

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P901/2020
PERMIT APPLICATION NO. 514/2019/03P

APPLICANT	S Georgy Pty Ltd
RESPONSIBLE AUTHORITY	Nillumbik Shire Council
SUBJECT LAND	33 Arthur Street ELTHAM VIC 3095
WHERE HELD	Melbourne
HEARING TYPE	Hearing
DATE OF HEARING	29 March 2021
DATE OF ORDER	30 March 2021
CITATION	S Georgy Pty Ltd v Nillumbik SC [2021] VCAT 289

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Site Line Building Design and Planning
 - Drawing numbers: TP-01 to TP-11 (Issue C).
 - Dated: 12 February 2021.
- 2 In application P901/2020 the decision of the Responsible Authority is set aside.
- 3 In planning permit application 514/2019/03P a permit is granted and directed to be issued for the land at 33 Arthur Street, Eltham in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of nine, three storey attached dwellings in the Activity Centre Zone Schedule 1.

J A Bennett
Senior Member



APPEARANCES

For S Georgy Pty Ltd	M John Joyner, Town Planner of Melbourne Planning Outcomes. He called expert evidence from the following witness: <ul style="list-style-type: none">• Mr Robert Thomson, Landscape Architect of Habitat Landscape Environmental Design Consultants.
For Nillumbik Shire Council	Mr Jason Kane, Barrister instructed by Nillumbik Shire Council.

INFORMATION

Description of proposal	Construction of nine, three storey attached dwellings.
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. ¹
Planning scheme	Nillumbik Planning Scheme.
Zone and overlays	Activity Centre Zone Schedule 1 (ACZ1). Significant Landscape Overlay – Schedule 1 (SLO1).
Permit requirements	Clause 37.08-4 (construct a building or construct or carry out works in ACZ1. In Precinct 2 a development must meet the requirements of Clause 55).
Relevant scheme policies and provisions	Clauses 11, 12, 15, 16, 21.03, 21.04, 21.05, 22.07, 37.08, 52.06, 65 and 71.02.
Land description	The site is located on the north west corner of Arthur and Bible Streets. It has a frontage to Arthur Street of approximately 20 metres, a side boundary along Bible Street of 49.5 metres and an area of 990 Square metres. The site was previously occupied by a single dwelling but is now cleared of both buildings and vegetation.

¹ Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.



ORAL DECISION AND REASONS GIVEN²

- 1 After having heard from the two parties, considered their written and oral submissions and taken an overnight adjournment, I gave an oral decision with reasons to grant a permit. The following is a record of the reasons given orally.
- 2 The proposal involves construction of nine, three storey townhouse style dwellings, attached in a row along the Bible Street frontage. The site is on the eastern edge of the Eltham Activity Centre and within Precinct 2A in the Activity Centre Zone Schedule 1 (**ACZ1-2A**). Precinct 2A includes a mandatory height limit of 3 storeys (10.5 metres) and a preferred front setback from kerb line of 5.5 metres. The Precinct is identified on the Framework Plan as “Residential interface/medium density housing”.
- 3 Whilst I appreciate Mr Kane’s submission that protection of the Shire’s character is highly regarded by the community and the Planning Scheme, it is also the case that the Eltham activity centre is intended to be the focus of more intensive development in order to take pressure off the residential hinterland and green wedge areas. The introduction of the ACZ and the type of development that has been occurring over the past 5 to 10 years is in response to those policy directions. The character of the centre has changed quite dramatically in that time and continues to change as demonstrated by the many larger apartment and mixed-use complexes that have or are being constructed, including those within Precinct 2.
- 4 I therefore support the concept of providing more intensive built form on the review site. I consider that at 3 storeys it does provide a built form transition to the residential areas to the east. Although these areas have been historically developed for modestly sized one and two storey dwellings on single lots, together with some small-scale medium density development, the NRZ allows new buildings up to 2 storeys in height. Given the proximity to the activity centre, I would anticipate more medium density developments up to 2 storeys in height to the east of Bible Street.
- 5 I also support the concept of providing townhouse style dwellings in an attached row along Bible Street. I acknowledge that they look different to the more usual apartment style buildings that have been approved to date. The fact they have a continuous built form along Bible Street is typical of such forms of attached or row development and a corner site with a long frontage is an ideal location for a row of attached dwellings. This type of built form may not have been present in Eltham before, but it provides a diversity of housing choice which is an outcome sought in planning policy. I accept it may not be a suitable style of housing in residential areas away from the activity centre and the ACZ, where local policy at Clause 22.01

² 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.



encourages medium density development to appear as single dwellings and asks that continuous building lines and blank walls be avoided.

- 6 I note that the attached row layout allows each dwelling to have a separate and distinct street address and that the layout of each provides opportunities for passive surveillance from all three levels. Whilst I have been critical of ‘reverse living’ proposals in the past because of major design shortcomings such as no ground floor habitable rooms and upper levels fully screened, those shortcomings result from physical or locational constraints such as mid-block sites. Those shortcomings do not arise in this proposal and the ‘reverse living’ design provides a high amenity for future occupiers.
- 7 I find the internal amenity of these dwellings to be high because each has two aspects – east and west. Amongst other benefits it allows for crossflow ventilation and excellent day light access without the constraints that often exist in apartment style developments. Council was critical about the size, dimensions, and orientation of the proposed balconies. The amended plans have included an extra west facing balcony for each dwelling which can act as secondary space off the kitchens. The primary balconies face east, have a pleasant outlook over the park and to the hilly terrain further east, and exceed the minimum requirements in Clause 55. They receive morning sun and the west balconies receive afternoon sun. As a result, occupiers have a choice of location depending on the time of day – something that is often not available in an apartment style dwelling. Given the north-south alignment of the land, it is unrealistic to expect the balconies to achieve northern orientation. Why forego the benefits of being able to provide unconstrained and unscreened views over Bible Street when that presents as a design opportunity.
- 8 Car parking located behind the dwellings achieves the outcome sought by policy. In addition, provision of a single crossover and driveway from Arthur Street minimises potential pedestrian conflict points along the street frontages and improves the streetscape appearance of the development.
- 9 I do not agree with Council’s criticism about non-compliance with Clause 55. I have referred to character earlier in my reasons but in some cases Council’s assessment is wrong. For example, the 58.7% site coverage is compliant with standard B8 and the private open space is compliant with standard B28. Whilst there can be differences of opinion about whether the façade articulation and colours and materials meet the detailed design standard B31, I consider that the building does provide sufficient articulation and that when combined with the use of the materials and colours as shown on the elevations, will be an acceptable response to the Eltham character.
- 10 I lastly turn to landscaping, which is an important issue, even though a planning permit is not required under the SLO applying to the area. My initial response to the boundary setbacks and space available for landscaping was that insufficient room had been left for canopy trees. It is a



strong theme in local policy and the ACZ1 that developments provide canopy landscaping.

- 11 However, after having heard from Mr Thomson and viewed photos of the landscaping provided in narrow areas on other sites in the activity centre, I consider that the proposal will in time provide a high-quality landscaping outcome. Mr Thomson's landscape proposal includes the planting of 24 canopy trees with a mature height of more than 8 metres. I was particularly concerned that the 1.9 metre setback to Arthur Street would be inadequate to allow canopy trees to grow, but the photo of the development at 31 Dudley Street demonstrates that taller vegetation can grow in narrow setbacks. The upper level building setbacks along both frontages will allow for some canopy spread towards the building, although the species selected do not have wide canopies.
- 12 The somewhat unusual location of the footpath close to the kerb along Bible Street and the position of the overhead powerlines will allow canopy trees along that frontage to reach the anticipated mature height without excessive trimming and lopping as is often the case when trees are planted under power lines.
- 13 In conclusion and having regard to the requirements of Clauses 65 and 71.02, I consider that the proposal is an acceptable outcome, and that when assessed against all relevant policies it does, on balance, achieve a net community benefit.
- 14 I will therefore direct that a permit be granted with conditions based on those discussed at the hearing.

J A Bennett
Senior Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	514/2019/03P
LAND	33 Arthur Street ELTHAM VIC 3095

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of nine, three storey attached dwellings in the Activity Centre Zone Schedule 1.

CONDITIONS

- 1 The plans to be endorsed are the plans identified as sheets TP01 to TP11, Issue C dated 12 February 2021.
- 2 The development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
- 3 Before the development commences, three copies of a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit. The plan must show:
 - (a) A survey of all existing vegetation and natural features;
 - (b) The area or areas set aside for landscaping;
 - (c) A schedule of all proposed trees, shrubs/small trees and ground water. This schedule shall include a mixture of exotic plants and plants selected from the Council document 'Live Local Plant Local' showing the botanical and common name of each plant, the quantity to be planted, the pot size and spacing;
 - (d) The location of each species to be planted and the location of all areas to be covered by grass, lawn or other surface material;
 - (e) Paving, retaining walls, fence design details and other landscape works including areas of cut and fill;
 - (f) Appropriate irrigation systems;
- 4 Unless with the prior written consent of the Responsible Authority, before the occupation of the development, the landscaping works shown on the endorsed plans must be carried out, completed and maintained to the satisfaction of the Responsible Authority.



- 5 The nature and colour of building materials employed in the construction of the buildings and works hereby permitted shall be harmonious with the environment, to the satisfaction of the Responsible Authority.
- 6 Vehicular access and egress each dwelling from the roadway must be by way of a vehicle crossing constructed / upgraded to the requirements of the Responsible , to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under an *Infrastructure Works permit*.
- 7 The width of the driveway at the property boundary must match the width of the vehicle crossing.
- 8 Vehicle crossing must comply to “Vehicle Crossing Policy” Version 1.0 January 2013 and to Standard Drawing (NS3000, NS3010, NS3020, NS3021 or NS3030).
- 9 The design of the driveway, visitor parking areas and associated drainage, must be submitted to the Responsible Authority for approval. The approved design levels must be shown on the construction plans for the site. The driveway and visitor parking areas must be constructed according to the levels shown on the plans.
- 10 Storm water from the surface of the driveway and visitor parking areas must be collected using a minimum 225mm diameter longitudinal underground drain and 225mm wide trench-grates across the driveway or grating pits positioned within the driveway all at maximum spacing’s of 15 metres. All to the satisfaction of the Responsible Authority.
- 11 The driveway and visitor parking areas must be constructed and formed to such levels to ensure they can be utilised at all times, all in accordance with the approved plans. All paved areas must be drained and constructed in concrete, asphalt or similar sealed surface. Construction must be carried out to the satisfaction of the Responsible Authority and maintained accordingly.
- 12 The development hereby permitted, including new paved areas, must be drained so as to prevent the uncontrolled discharge of storm water from the subject site across any road or footpath or onto any adjoining land. Storm water must not cause any nuisance or loss of amenity in any adjacent or nearby land by reason of the discharge of storm water.
- 13 Each dwelling must be provided with an independent underground storm water drainage system. Stormwater from the roof of each dwelling must be directed, via the underground system, to independent holding tanks (One/Unit) with a minimum storage capacity of 2,000 litres/tank. Water in the holding tanks may be used for one or more of the following purposes in each Unit: toilet flushing; property irrigation; vehicle washing and any other purpose approved by the Responsible Authority. The overflow from



the tanks must be directed via the internal drainage system to an on-site detention system for storage and detention. The outlet from the on-site detention system must be directed to the nominated point of discharge. All works are to be carried out to the satisfaction of the Responsible Authority.

- 14 Under no circumstances are storm water drains to be located under the proposed new dwellings.
- 15 The locations of holding tanks for each dwelling are to be drawn on the site plan and the plan submitted to Council for approval.
- 16 The on-site detention device shall be located and designed by a qualified engineer and plans submitted to the Responsible Authority for approval.
- 17 The engineer designing the on-site detention device must obtain **tc** and **tso** figures from Council. The permissible site discharge must be restricted to a pre development flow rate for a 1 in 5 year average recurrence interval (ARI) event and detained for a 1 in 10 year ARI event.
- 18 The overflow from the on-site detention system must be directed to the nominated point of storm water discharge.
- 19 The on-site detention device must be constructed, at no cost to Council, as per approved plans and Council's specification.
- 20 Construction of the on-site detention system must be carried out under Council supervision and under an *Infrastructure Works permit*. The detention system cannot be located under a structure or within an easement.
- 21 No polluted, effluent and/or sediment laden runoff from the development site is to be discharged directly or indirectly into Council's drains, Melbourne Water's drains or watercourses or adjoining private property during the construction of the development.
- 22 In this regard, sediment fencing and/or pollution/litter traps must be installed on site and serviced accordingly, all to the satisfaction of the Responsible Authority.
- 23 This permit will expire if one of the following circumstances applies:
 - (a) The development is not commenced within 2 years of the date of this permit.
 - (b) The development is not completed within 4 years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within 6 months afterwards if the development has not commenced, or 12 months after if the development has commenced but is not yet completed.

---End Conditions---

