VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1889/2019Permit Application no. TPA/50395 |
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| APPLICANT | FMC Investment & Management Pty Ltd |
| responsible authority | Monash City Council |
| Referral Authority | Vic Roads - Metropolitan South East Region |
| SUBJECT LAND | 110 Clayton Road CLAYTON VIC 3168 |
| WHERE HELD | Melbourne |
| BEFORE | S.R Cimino, Senior Member  |
| HEARING TYPE | Compulsory Conference  |
| DATE OF HEARING | 28 January 2020  |
| DATE OF ORDER | 28 January 2020 |

# Order

**Amend application**

1. Pursuant to 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: | Fd Architects Pty Ltd |
| Drawing numbers: | TP03D to TP09D |
| Dated: | 23 January 2020 |

### Grant permit

1. In application no. **P1889/2019,** the decision of the Responsible Authority is **set aside.**
2. In permit application no. TPA/50395 a permit is granted and directed to be issued for the land at 110 Clayton Road CLAYTON VIC 3168 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

Construction of five (5) dwellings on a lot

Alter access to a road in the Road Zone Category One

###  Hearing vacated

1. The hearing listed for **13 March 2020** is cancelled and the date vacated.

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

# Appearances

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| For applicant | Mr P. Rygl, planning consultant, Mecone |
| For responsible authority | Ms E. Connop, town planner |
| For Department of Transport  | No attendance – letter of consent submitted |

# remarks

1. This matter relates to 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 five dwellings on the subject land.
2. Following the compulsory conference on 17 January 2020, the applicant prepared revised plans for the Council’s consideration. At the compulsory conference on the 28 January 2020, the Council advised that it finds the changes to the plans together with its agreement to the removal of a street tree result in a development outcome that it is prepared to the support. The Council is agreeable to a permit being granted subject to conditions. The applicant accepts the conditions.
3. The Department of Transport (formerly VicRoads) has forwarded a latter advising that it does not oppose the proposal subject to the inclusion of specified conditions. The Council and applicant agree to the inclusion of those conditions.
4. As such, the parties request that I make orders by consent pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*, to implement settlement of this matter.
5. In giving its consent, the Responsible Authority confirms that the amended plans substituted as the application plans do not give rise to any new issues in terms of impacts on the amenity of neighbouring properties and notice is not required.
6. this order is made at the request of the parties and with their consent.
7. 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.
8. Based on the information available to the Tribunal, I consider it is appropriate to make these orders to implement the settlement reached by the parties.

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

# Appendix A – Permit Conditions

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| Permit Application No | TPA/50395 |
| Land | 110 Clayton Road^CLAYTON VIC 3168 |

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| What the permit allowS |
| In accordance with the endorsed plans:* Construction of five (5) dwellings on a lot
* Alter access to a road in the Road Zone Category One
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## Conditions

### Amended Plans

1. Before the development starts, a copy 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 prepared by Fd Architects Pty. Ltd. Revision D, dated 23/01/2020 but modified to show:
	1. Details of the proposed front fence.
	2. Finished floor levels of all decking areas.
	3. Provision of 6 cubic metres of storage for each dwelling to the satisfaction of the Responsible Authority.
	4. Gas, water and electrical meters to the satisfaction of the Responsible Authority.
	5. 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) on both sides the vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.

### 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.

### Common Boundary Fences

1. All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.

### 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 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.

### Street Tree Removal

1. The existing street tree (Tristaniopsis laurina) must be removed and replaced to the satisfaction of the Responsible Authority by payment of $4,137.17 not less than 6 months before the development commences.

### 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.



### Sustainable Management Plan

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 21.13 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.

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 of any of the dwellings 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 those relevant completed dwellings ready for occupation) all measures specified in the Sustainable Management Plan have been implemented in accordance with the approved plan.

### Construction Management Plan

1. Prior to the commencement of works on the site, 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 emissions of noise and dust and water runoff from the site;
	2. prevention of silt or other pollutants from entering Council’s underground drainage system or road network;
	3. the location where building materials are to be kept during construction;
	4. site security to prevent people from entering the construction site;
	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. a program for 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 that does not exceed the EPA guidelines).

### Waste Management Plan

1. Prior to the commencement of works on the site, a Waste Management Plan must be submitted to and approved by the Responsible Authority for the collection and disposal of garbage and recyclables by a private contractor for all uses on the site. The Waste Management Plan shall provide for:
	1. The time and method of collection of garbage and recyclables from uses;
	2. Designation of methods of collection by the private contractor;
	3. Appropriate areas for bin storage on site and areas for bin placement on collection days;
	4. Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
	5. The timing collection of all waste so as not to cause disruption to traffic and amenity of the area.
	6. Bins not to obstruct car parking or traffic movement.

Once approved the Waste Management Plan will be endorsed to form part of the permit.

### 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. 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.
3. 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 the 375 mm Council drain in the naturestrip via a Council approved saddle adaptor to be constructed to Council Standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

### Transport

1. Approval of each proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council’s Engineering Department.
2. The proposed crossing is to be constructed in accordance with the City of Monash standards.
3. All new 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. The proposed widening of the existing crossover will effect an existing junction pit. Approval from Council’s Development & Drainage Engineering Department is required as part of the vehicle crossing application process.
4. Bicycle parking facilities shall generally follow the design and signage requirements set out in Clause 52.34 of the Monash Planning Scheme.

### Permits

1. Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department. A refundable security deposit of $3,000 is to be paid prior to the drainage works commencing.

### VicRoads (Ref. No: 30433/19)

1. Prior to the commencement of the use of the development hereby approved, amended plans must be submitted to and approved by the Roads Corporation. 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 two copies must be provided. The plans must be generally in accordance with the plans drawn by Fd Architects dated 01.07.19 and annotated as but modified to show:
	1. Revised ramp gradients that comply with Clause 52.06-9 of the Monash Planning Scheme (no steeper than 1:10 for the first 5m of the site).
	2. The dimensions of the proposed widened crossover to comply with passing as per Monash Planning Scheme.
2. Prior to the commencement of use of the development hereby approved, 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 the Responsible Authority and at no cost to the Roads Corporation. Works will need to include reinstating the services pit shown on the site plan.
3. All vehicles must enter and exit the site in a forward direction at all times.

### Completion of Buildings and Works

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

### 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 two (2) years from the date of issue.
* The development is not completed before four (4) 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 –**