

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1664/2020
PERMIT APPLICATION NO.620/2019/03P

CATCHWORDS

Section 79 *Planning and Environment Act 1987*; Nillumbik Planning Scheme; Neighbourhood Residential Zone, Schedule 1; Significant Landscape Overlay, Schedule 3; To construct two or more dwellings on a lot; Neighbourhood and landscape character.

APPLICANT	Arthur Sarantis
RESPONSIBLE AUTHORITY	Nillumbik Shire Council
RESPONDENT	Graham Kenneth Fildes
SUBJECT LAND	40 Frank Street, Eltham 3095
HEARING TYPE	Hearing
DATE OF HEARING	30 June 2021
DATE OF INTERIM ORDER	26 July 2021
DATE OF ORDER	7 October 2021
CITATION	Sarantis v Nillumbik SC [2021] VCAT 1168

ORDER

No permit granted

- 1 In application P1664/2020 the decision of the responsible authority is affirmed.
- 2 In planning permit application 620/2019/03P no permit is granted.

Peter Gaschk
Member



APPEARANCES

For applicant	Mr Arthur Sarantis in person
For responsible authority	Mr Esmond Angeles, Town Planner
For respondent	Mr Graham Kenneth Fildes in person



INFORMATION

Description of proposal	Construction of two, double storey dwellings, in a side-by-side layout, with associated buildings and works and vegetation removal on a lot.
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.
Planning scheme	Nillumbik Planning Scheme (the Scheme)
Zone and overlays	Neighbourhood Residential Zone, Schedule 1 (NRZ1) Significant Landscape Overlay, Schedule 3 (Bush Garden Character) (SLO3)
Permit requirements	Clause 32.09-6: To construct two or more dwellings on a lot. Clause 42.03-2: To construct a building or construct or carry out works that exceed 7.5m in height above natural surface of the ground directly below it. To remove vegetation and construct buildings and works within 5.0m of a ‘substantial tree’ ¹ .
Relevant scheme policies and provisions	Clauses 02.03-5, 15.01-1S, Clause 15.01-2L-01, 15.01-2L-02 ² , 15.01-5L ³ , 16.01-1S, 16.01-1L ⁴ , 32.09, 42.03, 55, 52.06, 65 and 71.02-3.
VCAT Decisions	<i>Trik Investments Pty Ltd v Mornington Peninsula SC [2019] VCAT 1314; de Matteo v Nillumbik SC [2016] VCAT 454; Hart v Nillumbik SC [2021] VCAT 154.</i>

¹ A ‘substantial tree’ is defined in the SLO3 as ‘vegetation that has a trunk circumference greater than 0.5m at one metre above ground level’.

² Under Amendment C135 to the Scheme, gazetted 22 July 2021, policies previously specified in Clause 22.01 are now contained in Clauses 15.01-2L-02 – Medium Density Housing Design and Clause 16.01-1L – Location of Medium Density Residential Development. Policy previously specified in Clause 22.12 is now in Clause 15.01-5L – Neighbourhood Character – Nillumbik.

³ Ibid

⁴ Ibid



Land description

The review site is described as Lot 1 PS 96537 PSH Nillumbik, CT-8963/868, 40 Frank Street, Eltham. The lot is affected by Covenant F063761⁵.

The land is generally rectangular with a skewed front and rear boundary, front and rear boundary widths of 18.5m, side boundary lengths of 43.8m, and approximate area of 801sqm. A 2.4m wide easement extends along the rear boundary.

The review site is improved by a single storey 1970's rendered dwelling with pitched roof. A double carport is located adjacent to the dwelling. There are several small out-buildings to the side and rear of the dwelling. The land falls approximately 1.5m from the north-east down to the south-west. There are approximately 12 trees of varying condition/maturity on site.

The area generally features mature vegetation that extends across most private properties, along road reserves and public open space areas. Steep topography and mature vegetation are dominant features of the neighbourhood.

The review site abuts single dwellings to the west and south and abuts existing public open space to the east. The roof line of the existing single storey dwelling is clearly visible when viewed from the reserve environs and street. The Eltham Woods Children's Resource Centre is also located further east of the reserve.

The review site is located some 2km from the Eltham Activity Centre.

Tribunal inspection

Undertaken unaccompanied on 6 October 2021.⁶

⁵ Covenant F063761 has 3 requirements: (1) Preventing any fencing except for natural timber-stained capped fencing. (2) Preventing any fencing with 25 feet of the front boundary unless approved by Council. (3) Preventing materials other than substantially brick or brick veneer. Based on the submissions from the parties I am satisfied the proposal would not breach these requirements.

⁶ The timing of the inspection was impacted by the State Government's lockdown restrictions arising due to Covid19.



REASONS⁷

WHAT IS THIS PROCEEDING ABOUT?

- 1 This proceeding is a review by Arthur Sarantis (**the applicant**) against the Nillumbik Shire Council (**the council**) failure to grant a permit within the prescribed time under s79 of the *Planning and Environment Act 1987*, (**the Act**). The proposal involves the construction of two, double storey dwellings, in a side-by-side layout, including some vegetation removal (**the proposal**), on land described as 40 Frank Street, Eltham (**the review site**).
- 2 The council does not support the proposal and highlights the review site is located over 2km from the Eltham Activity Centre. It says this is significant, being over 30 minutes walking time from that activity centre. It also says the topography of the locality makes walking over longer distances challenging. In this context the council considers there is limited strategic support for the proposal.
- 3 The council submits the development represents a poor design outcome and responds unsatisfactorily to the adjoining public reserve to the east. It says from a design perspective, the proposal is contrary to the neighbourhood and landscape character policy aspirations for this area.
- 4 The respondent agrees with the council's concerns. He says Schedule 3 to the SLO3 indicates that building heights should be no more than 7.5m above the natural ground line below. He submits the proposal exceeds this limitation with a proposed building height of 8.4m.
- 5 He notes the review site is in a *Bush Garden Character* precinct that requires car storage areas (garages) not to dominate or create excessive visual bulk to the street frontage. He says the proposed side by side style development is completely at odds with existing residential development in the area.
- 6 The applicant does not agree with the council or respondent. He says there are many positive design features of this proposal that respond appropriately to neighbourhood character and strategic objectives of SLO3. He says the proposal achieves a high degree of compliance with relevant Standards and Objectives of Clause 55. This includes front, side, and rear setbacks, overlooking and overshadowing objectives. He submits there is adequate provision for new planting, including one canopy tree proposed in the front and rear setbacks of each dwelling, with lower landscaping provided around the remainder of the site.

⁷ 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 this material will be cited or referred to in these reasons.



7 Both the council and applicant referred me to some VCAT decisions in support of their respective submissions. I have considered these in my assessment of this proposal.

THE PROPOSAL

8 The proposal is described in the council's submission as follows:

- The demolition of all building and works from the site.
- The development of two double storey dwellings in a side-by-side layout.
- Dwelling 1 has a wider than standard single garage and tandem space, ground level bedroom, kitchen, dining and living areas, along with amenities. A further 3 bedrooms, leisure room and amenities are located at first floor.
- Dwelling 2 has a double garage, ground level kitchen, dining, living area, family room and amenities, with additional first floor bedrooms, leisure room and amenities.
- Dwellings 1 and 2 have courtyards of 120 and 143 square metres respectively.
- Dwelling 2 has a 6.4m garage wall on boundary and Dwelling 1 is set back 1.0m from the east boundary, with a lengthy 600-800mm high retaining wall located close to the east boundary.
- The development has a site coverage of 44%, permeability area of 55.9% and garden area of 43.6%.
- Contemporary design is proposed with parapet wall forms, pitched roof form and narrow vertical windows. Main materials include brick and render.
- The building has a maximum height of 8.3m. Around 500-600mm cut and fill is proposed across the width of the site.
- Trees 14 (Spotted Gum) and 17 (Red Box) are proposed to be removed.⁸

PROCEDURAL ISSUES

9 At the commencement of the hearing, the applicant sought leave to amend the permit application, by substituting amended development plans and a landscape plan for the exhibited permit application plans.

10 I was satisfied the plans had been circulated in accordance with VCAT Practice Note (PNPE9). The council and respondent did not oppose the substitution and had prepared submissions based on the revised set of plans.

⁸ These trees are identified in the Arboricultural Impact Assessment prepared by Nicholas Holiman, TMC Reports, dated 21 August 2019. At the hearing the applicant clarified that Tree 14 was located on an adjoining property and would not be removed. He also advised that Tree 17 would be retained as part of the proposal. I note a planning permit is still required for buildings and works proposed within 5.0m of an existing substantial tree as identified in SLO3 of the Scheme.



I ordered the substitution of these plans and the hearing proceeded based on the revised plans⁹.

- 11 On 22 July 2021, Amendment C135 (**AmC135**) to the Nillumbik Planning Scheme (**the Scheme**) was gazetted. The explanatory report to AmC135 included the following statement:

The amendment replaces the Municipal Strategic Statement (MSS) at Clause 21 and Local Planning Policies at Clause 22 of the Nillumbik Planning Scheme with a Municipal Planning Strategy (MPS), local policies within the Planning Policy Framework (PPF) and to various local schedules consistent with:

- The Victoria Planning Provisions as a result of Amendment VC148; and
- The Ministerial Direction – The Form and Content of Planning Schemes.

- 12 I considered it appropriate to seek submissions from the parties, addressing any implications arising from AmC135 to this proceeding. My interim order dated 26 July 2021, provided opportunity for parties to make submissions should they wish.

- 13 On 28 July 2021 the council submitted:

... the changes brought about by Amendment C135 Nil is considered policy neutral as key policy objectives have been preserved and relocated within the Planning Policy Framework. The relevant locations have been clearly specified in the attachment. In light of this, Council maintains its assessment and position that the proposal cannot be supported, as it will result in a poor outcome that is contrary to the specified policies and controls in place.

- 14 The council maintained its ‘grounds of refusal’ to the proposal (as set out in its notice of refusal dated 5 October 2020¹⁰).

- 15 The applicant also lodged a written submission to AmC135 on 3 August 2021. He accepts that AmC135 was essentially ‘policy neutral’. However, he submits the amendment continues to support in-fill residential development within the existing urban areas, which included the NRZ1 that now applied over the review site. He said that wording within Clauses 16.01-1L, 74.01 and 74.02 reinforced his submission the proposal was appropriate.

- 16 I have considered these submissions in my assessment of the proposal. I generally accept the views expressed by the parties that the essence of

⁹ See the Tribunal’s Interim Order dated 26 July 2021.

¹⁰ The Tribunal Order for Appeal P1664/2020 under Section 79 of the Act was issued on 9 October 2020. A Notice of Decision to Refuse the application was issued by the council on 5 October 2020. The Council maintains its original position and does not support the proposal for the reasons listed in the Notice of Decision to Refuse. I advised the parties I would continue to treat the review proceeding under s.79 of the Act. Noting s.4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision by the responsible authority is deemed to be a decision to refuse to make the decision. The parties did not contest this approach.



AmC135 is policy neutral. Nevertheless, I have assessed this proposal in the context of the amended policy provisions introduced into the Scheme, as they were expressed and gazetted under AmC135.

WHAT ARE THE KEY ISSUES?

- 17 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. I agree with the parties the key issue in this matter centres on neighbourhood and landscape character. I express this below:
- Does the proposed built form respond appropriately to existing and preferred neighbourhood and landscape character?
- 18 Having considered the submissions from the parties, including photographs and other material, relevant Scheme provisions and my inspection of the review site and surrounds, I have decided to affirm the council's decision and direct that no permit issue.
- 19 I find the proposed development, in a side-by-side dwelling layout, will visually dominate the frontage setting to the existing streetscape. The design response proposes an unbroken front façade that will present across most of the width of the review site¹¹. This extent of unbroken built form to the frontage is not characteristic of the area, where side setbacks enable opportunity for mature landscape treatment and effectively set the building form within the landscape. The proposed design is not responsive to the existing and preferred character sought for the *Bush Garden Character* precinct that applies over the review site and immediate surrounds.
- 20 The design response also introduces two large garage doors facing the street. I find this design feature and outcome is not characteristic of the area. The garage forms are visually highlighted to the street by the amount of hard stand area required for the two vehicle driveways proposed within the frontage. Additionally, the two vehicle crossovers and flared driveways reduce opportunity for additional canopy tree planting in the front of the site. This would help off-set the visual dominance of the building features and hard stand area I have described above.
- 21 I am also concerned the double storey form proposed along the eastern side boundary, at a height of 8.3m, set back 4.0m and extending 24.4m along that boundary, will result in excessive visual bulk to the adjoining open space reserve and when viewed obliquely from the street.
- 22 I find these design shortcomings are not site responsive to the key neighbourhood and preferred landscape character outcomes and policy objectives sought under the NRZ1, SLO3 and in policy at 15.01-2L-02 and 15.01-5L.
- 23 I explain my reasons below.

¹¹ I acknowledge the proposal includes a 1.0m side setback at ground level for the garage to Dwelling 1 along the eastern boundary.



RELEVANT PLANNING CONTEXT

- 24 The review site is in the NRZ1. Key zone purposes relevant to this proceeding include:
- To recognise areas of predominantly single and double storey residential development.
 - To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- 25 There are no variations to Clause 55 provisions in Schedule 1 to the NRZ. I note the proposed development satisfies the relevant minimum garden area required under Clause 32.09-4 (43.6%). The proposed building height of 8.3m falls under the 9.0m maximum building height. The zone purpose recognises both single and double storey-built form under this zoning.
- 26 I also note Planning Practice Note 91 - Principle 5, includes the following statement:
- ...The density or number of dwellings on a lot cannot be restricted in the Neighbourhood Residential Zone unless special neighbourhood character, heritage, environmental or landscape attributes, or other constraints and hazards exist. Dwelling density is no longer the basis for restricting development outcomes in the Neighbourhood Residential Zone. It is no longer appropriate to limit housing growth in existing urban areas just because an area is perceived to be remote from jobs, services and public transport..."
- 27 However, the zone purposes seek to manage and ensure new residential development that respects the identified neighbourhood and landscape character of the area.
- 28 Equally, under Schedule 3 of the SLO, the review site is in a *Bush Garden Character* precinct, described as featuring *mature, native, and indigenous trees and planted bush style gardens*. The Statement of Nature and Key Elements of Landscape expresses this in the following terms:
- The visual dominance of vegetation including large native and indigenous trees and bush garden planting.
 - The way in which the majority of development sits within the landscape with minimal excavation, and dwellings are partly obscured from view.
 - The hillsides appear to be covered by trees even when developed with houses.
 - Dwellings with colours that blend with the landscape.
 - A general lack of front fencing.
- 29 Importantly, I note new residential development under the SLO3 is to be compatible with the scale, setbacks and character of existing development and be *dominated* by vegetation. This includes providing mature native and

indigenous trees and planted bush style gardens that helps obscure and filter views of dwellings. I take from this policy objective that built form is to be visually recessive and set within a dominate landscape context. This is the existing character setting I observed during my inspection of the site and surrounds.

30 At Clause 4.0 of the Schedule, relevant Decision Guidelines reinforce this landscape character outcome:

- Whether the proposed development conforms with the preferred character of the area as stated in the relevant Shire of Nillumbik Neighbourhood Character Study brochure for the area.
- The scale, shape, bulk, design (including height and siting) and external finishes of any buildings and works and the impacts of these on the landscape qualities of the area.
- Whether the proposal retains existing high canopy trees, keeps buildings below the predominant tree canopy height and is sited below the ridge line.
- Whether the topography of the locality and the predominant tree canopy height enables higher buildings to be accommodated within the landscape and that the proposed development does not detrimentally affect long distance vistas and views, including views across river valleys.
- Whether the proposed development minimises excavation.
- The extent to which the proposal maintains the vegetation dominated streetscapes and vistas, including views across river valleys.
- The need to ensure new buildings and works, including driveways fit within the landscape and topography of the land.
- Whether front fences are commonly provided in the street and the style of fence.
- The need for additional landscaping and screen planting to maintain the existing and preferred landscape qualities identified in the Neighbourhood Character Study.
- Whether the proposed development contributes to increased housing diversity within proximity to the Eltham Major Activity Centre and transport nodes/routes.

(Tribunal emphasis added)

31 I find these character outcomes are again reinforced at Clause 15.01-5L (Neighbourhood Character) noting the following objectives:

- To maintain the existing vegetation including canopy trees.
- To minimise detrimental impacts on the landscape from site erosion and excavation.
- To ensure buildings do not dominate the streetscape.

- To ensure that car parking areas, garages and carports do not dominate sites when viewed from the street.
- To maintain and enhance the continuous flow of the garden settings and the openness of the front boundary treatment.

(Tribunal emphasis added)

32 The General policy guideline under this clause for medium density housing proposals also notes:

For medium density housing where existing trees are to be removed, encouraging a minimum planting of twice the number of trees that existed on the site prior to the development.

33 And further. At Clause 15.01-2L-02 (Medium Density Housing Design) the following strategies are to be considered for two or more dwellings on a lot:

- Encourage medium density housing development that is designed and sited to appear of a single dwelling when viewed from the street.
- Avoid continuous building lines and blank walls.
- Encourage building lines and walls that are articulated, contain visual features or are otherwise varied.
- Discourage medium density housing that relies on the visual amenity provided by road reserves or other public land to facilitate the development.

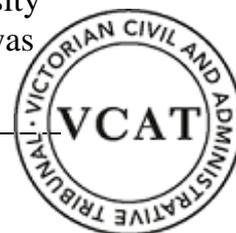
34 I agree with the council the zone and overlay purposes and policy settings I have described above, place a clear expectation that medium density housing design is to address neighbourhood character and landscape settings. In this regard, I agree with both parties the design bar is set high for new residential development in this neighbourhood character precinct.

Site Location

35 The council is concerned that the review site is located some distance (2km) from the Eltham Activity Centre. It describes this as a ‘hinterland setting’ that presents ‘walkability challenges’ given existing topography and lack of convenient access to public transport.

36 I accept the site is in a bush character hinterland setting. Having walked around the area, I also agree there would be significant challenges when walking to key services, retail, and community infrastructure. I therefore accept the proposition put by the council and respondent, that the location of the review site, being some 2km from the Eltham Activity Centre, is not conveniently located to these services.

37 However, distance, topography, and lack of convenient access to public transport, does not prohibit some modest form of medium density housing on the review site. My inspection revealed there are some medium density developments in Frank Street and surrounds. Albeit this development was



generally low scale, in scattered locations, in villa/townhouse, or tandem (one dwelling behind the other) layouts.

- 38 However, I consider the addition of one dwelling as proposed on the review site is a modest infill development proposal. I am also satisfied that some double storey form can be considered, noting the area includes dwellings in double storey form and the zone purposes acknowledges both single and double storey form.
- 39 The key question, therefore, centres on whether the design response has achieved the appropriate balance of these design elements and objectives in this neighbourhood.

DOES THE PROPOSED BUILT FORM RESPOND APPROPRIATELY TO EXISTING AND PREFERRED NEIGHBOURHOOD AND LANDSCAPE CHARACTER?

- 40 In addressing this question above, it is significant the proposed design response introduces a new built form response that is not currently seen within this street. Indeed, I confirmed by inspection, the closest side by side development was in Batman Road, over 1km away.
- 41 The applicant also acknowledges that side-by-side developments can be ... often maligned as being detrimental to neighbourhood character, due to the inherently longer and wider forms and dominance of garages.
- 42 However, he points out the design response has sought to address this concern by designing the built form under one pitched roof form. In this regard, he says the proposal satisfies the council's Medium Density Housing policy objectives at Clause 15.01-2L-02 that:
- Encourage medium density housing development that is designed and sited to appear of a single dwelling when viewed from the street.
- 43 I accept this clause encourages medium density to be designed in a manner that reinforces the appearance of a single dwelling. I also accept the applicant has sought to introduce a particular design response that goes some way to address the objective of this clause. However, I am concerned this design response does not go far enough. Noting this will be the first side-by-side design response introduced into Frank Street and other medium density development in the street is generally of lower scale, with single central accessway or tandem layout.
- 44 As I described earlier, the combination of the NRZ1 and SLO3 design purposes and objectives, has lifted the design bar higher for new residential development proposed on the review site. Nevertheless, I accept that side-by-side residential development is a legitimate form of in-fill development that has now been considered by numerous Tribunals.



45 The applicant referred me to a recent decision by Member Birtwistle in *Trik Investments Pty Ltd v Mornington Peninsula SC*. Member Birtwistle observed:

Firstly, the planning scheme does not mandate a particular housing typology or multiple dwelling arrangement. It does not require, for example, a particular design response, such as one behind the other or side-by-side format. The council has not, for example, varied clause 55 standards that might support a certain dwelling topology. In the absence of a robust policy position for a particular dwelling topology, a development's fit into the neighbourhood must be assessed on a case-by-case basis.¹²

46 I agree with Member Birtwistle that the '*development's fit into the neighbourhood must be assessed on a case-by-case basis*'.

47 I also accept there are some positive design elements associated with this proposal, including:

- The side-by-side design enables a sense of space at the rear of the site and achieves a larger area of open space that includes generous setbacks to reinforce rear yard character.
- The varied front setback aligns appropriately to the street and is generally respectful of the existing dwelling setback variations that exist on adjoining lots.
- The garages are recessed behind the front façade of the dwelling.
- The appearance of the development is a modern, contemporary styled building with a pitched roof form, consistent with pitched roof form of dwellings within the area.

48 However, Clause 15.01-2L-02 is not limited to these design characteristics alone. For example, this clause also seeks to:

- Avoid continuous building lines and blank walls.

49 In this regard, apart from a 1.0m side setback proposed to the eastern boundary at ground level, the front façade extends across the remainder of the site frontage. The proposed built form at ground level extends along the remainder of the site width for 18.5m, without any visual break in building facade to the street. In my view, this design does not avoid the appearance of a continuous building line along the frontage as sought above.

50 From oblique views along the street, I am also concerned the proposed upper-level form, placed under one pitched roof form, will further accentuate this continuous built form line to the street. Instead of presenting as a single dwelling when viewed from the street, the upper-level height will be accentuated and highlighted by the continuous façade form below it.

¹² *Trik Investments Pty Ltd v Mornington Peninsula SC* [2019] VCAT 1314, at paragraph 19.

- 51 The submitted landscape plan also indicates that one canopy tree will be provided in front of each dwelling (*Eucalyptus Melliodora*). The plan indicates this species grows to a height of 12.0m with a canopy spread of 5.0m. However, I am not persuaded the hard stand area proposed in front of each garage will enable these trees to reach that level of maturity.
- 52 In any event, I consider the proposed front landscape area is limited centrally in front of the two porch entrances. I find that this frontage requires additional planting of larger canopy trees to the front of the site that would help screen the upper-level form I have described above. This outcome is not achievable in the confined and centrally located landscape bed.
- 53 More importantly, the typical building form I observed along Frank Street, generally maintained distinct building gaps (or blue-sky views) to one or both side boundaries. These setbacks were generally landscaped with mature vegetation that flowed towards the front of the street. This setting provides the important landscape setting described in the Bush Garden Character precinct statement I have referred to above. This outcome is not achieved on the review site through this design response.
- 54 This type of vegetation setting is also sought as the ‘preferred landscape’ characteristic under the precinct statement and included as a Decision Guideline in Clause 4.0 of the SLO3.
- 55 Clause 15.01-5L also seeks similar landscaped design outcomes to the street as outlined below:
- To ensure buildings do not dominate the streetscape.
 - To ensure that car parking areas, garages and carports do not dominate sites when viewed from the street.
 - To maintain and enhance the continuous flow of the garden settings and the openness of the front boundary treatment.
- 56 I find the proposed development has not achieved this level of design response to these important character and landscape outcomes. I say this, particularly noting:
- The two garages and associated driveways dominate the site frontage and draw attention to vehicle parking areas, principally as these driveways widen towards the two garages and are both wider than a single garage width.
 - Both garages are wider than the respective dwelling porch entrances, resulting in the garages being the most dominant elements facing the street.
 - The two vehicle driveways effectively fragment the site frontage and create two narrow garden areas to the front of each dwelling.
- 57 While I accept submissions from the applicant the frontage setback can accommodate a single canopy tree in front of each dwelling, I do not



consider planting a single canopy tree in front of each dwelling will achieve the dominant character setting of landscaping to the street. It will be a secondary rather than primary feature of the site. The lack of vegetation planting along the side boundaries exacerbates this design shortcoming.

- 58 The council submitted the proposed development also provides a poor design response to the adjoining open space reserve along its eastern side boundary. It says the side building setback reduced to 2.8m at ground level, is compromised by the location of a proposed retaining wall and numerous service facilities in this setback.
- 59 I agree with this assessment. I note the submitted landscape plan does not provide for any canopy tree planting along this interface, thus relying largely on the existing mature landscaping located on the adjoining open space reserve. I agree with the council the building setback space along the eastern boundary of the review site is already compromised with other service type features that would hinder the placement and satisfactory growth of larger type trees at this interface.
- 60 This is not a satisfactory outcome and is a missed opportunity to respond to this important park interface.
- 61 Additionally, the visual bulk and presence of Dwelling 1 to this side setback is accentuated by the double storey form that will extend for 24.4m along the ground level building envelope. The overall height of this building form along the side boundary is 8.3m, with a 4.0m upper-level setback. As I noted above, there is little opportunity to screen this upper-level form by mature planting treatment along this interface. I find this is not a landscape character response sought under the SLO3. Nor is this supported by other related policy provisions I have noted above.
- 62 I find the design response has not satisfactorily responded to the existing and preferred neighbourhood character settings I have outlined above. I find the design shortcomings present as a threshold issue and requires a rethink of the design response for this site. Particularly addressing how the new development will address the streetscape without creating the appearance of continuous built form and providing a landscaped setting with integrated built form along the eastern side interface.

ARE THERE ANY OTHER ISSUES?

- 63 The council submits the proposed development does not satisfy the following Clause 55 provisions:
- 55.02-1 - Neighbourhood Character Objective (Standard B1)
 - 55.02-5 – Dwelling Entrances (Standard B5)
 - Clause 55.03-8 Landscaping (Standard B13)
 - Clause 55.05-5: Solar Access to Open Space (Standard B29)
 - Clause 55.06-1 – Detailed Design (Standard B31)



- 64 The applicant does not agree with these assessments and submits the 10.3m angled front setback responds well to the adjoining dwelling setback of 38 Frank Street. He also says the energy efficiency concerns expressed by the council are overstated. Noting the rear yards to both dwellings are deep enough to ensure adequate solar access is provided for future occupants of these dwellings. He also says each dwelling has a visible entrance to the street.
- 65 I do not intend to make any findings on these submissions. Having made a threshold finding that the existing and preferred neighbourhood character and landscape setting has not been satisfactorily achieved, it is not necessary to address these matters in detail. It is appropriate they be addressed as part of any redesign considered by the applicant.

CONCLUSION

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

Peter Gaschk
Member

