

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT DIVISION

VCAT REFERENCE NO. P1130/2022  
PERMIT APPLICATION NO.TPA/53112

<b>APPLICANT</b>	Clifford Russell Mott
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	306 Highbury Road MOUNT WAVERLEY VIC 3149
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	21 February 2023
<b>DATE OF ORDER</b>	22 February 2023

## ORDER

### Amend permit application

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

- Prepared by: JDH Design Group
- Drawing numbers: TP01 – TP10
- Dated: 16 December 2022 Revision 5
  
- Prepared by: Keystone Alliance
- Drawing numbers: Landscape Plan Page 1 of 1
- Dated: 14 December 2022 Revision E

### Permit granted

- 2 In application P1130/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/53112 a permit is granted and directed to be issued for the land at 306 Highbury Road Mount Waverley VIC 3149 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
- The construction of two or more dwellings on a lot;
  - The removal of two trees; and
  - The alteration of access to a road in a Transport Zone 2.

Karina Shpigel  
**Member**



## APPEARANCES

For Clifford Mott	Phillip Rygl, Town Planner, Connect Town Planning.
For Monash City Council	David De Giovanni, Town Planner.

## INFORMATION

Description of proposal	The development of two dwellings comprising the retention of the existing dwelling and the construction of a second double storey dwelling to the rear. The proposal is also for the removal of Trees 13 and 22 and the alteration of access to Highbury Road.
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	General Residential Zone, Schedule 3. Vegetation Protection Overlay, Schedule 1.
Permit requirements	Clause 32.08-6 to construct two or more dwellings on a lot. Clause 42.02-1 to remove, destroy or lop two trees specified in the schedule to the overlay. Clause 52.29-2 to create or alter access to a road in a Transport Zone 2.
Land description	<p>The subject land is located on the southern side of Highbury Road, which is a road in a Transport Zone 2.</p> <p>The land is rectangular in shape with an overall area of 780 square metres.</p> <p>The land is developed with a single storey brick dwelling with pitched tiled roof.</p> <p>The land has a fall of approximately 4.22 metres.</p> <p>The land is heavily vegetated in both the front and rear of the site. Trees 5, 13, 14 and 22 are canopy trees protected by the Vegetation Protection Overlay.</p>

## REMARKS

- 1 At the conclusion of the hearing, the Tribunal provided the parties with an Oral Ruling, which included the reasons for the decision.

Karina Shpigel  
**Member**



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/53112
<b>LAND</b>	306 Highbury Road MOUNT WAVERLEY VIC 3149

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- The construction of two or more dwellings on a lot;
- The removal of two trees; and
- The alteration of access to a road in a Transport Zone 2.

## 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 JDH Design Group, Job Number JDH264, dated 16 December 2022, but modified to show/include:
  - (a) The maximum grade within a parking module measured parallel to the angle of parking is to be 1 in 20. Measured in any other direction is to be 1 in 16.
  - (b) The location of gas and water meters in unobtrusive locations.
  - (c) The location and design of any proposed 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".
  - (d) A materials schedule of all external materials including colour swatches. The schedule must include specific detail of any cladding types.
  - (e) The Landscape Plan in accordance with condition 3 of this Permit.
  - (f) The deletion of the retaining wall on the eastern boundary in the existing dwelling's secluded private open space area to avoid incursion into the structural root zone of Tree 24.



- (g) The removal of part of the landscaping area on the western boundary adjacent to the existing dwelling to provide an accessway that is at least 3 metres wide.
- (h) The relocation of the existing dwelling's study window from the western wall to the southern wall.

### **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.

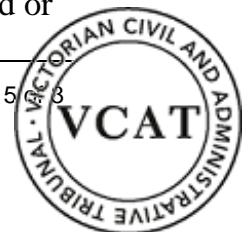
### **Landscape Plan**

- 3 Concurrent with the endorsement of any plans requested pursuant to Condition 1, amended landscape plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. The plans must be generally in accordance with the plans prepared by Keystone Alliance, Project Number L8994, dated 14/12/22, but modified to show any changes required by Condition 1 of this Planning Permit.

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

### **Tree Protection**

- 4 Prior to the commencement of development, and to the satisfaction of the Responsible Authority, Tree Preservation Zones must be provided in the following locations:
  - (a) Tree #1: to the extent of the calculated Tree Protection Zone (TPZ) where it occurs within the nature strip;
  - (b) Trees #4, #5, #6, #7, #8, #9, #10, #11, #14, #24, #25, #26, and #27: to the extent of the calculated Tree Protection Zone (TPZ) where it occurs within the land;
  - (c) The fencing can be realigned and suitable ground protection provided to allow any construction approved within a TPZ only to the satisfaction of the project arborist and only when approved by the Responsible Authority.
- 5 A suitably qualified arborist must supervise or undertake all approved activity within the calculated TPZ of Trees #14 and #26. Any root severance within the TPZ must be undertaken to their satisfaction using a clean sharp and sterilised pruning saw. There must be no root pruning within the SRZ unless consent is received in writing by the Responsible Authority, and there must be no root pruning within the TPZ for works other than those endorsed by the Responsible Authority. All and any excavations within the TPZ of retained trees must be undertaken by hand or



by approved non-destructive techniques suitable in the vicinity of trees in accordance with Section 9 of AS4373- 2007 Pruning of Amenity Trees, and must only be undertaken by, or directed and supervised by, a suitably qualified arborist (minimum AQF Level 5) for endorsed works or for works subsequently approved by the Responsible Authority.

- 6 Any weeds located within the Tree Preservation Zone are to be removed and the area mulched with 100mm of composted coarse grade woodchips.
- 7 Fencing of the Tree Preservation Zones is required as follows:
  - (a) Protective fencing must consist of chain wire mesh panels, held in place with concrete feet. Fencing must comply with Australian Standard AS 4687-2007 Temporary fencing and hoardings.
  - (b) The fences must not be removed or relocated without the prior consent of the Responsible Authority.
  - (c) Canopy and Limb protection must be provided in accordance with the guidelines detailed in AS4970-2009 Protection of Trees on Development Sites.
- 8 Fixed signs are to be provided on all visible sides of the Tree Preservation Fencing, stating “Tree Preservation Zone – No entry without permission from the Responsible Authority”.
- 9 The area must be irrigated during the summer months with 10 litres of clean water for every 1 cm of trunk girth measured at the soil / trunk interface on a monthly basis during summer (or a percentage thereof equivalent to the percentage of TPZ area occurring within the subject site).
- 10 No persons, vehicles or machinery are to enter the Tree Protection Zone except with the consent of the Responsible Authority.
- 11 No fuel, oil dumps or chemicals are allowed to be used or stored within the Tree Preservation Zone and the servicing and re-fuelling of equipment and vehicles must be carried out away from the root zones.
- 12 No storage of material, equipment or temporary building is to take place within the Tree Preservation Zone.
- 13 Nothing whatsoever, including temporary services wires, nails, screws or any other fixing device, is to be attached to any tree.
- 14 Any and all ground protection must incorporate a permeable membrane such as geotextile fabric beneath a layer of mulch or crushed rock below rumble boards in accordance with Section 4.5.3 of AS4970-2009 Protection of Trees on Development Sites.
- 15 Any underground service installations transecting the Tree Protection Zone of any retained tree must be bored beneath the entire TPZ to a depth of at least 600mm. Any excavation within the calculated TPZ of a retained tree required for the connection of services must be undertaken after written



approval is received from the Responsible Authority, and must be undertaken by hand or by approved non-destructive techniques suitable in the vicinity of trees under the supervision of the project arborist

### **Landscaping Prior to Occupation**

- 16 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**

- 17 The site must be drained to the satisfaction of the Responsible Authority.
- 18 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.
- 19 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.
- 20 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.
- 21 The nominated point of stormwater connection for the site is to the north-west 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 900 mm x 600 mm junction pit to be constructed to Council standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately

### **Department of Transport (Ref. 40406/22)**

- 22 All vehicles associated with the proposed development must be able to conveniently enter and exit the subject land in a forward direction to the satisfaction of the Responsible Authority and the Department of Transport.

### **Satisfactory Continuation and Completion**

- 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:
- (a) The development has 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.
- 25 Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

– End of conditions –

