

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1004/2021
PERMIT APPLICATION NO. 235/2020/14P

APPLICANT Stephen and Hayley Boucher
RESPONSIBLE AUTHORITY Nillumbik Shire Council
SUBJECT LAND 49 Glen Park Road, Eltham North
DATE OF ORDER 7 December 2021

ORDER

- 1 The decision of the Responsible Authority is set aside.
- 2 In planning permit application 235/2020/14P a permit is granted and directed to issue for the land at 49 Glen Park Road, Eltham North for a 2-Lot subdivision and removal of substantial native vegetation in accordance with the conditions set out in Attachment A to this order.
- 3 The hearing scheduled to commence at 10.00am on 9 December 2021 is cancelled and the date is vacated. No attendance is required.
- 4 No order as to costs.

Tracy Watson
Member



REASONS

- 1 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:
 - the Responsible Authority is of the opinion that the granting of the permit is appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987*, including the balanced application of the strategies and policies of the Nillumbik Planning Scheme and is otherwise in conformity with the provisions of the Nillumbik Planning Scheme and the *Planning and Environment Act 1987*; and
 - 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.
- 3 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*.

Tracy Watson
Member



ATTACHMENT A

PERMIT APPLICATION NO:	235/2020/14P
LAND:	49 Glen Park Road, Eltham North
WHAT THE PERMIT ALLOWS:	<ul style="list-style-type: none">• Two (2) lot subdivision and removal of substantial native vegetation.

CONDITIONS

1. Before the plan of subdivision is certified under the Subdivision Act 1988, 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 submitted with the application but modified to show:
 - a) The refused plans adjusted in accordance with plans received by Council on 6/12/2021 showing the following changes to Lot 2:
 - i. Lot size increased to 624.13m²;
 - ii. The length of Lot 2 increased along the west boundary to 29.815 metres and the eastern boundary to 29.270 metres;
 - iii. A building envelope, with an area of 148sqm, setback 2 metres from the western boundary, 1 metre from the northern boundary, 10 metres from the southern (front) boundary and generally ranging from 8.1 metres to 10.7 metres from the eastern boundary, with the exception of an arc that is 6.9 metres from the centre of Tree 12.
2. The subdivision allowed by this permit and shown on the plans endorsed to accompany the permit shall not be amended for any reason unless with the prior written consent of the Responsible Authority.
3. Prior to the issue of a Statement of Compliance, the removal of Trees 8, 10 and 11 must be completed.
4. Prior to the issue of a Statement of Compliance, a post and wire fence must be constructed along the northern and western boundary of Lot 2.



5. Prior to the issue of a Statement of Compliance, the following vegetation must be planted and maintained thereafter, to the satisfaction of the Responsible Authority:
 - a) The planting of two *Eucalyptus polyanthemos* (Red Box) trees forward of the building envelope, on the east side of the proposed crossover for Lot 2; and
 - b) The planting of one *Eucalyptus polyanthemos* (Red Box) tree forward of the building envelope, to the west of the proposed crossover for Lot 2. Removal of Tree 7 is necessary to allow replanting.
 - c) A mixture of shrubs/small trees on the north side of the northern boundary of Lot 2 to provide a landscape buffer to the existing dwelling on Lot 1. The plants should be selected from the Council document 'Live Local Plant Local'.
 - d) A mixture of shrubs between the existing driveway on Lot 1 and the western boundary of Lot 2 selected from the Council document 'Live Local Plant Local'.

6. Prior to the issue of a Statement of Compliance, the owner must enter into an agreement with the Responsible Authority in accordance with Section 173 Agreement of the *Planning and Environment Act 1987*. The agreement must provide for:
 - a) No buildings and/or works are to occur outside of the building envelope, except for a driveway, unless with the prior written consent of the Responsible Authority.

Application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the same Act prior to the issue of the Statement of Compliance.

The owner must pay all costs (including Council's costs) associated with the preparation, execution, registration and (if later sought) cancellation of the Section 173 Agreement.

7. Stormwater from the roof of existing dwelling must be directed to an independent holding tank with a minimum storage capacity of 2000 litres. The overflow from the tanks must be directed via the internal drainage system to the on-site detention system. The overflow from the on-site detention system must be directed to the nominated point of discharge.

Each dwelling must be provided with an independent underground drainage discharge system.

Under no circumstances is the stormwater drain of the existing dwelling to be located under the proposed new dwelling. Water in the holding tanks

may be used for one or more of the following purposes: toilet flushing; property irrigation; vehicle washing and any other purpose approved by the Responsible Authority.

8. The on-site detention device shall be designed by a qualified engineer and plans submitted to the Responsible Authority for approval (prior to the commencement of the development unless with the prior written consent of the Responsible Authority). The engineer that is designing the on-site detention device must obtain tc and tso figures from Council. The permissible site discharge must be restricted to a pre development flow rate for a 1 in 5 year average recurrence interval (ARI) event and detained for a 1 in 10 year ARI event. Please note there will be a fee associated with the Plan Checking and Supervision, of 3.25% of the detention drainage system cost.
9. No polluted, effluent and/or sediment laden runoff from the development site is to be discharged directly or indirectly into Council's drains, Melbourne Water's drains or watercourses or adjoining private property during the construction of the development.

In this regard, sediment fencing and/or pollution/litter traps must be installed on site and serviced accordingly, all to the satisfaction of the Responsible Authority.

10. Prior to the issue of a Statement of Compliance, the on-site detention device must be installed, at no cost to Council, to restrict the property storm water discharge to a flow equivalent to the pre-development design flow rate as approved by the Responsible Authority (Nillumbik Shire). The on-site detention system outlet must be connected to the Council nominated point of stormwater discharge. Construction of the on-site detention device must be carried out under Council supervision, in accordance with the approved plans and specifications and under an Infrastructure Works Permit.
11. Prior to the issue of a Statement of Compliance, vehicular access and egress to the development site from the roadway must be by way of vehicle crossings 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*. The width of the driveway at the property boundary must match the width of the vehicle crossing.



12. The vehicular driveway must be properly formed and constructed meeting the ramp grades specified in the Nillumbik Planning Scheme (Clause 52.06-9, Design standard 3: Gradients), and to such levels to ensure that it can be utilised at all times. The driveway must be drained, constructed in concrete, asphalt or similar surface and maintained in a continuously useable condition. Use minimum 225mm diameter underground drains for the internal drainage system underneath the driveway. All works are to be carried out to the satisfaction of the Responsible Authority.
13. The owner of the land must enter into an agreement with:
- a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - b) a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
14. Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
- a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
 - b) a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
15. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.



16. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
17. The plan of subdivision submitted for certification under the *Subdivision Act 1988* must be referred to the relevant authority in accordance with Section 8 of that Act.
18. This permit will expire if one of the following circumstances applies:
 - a) A plan of subdivision is not certified within two (2) years of the issue date of this permit; or
 - b) A plan of subdivision is not registered at Land Victoria within five years of the original certification date.

The Responsible Authority may extend the time for certification if a request is made in writing prior to expiry of the permit or within six months afterwards.

--- End of Conditions ---

