

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11030/2021
PERMIT APPLICATION NO. 837/2020/03P

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987* – repeat appeal – Activity Centre Zone Schedule 1 – Significant Landscape Overlay Schedule 1 – built form – removal of trees – building and works within 5 metres of a substantial tree – landscaping – vehicle access – access to garages

APPLICANT	16 Taylor Pty Ltd
RESPONSIBLE AUTHORITY	Nillumbik Shire Council
RESPONDENTS	Carlotta Quinlan Lynnsay Prunotto Eltham Community Action Group Inc
SUBJECT LAND	14 - 16 Taylor Street ELTHAM VIC 3095
HEARING TYPE	Hearing
DATE OF HEARING	4 & 5 April 2022
DATE OF ORDER	10 May 2022
CITATION	16 Taylor Pty Ltd v Nillumbik SC [2022] VCAT 510

ORDER

Permit granted

- 1 In application P11030/2021 the decision of the responsible authority is set aside.
- 2 In planning permit application 837/2020/03P a permit is granted and directed to be issued for the land at 16 Taylor Street, Eltham in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of seven dwellings, removal of vegetation and buildings and works within 5 metres of substantial trees.

Jeanette G Rickards
Senior Member



APPEARANCES

For 16 Taylor Pty Ltd

Ms T Cincotta, Solicitor, Best Hooper

She called as witnesses:

- Mr M Negri, Town Planner
- Ms L Dowey, Landscape Architect
- Ms D Donald, Traffic Engineer

For Eltham Community
Action Group Inc, Carlotta
Quinlan, Lynnsay Prunotto

Ms C Quinlan

For Nillumbik Shire Council

Mr D de Giovanni, Consultant Town Planner



INFORMATION

Description of proposal	The development of seven dwellings and works within 5 metres of the base of a substantial tree, and the removal of substantial trees.
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
Zone and overlays	Activity Centre Zone Schedule 1 (Eltham Town Centre) Significant Landscape Overlay Schedule 1 (Eltham Town Centre)
Permit requirements	Clause 37.08-5 – construct a building construct or carry out works Clause 42.03-2 - construct a building construct or carry out works Clause 42.03-2 – removal of substantial trees; building and works within 5 metres of a substantial tree
Relevant scheme policies and provisions	Clauses 2.01, 2.02, 2.03, 2.04-1, 11.01-1R, 11.01-1L-01, 11.02-1S, 11.03-1S, 15.01-1S, 15.01-2L-01, 15.01-2S, 15.01-5S, 15/02-1S, 16.01-1L, 16/01-2S, 18.02-2S, 52.06, 55 and 65
Land description	The subject site is a dual allotment located on the southern side of Taylor Street. The site has a combined frontage of 37.34 metres and side boundary lengths of 45.72 metres. The total area of the site is 1,707.18 square metres. The site slopes down from its south-east corner at RL70.90 to the north-east corner at RL63.72 equating to a fall of 7.18 metres diagonally across the site. There is also a cross fall at the frontage of the site of 1.79 metres. The site is accessed by a horse-shoe style driveway with crossovers at the eastern and western ends of the driveway. The area between the driveway and frontage of the site is well landscaped with several established trees.
Tribunal inspection	28 April 2022



REASONS¹

Previous Determination

- 1 An application for review on the subject site was considered and refused by the Tribunal in *16 Taylor Pty Ltd v Nillumbik SC* ². The Tribunal in that instance considered the construction of eight dwellings on the lot in two rows in a tandem arrangement. The front two dwellings were to be three storey with individual vehicle access from Taylor Street. The remaining six dwellings were to be double storey accessed via a central driveway.
- 2 The Tribunal in refusing the application found:
 - The front setback (preferred of 5.5m) cannot merely look at the quantitative outcome... The proposal presents poorly to the street, with a minimal front setback, and an extent of development that will dominate the public realm views, with minimal opportunity for landscaping. (paragraph 86)
 - The proposed units 1 and 2 occupy a significant proportion of the site frontage width, coupled with three driveways, two of which splay outwards from the frontage to the respective facades. Further, the porches and stairs to each of the front dwellings also occupy a significant proportion of the frontage setback areas. (paragraph 87)
 - It is not appropriate to rely on the road reserve for landscaping. (paragraphs 91 to 95).
 - The proposed three driveways across the frontage further reduce [the] area for landscaping. (paragraph 100)
 - I find there is adequate space on which to include canopy trees and other landscaping in order to achieve an acceptable outcome. Each private open space area of the proposed dwellings could accommodate either at least one canopy tree or retain an existing tree. (paragraphs 107 and 108).
 - Two rows of four attached dwellings does not allow space between each dwelling ... there is landscaping proposed along parts of the central driveway that can accommodate trees. (paragraph 109)
 - There remains doubt about any associated drainage required for such foundations (near the TPZ of Tree 18) the condition of the tree and its potential to drop limbs is questionable to the extent that I cannot be satisfied to an acceptable level that the tree will not drop limbs on dwelling 8. (paragraphs 122 and 123).

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 [2020] VCAT 673



- The delineation of access and the sense of address for the rear dwellings is poor. (paragraph 131)

Proposal

- 3 The application for review currently before the Tribunal is for the construction of seven dwellings in two rows in tandem. This follows the amendment to plans that proposed the construction of 12 dwellings over a basement car park with dwelling 1 to have its own separate basement garage.
- 4 Unlike the previous application considered by the Tribunal, all dwellings are double storey. Similar to the previous application dwellings 1 and 2 are to face Taylor Street and are provided with separate vehicle access utilising the existing two crossovers from Taylor Street, with the remaining dwellings accessed via a central driveway. Dwellings 1 and 2 are to have double garages in a basement that protrudes approximately 1.0 metre. Due to the topography of the site, pedestrian access to the front two dwellings requires a set of stairs that sit prominently at the front of each dwelling.
- 5 The proposed front setback is 5.6 metres, 4.0 metres to the east, 3.7 metres to the west and a rear (southern) setback of 1.5 metres. The proposed maximum height of the development is 8.2 metres. The dwellings are to have pitched roof elements, Tudor influenced gable elements at ground level and materials that include face brickwork, render, metal and timber cladding and glazing. No trees are to be retained on site.
- 6 Following the amendment of plans, the Nillumbik Shire Council (the Council) amended their grounds of refusal as follows:
 1. The proposal does not achieve the land use and development objectives, the precinct objectives and precinct guidelines for this site as outlined in the Activity Centre Zone, Schedule 1.
 2. The intensity, scale, mass, and form of the built form is excessive and contrary to the outcomes sought by the Activity Centre Zone, Schedule 1 and the Significant Landscape Overlay, Schedule 1.
 3. The proposal is contrary to the objectives and decision guidelines of the Significant Landscape Overlay, Schedule 1, in that it offers insufficient space for landscaping, including indigenous canopy trees to the front setback, alongside boundaries, the rear boundary of the site and throughout the central portion of the site. The proposal has not taken sufficient measures to minimise the loss of substantial trees on site, namely Trees 2 and 3.
 4. The proposal presents unreasonable levels of bulk and massing to adjacent properties and offers insufficient side setbacks suitable for the introduction of canopy tree planting contrary to Clause 55.03 – Site Layout and Building Massing.
 5. The central and rear bank of dwellings offer a poor sense of address contrary to Clause 55.02-5 - Integration with street.



6. The proposal is not site responsive and represents an over-development of the site.
 7. The proposal does not meet the objectives of Clause 55.02-1 (Neighbourhood Character) in terms of building bulk, massing and scale, removal of vegetation, insufficient landscaping opportunities, poor sense of address and lack of dwelling integration with the street.
 8. The proposal does not meet the objectives of Clause 55.03-5 (Energy Efficiency) as the development has not been designed so that solar access to north-facing windows is maximised.
 9. The proposal does not meet the objectives of Clause 55.03-7 (Safety) due to obscured dwelling entries and lack of passive surveillance to the street and common driveway.
 10. The proposal does not meet the objectives of Clause 55.03-8 (Landscaping). The proposal has not taken sufficient measures to minimise the loss of significant trees on site, namely Tree 2 and 3, and there is insufficient provision for canopy tree planting and other landscaping.
 11. The proposal does not meet the objectives of Clause 55.03-9 (Access) in relation to the impact on the streetscape character from vehicle crossings and driveways.
 12. The proposal does not meet the objectives of Clause 55.04-6 (Overlooking) in relation to overlooking to adjoining properties.
 13. The proposal does not meet the objectives of Clause 55.04-7 (Internal Views) in relation to internal views within the development.
 14. The proposal does not meet the objectives of Clause 55.05-1 (Dwelling Entry) due to poor sense of address, visibility and identifiable front entries.
 15. The proposal does not meet the objectives of Clause 55.05-5 (Solar Access to Open Space) in relation to solar access to secluded private open space.
 16. The proposal does not meet the objectives of Clause 55.06-1 (Design Detail) in relation to architectural design response, insufficient wall articulation and lack of eaves.
 17. The proposal does not meet the objectives of Clause 52.06 (Car Parking) in relation to car parking and vehicle access due to the overreliance on corrective manoeuvres.
 18. The application has not adequately demonstrated that third party trees would remain viable, as the extent of earthworks (including retaining walls) within the secluded private open space areas of the proposed development has not been shown or considered.
- 7 A ruling had already been made by the Tribunal prior to the commencement of the hearing stipulating that third party review rights were limited to the Significant Landscape Overlay Schedule 1 (SLO1) and related for the purposes of the hearing to the removal of Trees 1, 2, 3, 5 and 6 all located



in the frontage of the site as well as any proposed buildings and works within 5 metres of the base of a substantial tree. In this case Trees 8, 9, 14 and a group 7 as well as 12 (previously identified as Tree 18) all located on neighbouring properties.

- 8 At the hearing, due to the extensive references by the respondents in their submissions to matters that fell outside their third party review rights, a further ruling was made in relation to specific paragraphs within the submissions requiring those to be deleted, as they were considered not to be within the review rights of the third parties.
- 9 The applicant submitted that as this application is what is characterised as a ‘correcting’ repeat appeal³ namely, ‘a new proposal, generally similar to an earlier proposal refused for specific reasons, but incorporating alterations to satisfy those previously identified concerns’, the Tribunal should only consider the matters that the previous Tribunal had considered unacceptable.
- 10 Whilst I can take account of the previous decision of the Tribunal, I am not bound by that decision and consider that this proposal should be assessed not only on what the previous Tribunal considered acceptable but also what it considered unacceptable and whether what is now proposed is acceptable.

Planning Scheme

- 11 The proposed increasing of the number of dwellings on the subject land is supported in the Activity Centre Zone Schedule 1 (ACZ1) in which the land is located. The outcome sought is to provide a transition in built form scale between the core commercial area and adjoining residential areas. The subject land abuts the General Residential Zone to its rear. The topography of the area is recognised in the guideline that suggests ‘buildings with larger footprints should be designed with split levels to respond to the natural topography. The subject site rises steeply from Taylor Street to the rear.
- 12 The SLO1 which applies specifically to the ACZ1 recommends native canopy trees should assist in tempering the built form.
- 13 The Eltham Major Activity Centre Structure Plan July 2020 promotes an increase in housing and an increase in diversity of medium density housing. The Council acknowledged there is strong zone and policy support for more intensive housing in the general location. However, the Council considers regard must be had to the constraints of the site and in this respect highlighted the SLO1; the site being at the edge of the ACZ1 abutting a residential zone and the topography of the site with a 7.18m slope that occurs diagonally across the site and a 1.79m cross fall across the frontage of the site. Whilst not previously highlighted the Council also referred to the removal of trees within the front setback and the need to protect several trees located along the eastern, western, and southern interfaces.

³ *Reid v Nillumbik SC* (No 3) [2011] VCAT 925



Built form

- 14 The frontset back is 5.6m slightly increased from what the Tribunal considered previously. A preferred minimum front boundary setback of 5.5m is specified in the Precinct requirements at clause 5.2-3 of ACZ1. This setback is to be measured from the kerb (clause 4.4 of ACZ1). Dwellings 1 and 2 are to be setback between 10.27 metres and 10.67 metres from the kerb.
- 15 Dwellings are to be setback from the side boundaries and are separated by 6.4 metres. This separation has increased from the previous proposal of 4.0 metres and is to accommodate the central driveway, pedestrian path and landscaping. In this respect the siting and spacing of the dwellings responds to the subdivision pattern of the street.
- 16 Due to the topography of the site approximately 12 stairs are required between the basement driveways and the entries to dwellings 1 and 2 which will slightly encroach into the front setback. As the stairs are elevated a wall will present to the street. Ms Dowey's landscape plan, discussed below, addresses landscaping within the front setback.
- 17 Other nearby dwellings within Taylor Street also have similar stairway access within their frontages due to the topography.
- 18 The Council considered dwellings 1 and 2 presented a hardness with little response to the residential character of Taylor Street. The Council considered the vertical two storey metal clad wall where the internal stairs are located and the brick two storey wall beside it at the front of dwellings 1 and 2 gives the development a commercial like appearance which bears little relationship to the proportions and form of housing in Taylor Street.
- 19 I would acknowledge that the design is contemporary with little or no contemporary design evident presently in Taylor Street. I would however expect this to change given the location within the ACZ1 and as highlighted by the applicant, the clear encouragement within ACZ1 to 'optimise the development potential of the activity centre by ensuring individual sites are developed to their highest and best use' and 'to encourage more intensive development in a variety of high quality forms and design responses'.
- 20 The maximum height of the dwellings is 8.26 metres (dwelling 2) at the front of the site with dwelling 1 slightly across the slope at a height of 7.79 metres as generally are the remaining dwellings. All dwellings are two storey rather than the previous proposal of three storeys at the front. This results in the reduction in the height of the built form particularly facing the street.
- 21 Whilst there is no separation of the built form of the dwellings at ground level there is separation at the upper levels ensuring there is not a two storey built form mass that extends the length of the site. Dwellings 1 and 3, 5 and 7 and 2 and 4 are separated by 3.0 metres with 3.63 metres between dwellings 4 and 6.



- 22 Each dwelling has its private open space abutting the eastern, western and southern boundaries ensuring sufficient separation with the built form on abutting sites as well as landscaping to be incorporated within these spaces. Each space has a northern aspect.
- 23 I accept the recommendation of Mr Negri regarding screen treatments to particular windows to limit internal and external overlooking. Screening generally limits overlooking to abutting properties with some windows required to be screened.
- 24 Whilst there will be some overshadowing to the private open space areas of three abutting dwellings to the west, shadowing will have largely passed by 10.00am. Structures contribute to continued shadowing throughout the day but not from the proposed development.
- 25 I take no issue with the provision of a pedestrian path providing access to the remaining dwellings on the site. The provision of a pedestrian path ensures that the dwellings located behind the front two dwellings can be readily accessed and with each dwelling being provided with an entry porch, this provides sufficient address.

Landscaping

- 26 It is proposed to remove Trees 1, 2, 3, 4, 5, and 6 from the front of the site. These trees are considered substantial under the SLO1.
- 27 The Council submits the proposal is contrary to the objectives and decision guidelines of the SLO1 in that it offers insufficient space for landscaping, including indigenous canopy trees to the front setback, alongside boundaries, the rear boundary of the site and throughout the central portion of the site. The proposal has not taken sufficient measures to minimise the loss of substantial trees on site, namely Trees 2 and 3.
- 28 The later part of this ground of objection relating to the removal of Trees 2 and 3 from the front setback was not the subject of debate during the previous Tribunal hearing and apart from the concerns the Tribunal expressed regarding drainage to occur near Tree 12 to the rear no issues were raised regarding the removal of the vegetation at the front of the site.
- 29 The Council's arborists considered Trees 2 and 3 to be of medium retention value and should be retained. The report from TreeSpace prepared on behalf of the applicant indicated Trees 2 and 3 have a good and good/fair health rating with low Arboricultural value, although they have a life expectancy of 20 years or more. Whilst both these trees are well established at approximately 14m in height with canopy spreads of 9m and 6m respectively, I would agree with the descriptions in the TreeSpace report that the canopy is somewhat distorted due to power line clearance with ivy covering most of the lower parts of the trees.
- 30 The previous landscape plan proposed four trees to be located within the road reserve. This was not considered appropriate by the Tribunal. Due to



the now increased front setback 11 trees are now proposed. Overall, as shown on the landscape plan prepared by Ms Dowey, 26 native and indigenous trees of various sizes and form are proposed to the front, side, and rear setbacks. The proposed increased number of trees within the front setback will replace the existing six trees with limited or low retention value.

- 31 In relation to the prominence of the stairs providing access to dwellings 1 and 2 within the front setback Ms Dowey's landscape plan shows a Gold Dust Wattle with a potential height of 2m and a width of 2m to be located immediately in front of the stair wall with three Red Box with a height of 10m and a width of 5m in front of each dwelling. This should generally contribute to the screening of the stairs providing access to dwellings 1 and 2 diminishing any dominance.
- 32 The ACZ seeks to 'ensure that new development contributes to the achievement of the preferred character through additional landscaping, particularly canopy trees'. It is considered that the removal of all trees within the front setback will enable the establishment of a well-considered landscaping response that will, into the future, provide for an acceptable outcome that will not only assist in screening the front two dwellings, allow for a central driveway, but also make a significant contribution to the streetscape.
- 33 Whilst the removal of trees within the SLO1 is generally discouraged the removal of these trees will allow the site to satisfy its development potential in accordance with the Eltham Major Activity Centre Structure Plan.
- 34 The respondents expressed concern regarding the removal of the trees within the front setback, as well as to the proposed built form that would occur within 5 metres of a substantial tree, namely Trees 8, 9, 14 and a group 7 on abutting properties. It is considered that permit conditions will ensure that these trees will be protected.
- 35 In his assessment dated 14 February 2022 Mr Matthew Ness of Treespace Solutions considered 'there is no encroachment into the TPZ of Trees 8, 9, 10, 11, 13 and 14. Provided the recommendations are enforced, it is anticipated that these trees will not be adversely impacted by the proposal'. In relation to the TPZ of Group 7 he states 'it is noted by the proposed decking within the POS of Unit 4. With reference to AS4970 (2009) *Protection of trees on development sites*, this level of encroachment is considered a minor incursion and provided the recommendations are enforced, it is anticipated that the proposal will not adversely impact the viability of these trees'.
- 36 The rear of dwelling 6 is setback 4.44m and 7.09m from the rear boundary ensuring a setback from Tree 12 on the abutting rear property. Tree 12 was described as being 'in generally fair good health with moderate to high foliage density with a form and habit extending toward the south away from the site'. The respondents raised concerns regarding the type of drainage



that would occur within proximity to Tree 12. It is noted that the existing dwelling currently occupies 16.0m² which Mr Ness indicates reduces the net encroachment by the proposal to 22.2m² or 6.1%. Mr Ness considered this a minor incursion and as with the other trees considers that provided the recommendations are enforced the tree will not be adversely affected. There are various methods of drainage which in my view could be adopted to ensure there is no damage to the roots of Tree 12.

37 Mr Ness made the following recommendations:

- Upon completion, excavation for the southern footprint within the TPZ of Tree 12 must be inspected by the project arborist and any exposed roots must be pruned in accordance with AS4373-2007 *Pruning of amenity trees*.
- Prior to the commencement of the demolition works, in accordance with AS4970 (2009) Protection of Trees on Development Sites, temporary protection fencing is to be installed around the TPZ of Trees 10 – 14 and Group 7 within the site boundaries.
- The chainmesh temporary fencing or similar, is to be a minimum of 1.8m tall and is to be erected before any machinery or materials are brought onto or off the site and before the commencement of all demolition works. The enclosed TPZ areas within the site boundaries are to be mulched with composted mulch at a depth of 100mm.
- Following the demolition, ground protection is to be established within the TPZ of Trees 10, 11, 12, 13, 14 and Group 7 where outside the proposed building footprint. (i.e. between boundary fencing and building footprints).
- The TPZ fencing and ground protection measures must remain in place for the duration of works and can only be removed in consultation with the Project Arborist or local Responsible Authority for construction of the alfresco areas and landscaping.
- Excavation (demolition and construction) within the TPZs should be supervised by a qualified arborist. Any roots uncovered must be protected or cleanly pruned in accordance with Australian Standard AS4373-2007 *Pruning of Amenity Trees* and carried out by a minimum AQF Level 3 Arborist.
- Any new boundary fencing within the TPZ should be of light weight construction with non-continuous footings and manually excavated stump holes (by hand or post hole auger only).
- Any required pruning must be in accordance with Australian Standard AS4373-2007 *Pruning of Amenity Trees* and carried out by a minimum AQF Level 3 Arborist.
- Other than the endorsed works, activities generally excluded from the TPZ include:



- Machine excavation including trenching
 - Excavation for silt fencing
 - Cultivation
 - Storage
 - Preparation of chemicals, including preparation of cement products
 - Parking of vehicles and plant
 - Refuelling
 - Dumping of waste
 - Wash down and cleaning of equipment
 - Placement of fill
 - Lighting of fires
 - Soil level changes
 - Temporary or permanent installation of utilities and signs, and
 - Physical damage to the tree
- 38 These recommendations can be incorporated within permit conditions with the main requirement being the presence of an arborist to ensure the correct approach to building and drainage to occur within the TPZ of any tree.
- 39 Overall, the proposed landscaping will make a contribution to the streetscape and to the neighbourhood generally whilst allowing the site to be developed to its highest and best use.

Vehicle access

- 40 The Council considered the proposal does not meet the objectives of clause 55.03-9 (Access) in relation to the impact on the streetscape character from vehicle crossings and driveways. This concern was previously expressed. Council also considered the proposal does not meet the objectives of Clause 52.06 (Car Parking) in relation to car parking and vehicle access due to the overreliance on corrective manoeuvres.
- 41 The proposal is to utilise the existing two crossovers to provide direct access to the garages for dwellings 1 and 2. A new crossover is proposed central to the site to provide access to the remaining dwellings.
- 42 Given the broad frontage of the site, the location of a central driveway will result in similar spacing of crossovers within Taylor Street and will not in my view detract from the streetscape.
- 43 The proposal complies with clause 52.06 providing two car parking spaces for each four bedroom dwelling and one car space for each two bedroom dwelling (12 car spaces). It is noted that the site falls within the Principal Transport Network (PTN) therefore there is no requirement for the provision of an onsite visitor car space.



- 44 I accept Ms Donald's evidence that the 'proposed car parking is well located, is of a high standard, creates a safe environment for users and the layout does allow for easy and efficient use'. As noted by Ms Donald, there is no mention in clause 52.06 of any requirements relating to an 'overreliance on corrective manoeuvres' and Australian Standard AS2890.1 allows an additional movement for residential parking. Cars can exit the site in a forward direction.
- 45 I take no issue with the proposed access either to the site or to the individual garages noting the topography requires some ramping. I agree with Ms Donald that the use of the shared driveway will not result in any safety issues due to the low volume of traffic and low speed of vehicles.
- 46 I agree with Ms Donald that the engagement of a private waste contractor is not necessary. Given there are only seven dwellings bin collection can be undertaken through the Council.

Conclusion

- 47 I consider the proposal has addressed a number of the issues that were raised by the previous Tribunal in its decision in particular the front setback and the landscaping to occur within this setback. I am satisfied that with the incorporation of conditions requiring a Tree Management Plan that issues of buildings and works such as drainage can be properly managed to ensure no tree within close proximity to the site will be adversely affected.
- 48 I have considered the draft conditions prepared by the Council and the comments provided by the applicant and have either added, amended, or deleted conditions as I considered appropriate.
- 49 The provisions of the planning scheme strongly support an intensification of development on the subject land 'to deliver a diversity of housing at higher densities to make optimum use of the facilities and services'. The proposal incorporating seven dwellings in a contemporary style that takes onboard some of the features found within the area including pitched roofs and gabled ends, as well as more contemporary materials will meet these expectations.
- 50 The decision of the responsible authority is set aside, and a permit is determined to be granted for the construction of seven dwellings, removal of vegetation and buildings and works within 5 metres of a substantial tree subject to conditions.

Jeanette G Rickards
Senior Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	837/2020/03P
LAND:	16 Taylor Street, Eltham

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of seven dwellings, removal of vegetation and buildings and works within 5 metres of substantial trees.

CONDITIONS:

1. Before the development commences, three copies of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans prepared by SGA Design, Revision D dated 10 February 2022 but modified to show:
 - (a) The full extent of earthworks within the secluded private open space areas of all dwellings on site, including site cuts, retaining walls and service trenching.
 - (b) Any modifications required as a result of the Tree Management Plan in accordance with condition 5.
 - (c) Habitable bedroom room windows of the first floor of Unit 2 treated in accordance with Clause 55.04-6 Overlooking of the Nillumbik Planning Scheme to prevent overlooking to adjoining property to the east.
2. The development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
3. A landscape plan prepared by a suitably qualified person must be submitted to and approved by the Responsible Authority. The landscape plan must be generally in accordance with the landscape plan prepared by Hansen Partnership Drawing No. LCD-001 and LCD-002 dated 17 March 2022 but modified to show:
 - (a) Any changes required by the development pursuant to condition 1 of the permit.



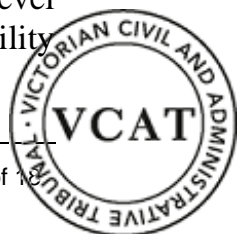
4. Unless with the prior written consent of the Responsible Authority, before the occupation of the development the landscaping works shown on the endorsed plans must be carried out, completed, and maintained to the satisfaction of the Responsible Authority.
5. Prior to the endorsement of plans pursuant to condition 1, a Tree Management Plan prepared by a suitably qualified arborist must be submitted to and approved by the Responsible Authority to its satisfaction and include:
 - (a) consideration of the potential impacts of the earthworks within the secluded private open space areas of all dwellings on site, including site cuts, retaining walls and service trenching on adjoining trees;
 - (b) recommendations to ensure the protection of the adjoining trees within three metres of the site including Tree Protection Zones in accordance with AS4970-2009;
 - (c) measures to address how underground services within the Tree Protection Zones should be designed and installed; and
 - (d) any modifications required to the development to ensure protection of adjoining trees.
6. Except with the prior written consent of the Responsible Authority, prior to development commencing (including any excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the adjoining trees within 3 metres of the site shown on the endorsed plans must have a Tree Protection Zone in accordance with AS4970-2009 and the Tree Management Plan endorsed under this Permit to the satisfaction of the Responsible Authority. The fencing associated with this Tree Protection Zone must meet the following requirements:
 - (a) Extent

The tree protection fencing is to be provided to the extent of the identified Tree Protection Zone.

If works are shown on any endorsed plan of this permit within the confines of the calculated Tree Protection Zone, then the Tree Protection Fencing must be taken in to only the minimum amount necessary to allow the works to be completed.
 - (b) Fencing

All tree protection fencing required by this permit must be erected in accordance with the approved Tree Protection Zone.

The Tree Protection Fencing must be erected to form a visual and physical barrier, be a minimum height of 1.5 metres above ground level and of chain mesh or similar material. A top line of high visibility plastic tape must be erected around the perimeter of the fence.



(c) Signage

Fixed signs are to be provided on all visible sides of the Tree Protection Fencing clearly stating “Tree Protection Zone – No Entry”, to the satisfaction of the Responsible Authority.

(d) Irrigation

The area within the Tree Protection Zone and Tree Protection Fencing must be irrigated during the summer months with 1 litre of clean water for every 1cm of trunk girth measured at the soil/trunk interface on a weekly basis.

(e) Provision of Services

All services (including water, electricity, gas and telephone) should be installed underground, and located outside of any Tree Protection Zone, wherever practically possible. If underground services are to be routed within an established Tree Protection Zone, they must be installed by directional boring with the top of the bore to be a minimum depth of 600mm below the existing grade or alternative measures to ensure protection of trees, to the satisfaction of the Responsible Authority.

Any bore pits must be located outside of the Tree Protection Zone or manually excavated without damage to roots, to the satisfaction of the Responsible Authority.

(f) Access to Tree Protection Zone

Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

7. Prior to the commencement of the approved works (including any excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the erected tree protection fences must be inspected and approved by the Responsible Authority.

Once erected to the required standard, the tree protection fencing shall be maintained in good condition and may only be removed upon completion of all development works, to the satisfaction of the Responsible Authority.

8. Prior to occupation of the development, all visual screening measures shown on the endorsed plans must be installed in order to prevent overlooking and must be maintained to the satisfaction of the responsible authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the responsible authority.



9. Prior to the development commencing, a Waste Management 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 as evidence of its approval. The plan must specify:
- (a) The details and location of bin storage and bin collection on the kerbside.
 - (b) Access route and method of access for the vehicles collecting waste.
 - (c) Details and location of bin storage areas for each approved dwelling.
 - (d) Odour control from bin storage areas.
10. Vehicular access and egress to the development site from the roadway must be by way of vehicle crossings constructed to the requirements of the Nillumbik Shire Council, to suit the proposed driveways and the vehicles that will use the crossings. The Responsible Authority must approve the location, design and construction of the crossings. 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*.

Width of the driveway at property boundary must match the width of the vehicle crossing.

11. The vehicular driveways must be properly formed and constructed meeting the ramp grades specified in the Nillumbik Planning Scheme (Clause 52.06-9, Design standard 3: Gradients), and to such levels to ensure that it can be always utilised. The driveway must be drained, constructed in concrete, asphalt, or similar surface, and maintained in a continuously useable condition. All works are to be carried out to the satisfaction of the Responsible Authority.
12. Except with the written consent of the Responsible Authority, stormwater from impervious areas located below the level of the legal point of discharge must be directed to a pit chamber and pumped to the on-site stormwater detention system. A backup pump of the same specification must be installed in the event of primary pump failure and located in the same pit chamber if a pit chamber is proposed. Engineering computations and design of the pumping system and a maintenance schedule must be submitted to and approved by the Responsible Authority.
13. The development, including any new paved areas, must be drained to prevent the uncontrolled discharge of stormwater from the subject site across any road or footpath or onto any adjoining land to the satisfaction of the Responsible Authority.
14. Except with the written consent of the Responsible Authority stormwater from the roof of the development hereby approved must be directed to the holding



tank. The size of the holding tank for the development must be designed by a suitably qualified engineer and computation submitted to Council for approval. Alternatively, a minimum of 15,000 litres holding tank must be provided.

The overflow from the tanks must be directed via the internal drainage system to the on-site detention system. The overflow from the on-site detention system must be directed to the nominated point of discharge.

15. 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.

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.

16. 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 of conditions -

