

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1972/2020
PERMIT APPLICATION NO. W016/00/026P

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987*; Nillumbik Planning Scheme; application for a three lot subdivision and removal of vegetation; objections and Council does not support proposal; VCAT hearing; issues of vegetation removal, whether the application plans were sub-standard and too much 'planning on the run', the degree of strategic support for the proposal and the site characteristics and setting; the acceptability or otherwise of the proposed building envelopes; permit refused.

APPLICANT	Mr Mark Lendon
RESPONSIBLE AUTHORITY	Nillumbik Shire Council
RESPONDENTS	Alan Murfett, David Adam, Julie Lynne Fink
REFERRAL AUTHORITIES	APT - APA Group (APT O&M Holdings Pty Ltd), AusNet Electricity Services Pty Ltd, Melbourne Water, Yarra Valley Water
SUBJECT LAND	26 Warringah Crescent ELTHAM VIC 3095
HEARING TYPE	Hearing
DATE OF HEARING	29 and 30 July 2021
DATE OF ORDER	19 October 2021
CITATION	Lendon v Nillumbik SC [2021] VCAT 1217

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & 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: Webster Survey Group
 - Drawing numbers: 1688501H-02
 - Dated: 4 March 2020
- 2 In application P1972/2020, the decision of the responsible authority is affirmed.
- 3 In permit application W016/00/026P, no permit is to issue.

Philip Martin
Senior Member



APPEARANCES

For applicant	Mr Mark Bartley of HWL Ebsworth lawyers, who called expert ecology evidence from Mr Aaron Organ of Ecology & Heritage Partners
For responsible authority	Mr David de Giovanni (consultant planner)
For respondent	The following neighbours appeared in person – Mr Alan Murfett, Ms Julie Fink and Mr David Adam.



INFORMATION

Description of proposal	Three lot subdivision and vegetation removal
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	Neighbourhood Residential Zone Schedule 1 (NRZ1) Significant Landscape Overlay Schedule 2 (SLO2) Environment Significance Overlay Schedule 1 (ESO1)
Permit requirements	Clause 32.09-3: a permit is required for subdivision pursuant to the NRZ1 Clause 42.03-2: a permit is necessary to remove native vegetation and to construct a driveway within five metres of a substantial native tree pursuant to the SLO2 Clause 42.03-2: a permit is triggered to subdivide land, to remove native vegetation and to construct a driveway within 5m of a substantial native tree as per the ESO1 Clause 52.17: requires a permit for the removal, destroying or lopping of native vegetation on this site which has a land area in excess of 0.4 hectares
Relevant scheme policies and provisions	Clauses 15, 19, 21.05-1, 21.05-3, 22.12, 52.17, 56 and 65.



Land description

The subject land lies on the south side of an unsealed section of Warringah Crescent. This is an unusually large residential lot at 4175 sqm. The site is currently improved by an older split level brick dwelling more located towards the front of the site. The site is well landscaped and includes a number of canopy trees, some of which are quite tall. There is a pronounced slope across the site, reflecting the natural slope of the whole area, from the front down to the rear. Council estimates the drop in height across the site as being 15.5 metres.

Tribunal inspection

After a considerable delay due to covid lockdown restrictions, the Tribunal inspected the site and surrounds. This included walking around the subject land and also visiting Coolabindi Chase further to the south.



REASONS¹

WHAT DOES THIS APPLICATION INVOLVE?

- 1 The subject land at 26 Warringah Crescent in Eltham is an unusually large (4175 sqm) and sloping residential lot on the south side of the street, sloping downhill from front to back. It currently features an older split-level brick dwelling closer to the front boundary and a very large back yard. The more northern lot to the west of the review site and the lots to the north and east of it are part of an older subdivision featuring unusually large lots, whereas the lots to the south are more conventional in size and ‘suburban appearance’. The review site is well landscaped and features a number of large canopy trees. This whole area along Warringah Crescent has an attractive semi-bush character, reinforced by the use of ‘post and wire’ fences and this section of Warringah Crescent being unsealed.
- 2 It is proposed that there be a three lot subdivision of the subject land and associated vegetation removal. Notably, most of the land closer to the front boundary would be the new Lot 1 with an area of 1435 sqm, encompassing the existing dwelling. However a strip of land alongside each side boundary (in the nature of a ‘handle’) would be allocated on the western side to the new Lot 2 and on the eastern side to the new Lot 3.
- 3 In simple terms, what would be created is two battle-axe style Lots 2 and 3, sitting behind the new Lot 1. The new Lot 2 would have an area of 1390 sqm and feature an irregular style building envelope at the rear. The new Lot 3 would have an area of 1350 sqm and feature a conventional shaped building envelope at the rear. The side-vehicle access for Lot 2 would involve removing the shed which currently sits just downhill from the north-western corner of the review site.
- 4 As updated during the hearing, paragraph 29 of the Council written submission helpfully sets out the 13 trees² which are proposed to be removed and where a planning permit trigger arises. These trees to be removed all have a ranked ‘retention value’ of ‘low’ or ‘medium’.
- 5 Objections have been received. Despite planning officer support for the proposal, Council has issued a Notice of Refusal to Grant a Permit. This has come on review to the Tribunal, with the hearing of this matter coming before me over 29-30 July 2021. The updated plans mentioned in my Order 1 above were substituted by consent of the parties.
- 6 Over the hearing I heard submissions from the persons shown above, plus I received the expert ecology evidence of Mr Organ. Over the course of the

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 Being, as updated, trees 4, 5, 11, 12, 13, 19, 20, 45, 46, 47, 49, 62 and 63.



hearing process, the applicant suggested a handful of changes to aspects of the proposal, with the aim of responding to concerns being raised or issues emerging from the debate. After a long delay caused by the Covid lockdown, I was able to do a site inspection. This included walking around the review site itself, taking in the streetscape and also visiting Coolabindi Chase streetscape further to the south. Coolabindi Chase is a real contender for saluting on the podium of Melbourne suburban streets with truly ostentatious and garish two storey dwellings³.

- 7 To summarise my findings, at an in-principle level, it is difficult to see that the subject land is incapable of supporting a subdivision which would accommodate one more dwelling in the current backyard area. Indeed no one at the hearing before me went so far as to argue that the site is undevelopable beyond the current single dwelling.
- 8 With the proposal here for three lots, I do not see any fatal problem in itself, simply with these lots being smaller than the exceptionally large residential lot at No. 30 Warringah Crescent and the other like lots in the balance of the older subdivision. This is because simply from a 'lot size' point of view, I accept that the subject land is in a transition area, between the older/larger lots to the north and the newer/more conventional sized residential lots to the south.
- 9 Rather, the key point of controversy seems whether this location and the strategic planning context can reasonably support a subdivision with building envelopes geared to two new dwellings at the rear. In principle, it might be possible that an excellent set of application plans proposing two more sparingly sized building envelopes at the rear would warrant serious consideration for approval. However I find that it would be premature for the current application to be approved, where the application plans are problematic with the level of information they show and where I consider the two proposed building envelopes excessive (even allowing for the changes suggested by the applicant on the second day of the hearing). It has also made the applicant's case much more difficult here where the proposal is simply for vegetation removal and subdivision, without knowing what proposed form of actual development/landscaping might go ahead.
- 10 Hence my orders have directed that no permit issue. I will now run through the main issues.

EXTENT OF STRATEGIC PLANNING SUPPORT FOR A THREE LOT SUBDIVISION OF THE SUBJECT LAND?

- 11 On the one hand, the very fact that the site is as large as 4175 sqm points to its potential for further subdivision, as does the fact that it has a residential form of zoning and is located in an established residential area.

³ And the only street I can remember where there is a significant brick letterbox built right alongside the roadway guttering – drivers beware !



- 12 However I consider that the degree of strategic planning support for the potential three lot subdivision of the subject land is quite tempered. I say ‘tempered’ because:
- (a) The site is zoned NRZ1, where less change is anticipated compared to say the General Residential Zone.
 - (b) The site is also affected by the SLO2 and the ESO1, which ‘set the bar higher’ and point to the need for greater caution with the potential redevelopment of the review site.
 - (c) The site is well away from public transport and the Eltham town centre. Particularly with the major natural slopes involved, this would not be an easy area to walk any major distances and it seems likely that properties in this location are quite car-dependent.
 - (d) Where other large lots in this older subdivision have been subdivided, they have not been mid-block sites with no rear vehicle access. Rather, they have either been corner-sites or had second vehicle access from the rear. I refer here to:
 - The following two larger lots that had the benefit of rear vehicle access – the land to the west of the subject land and the land on the south side of the ‘elbow’ of Warringah Crescent further to the east.
 - The following two larger lots that are corner sites – No. 23 Warringah Crescent to the north of the subject land and the land to the north of the aforementioned ‘elbow’ further to the east of the subject land.
- 13 Putting this another way, it is not as if this is a flat and very walkable location near shops and a railway station, which has no overlay controls and some form of more intensive form of zoning.

HOW SENSITIVE/CHALLENGING A SITE IS THIS TO MORE INTENSIVELY UTILISE?

- 14 As mentioned, the very size of the site, its location in an established residential area and its residential form of zoning are a plus for potentially utilising the subject land more intensively. It also assists the situation that the existing dwelling is centrally located vis-à-vis the side boundaries and sited closer to the front boundary. Compare this for example to the abutting property to the east, which has its dwelling located close to the rear boundary of its site. I also acknowledge that the adjacent properties alongside the south-west corner of the subject land involve smaller lots and large double storey dwellings i.e. a very robust interface.
- 15 However even allowing for these positive factors, overall I would still describe this as being a very challenging and more sensitive site to potentially utilise more intensively.



- 16 An obvious factor here is the unusually steep slope of the subject land, which was very evident during my site inspection. This has particular implications for the workability or otherwise of the two proposed side driveways that would extend downhill, quite close to each side boundary.
- 17 A stand-out factor is that the site includes a number of native canopy trees, some of them quite large. Hence it is very difficult to see how even one new dwelling could be provided for in the current back yard area without some extent of native tree removal, thereby creating a permit trigger under Clause 52.17 and/or the two overlay controls at work.
- 18 In addition, the scrubby character of this location is reinforced by the subject land falling within the 'Semi-Bush (SB3) Precinct' pursuant to Clause 21.12 in the Planning Scheme. Very relevantly for our purposes, the Statement of Desired Future Character for this Precinct includes the following statement – "Development is sited so that buildings nestle into the landform and are partly obscured from view by the topography or tree canopy. Development responds to sloping landforms and creates minimal disturbance". Relying both on these provisions and the semi-bush nature of this location, I see real weight in the submission by Mr de Giovanni that 'the bar is set higher' here with the proposal needing to establish that it would be an acceptable 'neighbourhood character' outcome.

ARE THE APPLICATION PLANS SUB-STANDARD AND DID THE VCAT HEARING INVOLVE TOO MUCH 'PLANNING ON THE RUN' BY THE APPLICANT?

- 19 As mentioned, updated plans were substituted at the beginning of the hearing.
- 20 However even working with substituted plans, Mr de Giovanni for Council was still highly critical of what he saw as their sub-standard quality. He submitted that these plans are missing key information, such as necessary details about the extent of cut and fill and the precise location and nature of the two intended driveways leading down to the building envelopes. He queried what extent of the critical root zone of the adjacent trees would be affected by the proposed two side driveways and whether these trees could realistically survive the necessary intrusion – the extent of any such overlap is not shown on the updated plans.
- 21 Overall, Mr de Giovanni submitted that the proposal is 'poorly resolved'. He rhetorically questioned whether the application plans 'raise more questions than answers'. He also argued that with a more complicated site such as this, the proper approach would have been to put forward a 'subdivision and development' proposal, not merely a subdivision proposal.
- 22 In response, Mr Bartley for the applicant made a handful of suggestions in the course of the hearing about how additional permit conditions could 'fill the gap' with some of these contentious points and/or shortcomings of the application plans. Notably, on the second hearing day he offered that each



building envelope could have its setback to the nearest side boundary extended from 3 metres to 4 metres. He also offered for the Lot 3 building envelope to have an additional two metre setback from the rear boundary. Mr de Giovanni was generally supportive of these changes being offered, but submitted that such concessions corroborated his 'poor application plans' submissions and pointed to excessive 'planning on the run' by the applicant.

- 23 On the one hand, I share the concerns of Council that the applications plans are rather crude in how they show certain aspects of the proposal. In particular, they lack important detail about the precise location of the intended side driveways for Lots 2 and 3 and how the creation of these driveways can be done with minimal disturbance to the adjacent trees. The application plans lack suitable notations, showing the relevant setbacks of the edge of the intended driveways from the side boundaries and the nearest trees.
- 24 In summary, on the one hand, it is not a great look for the applicant that the application plans do lack important information. Also the concessions being offered by the applicant regarding the building envelope during the hearing did have some extent of 'planning on the run' feel to it. For example, Mr Organ had already completed his expert ecology evidence on behalf of the applicant, when the offer was made by the applicant on the second hearing day to increase the relevant side boundary setbacks for the building envelopes.
- 25 On the other, I do not see this situation as in itself fatal to the proposal, for the following reasons. The aforementioned concessions offered by the applicant on day 2 of the hearing were generally well received and it would be a sad day at the Tribunal if advocates were harshly treated by a member for trying to be constructive in dealing with issues arising during a planning merits hearing. However the self-evident problems with the application plans and the fact that design concessions were being offered by the applicant on the second hearing day are not a great look for the proposal.

PROPOSED ROUTE OF SIDE DRIVEWAYS

- 26 Where the application plans are lacking detail with precisely how the two proposed side driveways would be built and interface with the affected trees, and how much 'cut and fill' would be involved, this omission is surprising and unfortunate. I agree with Council that this is a significant issue, in terms of having some confidence whether or not the overlapping trees could survive the potential construction of the two side driveways.
- 27 Again this did not make the applicant's case any easier and this issue remains unresolved until proper information about the 'tree protection zone' (TPZ) of the affected trees is established, along with to what extent the intended driveways would intrude into the relevant TPZs.



- 28 At this stage, my initial impression is that this aspect of the proposal is probably feasible, if done in the context of a suitable permit condition requiring that root-sensitive construction techniques be used and the necessary driveway excavation minimised. Also Mr Bartley indicated that the precise location of any one part of a driveway could be fine-tuned, to maximise keeping the driveway as far away as possible from any affected trees.
- 29 Also (putting to one side whether or not a planning permit trigger arose at the time) I agree that the indications are that the proposed eastern driveway route has already had fill added to it, to give it a more raised and level slope.
- 30 In summary, I see likely prospects that this aspect of the proposal can be appropriately managed, but this would need to be more properly substantiated.

DOES THE PROPOSAL INVOLVE FATAL ISSUES WITH THE PROPOSED TREE REMOVAL?

- 31 As mentioned above, incorporating some corrections made during the hearing, the proposal involves seeking planning approval for the removal of 13 trees. This is where the site inspection was helpful, to see these trees up close, as well as the photos shown at the hearing.
- 32 There was a good discussion about these trees at the hearing. In addition the Tribunal received expert ecology evidence from Mr Aaron Organ. It was his expert evidence that the extent of the tree removal was reasonable, particularly where none of the trees proposed to be removed have been rated as having a 'high' retention value. Mr Organ acknowledged that the intended removal of the thirteen trees is not ideal, but saw this situation as still acceptable in this urban setting, with a site zoned NRZ1. He discussed the 'off-setting' regime that would apply.
- 33 As I said at the hearing, it was commendable and refreshing that Mr Organ addressed the issues and the questions put to him in a commendably direct and transparent way, rather than trying to 'bat away' the more challenging points arising.
- 34 For the following reasons but subject to my comments further below about tree 48, whilst clearly this is a more challenging and rather 'marginal' aspect of the proposal, I see no fatal problem in itself arising with the intended removal of the thirteen relevant trees, even allowing for the role of the ESO1 and the SLO2.
- 35 First, my site inspection confirmed that many of these trees are smaller and/or in a compromised condition/state of health or structure already. Of the thirteen trees to be removed, only five are rated as having a retention value of 'medium' and none have a 'high' retention rating. With the five trees rated as 'medium', with the benefit of my site inspection, I would (with one proviso) not see most of these five trees as 'jumping off the page



as outstanding trees. The proviso is that I accept that tree 48, with an estimated height of 27 metres, is a tree of some real consequence to be removing (albeit rated as having a ‘medium’ retention value, rather than ‘high’).

- 36 Second, I accept that the landscape values of this location are somewhat varied, from lot to lot, and north-to-south. For example, the No. 30 lot to the east is very scrubby, whereas the other adjacent smaller lots in the south-west corner of the subject land have minimal landscaping and feature two storey built form that is very ‘in your face’. Also the very large No. 23 lot on the northern side of this section of Warringah Crescent has a lot of cleared lawn area and is semi-suburban in appearance.
- 37 Third, I consider the expert evidence of Mr Organ on this issue to be credible and to carry real weight. It was fortunate in this regard that Mr Organ was able to visit the subject land as part of his report and giving of evidence at the hearing, despite the lockdown restrictions caused by the Covid pandemic which occurred later on.

ARE THE TWO PROPOSED BUILDING ENVELOPES ACCEPTABLE?

- 38 With each of the two proposed building envelopes, as per the substituted application plans but incorporating the design changes offered by the applicant during day 2 of the hearing, each would have:
- An ‘outboard’ four metre setback from each side boundary.
 - An ‘inboard’ three metre setback from the proposed internal subdivision boundary which would separate the intended Lots 2 and 3.
- 39 It was telling that both Mr Bartley and Mr Organ at different times in the hearing properly acknowledged that the proposed building envelopes here are large/generous in size.
- 40 The proposed eastern Lot 3 building envelope is of a conventional shape and would be setback 10 metres from the rear boundary.
- 41 The proposed western Lot 2 building envelope is more L-shaped, presumably to allow for the better retention of the large tree located near the south-western corner of the site. The eastern section of this building envelope would have (as amended) an eight metre setback to the rear boundary and its western section has a 14 metre equivalent setback.
- 42 At a more general level, the other parties beyond the permit applicant were all critical of what they saw (at a global level) as the excessive extent of the two proposed building envelopes. However the applicant argued that a large site such as this can reasonably accommodate two building envelopes as proposed.
- 43 My deliberations on this issue have been greatly assisted by my actually going out on site and walking around. This was important both to



understand the nature of the site itself, plus to better appreciate the interface with the neighbouring properties.

- 44 I see as acceptable the interface between the two intended building envelopes and:
- The intended Lot 1 to the north/the existing dwelling. Notably, with this intervening area between the existing dwelling and the northern end of the proposed building envelopes, the intervening distance, the change in height of the natural ground level and the relevant canopy trees to be retained should ‘soften’ this interface and have privacy benefits.
 - The rear boundary. I consider the (as amended) proposed intervening distance between the southern edge of the building envelopes and the southern boundary to be appropriate and it is positive that various southern perimeter canopy trees will be retained. Particularly, the western building envelope benefits from it ‘wrapping around’ the relevant existing large tree.
- 45 I turn now to the proposed arrangement where each building envelope would have an ‘inboard’ three metre setback, to the intended internal boundary between the proposed Lots 2 and 3. Hence if each new building ‘inboard’ extended right up to the edge of the building envelope, the two facades facing each other would be six metres apart.
- 46 From a ‘neighbourhood character’ and ‘internal amenity’ point of view, I have major concerns whether this ‘six metre separation’ is acceptable. In the situation where the site is zoned NRZ1, plus the subject land/No. 24/No. 30 Warringah St properties are all unusually large lots with dwellings that currently are spread well apart, I see a real likelihood that having two new dwellings (internally) potentially sitting as close as six metres from each other would be incongruous and visually jarring. Similarly query if it would be incongruous for there to be a larger buffer area to the existing dwelling further to the north (which sits considerably higher up the slope) vis-à-vis the smaller buffer area (at the same height) internally between the two proposed building envelopes.
- 47 Likewise with the potential adverse ‘internal amenity’ and/or privacy implications of such close proximity, particularly if there are any inwards-facing windows.
- 48 I similarly see major tensions arising with how close each building envelope would extend to the side boundary. As amended, each building envelope would be setback from each side boundary by four metres.
- 49 During my site inspection of the back yard of the subject land, one consideration which really stood out was the lack of any perimeter landscape screening at the rear of both side boundaries. That is:
- With the rear of the eastern side boundary, this boundary area is visually very open, due to the absence of any concentrated boundary plantings.



Hence whilst the existing No. 30 dwelling is set somewhat back from the common side boundary, there are very exposed views of that dwelling from the rear of the review site and vice-versa.

- With the rear of the western side boundary, my site inspection confirmed that this south-western corner of the subject land currently has a rather ‘in your face’ interface with the eastern façade of a very visually prominent/gaudy two storey neo-Georgian style large dwelling⁴. This interface is made exceptionally jarring where (on the other side of the side boundary) this abutting property has in the intervening area created a large sealed courtyard.

50 Given these acute interface tensions with the rear side neighbouring properties, the question is how much setback room is needed, for side walkway access to the anticipated dwellings and to have the opportunity to create a substantial landscape strip on the review site side of each side boundary.

51 With the benefit of my site inspection, it is clear cut that a three metre setback would be quite inadequate.

52 Where the second hearing day the applicant offered for four metre side setbacks to operate instead, I see this as getting much closer to the mark. But I still have residual concerns whether ‘four metres’ is fit-for-purpose and these concerns are made worse where this application before me does not include/show:

- The proposed form of actual development.
- The proposed form of actual new perimeter landscaping.

53 Hence I see this as a fatally unresolved aspect of the proposal. The problematic nature of this issue is reinforced by the following - from what I saw during my site inspection, I have no confidence that either side neighbouring property will provide any future meaningful perimeter landscape screening on their side of this section of each side boundary⁵. It also did not help the situation that at the hearing, Mr Organ was not able to express a view whether or not a four metre side setback would provide enough room for new planting, because his evidence was completed by the time that concession was made.

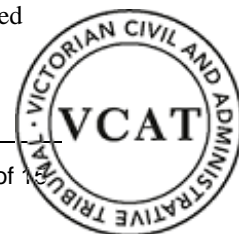
CONCLUSION

54 For the removal of any doubt:

- Relying on the credible expert evidence of Mr Organ, I see no inherent ecological consequences of the proposal, that are so negative as to be fatal when viewed in isolation. Whilst I respect that the neighbours

⁴ Some might say ‘McMansion’.

⁵ Noting as I have said that the abutting neo-Georgian property to the west features a large sealed courtyard in its intervening area.



highly value the local flora and fauna and that Mr Adam is a professional wildlife photographer, it was the expert evidence of Mr Organ that this area does not feature any recognised threatened or rare flora or fauna⁶. Mr Organ's view was that the removal of the 13 trees would not cause any unreasonable biodiversity negative impacts, and that there was not any credible/recognised 'wildlife corridor' running through this location.

- Beyond those matters I have discussed above, I see any other objections raised against the proposal as being so peripheral and carrying such little weight, that I do not need to specifically respond to same.

- 55 As mentioned above, at an in-principle level, there would seem good prospects for (in theory) a subdivision proposal which simply provides for one new dwelling in the back yard of the subject land and the associated tree removal. If this involves removing some of the 13 trees that have been in debate before me, in-principle that seems reasonable. In this more straight forward scenario, it may be workable for the proposal to simply seek permission for the relevant tree removal and subdivision, albeit some careful thought would still be needed regarding the size and precise location of the proposed building envelope⁷.
- 56 By contrast, 'the jury still seems out' regarding the inherent feasibility on a mid-block site such as this (with no rear vehicle access) of seeking planning approval for all of the following – retaining the current older brick house on its own new lot, creating two new battle-axe lots, removing the relevant native trees and having two building envelopes at the rear. Apart from the obvious problems with the two larger building envelopes currently being put forward, I have made findings above that the degree of strategic planning support for the site's subdivision is tempered and that the situation with the proposed tree removal is 'marginal'. I have also found that more information should be provided, to demonstrate that the two proposed side driveways would have an acceptable interface with the critical root zone of the affected trees which the applicant seeks to retain.
- 57 Whilst it might be possible that very skilful and less ambitious revised design and a first class set of application plans could put this type of three lot subdivision proposal at least up for legitimate consideration, the proposal before me falls short of this high standard. It also inherently introduces an additional layer of uncertainty with a challenging site like this that the proposal simply sought 'subdivision' approval, without any 'development' aspect and without any landscaping plan being provided. In other words, I see a strong case that a more challenging development site

⁶ Mr Organ acknowledged the advice of Mr Adam that the nationally threatened Swift Parrot has been sighted in this area, but confirmed that there is no important or critical habitat for that parrot on the subject land.

⁷ For example, it would be preferable if tree 48 (a Candlebark tree) could be retained. I note that during his cross examination, Mr Organ acknowledged that tree 48 is a 'good specimen'.



such as this needs a combined ‘subdivision/development/landscaping’ proposal, for the overall proposal to be assessed on a more holistic basis.

- 58 However any fresh proposal would need to assessed afresh on its own merits, on another day.

Philip Martin
Senior Member