

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P970/2022
PERMIT APPLICATION NO.TPA/52843

APPLICANT	Hilite Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Paul Meiklejohn
REFERRAL AUTHORITY	The Head, Transport for Victoria
SUBJECT LAND	1758 Dandenong Road & 4 Kumara Place CLAYTON VIC 3168
HEARING TYPE	Hearing
DATE OF HEARING	19 & 20 January 2023
DATE OF ORDER	7 February 2023
CITATION	Hilite Pty Ltd v Monash CC [2023] VCAT 116

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: LRW Design Pty Ltd and Morris Outside Pty Ltd (Landscape Plans only)
 - Drawing numbers: TP01b - TP03b, TP04c and TP05b - TP08b (Project 21.020) and LA/02/KM151021 (two pages – Landscape Plans only)
 - Dated: All November 2022 and 21 November 2022 (Landscape Plans only)
- 2 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended to:
 - Construct buildings and works associated with an extension to the existing Child care centre, reduction in standard car parking requirements, display of business identification signage and alteration of access to a Transport Road Zone Category 2.



Permit granted

- 3 In application P970/2022 the decision of the responsible authority is set aside.
- 4 In planning permit application TPA/52843 a permit is granted and directed to be issued for the land at 1758 Dandenong Road & 4 Kumara Place CLAYTON VIC 3168 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Use of the land for a Child care centre and construct buildings and works associated with an extension to the existing child care centre in the Residential Growth Zone Schedule 3.
 - Reduction in standard car parking requirements on the land under Clause 52.06-3.
 - Display of business identification signage on the land under Clause 52.05-13.
 - Alteration of access to a road in the Transport Road Zone Category 2.

Peter Gaschk
Member



APPEARANCES

For Hilite Pty Ltd:

Dominic Scally, Solicitor, with Best Hooper Lawyers.

Witnesses called:

- Rebecca West, Town Planner from Urbis Consultants Pty Ltd
- Terry Hardingham, Traffic Engineer from O'Brien Traffic Pty Ltd
- Nicholas Peters, Acoustic Engineer from Renzo Tonin & Associates (VIC) Pty Ltd

For Monash City Council:

Adrienne Kellock, Town Planner, with Kellock Town Planning Pty Ltd

For Paul Meiklejohn:

In person (Day 1 only)

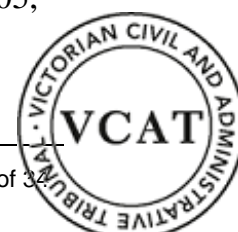
For The Head, Transport for Victoria:

No appearance



INFORMATION

Description of proposal	<p>Construction of an extension to the existing Child care centre on the land at 1758 Dandenong Road and 4 Kumara Place (the review site) (including demolition of the existing caretaker's dwelling, outbuildings and vegetation).</p> <p>New buildings and associated works comprise a two storey building to accommodate an additional 24 children, an extended play area including a raised deck area (play area) located partly over the existing car park, new landscaping, reduction in car parking requirements, construction and display of business identification signage and alteration of access to a Transport Road Zone, Category 2 (TRZ2).</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 (Scheme)
Zone and overlays	Residential Growth Zone, Schedule 3 (RGZ3) No overlays apply
Permit requirements	<p>Clause 32.07-2: Use of a Child care centre on the subject land (non-specified Section 2 use in the Land Use Table at clause 32.07-2).</p> <p>Clause 32.07-8: To construct a building or construct or carry out works for a use in Section 2 of Clause 32.07-2.</p> <p>Clause 52.05-13: Display of business signage (Category 3).</p> <p>Clause 52.06-3: To reduce (including reduce to zero) the number of car parking spaces required under clause 52.06-5.</p> <p>Clause 52.29-2: Alter access to a road in a TRZ2.</p>
Key scheme policies and provisions	Clauses 11, 11.01-1R, 15.01-1S, 15.01-2S, 17, 18, 19, 19.02-2S, 21.04, 21.05, 21.08, 21.11, 21.13, 22.01, 22.08, 22.09, 22.13, 32.07, 52.05, 52.06, 52.29, 65.01 and 71.02.



Land description

The review site is located on the south side of Dandenong Road and east side of Kumara Place. The site has an L shape with a frontage of 32.0m to Kumara Place and 21.0m to Dandenong Road (service road). A drainage and sewerage easement runs centrally through the middle of the site and inside the southern boundary of part of the land. The land has been consolidated.

The review site includes two existing vehicular crossings and circular driveway to the Dandenong Road frontage that leads to a single storey building used as a Child care centre. A further crossing is in the Kumara Place frontage that leads to an unsealed car parking area used by staff of the Child care centre.

The existing Child care centre primarily occupies the Dandenong Road portion of the review site and accommodates 97 children. Existing outdoor play areas are located to the west and south of the existing single storey Child care building. A single storey caretaker's dwelling, and garage is located to the rear at 4 Kumara Place (to be demolished and replaced with a double storey building as part of the proposal). The garage is used for outdoor educational purposes.

The surrounding area generally comprises residential housing, with some mix of non-residential uses. For example, a dental clinic is located to the east off Dandenong Road, with a similar vehicle and parking access arrangement as the child care facility.

The review site is within the Monash National Employment and Innovation Cluster (**MNEIC**) which includes Monash University (**MU**), the Monash Medical Centre (**MMC**) located approximately 400m to the south and the Clayton Major Activity Centre (**CMAC**) located approximately 1km to the south west.



Public transport includes bus services that operate along North Road and Dandenong Road. The nearest train station is Clayton Station approximately 1.2km and Huntingdale Station 2km to the west.

To the north west is a two storey brick dwelling with separate garage (2 Kumara Place). To the north is the Dandenong Road service road, with the Dandenong Road / North Road intersection nearby. To the east is a double storey brick dwelling (1760 Dandenong Road). To the south includes a part single and part double, two storey brick dwelling, with frontage to Kumara Place and Myriong Street (33 Myriong Street), six single storey dwellings comprising a six dwelling medium density development (35 Myriong Street) and a single storey dwelling at 37 Myriong Street.

Tribunal inspection

Undertaken unaccompanied on 30 January 2023.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

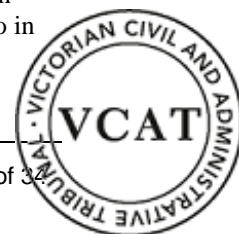
- 1 The permit applicant Hilite Pty Ltd (**applicant**) has sought a review of Monash City Council's (**council**) refusal to grant a permit under s.77 of the *Planning and Environment Act 1987* (**the Act**).
- 2 The applicant seeks approval to construct an extension to the existing Child care centre (Monash Vale Early Learning Centre), including a new two storey building accommodating an additional 24 children and office/storage space, reduction in car parking requirements, display of business identification signage and alteration of access to a Transport Road Zone Category 2 (**the proposal**) in accordance with amended plans prepared by LRW Design Pty, all dated November 2022².
- 3 The application was refused by Council on 8 June 2022 on the following grounds:
 1. The proposal does not meet the objectives and policies of Clause 15.01-1S Urban Design and Clause 22.09 Non-residential Use and Development in Residential Areas in terms of location, urban design, car parking and landscaping criteria.
 2. The proposal fails to provide an outcome in keeping with that sought in the Residential Growth Zone 3 in terms of compatibility, the design and appearance of the buildings, landscaping and car parking.
 3. The proposal fails to provide sufficient space for landscaping opportunities to important site interfaces.
 4. The proposal will detrimentally impact on the street and abutting properties in terms of bulk and massing, car parking/traffic, noise and presentation.
 5. The proposal does not comply with Clause 52.06 Car Parking of the Monash Planning Scheme in relation to the car parking requirement, safety and traffic movement in the area and the reduction of 5 car spaces is not justified.
 6. The location of the roof top play area on top of a free standing structure and associated ramp results in a poor design response.
 7. The proposal is an overdevelopment and a poor design outcome for the site and surrounding area.

Amended plans and Application Preamble

- 4 The applicant sought to substitute amended plans prepared by LRW Design Pty Ltd, all dated November 2022. The amended plans also included

¹ 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.

² See Order 1.



Landscape Plans, drawing numbers LA/02/KM151021 (two pages), prepared by Morris Outside Pty Ltd, dated 21 November 2022.

5 The amended proposal is described in the council's written submission and provided below:

- The existing single storey dwelling at the northern end of the Kumara Place frontage is to be demolished.
- A new two storey building is to be constructed at the northern end of the Kumara Place frontage. This building:
 - Is setback 11.7 metres from Kumara Place.
 - Contains an 18.8 metre length of wall that is setback 110mm from the northern boundary.
 - Contains an entry, reception area, and one child care room for 24 at ground level.
 - Contains a planning room, a store room and a bathroom at first floor level.
- The amended plans increased the setback of the building from Kumara Place, from approximately 4 to 11.7 metres and relocate the entry to the eastern end of the building (away from the street). This has resulted in various consequential changes including:
 - Provision of a new ground level outdoor play area in the 11.7 metre front setback area to Kumara Place.
 - Introduction of a new 2 metre vertical steel picket fence to the northern end of the Kumara Place frontage alongside the outdoor play area.
- The amended plans contain a larger car park than the plans that Council originally considered, as they introduce two (2) extra car spaces. The plans indicate that the enlarged car park will be setback 1.54 metres from the Kumara Place frontage and 930mm from the southern boundary.
- An elevated play deck is to be constructed partly above the car park. This deck is setback 4.1 and 4.5 metres from Kumara Place and the southern side boundary respectively. The northern part of the deck is covered with an angled canopy that has a maximum height of approximately 6.3 metres.
- A two (2) metre high feature decorative metal screen is provided to the Kumara Place frontage of the elevated play deck.
- Two (2) metre high acoustic screening is provided to the southern perimeter of the elevated play deck and part of the eastern side (southern end only).
- A new 2.4 x 1.5 metre non-illuminated business sign is to be constructed in proximity to the Kumara Place frontage.



- 6 The applicant is also seeking to amend the permit application details to address proposed access alterations to the Dandenong service road, being a Transport Road Zone, Category 2. The amended wording sought is:
- Buildings and works associated with an extension to the existing child care centre, reduction in the standard car parking requirements, display of business identification signage and alteration of access to a Road Zone.
- 7 Council and the respondent did not object to the amended plans or the proposed wording change to the permit application description.
- 8 I am satisfied the amended plans have been circulated in accordance with the Tribunal's Practice Note. I formally substituted the amended plans and amended the application details orally at the hearing. These are now confirmed by this Order.
- 9 The hearing proceeded on the amended plans and revised application description.

Council Submission

- 10 Council acknowledges the review site is within an area that anticipates significant growth, particularly in the form of higher density residential development. It supports an expansion and upgrade of the Child care centre '*in principle*'.
- 11 However, it says the amended design response for the proposal fails to achieve the following:
- Encourage site responsive design that fits its' particular context and contributes positively to the public realm.
 - Provide sufficient on-site car parking to meet the demand generated by the use.
 - Provide an attractive landscape outcome that integrates successfully with the valued garden city character of the municipality.
 - Minimise adverse amenity impacts on adjoining and nearby properties.

Respondent Submission

- 12 The respondent resides at Unit 5/35 Myriong Street. The property at 35 Myriong Street contains six single storey units and adjoins the southern boundary of the review site, where the respondent's dwelling is located mid-block.
- 13 The respondent is concerned with overlooking into this property from the proposed two storey extension and from the raised children's playground over the existing staff car park. He is also concerned the proposed expansion of the Child care centre will create additional parking demand in



surrounding streets and increase noise impacts through more children on the review site.

Applicant Submission

- 14 The applicant submits that Child care centres are an appropriate non-residential use in residential areas, provided a satisfactory design outcome can be achieved and amenity impacts appropriately addressed. It says the amended design has achieved this outcome. The applicant notes the review site is not affected by any overlay controls that would protect existing housing stock, neighbourhood character or significant vegetation.
- 15 The applicant says the expansion and internal refurbishment and increased children's spaces will meet an identified and growing need within the local community³. It submits the proposal achieves a high quality design outcome that will sit comfortably within the character of the surrounding area⁴.
- 16 The applicant also relies on expert evidence from:
 - Rebecca West (Town Planning)
 - Terry Hardingham (Traffic Engineering)
 - Nicholas Peters (Acoustics)

PLANNING POLICY FRAMEWORK AND PHYSICAL SETTING

Planning Policy Framework (PPF)

- 17 I have detailed key clauses from the PPF above and have considered these policies, as relevant, as part of my assessment of the proposal.
- 18 Clause 15 (Built Environment and Heritage) recognises the role of urban and building design in delivering liveable and sustainable cities and neighbourhoods. Relevant strategies at clause 15.01-1S, require *'development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate'*.
- 19 The design and location of publicly accessible private areas is also required, and is to be *'of a high standard, creates a safe environment for users and enables a safe environment for users and enables easy and efficient use'*. While a key building design objective at clause 15.01-2S also seeks:

To achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development.
- 20 Clause 19 (Infrastructure) includes the following strategies:

³ *Pict Technical Services Pty Ltd v Whitehorse City Council* [2005] VCAT 2355 and *Charbrow Pty Ltd v Maroondah City Council* [2016] VCAT 724 referred to.

⁴ Clauses 15 and 22 of the Scheme referred to.



- Planning for development of social and physical infrastructure should enable it to be provided in a way that is efficient, equitable, accessible and timely.
- Planning is to recognise social needs by providing land for a range of accessible community resources, such as education, cultural, health and community support (mental health, aged care, disability, youth and family services) facilities.

21 Clause 19.02-2S is particularly relevant to this proposal as it provides objectives and strategies specific to Child care centres. This includes:

Objective

To assist the integration of education and early childhood facilities with local and regional communities.

Strategies

Consider demographic trends, existing and future demand requirements and the integration of facilities into communities in planning for the location of education and early childhood facilities.

Locate childcare, kindergarten and primary school facilities to maximise access by public transport and safe walking and cycling routes.

Ensure childcare, kindergarten and primary school and secondary school facilities provide safe vehicular drop-off zones.

Ensure streets and accessways adjoining education and early childhood facilities are designed to encourage safe bicycle and pedestrian access.

Consider the existing and future transport network and transport connectivity.

22 At a local policy level, clause 21.01 contains the following strategic direction to reinforce the primacy of the MNEIC in the area:

To direct residential growth to neighbourhood and activity centres, the (MNEIC) (*Tribunal abbreviation*) and the boulevards (Springvale Road and Princes Highway).

23 I find it is significant the review site is prominently situated in the MNEIC, and located within the Housing Growth Areas of Category 3 where:

‘... new development should be carefully designed and sited to satisfy the intent of the preferred future character statements for each residential character type as identified. Garden city character within all residential areas should be maintained and enhanced’.

24 The MNEIC is a State recognised growth and development cluster that will continue to attract considerable economic investment into this area, while driving significant change to urban form, infrastructure and supporting



services. Clause 21.04 reinforces the review site is in Category 3 – Residential Land in the MNEIC ⁵.

- 25 The preferred future character statement expressed under clause 21.04 for the Category 3 – Residential Land Area states:

The scale of new residential development will generally comprise larger footprint apartment development of a high-quality design and finish. Some infill town house and unit development will also occur.

Where possible on larger sites, developments will be multi-level, and set in open gardens. Although setbacks from all boundaries will be less than is common in other parts of Monash, the developments will ensure the incorporation of well-maintained landscaping to address the garden city character, albeit in a more urban form.

- 26 At clause 21.05-3, the following design and amenity objective is sought within the Category 3 Area:

To encourage appropriate mixed use development while ensuring that the amenity of neighbourhoods is not adversely affected.

- 27 I take from this objective that mixed use development is encouraged in locations such as the review site, providing neighbourhood amenity is not adversely affected. In my view this emphasises the need to achieve a high quality design outcome for new development.

- 28 Clause 22.01 specifically applies to all residential land and nominates a range of residential character types, design and landscape objectives, open space and parking outcomes that are to be considered for new development in residential settings. The clause reinforces the review site is in the Housing Growth Area - Clayton Activity Centre and Monash National Employment Cluster.

- 29 As with clause 19.02-2S, clause 22.09 addresses built form objectives for Non-Residential Uses and Development in Residential Areas. The following objectives are particularly relevant to the proposal:

- New development be carefully designed and sited to complement the current character and satisfy the desired future character of residential areas.
- Car parking satisfies the needs of users without detriment to the local amenity.
- Traffic generated by a non-residential use is appropriate to the street and locality and not adversely affect the existing traffic pattern.

Zoning

- 30 The review site is located within the Residential Growth Zone – Schedule 3 (RGZ3) of the Scheme. A key purpose of the RGZ3 is:

⁵ I refer here to clause 21.04, Map 3 – Residential Development Framework Map.



To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

31 Design Objectives at Schedule 3 of the RGZ include:

- To ensure developments are constructed within an open garden setting through the retention and planting of vegetation, including canopy trees.
- To ensure that the height, scale and form of development respects any sensitive residential interfaces and minimises the appearance of visual bulk.

32 A maximum building height of 13.5m applies in the RGZ. The proposal does not exceed this maximum height.

33 A zoning map is provided below:



Figure 1: Zoning Map – Source: Vic Plan

34 In addition to the Decision Guidelines in clause 65.01, specific decision guidelines for Non-residential use and development are also set out in section 5.0 of Schedule 3 of the RGZ and include:

- Whether the use or development is compatible with residential use.
- Whether the use generally serves local community needs.
- The scale and intensity of the use and development.
- The design, height, setback and appearance of the proposed buildings and works.
- The proposed landscaping.
- The provision of car and bicycle parking and associated accessways.
- Any proposed loading and refuse collection facilities.
- The safety, efficiency and amenity effects of traffic to be generated by the proposal.

- 35 I find the proposed expansion of the child care centre on the review site is generally consistent with the growth zone purposes and strategic intent of the zone. I have given this considerable weight in my assessment, noting the RGZ3 acknowledges the important role and function of the MNEIC within which the review site is located. The proposal also seeks to build upon its location advantages within the MNEIC and upgrade its presence and facilities it currently offers to the community. These are important outcomes sought under clause 19.02-2S.

Business Signage

- 36 The proposed display of business signage on the review site falls within Category 3 – High Amenity Areas expressed under clause 52.05-13.
- 37 A new business identification sign is proposed for the development facing Kumara Place. The sign is 2.4m x 1.5m and will be non-illuminated.
- 38 Clause 52.05 addresses the following purposes for the display of signs and associated structures that are relevant:
- To ensure signs are compatible with the amenity and visual appearance of an area, including the existing or desired future character.
 - To ensure signs do not contribute to excessive visual clutter or visual disorder.
 - To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.
- 39 Clause 22.08 (Outdoor Advertising Policy) is therefore a relevant consideration. Objectives of this policy includes the following General Objectives:
- To facilitate advertising signs that provide appropriate and effective identification of businesses and other land uses.
 - To identify signage types appropriate to different land use and development circumstances.

I address these policy settings in relation to the proposed sign on the review site under Key Issues.

Car Parking and Road Access

- 40 Clause 52.06-3 addresses parking requirements for new development that includes reducing (including to zero) the number of car parking spaces required under clause 52.06-5. The proposal is seeking to address the additional five, on-site car spaces generated for the proposal under the Scheme.
- 41 The traffic evidence statement and demand assessment provided by Mr Hardingham indicates the proposal is seeking a reduction in three car spaces under this clause. The variation quantum is not contested by council.



However, it is concerned the shortfall cannot be appropriately addressed through on-street parking in the area. This view is also supported by the respondent.

- 42 Clause 52.29-2 also addresses new development proposals that seek to alter access to a road in a Transport Zone 2. By advice dated 23 December 2021, The Head, Transport for Victoria (HTfV) advised council it did not object to the proposal, or require any conditions, should a permit issue for the proposal. The authority further advised it did not intend to participate in the hearing. I am satisfied this matter has been appropriately considered and addressed and make no further finding on this matter.

Physical Setting

- 43 The surrounding area of the review site generally comprises a residential character (albeit interspersed with some mixed use) located in the Residential Growth Zone that adjoins the MNEIC. The site is also impacted by the significant physical presence of the Dandenong, North and Wellington Roads intersection. This provides a heavily urbanised context to the review site, including a constant background traffic noise that is evident when moving around the area.
- 44 Within this heavily urbanised setting, other notable mixed uses, including large scale medical services and education facilities have established. To the north east, diagonally opposite to the road intersection, is Monash University. The Monash Medical Centre (MAC) is located approximately 750m to the south west. Clayton Major Activity Centre (CMAC) is located approximately 1km to the south west. Mannix College is approximately 400m to the south east, while Clayton North Primary School is located 500m to the north west. Further north west along North Road are prominent take away convenience premises including McDonalds.
- 45 The review site itself has an L shaped configuration and contains an existing single storey Child care centre that primarily occupies the Dandenong Road portion of the site. This use has operated on the site since the 1990's. The facility currently accommodates 97 children in a series of approved buildings⁶. Existing outdoor play areas on the site are located to the west and south of the existing Child care building. An existing brick dwelling and garage is located to the rear at 4 Kumara Place (caretaker's dwelling). An existing staff parking area with eight car spaces is in the south west corner of the site, accessed directly from Kumara Place. Immediately north of the staff car park access, a second crossover provides access to the existing caretaker's dwelling.
- 46 It is generally accepted by the parties the review site has sensitive interfaces to the north west, east, and south. To the west on the opposite side of Kumara Place are further single dwellings, with the dwellings at 3 and 5

⁶ By way of various permits issued by the responsible authority over a period 1993 to current.



Kumara Place having a narrower street frontage, reflecting the side setback of the dwelling at 31 Myriong Street.

- 47 Being in the MNEIC, it is not surprising the area is well served by public transport, including bus services that operate along North Road and Dandenong Road and nearby train stations to the west.
- 48 Having considered the policy and physical setting of the review site, I am satisfied the expansion of the existing Child care centre is an appropriate development in this urbanised and mixed use/service/education facilities environment. I consider the expansion and upgrade is consistent with the RGZ purpose that encourages a *'scale of development that provides a transition between areas of more intensive use and development and other residential areas'*.
- 49 I note these matters were not contested between the parties, with the respondent also noting the existing use on the review site has been generally well managed by the current operators.

WHAT ARE THE KEY ISSUES?

- 50 Having considered the submissions and evidence before me, the following key questions are relevant:
- Will the proposal achieve an acceptable built form and landscape response?
 - Are there any unacceptable off-site amenity impacts?
 - Are there any unacceptable traffic or car parking impacts?
- 51 On balance, I find the proposed development on the review site will result in an acceptable planning outcome sought under the relevant zone and generally supports relevant Scheme provisions in the PPF and local policy that applies.
- 52 Subject to the permit conditions I have included in Appendix A, I will set aside the decision of the responsible authority and direct a permit issue. My reason for this finding follows.

KEY ISSUES

Will the proposal achieve an acceptable built form and landscape response?

- 53 Council considers the proposed design response does not respond appropriately to its residential context and the valued garden city character that is sought under local policy. It submits:
- The car parking area and elevated outdoor deck above will present poorly to Kumara Place.
 - Insufficient on-site car parking is provided to satisfy the demand generated by the expanded use.



- It will detrimentally affect the amenity of the surrounding area, particularly Kumara Place.
 - Insufficient space is provided for landscaping, including canopy vegetation, along the Kumara Place frontage and alongside neighbouring properties.
- 54 More particularly, council says the proposed expansion will result in a non-residential use further intruding into Kumara Place, which is a low order street and not a preferable location for increased non-residential activity. It says the proposed roof top parking play area will be visually prominent due to its height and scale, including the pedestrian ramp along the north side, a canopy over the northern end and a 2.0m high acoustic and screening treatment to the west and south perimeter.
- 55 Council also notes the existing residential interfaces along the street have low key fencing and well landscaped front setbacks that reinforce the lower scale and residential nature and character of the street. It says the proposed landscaping alongside and opposite these residential interfaces is minimal and will not maintain the existing landscape setting and residential character of the area. It is not reflective of the garden city setting sought under local policy.
- 56 It relies on the decision guidelines at clause 32.07-13 of the zone and clause 65.01 that include various references to landscaping, scale of use, parking and loading and unloading. Council is also concerned with the location of a proposed bin enclosure area to the front of the site, that it says will detract visually from the street.
- 57 The applicant submits the existing zoning and policy regime supports the expansion of a non-residential use on the review site, with a design response that was ‘*fit for purpose*’ (i.e., Child care centre). It relies on various Tribunal decisions⁷ that it says support this position, including State and local policy at clauses 19.02-2S, 21.01-1, 21.01-3 and 22.09. It also submits there is a demonstrated need for the expansion of the Child care centre.⁸ Reference was also made to the Monash Vale Early Learning Centre Waiting List that was submitted with the planning application that shows the location and number of parents seeking places at the centre. It also notes the Scheme reinforces the need to accommodate a growing and emerging family character within its residential areas.
- 58 The applicant also relies upon the planning evidence and assessment of Rebecca West.

⁷ See *Pict Technical Services Pty Ltd v Whitehorse City Council* [2005] VCAT 2355; *Charbrow Pty Ltd v Maroondah City Council* [2016] VCAT 724; *Doranit Pty Ltd v Glen Eira CC* [2015] VCAT 201; *Intabuild Pty Ltd v Whitehorse CC* [2017] and *Mangiavillano v Monash CC* (Corrected) [2021] VCAT 1320.

⁸ See *Gerard Holwell Pty Ltd v Greater Geelong CC* [2018] VCAT 486 and *Delios v Banyule CC* [2022] VCAT 768.



59 It is Ms West's evidence (in summary) that there is strong policy support for the proposed expansion of the Child care centre on the review site. It is her opinion that:

- The review site is zoned [RGZ3] which supports non-residential uses which cater to the needs of the surrounding community.
- The proposal is consistent with the objectives and policies of Clause 22.09.
- The proposal has successfully balanced its design response to surrounding character whilst also being fit-for-purpose in terms of accommodating the childcare centre use.
- The design of the proposal has successfully responded to external amenity considerations.

60 Regarding built form and landscape response, Ms West also provided a detailed assessment of the design against the decision guidelines at clause 22.09. It is her view the proposal demonstrates an acceptable built form and character response when evaluated against these decision guidelines.

My Findings

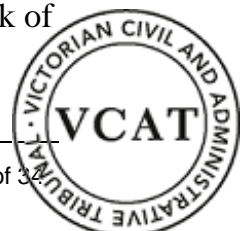
61 It is significant that the review site has been operating as a Child care centre since 1993. I note the council has not undertaken any compliance action on the operations of the centre and the respondent commented the existing management of the centre is responsive to community input. I consider this demonstrates the existing use can operate effectively in the urbanised physical setting within which the use is located.

62 Regarding the built form response and character setting, I find the design response achieves an acceptable degree of consistency with the existing and emerging built form scale of the area.

63 The design also seeks to introduce other innovative built form elements such as the roof deck parking and play area, which uses the space on the site within a zone that will ultimately result in significant urban design changes, including more building height and scale over time. I also note this includes a preferred building height of four storeys within the RGZ.

64 Council was concerned that an upper level play area deck was not a common feature in this residential setting. However, Ms West considers the deck is appropriately designed to present an attractive frontage to the street by incorporating curved and decorative screening features to the west and south. Ms West also opines this design feature makes efficient use of the site being constructed over the existing staff car parking area. I accept and agree with Ms West's assessment of this built form feature in this existing urbanised setting. Particularly noting that land is a premium commodity in the MNEIC.

65 Council was also concerned with the proposed minimum 110mm setback of the new built form to 2 Kumara Place. I am satisfied with this design



response, noting the new double storey building is in a similar location to the existing garage and carport of the caretaker dwelling that will be demolished. In this physical context, the extent of the new building wall (at 18.87m) is acceptable given the dwelling at Kumara Place is at angle to the common boundary, with the review site and the location of the garage of the adjacent property to the north and interfaces with the eastern portion of the new building.

- 66 I agree with council's submission, the front setback of the decked area to Kumara Place is narrow (1.54m) and reduces opportunity to place some meaningful landscaping to the street in front of the car park. I will require the setback to be increased to 3.0m to enable some additional landscape treatment and growing space in these garden beds. I note and accept the raised deck is located approximately 4.1m from the Kumara Street frontage that will enable the proposed landscaping treatment to reach its mature height and canopy spread.
- 67 I accept the increased front setback to Kumara Place will result in the sunshades over the existing *at grade* play areas to be set back from their current location. However, I do not consider this will be fatal to the overall design layout. I also note the upper level deck will include some decorative screening treatment with curved feature along the street that will add some visual interest to the streetscape.
- 68 Council was also concerned the pedestrian ramp providing access to the deck play area will appear excessive and create unnecessary visual bulk along the streetscape. I do not agree with this assessment, noting the pedestrian ramp will sit slightly forward of the alignment of the angled dwelling at 2 Kumara Place and 4.4m behind the side building setback of the dwelling at 33 Myriong Street. It is also significant the deck area itself will have an open construction and not be enclosed by built form around its sides. It is also of a height that will not dominate the existing streetscape built form in Kumara Place.
- 69 I also note the following built form responses are consistent with the longer term built form expectations brought about by the RGZ3 purposes and location within the MNEIC including:
- Using a double storey scale for the new building with generous setbacks that can accommodate some additional landscaping treatment on the review site with a set back from Kumara Place of 11.7m. The two storey height is also well within the allowable four storey height in the RGZ. I note the proposed setback is more than that required by the varied ResCode requirements for new residential development under the RGZ.
 - Using a play area deck over the existing staff car park area that will be set back 4.5m from the dwelling to the south. The double storey wall on the adjoining dwelling does not contain any habitable room windows at upper level that would be impacted by the upper level play



area deck. I consider this provides an appropriate separation distance to the dwellings to the more sensitive residential interfaces to the south.

- 70 I also agree with the applicant that the design of Child care centres will differ somewhat from more traditional residential built form. Largely due to the function of the Child care centre and its corresponding needs to operate efficiently. The location and use of the upper level play area over the car park area is a good example of this. This approach is also consistent with various findings of other Tribunals on this matter⁹.
- 71 The respondent was particularly concerned the upper level play deck area will result in adverse overlooking into 35 Myriong Street. Having inspected the area, observed the setting of the respondent's dwelling on this property and considered the design response for the upper level play deck area, I am satisfied that with the screening treatment proposed along the southern side of the deck area, overlooking concerns from the deck into this property have been appropriately addressed.
- 72 New landscaping is also proposed along the Kumara Place car park frontage, along the southern boundary of the car park area, with supplementary planting to the existing Dandenong Road frontage. Shade trees will also be provided within the outdoor play areas. I am satisfied this landscape response will provide an appropriate landscape setting for the development.
- 73 I am mindful of the submissions by the applicant that setting the front fencing treatment along Kumara Place, behind any landscape setback, will impact directly on the potential number of children spaces achieved under the development proposal. I therefore accept the location of fencing on the Kumara Place street boundary is therefore a necessary and satisfactory design outcome along this section of Kumara Place.
- 74 I find the proposed landscape outcome across the site is responsive to the surrounding garden city landscape character and to outcomes sought at Clause 22.01. It is also responsive to the wider demand for Child care centre spaces encouraged under the relevant objectives of clause 19.02-2S.
- 75 By requiring the additional 1.5m front landscape setback width in front of the car park area along Kumara Place (to a minimum width of 3.0m), I am satisfied the proposed development will achieve an acceptable built form and landscape response sought under the RGZ and responds appropriately to its existing and future physical setting.

Are there any unacceptable off-site amenity impacts?

- 76 Council is concerned the proposal will result in unacceptable amenity impacts to the surrounding residential properties. More particularly, it submits the raised deck play area and new play area at ground level

⁹ See Footnote 7.



proposed along Kumara Place, will increase the potential for noise to the detriment of existing residences. The respondent supports the council in these concerns.

- 77 The applicant does not agree. Regarding off-site amenity noise impacts, the applicant relies on the planning evidence of Ms West and the acoustic evidence of Mr Peters.
- 78 Regarding the siting and scale of the new building form and play areas, it is Ms West's opinion that:
- The new building and deck will not cause any unreasonable overlooking opportunities noting:
 - There are no first-floor windows of the new building which face the residential property to the north.
 - The southern side of the deck will have 2m high solid metal screening, obscuring views to the residential properties to the south.
 - The shadow diagrams show there will be no additional shadows cast on adjoining properties between 9am and 3pm on the equinox.
 - The built form outcome will not cause unreasonable visual bulk impact to the neighbouring property to the north for the following reasons:
 - The new building will be located in a similar location and setback from the northern boundary as the existing garage and car port which will be demolished.
 - The building [is] generally positioned adjacent to the garage on the adjacent site, rather the main house.
 - The adjacent dwelling is angled away from the site.
 - The first-floor element has significantly smaller floorplate and is setback 1.8m from the common boundary, compliant with the ResCode Standard B17 side setback profile.
 - Whilst not an applicable test, the extent of the boundary construction is only marginally in excess (approximately 3m) of ResCode Standard A11 walls on boundaries.
 - The deck is setback 4.5m from the southern boundary, providing appropriate separation distance to the dwelling to the south and also noting there are no first-floor windows of 33 Myrniong Street facing the [Subject Land].
- 79 Regarding noise impacts, I am satisfied Mr Peters has undertaken a detailed acoustic assessment of existing and future noise levels that arise from the amended proposal. His assessment forms part of his evidence statement.
- 80 In summary, Mr Peters opines that existing and predicted noise levels from the proposed use and new buildings is less than existing traffic noise emanating north of the review site. It is his opinion the inclusion of the



deck play area over the car park area will not result in a significant change in noise levels on or off the existing site. He considers the expanded Child care centre can operate without any unreasonable impact on residential acoustic amenity within the area.

- 81 Nevertheless, Mr Peters supports the additional acoustic treatment proposed by the applicant to the deck area screening along the southern and western boundaries, as part of a responsible acoustic management approach to the site.

My Findings

- 82 I accept the evidence of Ms West regarding the appropriate siting and scale of the new double storey building and raised play deck area.
- 83 I have already commented on the double storey wall setting of the dwelling to the south (33 Myriong Street). This dwelling wall does not contain any habitable room windows at upper level that could result in potential for adverse overlooking from the double storey building and upper level play deck area.
- 84 Importantly, the upper level play deck area will include a 2.0m high solid metal screening to this southern boundary and will be set back approximately 4.5m from the dwelling at 33 Myriong Street and over 7.0m (measured diagonally) from the dwellings at 35 Myriong Street.
- 85 Ms West opines this will effectively obscure views to the residential properties to the south. I accept and agree with her evidence on this matter.
- 86 I am also satisfied the distance between the proposed double storey building, interspersed with shade screens, outbuilding and landscape treatment, will effectively limit and ensure there will be no adverse overlooking from this new building to the south.
- 87 I have also made some findings regarding the interface treatment to the north. It is significant in my view that the existing double storey dwelling at 2 Kumara Place is angled away from the common boundary with the review site. The second level of the new building will also have a significantly smaller building envelope than at ground level and proposes a 1.8m setback from that common boundary. These factors persuade me that the proposed wall length and location of the new double storey building to the north is an acceptable planning outcome in the RGZ3.
- 88 I accept the acoustic evidence of Mr Peters and find he has undertaken a detailed assessment in reaching his conclusions regarding existing and potential noise impacts associated with the proposal. This includes:
- Reviewed architectural plans prepared by LRW Design Pty Ltd, dated November 2022.
 - Undertaken noise monitoring of 2022 noise conditions.



- Set out applicable noise limits and criteria for operation of the childcare centre, including childcare outdoor play criteria per AAAC Guidelines; EPA Pub. 1826 Noise Protocol for mechanical services noise; and sleep disturbance criteria for car park operation before 7am.
- Analysed measured noise levels from the existing childcare centre and found existing noise levels to conform with nominated criteria.
- Modelled and assessed noise impacts with the proposed childcare centre scheme as set out in the architectural plans dated November 2022.
- Predicted conformance from the proposed childcare centre scheme with nominated noise criteria by a significant margin.

89 I note Mr Peters' evidence is also supported by an earlier acoustic report prepared by Efficient Energy Choices submitted with the planning application. The Energy Choices report also confirmed the proposal would be able to conform with the relevant acoustic criteria that is applied to these types of non-residential uses.

90 During my inspection of the area, I noted constant traffic noise arising from vehicles using and travelling along roads associated with the busy intersection of Dandenong, North and Wellington Roads. I accept this is the background traffic noise levels monitored and recorded in Mr Peters' acoustic assessment. I also noted this noise level fell slightly when moving into Kumara Place and Myriong Street. Nevertheless, the background traffic noise level was still perceptible and in my view constant at that time of day (approximately 2.15pm). I have no contrary evidence that would indicate this background noise level dissipates over time.

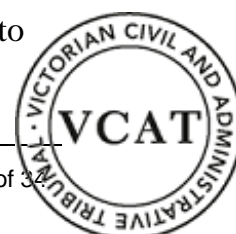
91 In the absence of any contrary acoustic evidence, I am persuaded by Mr Peters' assessment and conclusions. I find no reason to dispute these acoustic assessments regarding this proposal. In any event, the applicant has accepted further acoustic treatment by way of a 2.0m high screening to the deck play area on the south and east side of the deck, to assist in limiting noise transfer from the deck to neighbouring residential properties. I agree this is good management practice.

92 I also note that noise levels in the play deck area will be managed by limiting the number of children in the play area to no more than 20 children at any time. Council's draft conditions include this provision. I support this condition.

93 I am satisfied that the proposed design response will ensure that noise impacts and amenity concerns are effectively managed on and off the site.

Are there any unacceptable traffic or car parking impacts?

94 Council and the respondent have concerns with the proposal in relation to traffic and car parking matters.



- 95 Under clause 52.06 of the Scheme, the proposal generates a statutory car parking requirement of 13 car spaces. The proposal proposes parking provision of 10 on-site car spaces and requires a waiver for three car parking spaces.
- 96 The applicant relies on the expert traffic and parking evidence of Mr Hardingham.
- 97 It is Mr Hardingham's evidence that the parking shortfall can be absorbed by the availability of unrestricted on-street spaces he has identified through parking demand analysis that forms part of this evidence statement. He is also satisfied the nature of the use that sees a designated drop off and pick up by parents during specified peak periods. This activity is limited to the front of the site in Dandenong Road.
- 98 Both council and the respondent were concerned the demand analysis undertaken by Mr Hardingham did not account for demand of on street parking from university students. They noted the analysis was undertaken during the university holiday period.
- 99 In response to questions on this matter, Mr Hardingham maintained his opinion that the amount and location of unrestricted on street parking in the area would be sufficient to address the shortfall of three car spaces arising from the proposal. He based this opinion on his parking demand analysis, including earlier assessments he had undertaken for the proposal, as well as noting not all staff parking spaces were fully utilised at periods of the day.

My Findings

- 100 I accept the proposal requires a waiver of three on-site parking spaces under relevant provisions of clause 52.06 of the Scheme. I am satisfied the proposed car parking layout meets the relevant layout and access requirements sought under clause 52.06.
- 101 The Scheme also provides for a waiver of parking requirements under clause 52.06-3; the *bona fides* to be established through a parking demand analysis. Mr Hardingham's demand analysis and parking kerbside inventory established there were a total of 66 on street spaces within 100-150 metres of the review site. This included 13 unrestricted spaces that Mr Hardingham observed were not fully utilised at the time of his analysis. I accept this analysis.
- 102 During my inspection of the review site and surrounding streets, I was able to confirm both restricted and unrestricted street spaces identified in the evidence of Mr Hardingham. I also accept his view that the review site is well serviced by public transport options that provides further travel options for staff associated with the child care centre.
- 103 I also accept the existing vehicle crossover to the caretaker's dwelling in Kumara Place will be reinstated, providing an additional on street parking space in this location.



- 104 Though I agree an analysis of parking demand of unrestricted on street parking spaces in the area around the review site from university students would have been useful, in the absence of any contrary parking evidence, I accept Mr Hardingham's parking assessment. I find the waiver of three spaces sought for the proposal is a modest reduction that can be accommodated within the existing street parking that has been identified by Mr Hardingham. I am also satisfied that other options for staff travelling to the Child care centre are available in the form of public transport options.
- 105 Having considered the evidence provided on this matter, I am satisfied the proposed waiver/reduction in three car spaces for the proposal as submitted is appropriate. I note that council's draft conditions sought to restrict the parking of child care centre staff in on street parking. I would not support this restriction given the evidence of Mr Hardingham and my findings above.

ARE THERE ANY OTHER ISSUES?

- 106 Ms West considered the impacts arising from the proposed business identification signage proposed to Kumara Place. Ms West opines the proposed sign is modest in size (2.4m x 1.5m) and non-illuminated.
- 107 I agree and accept Ms West's assessment and evidence that the proposed sign is appropriately sized and located on the review site.
- 108 Council also raised concerns with the proposed location of the bin enclosure at the front of the site to Dandenong Road, submitting this was inappropriate and should be located internally in the site to avoid appearance of visual clutter.
- 109 Having viewed the current bin enclosure area and the alternative location proposed by council into the site, I find the current location proposed in the front of the site to Dandenong Road is to be preferred from an efficiency perspective. Mr Hardingham supports the current location of the bin enclosure from a traffic movement perspective. I accept this may result in some visual impact to the street but agree with submissions from the applicant that this impact can be satisfactorily addressed through further screen planting. I have added this requirement into the permit condition (at 8(a)).

WHAT CONDITIONS ARE APPROPRIATE?

- 110 Draft conditions prepared and circulated by council were discussed with the parties at the conclusion of the hearing.
- 111 In deciding the conditions to be included on the permit, I have had regard to the draft set of conditions finalised by council and the marked up conditions provided to the Tribunal by the applicant and the additional comments from the respondent. The conditions in Appendix A reflect the further written submissions of the respondent and evidence of the parties, in addition to matters which arise from my reasons detailed above.



CONCLUSION

112 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions as set out in Appendix A to this decision.

Peter Gaschk
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/52843
LAND	1758 Dandenong Road & 4 Kumara Place CLAYTON VIC 3168

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Use of the land for a Child care centre and construct buildings and works associated with an extension to the existing child care centre in the Residential Growth Zone Schedule 3.
- Reduction in standard car parking requirements on the land under Clause 52.06-3.
- Display of business identification signage on the land under Clause 52.05-13.
- Alteration of access to a road in the Transport Road Zone Category 2.

CONDITIONS

Amended Plans Required

- 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 amended plans served prior to the VCAT hearing, prepared by LRW Design and labelled TP01b, TP02b, TP03b, TP04c, TP05b, TP06b, TP07b and TP08b, all dated Nov 2022, but modified to show:
 - (a) The two car spaces in front of the building clearly labelled as drop off parking (Plan Drawing TP04c)
 - (b) Corner splays or areas at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage, to provide a clear view of pedestrians on the footpath of the frontage road (this requirement is applicable to the Dandenong Road service road only, as sufficient splays are already provided to the Kumara Place accessway). The area clear of visual obstructions may include an adjacent entry or exit lane where more than one lane is provided, or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.



- (c) The black vertical steel picket fence provided to the outdoor play area fronting Kumara Place:
 - i Reduced in height to the minimum height required for child safety and compliance purposes.
- (d) An increase in the front setback of the staff car park that faces Kumara Place to a minimum of three (3) metres, whilst maintaining the provision of ten (10) on-site car spaces. Any consequential changes required to the shade sails at the rear of the car park must not reduce their associated setback from the southern side boundary.
- (e) Relocate the business identification signage in Kumara Place to a location in front of the staff car park and include a notation on it or the car park surface area to read: “staff parking only”.
- (f) Details regarding the exact style/design of the decorative mesh metal screen (which must have a height of 2 metres) provided to the Kumara Place frontage of the raised play deck area, which must be generally similar to that shown on TPO6b. The same decorative mesh screen must also be provided to:
 - i A north (internal) elevation of the raised play deck area showing the decorative mesh metal screen.
- (g) Notations stating that:
 - i The 2 metre high acoustic metal clad screen provided to the entire southern perimeter of the raised play deck area must have a minimum mass of at least $8kg/m^2$.
 - ii The 2 metre high acoustic glazed screen provided to part of the eastern perimeter of the raised play deck area (southern end of eastern perimeter only, as shown in the Acoustic Evidence statement prepared by Nicholas Peters of Renzo Tonin & Associates dated 4 January 2023) must have a minimum mass of at least $8kg/m^2$.
 - iii All acoustic screens must have no holes or gaps and be designed to ensure that there is no likelihood of them occurring through natural causes or deformations.
- (h) Corrections to the elevations and the external materials, colours, finishes schedules to accurately reflect the acoustic screening treatment and decorative metal mesh screening treatment provided to raised deck/play deck (e.g., “E” notation in external colours schedule erroneously refers to timber deck screen, finishes schedule needs to clearly identify both metal acoustic screening treatment and decorative metal mesh screen).
- (i) A Landscape Plan in accordance with Condition 8 of this permit.



- (j) An updated Acoustic Report (as required) in accordance with Condition 10 and any modifications required to the plans.
- (k) An updated Arborist Report in accordance with Condition 13 and any modifications required to the plans.
- (l) The TPZ and SRZ of the two street trees as set out in the Arborist Report.
- (m) A Waste Management Plan in accordance with Condition 14 of the Permit.

All to the satisfaction of the responsible authority.

No Alteration or Changes

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

Hours of operation

- 3 The use allowed under this permit may operate only during the following hours, except with the prior written consent of the responsible authority:
 - (a) Monday to Friday (except Public Holidays) - 6:30am to 6:30pm.

Number of children

- 4 A maximum of 121 children are permitted on the site at any one time.
- 5 The raised deck/play area must be occupied by a maximum of 20 children at any one time and must only be used between the hours of 9:00am and 5:00pm, Monday to Friday.

Access

- 6 Children's drop off and pick up must only be from the Child Care Centre entry at 1758 Dandenong Road as noted on plan TP04c.

Staff parking

- 7 Staff parking must only be within the car park area accessed from Kumara Place and not within the drop-off/pick up area at 1758 Dandenong Road.

Landscape Plan

- 8 Concurrent with the endorsement of plans requested pursuant to Condition 1 of this permit, 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 plans prepared by Morris Outside and marked "plan LA/02/km151021, last dated 21.11.22 comprising two sheets, and show:
 - (a) Screen planting around the bin enclosure;



- (b) The location of any external lighting;
- (c) Internal fencing, landscaping and planting within all children play areas; and
- (d) Provision of canopy tree planting throughout the site including:
 - i Landscape treatment to the Dandenong Road front setback area including the provision of new screen planting to the area occupied by the bin storage area.
 - ii The replacement of the two trees removed from the front of the Kumara Place car parking area with two (2) native species, to be planted in a similar location, which will reach a mature height of at least 12 metres.
 - iii Evergreen hedge type screen canopy planting along the southern boundary of the Kumara Place car park that will reach a mature height of at least 5 metres.
 - iv The landscaping plan must result in a strong landscape presentation to the street and incorporate shrubs.

All to the satisfaction of the responsible authority.

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

Landscaping prior to occupation and maintenance

- 9 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 be maintained, to the satisfaction of the responsible authority.

Acoustic Report

- 10 Concurrent with the endorsement of any plans requested pursuant to Condition 1 of this permit, an updated acoustic report must be submitted to and approved by the responsible authority. When approved the acoustic report will be endorsed and will then form part of the permit. The updated acoustic report must be generally based on the provisions, recommendations and requirements of the Statement of Evidence prepared by Nicholas Peters of Renzo Tonin & Associates, dated 4 January 2023, but updated to:

- (a) Clearly identify which sections (if any) boundary paling fencing with neighbouring properties need to be replaced with acoustic fencing to mitigate impacts from the raised deck/play area (noting that the evidence statement states that some existing fencing has gaps that need to be addressed). The exact location/extent of fencing required to be replaced with acoustic fencing must be shown and specifications provided in relation to the fence design, height and materials.



- (b) Review noise impacts associated with the ground level play space proposed within the Kumara Place front setback area on nearby residential properties.
 - (c) Provide recommendations/requirements (if needed) in relation to any changes required to mitigate the noise impacts referred to in condition b) above (e.g., installation of acoustic fencing, any particular operational requirements such as restrictions on the use of the play space to particular times of the day). If the recommendations include installation of acoustic fencing within the Kumara Place front setback, this fencing must be setback behind the vertical metal fence, screened by landscaping and constructed of high quality acoustic materials that minimise streetscape impacts (e.g., such as glass).
- 11 Once approved the acoustic report must be implemented and complied with, to the satisfaction of the responsible authority.
- 12 Prior to commencement of the approved use, inspection of the constructed acoustic treatment/s shall be carried out by a suitably qualified acoustic consultant to the satisfaction of the responsible authority to confirm works are in accordance with the recommendations of the Acoustic Report pursuant to Condition 10 of this Permit.

Arborist report

- 13 Concurrent with the endorsement of any plans requested pursuant to Condition 1 of this permit, an updated Arborist Report must be submitted to and approved by the responsible authority. This report must detail the potential impacts of the development, including demolition works and the construction of new fencing proposed on the subject land. When approved, the Arborist Report will form part of this permit and any recommended works must be done in accordance with the endorsed arborist report to the satisfaction of the responsible authority.

Waste Management Plan

- 14 Concurrent with the endorsement of plans, an updated Waste Management Plan must be submitted to and approved by the responsible authority. When approved, the plan will be endorsed and will then form part of the Permit. The Waste Management Plan must be in accordance with Council's relevant requirements (City of Monash MUD and Commercial Developments WMP Guide for Applicants).
- 15 Once approved the Waste Management Plan must be implemented and complied with, to the satisfaction of the responsible authority.

Drainage

- 16 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.



- 17 The private on-site drainage system must prevent stormwater discharge from the driveway over the footpath and into the road reserve.
- 18 All stormwater collected on the site is to be detained on site to the pre-development 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.
- 19 The nominated point of stormwater connection for the site is to the south-east corner of the property where the entire additional development's stormwater must be collected and free drained via a pipe to the existing internal drainage system. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

Road Infrastructure and Car Parking

- 20 The existing redundant crossing in Kumara Place is to be removed and replaced with kerb and channel to Council standards.
- 21 Any works within the road reserve must ensure the footpath and nature strip are to be reinstated to Council standards.

Tree Protection

- 22 Prior to the commencement of works on the land including any building or fence demolition/removal and crossover removal, four sided tree protection panels are to be installed within 3 metres of the base of the northern Agonis Street tree in Kumara Place at the front of the site.
- 23 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the construction period of the development hereby permitted without the prior written consent of the responsible authority.
- 24 In removing the crossover, concrete must be removed while avoiding excavating deeper than 100mm below the concrete. Only the immediate debris is to be removed and the area is to be levelled appropriately to apply suitable topsoil for reinstatement.

Boundary Fencing

- 25 Prior to the occupancy of the development, any proposed boundary fencing must be constructed in accordance with the endorsed plans and in a good condition, to the satisfaction of the responsible authority.

Plant / Equipment or features on roof

- 26 No equipment, services, architectural features, or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans, shall be permitted above the roof level of the building unless otherwise agreed to in writing by the responsible authority.



Loudspeakers

- 27 No external sound amplification equipment or loudspeakers are to be used for the purpose of announcements, broadcasts, playing of music or similar purposes, to the satisfaction of the responsible authority.

Vehicle Crossovers

- 28 The existing redundant crossing is to be removed and replaced with kerb and channel. The footpath and naturestrip are to be reinstated to the satisfaction of Council. Any sections of the existing concrete naturestrip are to be reinstated to grass to the satisfaction of the responsible authority.

Car Parking and Driveways to be constructed

- 29 Before the use starts and / or prior to occupancy of the development, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
- (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather sealcoat;
 - (d) drained, maintained and not used for any other purpose; and
 - (e) line-marked to indicate each car space and all access lanes,
- All to the satisfaction of the responsible authority.

Use of car parking spaces and driveways

- 30 Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the responsible authority.
- 31 Parking areas and access lanes must be kept available at all times to the satisfaction of the responsible authority.

External lighting

- 32 All proposed external lighting must be designed, baffled and located so as to prevent light from the site causing any unreasonable impacts on the locality, to the satisfaction of the responsible authority.

Urban Design

- 33 The walls on the boundary of adjoining properties shall be cleaned, finished and reinstated in a reasonable manner, to the satisfaction of the responsible authority.



Completion of Buildings and Works

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

Signage

- 35 The location, layout, dimensions, structures and features of the approved sign shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.
- 36 The sign must be constructed and maintained to the satisfaction of the responsible authority.

Permit Expiry

- 37 This Permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
- (a) The development has not started before two (2) years from the date of issue.
 - (b) The development is not completed before four (4) years from the date of issue.
- 38 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:
- (a) Within six (6) months afterwards if the development has not commenced; or
 - (b) Within twelve (12) months afterwards if the development has not been completed.

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

