VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P2618/2018  Permit Application no. TPA/49256 |
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| APPLICANT | Ferntree Hill Project Pty Ltd |
| responsible authority | Monash City Council |
| Referral Authority | Vic Roads - Metropolitan South East Region |
| SUBJECT LAND | 855 - 869 Ferntreee Gully Road WHEELERS HILL VIC 3150 |
| WHERE HELD | Melbourne |
| BEFORE | S.R Cimino, Senior Member |
| HEARING TYPE | Compulsory Conference |
| DATE OF HEARING | 16 July 2019 |
| DATE OF ORDER | 29 July 2019 |

# Order

**Amend application**

1. Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act* 1998, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| Prepared by: | CHT Architects Pty Lt |
| Drawing numbers: | TP0.00, TP0.01, TP0.02, TP1.01 to TP1.05, TP2.00 to TP2.03, TP3.00, TP4.00 and TP4.01, all Revision J |
| Dated: | 5 July 2019 |

### Grant permit

1. In application no. P2618/2018, the decision of the Responsible Authority is set aside.
2. In planning permit application no. TPA/49256. a permit is granted and directed to be issued for land at 855-869 Ferntree Gully Road WHEELERS HILL VIC 3150 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

* Buildings and works to construct not more than sixty-five (65) dwellings (2-3 storeys in height) with associated basement car parking;
* Removal of native vegetation on land affected by vegetation Protection Overlay 1(VPO1), and
* Alteration of access to a Road Zone (category 1)

### Hearing vacated

1. The hearing listed to commence on **19 August 2019** is cancelled and the dates vacated.

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| **S.R Cimino**  **Senior Member** |  |  |

# Appearances

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| For applicant | Mr M. Naughton, solicitor, Planning & Property Partners |
| For responsible authority | Mr D. Vorchheimer, solicitor, HWL Ebsworth |
| For referral authority | No appearance |

# reasons

1. This matter involves an application under Section 77 of the *Planning and Environment Act 1987* to review Monash City Council’s decision to refuse a permit for the construction of a multi-dwelling development on the subject land.
2. Following several compulsory conferences, the parties attending the compulsory conference reached agreement. They request orders by consent directing the grant of a permit for the construction of up to 65 dwellings on the subject land subject to an agreed set of conditions.
3. By letter dated 31 October 2018, VicRoads advised that it withdrew its objection and would support the proposal subject to the inclusion of conditions. The conditions required by VicRoads are included in the agreement.
4. The agreement is based on changes shown on amended plans and further changes by permit condition. In giving its consent, the Responsible Authority confirms that the amended plans substituted as the application plans and further changes required by conditions do not give rise to any new issues in terms of impacts on the amenity of neighbouring properties and notice is not required. I agree with the Council’s assessment.
5. Accordingly, pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*, this order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
6. The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
   * + - 1. the responsible authority is of the opinion that the permit is appropriate having regard to the matters it is required to consider under section 60 of the Act, including the balanced application of the strategies and policies of the relevant planning scheme and is otherwise in conformity with the provisions of the planning scheme and the *Planning and Environment Act 1987*;
         2. the proposed orders will not result in any change to the proposed use or development which would materially affect any person other than the parties to the proceeding.
7. Based on the information available to the Tribunal including the discussion during the course of the compulsory conference, I consider it is appropriate to make these orders.

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| **S.R Cimino**  **Senior Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No | TPA/49256 |
| Land | 855 - 869 Ferntreee Gully Road WHEELERS HILL VIC 3150 |

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| What the permit allowS |
| In accordance with the endorsed plans:   * Buildings and works to construct not more than sixty-five (65) dwellings (2-3 storeys in height) with associated basement car parking; * Removal of native vegetation on land affected by vegetation Protection Overlay 1(VPO1), and * Alteration of access to a Road Zone (category 1) |

## Conditions

### Amended Plans

1. Before the development starts, three copies of plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans by CHT Architects Pty Ltd, drawing nos. TP0.00, TP0.01, TP0.02, TP1.01 to TP1.05, TP2.00 to TP2.03, TP3.00, TP4.00 and TP4.01, all Revision J and dated 5 July 2019, but modified to show:
   1. Ground floor widths of TH28 – 40 and TH47 – 58 to be increased to a minimum of 5.0m whilst still retaining the 5m minimum width of the central pedestrian path between TH34 & 35 and TH52 & 53.
   2. Provision of doors, windows and porches along the southern elevations of TH27, TH28 and TH58 in order to provide a sense of address to Ferntree Gully Road to the satisfaction of the Responsible Authority.
   3. Relocation of a minimum of one visitor space from either Ferntree Way or Ferntree Boulevard to Ferntree Lane.
   4. All visitor car parking spaces to be signed and line marked accordingly.
   5. The location of all trees being retained on the site.

### 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.

### Landscaping

1. Before the commencement of buildings and works, 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 be generally in accordance with the Landscape Master Plan prepared by Davidson Design Studio dated 5 July 2019 (Ref: 180301) and must show the proposed landscape treatment of the site including: -
   1. the location of all existing trees and other vegetation to be retained on site
   2. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development
   3. planting to soften the appearance of hard surface areas such as driveways and other paved areas
   4. 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
   5. the location and details of all fencing
   6. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site
   7. details of all proposed hard surface materials including pathways, patio or decked areas

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

### Tree Protection

1. No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained during the construction period of the development hereby permitted

### Landscaping Prior to Occupation

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.

### Management Plans

1. Concurrent with the endorsement of any plans, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority. The report must include, but is not limited to, the following:
   1. Demonstration of how ‘best practice’ sustainability measures have been addressed, having regard to the relevant aspects of Clause 22.13 of the Monash Planning Scheme.
   2. Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
   3. Document the means by which the appropriate target or performance is to be achieved.
   4. Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
   5. Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
   6. Any relevant requirements of the Condition 1 sub-clauses hereof.

All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Management Plan may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed architectural plans.

1. Prior to the occupation any of the buildings approved under this permit, a report from the author of the endorsed Sustainable Management Plan (or similarly qualified person or company) must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that (in relation to the relevant completed stage of the building ready for occupation) all measures specified in the Sustainable Management Plan have been implemented in accordance with the approved plan.
2. Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan for the collection and disposal of garbage and recyclables for all dwellings on the site by private contractor.  The Waste Management Plan shall provide for:
   1. The method of collection of garbage and recyclables for uses;
   2. Designation of methods of collection by private services;
   3. Appropriate areas of bin storage on site and areas for bin storage on collection days;
   4. Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
   5. Litter management.
   6. No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.

A copy of this plan must be submitted to and approved by the Responsible Authority.  Once approved the Waste Management Plan will be endorsed to form part of the permit.

1. Before the development starts, a Construction Management Plan must be prepared and submitted to the Responsible Authority for approval.  The plan must be to the satisfaction of the Responsible Authority.  Once approved, the plan must be implemented to the satisfaction of the Responsible Authority.  The plan must address the following issues:
   1. measures to control noise, dust and water runoff;
   2. prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
   3. the location of where building materials are to be kept during construction;
   4. site security;
   5. maintenance of safe movements of vehicles to and from the site during the construction phase;
   6. on-site parking of vehicles associated with construction of the development;
   7. wash down areas for trucks and vehicles associated with construction activities;
   8. cleaning and maintaining surrounding road surfaces;
   9. a requirement that construction works must only be carried out during the following hours:

* Monday to Friday (inclusive) – 7.00am to 6.00pm;
* Saturday – 9.00am to 1.00pm;
* Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings.  This does not include excavation or the use of heavy machinery.)

### Drainage

1. All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
2. 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 either:

* a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
* shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
* another Council approved equivalent.

1. All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council’s Engineering Department prior to drainage works commencing.
2. The nominated point of stormwater connection for the site is to the north-east corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the existing pit in the naturestrip on Jells Road to be constructed to Vicroads Standards.Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

### Transport

1. The existing redundant crossing in Ferntree Gully Road is to be removed and replaced with kerb and channel. The footpath and naturestrip are to be reinstated to the satisfaction of Council.
2. 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) from the edge of the exit lane of the vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
3. The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-9 of the Monash Planning Scheme as detailed below:

* Driveway to provide at least 2.1m headroom beneath overhead obstructions.
* Driveway gradient to be no steeper than 1 in 10 (10%) within 5 metres of the frontage to ensure safety for pedestrians and vehicles.
* Parallel car parking spaces to be a minimum of 6.7m in length.
* Garages or carports must be at least 6 metres long and 3.5 metres wide for a single space and 5.5 metres wide for double spaces measured inside the garage or carport.

1. The tandem garages are to have a minimum internal dimensions of 3.5m in width and 11.4m in length, unless otherwise agreed by the Responsible Authority.
2. All new vehicle crossings must be a minimum 3.0 metres in width and constructed in accordance with Council standards.
3. All new vehicle crossings are to 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 from affected service authorities is required as part of the vehicle crossing application process.

### Permits

1. Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council pits and these works are to be inspected by Council's Engineering Department. A refundable security deposit of $1,000 is to be paid prior to the drainage works commencing.

### Completion of Buildings and Works

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

### Transport for Victoria

1. The permit holder must take all responsible steps to ensure that disruption to bus operation along Jells Road is kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to Public Transport Victoria eight (8) weeks prior by emailing customerservice@ptv.vic.gov.au

### VicRoads

1. Unless otherwise agreed in writing by VicRoads, before the development starts, a detailed Functional Layout Plan (FLP) showing access arrangement must be submitted to and approved by the Roads Corporation (VicRoads). When approved by the Roads Corporation, the plans may be endorsed by the Responsible Authority and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the preliminary Functional Layout Plan (Drawing No. G24503-01, dated 10 October 2018 prepared by Traffix Group) showing the designated left turn and right turn lanes along Jells Road but modified to include:
   1. Northern access splay reconstituted with a larger radius and made from SM2 kerb;
   2. Deceleration lane extended to approx. 55 meters, using grade correction;
   3. Existing merge length along Jells Road to be maintained;
   4. Signage and line-marking plan showing any signs that need to be relocated or installed;
   5. Vesting of land to maintain an appropriate verge width;
   6. Functional Stage Road Safety Audit to identify any hazards, such as retaining walls and trees within close proximity. Amended functional layout plan, if any, would need to be submitted for review and approval;
   7. Amended site layout plan generally in accordance with the advertised plans and approved Functional Layout Plan.
2. Subsequent to the approval of Functional Layout Plan (FLP) and prior to the commencement of any roadworks, the applicant must submit the detailed engineering design plans along with detailed design stage road safety audit to VicRoads for review and obtain written approval. The detailed design plans must be prepared generally in accordance with the approved functional layout plan.
3. Prior to the commencement of the use of the development hereby approved, all roadworks as required by VicRoads must be completed generally in accordance with approved Functional Layout Plan (FLP) and detailed design plans to the satisfaction of VicRoads and the Responsible Authority and at no costs to VicRoads;
4. Before the plan of subdivision is submitted to the Responsible Authority for certification under the Subdivision Act 1988, the following amendments to the plans submitted with the application must be made:
   1. Any land set aside as Road must be labelled “ROAD” on the plan of subdivision.
   2. All land to be vested as road, for which the Roads Corporation is to be responsible, must be vested in the name of the ROADS CORPORATION (not VicRoads).
5. Where the proposed roadworks, including footpath and nature strip, lie within the private property, a widening of the road reserve will be required, at no cost to VicRoads. The developer must engage a licensed surveyor to prepare a Plan of Subdivision showing the affected land labelled "ROAD", which is to be vested in the Roads Corporation upon certification of the Plan of Subdivision, without any encumbrances. Subsequent to the registration of the plan, the subdivider must ensure that the original Certificates of Title, that issues in the name of the Roads Corporation, are posted to: VicRoads– Integration Services Team, 60 Denmark Street KEW, 3101.

### Permit Expiry

1. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:

* The development has not started before three (3) years from the date of issue.
* The development is not completed before five (5) years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

**– End of conditions –**