

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P767/2023

APPLICANTS	Dawn Lambden & Georgina Lambden
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Hung Nguyen
SUBJECT LAND	13 Kevin Street MOUNT WAVERLEY VIC 3149
HEARING TYPE	Compulsory conference
DATE OF HEARING	27 October 2023
DATE OF ORDER	27 October 2023

ORDER

Grant permit

- 1 In application no. P767/2023 the decision of the responsible authority is **varied**.
- 2 In permit application no. **TPA/53717** a permit is granted and directed to be issued for the land at 13 Kevin Street MOUNT WAVERLEY VIC 3149 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
 - Construction of more than one dwelling on a lot in the Neighbourhood Residential Zone – Schedule 3

Hearing vacated

- 3 The hearing scheduled at **10:00am on 13 February 2023** is vacated. No attendance is required.

S. R. Cimino
Senior Member

APPEARANCES

For applicants	Georgina Lambden
For responsible authority	Nicolas Rocca and Sally Moser, town planners
For respondent	In person



REMARKS

- 1 This matter involves an application pursuant to section 82 of the *Planning and Environment Act 1987* (Vic) for a review of the Monash City Council's decision to grant a permit for the construction of two dwellings on the subject land.
- 2 At the compulsory conference, the parties reached agreement and request orders by consent. The parties request that a permit be granted subject to additional conditions that increase some setbacks to a bedroom and garage to dwelling 2, amend the external finish of part of dwelling 2 and modify landscaping requirements along the rear boundary.
- 3 This order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 4 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
 - the responsible authority is of the opinion that the permit is appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987* (Vic), including the balanced application of the strategies and policies of the Monash Planning Scheme (**Planning Scheme**) and is otherwise in conformity with the provisions of the Planning Scheme and the Act;
 - the proposed orders will not result in any change to the proposed development which would materially affect any person other than the parties to the proceeding.
- 5 Based on the information available to the Tribunal, I consider it is appropriate to give effect to the settlement reached by the parties pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

S. R. Cimino
Senior Member



APPENDIX A

PERMIT APPLICATION NO:	TPA/53717
LAND:	13 Kevin Street MOUNT WAVERLEY VIC 3149
WHAT THE PERMIT ALLOWS:	
<ul style="list-style-type: none"> • Construction of more than one dwelling on a lot in the Neighbourhood Residential Zone – Schedule 3 <p>in accordance with the endorsed plans.</p>	

CONDITIONS

Amended Plans

- 1 Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans submitted to Council prepared by Pillar Building design, TP Amendment 2, but modified to show:
 - (a) The northern wall of bedroom 02 of dwelling 2 set back increased to not less than 3.1 metres to the north boundary, with the setback of bedroom 03 maintained at no less than 3 metres to the south boundary.
 - (b) The garage to dwelling 2 setback increased to not less than 3 metres from the rear (west) boundary, unless satisfactory turning circles can be demonstrated for vehicles associated with dwelling 2, in which case, the setback may be increased to 3.1 metres.
 - (c) The rendered finish to the first-floor level of dwelling 2 specified as ‘Winter Fog’ (Dulux) tinted at half strength.
 - (d) The location of Tree Protection Zones and Tree Protection Fencing for the street trees.
 - (e) Compliance with standard B18 of Clause 55 of the Monash Planning scheme for the northern wall of the dwelling 2 garage.
 - (f) Compliance with ramp grades within design standard 3 of Clause 52.06-9.
 - (g) A Landscape Plan in accordance with condition 5 of this Permit.
 - (h) A drainage plan in accordance with condition 11 of this Permit

all to the satisfaction of the Responsible Authority.



Layout not to be Altered

- 2 The development and use as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

Landfill Gas Assessment

- 3 Prior to the commencement of the development authorised under this permit (excluding works reasonably required to conduct the landfill gas assessment), the permit holder must to the satisfaction of the Responsible Authority:

- (a) Engage an appropriately qualified site assessor with demonstrated experience in the assessment of landfill gas in the subsurface environment, to conduct an assessment of any methane within the land, subsurface services and buildings and structures on the land adopting the methane gas action levels prescribed at items 6 and 7 of schedule 3 of the Environment Protection Regulations 2021 (Vic) as set out below.

<i>Item</i>	<i>Location for assessing methane gas concentration action levels</i>	<i>Methane gas concentration action level</i>
6	Subsurface services on, and adjacent to, the waste	10,000 parts per million
7	Buildings and structures on, and adjacent to, the waste	5000 parts per million

- (b) Ensure that the site assessor prepares a report to be submitted to the Responsible Authority. The landfill gas risk assessment (LGRA) should be based on guidance prepared by the Environment Protection Authority from time to time and / or made under the *Environment Protection Act 2017 (Vic)* and subordinate legislation. As at the issue date of this permit, such ‘guidance’ includes EPA Publication 788.3 (Landfill Best Practice Environmental Management or Landfill BPEM) and EPA Publication 1684 (Landfill gas fugitive emissions monitoring guideline).
- (c) If the landfill gas assessment identifies methane at concentrations exceeding the methane gas concentration action levels, the permit holder must engage the services of an EPA-appointed environmental auditor to complete an environmental audit with a scope limited to:
 - i assessment of the nature and extent of the risk of harm to human health from waste;



- ii recommending measures to manage the risk of harm to human health from waste;
 - iii making recommendations to manage any waste, where the landfill extends onto or beneath the land.
- (d) The permit holder must provide the Responsible Authority with a scope and supporting documents endorsed or determined by the Environment Protection Authority pursuant to section 208(5) of the *Environment Protection Act 2017* (Vic) and a copy of the environmental audit statement and environmental audit report issued pursuant to sections 210(1) of the *Environment Protection Act 2017* (Vic).

Peer Review

- 4 Prior to the commencement of the development authorised under this permit, the permit holder must:
- (a) provide to Council a copy of the LGRA undertaken in accordance with condition 1 within 14 days of receiving the LGRA;
 - (b) pay Council's costs and expenses associated with a Council-arranged peer review of the LGRA. The peer review will be undertaken by an independent and suitably qualified environmental consultant nominated by Council; and
 - (c) obtain a copy of the peer review obtained by Council.

The recommendations of the LGRA including any requirements arising from the peer review are to be implemented by the permit holder.

- iii making recommendations to manage any waste, where the waste extends onto or beneath the land. The land owner must provide the Responsible Authority with a scope and supporting documents endorsed or determined by the Environment Protection Authority pursuant to section 208(5) of the *Environment Protection Act 2017* (Vic) and a copy of the environmental audit statement and environmental audit report issued pursuant to sections 210(1) of the *Environment Protection Act 2017* (Vic).

Landscape Plan

- 5 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 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) A planting schedule of all proposed trees, 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; Planting to be contain native and indigenous species.
- (c) A minimum of four (4) canopy trees (minimum 1.5 metres tall when planted) in the following areas (two within the front setback and one in each secluded open space area). The canopy trees must have a minimum height equal to the height of the roof and must have a spreading crown with a minimum width of 5 metres at maturity, The species of canopy trees should be native, preferably indigenous or as otherwise agreed by the Responsible Authority.
- (d) The replacement of the proposed *Pittosporum tenuifolium* in the rear of dwelling 2 with a suitable native equivalent that reaches a height of about 3 metres and has a non-invasive root system.
- (e) Planting to soften the appearance of hard surface areas such as driveways and other paved areas. Landscaping and planting to be provided within all open areas of the site.
- (f) Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site;
- (g) the location of any retaining walls associated with the landscape treatment of the site;
- (h) details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (i) The location of Tree Protection Zones and Tree Protection Fencing;
- (j) 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;
- (k) The location of external lighting (if any);
- (l) The location of electricity supply meter boxes. The electricity supply meter boxes must be located at or behind the setback alignment of buildings on the site, or in compliance with Council's "Guide to Electricity Supply Meter Boxes in Monash"
- (m) The location of all services (water /gas/drainage)
- (n) the location of any fencing internal to the site;

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

- 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



Tree Protection

- 7 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.
- 8 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the Responsible Authority.

Landscaping Prior to Occupation

- 9 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

- 10 The site must be drained to the satisfaction of the Responsible Authority. Stormwater must be directed to the Point of Connection as detailed in the Legal Point of Discharge report. Stormwater must not be allowed to flow into adjoining properties including the road reserve.
- 11 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. Refer to Engineering Plan Checking on www.monash.vic.gov.au.
- 12 Stormwater discharge is to be detained on site to the predevelopment 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.
- 13 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.
- 14 The full cost of reinstatement of any Council assets affected by the 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 Crossovers

- 15 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.
- 16 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 17 Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority. All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.

- **Privacy Screens**

- 18 Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed, the screening and other measures must be maintained ongoing to the satisfaction of the Responsible Authority. The use of obscure film fixed to transparent glass or windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.

- **Boundary Walls**

- 19 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

- **Satisfactory Continuation and Completion**

- 20 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

- **Time for Starting and Completion**

- 21 In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
 - (a) The development is not started before 2 years from the date of issue.
 - (b) The development is not completed before 4 years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or

- i within six (6) months afterwards if the development has not commenced; or
- ii within twelve (12) months afterwards if the development has not been completed.



Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

--- End of Conditions ---

