

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11690/2021  
PERMIT APPLICATION NO.TPA/52516

### CATCHWORDS

Section 77 *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone – Schedule 2; Construction of 77, two and three storey dwellings to be developed in two stages, front fencing exceeding 1.2m in height and creation and alteration of vehicle access in a Transport Road Zone, Schedule 2; Planning policy setting; Built form and landscaping; Amenity; Traffic, Access and Car parking.

<b>APPLICANT</b>	Glen Ferntree Gully Development Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>REFERRAL AUTHORITY</b>	Head, Transport for Victoria
<b>SUBJECT LAND</b>	583 Ferntree Gully Road GLEN WAVERLEY VIC 3150
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	26, 27 & 28 April 2022
<b>DATE OF ORDER</b>	21 July 2022
<b>CITATION</b>	Glen Ferntree Gully Development Pty Ltd v Monash CC [2022] VCAT 808

### ORDER

#### Amend permit application

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
  - Prepared by: RotheLowman Architects
  - Drawing numbers: TP00.00, TP00.01, TP01.02 - TP01.06 (incl.), TP01.10 - TP01.12 (incl.), TP01.30 - TP01.32 (incl.), TP01.40 - TP01.42 (incl.), TP01.60 - TP01.62 (incl.), TP02.11 - TP02.19 (incl.), TP03.11, TP03.13 - TP03.15 (incl.).
  - Dated: 8 March 2022

#### Permit granted

- 2 In application P11690/2021 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/52516 a permit is granted and directed to be issued for the land at 583 Ferntree Gully Road GLEN WAVERLEY



VIC 3150 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

- Construction of seventy-seven (77) two to three storey dwellings with associated buildings and works to be developed in two stages and creation and alteration of vehicle access to a road in a Transport Zone 2.

Peter Gaschk  
**Presiding Member**

Rebecca Cameron  
**Member**

### **APPEARANCES**

For applicant

Peter O'Farrell, Counsel, instructed by Andrea Harwood from Minter Ellison, Lawyers

He called the following witnesses:

- Amanda Ring, Town Planner with the Planning Collective
- Charmaine Dunstan, Traffic Engineer with the Traffix Group
- John Patrick, Landscape Architect with John Patrick Landscape Architects

For responsible authority

Maria Marshall, Solicitor, from Maddocks Solicitors

For referral authority

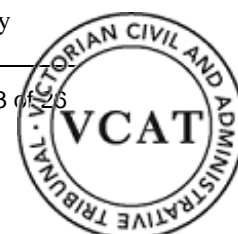
No appearance

## INFORMATION

Description of proposal	<p>The construction of 77, two and three storey dwellings in two stages, front fencing exceeding 1.2m in height and creation and alteration of vehicle access to a road in a Road Zone Category 1.</p> <p>Under the substituted plans the 77 dwellings comprise 19 three bedroom dwellings and 58 four bedroom dwellings. Stage 1 of the development will involve proposed construction of 41 dwellings, while the balance of 36 dwellings proposed to be constructed in Stage 2.</p>
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme (the Scheme)
Zone and overlays	General Residential Zone, Schedule 2 (GRZ2) No overlays apply.
Permit requirements	<p>Clause 32.08-6: To construct two or more dwellings on a lot and construct a front fence exceeding 1.2m in height.</p> <p>Clause 52.29: To alter access to a road in a Transport Zone 2<sup>1</sup> (with a proposed new crossover to be created and the existing crossovers to be removed).</p>
Relevant scheme policies and provisions	Clauses 11.01-1R, 11.02-1S, 15.01-1S, 15.01-1R, 15.01-2S, 15.01-4S, 15.01-4R, 15.01-5S, 15.02-1S, 16.01-1S, 16.01-1R, 16.01-2S, 18.01-1S, 18.02-2R, 18.02-4S, 19.03-3S, 21.04, 21.08, 21.13, 22.01, 22.04, 22.05, 22.13, 32.08, 52.06, 52.29, 55, 65 and 71.02.

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<sup>1</sup> Amendments VC204 and VC205 to the Scheme were gazetted on 9 December 2021 and 20 January 2022 respectively. VC204 aligns the Planning Policy Framework with the Transport Integration Act 2010. VC205 replaced reference to Road Zone Category 1 for Ferntree Gully Road to Transport Zone 2.



## Land description

The review site is described as 583 Ferntree Gully Road, Glen Waverley, located on the northern side of Ferntree Gully Road, approximately 30m east of Woodlea Drive. The land is part of a larger parcel situated at 583 Ferntree Gully Road, Glen Waverley – this larger parcel is affected by a proposed subdivision. When the proposed subdivision is completed, the review site will be properly described as Lot S2 on Plan of Subdivision 824072 (Lot 2).

The review site has an approximate area of 16,478.5sqm, with frontages of 162.7m to proposed Lot 1 to the north, 161.6m to Ferntree Gully Road to the south, 86.6m along the western boundary and 104.68m along the eastern boundary.

The site is currently occupied by institutional buildings (predominantly single storey) and an internal road network with at-grade car parking concentrated within the eastern portion of the site. The buildings are used for the purposes of a specialist primary school, medical centre, and office. These uses will be relocated to the proposed Lot 1 on Plan of Subdivision 824072 (Lot 1)<sup>2</sup>.

Vehicle access is currently provided by two crossovers to Ferntree Gully Road, which includes a single crossover near the south-western corner of the review site and a double crossover located centrally.

To the immediate north of the existing buildings is proposed Lot 1 occupied by a single storey building used as a childcare centre that ceased use on 31 December 2020. This lot is irregularly shaped and connects to Woodlea Drive to the west. However, there is no direct vehicle access from Woodlea Drive.

To the immediate south is Ferntree Gully Road, with three lanes in either direction (collectively a six lane arterial road) and a part concrete, part vegetated median strip. Footpaths are provided on either side of the road, with established

medium to large canopy trees and transmission lines. There is a 16.0m high English Oak (*Quercus Robus*) along the Ferntree Gully Road frontage.

To the immediate east are six dwellings, including the Glen Inn Motel and apartments all located along Kerferd Road.

To the immediate west are four dwellings at 18-24 Woodlea Drive, Glen Waverley. Nos. 20, 22 and 24 are all single storey brick dwellings with pitched roofs and vegetated front and rear setbacks. 18 Woodlea Drive is a two storey red brick dwelling, with an attached double garage and vegetated front setback.

The review site is in an established residential and commercial area, proximate to a range of public amenities and services including parklands, shopping centres, education, research and health facilities. Brandon Park Shopping Centre is 350m to the south east. Brandon Park Reserve 380m to the east. Glen Waverly South Primary School is 800m to the north east, Brentwood Secondary College is 750m to the north east, while Monash University is 1.6km to the south east.

The site is also well serviced by public bus routes including a bus stop in front of the site.

Tribunal inspection

Unaccompanied on 27 April 2022.

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<sup>2</sup> Planning permit TPA/52130 issued on 12 April 2021, authorises buildings and works on Lot 1 to facilitate the relocation of these uses.

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## REASONS<sup>3</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application for review brought by Glen Ferntree Gully Development Pty Ltd (**applicant**) under section 77 of the *Planning and Environment Act 1987* against Monash City Council's (**council**) decision to refuse to grant permit application number TPA/52516 (**Permit Application**) in respect of land situated on part of 583 Ferntree Gully Road, Glen Waverley (**review site**).
- 2 The lodged Permit Application sought approval for:
  - The construction of 77, two and three storey dwellings, in 2 stages, front fencing exceeding 1.2 metres in height and creation and alteration of vehicle access to a road in a Road Zone Category 1.
- 3 On 26 October 2021, Council determined to issue a notice of decision to refuse the Permit Application based on eight grounds. Following the substitution of plans by the Tribunal, council maintained its grounds of refusal as set out below:
  1. The proposal is inconsistent with the objectives of clause 21.04 Residential Development, clause 22.01 Residential Development and Character Policy and clause 55 of the Monash Planning Scheme in regard to built form and spacing, sense of address, landscaping, internal amenity, design detail and design of car parking.
  2. The proposed built form is out of character and results in an overdevelopment within the context of the neighbourhood.
  3. The proposal does not provide for adequate landscaping opportunities to contribute to the Garden City Character.
  4. The proposal will present a dominance of garages within the internal streetscape resulting in poor sense of address and inadequate landscaping along the internal road.
  5. The proposal will result in poor internal amenity for future residents.
  6. The proposal does not provide a balance of housing types and layouts to meet the housing diversity objective.
  7. The proposal heavily relies on tandem car parking and will not result in the efficient movement of vehicles; and
  8. The proposed tandem garages do not meet design requirements in clause 52.06 of the Monash Planning Scheme.

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<sup>3</sup> The submissions and evidence 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 these reasons.

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- 4 Council submits the design shortcomings of the proposal demonstrates lack of a high quality design response sought under the Scheme. It submits the development does not respond to its context, its physical and strategic setting, including existing and preferred neighbourhood character. While it supports the net community benefits derived from the additional housing the proposal brings, it says this positive element is overwhelmed by the adverse impacts to internal amenity of future occupants.
- 5 The applicant does not agree and submits the proposal is responsive to the suite of urban consolidation policies set out in clauses 11-19 of the Scheme.
- 6 It submits the design response is appropriate for the site being contemporary and distinguishable on this large site. It says the design response proposes private garden space at ground level for dwellings along perimeter boundaries, within an attractive landscaping scheme, including a large, centrally located open space area that forms a key part of the proposal.
- 7 The applicant also submits the design achieves a high level of compliance with relevant standards and objectives of clause 55. It relies on the planning and landscape evidence of Ms Ring and Mr Patrick in respect to these matters. It also relies on the evidence of Ms Dunstan on traffic and parking matters.

#### **WHAT ARE THE KEY ISSUES?**

- 8 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. The consideration of clause 71.02 is also relevant.
- 9 We consider the key issues for determination by the Tribunal are:
  - Is the proposal acceptable in the context of the planning policy framework?
  - Is the building form and landscaping design response acceptable?
  - Will the proposal result in unreasonable off-site amenity impacts?
  - Are traffic, parking and vehicle arrangements acceptable?
- 10 Having considered the submissions, the evidence, Scheme provisions and our site inspection, we find the design concept, site layout and proposed landscape treatment is appropriate. We support the varied use of contemporary styling and materials, including different roof form proposed for the dwellings and find the range of housing styles and types will offer suitable options for future residential needs.
- 11 We support the retention of significant trees on the site, the centrally located communal open space area and the theme planting to be undertaken throughout the site as recommended by John Patrick Landscape Architects.



- 12 The review site is well located at the edge of a Major Activity Centre (Brandon Park), has a generous site area (1.5ha) with few sensitive interfaces that offers design flexibility and character variation for the discrete infill townhouse development as proposed. Changes will be required to the location of the front fence treatment along Ferntree Gully Road, to improve and filter the visual presence of the three storey built form sections along this road.
- 13 The proposed development has been satisfactorily designed to address parking, traffic and pedestrian movement on and off the site. We accept the use of tandem garage parking for the relevant dwelling types, noting we will require some dimensional changes to these spaces to improve their efficiency and use.
- 14 We are satisfied these minor design changes can be appropriately addressed by way of additional permit conditions. Further amended plans will need to be prepared to the requirements and satisfaction of the responsible authority. Relevant conditions at 1 and 4 of the permit reflect this in Appendix A to this decision.

## WHAT IS PROPOSED

- 15 The substituted plans seek approval for the construction of 77, two and three storey dwellings, to be developed in two stages, and creation and alteration of vehicle access to a designated Transport Road Zone 2 (Ferntree Gully Road). The lodged plans also sought approval for the construction of front fencing exceeding 1.2m in height. However, this approval is no longer required as we are requiring relocation of the front fence 3.0m off the front street boundary for improved landscaping and visual amenity.
- 16 The 77 town house dwellings are planned in groups around and perpendicular to an internal central loop road. The dwelling groups (comprising either three or four-bedroom dwellings) include a range of dwellings chosen from typical dwelling layout plans designated on plan by type. Nineteen three-storey Type A dwellings are positioned to engage with Ferntree Gully Road and are set back 7.6 metres from the site's frontage. Thirty four two and three storey Type B dwellings are proposed adjacent to the west, north and east boundaries of the site. Twenty four three storey Type C dwellings are proposed located off the loop road in the central part of the site.
- 17 All dwellings have private open space provided at ground level and/or balconies at the first floor that comply with clause 55 provisions. The two storey dwellings have a height between 6.0m to 7.0m. The three storey dwellings have a height between 10.0m to 11.0m.
- 18 The dwellings have contemporary styling and design with a combination of materials and finishes in earthy tones and textures. A new access entry is proposed and supported by the relevant road traffic authority, subject to





conditions<sup>4</sup>. This includes a pedestrian refuge. The 5.6m wide entry drive will intersect with a new 5.5m wide, two-way, loop road about 24.0m into the site which incorporates indented parking for visitors (15 spaces) at its inside edge. A pedestrian access only is proposed to Ferntree Gully Road at the western end of the site, between proposed lots 16 and 17.

- 19 The edges of the loop road will be landscaped, apart from where crossovers provide access to garage parking. Pedestrian footpaths are provided on the inside edges of the loop road. A communal open space of approximately 910sqm will be constructed and planted in the eastern part of the site. This area will be visible upon entry to the site from Ferntree Gully Road.
- 20 Plans of the substituted site layout and development staging at ground level and entire southern elevation to Ferntree Gully Road (in three parts) are shown below:

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<sup>4</sup> Vehicle access to the site is to be provided by a relocated left-in/left-out arrangement onto Ferntree Gully Road. The Department of Transport (DoT) approved the proposed vehicle access subject to conditions. Referral dated 6 December 2021.



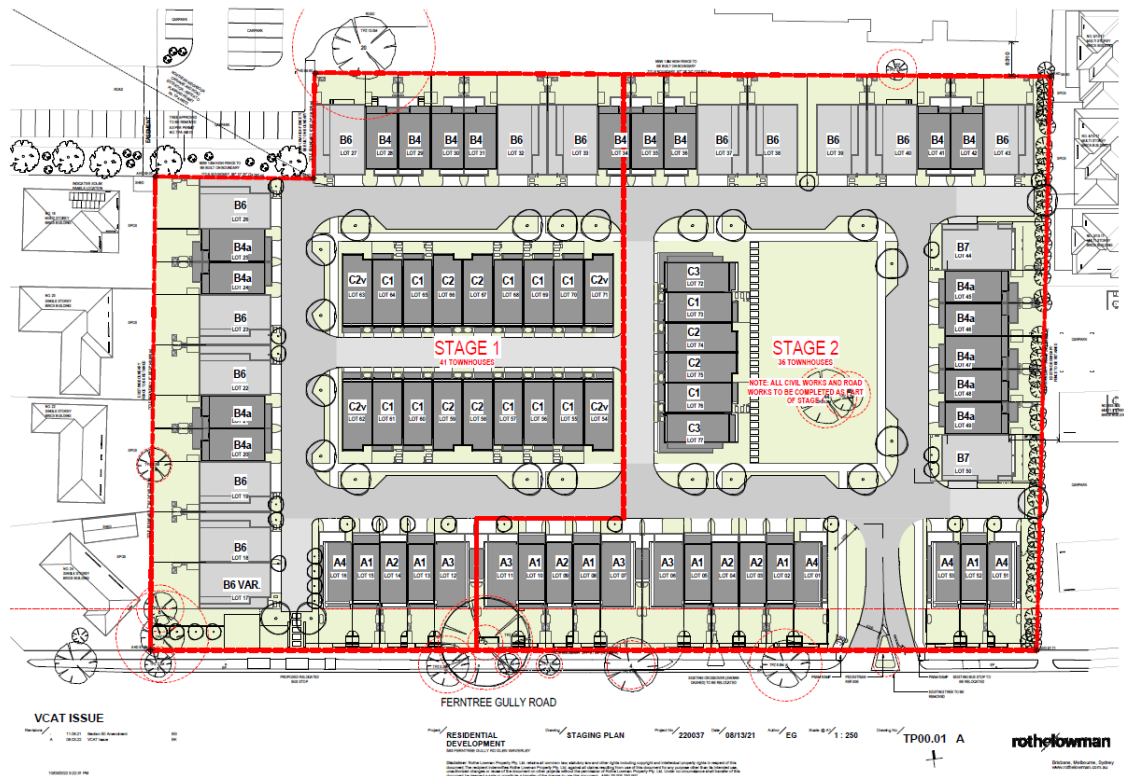


Figure 1: Development staging plan – Drawing TP00.01



## RELEVANT BACKGROUND

- 21 The review site forms part of a larger parcel of land at 583 Ferntree Gully Road, Glen Waverley affected by a proposed subdivision. The proposed two lot subdivision of subject land was authorised by planning permit TPA/49510, issued on 28 February 2020 (directed by Tribunal order dated 22 January 2020). When the proposed subdivision is certified, the review site will be properly described as Lot S2 on Plan of Subdivision 824072 (Lot 2).
- 22 We note this matter was originally listed for a Practice Day Hearing on 21 January 2022 to consider whether the review site included Lot 84 on Lot Plan 64921 (which is affected by a restrictive covenant). The Practice Day Hearing was subsequently vacated following mutual agreement reached between the parties, acknowledging that Lot 84 did not form part of the review site for purposes of the planning application.
- 23 We note the subject land is currently occupied by a number of institutional style buildings (predominantly single storey) and an internal road network with at grade car parking concentrated within the eastern portion of the site. The buildings are used for the purposes of a specialist primary school, medical centre and office. These uses will be relocated to the proposed Lot 1 on Plan of Subdivision 824072 (Lot 1). Planning permit TPA/52130 issued on 12 April 2021 authorised buildings and works on Lot 1 to facilitate the relocation of these uses. We noted these works during our inspection.

## IS THE PROPOSAL ACCEPTABLE IN THE CONTEXT OF THE PLANNING POLICY FRAMEWORK?

- 24 The review site is zoned GRZ2 and is not affected by any overlays. Ferntree Gully Road is designated a Transport Zone and is identified in the Principal Road Network at clause 36.04-4 (TRZ2)<sup>5</sup>. A proposal to construct two or more dwellings on a lot must comply with clause 55, while a range of decision guidelines to be considered are set out at clauses 32.08-13 and 65 of the Scheme.
- 25 Clause 32.08-4 requires that a minimum 35% of the review site area is set aside for garden area at ground level. The proposal satisfies this requirement with 35.94% garden area.
- 26 Clause 32.08-10 requires building height must not exceed 11.0m and be no more than three storeys at any point. The proposal satisfies these requirements, including both double and three storey built form height across the site.

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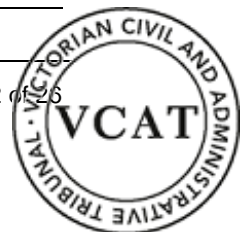
<sup>5</sup> See Amendments VC204 and VC205 gazetted on 9 December 2021 and 20 January 2022 respectively.



- 27 The review site is also affected by a range of planning policies that have been outlined above. We do not intend to reiterate the purposes of these policies here. Relevant strategic planning documents also include Plan Melbourne and the Monash Housing Strategy. We note local policy at clause 21.04 is intended to enshrine the aspirations of the Housing Strategy into the Scheme and lists the Housing Strategy as a background reference document.
- 28 The proposal also seeks to alter access to a road in a TRZ2 by a proposed new crossover to be created to Ferntree Gully Road, while existing crossovers to that road are to be removed. This new road access triggers a permit requirement under clause 52.29.
- 29 The planning application was referred to Transport for Victoria (TfV) who consented to the new access, subject to conditions requiring a relocated left-in/left-out arrangement to Ferntree Gully Road at the site's southern boundary. TfV have also required additional roadworks that will result in the existing bus stop and any associated infrastructure relocated along Ferntree Gully Road in accordance with a Modified Bus Stop Location Option 2 Concept Layout, Drawing No. V200270-01-03, sheet 03 of 03, issue P7 and compliance with the *Disability Discrimination Act 1992* and the *Disability Standards for Accessible Public Transport 2002*. These matters have been included within the draft permit conditions prepared and circulated by the council.
- 30 Council generally acknowledges the planning policy framework supports increased housing in and around activity centre locations, on land close to jobs, services and public transport<sup>6</sup>. The review site falls within this setting.
- 31 The review site is identified within Category 2 – Accessible Areas and Category 8 - Garden City Suburbs areas, of the Housing Strategy. We note Accessible Areas are identified as suitable for future redevelopment potential. The Housing Strategy encourages development to be consistent with the proposed future character of the area and provide appropriate built form transition to interfaces. Garden City Suburbs are identified as suitable for incremental change. Residential outcomes sought in Garden City Suburbs are described in the extract below:
- Predominantly conventional detached houses, units and townhouses reflecting the existing scale and neighbourhood character. On larger lots, in suitable locations, lower to medium scale apartment developments may be appropriate, subject to careful design and the provision of substantial landscaped setbacks.
- 32 Council submits that a new development on this site must primarily be determined by a careful assessment against both the Scheme provisions and overall principles of good planning. It submits the fundamental concerns relating to neighbourhood character, poor internal amenity outcomes for

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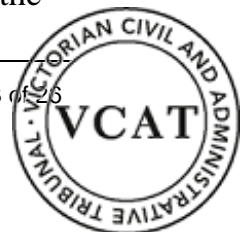
<sup>6</sup> See clauses 11.02-1S, 11.03-1S, 11.03-1R and 18.01-1S of the Scheme.



future occupants and lack of housing diversity, results in an overdevelopment of the review site.

## Our Findings

- 33 Having assessed the submissions and evidence of the parties, we find the review site is well located to provide an opportunity for significant infill town house development as proposed in this planning application.
- 34 We accept submissions from the council that development potential is not unfettered and requires appropriate consideration of both design and character provisions set out in the respective Category 2 – Accessible Areas and Category 8 - Garden City Suburbs that applies to the review site.
- 35 However, we do not accept the proposal is an overdevelopment of the site. We find the particular characteristics of the site, including a generous land area, minimal sensitive interfaces, a location within convenient walkability to retail and community services and facilities, public transport access and employment opportunities, all combine to warrant a dwelling density and contemporary medium density development as proposed.
- 36 We accept treatment of built form to Ferntree Gully Road requires some modification. We note the council supported the staggering and lower fence form to this road along this boundary interface. We do not support the lowering of fence form for amenity and noise reasons. To this end, we will require a 3.0m setback of the front fence treatment to the road, to be landscaped to help filter direct views of the partial double and three storey built form proposed to this interface.
- 37 Council submits the proposed development does not contain sufficient variation with smaller and detached dwelling forms. It submitted this would better reflect the character of the surrounding area. We acknowledge this criticism from the council. However, we consider the combination of three/four bedroom dwellings, in both double and three storey form offers an appropriate level of dwelling diversity, given the number of dwellings proposed on the site. We are also satisfied the proposed attached built form of the dwellings set around the internal loop road is appropriate to the land area and physical setting of the review site. We note attached built form, many with extensive wall forms to the street, such as the adjoining Hotel development, are found in the area.
- 38 We find the review site offers excellent opportunity for urban consolidation aspirations sought under policy. Increased density outcomes on the site will also capitalise on the existing physical and social infrastructure that is available to the review site.
- 39 We agree with submissions from the applicant and supported by its town planner/urban design expert, that the review site does not need to reflect surrounding character. Its size, setting and interface conditions enables the



site to establish its own character setting, particularly considering its robust interface to Ferntree Gully Road.

- 40 We also agree with Ms Ring that a more flexible and balanced approach to the design response is appropriate, including contemporary, attached dwelling styles with flat roof form. We concur this section of Ferntree Gully Road includes a mix and variety of built form that enables character variations as proposed.
- 41 We support the proposed building setbacks to the Kerford Road and Woodlea Drive properties. Noting these dwellings will include appropriate screening and design treatments that will be reinforced through permit conditions.
- 42 We also support the location of the communal open space area proposed on the site. We consider this will provide an important green, open and leafy space for the use and enjoyment of future occupants. We note and support the retention of some significant existing trees in John Patrick's landscape plan, as well as the proposed replacement and overall landscaping theming proposed across the review site shown on this plan.
- 43 For the reasons we outlined above, we find the proposed development and design response is acceptable in the context of the planning policy framework that applies to the review site and surrounds.

#### **IS THE BUILDING FORM AND LANDSCAPING DESIGN RESPONSE ACCEPTABLE?**

- 44 Council accepts the proposed development meets the minimum garden area sought under clause 32.08-4. However, it says the minimum garden area of 35.9% is largely achieved through the provision of the communal open space, while other parts of the site are more constrained in terms of landscape. Particularly around buildings abutting the internal loop road.
- 45 It says the narrow nature strip spaces proposed along the internal loop road and long lengths of attached built form results in limited areas for meaningful landscaping. It says this is a lost opportunity to provide appropriate soft landscaping given the high yield of dwellings.
- 46 Council's concerns around built form and landscaping are not supported by the expert evidence of Ms Ring and Mr Patrick.
- 47 Ms Ring opines the proposed design response is appropriate given the proposal seeks to convert former child care and educational form and use on the site to residential focus. She notes the proposed development will have a site coverage of just under 41% and provides a garden area exceeding the required 35% in the GRZ2.
- 48 It is her view the proposed contemporary housing forms and site layout on a large site, offers more flexibility and distinctness in contemporary building form. She also notes the wider area is heavily influenced by the arterial



character and role of Ferntree Gully Road and the mix of land uses and robust building form found along this road. It is her opinion that:

..... these Ferntree Gully Road conditions are very different from the more typical neighbourhood character conditions represented deeper into the neighbourhood to the north<sup>7</sup>.

- 49 Mr Patrick is also satisfied the proposed landscape treatment and retention of trees on site achieves an appropriate balance and design response to the residential intensification of the site. It is his opinion, expressed at paragraph 9.51 of his evidence statement, that:

The proposal responds effectively to the expectations of Clause 22.01 Residential Development and Character Policy by providing trees to the front setback that assist in integrating the development with its site context, this including retained canopy trees and new large canopy tree plantings, retaining trees where practical notably to the eastern site boundary where they establish a meaningful boundary interface and then planting canopy vegetation of appropriate scale to the northern and western site boundaries...

He also opines at paragraphs 9.52 and 9.55 that:

The proposal provides a responsible and realistic response to Clause 22.05 Tree Conservation Policy by retaining site canopy trees where practicable and protecting off site vegetation from impacts of development, this represents a balanced approach to tree retention, by introducing trees with spreading canopies to offer a mature site outcome wrapped in trees ....

The proposal responds effectively to Clause 55.03-8 Landscaping objectives by providing a landscape plan that respects the character of the neighbourhood, provides improved habitat values though not in a precinct noted for habitat values, and retaining mature vegetation whilst also meeting the expectations of Standard B13 by offering a safe, attractive, and functional environment for future residents and allowing for vegetation growth.

## Our Findings

- 50 Having considered the submissions of the parties and our inspection of the review site and surrounds, we accept the expert evidence of Ms Ring and Mr Patrick. We find the review site has a greater level of robustness and capacity to absorb higher density due to its location on a main road setting and its larger size. We also agree the site displays fewer sensitive interfaces than would normally be encountered on a typical suburban infill site.
- 51 We are satisfied the contemporary architectural style of the proposed development is of high quality and will provide visual interest when viewed from the public realm. We are also satisfied that the built form is suitably modulated along the east, north and west interfaces. Internally, we note the

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<sup>7</sup> At page 31 of Ms Ring's evidence statement.



design provides for the recession of garage forms at ground level from the principal facades of the dwellings, ensuring the upper levels of the dwellings will retain visual prominence. We also note that styling of garage doors will feature to all dwellings on the loop road.

- 52 We also find the visual setting and physical location of the large communal open space internal to the loop road has been understated by the council. We consider this is an integral and important design component of this development, one that adds visual depth and physical context to the site.
- 53 While we accept that greater dwelling intensification is proposed around the internal loop road, we find the large communal space will offset this by providing an area that can be appropriately landscaped with canopy tree planting for the enjoyment and use of all future occupants on the site.
- 54 We also note the following positive landscape design outcomes:
- Retention of existing vegetation including the English Oak on the southern boundary, the Port Jackson Fig on the northern boundary and although on the road reserve, the Ferntree Gully Road nature strip trees.
  - The front setback to Ferntree Gully Road will accommodate landscaping including some canopy trees and shrubs that will enhance the appearance of the built form and contribute to the landscape character of the area.
- 55 For the reasons we provided above, we find the proposed development and design response will achieve a satisfactory building form and landscaping response sought under the relevant provisions of the GRZ2 and Scheme.

#### **WILL THE PROPOSAL RESULT IN UNREASONABLE OFF-SITE AMENITY IMPACTS?**

- 56 We find the proposal has appropriately addressed matters regarding off site amenity impacts. Having reviewed the respective submissions and evidence of the parties on this matter, amongst other related amenity matters, the proposal achieves a high level of compliance with relevant clause 55 provisions, noting:
- The proposal complies with relevant overlooking provisions of clause 55.04-6, Standard B22. Various techniques are proposed including setbacks, height variation and use of landscaped secluded private open spaces and screening treatments specified by Standard B22. We note these outcomes are also reinforced through permit conditions.
  - Overshadowing objectives under clause 55.04-5 and requirements sought by Standard B2 have been met. Noting secluded private open space areas of properties interfacing Woodlea Drive and Kerford Road will maintain between five to six hours of uninterrupted hours of sunlight across the day.

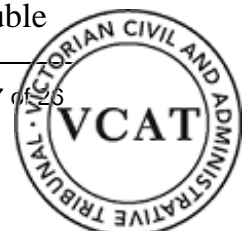




- Front fencing along Ferntree Gully Road will be maintained at an appropriate height, combined with additional landscape treatment by permit condition, to provide a buffer for the immediate properties facing that road, as well as providing noise attenuation to other dwellings proposed across the site.
  - Acoustic noise attenuation conditions are included on permit as recommended by Ms Ring, adding further window glazing and acoustic fence treatments along Ferntree Gully Road.
  - Appropriate public surveillance is provided to and from the private/public domain from upper levels of dwellings, combined with the visible pedestrian entries of dwellings to the internal loop road.
- 57 Council raised concerns on the use of reverse living arrangements for some dwellings on site. It submits a more conventional layout of dwellings on the site would improve internal amenity for future occupants, as well as responding to interface treatments.
- 58 We accept the use of reverse living on this site is appropriate. We do not find there is an excessive reliance in the design through screening treatments to interfaces and consider the articulation proposed between levels and groupings of dwellings, ensures that visual bulk is appropriately addressed to these interfaces. Dwelling occupants will also have excellent and convenient access to the large communal open space area on the site.
- 59 We agree with the applicant that the north interface does not require screening to the reverse living balconies to prevent overlooking of the non-residential facility at 16 Woodlea Drive. However, where screening is proposed to be included as a design element to allow views to and from the adjoining property to be regulated by occupants, we will require a form of screening that is operable and allows for visual connection of the balconies and the ground level private open spaces on the same lots to be maintained. We have included a condition in the permit to issue to reflect this requirement.
- 60 We also note council accepts that some form of reverse living proposed on the site is appropriate, associated with dwelling types C1, C2 and C3. We consider the inclusion of the centrally located open space area on the site will play an integral role in the overall amenity setting and enjoyment of all future occupants using this space.
- 61 For the reasons we provide above, we find the proposed development and design response will not result in any unreasonable amenity impacts.

**ARE TRAFFIC, PARKING AND VEHICLE ARRANGEMENTS ACCEPTABLE?**

- 62 A total of 154 car spaces will be provided for the proposed development. Including a mix of garages and at grade car spaces, tandem garages, double



garages and single garages, with at grade tandem car spaces. Provision of 15 on site visitor car spaces is also proposed, while *above bonnet* bicycle spaces are provided within each resident garage, allowing two spaces for each dwelling. Based on the proposed parking provision a car parking reduction is not required for the proposed development under clause 52.06-5 of the Scheme.

- 63 Revised vehicle access proposed to the site will be provided via a relocated left-in/left-out arrangement to Ferntree Gully Road.
- 64 Council is particularly concerned the proposed development relies on tandem car parking that will not facilitate efficient movement of vehicles. It also submits the tandem garages do not meet design requirements under clause 52.06.
- 65 It is the evidence of Ms Dunstan that the proposed parking arrangements, with revised widths to some spaces located within the tandem garages, satisfy the provisions of clause 52.06. Ms Dunstan was extensively cross examined on this point. It is her evidence the proposed parking arrangement (with amendments to some tandem spaces) is practical, convenient and adequate for the future needs of residents.

### **Our Findings**

- 66 We are satisfied the quantum of proposed car parking on site meets the requirements of clause 52.06. Each dwelling will have access to two car parking spaces that are accessible from within the dwelling and externally.
- 67 We agree with Ms Dunstan that modification is required to the width and dimensions of the second tandem car space allocated to the dwelling garages. We therefore support the proposed condition be added to the permit:

All garages or carports to be at least 6 metres long and 3.5 metres wide for a single space and 5.5 metres wide for a double space measured inside the garage or carport and for all tandem double space garages to be at least 10.9m long, and the width of at least one space to be a minimum of 3.5 metres closest to the accessway with the second space a minimum of 3.0 metres.

- 68 The council supported this change during discussions on the draft conditions.
- 69 Based on Ms Dunstan's evidence and no contrary opinion, we accept vehicles and pedestrians will be able to navigate efficiently and safely within and throughout the site. We agree the loop road will act as a slow speed environment within the site. The loop road will also have dedicated footpaths provided at internal edges for use by pedestrians.



- 70 We note and support the revised two way vehicular access to Ferntree Gully Road sought by TfV. Conditions have been included in the draft permit to reflect TfV requirements.
- 71 For the reasons expressed above, we find the proposed development and design response will not result in unreasonable traffic or parking impacts, either on the immediate site or within the surrounding street network.

### **WHAT CONDITIONS ARE APPROPRIATE?**

- 72 Draft permit conditions were circulated between the parties, including an initial draft by council and a later marked up version provided by the applicant.
- 73 The draft permit conditions were discussed between the parties at the conclusion of the hearing. In deciding the conditions to be included on the permit, we have had regard to the marked up conditions, the written and oral submissions and evidence of the parties, in addition to matters which arise from our reasons detailed above.
- 74 We have amended the permit preamble to reflect the permit triggers, given the front fence along Ferntree Gully Road is to be set back 3.0m from the street frontage. We support the changes/additions sought to conditions 1(b), (d), (e), (f) and (g) and have added 1(h) to enable alternative screening treatment to the north interface and 4 (d) to deal with the revised front fence setback. We also support the increased time to commence and complete the development sought by the applicant.
- 75 Apart from some minor editing and formatting that does not change the intent of the draft conditions, we are satisfied with the remainder of the conditions as specified in Appendix A to this decision.

### **CONCLUSION**

- 76 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions included in Appendix A to this decision.

Peter Gaschk  
**Presiding Member**

Rebecca Cameron  
**Member**



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/52516
<b>LAND</b>	583 Ferntree Gully Road GLEN WAVERLEY VIC 3150

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of seventy-seven (77) two to three storey dwellings with associated buildings and works to be developed in two stages and creation and alteration of vehicle access to a road in a Transport Zone 2.

## CONDITIONS

### Amended Plans Required

- 1 Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the responsible authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans prepared by RotheLowman, all dated 8 March 2022, but modified to show:
  - (a) Additional details relating to the proposed grades for the main carriageway within the site.
  - (b) All garages or carports to be at least 6 metres long and 3.5 metres wide for a single space and 5.5 metres wide for a double space measured inside the garage or carport and for all tandem double space garages to be at least 10.9m long, and the width of at least one space to be a minimum of 3.5 metres closest to the accessway with the second space a minimum of 3.0 metres.
  - (c) A corner splay or area at least 50% clear of visual obstruction (or with a height of less than 1.2m) extending at least 2.0 metres long x 2.5 metres deep (within the property) from the edge of the exit lane for the purpose of providing a clear view of pedestrians on the footpath of the frontage road.
  - (d) Location of the gas, water meter enclosures and substation (unless the relevant power authority does not provide consent) to be integrated with landscaping in accordance with the amended Landscape Plan endorsed under this permit.



- (e) All habitable room windows facing Ferntree Gully Road to be double glazed.
- (f) Front fences associated with Type A dwellings modified to increase visual privacy to ground level private open spaces.
- (g) Details of external lighting at dwelling entries, common accessway and communal open space.
- (h) Details of any operable screen on the north facing first floor balconies adjacent to the northern site boundary to provide occupants the ability to maintain connection with the ground level private open space on the same lot and to regulate views towards the property at 16 Woodlea Drive, Glen Waverley.
- (i) The front fence proposed for Type A dwellings on lots 1 - 16 and 51 – 53 inclusive along Ferntree Gully Road to be setback a minimum 3.0m from that boundary and landscaped.

All to the satisfaction of the responsible authority.

Concurrent with the endorsement of plans requested pursuant to this condition, amended plans comprising a Landscape Plan, Waste Management Plan and Sustainable Management Plan are to be endorsed in accordance with Conditions 4, 5 and 6 respectively.

#### **Layout not to be Altered**

- 2 The development and use as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

#### **Satisfactory Continuation**

- 3 Once the development has started it must be continued and completed to the satisfaction of the responsible authority.

#### **Landscape Plan**

- 4 Concurrent with the endorsement of any plans requested 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. When endorsed, the plan will form part of the Permit. The Landscape Plan must be generally in accordance with the Landscape Master Plan dated 17 March 2022 and prepared by John Patrick Landscape Architects Pty Ltd, except that the plan must be modified to show:
  - (a) The detail of the proposed paving.
  - (b) The location of external lighting within the site (if any); and
  - (c) The provision of an in-ground, automatic watering system linked to rainwater tanks on the land servicing the main garden areas.



- (d) Landscape treatment required under condition 1(i) of this permit, generally in accordance with the amended landscape plan titled Typical Landscape Plan – Type A, Revision A, dated 27 April 2022, prepared by John Patrick Landscape Architects Pty Ltd.

All to the satisfaction of the responsible authority.

### **Waste Management Plan**

5 Concurrent with the endorsement of plans required pursuant to Condition 1, an amended Waste Management Plan must be approved by the responsible authority. The plan must be generally in accordance with the Waste Management Plan (**WMP**) prepared by Leigh Design dated 10 March 2022 but amended to provide:

- (a) Purpose of the WMP into the introduction or early part of the WMP as per the ‘Multi-Unit and Commercial Developments Waste Management Plan: Guide for Applicant’s’ prepared by Monash City Council.
- (b) The planning permit application number (i.e. TPA) and existing land use in the development description.
- (c) The number of bedrooms per dwelling and appropriate waste generated estimate.
- (d) Correct waste volume calculation and total waste generated per waste stream.
- (e) Using the waste generation figures, details of the bin collection details including collection points, bin transfer routes and swept path diagrams, the number of collections per week, bin numbers, bin size/ colour that are required to meet the anticipated waste volumes including food organics and glass recycling.
- (f) For food organics recycling.
- (g) Storage of 4 bins per dwelling.
- (h) Scaled plans with details of bin collection areas, supported by location of each bin at collection point.
- (i) A statement that this development is not eligible for Council’s Annual Hard Waste Collection Service.
- (j) A statement that provides that access to Council’s ‘at-call users pays hard rubbish service’ will be dependent on a Section 173 Agreement being in place with Council’s Waste Services.
- (k) Provision for hard waste collections; and
- (l) Waste management communication strategy for occupiers.



The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the responsible authority.

### **Sustainable Management Plan**

- 6 Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Management Plan must be approved by the responsible authority. The plan must be generally in accordance with the Sustainability Management Plan prepared by Co-Perform Pty Ltd dated 8 March 2022.

### **Construction Management Plan**

- 7 Prior to the commencement of any site works (including any demolition and excavation), a Construction Management Plan (CMP) must be submitted and approved by the responsible authority. No works are permitted to occur until the Plan has been endorsed by the responsible authority. Once endorsed, the CMP will form part of the permit and must be implemented to the satisfaction of the responsible authority. The CMP must address the following issues:
- (a) Hours for construction activity in accordance with any other condition of this permit.
  - (b) Appropriate measures to control noise, dust and water and sediment laden runoff.
  - (c) Appropriate measures for the prevention of silt or other pollutants from entering into the Council's underground drainage system or road network.
  - (d) Appropriate measures relating to removal of hazardous or dangerous material from the site, where applicable.
  - (e) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site so as to prevent material leaving the site and being deposited on Council's road network.
  - (f) A program for the cleaning and maintaining surrounding road surfaces.
  - (g) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like.
  - (h) Measures to provide for public safety and site security.
  - (i) A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay.



- (j) A Traffic Management Plan showing truck routes to and from the site.
- (k) A swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction.
- (l) Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the Council-endorsed CMP.
- (m) Include contact details of key construction site staff; and
- (n) A requirement that except with the prior written consent of the responsible authority, demolition, excavation or construction works must only be carried out during the following hours:
  - Monday to Friday (inclusive) – 7.00 am to 6.00 pm;
  - Saturday – 9.00 am to 1.00 pm; and
  - Saturday – 1.00 pm to 5.00 pm (Only activities associated with the erection of buildings that does not exceed any relevant EPA guidelines).
  - No works are permitted on Sundays or Public Holidays.

The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with by all contractors to the satisfaction of the responsible authority.

### **Car Parking**

- 8 A detailed plan of the access arrangements to Ferntree Gully Road must be submitted to the responsible authority for approval. A Road Opening Permit, with associated refundable security bond, will be required from Council's Engineering Department prior to the roadworks commencing.
- 9 Prior to occupation of any stage of the approved development, areas set aside for parked vehicles and access lanes associated with the relevant stage as shown on the endorsed plans must be:
  - (a) Constructed to the satisfaction of the responsible authority.
  - (b) Properly formed to such levels that they can be used in accordance with the plans.
  - (c) Surfaced with an all-weather sealcoat to the satisfaction of the responsible authority.
  - (d) Drained, maintained and not used for any other purpose to the satisfaction of the responsible authority; and
  - (e) Line-marked to indicate each car space and all access lanes to the satisfaction of the responsible authority.





Parking areas and access lanes must be kept available for these purposes at all times.

### **Landscaping and Tree Retention**

- 10 Before the development (including demolition) starts, a tree protection fence must be erected around the Tree Protection Zone (TPZ) of trees being retained on the site. The fence must be constructed of (specify star pickets and chain mesh or similar) and verified by a qualified landscape architect or horticulturist. The tree protection fence must remain in place until construction is completed. Before the development starts, the ground surface of the TPZ must be covered by a 100 mm deep layer of mulch. The TPZ must be watered regularly to the satisfaction of the responsible authority.
- 11 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the TPZ of any tree to be retained (including trees on the nature strip) during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the responsible authority.
- 12 All works (including demolition and excavation works) within the dripline of any tree to be retained (including trees on nature strip and adjoining properties) shall be supervised by a qualified landscape architect or horticulturist who shall ensure that the works are done in a manner which protects and minimises any damage to those trees.
- 13 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 there after maintained to the satisfaction of the responsible authority.

### **Drainage**

- 14 The site must be drained to the satisfaction of the responsible authority.

### **Other**

- 15 Any required fire services, electricity supply, gas and water meter boxes must be discreetly located and/or screened to compliment the development to the satisfaction of the responsible authority. Any required services must be clearly detailed on endorsed plans forming part of this permit.

### **Time for Starting and Completion**

- 16 In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
  - (a) The development has not started before three years from the date of issue.



- (b) The development is not completed before five 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:

- (c) Within six months afterwards if the use or the development has not commenced; or
- (d) Within twelve months afterwards if the development has not been completed.

The responsible authority and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

### **Head, Transport for Victoria**

- 17 Prior to the occupation of the development, the following roadworks on Ferntree Gully Road must be completed at no cost to and to the satisfaction of the Head, Transport for Victoria:
  - (a) The bus stop and any associated infrastructure relocated in accordance with Proposed Modified Bus Stop Location Option 2 Concept Layout, Drawing No. V200270-01-03, sheet 03 of 03, issue P7 and compliant with the *Disability Discrimination Act 1992* (Cth) and the Disability Standards for Accessible Public Transport 2002.
  - (b) Splitter island at the site access.
- 18 Prior to the occupation of the development, the crossover and driveway are to be constructed to the satisfaction of the responsible authority and at no cost to the Head, Transport for Victoria.
- 19 Prior to the occupation of the development, all disused or redundant vehicle crossings must be removed, and the area reinstated to kerb and channel to the satisfaction of the responsible authority and at no cost to the Head, Transport for Victoria.
- 20 The demolition and construction of the development must not disrupt bus operations on Ferntree Gully Road without the prior written consent of the Head, Transport for Victoria.
- 21 Any request for written consent to disrupt bus operations on Ferntree Gully Road during the demolition and construction of the development must be submitted to the Head, Transport for Victoria no later than 8 weeks prior to the planned disruption and must detail measures that will occur to mitigate the impact of the planned disruption.

– End of conditions –

