VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference Nos.P11251/2021& P11370/2021  Permit Application no.TPA/552279 & TPA/52780 |
| CATCHWORDS | |
| Applications under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. | |

|  |  |
| --- | --- |
| P11251/2021 & P11370/2021 |  |
| APPLICANT | Theo Hronopoulos |

|  |  |
| --- | --- |
| Responsible Authority | Monash City Council |

|  |  |
| --- | --- |
| SUBJECT LAND | 19 Stableford Avenue Glen Waverley VIC 3150 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 16 November 2021 |
| DATE OF ORDER | 13 December 2021 |
| CITATION | Hronopoulos v Monash CC [2021] VCAT 1502 |

# Order

## application P11251/2021

1. In application P11251/2021 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/52279 no permit is granted.

## application p11370/2021

1. In application P11370/2021 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/52780 no permit is granted.

|  |  |  |
| --- | --- | --- |
| Laurie Hewet  **Senior Member** |  |  |

# Appearances

|  |  |
| --- | --- |
| For applicant in both cases | Mr Theo Hronopoulos |
| For responsible authority in both cases | Ms S Moser, town planner  Ms Moser called expert evidence from:   * Mr G Thyer, arborist |



# Information

|  |  |
| --- | --- |
| Description of proposal | The removal of two trees |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Clause 32.09: Neighbourhood Residential Zone (NRZ3)  Clause 42.02: Vegetation Protection Overlay (VPO1) |
| Permit requirements | A permit is required to remove or destroy any vegetation that meets nominated circumference and height criteria. Both trees proposed to be removed require a permit for their removal |
| Land description | The site is located on the northern side of Stableford Avenue, Glen Waverley. The land has a regular configuration with an area of approximately 653m². It has a slope of 2.75 metres from the south-west to the north-east of the site.  A double storey dwelling occupies the site. The site contains diverse vegetation, with significant trees at the front and rear of the property.  The trees subject to this permit application are at the front of the site. Tree 1 is a *Eucalyptus maculata* (Spotted Gum) with a height of 18m and a diameter at breast height (DBH) of 0.42m. Tree 2 is also a *Eucalyptus maculata* (Spotted Gum) with a height of 20m and a DBH of 0.63m. |

# Reasons[[1]](#footnote-2)

1. This is an application to review the decision of the Responsible Authority to refuse permission for the removal of two trees at 19 Stableford Avenue, Glen Waverley. The Responsible Authority issued Notices of Refusal to Grant Permits for the following reasons:

The tree makes a significant contribution to the landscape character of the area and the removal does not accord with the objectives of Clause 59.06 (Remove, Destroy or Lop a Tree) and Clause 42.02 (Vegetation Protection Overlay) of the Monash Planning Scheme.

There is inadequate justification for the removal of the tree having regard to the objectives or decision guidelines of Clause 42.02 (Vegetation Protection Overlay) of the Monash Planning Scheme.

The tree makes a significant contribution to the landscape character of the area. The removal would fail to maintain the Garden City Character of the area.

1. There are several matters that are not in dispute in this case. These are as follows:

* The application of the Vegetation Protection Overlay (VPO1) gives effect to and implements policy for existing treed environments where the vegetated character of the area is valued by the community and the retention of vegetation is encouraged[[2]](#footnote-3).
* The trees proposed to be removed make a significant contribution to the vegetated character of the neighbourhood. The applicant for review acknowledges the contribution made by the trees. Their contribution has been confirmed by my inspection of the site after the hearing.
* Both trees are in good health with a long safe useful life expectancy. The evidence of Mr Thyer is not contradicted on this point.

1. The roots of the trees have caused property damage on the site, primarily to the adjacent driveway which at the time of the applications being considered by the Council was severe enough to prevent vehicle access to the garage via the driveway.
2. The applicant submits that the damage caused to the driveway by the tree roots is a reasonable justification for the removal of the trees.
3. At the hearing the applicant advised that he had been able to repair the driveway to a level that it now allows access to the garage, albeit on an interim basis.
4. I agree with the applicant that damage to property caused by trees can be a reasonable justification to remove the trees that are causing the damage. The severity of the damage, the significance of the trees and options for repairing damage or preventing further damage, are all factors that can be considered in deciding whether to allow trees to be removed.
5. In this case the trees do make a significant contribution to the character of the neighbourhood. The damage they have caused to the driveway is also significant, but it has now been repaired and the driveway is at least functional.
6. In these circumstances and having regard to the sound policy basis underpinning the provisions of the VPO1, I am not prepared to authorise the removal of these significant trees.

## conclusion

1. It follows from the above reasons that it is my conclusion that the decision of the responsible authority should be affirmed and no permit issued

|  |  |  |
| --- | --- | --- |
| Laurie Hewet  **Senior Member** |  |  |

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. [↑](#footnote-ref-2)
2. The statement of the nature of significance of vegetation in VPO1 relevantly states:

   ………Existing on-site canopy trees contribute to the Garden City Character of Monash. Retention of canopy trees helps integrate new development into the existing urban form and reduces the impact of higher densities or larger buildings on neighbourhood character. The tree canopy presents a “special” leafy character valued by the community in terms of consistent and visible vegetation and the opportunity for residents to live in a treed, predominantly low density, detached house environment. Retention of existing canopy trees is necessary to complement any new development. [↑](#footnote-ref-3)