VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P1995/2018  Permit Application no. TPA/49004 |
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| APPLICANTs | Nilesh Chander Bansal & Meenakshi Nilesh Bansal |
| responsible authority | Monash City Council |
| SUBJECT LAND | 198 Huntingdale Road, Mount Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Geoffrey Code, Senior Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 18 March 2019 |
| DATE OF ORDER | 18 March 2019 |

# Order

### Decision set aside

1. In application P1995/2018 the decision of the responsible authority is set aside.

### Permit granted

1. In planning permit application TPA/49004 a permit is granted and directed to be issued for the land at 198 Huntingdale Road, Mount Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Proceeding under section 23 of the *Subdivision Act 1988* to vary a restriction, being the covenant entered into on 4 May 1949 contained in instrument of transfer 2218143, as follows:
* For the expression:

‘and that he will not erect or allow to be erected on each lot of the said land hereby transferred any building other than one dwelling house and the usual outbuildings and fences’,

substitute:

‘and that he will not erect or allow to be erected on each lot of the said land hereby transferred any building other than either one dwelling house and the usual outbuildings and fences or two dwellings in accordance with permit TPA/49004 issued under the *Monash Planning Scheme*’

* Construction of two double-storey dwellings
* Alteration or creation of access to a road in Road Zone Category 1

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| Geoffrey Code  **Senior Member** |  |  |

# Appearances

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| For Nilesh Chander Bansal & Meenakshi Nilesh Bansal | Mr Nilesh Chander Bansal |
| For Monash City Council | Mr David Di Giovanni, town planner |

# Information

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| Brief description of proposal | Variation of registered restrictive covenant and construction of two dwellings |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit |

# Reasons

1. Oral reasons for this order were given at the conclusion of the hearing.

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| Geoffrey Code  **Senior Member** |  |  |

# Appendix A

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| Permit Application No | TPA/49004 |
| Land | 198 Huntingdale Road, Mount Waverley |

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| What the permit allowS |
| * Proceeding under section 23 of the *Subdivision Act 1988* to vary a restriction, being the covenant entered into on 4 May 1949 contained in instrument of transfer 2218143, as follows: * For the expression:   ‘and that he will not erect or allow to be erected on each lot of the said land hereby transferred any building other than one dwelling house and the usual outbuildings and fences’,  substitute:  ‘and that he will not erect or allow to be erected on each lot of the said land hereby transferred any building other than either one dwelling house and the usual outbuildings and fences or two dwellings in accordance with permit TPA/49004 issued under the *Monash Planning Scheme*’   * Construction of two double-storey dwellings * Alteration or creation of access to a road in Road Zone Category 1 |

### Covenant variation must precede development

1. Except with the consent of the Responsible Authority, the development must not start before the date on which the variation to the restriction is registered. After the variation is registered, a copy of the registration must be given to the Responsible Authority without delay.

### Amended plans

1. Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the decision plans but modified to show:
   * + - 1. Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2m), which may include adjacent landscape areas with a height of less than 0.9m, extending at least 2.0m long x 2.5m deep (within the property) to both sides of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
         2. The garage for dwelling 1 shifted toward the northern boundary by 1.8m to facilitate improved vehicle turning or such other changes to the location of the garage for either dwelling 1 or 2 that ensure all vehicles can exit the land in a forwards direction with no more than one corrective manoeuvre.
         3. Details of root sensitive footings where the dwellings intrude into the TPZ of trees 9 and 10 as detailed in the BlueGum arborist report (version 04/18).
         4. The driveway constructed above grade with no excavation where it intrudes into the TPZ of tree 9.
         5. The driveway where it intrudes into the TPZ of tree 9 to be constructed with flexible and permeable material such as pavers, aggregate mix or crushed rock.
         6. The location of tree protection fencing as detailed in the BlueGum arborist report (version 04/18).
         7. The garage of dwelling 2 replaced with a carport.
         8. The slab associated with the dwelling 2 carport constructed above natural ground level with no excavation.

### No alteration or changes

1. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

### VicRoads’ conditions

1. Before the development starts, a sealed access crossover and driveway, with the edges of the crossover angled at 60 degrees to the road reserve boundary, at least for the first 3 metres from the edge of the road must be constructed to the satisfaction of the Responsible Authority and at no cost to VicRoads.
2. Before the development is occupied, all disused or redundant vehicle crossings must be removed and at the area reinstated to the satisfaction of the Responsible Authority and at no cost to VicRoads.
3. Vehicles must enter and exit the land in a forward direction at all times.

### Tree protection

1. Before the development starts, tree protection fencing as detailed in the BlueGum arborist report (version 04/18) must be installed to the satisfaction of the Responsible Authority.

### Drainage

1. All on-site stormwater must be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
2. All stormwater collected on the site must be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system must be approved by Monash City Council before drainage works start.
3. 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 any one of the following:

* A trench gate (minimum internal width of 150mm) located within the property boundary and not the back of the footpath.
* Shaping the internal driveway so that stormwater is collected in grated pits within the property.
* Another equivalent approved by Monash City Council.

1. The nominated point of stormwater connection for the site is to the south-west corner of the property where the entire site’s stormwater must be collected and free drained via a pipe to Monash City Council’s pit in the naturestrip to be constructed to Monash City Council standards.

### Vehicle crossings

1. All new vehicle crossings must be a minimum 3.0m in width and constructed in accordance with Monash City Council standards.
2. All new vehicle crossings must be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval must be granted from affected service authorities as part of the vehicle crossing application process.
3. The existing redundant crossing must be removed and replaced with nature strip and kerb and channel to Monash City Council standards.
4. All works within the road reserve must reinstate the footpath and naturestrip to Monash City Council standards.

### Landscaping

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 prior to the commencement of any works. The plan must show the proposed landscape treatment of the site including:

* The location of all existing trees and other vegetation to be retained on site.
* The provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development. The planting provision is to include tall trees that when grown will positively contribute to the upper level tree canopy of the area.
* Planting to soften the appearance of hard surface areas such as driveways and other paved areas.
* A schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material (semi-mature plant species are to be provided).
* The location and details of all fencing.
* The extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
* Details of all proposed hard surface materials including pathways, patio or decked areas.
* Coloured concrete, paving or the like in the driveways.

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

1. Before the occupation 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 then maintained to the satisfaction of the Responsible Authority.

### Walls

1. The walls facing the boundary of adjoining properties must be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

### Driveway

1. The driveway and parking area must be constructed to the satisfaction of the Responsible Authority.

### Expiry

1. This permit will expire if one of the following applies:

* The variation to the restriction is not registered within two (2) years of the date of this permit.
* The development is not started within two (2) years of the date of this permit.
* The development is not completed within four (4) years of the date of this permit.

In accordance with Section 69 of the Planning and Environment Act 1987, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

**– End of conditions –**