VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P653/2020Permit Application no. TPA/50813 |

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| APPLICANT | Ky Huynh |
| responsible authority | Monash City Council |
| SUBJECT LAND | 58 Albany Drive, Mulgrave  |
| WHERE HELD | Melbourne |
| BEFORE | Tracey Bilston-McGillen, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 12 August 2020 |
| DATE OF ORDER | 12 August 2020 |

# Order

### Permit granted

1. In application P653/2020 the decision of the responsible authority is set aside.
2. In planning permit application TPA/50813 a permit is granted and directed to be issued for the land at 58 Albany Drive, Mulgrave in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* Construction of two double storey dwellings.

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| Tracey Bilston-McGillen**Member** |  |  |

# Appearances

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| For applicant | Mr Tim Radisich, town planning consultant, Associated Town Planning Consultants. |
| For responsible authority | Ms Alexander Wade, town planner. |

# Information

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| Description of proposal | Construction of two double storey dwellings. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.  |
| Planning scheme | Monash Planning Scheme. |
| Zone and overlays | General Residential Zone Schedule 3 – Garden City Suburbs (**GRZ3**). |
| Permit requirements | Clause 32.08-4. A permit is required to construct two or more dwellings on a lot. |
| Land description | The site is located on the western side of Albany Drive, approximately 35 metres north of Mangana Drive and approximately 15 metres south of Glengariff Drive. The site has an overall area of 654 square metres, a frontage of 16.77 metres, a depth of 35.95 metres on the northern boundary, a depth of 39.24 metres on the southern boundary, and a rear boundary length of 18.52 metres. It has a fall of approximately 1 metre from the south-east corner to the north-west corner.The site is currently developed with a single-storey brick dwelling with an existing crossover located on the south-east corner of the site and a driveway abutting the southern boundary.A restrictive covenant affects the site. It prevents the erection of any fence on the front boundary or within 30 feet (9.14 metres) of the front boundary on the side boundaries, other than a fence of not more than three feet (0.91 metres) above ground level. A 3.05 metre wide drainage and sewerage easement runs along the western (rear) boundary. |

# Reasons[[1]](#footnote-1)

1. The parties were advised orally of the reason for this decision to allow the review and order that a permit be issued subject to conditions.

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| Tracey Bilston-McGillen**Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No: | TPA/50813 |
| Land: | 58 Albany Drive, Mulgrave  |

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| What the permit allows |
| In accordance with the endorsed plans:* Construction of two double storey dwellings.
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## Conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed, they will then form part of the Permit. The plans must be generally in accordance with the decision plans prepared by Heritage Homes dated 21 October 2019, Plan no. TP1-TP11 but modified to show:
	1. Redesign of the front porch including a reduction in height and a lightweight presentation demonstrating compliance with Standard B6 to the satisfaction of the responsible authority.
	2. Natural ground level as per the survey plan, to be clearly shown on elevation plans including any retaining walls proposed across the site.
	3. Any steps to the rear of the site from the family room to the area of secluded private open space.
	4. Elevation plans to be labelled accordingly with the orientation.
	5. Width and location of the proposed vehicle crossovers.
	6. A roof plan showing the location of any proposed solar panels or solar hot water system.
	7. 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.
	8. Correction of the area and percentage calculations of permeability on the site taking into account all hard-paving areas.
	9. ‘OBS’ to be identified within the materials schedule, or a legend provided to suggest that this material is fixed, obscure glazing with a maximum of 25% transparency.
	10. A Landscape Plan in accordance with Condition 4 of this Permit.
	11. A Tree Management Plan in accordance with Condition 7 of this Permit.

### Layout not to be Altered

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

### Satisfactory Continuation

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

### Landscape Plan

1. Concurrent with the endorsement of any plans 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:
	1. 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;
	2. A planting schedule of all proposed trees, 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;
	3. A minimum of one (1) canopy tree (minimum 1.5 metres tall when planted) located within the front setback per dwelling, and each area of secluded private open space. The canopy trees must have a minimum height of 7.5 metres and must have a spreading crown with a minimum width of 4 metres at maturity, or as otherwise agreed by the Responsible Authority. No canopy trees are permitted to be planted within the easement located to the rear of the site;
	4. The location of the tree located within the property of 38 Glengariff Drive adjacent to the subject site to be retained including the Tree Protection Zone identified for this tree;
	5. The location of any fencing internal to the site;
	6. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development; and
	7. Planting to soften the appearance of hard surface areas such as driveways and other paved areas.
	8. Any changes as required by Condition 1 of this Permit.
2. 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.
3. All landscaping works shown on the endorsed landscape plan(s) must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.

### Tree Management Plan

1. 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 the tree located within the secluded private open space of 38 Glengariff Drive, adjacent to the northern boundary of the subject site.

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:

* 1. A Tree Protection Plan drawn to scale that shows:
		1. Tree protection zones and structural root zones of all trees to be retained,
		2. All tree protection fenced off areas and areas where ground protection systems will be used;
		3. The type of footings within any tree protection zones;
		4. 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 using hydro excavation under the supervision of the Project Arborist; and
		5. A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones.
	2. 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.
	3. Supervision and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and
	4. 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.

### Tree protection during construction

1. Before any development (including demolition) starts on the land, a tree protection fence must be erected around the tree located within the secluded private open space of 38 GlenGariff Drive, adjacent to the northern boundary of the subject site to define a "Tree Protection Zone" as detailed in the endorsed Tree Management Plan. The fence must be constructed as specified in the endorsed Tree Management Plan. 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.
2. No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the construction period of the development hereby permitted without the prior written consent of the Responsible Authority.

### Privacy screens

1. Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority. The use of obscure film fixed to transparent windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.

### Vehicle Crossovers, car parking spaces and driveways

1. Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority.
2. Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
3. All disused or redundant vehicle crossovers must be removed, and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.

### Drainage and Stormwater

1. The site must be drained to the satisfaction of the Responsible Authority.
2. 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.

### Time for Starting and Completion

1. In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
	1. The development is not started before 2 years from the date of issue*.*
	2. The development is not completed before 4 years from the date of issue*.*
2. 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 -**

1. The submissions of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in the reasons. [↑](#footnote-ref-1)