

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1449/2022
PERMIT APPLICATION NO.TPA/53753

CATCHWORDS

Application under section 77 of the *Planning and Environment Act 1987* (Vic) to review the refusal to grant a permit; Monash Planning Scheme; Neighbourhood Residential Zone Schedule 3 – Creek Environs Area; two double storey dwellings; neighbourhood and landscape character

APPLICANT	Jia Jun Shen
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	18 Morrison Court MOUNT WAVERLEY VIC 3149
HEARING TYPE	Hearing
DATE OF HEARING	2 May 2023
DATE OF ORDER	17 May 2023
CITATION	Shen v Monash CC [2023] VCAT 561

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

Design Plans prepared by: Zai Pty Ltd
Drawing numbers: TP-21040/100 to TP-21040/107 inclusive
Revision: D
Dated: 16/12/2022
Presentation Plans prepared by: Zai Pty Ltd
Drawing numbers: 21040/001 to 21040/009 inclusive
Dated: 10/01/2023

- 2 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended by changing the permit preamble to read:

Construction of two double storey dwellings

- 3 In application P1449/2022 the decision of the responsible authority is set aside.



- 4 In planning permit application TPA/53753 a permit is granted and directed to be issued for the land at 18 Morrison Court Mount Waverley VIC 3149 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
- Construction of two double storey dwellings

Christopher Harty
Member

APPEARANCES

For Jia Jun Shen

Mr How Ng, town planner from Melbourne Planning Pty Ltd. He called the following witness:

- Mr Michael Smith, landscape architect and urban designer from Michael Smith and Associates Landscape Architecture and Urban Design

For Monash City Council

Ms Michaela Harding, town planner



INFORMATION

Description of proposal	Demolition of the existing double storey dwelling and construction of two double storey dwellings.
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	Monash Planning Scheme
Zone and overlays	Neighbourhood Residential Zone Schedule 3 – <i>Creek Environs Area (NRZ3)</i> Vegetation Protection Overlay Schedule 1 – <i>Tree Protection Area (VPO1)</i>
Permit requirements	Clause 32.09-6 to construct two or more dwellings on a lot
Relevant scheme policies and provisions	Clauses 11, 15, 16, 18, 21.01, 21.04, 22.01, 22.05, 32.09, 52.06, 55, 65 and 71.02
Land description	<p>The subject land is located on the southern side of Morrison Court in Mount Waverley. It is irregular in shape situated on the start of the Court bowl with a frontage width of 12.19 metres, a maximum depth of 50.65 metres and a site area of 915 square metres. The subject land has a slope of approximately 6 metres from the southern corner to the north-western corner. It is currently occupied by a double storey weatherboard dwelling with a driveway located on the western side of the frontage with existing garden plantings including trees primarily around its boundaries. The subject land borders to its south/south-east the Melbourne Water Water Pipe Reserve, which is a grassed and treed reserve used as a public walkway linking up with the broader Scotchmans Creek Trail located further to the south.</p> <p>The surrounding area is an established residential area with a mix of single detached dwellings and multi-dwelling developments with both single and double storey built form present in the area.</p>
Tribunal inspection	9 May 2023 unaccompanied



REASONS¹

- 1 This is an application by Jia Jun Shen (**applicant**) to review the decision of Monash City Council (**Council**) to refuse permission in relation to permit application TPA/53753 on 16 September 2022 for the construction of two double storey dwellings and the removal of three (3) trees in a Vegetation Protection Overlay at 18 Morrison Court, Mount Waverley (**site**). Figures 1, 2 and 3 show the layout of the proposal.



Figure 1: Site plan.



Figure 2: Aerial view from the north.

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.



Figure 3: Aerial view from the east.

- 2 Amended plans were circulated to which Council offered no objections to their substitution. However, Council advised that they did not go far enough in allaying their concerns with the proposal and that its position remains unaltered.
- 3 One of the changes included the retention of three trees² that would require a permit for removal under the Vegetation Protection Overlay Schedule 1 – ‘Tree Protection Area’ (**VPO1**). Accordingly, the permit requirement under VPO1 was no longer triggered and the permit application was amended to remove the requirement for permission for the removal of the three trees.
- 4 Council's grounds of refusal, generally relate to the lack of responsiveness of the proposed design to the landscape character sought for the area with insufficient setbacks and lack of space for landscaping and the design not complementing or responding to the existing or preferred neighbourhood character of the area with prominent built form.
- 5 The applicant's position was that the proposal has been designed to achieve a respectful response and acceptable outcome to the requirements and policy of the Monash Planning Scheme (**planning scheme**) and the physical context of the site and surrounds.
- 6 I have been provided with a detailed description of the site and its environs, the immediate neighbourhood, and the broader area around the site. I have also been provided with a detailed description of the proposal and the planning scheme provisions and applicable policies. It is not necessary for me to repeat that material other than to record that:

Site context

- The site is on the southern side of Morrison Court in Mount Waverley.

² Tree 3, a Liquidambar Sweetgum (*Liquidambar styraciflua*), Tree 11, a Red Flowering Gum (*Corymbia ficifolia*) and Tree 19, a Pin Oak (*Quercus palustris*).

- It is irregular in shape located on the beginning of the Court bowl apex with a frontage width of 12.19 metres, a maximum depth of 50.65 metres and a site area of 915 square metres.
- The site has a slope of approximately 6 metres from the southern corner to the north-western corner. It is currently occupied by a double storey weatherboard dwelling with a driveway located on the western side of the frontage with existing garden plantings including trees primarily around its boundaries.
- Behind the site is the Melbourne Water Water Pipe Reserve (**Pipe Reserve**), which is an open grassed and treed reserve, with a width of 14.5 metres, used as a public walkway linking up with the broader Scotchmans Creek Trail that is located further to the south.
- The surrounding area is an established residential area with a mix of single detached dwellings and multi-dwelling developments. Built form is a mix of single and double storey dwellings. There is a two dwelling development with double storey form located two doors down from the site at 14 Morrison Court.³

Proposal

- The proposal is to demolish the existing double storey dwelling⁴ and construct two new double storey dwellings. Dwelling 1 will contain three bedrooms and dwelling 2 will have four bedrooms.
- The layout of the dwellings is detached with dwelling 1 sited in the western half of the site and dwelling 2 in the eastern half. Due to the triangular shape of the lot, the design is a mix of tandem layout with one dwelling slightly behind the other yet with a side-by-side built form typology with both dwellings facing to the north-west.
- Dwelling 1 is double storey with a lower ground floor level due to the slope down from the street frontage. It will sit lower in the streetscape with a maximum height of 6.6 metres compared to dwelling 2 which would be more prominent with a maximum height of 8.469 metres. Dwelling 2 is double storey with a small part at the rear south/south-east corner consisting of a three storey built form due to a lower ground floor level service area.
- Dwelling 1 is set back 7.6 metres from the street and dwelling 2 setback 15.5 metres.
- Vehicle access for both dwellings is provided via a common driveway utilising the existing crossover with direct access provided to a double

³ I was advised this development was approved under the previous General Residential Zone provisions and that the area, including the site, was rezoned to the more restrictive Neighbourhood Residential Zone in 2018 under Amendment C125.

⁴ No approval is required for demolition.



garage for dwelling 1 while the driveway continues past it in a curved design to a double garage for dwelling 2.

- The design of the curved driveway is proposed to be a combination of exposed aggregate and concrete grass pavers. The concrete grass pavers are proposed where there would be an encroachment into the Tree Protection Zone (**TPZ**) of Tree 3, a Liquidambar Sweetgum, of around 60%. This is a major encroachment. I note that the landscape evidence of Mr Smith suggested replacing the use of concrete grass pavers with a permeable pavement constructed at grade to minimise impacts from construction excavation on the TPZ of Tree 3.
- Two other large canopy trees that would have required permission for removal under the VPO1 that are now proposed to be retained also have encroachment with Tree 11, a Red Flowering Gum located in the eastern corner of the site having an encroachment estimated by Mr Smith of 15 to 20% from the decking of dwelling 2 and Tree 19, a Pin Oak having encroachment from the rear bedroom 3, ensuite, living room and terrace of dwelling 1 of 9.8%.
- I note from the Arborist report supporting the permit application, the site contains 17 trees of which, it is proposed to retain seven and remove the remaining 10 trees. There are also seven trees on adjoining land all of which are anticipated by the applicant to be unaffected by the proposal and which are to be retained.
- The dwellings are modern contemporary in design with a mix of brick, render and timber cladding with flat roof form.

Policy context

- The site is in the Neighbourhood Residential Zone Schedule 3 – ‘Creek Environs Area’ (**NRZ3**). A permit requirement is triggered for the construction of the two dwellings.
- The site is also affected by the Vegetation Protection Overlay Schedule 1 – ‘Tree Protection Area’ (**VPO1**), which relates to the significance of vegetation, particularly canopy trees to the ‘Garden City Character’ of Monash. It also refers to how trees can help integrate new development into the existing urban form and reduce impacts of higher density development or larger buildings on neighbourhood character. However, no permit requirement is triggered under the VPO1 because no trees are proposed to be removed that require a permit. Hence, the provisions of the VPO1 are not activated in considering the proposal.
- The purposes of the NRZ3, generally recognises areas of predominantly single and double storey residential development. The NRZ3 and the policy framework also seeks to ensure development is



respectful of the neighbourhood and landscape character of the area and seeks to provide adequate opportunities to retain canopy trees and for new landscaping.⁵

- The NRZ3 includes neighbourhood character objectives that seek to ensure new development transitions down in scale towards the creeks, respecting and reinforcing the natural topography, and that development is defined by spacious and generous garden settings, tall canopy trees and consistent built form and setbacks.
- The NRZ3 includes decision guidelines that require consideration of tree retention and landscaping that includes areas within front, side and rear setbacks and open space areas, minimises tree removal and hard paved areas and breaks up building mass and appearance through space for trees and vegetation between dwellings. Built form is to be recessed and articulated where viewed from creek reservations and neighbouring properties and make space to achieve a garden city character.
- Clause 21.01-1 – ‘Municipal profile’ recognises the garden city character of residential areas with leafy low-rise suburbs that is highly valued by the community.
- Under Clause 21.04 – ‘Residential Development’, the site is identified within ‘Category 7 – ‘Creek environs’ which are locations of special character that have limited potential to support residential growth. Policy relevant to creek environs includes:
 - Encouraging a variety of housing that accommodates a diversity of housing needs and preferences that compliments and enhances the garden city character.
 - Recognising the need to conserve treed environments and revegetate new residential developments to maintain and enhance the garden city character.
 - Protecting and contributing to the special character of the creek environs.
 - Ensuring development contributes to the naturalistic character of the creek environs.
- Under Clause 22.01 – ‘Residential Development and Character Policy’, recognises that the creek environs precincts⁶ presents limited redevelopment potential by virtue of proximity to creek reserves. The

⁵ Refer to Clauses 15.01-1S, 15.01-2S, 15.01-5S, 16.01-1S, 16.01-1R, 21.01, 21.04, 22.01 and 22.05.

⁶ Noting there are two residential character precincts comprising Creek Abuttals and Creek Environs.



site is also identified under this policy in the 'Creek Environs' residential character precinct.

- 7 I have had the benefit of submissions from Ms Harding from Council, Mr Ng for the applicant and the landscape and urban design evidence of Mr Smith on behalf of the applicant and have given consideration to them.
- 8 With this matter, I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the planning scheme. Net community benefit is central in reaching a conclusion. Clause 71.02-3 - 'Integrated Decision Making' of the planning scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.
- 9 With this proposed development I must decide whether a permit should be granted and, if so, what conditions should be applied.
- 10 Having considered the submissions presented with regards to the applicable policies and provisions of the planning scheme, I find I am generally in agreement with the applicant.
- 11 I find the proposal represents an acceptable outcome subject to conditions requiring an increase of side and rear boundary setbacks, the use of permeable paving and at grade construction of the driveway which should improve tree retention and provide more space for canopy tree planting and landscaping that will enhance the garden city character in this area.
- 12 The site is located within a reasonable travel distance to public transport with the nearest bus stops in Blackburn Road approximately 200 metres to the north-east and Syndal Railway Station approximately 600 metres or around an 11-minute walk to the north. The site is also within 300 metres to Syndal South Primary School and approximately 260 meters to the Waverley Private Hospital and 1.03 kilometres to the Pinewood Shopping Village to the south. I do not consider the site to be isolated and is not at odds with achieving a 20-minute neighbourhood sought under Clause 15.01-4R.
- 13 Council says the proposal does not prioritise the landscape character needed for the area and is a design that does not complement or respond to the existing or preferred character of the area. It is a poor response to neighbourhood and landscape character. Council says the area is generally low scale with low visual impact housing where existing built form is well setback with limited hard paving and large areas of landscaping that results in dwellings in the Court bowl being almost completely hidden from view. They say the proposal presents as a significant departure from this built form character.



- 14 Council says the form of the proposed dwellings will sit uncomfortably on the site. They are of a modern design with a box-like appearance with flat roof profiles that will contrast with the existing pitched roof housing in the neighbourhood. Dwelling 1 will sit forward and with its garage protruding 1.43 metres from the residential façade, will be the dominant element when viewed from the street. Council says such outcomes are discouraged under Clause 22.01.
- 15 Compounding this appearance is the extent of hard paving associated with the driveway that leads to the garage of dwelling 1 but also its curvature past the front of dwelling 1 to access the garage of dwelling 2. The combination of this extent and its proximity to Tree 3 and its Structural Root Zone (SRZ) places this tree's retention in jeopardy.
- 16 Council says that:
- The subject site is located in the 'Creek Environs Area', which determines the preferred future character. Statements made for this area include:
- The neighbourhood character of this area will be **defined by its spacious garden settings, tall canopy trees and consistent built form.**
 - New developments will be **designed to complement the established planting patterns** and topography.
 - **Vegetation will dominate the streetscape and buildings will be recessive and normally hidden from view behind vegetation and tall trees.**
 - New dwellings will complement the older 1950s and 1960s buildings styles through the use of simple details, low building scale and articulated facades.
 - Design emphasis should be placed on promoting the preferred neighbourhood character by **responding to the landscape setting.**
- 17 Council considers the proposal does not prioritise open and spacious landscaping within the front setbacks and limits side boundary planting due to narrow side setbacks. The front area of the site is proposed to have hard paving amounting to an area of approximately 132 square metres compared to an area for landscaping amounting to approximately 73 square metres. Side boundary setbacks are limited from the south-west for dwelling 1 of 1.25 metres and 1.806 metres from the north side boundary for dwelling 2.
- 18 Regarding the rear setback, this area abuts the Pipe Reserve. Council says the scale of the built form will overwhelm this area. The NRZ3 varies setbacks with a requirement for a rear setback of 5 metres. The proposal encroaches into this setback with the terrace of dwelling 1 and the deck of

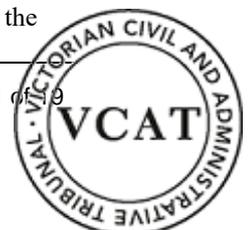
dwelling 2.⁷ Council says these reduced setbacks, combined with the presence of a 2.44 metre wide easement along the rear boundary limits space for landscaping that can include canopy trees. They consider it will not achieve an outcome of a screened built form and leafy setting complimentary of the garden city character sought by the planning scheme and an outcome respectful of the creek environs setting.

- 19 Despite Council's concerns, I find the proposal is a modest increase in residential density. Replacement of the existing single double storey dwelling with two new contemporary double storey dwellings is a modest extent of change. It is a change that is respectful of the neighbourhood character whilst achieving urban consolidation policies in Mount Waverley.⁸
- 20 I note the Mr Ng was critical of Council's reliance on policy referring to many previous Tribunal decisions⁹ that reflect the guidance offered by policy and that policy should not be used as a control or rule to determine applications for proposals such as in this matter. While I acknowledge his arguments, I am also conscious of the role policy does play in guiding the exercise of discretion with decision making on permit applications. An example of that is Clause 22.05 – 'Tree Conservation Policy' which is a policy that applies to all land. It recognises the importance of maintaining and enhancing the garden city character. The policy also acknowledges the importance of ensuring the remaining remnant trees, and trees that have been planted and have now matured are retained, where possible, when development proceeds, and that new canopy trees with spreading crowns be planted as part of all new developments. This policy has some resonance, particularly in an area recognised for its relationship to creek environs which in this case is the Pipe Reserve behind the site.
- 21 I consider the proposal is an acceptable outcome subject to changes with respect to the northern side boundary setback and the rear setback that abuts the Pipe Reserve. The Pipe Reserve is in the Public Use Zone Schedule 1 – 'Service and Utility' (**PUZ1**). It is an area that does not contain a waterway or creek. But it is a linear open area that is available for public use in the form of a pedestrian link to a broader creek trail to the south. Otherwise, it remains an area available for public infrastructure associated with Melbourne Water.
- 22 The Pipe Reserve is an open grassed area with scattered trees along its edges. It remains an area that is sensitive to the appearance of built form. The rear of the existing dwelling presents to the Pipe Reserve as a single storey element protruding above the existing timber paling fence along this

⁷ The terrace of dwelling 1 is set back 4.1 metres and the deck of dwelling 2 is set back 3.148 metres from the rear boundary abutting the Pipe Reserve.

⁸ Refer to Clauses 11.01-1R and 16.01-1S.

⁹ I do not reference these cases, but they are included in the applicant's submission which is on the Tribunal file.



boundary which has a height of 1.8 metres. Whilst the rear or south elevation of dwelling 1 will maintain a single storey form above the fence, dwelling 2 will have a larger length of exposure with a double storey built form protruding above the existing fence (refer to Figure 4). This creates a larger built form presence to the Pipe Reserve, which would be dominant and overwhelming to the public view.

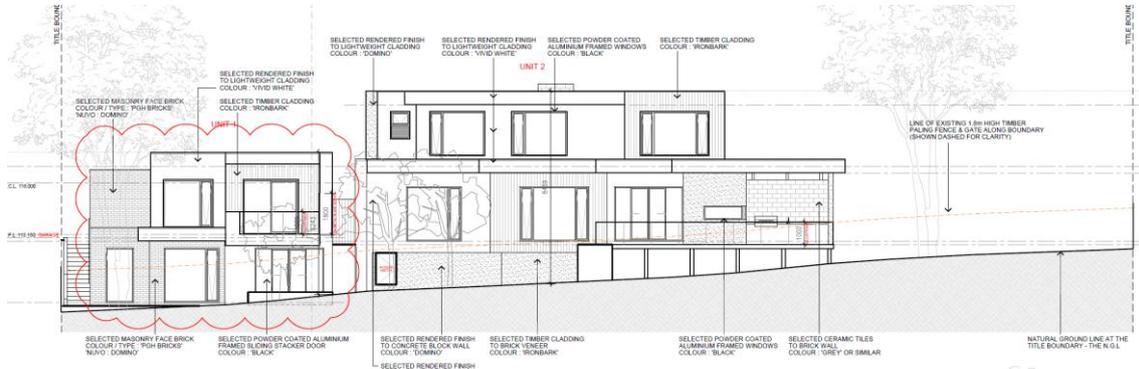


Figure 4: South elevation.

- 23 However, I am comfortable that the overwhelming dominance of the rear façade of dwelling 2 can be mitigated through an increase in setback from this boundary and the inclusion of additional canopy tree and understory planting that will be able to filter views of the building from public view from the Pipe Reserve.
- 24 My views in this regard are supported by the presence within the Pipe Reserve towards the north-eastern end of the site of a Willow Myrtle (*Agonis flexuosa*) and a Bracelet Honey-myrtle (*Melaleuca armillaris*). These, together with the retention of the Pin Oak and Tree 17, a hedge row of Kohuhu (*Pittosporum tenuifolium*) and the proposed planting shown in the landscape plan in the evidence of Mr Smith of a Silver-leaf or Mealy Stringybark (*Eucalyptus cephalocarpa*), should assist in both retaining canopy trees and enhancing the garden city character through canopy tree planting. It will also contribute to a filtered screen of the proposed built form from the Pipe Reserve.
- 25 Accordingly, I will include a condition requiring the terrace of dwelling 1 to be set back from the rear boundary a minimum of 5 metres and the decking of dwelling 2 to be set back from the rear boundary a minimum of 5 metres and a minimum of 2 metres from the northern side boundary.
- 26 In addition, to allow for more space for increased landscaping along the northern side boundary, I will include a condition for dwelling 2 to achieve a setback of a minimum of 2 metres.
- 27 These changes will assist with providing more space for meaningful landscaping and reduction of the extent of encroachment into TPZs of trees to the retained (Trees 11 and 19).

- 28 Regarding the driveway, I am satisfied with the recommendations in the evidence of Mr Smith with respect to replacing the concrete grass pavers with permeable paving laid at grade over the root system of Tree 3. This will allow water to permeate through to the root system and should avoid the need to cut any roots for construction of this section of the driveway. I am comfortable the driveway design will not lead to excessive hard paving, and it will utilise the existing crossover preserving the extent of nature strip and the retention of the street tree. I will include a condition requiring driveway construction to occur during the April to September period when Tree 3 is in hibernation to minimise any impacts.
- 29 The retention of the trees that would trigger a permit requirement under the VPO1 is supported. The remaining trees proposed to be removed do not require a permit. Out of the 10 trees on the site proposed to be removed, three are weed species exempt under the VPO1. I do consider that Tree 10, a Kohuhu Pittosporum (*Pittosporum eugenoides variegatum*) which is located on the northern side boundary and Tree 13, a Wattle (*Acacia Spp.*) located in the rear corner of the site should both be retained. They are both in good health and with the increased setbacks are capable of being retained.
- 30 To ensure the encroachment of the TPZs of Trees 11 and 19 proposed to be retained are protected, I will include a condition requiring construction within their TPZs to be of a pier and beam form with any decking to have slatted boarding that allows water to penetrate into the soil below.
- 31 Regarding the contemporary built form design and the flat roof component, I am not concerned that this departure in design from other housing in the area is a significant impact on neighbourhood character. Change will always occur. The front of dwelling 1 will present to the street as a single storey form (refer to Figure 5).

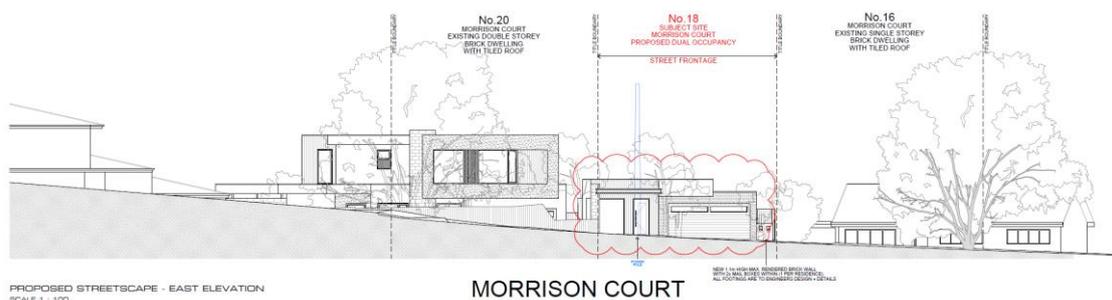


Figure 5: Streetscape elevation.

- 32 I do not consider this will be dis-respectful and with tree retention and landscaping is satisfactory. I do not consider the policy should prevent change that is in the form of contemporary design from occurring and limiting architectural expression to that which has occurred in the past.
- 33 Mr Ng queried the need for the drainage conditions circulated by Council. Council says they are standard conditions. I am comfortable for them to

remain as they will ensure drainage is implemented to Council's requirements and satisfaction.

- 34 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Christopher Harty
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/53753
LAND	18 Morrison Court MOUNT WAVERLEY VIC 3149

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two double storey dwellings

CONDITIONS

Amended plans

- 1 Before the development commences, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed they will form part of the Permit. They must be generally in accordance with plans prepared by Zai Pty Ltd, dated 10 January 2023, Revision D, but modified to show:
 - (a) The terrace of dwelling 1 set back from the rear (south-eastern) boundary a minimum of 5 metres. No other setbacks to be decreased.
 - (b) The decking of dwelling 2 set back from the rear (south-eastern) boundary a minimum of 5 metres and a minimum of 2 metres from the northern side boundary. No other setbacks to be decreased.
 - (c) Dwelling 2 set back a minimum of 2 metres from the northern side boundary to allow for more space for landscaping along the northern side boundary. No other setbacks to be decreased.
 - (d) Construction within the Tree Protection Zones of Tree 11 (Red Flowering Gum) and Tree 19 (Pin Oak), is to be of a pier and beam form with any decking to have slatted boarding to allow water penetration into the soil below to ensure the encroachment of the trees proposed to be retained are protected.
 - (e) A Tree Management Plan in accordance with condition 4 of this Permit.
 - (f) Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides or from the edge of the exit lane of each vehicle crossing to



provide a clear view of pedestrians on the footpath of the frontage road.

- (g) Clear annotations to show trees to be removed and retained on the site.
- (h) A Landscape Plan in accordance with condition 3 of this Permit.

Layout not to be Altered

- 2 The development as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

Landscape

- 3 Concurrent with the endorsement of any plans requested pursuant to Condition 1, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned and generally in accordance with the landscape plan prepared by Michael Smith and Associates plan number 23-013 Sheets 1 and 2 dated 12/04/2023 must be submitted to and approved by the responsible authority. The Landscape Plan must show:

- (a) A survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
- (b) Retention of Trees 1, 2, 3, 10, 11, 12, 13, 14, 17 and 19 (as identified in the Arborist Report submitted with the application, prepared by Dr Peter Yau);
- (c) A planting schedule of all proposed trees (canopy tree to be Australian native species), shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;
- (d) A minimum of five (5) canopy trees (minimum 1.5 metres tall when planted). The canopy trees must have a minimum height of 7 metres and must have a spreading crown with a minimum width of 4 metres at maturity, or as otherwise agreed by the responsible authority;
- (e) Canopy trees to be of indigenous or Australian native species;
- (f) The location of any boundary and internal fencing to the site;
- (g) Provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
- (h) Planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- (i) Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site;



- (j) The location of any retaining walls associated with the landscape treatment of the site;
- (k) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (l) An in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the responsible authority;
- (m) Tree protection fencing in accordance with Tree Management Plan of this Permit.
- (n) Landscaping and planting within all open areas of the site.

When approved the plan will be endorsed and will then form part of the permit.

Tree Management Plan

- 4 Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the responsible authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must set out recommendations and requirements in relation to the management and maintenance of Tree Nos. 1, 3, 5, 7, 10, 11, 13, 14, 16, 17, 19 and 20 (as identified in the Arborist Report submitted with the application, prepared by Dr Peter Yau).

The TMP must be approved by the responsible authority prior to the commencement of any works, including demolition and/or levelling of the site. The TMP must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - *Protection of Trees on Development Sites* and detail the following to the satisfaction of the responsible authority ensuring the trees to be retained remain healthy and viable during construction:

- (a) A Tree Protection Plan drawn to scale that shows:
 - i Tree Protection Zones and structural root zones of all trees to be retained,
 - ii All tree protection fenced off areas and areas where ground protection systems will be used;
 - iii The type of footings within any Tree Protection Zones;
 - iv Any driveway construction within the Tree Protection Zone of Tree 3 must be undertaken between April and September.
 - v Care management of Trees 11 and 19 by removing Ivy growth by hand and periodic inspections to control Ivy regrowth.



- vi Any services to be located within the Tree Protection Zone and a notation stating all services will either be located outside of the Tree Protection Zone, bored under the Tree Protection Zone, or installed using hydro excavation under the supervision of the Project Arborist; and
 - vii A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones.
- (b) Details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist.
 - (c) Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and
 - (d) Any remedial pruning works required to be performed on tree canopies located within the subject site. The pruning comments must reference Australian Standards 4373:2007, *Pruning of Amenity Trees* and a detailed photographic diagram specifying what pruning will occur.

The recommendations contained in the approved tree management plan must be implemented to the satisfaction of the responsible authority.

Tree Protection

- 5 Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees that are to be retained, or are located within or adjacent to any works area (including trees on adjacent land). The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the responsible authority.

Landscaping Prior to Occupation

- 6 Before the occupation of any of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the responsible authority and thereafter maintained to the satisfaction of the responsible authority.

Drainage

- 7 The site must be drained to the satisfaction of the responsible authority.
- 8 A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.



- 9 Stormwater discharge is to be detained on site to the pre-development level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing; or any alternate system.
- 10 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the responsible authority.
- 11 The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the responsible authority.

Vehicle Crossover

- 12 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
- 13 Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides or from the edge of the exit lane of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.

Satisfactory Continuation and Completion

- 14 Once the development has started it must be continued and completed to the satisfaction of the responsible authority.

Expiry of permit for development

- 15 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
 - (a) The development is not started within two (2) years of the issue date of this permit.
 - (b) The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

– End of conditions –