Bush Residential Areas (SLO2)</i> |
| Permit requirements | Clause 32.08-6 – to construct two or more dwellings on a lot. Clause 42.03-2 – to construct a building or construct or carry out works and to remove, destroy or lop native vegetation. |
| Relevant scheme policies and provisions | Clauses 02.01, 02.03, 11, 15, 16, 32.08, 42.02, 52.06, 55, 65 and 71.02. |
| Land description | The subject land at 11 Porter Street, Eltham (site) is located on the south-west corner of Porter Street and Walsh Street. It has a frontage width to Porter Street of 14.17 metres with a corner splay width of 6.47 metres and a width to Walsh Street of 42.67 metres. The site has an overall area of 875 square metres. The site has a fall from the front north-east corner to the rear south-west corner of approximately 3 metres. It contains a single storey dwelling and several exotic and native trees forming an established garden character. The surrounding area is characterised by detached, single dwellings, with well landscaped front and rear setbacks in a bush garden setting. Built form is predominantly single storey brick veneer with pitched tiled roofs, with some examples of double storey dwellings in the form of single and medium density residential development. |
| Tribunal inspection | 26 April 2022 unaccompanied |



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

1 Jibin Hou (**applicant**) seeks a permit for buildings and works to construct three part-triple storey dwellings (refer to Figure 1) on land at 11 Porter Street, Eltham (**site**). The proposal includes the removal of trees found on the site of which one requires approval because it is a tree indigenous to Victoria.²

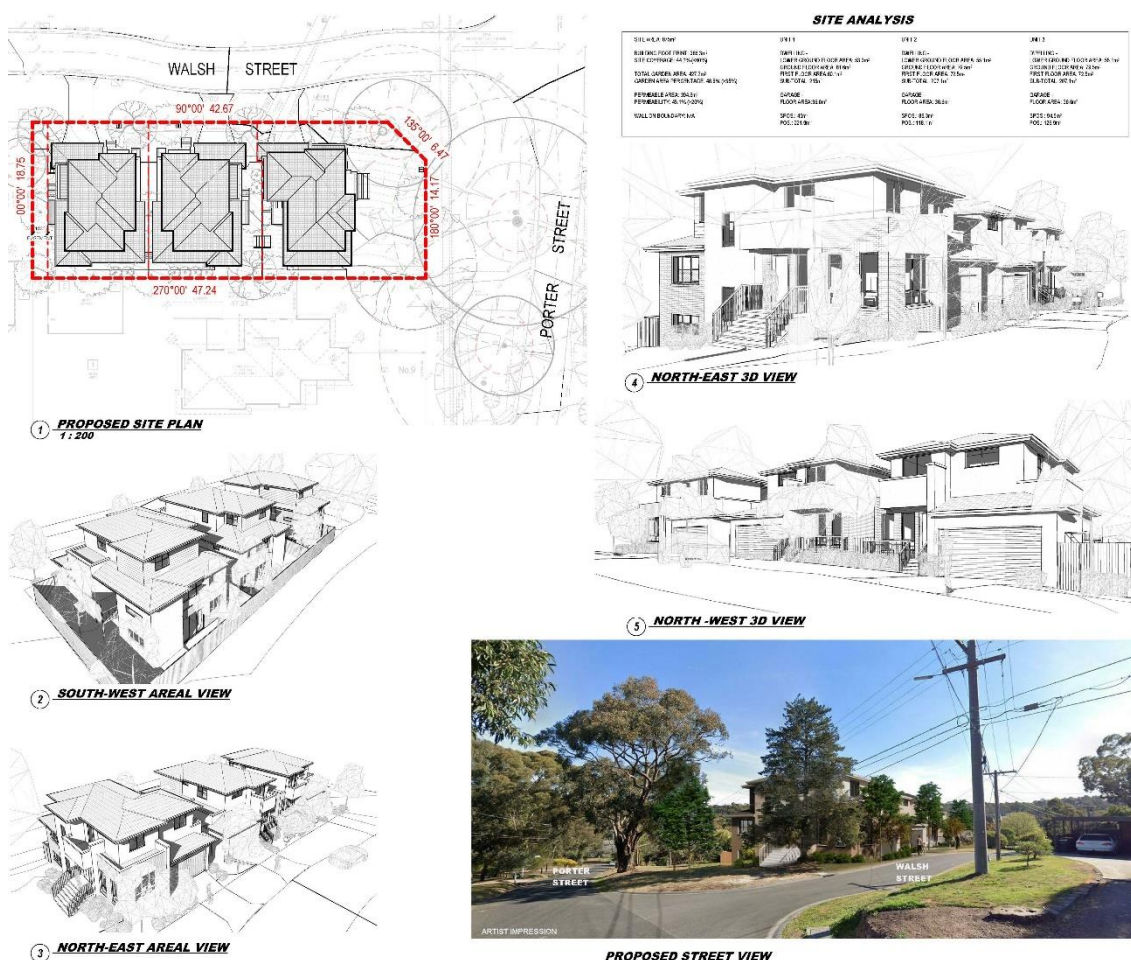


Figure 1: Site layout and images of the proposal.

2 Key features of the proposal include the following:

- The construction of three part-triple storey dwellings each with four bedrooms, four bathrooms and three living rooms.
- A double car garage for each dwelling with individual driveways and crossovers to Walsh Street.

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

² As defined as native vegetation under Clause 73.01.

- Building heights ranging between 8.85 metres to 9.38 metres due to the slope of the site. The built form has a two-storey appearance fronting Walsh Street (north), while three storeys from the south and part two to three storeys from Porter Street (east) and from the west. Each dwelling is provided with a small balcony off a first-floor level bedroom.
 - External materials are face brick, render, and pitched tiled roofs.
 - Removal of vegetation including native vegetation. The arborist report supporting the permit application identified the removal of 22 of the 23 trees on the site. However, the arboriculture evidence of Mr Kellett on behalf of the applicant identified 17 trees on the site to be removed, two (2) trees on the site to be retained, the retention of two (2) street trees and the protection of one (1) neighbouring tree. Only one (1) tree requires a permit under the Significant Landscape Overlay – Schedule 2 – *Bush and Semi-Bush Residential Areas (SLO2)* which is a Coast Tea-tree (*Leptospermum laevigatum*).
 - Provision of private open space in the form of both raised decks accessible by stairs to the ground, and ground level open space areas to the side and behind each dwelling.
- 3 Nillumbik Shire Council (**Council**) determined to refuse the application and the applicant seeks a review of that decision by the Tribunal.
- 4 Council’s grounds generally relate to the following issues:
- The proposal is not located within proximity to the Eltham activity centre or train station to support intensive form of development.
 - The proposed built form dominates the bush and semi-bush residential setting and reshapes the landscape.
 - Excessive building bulk, massing, scale, and height.
 - Insufficient separation between buildings and failure to maintain the detached character of the area.
 - Visual dominance of garages and driveways.
 - Extent of vegetation removal.
 - Insufficient space for canopy tree planting and landscaping.
 - Lack of provision for secluded private open space.
 - Poor access to people with limited mobility.
 - Overdevelopment of the site.
- 5 Prior to the hearing the Council sought leave to amend its grounds of refusal as follows:
- Amend existing Ground 1(b) to read:

The failure to adequately integrate the existing trees on site into the design.

- Amend existing Ground 2(f) to read:

The proposal fails to comply with Clause 55.03-8 – Standard B13 as the proposed level of landscaping provided is not in keeping with the landscape character of the surrounding neighbourhood and the proposal fails to adequately integrate the existing trees on site into the design.

- Include new Ground 2 j) to read:

The proposal fails to meet the objective of Clause 55.05-4 Private Open Space.

6 The applicant did not object to the changes, and I have allowed for the amendment to Council's grounds.

7 In contrast, the applicant considers the proposal is an acceptable outcome because:

- The proposal is consistent with the strategic context of the site and the design is site responsive, and respectful of the neighbourhood context. It is informed by the site's corner location, site constraints such as slope and retained trees, opportunities for revegetation, and location in an area where medium density housing should be supported.
- The proposal achieves a high level of compliance with the requirements of Clause 55 of the planning scheme, including standards governing setbacks, building height, site coverage, landscaping, accessibility, and solar access to open space and is not an overdevelopment.
- The proposed development provides a high degree of amenity for each dwelling in terms of flexible living arrangements and the relationship between internal and external spaces.
- Adequate provision to minimise amenity impacts from overlooking.

WHAT ARE THE KEY ISSUES?

8 The issues raised within the context of this review relate generally to the proposal's response to neighbourhood and landscape character, vegetation loss and landscaping and visual bulk with respect to amenity.

9 Having heard the submissions and evidence and inspected the site and surrounds, the key issues arising from this proposal are:

- Whether the development respects neighbourhood and landscape character?
- Are impacts on amenity unreasonable?

- 10 I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the Nillumbik Planning Scheme (**planning scheme**). Net community benefit is central in reaching a conclusion. Clause 71.02-3 - *Integrated Decision Making* of the planning scheme 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 for the benefit of present and future generations.
- 11 With this proposed development I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regards to the applicable policies and provisions of the planning scheme, assisted by my inspection, I find the proposal fails to achieve an acceptable outcome.
- 12 I have decided to affirm the decision of Council and direct that no permit be granted. My reasons follow.

WHETHER THE DEVELOPMENT RESPECTS NEIGHBOURHOOD AND LANDSCAPE CHARACTER?

- 13 Redevelopment of the site for the proposal is governed by a combination of strategic policy and the physical context affecting the site.

Strategic policy context

- 14 The site is in the General Residential Zone Schedule 1 – *General Residential Areas (GRZ1)* that affects pockets of land around Eltham. The site is within an area of GRZ1 that is located approximately 2 kilometres south-west of the Eltham Major Activity Centre (**Eltham MAC**) and 2.2 kilometres from the Eltham Railway Station with good access to Bolton Street and Main Road. It is within one of two areas of GRZ in Eltham with the other located to the east of the Eltham MAC.
- 15 The GRZ1 seeks to encourage a diversity of housing types and growth particularly in locations offering good access to services and transport while encouraging development that respects the neighbourhood character of the area.
- 16 I understand that both parties consider the site as having potential for medium density housing. Council is less supportive because of the distance of the site from the Eltham MAC, while the applicant considers the site has support for more intensive housing development under policy at Clause 16.01-1L – *Location of medium density residential development*.
- 17 Apart from supporting the location of medium density housing close to the Eltham MAC, Eltham Railway Station and other major activity centres and railway stations, the policy directs medium density housing in Nillumbik to areas with convenient access to public transport with frequent services, public open space and community and commercial facilities.



- 18 The policy also includes a policy guideline, to consider convenient access to public transport, public open space and community services that are within 400 metres.
- 19 The applicant argues the site satisfies this policy direction by being close to the following:
- A small neighbourhood shopping centre 140 metres to the west down the end of Walsh Street on the corner with Bolton Street.
 - A service station to the south down the end of Porter Street on Main Road.
 - A medical centre on the corner of Bolton Street and Main Road.
 - Bus services, including Bus Service 513 with a stop beside the medical centre that has a direct link to the Eltham Railway Station, and which runs every 30 minutes.
 - Open space areas at Eltham Lower Park and Eltham Bushland Reserve.
 - Childcare and aged care facilities and the Eltham High School a little further distant.
- 20 The planning scheme at Clause 02.03 includes strategic direction in relation to settlement which identifies Nillumbik’s key planning issue of providing a diverse range of dwellings within its urban areas while ensuring it is in keeping with neighbourhood character. It places emphasis on locating residential growth close to major activity centres including the Eltham MAC. However, the policy also provides direction to ensure increased diversity and amount of housing is sustainable and scaled to respect the surrounding topography.
- 21 Respect for character extends not only to the neighbourhood in terms of built form but also landscape character. Clause 02.01 recognises the high landscape value of Nillumbik. The site is affected by the SLO2 which includes landscape character objectives for providing housing in a residential location in a bushland setting with sensitive siting of buildings and works, and restoration of native vegetation and ensuring development and native vegetation removal is not detrimental to the character of the area.
- 22 The SLO2 highlights in the statement of nature and key elements of landscape the natural bush setting where vegetation dominates the skyline and gardens are mostly indigenous native plantings with remnant vegetation. Buildings are sited to minimise disruption to landform and to native vegetation and are generally obscured from the street. Key elements include the visual dominance of native vegetation including substantial indigenous trees and understorey species that creates a bushland character with buildings obscured from street view. Dwellings are designed and

coloured to blend in with the bushland landscape with an open garden to the street.

- 23 The provisions of the SLO2 are reinforced under Clause 15.01-5L – *Neighbourhood character – Nillumbik* which identifies the site within the *Bush Garden Precinct 2 (BG2)*.
- 24 The policy includes precinct wide objectives to maintain canopy trees, minimise detrimental impacts on the landscape, ensure buildings do not dominate the streetscape with garages not dominating the view from the street and allowing a continuous garden flow across boundaries. Precinct wide strategies include:
- Encourage contemporary design that does not detract from the preferred character of the area.
 - Retain or plant substantial trees as necessary to contribute to the desired future character of the area while maintaining solar access and residential amenity, and minimising bushfire safety issues.
 - Site development so it responds to existing vegetation (including drip-lines of trees) and minimises the removal of existing trees, including by:
 - Siting open space around significant vegetation.
 - Allowing sufficient space for:
 - The planting of vegetation that supports the preferred character of the area.
 - Canopy trees (preferably indigenous to the area) in the front setback of the development and in other strategic locations on the site.
 - Maintain the pattern of orientation and setbacks of adjoining properties and the streetscape.
 - Site and design driveways and car storage areas to occupy the minimum functional area.
- 25 The precinct wide policy guideline relating to developments like the proposal where existing trees are to be removed is to encourage a minimum planting of twice the number of existing trees.
- 26 Objectives specific to the BG2 include maintaining the dominance of indigenous vegetation where development is sited to minimise disruption to the precinct’s rolling and hilly topography and the significant native and indigenous tree canopy.
- 27 Strategies specific to the BG2 include:
- Design dwellings to have earthy tones and low hipped or split gabled roof forms.
 - Minimise the visibility of dwellings from the street.

- Discourage front or side fences that are visible from the street, where fencing is not a feature of the streetscape.
- Encourage gardens with native vegetation and predominantly indigenous trees that extend into the street space, with little or no delineation between public and private land.
- Retain remnant indigenous understorey vegetation where possible and replant where appropriate.

28 Policy guidelines specific to the BG2 for consideration as relevant include:

- Retaining or planting native and indigenous canopy trees at a density of one tree to every 150 square metres.³
- Supporting two storey buildings where this is characteristic of the area or where it will result in a positive contribution to the character of the precinct.
- Allowing development to vary the existing pattern of orientation and setbacks of the adjoining properties and the streetscape, where the development is located in areas close to activity centres and transport routes and such variations are justifiable to facilitate higher density development.

29 The policy invokes a strongly reinforced theme of retention and planting of native vegetation with an emphasis on substantial indigenous native canopy trees and a pre-eminence of vegetation over built form when viewed from the public realm.

30 What is clear is that the site is in an area where medium density housing is supported. The site is within a part of Eltham that satisfies the policy direction under Clause 16.01-1L and the purposes of the GRZ1. However, this does not mean the proposal receives a ‘free kick’ and that redevelopment of the site is not unfettered. The planning scheme has an established policy framework that requires a ‘high bar’ to be met with respect to neighbourhood and landscape character and this is required to be satisfied by how the design of the proposal responds to both the policy framework but also its physical context.

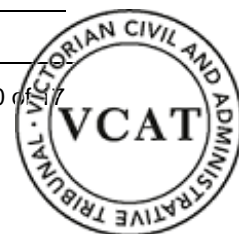
Physical context

31 The physical context of the site with regards to topography and landscape reflects what is generally found in Eltham.

32 Council says Eltham is defined by a scenic backdrop of hills and valleys, dominated by tree canopy. Built form is nestled under the canopy and blends in with the bush landscape. Council says the vegetated landscape is the dominant feature of the area with built form a secondary element.

33 The site is on a corner location with a slope down to the south and west (refer to Figure 1). On the other side of Walsh Street to the north the

³ Based on a site area of 875 square metres, this equates to 5.8 or 6 trees.



dwelling at 15 Porter Street sits higher in elevation with Porter Street running uphill to the north. In contrast, to the east on the other side of Porter Street, the dwellings at 10 and 12 Porter Street both sit lower in elevation falling away from Porter Street. Similarly, the dwelling abutting the site to the south at 9 Porter Street sits lower in elevation compared to the site, as does the dwelling abutting the site to the west at 12 Walsh Street (refer to Figure 2).



Figure 2: The adjoining dwelling to the west at 12 Walsh Street. Source: ZoneWorks.

- 34 Council says the building bulk, massing, scale, and height of the development is excessive and dominates the landscape. The height at three storeys is not sympathetic to the low scale character of the area and the size of the dwelling footprints are excessive.
- 35 The applicant says the extent of built form complies with relevant Clause 55 requirements including:
- Front setbacks to Porter Street at 9 to 9.45 metres. The applicant concedes the upper-level balcony of Dwelling 1 encroaches into the 9 metres setback by around 0.75 metres and would accept a condition to increase the balcony setback to 9 metres.
 - Side and rear setbacks compliant with Standard B17 of Clause 55.04-1 with 3 metres (2.58 metres for Dwelling 1) from the Walsh Street frontage, 2 metres from the southern (rear) boundary and 1.85 metres from the western side boundary.
 - Site coverage at 44% compared to the requirement of 60%.

- Site permeability of 45% compared to the requirement of greater than 20%.
 - Garden area of 48% compared to the requirement of 35%.
- 36 The applicant says building height is within the requirements of the GRZ1 at between 8.8 to 9.4 metres and three storeys compared to a limit of 11 metres and three storeys. The dwellings are not attached with separation of 2-3 metres at ground floor level and between 4.1 to 5.5 metres at first floor level and there are no walls on boundaries. Regarding separation between the dwellings, I find that due to the articulated form of the development, the extent of spacing varies with separation at ground floor level between Dwellings 2 and 3 being, at a minimum, 1 metre.
- 37 Council says the proposal has insufficient space for planting canopy trees of a sufficiently large size and for other landscaping to break up the large, bulky form of the dwellings. It says the landscaping response of the proposal fails to appropriately and adequately meet the large canopy treed character that is found in the neighbourhood and in Eltham more generally. As a result, the proposal is not consistent with what the planning scheme seeks regarding landscaping with large, tall canopy native trees.
- 38 I have had the benefit of landscape evidence from Mr Thomson on behalf of the applicant who says:
- Nearby properties in Porter Street and Walsh Street contain mixed style dwellings with gardens planted with exotic and native species. Many properties do not contain trees of sufficient size to make a contribution to canopy cover generally. Street level landscape character is mostly derived from medium to large Eucalyptus Street trees and sparsely scattered medium to large trees of various species in private property. Porter Street landscape is generally more treed with large indigenous canopy trees within the road reserve providing canopy component.
- 39 The applicant says the landscape character in Walsh Street is changing with recent medium density housing development with a less conspicuous landscape character (refer to Figure 3).
- 40 The applicant relies on the evidence of Mr Kellett that most trees on the site are not highly valued in landscape terms, noting that only one tree requires a permit for removal with all other trees able to be removed at any time.
- 41 The applicant says it is proposed to retain two trees on the site including a Mexican Cypress (*Cupressus lusitanica*) and a Prickly Paperbark (*Melaleuca stypheliodes*).
- 42 The evidence of Mr Thomson is that 15 canopy trees can be planted that will grow to a minimum height of 7 metres or more. This includes a Yellow Box (*Eucalyptus melliodora*) that could grow to a height at maturity of 18 metres with a canopy spread of 12 metres and 4 Yellow Gum

cultivars (*Eucalyptus leucoxylon* 'Rosea') that can potentially reach a height at maturity of 9 metres with a canopy spread of 6 metres. The applicant says this is a good indicator that the site is not overdeveloped and will achieve a landscaping outcome that is respectful of the landscape character of the area.



Figure 3: Recent development at 7 Walsh Street. Source: ZoneWorks.

Tribunal's findings

- 43 Generally, under normal circumstances, one would potentially conclude that the design achieves relatively good compliance with various Clause 55 ResCode standards and requirements. The proposal will appear as a two-storey development from Walsh Street and as a single dwelling form when viewed directly from Porter Street. The extent of vegetation removal would not, under usual circumstances, be considered a significant impact and the extent of planting including canopy trees would be sufficient to form a view supportive of the proposal.
- 44 However, I find the situation for this site, in this location in Eltham, a different prospect, both in a policy and physical context sense.
- 45 I find that the combination of the topography and elevational characteristics of the site and its surrounds with slope and the corner setting, makes it a more prominent location compared to mid-block locations within the neighbourhood.⁴ This makes any redevelopment of the site subject to a more visually exposed outlook. The proposal's part two and three storey-built form design combined with the extent of vegetation removal

⁴ Such as that shown in Figure 3.

exacerbates this visual exposure, which makes the proposal stand out as a conspicuous design of intensity that is at odds with the evident low-rise character of the neighbourhood and with the landscape outcomes identified in the planning scheme for the BG2 area and for built form under the SLO2.

- 46 Further highlighting the incongruous nature of the proposal's design is the single storey form of dwellings adjoining the site. The dwellings abutting the site to the south and west and those on opposite sides of the roads to the east and north are all single storey in form, albeit with some higher walls due to the downhill slope.
- 47 In particular, the flat roof design of the adjacent dwelling to the west combined with its excavated lowered form, means that it sits low in the landscape (refer to Figure 2). This, when combined with the part three storey form of Dwelling 3 with a height of 9.3 metres on its west elevation and setback between 1.85 metres to 3.3 metres from the common side (west) boundary, makes the proposal appear as a dominant and somewhat overbearing built form. This is apparent when looking at Figures 1 and 2 and is highlighted in the statement of grounds of Mr Bruce Pittard⁵, the owner of the adjoining dwelling to the west at 12 Walsh Street, which includes dimensioned diagrams showing a variation between the levels of an outdoor private courtyard and the top of the roof ridge of Dwelling 3 at approximately 11.27 metres. I find this degree of variation creates too much of an impact with respect to visual bulk and dominance.
- 48 Similarly, when viewed from Porter Street Dwelling 1 fails to provide a stepping down design that follows the land slope from north to south. As a result, it presents as a large built form with an elevated entry porch and protruding balcony at first floor level. This bulky design will be accentuated with oblique views due to the corner location. The retention of the street trees and two trees located on the corner frontage of the site does assist with some partial screening, but not enough in my view to create an outlook where built form is subservient in the broader landscape.
- 49 I do consider the proposal to retain two large street trees within the Porter Street frontage and the large Mexican Cypress on the front boundary to Porter Street meritorious. However, another significant shortfall with the proposal is the landscaping response in terms of provision for planting large canopy trees that complement the large canopy trees found in the neighbourhood.
- 50 I agree with Mr Thomson's observation that the landscape character of Porter Street is stronger with larger canopy trees present compared to Walsh Street. However, what is evident with development in Walsh Street, such as depicted in Figure 3, is not necessarily the outcome the planning scheme

⁵ A non-party, but whose statement of grounds, I have considered.

is seeking regarding a landscape response for significant canopy tree planting which dominates the view.

- 51 Mr Thomson's evidence included a landscape plan showing the planting of one large Yellow Box as a canopy tree within the front setback to Porter Street. However, no other proposed canopy trees would reach a height at maturity of 10 or more metres, which would generally match the building heights of the proposal. The proposed landscaping certainly does not exceed those heights to any great extent. Council says it would be seeking canopy tree heights like that of the Yellow Box to make a respectful response to the canopy tree character of the landscape in the neighbourhood.
- 52 I agree with Council.
- 53 I provided Council and the applicant an opportunity post-hearing for procedural fairness, via an interim order dated 1 March 2022, to make written submissions addressing me on a correction in the evidence of Mr Thomson regarding the proposed planting of a Yellow Gum cultivar in lieu of another cultivar species of *Eucalyptus leucoxylon* 'Euky Dwarf', which apparently reaches a height at maturity of around 6 metres. Council says the cultivar is not a canopy tree in terms of what is found in the neighbourhood or more generally in Eltham. The applicant disagrees saying the cultivar will reach heights of 9 metres and is a canopy tree. I have considered their respective responses.
- 54 Canopy trees such as the Yellow Gum cultivars, whether 'Euky Dwarf' or 'Rosea', are just that. They represent a species selection for sites where space can be tight and where heights that match a two-storey form are found to be appropriate. However, within the context of the landscape character found in the neighbourhood, they are a medium sized canopy tree that would roughly match the height of the proposed dwellings but not achieve the landscape outcome sought under the planning scheme for large canopy trees which can maintain the vegetated canopy skyline under which built form would be more subservient.
- 55 To reasonably provide for larger canopy trees, I find the proposal does not adequately provide the space sufficient for planting that would achieve the policy outcome for planting native and indigenous canopy trees at a density of one tree to every 150 square metres, which for the site, equates to 5.8 or 6 trees or the high tree canopy evident in the area and sought by the planning scheme.
- 56 The built form is too large for the site and for its location and does not offer a more modest presence which follows the slope and with larger setbacks to allow for larger canopy tree planting. A more respectful landscape response would comprise a combination of large and medium canopy trees supported by an understorey layer of shrubs that creates a leafy outcome.

57 Generally, I find the proposal fails to appropriately respect the neighbourhood and landscape character of the area. Space is insufficient within the setbacks to Walsh Street and from the western and southern side boundaries for canopy tree planting and both height and separation between dwellings is insufficient to reduce visual bulk impacts.

ARE IMPACTS ON AMENITY UNREASONABLE?

58 Visual bulk is an issue I have discussed earlier in terms of character, but for adjoining properties to the west, south and with the corner location, is a concern in terms of amenity.

59 Although the adjoining property to the south has a driveway and carport and garage running along the common boundary offering some relief from the southern elevation of the proposal, the setbacks and three storey heights sequestered from the slope is considered a significant impact.

60 Similarly, and as I have highlighted in the statement of grounds of Mr Pittard, for the dwelling to the west, the difference in built form height is significant and has detrimental impacts on the amenity of that dwelling. The lowered form of the adjacent dwelling exacerbates the impact, which will have detrimental effects on the use of a private courtyard that is located close to the common boundary with the site.

61 Generally, I consider impacts on amenity from visual bulk unreasonable.

62 Another amenity issue relates to private open space. Council says the areas set aside for private open space for the dwellings are inappropriate and inadequate. In addition, Council says the private open space areas are poorly oriented for solar access which undermines their useability and functionality of each dwelling.

63 The applicant noted that due to the east-west orientation of the site, provision of private open space to the rear of the proposed dwellings results in a southern orientation. The applicant has attempted to overcome this constraint by providing part of the private open space areas between the dwellings supplemented by decks on the upper levels due to the slope, with access to ground levels via external stairs.

64 The proposal includes adequate areas for private and secluded private open space. However, it is the useability and functionality of these areas that is in issue. The proposal includes ground level open space over sloping land and compensates for this by providing level decks that are elevated above ground. They are located to the side of each dwelling, less than 3 metres in width, partly covered by the first-floor levels and with access from studies. The applicant says they are provided as an addition to ground level secluded private open space areas as a level area for BBQ gatherings and the like. The ground level open space areas are accessed via living rooms in the sub-floor level at the rear of each dwelling.



- 65 Although Council is critical of how the private open space areas have been provided, I find their provision acceptable in terms of satisfying the objective under Clause 55.05-4 of providing adequate private open space for the reasonable needs of residents. The solar orientation is problematic, but an acceptable outcome and one that would only benefit from greater setbacks and additional space.
- 66 Regarding other relevant amenity aspects such as overshadowing and overlooking, I do not consider they have impacts on amenity that are unreasonable.

ACCESSIBILITY

- 67 Due to the slope on the site, Council was critical of the lack of easy access for people with limited mobility due to the prevalence of stairs for accessing each dwelling.
- 68 The applicant appears to dismiss this issue because of design difficulties and an acceptance that for dwellings built on a sloping site in a hilly area in streets without public footpaths, it would have to be accepted that there will be inherent difficulties for people with limited mobility.
- 69 I do not accept this proposition and consider that a design can be achieved to provide improved accessibility for people with limited mobility. I consider the proposal fails in this regard.

CONCLUSION

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

Christopher Harty
Member

