

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P173/2022
PERMIT APPLICATION NO. TPA/53021

APPLICANT Guo Chen and Fengzhu Wang
RESPONSIBLE AUTHORITY Monash City Council
SUBJECT LAND 3 Amber Grove
MOUNT WAVERLEY VIC 3149
DATE OF ORDER 19 April 2022

ORDER

- 1 The hearing scheduled at 9.30 am on 17 May 2022 is vacated. No attendance is required.
- 2 In application P173/2022, the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/53021 a permit is granted and directed to be issued for land at 3 Amber Grove, Mount Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows the:
 - Construction of two (2) double storey dwellings.
- 4 There shall be no order as to costs.

Judith Perlstein
Member



REMARKS

- 1 Pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*, this order is made at the request of the parties and with their consent.
- 2 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
 - a the responsible authority is of the opinion that the permit or amended permit is appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987*, including the balanced application of the strategies and policies of the Monash planning scheme and is otherwise in conformity with the provisions of the planning scheme and the *Planning and Environment Act 1987*;
 - b the proposed orders will not result in any change to the proposed use or development which would materially affect any person other than the parties to the proceeding.
- 3 Based on the information available to the Tribunal, I consider it is appropriate to make these orders.

Judith Perlstein
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/53021
LAND	3 Amber Grove MOUNT WAVERLEY VIC 3149

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two (2) double storey dwellings

CONDITIONS

Amended Plans

- 1 Before the development starts, plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans prepared by NJAM Design & Build, Drawing Nos. A.000, A101, A102, A103, A201, A202, A301, A402, A403, A404, A501 Revision 1 May 2021, but modified to show (as depicted in the plan set identified as Revision 2, April 2022):
 - (a) The exact distance from base of the *Corymbia ficifolia* street tree to the edge of the Dwelling 2 crossover in the nature strip to tree including with clear note that there is to be no excavation, works, or the like between the tree and the non-destructive root investigation trench undertaken by John Patrick Landscape Architects P/L (Ms Kylie May) dated February 2022 with confirmed measurement of 2.5 metres from the base of the tree with splay to 2.3 metres.
 - (b) On the ground floor plan provide:
 - i An increase in the setback of the laundry to living room area of Dwelling 1 from 1.4 to 2 metres.
 - ii The remaining west facing verandah of Dwelling 1 identified as a courtyard.
 - iii Squared off entry porches to Dwellings 1 and 2.
 - iv The footpaths between the parallel walkways and front boundary of each dwelling deleted.
 - v Fencing (black metal picket type or timber landscaping posts or similar with high level of transparency that will be softened with plantings) with a maximum height of 1.2 metres between the end of the paved porched areas and the front boundary of each dwelling.



- vi Relocate the letter boxes to positions abutting the respective driveways.
 - vii Include a notation the letter boxes are not to exceed 900mm in height.
 - viii The Dwelling 2 crossover combined with the crossover of the abutting property to the east
- (c) At first floor on the west side of Dwelling 1:
- i Bedroom 1 of Dwelling 1, provide a setback off the boundary ranging from 3.2 – 3.78 metres.
 - ii A stepped indent created in the western façade of Dwelling 1 by providing a 3.2 metre minimum setback to the north-west corner of Bedroom 2 and the main bathroom.
 - iii A reduction in the internal width of Bedroom 3 of Dwelling 1 from 3.4 metres wide to 2.81 metres wide.
 - iv An increase western setback of Bedroom 4 (including WIR and ensuite) of Dwelling 1 from 2.615 to 3.20 metres.
- (d) For both dwellings:
- i An increase setback of the upper level balcony from the ground floor of both dwellings by 1 metre.
 - ii A notation showing the privacy screens on east and west sides of the rear balconies altered to a 1.7m high colorbond (low key naturalistic colour) louvre presentation with 25% transparency.
- (e) Updated elevations with:
- i A decrease in the maximum overall height of the dwellings from 7.944 metres to 7.494 metres.
 - ii The provision of timber panelling on the west facing upper level wall above the Dwelling 1 west side courtyard.
- (f) An updated set of updated shadow diagrams to reflect existing conditions, the amended design and including compliance with Clause 55.04-5.
- (g) A schedule of materials and finishes.
- (h) The tree protection zones of the Council street tree and any trees on abutting properties impacted by the development.
- (i) The location of tree protection fencing.
- (j) A prominent notation with arrow to the western edge of the Dwelling 2 crossover referencing to Conditions 4 and 5 of the permit along with the following:
- i Tree protection fencing must be erected prior to the commencement of any works on-site.



- ii A construction work setback line must be agreed with Council, be marked on the ground, photographed and then inspected by Council.
 - iii Hand dug excavation by or under the supervision of the project arborist is to occur and be completed at the agreed setback line and not extend any further. Any roots greater than 30mm encountered during the hand excavation must be cut clearly and treated by the project arborist in accordance with best practice. A photographic record is to be made.
 - iv Any breaches in the above requirements must be reported to Council immediately.
- (k) Gas/water meter locations in unobtrusive locations.
 - (l) The location of water tanks and any other facilities needed to meet any required sustainable design/energy ratings.
 - (m) A Tree Management Plan required in Condition 4.
 - (n) Reference to the Tree Management Plan required in accordance with Conditions 4 on the plans.
 - (o) A landscape plan required in Condition 10.

No Alterations

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

Common Boundary Fences

- 3 All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.

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, must be submitted to, be to the satisfaction of and be 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 during the construction period of the *Corymbia ficifolia* street tree in the nature strip as well as any trees on abutting land potentially impacted by the development.
- 5 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 tree is 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 the Council street tree and any trees/large shrubs on the abutting properties potentially impacted by the development,
 - ii All tree protection fenced off areas and areas where ground protection systems will be used;
 - iii The type of footings (associated with the buildings and any proposed fencing) within any tree protection zones;
 - iv Details on any earthworks including ground level finishes/works that alter the existing condition of the land in respect of the tree protection zones. This is to include the removal of front fencing and existing concreted areas within the TPZ of the Council street tree (*Corymbia ficifolia*).
 - v Information on what specific details/actions are required within the tree protection zones including removal of existing concrete and front boundary fencing within the property within the TPZ of the Council street tree.
 - 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
- (b) Details of how the root system of any tree to be retained will be managed having regard to the works proposed. 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 including stages required by the Project Arborist to the satisfaction of the Responsible Authority. This is to include a requirement that the project arborist is to be in attendance during construction works for the Dwelling 2 driveway.
- (d) The TMP is also to include the following for the Council street tree (*Corymbia ficifolia*):
- i A Tree Protection Fence in accordance with AS 4070 – 2009 is to be erected prior to the commencement of any works, including demolition, on the land. The fence is to extend around the Tree Protection Zone of the Council Street tree (*Corymbia ficifolia*) in the nature strip into the front setback area of the site in accordance with the TPZ distance.



- ii A requirement that prior to commencement of any works associated with construction of the Dwelling 2 crossover and in addition to any other requirements under this permit, a construction works setback line is to be marked on the ground and be photographed and then be inspected and agreed to by Council's arborist. The TPZ fence in the nature strip is to be repositioned to this line and must not be altered during the construction.
 - iii In the nature strip, hand dug excavation for the crossover, by or under the on-site supervision of the project arborist is to occur and be completed at the agreed setback line and must not extend any further. Any roots encountered greater than 30mm must be cut cleanly by the project arborist who must undertake this requirement and treat any roots in accordance with best practice. Photos must be taken to show compliance and/or Councils arborist arranged to inspect and confirm.
 - iv Any breaches of the agreed construction setback in the nature strip, will require works to cease while Councils arborist attends to assess and determine following actions.
 - v No soil or construction debris is to be placed against the tree or in the TPZ area.
 - vi No services, structures or any other works associated with the development are to occur within the TPZ area of the *Corymbia ficifolia*.
- 6 Prior to occupation of the buildings, confirmation is to be provided in writing to Council by the project arborist that all recommended measures of the TMP were undertaken in accordance with the requirements of the TMP.
- 7 The recommendations contained in the approved TMP must be implemented to the satisfaction of the Responsible Authority.

Contractors to be advised of trees to be protected

- 8 The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, contractors and tradespersons operating on the site are advised of the status of protected trees/large shrubs on abutting land and be advised of any obligations in relation to the protection of the trees detailed in the TMP.
- 9 No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained on-the site or adjoining land during the construction period of the development hereby permitted.



Landscaping

- 10 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;
 - (c) A minimum of two (2) canopy trees (minimum 1.5 metres tall when planted) in the following areas:
 - i In the front setback area of each dwelling outside the tree protection zone of the Council street tree (*Corymbia ficifolia*) a canopy tree that will have a minimum growth height no less than the height of the respective dwelling with a minimum width of 4 metres at maturity, or as otherwise agreed by the Responsible Authority;
 - ii A canopy tree outside the easement area at the rear of the property in the private secluded open space of each dwelling.
 - iii A medium height deciduous tree in the east and west courtyard area of each dwelling.
 - (d) Softening screen planting inside the east and west boundaries of the land opposite the built form.
 - (e) Fencing (black metal picket type or timber landscaping posts or similar with high level of transparency that will be softened with plantings) with a maximum height of 1.2 metres between the end of the paved porch areas and the front boundary of each dwelling.
 - (f) the location of any fencing internal to the site;
 - (g) planting to soften the appearance of hard surface areas such as driveways and other paved areas;
 - (h) canopy Trees / significant Plantings on adjoining properties within 3 metres of the site;
 - (i) the location of any retaining walls associated with the landscape treatment of the site;
 - (j) details of all proposed surface finishes including pathways, accessways, patio or decked areas;



- (k) The location of Tree Protection Zones and Tree Protection Fencing as outlined within the TMP of Condition 4;
- (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) The location of external lighting (if any);
- (n) Planting required by any other condition of this permit; and
- (o) 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.

Landscaping Prior to Occupation

- 11 Before the occupation 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 then maintained to the satisfaction of the Responsible Authority.

Drainage

- 12 Drainage of the site is to be to the satisfaction of the Responsible Authority.
- 13 All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
- 14 The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:
 - a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
 - shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
 - another Council approved equivalent.
- 15 All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council's Engineering Department prior to drainage works commencing and is to be to the satisfaction of the Responsible Authority.
- 16 The nominated point of stormwater connection for the site is to the south-east corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the 225 mm Council drain in the naturestrip via a 900mm x 600mm junction pit to be constructed to Council standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.



Road Infrastructure

- 17 All new vehicle crossings must be constructed in to the satisfaction of the Responsible Authority.
- 18 All vehicle crossings within 2.4 metres of an adjoining crossing shall be converted to a double crossing in accordance with Council standards.
- 19 All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
- 20 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
- 21 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.
- 22 Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department and be to Council's approval. A refundable security deposit of \$3,000 is to be paid prior to the drainage works commencing.

Completion of Buildings and Works

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

Permit Expiry

- 24 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
 - The development has not started before two (2) years from the date of issue.
 - The development is not completed before four (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 within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

– End of conditions –

