

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P664/2023

**APPLICANT** Wenyi Yu  
**RESPONSIBLE AUTHORITY** Monash City Council  
**SUBJECT LAND** 29 White Street  
MOUNT WAVERLEY VIC 3149  
**DATE OF ORDER** 20 October 2023

**ORDER**

- 1 In application P664/2023, the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/53697 a permit is to be granted for the land at 29 White Street, Mount Waverley subject to the conditions set out in Appendix A. The permit allows:
  - Construction of two (2) double storey dwellings on the lot
- 3 The hearing scheduled at **10:00am on 11 December 2023** is vacated and no attendance is required.

Joel Templar  
**Member**



## REMARKS

### Full settlement

- 1 This matter involves an application pursuant to section 79 of the *Planning and Environment Act 1987* for a review of the Monash City Council's decision to refuse to grant a permit for the construction of two double storey dwellings on a lot.
- 2 Following the compulsory conference, the parties reached agreement and request orders by consent. The parties request that a permit be granted, subject to conditions.
- 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 a permit is appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987* (**Act**), 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*.

Joel Templar  
**Member**



**APPENDIX A**

<b>PERMIT APPLICATION NO:</b>	TPA/53697
<b>LAND:</b>	29 White Street MOUNT WAVERLEY VIC 3149
<b>WHAT THE PERMIT ALLOWS:</b>	
<ul style="list-style-type: none"> <li>• Construction of two (2) double storey dwellings on the lot, in accordance with the endorsed plans.</li> </ul>	

**CONDITIONS**

**Amended Plans**

- 1 Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and be approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed they will form part of the Permit. They must be generally in accordance with plans prepared by Summitvest Design and Architecture, Revision D, dated 9 January 2023, but modified to show:
  - (a) Annotations to show that there will be no change to the existing surface levels in the Private Open Space of Dwelling 2 within the TPZ of Tree 5.
  - (b) Removal of the fence return on the east side of the common driveway and its replacement with landscaping in accordance with condition 3 of this permit.
  - (c) Reduction of the number of front fence pillars across the frontage of the land.
  - (d) The northern wall of Bedroom 3 of Dwelling 1 shifted south bringing it in line with the northern wall of Bedroom 2. The internal layout in this location reconfigured so the ensuite extends along the west side of the building in this location.
  - (e) A minimum setback to the western boundary of Dwelling 1 bed 3 ensuite of 6.585 metres.
  - (f) The Dwelling 2 first floor Bedroom 3 east side setback increased to line up with the eastern wall of the adjoining bathroom.
  - (g) Reduce Dwelling 1's pergola and deck by 1 metre on the east side.
  - (h) Reduce the length of Dwelling 2's pergola and deck by 1 metre on the east side.
  - (i) Annotations to show pergolas of both dwellings as unroofed.



- (j) Increase the 1:4 gradient length to 2 metres towards the southern boundary by reducing the 1:8 gradient length to 3.12 metres.
- (k) Show maximum and minimum heights of all retaining walls.
- (l) Retaining walls along driveway in naturalistic material/finishes.
- (m) A Landscape Plan in accordance with condition 3 of this Permit.
- (n) A Tree Management Plan in accordance with condition 7 of this Permit.

**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**

- 3 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 (canopy tree to be Australian native species), 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 four (4) canopy trees (minimum 1.5 metres tall when planted). The canopy trees must have a minimum height of 7 metres and must have a spreading crown with a minimum width of 4 metres at maturity, or as otherwise agreed by the Responsible Authority;
  - (d) Planting along eastern boundary for Dwelling 2 to be a minimum mature height of the boundary fence;
  - (e) The location of any boundary and internal fencing to the site;
  - (f) Planting along eastern boundary fence, adjacent to Dwelling 2, to have a mature height of at least 2 metres and creepers/ cascading plants to retaining walls along the driveway;
  - (g) Provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
  - (h) Planting to soften the appearance of hard surface areas such as driveways and other paved areas;



- (i) Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site;
- (j) The location of any retaining walls associated with the landscape treatment of the site;
- (k) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (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; and
- (m) 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**

- 4 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.

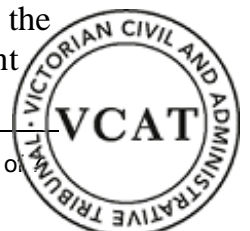
### **Tree Protection**

- 5 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.
- 6 All trees specified in the endorsed Tree Management Plan are to be protected and maintained in accordance with the recommendations set out in the report, to the satisfaction of the Responsible Authority.

### **Tree Management Plan**

- 7 Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and 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 of Tree Nos. 2, 4 and 5 (as identified in the Arborist Report submitted with the application, prepared Molloy Arboriculture Pty Ltd, dated 23 June 2023).

The TMP must be approved by the Responsible Authority prior to the commencement of any works, including demolition and/or levelling of the site. 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 trees to be 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 all trees to be retained;
  - ii All tree protection fenced off areas and areas where ground protection systems will be used;
  - iii The type of footings within any tree protection zones;
  - iv 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 under hydro excavation under the supervision of the Project Arborist; and
  - v A notation to refer to the Tree Management Plan for specific detail on what actions are required with the tree protection zones.
- (b) Details of how the root system of any tree to be retained will be managed. 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 required by the Project Arborist to the satisfaction of the responsible authority; and
- (d) Any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur.

The recommendations contained in the approved tree management plan must be implemented to the satisfaction of the Responsible Authority.

## **Drainage**

- 8 The site must be drained to the satisfaction of the Responsible Authority.
- 9 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.
- 10 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.



- 11 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.
- 12 The full cost of reinstatement of any Council assets damaged as a result of 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 Crossover**

- 13 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
- 14 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.

### **Urban Design**

- 15 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**

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

### **Permit Expiry**

- 17 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 2 years from the date of issue.
  - 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 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 Administrative Tribunal are unable to approve requests outside of the relevant time frame.

**--- End of Conditions ---**

