VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P1917/2019Permit Application no. TPA/49560 |
|  |

|  |  |
| --- | --- |
| APPLICANT | Wai Ho Simon Chan |
| responsible authority | Monash City Council |
| SUBJECT LAND | 2/33 Mount StreetGLEN WAVERLEY VIC 3150 |
| WHERE HELD | Melbourne |
| BEFORE | Michelle Blackburn, Member  |
| HEARING TYPE | No hearing  |
| DATE OF ORDER | 11 May 2020  |

# Order

### Permit granted

1. In application P1917/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/49560 a permit is granted and directed to be issued for the land at 2/33 Mount Street, Glen Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* Construction of a dwelling on a lot less than 500 square metres; and
* Variation to Covenant contained in Instrument of Transfer no. 2292847 to allow for the construction of a two storey dwelling.

|  |  |  |
| --- | --- | --- |
| **Michelle Blackburn****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:
	* + - 1. 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 Act, including the balanced application of the strategies and policies of the relevant planning scheme and is otherwise in conformity with the provisions of the planning scheme and the *Planning and Environment Act 1987*;
				2. 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.

|  |  |  |
| --- | --- | --- |
| **Michelle Blackburn** **Member** |  |  |

# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No | TPA/49560 |
| Land | 2/33 Mount StreetGLEN WAVERLEY VIC 3150 |

|  |
| --- |
| What the permit allowS |
| In accordance with the endorsed plans:* Construction of a dwelling on a lot less than 500 square metres; and
* Variation to Covenant contained in Instrument of Transfer no. 2292847 to allow for the construction of a two storey dwelling.
 |

## Conditions

### Amended Plans

1. Before the development starts, three copies of 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 submitted with the application (TP03-TP07, Revision A. Job Number: 18022, dated 2019-03-08 by Prestigious Millennium Design Pty Ltd.), but modified to show:
	1. Fixed lattice trellising of 250mm on top of the shared fence with unit 1/33 Mount Street, Glen Waverley from the garage up until the driveway turns west
	2. Northern wall of bedroom 2 at the first floor to be setback by 700mm from the line of the garage wall at ground floor.
	3. Western wall of Master bedroom at the first floor to be setback to minimum of 5m from the western property boundary together.
	4. No permanent building requiring footings, to occur over the easement at the rear of the property.
	5. A notation that a canopy tree planting should not be planted in the easement.

### Variation of Covenant

1. Prior to the commencement of the development, an application must be made to the Registrar of Titles for the variation of the covenant contained in Instrument of Transfer 2292847, and such variation registered on the certificate of title to the land as follows:

The covenant is modified by removing the variation S875144W and the addition of the following words *"notwithstanding any restrictions contained in Instrument of Transfer 2292847 the Covenant shall not prevent the erection of a second dwelling which is up to two storeys in height and which is located on that part of the land transferred now know as Lot 2 of Plan of Subdivision 332343R"*

or as otherwise agreed in writing by the responsible authority as may be required by the Land Registry to give effect to this variation.

### No Alteration or Changes

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

### Common Boundary Fences

1. All common boundary fences shared with unit 1/33 Mount Street, Glen Waverley 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.

### Landscaping

1. Before the commencement of buildings and works, 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 prior to the commencement of any works. The plan must show the proposed landscape treatment of the site including:-
* the location of all existing trees and other vegetation to be retained on site;
* provision of at least 1 canopy tree with a spreading crown capable of reaching a mature height of 6m in the Secluded Private Open Space area of the development;
* planting to soften the appearance of hard surface areas such as driveways and other paved areas;
* a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material;
* the location and details of all fencing;
* the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site; and
* details of all proposed hard surface materials including pathways, patio or decked areas.
1. Should the proposed planter boxes within the easement require footings, plans and cross-section of planter boxes including footings are to be provided to for the approval prior to endorsement of the development plan, these plans must also;
* Locate and verify the existing drainage asset within the easement, including exact depth of the drainage asset and the offset from the property boundary, prior to designing of the footings for the planter boxes to comply with Council’s building over easement policy.
* A construction clearance of 300mm must be maintained around the drainage asset. The footing of the planter boxes are to be below the bottom of the drainage asset.
1. When approved the landscape plan will be endorsed and will then form part of the permit.

### Tree Protection

1. Prior to the commencement of any works that are permitted by this permit, the tree on the nature strip shall be marked and provided with a protective barricade and verified by an authorised officer of the Responsible Authority.
2. No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained during the construction period of the development hereby permitted

### Landscaping Prior to Occupation

1. 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.

### Stormwater

1. 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.
2. The nominated point of stormwater connection is to the existing internal stormwater drainage system of the property. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.
3. One copy of the plans for the drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of works. The plans are to show sufficient information to determine that the drainage works will meet all drainage conditions of the permit.

### Permits

1. Engineering permits must be obtained for and these works are to be inspected by Council's Engineering Department. A refundable security deposit of $1000 is to be paid prior to the drainage works commencing.

### Completion of Buildings and Works

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

### Permit Expiry

1. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987,* if one of the following circumstances applies:
	1. The development has not started before two (2) years from the date of issue.
	2. 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.

### Variation of Covenant

1. This permit will expire in accordance with section 68 of the Planning and Environment Act 1987, if one of the following circumstances applies:
* The variation to the covenant approved herein is not certified under the Subdivision Act 1988 within 2 years from permit issue.
* The variation to the covenant approved herein is not completed and lodged with the Land Titles Office within three years of the date of starting.

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 afterwards.

**– End of conditions –**