

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1785/2020

<b>APPLICANT</b>	Greer Hosking and Rod Moore
<b>RESPONSIBLE AUTHORITY</b>	Nillumbik Shire Council
<b>RESPONDENT</b>	K Minniti
<b>SUBJECT LAND</b>	10 Ely Street, Eltham
<b>HEARING TYPE</b>	Compulsory conference
<b>DATE OF HEARING</b>	24 March 2021
<b>DATE OF ORDER</b>	24 March 2021

## ORDER

### Permit granted

- 1 In application P1785/2020 the decision of the responsible authority is varied.
- 2 In planning permit application 312/2020/05P a permit is granted and directed to be issued for the land at 10 Ely Street, Eltham in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - Buildings and works to construct a dwelling, fencing and vegetation removal
- 3 The hearing scheduled to commence on 9 July 2021 is vacated. No attendance is required.

E A Benz  
**Member**

## APPEARANCES

For applicant	Nicola McGowan, town planner
For responsible authority	Elouise Gabrielle, town planner
For respondents	Irene Plakidis, town planner



## REMARKS

### Full settlement

- 1 This matter involves an application pursuant to section 82 of the *Planning and Environment Act 1987* for a review of the Nillumbik Shire Council to grant a permit for Buildings and works to construct a dwelling, fencing and vegetation removal
- 2 At the compulsory conference, the parties reached agreement and request orders by consent. The parties request that a permit is granted, subject to varied 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 the amended 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 Nillumbik 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*.

**APPENDIX A**

<b>PERMIT APPLICATION NO:</b>	312/2020/05P
<b>LAND:</b>	10 Ely Street ELTHAM VIC 3095
<b>WHAT THE PERMIT ALLOWS:</b>	
<ul style="list-style-type: none"> <li>• Buildings and works to construct a dwelling, fencing and vegetation removal, in accordance with the endorsed plans, in accordance with the endorsed plans.</li> </ul>	

**CONDITIONS**

- 1 Before the development commences, copies of 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 plans received on 10 June 2020 and prepared by D2 Studio but modified to show:
  - (a) Notation on the Site Plan detailing fencing from the front facade of the dwelling to the rear southern boundary to be constructed to 2.5 metres in height and constructed of brushwood with rolled capping. The fencing is to be constructed along the western title boundary and not forward of the dwelling.
  - (b) Notation on the Site Plan that the existing cyclone fence to 1.9 metres is to be retained forward of the dwelling.
  - (c) Elevation Plan detailing the height and design of the brushwood with rolled capping fence to 2.5 metres in height along the western common boundary.
  - (d) Notation on the Site Plan that internal fencing between the east and west common boundaries to the dwelling to be 1.8 metre timber paling fence.
  - (e) Landscape Plan in accordance with Condition 2.
  
- 2 Before the development commences, copies of a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit. The landscaping plan must be generally in accordance with the landscape concept plan dated 10 June 2020 prepared by D2 Studio. The plan must show:

- (a) The replacement species of two canopy trees to be in species *Eucalyptus leucoxylon* (Yellow Gum) planted throughout the development site as appropriate, including in the front setback area of the proposed buildings.
  - (b) All other trees to be planted in native species.
- 3 The development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
  - 4 All costs associated with construction of the new brushwood fencing along the western boundary will be borne by the permit holder.
  - 5 The nature and colour of building materials employed in the construction of the buildings and works hereby permitted shall be harmonious with the environment, to the satisfaction of the Responsible Authority.
  - 6 The materials to be used in the construction of the buildings and works hereby permitted shall be of non-reflective type, to the satisfaction of the Responsible Authority.
  - 7 Unless with the prior written consent of the Responsible Authority, within three months of the occupation of the dwelling hereby approved, the landscaping works shown on the endorsed plans must be carried out, completed and maintained 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), the trees marked on the endorsed plans as being retained must have a Tree Protection Zone to the satisfaction of the Responsible Authority in accordance with the report prepared by Stemarboriculture dated 20 March 2015. The fencing associated with this Tree Protection Zone must meet the following requirements:

**Extent**

- (a) The tree protection fencing is to be provided to the extent of the Tree Protection Zone identified in the arborist report prepared by Stemarboriculture dated 20 March 2015. 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.

**Fencing**

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

## **Signage**

- (c) 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.

## **Irrigation**

- (d) 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.

## **Provision of Services**

- (e) All services (including water, electricity, gas and telephone) should be installed underground, and located outside of any Tree Protection Zone, wherever practically possible. If underground services are to be routed within an established Tree Protection Zone, they must be installed by directional boring with the top of the bore to be a minimum depth of 600mm below the existing grade, to the satisfaction of the Responsible Authority.

Bore pits must be located outside of the Tree Protection Zone or manually excavated without damage to roots, to the satisfaction of the Responsible Authority.

## **Access to Tree Protection Zone**

- (f) 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 Unless with the prior written consent of the Responsible Authority, the removal of any humus/organic matter within any Tree Protection Zones must be undertaken by hand with all roots greater than 40mm in diameter left unscathed and intact to the satisfaction of the Responsible Authority.
  - 12 Unless with the prior written consent of the Responsible Authority, any roots within all Tree Protection Zones smaller than 40mm in diameter must be cleanly pruned at right angles, using sharp, clean tools by the project arborist to the satisfaction of the Responsible Authority.
  - 13 Vehicular access and egress to the development site from the roadway must be by way of a vehicle crossing constructed to the requirements of the Responsible Authority, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under an Infrastructure Works permit.
  - 14 The width of the driveway at the property boundary must match the requirements of the planning permit no 595/2017/14P.
  - 15 The development hereby permitted, 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.
  - 16 Unless with the prior written consent of the Responsible Authority, stormwater must not be discharged from the subject land other than by means of an underground pipe drain to the Nominated point of stormwater discharge. In this case the Nominated point of stormwater discharge may be a culvert adjacent to 14 Ely Street or otherwise agreed, to the satisfaction of the Responsible Authority.
  - 17 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 ---**

