

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P985/2020

APPLICANT	Philip William Gillard
RESPONSIBLE AUTHORITY	Nillumbik Shire Council
RESPONDENTS	ATS Design & Drafting
SUBJECT LAND	46 Orchard Avenue ELTHAM NORTH VIC 3095
WHERE HELD	Melbourne
HEARING TYPE	Compulsory conference
DATE OF HEARING	19 October 2020
DATE OF ORDER	9 November 2020
DATE OF CORRECTION ORDER	1 February 2021

CORRECTION ORDER

- 1 Pursuant to Section 119 of the *Victorian Civil and Administrative Tribunal Act 1998*, the Tribunal's order in Application P985/2020 dated 9 November 2020 is corrected as follows.
- 2 Orders 2 and 3 are deleted and replaced by the following:
 - 2 In application P985/2020 the decision of the responsible authority is affirmed.
 - 3 In planning permit application 584/2019/05P a permit is granted and directed to be issued for the land at 46 Orchard Avenue, ELTHAM NORTH in accordance with the endorsed plans and the amended conditions set out in Appendix A. The permit allows:
 - Buildings and works to construct an outbuilding

E A Bensz
Member



REASONS

- 1 By order dated 9 November 2020, the Tribunal ordered for a permit to be granted and directed to be issued in accordance with the endorsed plans and the conditions set out by Council in their Notice of Decision dated 25 May 2020.
- 2 By email letter dated 11 November 2020, Nillumbik Shire Council drew the Tribunal's attention to what they suggested was an error within the Tribunal's order, and submitted that the order should be corrected.
- 3 The correction requested related to the omission of the amended permit conditions that were not attached at Appendix A. The conditions have now been appended at Appendix A.
- 4 Section 119 of the *Victorian Civil and Administrative Tribunal Act 1998* provides that the Tribunal may correct an order made by it if the order contains:
 - a a clerical mistake;
 - b an error arising from an accidental slip or omission;
 - c a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order; or
 - d a defect of form.
- 5 I am satisfied that a clerical mistake has occurred here, and find it appropriate to authorise a correction of the order.

E A Bensch
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	584/2019/05P
LAND:	46 Orchard Avenue ELTHAM NORTH VIC 3095

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Buildings and works to construct an outbuilding

CONDITIONS:

- 1 Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the application plans but modified to show:
 - (a) The outbuilding setback 2 metres from the eastern boundary.
 - (b) The overall height of the outbuilding.
 - (c) Muted and non-reflective colours and materials.
 - (d) Trees 1 and 2 identified.
 - (e) The following notation on the plans:
 - i Post and beam construction must be used to protect the Tree Protection Zones of trees 1 and 2.
- 2 The development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
- 3 The outbuilding hereby approved must not contain all of the elements of a dwelling as defined by the Nillumbik Planning Scheme, to the satisfaction of the Responsible Authority
- 4 All trees are to be retained and protected in accordance with the recommendations of the Arboricultural Impact Assessment from TMC Reports (Dated: 19/12/2020) to the satisfaction of the Responsible Authority.
- 5 No vegetation on-site shall be removed, destroyed, felled, lopped, ringbarked, uprooted or otherwise damaged except with the prior written consent of the Responsible Authority.



- 6 Unless with the prior written consent of the Responsible Authority, within three months of the practical completion of the outbuilding, screen planting must be planted along the eastern boundary for a length of 5 metres from the rear boundary. The plants chosen must grow to provide an effective visual screen and must be maintained thereafter. All must occur to the satisfaction of the Responsible Authority.
- 7 The materials to be used in the construction of the buildings and works hereby permitted shall be of non-reflective type and finished in muted tones, to the satisfaction of the Responsible Authority.
- 8 Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), Tree 2 marked on the endorsed plans as being retained must have a Tree Protection Zone to the satisfaction of the Responsible Authority. The fencing associated with this Tree Protection Zone must meet the following requirements:

(a) Extent

The tree protection fencing is to be provided to the extent of the Tree Protection Zone, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009).

If works are shown on any endorsed plan of this permit within the confines of the calculated Tree Protection Zone, then the Tree Protection Fencing must be taken in to only the minimum amount necessary to allow the works to be completed.

(b) Fencing

All tree protection fencing required by this permit must be erected in accordance with the approved Tree Protection Zone.

The Tree Protection Fencing must be erected to form a visual and physical barrier and must be a minimum height of 1.5 metres and of chain mesh or similar fence with 1.8 metre support posts (e.g. treated pine or similar) every 3-4 metres, including a top line of high visibility plastic hazard tape erected around the perimeter of the fence

(c) Signage

Fixed signs are to be provided on all visible sides of the Tree Protection Fencing clearly stating “Tree Protection Zone – No Entry”, to the satisfaction of the Responsible Authority.

(d) Irrigation

The area within the Tree Protection Zone and Tree Protection Fencing must be irrigated during the summer months with 1 litre of clean water for every 1cm of trunk girth measured at the soil/trunk interface on a weekly basis.



(e) Provision of Services

Unless with the prior written consent of the Responsible Authority, all services (including water, electricity, gas and telephone) must be installed underground, and located outside of any Tree Protection Zone, to the satisfaction of the Responsible Authority.

(f) Access to Tree Protection Zone

Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

- 9 Once erected to the required standard, the Tree Protection fencing shall be maintained in good condition and may only be removed upon completion of all development works, to the satisfaction of the Responsible Authority.
- 10 The following actions must not be undertaken in any Tree Protection Zone as identified in this permit, to the satisfaction of the Responsible Authority:
- (a) Materials or equipment stored within the zone;
 - (b) Servicing and refuelling of equipment and vehicles;
 - (c) Storage of fuel, oil dumps or chemicals;
 - (d) Attachment of any device to any tree (including temporary service wires, nails, screws or any other fixing device);
 - (e) Open cut trenching or excavation works (whether or not for laying of services);
 - (f) Changes to the soil grade level;
 - (g) Temporary buildings and works; and
 - (h) Unauthorised entry by any person, vehicle or machinery
- 11 The development, including any new paved areas, must be drained so as to prevent the uncontrolled discharge of stormwater from the subject site across any road or footpath or onto any adjoining land. Stormwater must not cause any nuisance or loss of amenity in any adjacent or nearby land by reason of the discharge of stormwater
- Stormwater from the roof of the development must be directed to the existing stormwater drainage system for the dwelling to the satisfaction of the Responsible Authority.
- 12 This permit will expire if one of the following circumstances applies:
- (a) The development is not commenced within 2 years of the date of this permit.



- (b) The development is not completed within 4 years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within 6 months afterwards if the development has not commenced, or 12 months after if the development has commenced but is not yet completed.

- End of conditions -

