

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P550/2023
PERMIT APPLICATION NO.TPA/54032

CATCHWORDS

| | |
|--------------------------------|--|
| APPLICANT | 41 Myrtle Street Pty Ltd |
| RESPONSIBLE AUTHORITY | Monash City Council |
| REFERRAL AUTHORITIES | Head, Transport for Victoria at Department of Transport and Planning Melbourne Water Suburban Rail Loop Authority |
| SUBJECT LAND | 41 Myrtle Street GLEN WAVERLEY VIC 3150 |
| HEARING TYPE | Hearing |
| DATES OF HEARING | 26 and 27 October 2023, 4 and 15 March 2024 |
| DATES OF INTERIM ORDERS | 27 May 2024 |
| DATE OF ORDER | 14 June 2024 |
| CITATION | 41 Myrtle Street Pty Ltd v Monash CC [2024] VCAT 557 |

ORDER

Permit granted

- 1 In application P550/2023 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/54032 a permit is granted and directed to be issued for the land at 41 Myrtle Street Glen Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Clause 33.01-1 – Use of land as a childcare centre in the Industrial 1 Zone.
 - Clause 33.01-4 – Construct a building and construct and carry out works in the Industrial 1 Zone.
 - Clause 43.02-2 – Construct a building and construct and carry out works in the Design and Development Overlay Schedule 1.



- Clause 43.02-2 – Construct a fence in the Design and Development Overlay Schedule 1.
- Clause 44.05-2 – Construct a building and construct and carry out works, including a fence, in the Special Building Overlay.
- Clause 52.05-12 – Display of Business Identification Signage.

Katherine Paterson
Member

APPEARANCES

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| For applicant | Chris Taylor, Solicitor, Planning and Property Partners Pty Ltd. He called the following witnesses: <ul style="list-style-type: none"> • David Crowder, Town Planner • Darren Tardio, Acoustic Consultant • Leigh Furness, Traffic Engineer. • Peter Oxnam, Environmental Consultant |
| For responsible authority | David De Giovanni, Town Planner |
| For Melbourne Water | Oscar Orellana, Town Planner, Melbourne Water |
| For Suburban Rail Loop Authority and Head, Transport for Victoria | No appearance |



INFORMATION

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| Description of proposal | Use and Development of a 90 place childcare centre. 19 car spaces have been provided for the facility at ground level, accessed via two single crossovers to Myrtle Street which have been sited around an existing street tree. The childcare centre will consist of two separate buildings divided into various children's room. A large play area will be constructed at the first floor level which will extend over the car park, and a smaller area provided at ground level. The proposed hours of the centre at 6:30am to 7:00pm Monday to Friday. |
| Nature of proceeding | Application under section 77 of the <i>Planning and Environment Act 1987</i> (Vic)– to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Industrial 1 Zone, Special Building Overlay, Design and Development Overlay Schedule 1; Specific Controls Overlay Schedule 14, Specific Controls Overlay Schedule 15 and Special Building Overlay |
| Permit requirements | Clause 33.01-1 – Use of land as an education centre (INZ1); Clause 33.01-4 – Construct a building and construct and carry out works (INZ1); Clause 43.02-2 – Construct a building and construct and carry out works (DDO1); Clause 43.02-2 – Construct a fence (DDO1); Clause 44.05-2 – Construct a building and construct and carry out works (SBO); and Clause 52.05-12 – Display of Business Identification Signage. |
| Land description | The subject site has an area of 1,356 square metres and contains a single storey industrial building on the site. The site is located at the fringe of an industrial estate. |
| Tribunal inspection | 1 November 2023, accompanied by all parties. |



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 41 Myrtle Street Pty Ltd ('applicant') wish to establish a 90 place childcare centre on the site at 41 Myrtle Street Glen Waverley. Following the decision of Monash City Council's ('Council') decision to refuse the application, they have requested that the Tribunal review this matter.
- 2 Council refused the application on a number of grounds but are primarily concerned that:
 - The proposal is inconsistent with the purposes of the Industrial 1 Zone and represents a poor planning outcome for the site;
 - The existing industrial uses within the estate will have a detrimental impact on the amenity of the users of the childcare centre through noise, odour and fumes;
 - The proposed childcare centre may unreasonably restrict the existing industrial operations in the area;
 - The design and siting of the centre is inconsistent with the built form outcomes sought for the site within the Monash Planning Scheme ('scheme');
 - The proposal will not achieve the landscape outcomes sought for the site; and
 - The design of the car parking and vehicle access arrangements do not enable easy and efficient use by vehicles and pedestrians.
- 3 The Tribunal received a Statement of Grounds from Salpina Pty Ltd owner of 39A Myrtle Street which is located to the north of the site. A planning permit has recently been issued for the development of a warehouse on this site, and Nearmap aerial imagery indicates that works have recently commenced on the site.² They share Council's concerns that the proposed childcare centre may unreasonably restrict the use of their land for industrial purposes. They are also concerned that the use of their site may unreasonably affect the operations of the childcare centre, giving the example that noise generated by their warehouse may disturb the children's sleep.
- 4 As the impact on the proposed use from noxious odours or fumes was not raised in detail prior to the hearing, and odour was observed by all parties at the site inspection, the Tribunal's orders of the 1 November 2024 required the permit applicant to provide the Tribunal and the other parties with an air

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 Nearmap images indicate that works commenced between November 2023 and February 2024



quality report prepared by a suitably qualified person which assessed the impact of any odours and/or fumes generated by the premises located to the east of the subject site. The orders also provided the parties with an opportunity to respond to the report in a further written submission to the Tribunal.

- 5 Following the Tribunal's order dated 9 February 2024 the permit applicant circulated an expert witness statement prepared by Mr Peter Oxnam, an environmental consultant on the 23 February 2024.
- 6 On 1 March 2024 an addendum to the expert witness statement was provided, which included the results of a second round of air sampling conducted at the site.
- 7 The responsible authority objected to the late circulation of the evidence, submitting that they did not have an opportunity to review this material and prepare for cross examination of the witness.
- 8 The additional day hearing was adjourned until the 15 March 2024 to provide an opportunity for the responsible authority to review the material prior to the calling of the witness.
- 9 Amendment C166mona to the scheme was gazetted on 23 May 2024. The amendment made a wide range of modifications to the scheme. The Tribunal's orders of the 27 May 2024 provided an opportunity for the parties to make a further written submission on any implications of the amendment for the application for review. A response was received from the responsible authority advising that in their view the amendment was a largely policy neutral amendment that brings scheme in line with the new format planning schemes. No other submission was received by the Tribunal.

What are the key issues?

- 10 Having considered all the submissions and evidence and inspected the subject land and its locality I am of the opinion that the key issues in this proceeding are:
 - Does planning policy support the establishment of a childcare centre on this site?
 - Will the existing industrial uses operating in the precinct unreasonably affect the amenity of users of the childcare centre?
 - Will the childcare centre unreasonably affect the existing industrial operations within the estate?
 - Is the design of the childcare centre acceptable?
 - Will the proposal provide an acceptable landscape outcome for the site?



- Are the car parking and vehicle access arrangements acceptable?

Summary of findings

11 I have decided to grant a permit as:

- I find that the proposed childcare centre will not have an unreasonable impact on any existing or proposed industrial operations occurring within the estate;
- The existing industrial uses will not have an unreasonable impact on the amenity or health of users of the childcare centre; and
- The built form, landscaping and car parking arrangements are an acceptable response to the provisions of the scheme.

My reasons follow.

DOES PLANNING POLICY SUPPORT THE USE OF A CHILDCARE CENTRE ON THIS SITE?

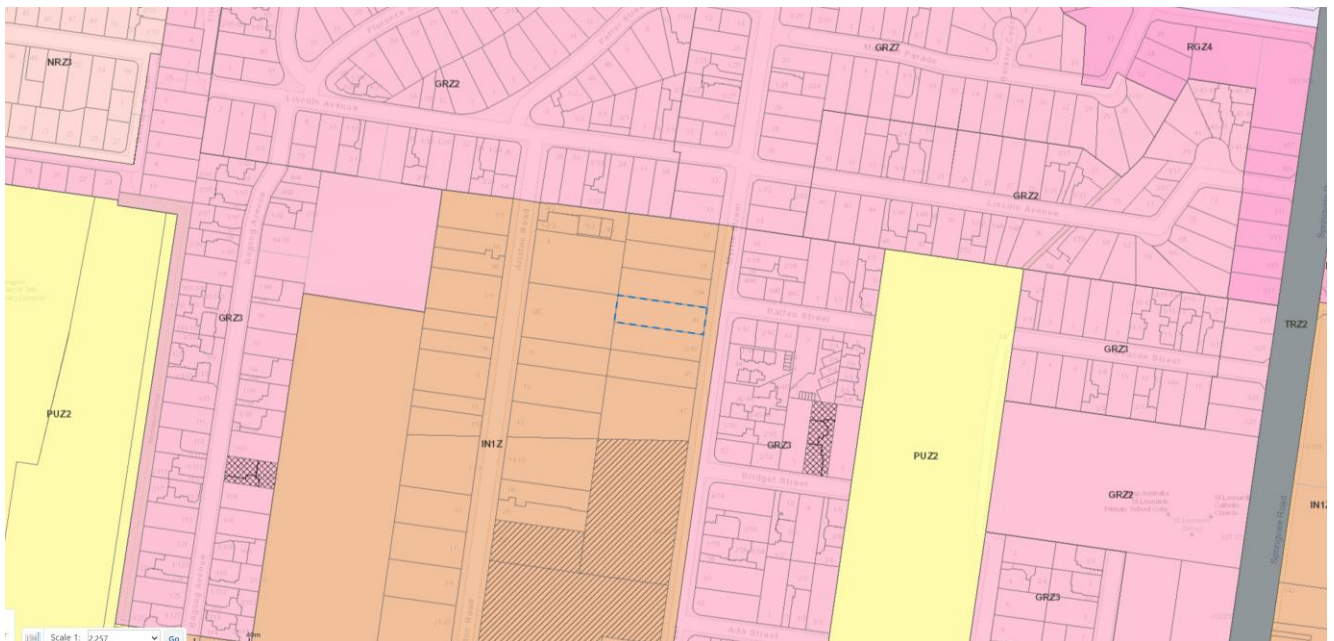


Figure 1 – Zoning Map extracted from VicPlan dated 31 January 2024

12 As can be seen in the above zoning map, the subject site is located within a small isolated industrial precinct which has been included within the Industrial 1 Zone (INZ1). The purposes of the zone are:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To provide for manufacturing industry, the storage and distribution of goods and associated uses in a manner which does not affect the safety and amenity of local communities.

- 13 A planning permit is required to use and develop land for a childcare centre on land within the INZ1. When considering an application for the use of the land, the zone requires consideration of the following decision guidelines:
- The Municipal Planning Strategy and the Planning Policy Framework.
 - The effect that the use may have on nearby existing or proposed residential areas or other uses which are sensitive to industrial off-site effects, having regard to any comments or directions of the referral authorities.
 - The effect that nearby industries may have on the proposed use.
 - The drainage of the land.
 - The availability of and connection to services.
 - The effect of traffic to be generated on roads.
 - The interim use of those parts of the land not required for the proposed use.
- 14 Turning to the Municipal Planning Strategy and the Planning Policy Framework. Clause 11 states that planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure and that planning is to recognise the need for, and as far as practicable contribute towards health, wellbeing and safety. Clause 19.02-2S states that planning should 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.
- 15 Clause 11.01-1S contains a number of settlement strategies for Victoria, including to:
- Develop compact urban areas that are based around existing or planned activity centres to maximise accessibility to facilities and services.
 - Ensure retail, office-based employment, community facilities and services are concentrated in central locations
- 16 Plan Melbourne, a policy document referenced at Clause 11.01-1S of the scheme places the subject site at the northern edge of the Monash National Employment and Innovation Cluster (‘NEIC’), as shown in the map below:



Map 5

Monash National Employment and Innovation Cluster

Figure 2 – Extract from Plan Melbourne with approximate location of site shown as a blue star.

- 17 Clause 11.01-1R states that it is planning policy to focus investment and growth within NEICs. Clause 02.03-6 states that The Monash NEIC is the largest concentration of employment outside the Melbourne Central Business District. The *Melbourne Industrial and Commercial Land Use Plan* (Department of Environment, Land, Water and Planning, 2020), which is a reference document at clause 17.03-3S also states that the area in and around the Monash NEIC has one of the largest concentrations of jobs outside of the Melbourne Central City. Map 10 of the land use plan indicates that the site is located outside of the Monash NEIC, but within an existing precinct of industrial land which is of Local significance. The document states that the purpose of the Local Industrial Precincts will be:

To provide for a range of local industry and employment opportunities that support local communities and other businesses operating in the local area. They will be planned to support local service trades and the needs of smaller businesses serving more localised markets.

They should be retained for industrial or employment purposes unless a planning authority has identified them for an alternate non-employment purpose.

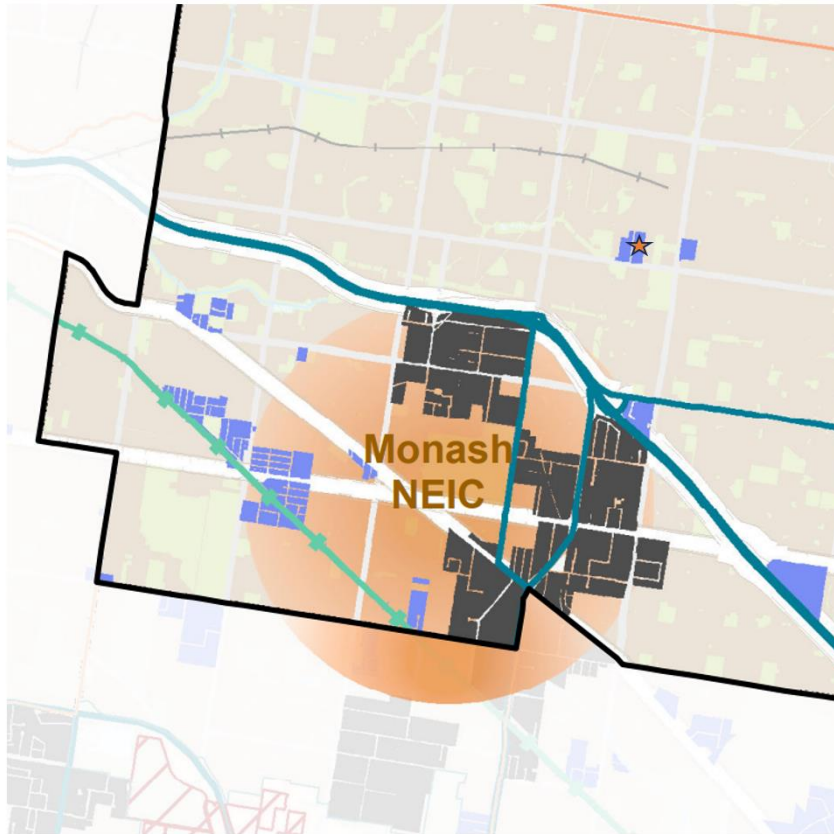


Figure 3 – Extract from Map 10 Eastern Region Industrial Land contained within the *Melbourne Industrial and Commercial Land Use Plan* (Department of Environment, Land, Water and Planning, 2020 – approximate location of site shown as a red star.

- 18 The land use plan goes on to state that the INZ1 would usually be applied to local precincts focussed on allowing for traditional industrial uses.
- 19 These policies are echoed at Clause 17.03-1S of the scheme which includes the following policies:
 - Protect and carefully plan existing industrial areas to, where possible, facilitate further industrial development.
 - Preserve locally significant industrial land for industrial or employment generating uses, unless long-term demand for these uses can be demonstrably met elsewhere.
 - Avoid approving non-industrial land uses that will prejudice the availability of land in identified industrial areas for future industrial use.
- 20 Clause 02.03-6 provides further guidance for the industrial areas within Monash. The land is located within one of the smaller industrial areas located within Burwood, Mulgrave and Glen Waverley. It is also located approximately 60 metres to the south of the Glen Waverley Major Activity

Centre.³ Clause 02.03-6 notes that there are areas where manufacturing has given way to office uses reflecting the change in the municipality. The clause goes on to say:

Monash seeks to facilitate a greater diversity in economic investment within the municipality by:

- Supporting land use and development that fosters business growth.
- Facilitating innovation and growth in the knowledge economy, particularly in science, technology and emerging industries.
- Maintaining the amount of land set aside for industry, as these areas are proposed to retain their focus for supporting large scale industrial activities.
- Enhancing the physical environment of industrial and commercial areas by facilitating amenity improvements, walking and cycling infrastructure, public transport access and traffic and car parking networks.

21 Under the heading 'education facilities' Clause 02.03-8 states that Council seeks to:

- Retain and support the Monash University and Holmesglen TAFE campuses as significant educational facilities.
- Retain and support the range of public and private educational facilities in Monash.
- Facilitate industrial, business and residential development that cater for the needs of users of tertiary education centres.

22 Clause 13.06-1S seeks to:

Ensure, wherever possible, that there is suitable separation between land uses that pose a human health risk or reduce amenity due to air pollutants, and sensitive land uses (residential use, childcare centre, school, education centre, residential aged care centre or hospital).

23 Clause 13.07-1S seeks to protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts. Strategies to achieve this objective include:

- Ensure that use or development of land is compatible with adjoining and nearby land uses
- Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses.

³ As shown on the Strategic framework plan at Clause 02.04-1 and residential development plan at Clause 02.04-3 of the scheme.

- Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.
 - Protect commercial, industrial and other employment generating uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively.
- 24 Clause 17.01-1R includes the following strategy to encourage a diversified economy:
- Consider how land use change proposals can respond to local and regional employment demand or identify how it can be accommodated elsewhere.
 - Plan for industrial land in suitable locations to support employment and investment opportunities.
- 25 Clause 17.01-1L also contains a number of strategies including:
- Give preference to clustering of businesses and industry in accessible, attractive and well serviced locations.
 - Improve the attractiveness, convenience and accessibility of industry, business and activity centres through the development of structure plans, business plans, and urban design frameworks to attract a diversity of business and workers.
- 26 Town Planning evidence was provided to the Tribunal by Mr David Crowder. It was his evidence that the provision of childcare services is an important community need, which is increasingly being met through private providers. In his view there isn't a 'childcare centre zone' and as such wherever a childcare centre seeks to establish it is typically not consistent with the primary purpose of the zone. I disagree. The General Residential Zone, for example has a clear purpose:
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.
- 27 The purposes of the Commercial 1 Zone include:
- To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.
- 28 I therefore find that there are zones which expressly encourage the establishment of education centres and community uses, such as childcare centres. I acknowledge that a planning permit is still required to use land for a childcare centre in both the GRZ and C1Z.
- 29 I agree with Mr Crowder that applications for the establishment of non-industrial uses such as childcare centres within the INZ1 needs to be assessed on a case by case basis.

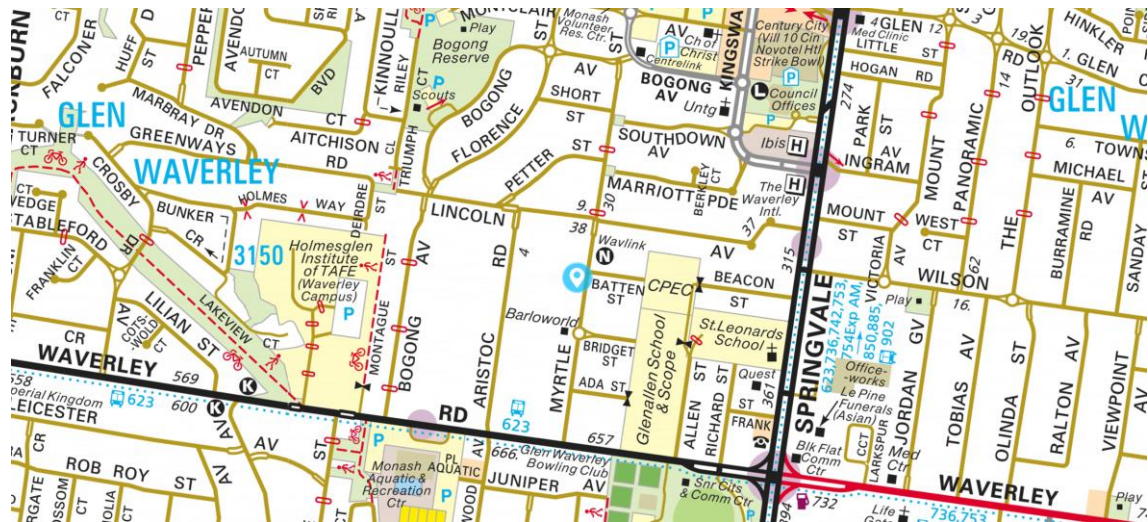


Figure 4 – Extract from Melways Online

- 30 As shown in the extract from Melways Online above, this site has many locational attributes that would support the establishment of a childcare centre including:
- The proximity of this site to the Monash NEIC and the Glen Waverley Major Activity Centre, which are significant employment generators and in turn would generate demand for childcare places;
 - The proximity of this site to residential properties, located directly opposite the site;
 - The presence of other non-residential uses within the industrial estate;
 - The proximity of this site to other education uses, including Glenallen School, St Leonards School and Holmesglen Institute of TAFE.
- 31 I find that the establishment of a childcare centre on this site is generally supported by planning policy. However, planning policy also requires consideration of the impacts of the existing industrial uses on the proposed centre, and vice versa as well as the impact of the proposed centre on the amenity of the residential properties. I consider these impacts next.

WILL THE EXISTING INDUSTRIAL OPERATIONS WITHIN THE PRECINCT UNREASONABLY AFFECT THE AMENITY OF USERS OF THE CHILDCARE CENTRE?

- 32 The decision guidelines provided at Clause 33.01-2 of the scheme include consideration of:

The effect that nearby industries may have on the proposed use.

- 33 A childcare centre is included within the EPA’s definition of sensitive land uses, defined by the ‘Guidelines for assessing and minimising air pollution in Victoria’⁴ as:

A land use where it is plausible for humans to be exposed over durations greater than 24 hours, such as residential premises, education and childcare facilities, nursing homes, retirement villages, hospitals.

- 34 Mr Crowder’s evidence included a map of land uses found within the industrial precinct:



Figure 5 – Map of land uses extracted from David Crowder’s evidence statement.

- 35 I will first consider the likelihood of new industrial uses establishing in the area. As the site and its neighbours at 39 and 43 Myrtle Street and 4 Aristoc Road are less than 30 metres away from residential properties, a planning permit is required to establish an industrial land use on these properties, and an assessment would need to be made on a case by case basis as to the suitability of the proposed land use at that time. As such the proposed childcare centre will not alter the planning scheme requirements for the establishment of new industrial land uses within the estate.
- 36 Whilst the properties at 4 and 6 Aristoc Road are located within the section of the precinct which Mr Crowder described as the “core”, due to the

⁴ This document was referred to in the Air Quality Report prepared by Focus Environmental dated 30 November 2023.

establishment of sensitive land uses within the existing tenancies of 6 Aristoc Road including a dance school and martial arts centre. I note due to the limited separation between these sites and sensitive uses, a planning permit is required to establish future industrial uses on these sites.

- 37 A planning permit was issued on 9 March 2023 for the use and development of a table tennis academy on adjoining property at 43 Myrtle Street. The delegate report indicates that the use of 43 Myrtle Street as a table tennis academy was considered acceptable as:

The use is not industrial in nature it is one that requires a large site commonly available in these zones. Its position on the periphery, and the fact it is unlikely to have external amenity issues for residential properties location directly opposite (subject to the provision of adequate car parking) makes it a suitable proposal for the site.

- 38 Mr David De Giovanni on behalf of Council submitted that a key difference between the proposed table tennis academy and the proposed childcare centre is the duration the facilities will be used. I agree. A table tennis academy is likely to be used for short periods of time, for an example an hour or two during the week for a lesson. Young children will attend this childcare centre between the hours of 6:30am and 7:00pm up to five days a week, a considerable period. They will utilise outdoor play areas during the day, which may be affected by noise and odour. This differs from the proposed table tennis academy which is entirely indoor.
- 39 I will consider the impact of noise and odour on the proposed childcare facility in turn.

Noise

- 40 A planning permit to construct buildings and works associated with an existing warehouse on the land at 39A Myrtle Street was granted by the responsible authority on 26 May 2023, and works have commenced on the site. When completed, the capacity of the existing warehouse will be significantly expanded. As indicated in the statement of grounds, the existing and proposed use may have an impact on the operations of the centre through noise.
- 41 Acoustic evidence was provided to the Tribunal by Mr Darren Tardio of Ennfield Acoustics Pty Ltd. His evidence statement considered the childcare centre as both a noise emitter and a noise receptor. He was satisfied that the impacts of the proposed use as a noise emitter was unlikely to have an unreasonable impact on the nearby residential properties. In this case, greater consideration needs to be given to the proposed use as a noise receptor.
- 42 He installed a noise monitor on the subject land to determine what impacts are generated by the adjacent industrial uses. It was his evidence that there was only one neighbouring premises that was generating audible noise,



being the premises at 4 Aristoc Road, and not the neighbouring property at 36A Myrtle Street. Based on this evidence, I consider it unlikely that the existing use of 36A Myrtle Street will affect the proposed childcare centre through noise. Any future use of this site will need to comply with the EPA's Regulations and Noise Protocol, even if a child care centre isn't established on this site due to the site's proximity to residential properties to the east of the site. As such I find that it is likely that the impact on the childcare centre from noise generated at 36A Myrtle Street is likely to be acceptable.

- 43 The property at 4 Aristoc Road is used as a printing warehouse and operates between 8:30am to 5:00pm Monday to Friday. Mr Tardio described the noise generated by this property as a "low background hum." The level of noise generated by this use was recorded as 52dB(A) which Mr Tardio assessed as being below the established noise limit under the Regulations and Noise Protocol. Based on this evidence I am satisfied that the proposed childcare centre is unlikely to be significantly impacted through noise generated by the surrounding industrial properties.
- 44 Mr Tardio also considered the noise to be generated by the proposed table tennis academy at 43 Myrtle Street. It was his evidence that this type of use would not be expected to generate any material noise emissions, and as the activities will be entirely indoors with no windows or openings facing the subject site the proposed childcare centre is unlikely to be unreasonably affected by any noise generated from the facility. I agree with this assessment.
- 45 Mr Tardio submitted that whilst it was unlikely that the childcare centre would be affected by noise, the applicant may wish to use features such as double glazing or acoustic fencing to further ensure that the childcare centre is not affected by noise. Given the evidence, I consider that these measures are unnecessary, and I have not required them as a condition of permit.

Odour

- 46 Prior to the hearing Mr de Giovanni undertook a site inspection where he observed a chemical odour being emitted from the adjoining industrial premises. The odour appeared to be coming from the occupant of the premises at 6A Aristoc Road, Advance Anti-Slip Surfaces Pty Ltd, a business that manufactures and supplies anti slip surfaces for walkways, steps, ladder rungs and other similar surfaces. The outdoor play area for the proposed childcare centre is located approximately 22 metres from this facility. Mr de Giovanni submitted:

The business relies on the use of strong adhesives. The front portion of the building facing Myrtle Street appears to have a more

administration and display function, with the manufacturing component of the business occurring to the rear of the site.

On my site inspection, there were workers applying adhesives using rollers that emitted strong odour, and they had the rear door open for ventilation

- 47 A similar odour was observed by the Tribunal and the parties at the accompanied inspection conducted on the 1 November 2023, particularly when a slight breeze occurred. A roller door was observed to be open at this time, however it was not clear if any manufacturing was occurring at the time of the inspection. As the odour may have also been generated by the premises at 4 Aristoc Road, my order of the 1 November 2024 required the air quality assessment to consider the impact of the existing uses occurring on both properties.
- 48 No odours were detected by Mr Peter Oxnam who conducted the air quality assessment during their observations on the 17 November 2023. The report dated 30 November 2023 which followed the assessment states that the businesses were operating at the time of the inspection, but was silent as to whether any roller doors were open. The report identifies that the wind was noted to be from a northerly direction at the time of sampling. 4 and 6 Aristoc Road are located to the west of the site. In a response to the Tribunal's order of 9 February 2023 Mr Oxnam advised that the door was closed at the time of the initial air quality testing.
- 49 Mr Oxnam completed a second air sampling round on the 27 February 2024. Mr Oxnam provided the Tribunal with a list of observations made on the day of the second sample. These observations include:
- A faint sweet chemical odour was noted at the front of the site and along the site's driveway. No odour was noted at the rear fence of the site shared with 6 Aristoc Rd. From my experience, the observed sweet chemical odour was likely to be associated with printing and could be related to the known printing operations at 4 Aristoc Road, Glen Waverley.
 - The faint sweet chemical odour was also noticed at the residential premises opposite the site on the corner of Myrtle Street and Batten Street.
 - The odour intensity and discernible odour duration of the sweet chemical odour was noted to be less than the exhaust odours emitted from passing vehicles along Myrtle Street that included diesel trucks and petrol cars (i.e. it was a fleeting odour).
 - The air monitoring equipment was set up and was collecting ambient air samples by 10:30am at the same time the faint sweet chemical odour was noted along the driveway of the site where the background sampling equipment was positioned.
 - The roller door at the anti-slip factory at the rear of 6 Aristoc road was open at the time of air quality sampling.



- I walked up to and inspected the roller door entrance of the anti-slip product factory at the rear of 6 Aristoc Road and observed the preparation of yellow anti-slip strips by a single worker. The worker was not wearing respiratory personal protective equipment. I also observed a faint volatile organic odour emanating from the factory roller door entrance. The odour was completely different to the faint sweet chemical odour observed on the site and at the residential premises on Myrtle Road.

50 In his evidence to the Tribunal, Mr Oxnam outlined the methodology used for undertaking the air quality assessment and assessing the relationship between odour and chemicals in the atmosphere at the proposed childcare development site. He used the EPA guidance for assessing air pollution (Publication 1961) which outlines a risk based assessment depending on the risk factors associated with a site. Due to the sensitive nature of a childcare centre being established within an industrial, a level 2 assessment was undertaken for the site. This assessment involves a combination of air sampling and modelling, using Air Pollution assessment criteria ('APACs'). It was Mr Oxnam's evidence that:

APACs are concentrations of pollutants in air that provide a benchmark to understand potential risk to human health or the environment. They are risk-based concentrations that can help identify when or if an activity is likely to pose an unacceptable risk to the receiving environment.

51 Sampling for Volatile Organic Compounds (VOCs) was undertaken on the site using specially prepared Canisters (Summa) on two occasions. The location of the canisters is shown below:



Figure 6 – Extract from site area plan included within the report prepared by Focus Environmental dated 30 November 2023

52 Mr Oxnam's evidence was that the locations were chosen based on the proposed locations of the outdoor play spaces and the prevailing wind conditions of the area.

53 The initial Ambient Air Assessment conducted by Emerge Associates Pty Ltd and Focus Environmental, dated 30 November 2023 details that Ethanol, Toluene, Hexane, Heptane, Ethylbenzene, m- & p-Xylene, o-Xylene, 4-ethyl toluene, 1,3,5- Trimethylbenzene, 1-methyl- 4 ethyl benzene, and 1,2,4- Trimethylbenzene were detected within the first set of samples. The report states:

These detections of certain analytes were reported above the laboratory limit of reporting. However were not in concentrations to pose a health risk and were below all of the adopted guidelines and exposure standards. All of the detected concentrations were below the APAC cumulative 1 hour guidelines adopted from EPA Publication 1961 Guideline for Assessing and Minimising Air Pollution in Victoria.

54 Mr Oxnam's addendum to his evidence dated 1 March noted the following with respect to the second round of sampling:

- No exceedances were reported from the second round of sampling for either the 8-hour time weighted average (TWA) or the air pollution assessment criteria (APACs) (refer Attachment 2, comparison tables).
- Detectable concentrations of the following chemicals were reported above the limit of reporting but below the adopted criteria.
 - Western boundary shared with 6 Aristoc Road: Toluene, Xylene (m & p), Ethanol, Heptane, Hexane, 2-Propanol (Isopropyl Alcohol).
 - Background location toward the front of the site along the driveway: Ethanol
- Chemical concentrations detected in the second round of sampling were within the same range as reported in the first round of sampling.
- The first round of air sampling reported additional detectable chemicals which were not detected during the second round of air sampling including the following:
 - o-Xylene, 4-ethyl toluene;
 - 1,3,5-trimethylbenzene;
 - 1,2,4-trimethylbenzene; and
 - ethylbenzene.

55 The 30 November 2023 report outlined that:

- For low and moderately hazardous air pollutants, the adopted APAC (expressed as an 8-hour average) is the time-weighted average (TWA) divided by 10. This safety factor of 10 accounts for extrapolation from a healthy adult exposed over their

working life to the general population potentially exposed over a lifetime. This factor ensures the protection of sensitive groups including the elderly and children.

- For highly hazardous pollutants, the adopted APAC (expressed as an 8-hour average) is the TWA divided by 20. This correction factor includes an additional safety factor of 2 due to the severity of the potential health effects arising from exposure to these pollutants.

Therefore for a conservative approach, all contaminants without an APAC guideline will be considered as “highly hazardous pollutants” and the adopted APAC is the TWA divided by 20.

56 Mr Oxnam provided the Tribunal with a table which summarised the results against the Time Weight Averages for the proposed childcare centre, which assumes 8 hours of outside play per day, 5 days a week, 46 weeks per year.

57 The table indicates that the detected levels are considerably lower than the amounts deemed to be safe for the level of exposure likely to be experienced by the children and adults using the centre. For example, the users of the centre are likely of be exposed to 160ug/m³ of Ethanol over a 1 hour period. The APACs deems exposure to 94,000ug/m³ of Ethanol over 1 hour to be safe. The other chemicals detected were at far lower levels than Ethanol.

58 Mr Oxnam noted in his evidence that:

It is noted that the absence of odour in the first round of sampling where a greater number of chemicals were detected demonstrates the difference between the presence of discernible odours as an ‘amenity’ consideration vs. the actual concentration of detectable chemicals in the atmosphere that could have an impact to human health.

59 Whilst the users of the centre will be exposed to chemicals, particularly when using the outdoor play spaces, I am satisfied based on the evidence that the level of exposure is highly unlikely to be harmful to their health. Odours will be able to be observed by the users of the childcare facility particularly when the neighbouring industrial uses are operating, and the operators of the childcare centre may wish to alter activities accordingly, such as limiting the use of the outdoor spaces if the odour is particularly strong. However, based on the evidence I am satisfied that there would be no human health reason to do so.

IS THE DESIGN OF THE CHILDCARE CENTRE ACCEPTABLE?

60 Clause 02.03-4 states:

Monash is known for its garden city character, leafy, low-rise suburbs with well vegetated gardens and wide streets with street trees. Development in the employment and commercial areas has also contributed to the garden city character through generous landscaped setbacks including tall canopy trees.



This characteristic is highly valued by the community. Tall canopy trees are a dominant feature, particularly towards the east of the municipality. This garden city characteristic is predominant in residential areas and some commercial areas, especially the planned business parks. Industrial areas are clearly designated and incorporate wide streets, generous and well landscaped setbacks, and provide an overall high-quality environment.

...Council seeks to:

- Maintain and enhance the garden city character by ensuring that development contributes to the garden city character including through the conservation of existing trees and the planting of canopy trees.
- Ensure that development enhances the character of the neighbourhood, consistent with the identified preferred future character.

61 Clause 15.01-2L-01 contains the ‘Industry and business built form character policy’, which applies to land within the Industrial 1 Zone. The policy includes the following objective:

- To ensure that development creates or enhances a high-amenity built form environment and contributes to the garden city character.

62 The industrial estate where the site is located within the Industrial Character Type 2 (‘IND2’). It is strategy to support development within the character type that:

- Retains evidence of the area’s origins in the middle of the 19th Century and its historic subdivision pattern.
- ...
- Addresses the street and is consistent with its industrial and commercial functions.
- Allows for some variation in building height , but minimises large height differences.
- Provides landscaped setbacks when redeveloping sites.
- Maintains the visual diversity produced by the variations in size, scale and form of buildings.
- Minimises or where possible, eliminates those elements within the area that contribute to visual clutter when redeveloping sites.
- Encourages a visual relationship between the colour schemes of various buildings that will progressively result in a cohesiveness between the varied architectural forms and scales.
- Locates car parking to the rear of properties.

63 The subject site has also been included with the Design and Development Overlay Schedule 1 (DDO1), which has the following design objectives:



- To ensure that development, including front setbacks, is in keeping with and contributes to the Garden City Character as set out in the Municipal Planning Strategy.
- To ensure that the building scale and form in terms of height and bulk complements and does not visually overwhelm surrounding buildings.
- To ensure that streetscape engineering details of new developments integrate with the existing streetscape.
- To ensure that fences or planting along property boundaries do not adversely affect urban character or adjacent open space.
- To ensure that the landscape treatment within the front setback contributes to the positive aspects of the applicable industry or business Character Type identified in Clause 22.03 [sic].
- To retain existing on-site vegetation if possible.
- To ensure that car parking, vehicle access and service areas do not visually impinge on front setbacks or affect streetscape elements such as trees and nature strips.
- To minimise visual clutter.

64 Council was critical of the proposed undercroft car parking arrangement and proposed dual access arrangement, submitting that this would fragment the front setback into small garden areas that could not achieve the landscape outcome envisaged by the DDO1 for this site. The arrangement is shown in the following extract from Council’s submission below:



Figures 15 & 16 – Extract of Ground Floor Plan & Front Perspective (Ellis Group)

Figure 6 – Extract from the submission prepared by David de Giovanni.

65 A landscape plan prepared by Keystone Alliance was circulated by the permit applicant with the expert evidence. This plan indicates that the areas for landscaping are sufficient to accommodate canopy vegetation as shown below:

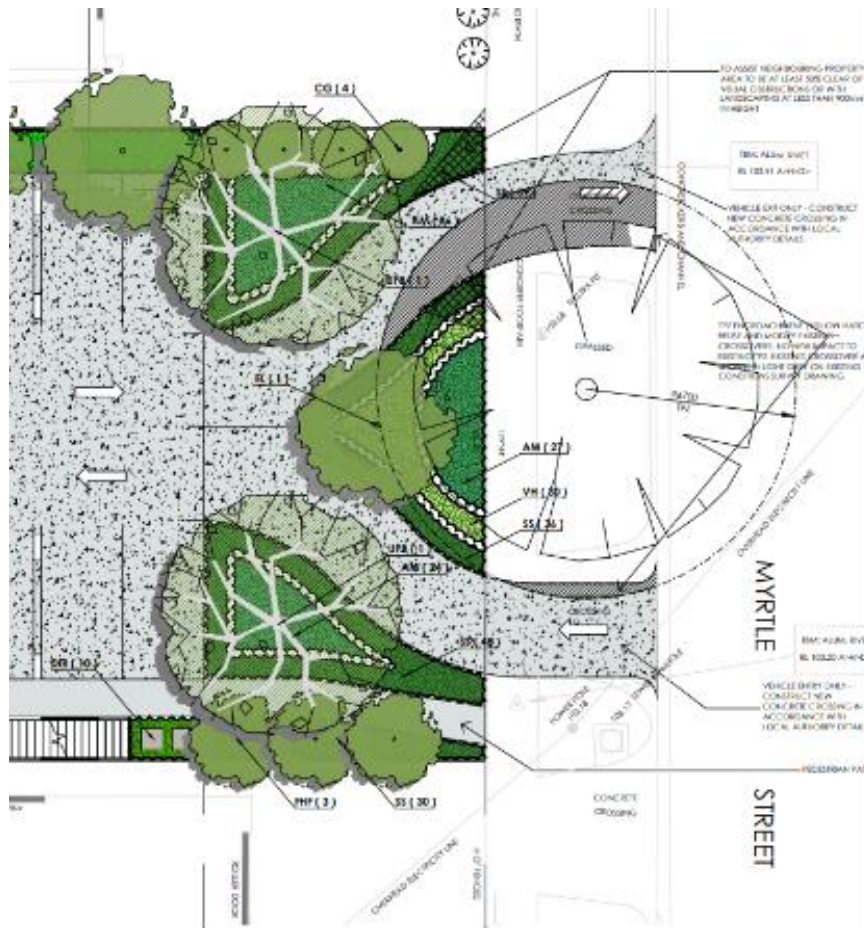


Figure 7 – Extract from landscape plan prepared by Keystone Alliance dated 12 October 2023

- 66 The schedule to the landscape plan indicates that the proposed canopy trees within the front setback are a 7 metre Dwarf Yellow Gum and two 9 metre Chinese Elms. Whist Council was critical that there would not be sufficient space for the planting of these trees, I disagree. The canopy trees will be planted with significant areas for their roots to expand, albeit beneath pavement, which is not dissimilar to street trees which establish in similar circumstances throughout metropolitan Melbourne. Presumably the species has been chosen by the landscape architect because of their suitability for the space and capacity of the trees to grow. I find that the landscaping is an acceptable response to the preferred character of the area, and I have required the endorsement and implementation of the landscape plan as a condition of permit.
- 67 In terms of the built forms response to the street, Mr Crowder described the existing character of the industrial estate as ‘very eclectic and somewhat unremarkable’. I agree. Many of the buildings within the estate are in a state of disrepair and are likely to be redeveloped in the near future, which is also reflected in the number of recent approvals for new buildings within the industrial estate. Mr Crowder submitted that the existing character allows for a greater flexibility when considering the redevelopment of sites

within the estate. The properties either side of the proposed development have recently been granted planning permission to be redeveloped. Mr Crowder’s evidence statement included a copy of the proposed and approved elevations for 39A, 41 and 43 Myrtle Street:

Figure 29 – proposed and approved front elevations for No’s 39A, 41 and 43 Myrtle Street¹⁶



Figure 8 – Extract from the evidence statement prepared by David Crowder of Ratio consultants dated 12 October 2023

- 68 These images indicate that infill development within the industrial estate is likely to reflect the existing eclectic character of the estate. I note that the roof form of the proposed childcare centre is an ‘in between’ form between the approved pitched roof form of 39A and the flat roof form of the approved development at 43 Myrtle Street. I find that the architectural style of the proposed built form will be a comfortable fit within the streetscape, including the use of an undercroft car park, which is an approach taken by the recently constructed real estate office at 45 Myrtle Street.
- 69 Despite the DDO1 and planning policy clearly preferring the provision of car parking at the rear of sites, the approved development at 39A and 43 Myrtle Street has allowed the provision of parking within the front setback, albeit limited in the case of 39A to a single disabled car parking space, with the remainder of parking to be provided at the rear of the site. The recently constructed office for Biggin Scott Real Estate Agents at 45 Myrtle Street uses a combination of undercroft car parking and car parking to the side of the two storey built form, as seen in the image below:



Figure 9 - Extract from Google Street view. Image dated January 2023, retrieved 26 April 2024

- 70 The recently constructed development at 45 Myrtle Street and the approved car park at Myrtle Street have used screens to assist in mitigating the visual impact of the car park from the street. During the hearing it was discussed whether a similar approach should be taken for the proposed development.
- 71 Mr Taylor, on behalf of the permit applicant submitted that a batten screen could be added to the front of the car park area. Mr Furness, who provided traffic evidence to the Tribunal submitted that this would be acceptable, provided that car spaces 10 and 11 were widened to a minimum of 2.9 metres to accommodate the screen, and that it was designed to allow for a visibility splay.
- 72 It is noted that a fence within the front setback areas requires a planning permit under the DDO1. The fences that are proposed within this area are an acoustic fence along both side boundaries, and the batten screen. Landscaping will be place in front of the side boundary fences which will soften their impact when viewed from the street.
- 73 With a screen in place, I am satisfied that the proposed location of the car park is an acceptable response to the design objectives of DDO1 and the policy at Clause 15.01-2L-01. I have required this as a condition of permit.

ARE THE CAR PARKING AND VEHICLE ACCESS ARRANGEMENTS ACCEPTABLE?

- 74 Clause 19.02-2 provides some specific strategies for childcare centres which include:
- 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.

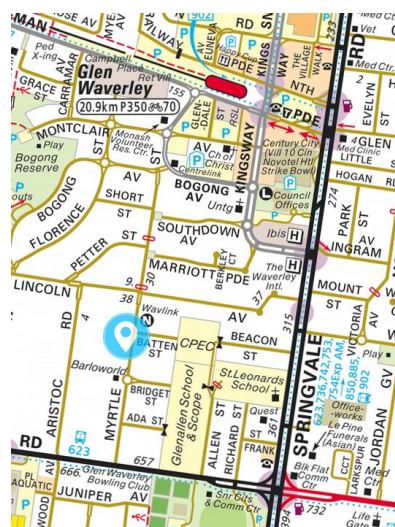


Figure 10 – Extract from Melways Online retrieved 26 April 2024



- 75 As can be seen from the above extract from Melways Online, the subject site is in proximity to several bus routes, with the nearest stop located 400 metres (a 5 minute walk) on Waverley Road. This bus route provides a direct connection to Glen Waverley Station, which is located 800 metres away from the site. Footpaths are provided on both sides of Myrtle Street, making access to the bus stop or train station easily accessible to and from the site.
- 76 Nineteen car spaces are proposed to be provided for the childcare centres which is consistent with the provision requirements of Clause 52.06 of the scheme. The car park is to be accessed via two separate curved driveways providing separate entry and exit points to the car park. This arrangement has the benefit of using the general location of the existing crossovers to the site as well as protecting and retaining an existing street tree located close to the frontage of the site.

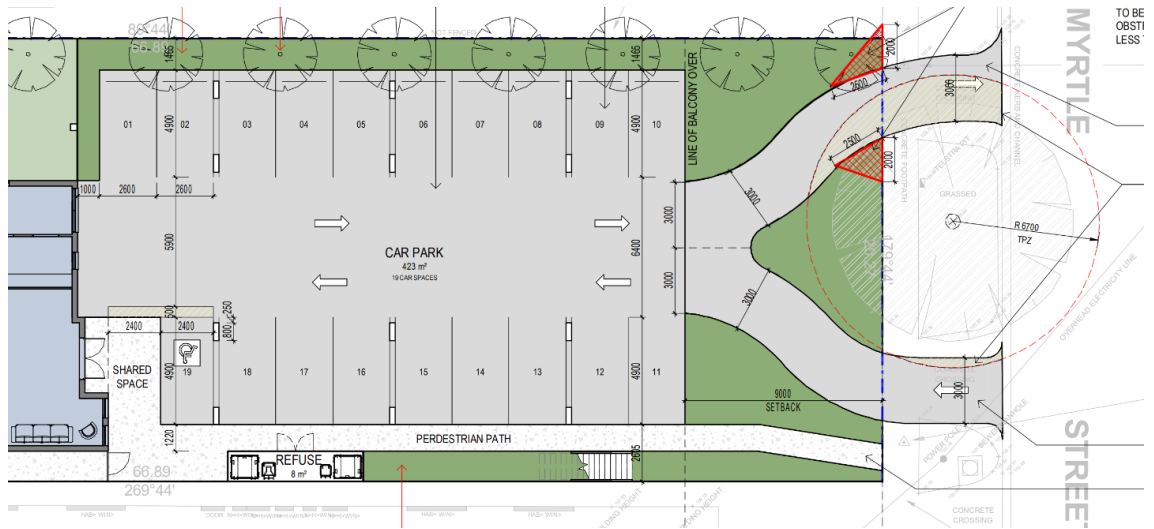


Figure 11 – Extract from plan TP A101 rev P5 dated 1 September 2024 prepared by The Ellis Group Architects

- 77 Council submit that the access and car parking arrangements require precision driving and will not be easy or efficient use to use and will not provide a quick drop off zone for parents.
- 78 I disagree. Traffic evidence was provided to the Tribunal by Mr Furness of Traffix Group. It was his evidence that the one way entry and exit arrangement would simplify the traffic movements throughout the site, and will provide a level of storage for any queuing vehicle waiting to access the car park. Mr Furness calculated that the proposed 90 space childcare centre would result in 72 trip ends in the peak hour (36 entry and 36 exit), or one exit and entry movement every 2 minutes. These figures would include vehicle movements associated with staff. Based on the traffic volumes provided by Mr Furness it is likely that most spaces will be ‘turned over’ at least twice during the peak hour. The entry access way is approximately

10.23 metres long, providing additional storage for two more vehicles to prop until a car space becomes available.

- 79 Mr Furness' evidence also included the results of a survey of existing on street parking within the area which was undertaken at 8am on Monday 15 May 2023. At this time within Myrtle Street there were 49 unoccupied parking spaces within Myrtle Street. I am satisfied that even if the proposal results in overflow parking in the street during the peak drop off and pick up times, there is sufficient capacity within the on street network to accommodate this demand generated by parents picking up or collecting their children.
- 80 The draft conditions provided by the responsible authority require the design of the access way to be altered to be more a defined "C" shape to accommodate u-tune movements if the car park is full. It was Mr Furness' evidence that this could be easily accommodated, and it will enable a vehicle to quickly leave the site to find an on street car park in the event that the car park is full. It is also likely that a car will prop in the entry access way and wait for a space to become available, which I find is acceptable.
- 81 Mr Furness' evidence included swept path diagrams, which indicate that most spaces are easily accessible for drivers to use. Three spaces are shown requiring a reversing manoeuvre to enter the space, the most complicated of which is for entry into the disabled space.

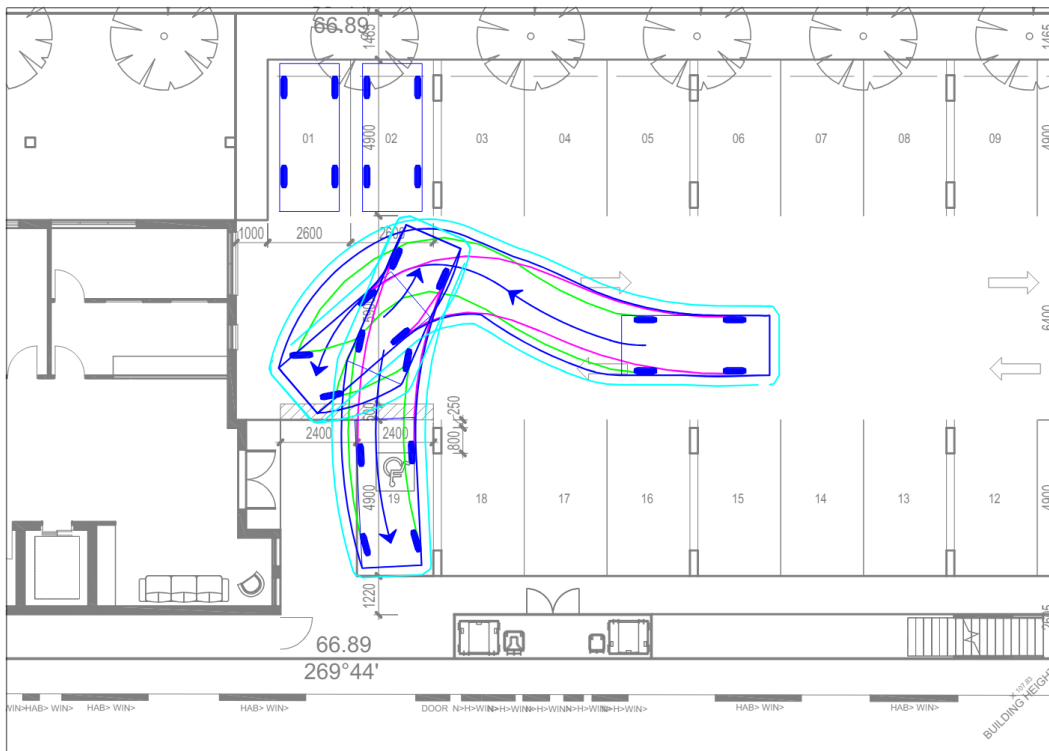


Figure 12 – Extract from Swept Path Diagram prepared by Traffix Group (Rev A dated 18 September 2023)

- 82 Clause 52.06-9 ‘Design standards for car parking’ states that disabled car parking spaces must be designed in accordance with Australian Standard AS2890.6-2009 (disabled) and the Building Code of Australia. It was Mr Furness’ evidence that the disabled space arrangement complies with the requirements of the standard. Whilst three movements are required to enter the space in reverse, I find that this arrangement is acceptable, as it is likely that users of the space are more likely to be frequent users of the centre who will become familiar with the arrangement overtime. It was also Mr Furness’ evidence that should chose to entry in a forward direction, this may be achieved for all spaces, albeit with some additional corrective movements.
- 83 During the hearing there was some discussion as to whether the ‘reverse in’ spaces, such as spaces 10 and 11 should be allocated to staff. Mr Furness’ evidence was that whilst this could be done, there was no traffic reason to do so. I also consider it unnecessary for the spaces to be allocated to staff as this would provide the most flexibility in how the car park is utilised throughout the day.
- 84 Mr Furness made some other recommendations with respect to the permit conditions which I have largely adopted, including the deletion of the of the requirement for visibility splays as these are already provided on the plan for the exit, and are not required for entry into the site.

ARE THERE ANY OTHER ISSUES?

Special Building Overlay

- 85 A Special Building Overlay (‘SBO’) applies to the front portion of the site. Melbourne Water as a determining referral authority, lodged a statement of grounds and attended on Day 1 of the hearing to advise that so long as their proposed condition was not contested, they had no objection to the proposal and would not be participating further in the hearing. The condition states:

To minimise damage to the building from flooding, the building must be constructed with finished floor levels no lower than 300 millimetres above surrounding finished ground surface levels.

- 86 There was no objection to the inclusion of this condition by the parties, which I have included as a condition of permit. This condition is likely to result in a slightly taller built form, but I find that this is acceptable.

Signage

- 87 The application also seeks permission for the display of business identification signage. This aspect of the proposal was not controversial, and I agree that the proposed signage is an acceptable response to the scheme.

88 It was unclear to both the Tribunal and the parties as to whether the sign located on the front parapet of the building is proposed to be illuminated. Whilst there was no concern raised as to whether the sign was illuminated or not, I have required further details of the sign to be provided. If the sign is to be illuminated, the preamble of the permit will need to be amended to reflect the permit permission required. This will be a matter for the responsible authority. Draft conditions required any illumination to be limited to be between 6:30am and 7:00pm, which I have retained in the event the sign is illuminated.

Easement

89 There is a 2.44 metre drainage and sewerage easement located along the western boundary of the site. The application proposes to construct the building to the boundary, within this area. Council’s drainage engineers have requested a condition requiring all buildings to be removed from the western easement.

90 I note that the approved table tennis academy at 43 Myrtle Street is also proposed to be constructed to the western boundary and over the easement. Notes on the permit outline the process required to obtain approval to build over the easement, however it is not known to the Tribunal whether this has occurred. I also note that the aerial image shown below indicates that the existing buildings from 43 to 55 Myrtle Street have also been constructed over the easement.



Figure 13 – Nearmap aerial image dated 16 May 2024, retrieved 12 June 2024.



- 91 Council's drainage engineers have advised that there is a 225-millimetre Council drain in the easement, and that under the current guidelines no building can be placed over a drain even if the drain is upgraded. The engineers advised that the guidelines have recently changed 'because of past decisions to allow structures have become very problematic and costly to rectify maintenance issues.' Following the hearing the responsible authority sought further clarification from Council's drainage engineer who advised:

The neighbouring property already had approval for an existing building over the easement so the new structure was allowed. In this instance, the new childcare centre is proposing a new structure over an easement that is unencumbered.

Having multiple adjoining properties built over the easement makes maintenance activities very difficult as our maintenance equipment can only reach so far from pit to pit. When the drain needs to be replaced at some time in the future major disruptions will occur to all properties built over the easement.

- 92 On balance, I have not required the building to be modified at this time to remove any buildings from the easement. From a planning perspective there is benefit in constructing to the western boundary, not least because it will provide a physical buffer between the proposed childcare centre and the existing industrial uses to the west.
- 93 The applicant is required to obtain permission from the relevant authority to build over the easement. If permission is not granted by the relevant authority the plans will need to be amended to remove the built form from the easement. This will need to be considered via a separate process.

Environmental Audit

- 94 Draft conditions circulated by the responsible authority require the provision of a report detailing soil testing and if required by the results of the soil test, an environmental audit.
- 95 The applicant suggested that a stage approach should be taken, similar to the approach taken for 43 Myrtle Street, and suggested that a preliminary assessment to determine whether there is a need for soil testing and then if required an environmental audit for the site.
- 96 I agree that a staged approach should be undertaken for this site. A report outlining the results of a detailed site investigation prepared by Environmental Earth Sciences, was provided to the Tribunal at the time the evidence statements were circulated which followed a preliminary site investigation what was undertaken on the site in 2021. The Detailed Site Investigation conducted by Environmental Earth Sciences included targeted soil sampling. The report concludes:



Based on the outcomes of the investigation, there is likely to be a low risk to future onsite residential /childcare receptors as a result of the soil conditions encountered at the site. Although the site is reported as having a long history of light industrial activity, the investigation results suggest this has not resulted in significant site contamination and an Environmental Audit is not considered to be required for the site to permit the proposed childcare development.

- 97 Based on the report’s conclusion I am satisfied that an environmental audit is not required for the use of this site for a childcare centre. I have required the endorsement of the detailed site investigation as a condition of permit.

Protection of Street tree

- 98 As stated above, the driveway has been redesigned to protect an existing street tree located in the road reserve in the frontage of the property. An arborist report prepared by Urban Forestry Victoria Pty Ltd accompanied the application, which describes the tree as a Chinese Elm, and calculated that the encroachment was approximately ten per cent into the Tree Protection Zone of this tree. The officer’s reports indicates that Council’s arborist made the following comments on the initial application:

Ulmus parvifolia, 10mt, 68cmDBH. In leaf at the time of inspection but displays healthy normal bud development and no major tree defects. The south property boundary is just over 11 metres from the tree base. The 3.5 metre existing south crossover is 5 metres from the tree base. Given the size and maturity of the tree a crossover must not be installed any closer than 3.5metres from the outer edge of the tree buttress. Ideally, there should be a no-excavation setback of 4.2 metres. If the excavation is completed as close as 3.5mts, that measurement point should be hand dug and any roots cut cleanly.

- 99 The draft conditions reflect these recommendations and require the crossover to be located a minimum of 3.5 metres from the tree base.

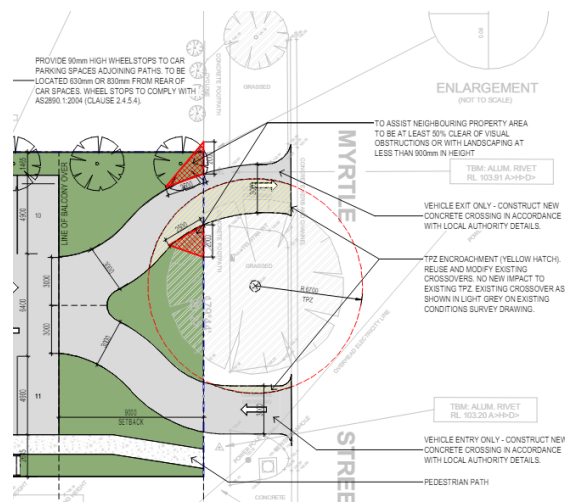


Figure 14 – Extract from drawing TP A101 P5 prepared by the Ellis Group Architects dated 1 September 2023.



- 100 Scaling the plans indicates that the location of the new crossovers will be a minimum of approximately 4.21 metres away from the trunk of the tree, and in a position that generally follows the existing crossovers to the site.
- 101 During the hearing there was a discussion as to whether permeable paving should be utilised for the accessways where they are within the Tree Protection Zone of the tree. This measure may not be required depending on the level of encroachment or likely impacts to the street tree. I have therefore required the provision of an amended arborist report which recalculates the encroachment into the tree protection zone of the street tree and makes recommendations as to any changes required to the design, such as permeable paving required to protect the tree, as well as tree protection measures during construction. With this change in place, I am satisfied that the street tree will be able to be retained.

WHAT CONDITIONS ARE APPROPRIATE?

- 102 Draft conditions were discussed at the hearing and any changes to the conditions reflects those discussions plus further consideration by the Tribunal.

CONCLUSION

- 103 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Katherine Paterson
Member



APPENDIX A – PERMIT CONDITIONS

| | |
|------------------------------|--|
| PERMIT APPLICATION NO | TPA/54032 |
| LAND | 41 Myrtle Street GLEN WAVERLEY VIC 3150 |

WHAT THE PERMIT ALLOWS

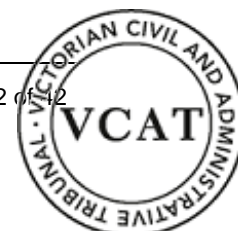
In accordance with the endorsed plans:

- Clause 33.01-1 – Use of land as a childcare centre in the Industrial 1 Zone;
- Clause 33.01-4 – Construct a building and construct and carry out works in the Industrial 1 Zone.
- Clause 43.02-2 – Construct a building and construct and carry out works in the Design and Development Overlay Schedule 1.
- Clause 43.02-2 – Construct a fence in the Design and Development Overlay Schedule 1.
- Clause 44.05-2 – Construct a building and construct and carry out works, including a fence, in the Special Building Overlay.
- Clause 52.05-12 – Display of Business Identification Signage

CONDITIONS

Amended Plans Required

- 1 Before the development and use starts, one copy of amended plans drawn to scale and correctly 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 The Ellis Group Architects (Drawings A001 to A601 inclusive Rev P5) dated 1 September 2023, but modified to show:
 - a) The circular driveway amended to be ‘C’ shaped to accommodate through traffic movements when the carpark is full;
 - b) Batten screens added to the edge of car spaces 10 and 11 to reduce the visibility of the car park from the street. The screen must be designed to allow visibility for vehicles entering the car park by being setback from the access way for a minimum distance of 2 metres in front of car space 11;
 - c) Car spaces 10 and 11 widened to a minimum of 2.9 metres to accommodate the screens as well as any subsequent design change



such as a minor reduction in the front setback to accommodate the wider car spaces;

- d) A bollard provided in the shared space adjacent to the accessible parking space, in accordance with the Australian Standard for Off-Street Parking for people with disabilities, AS/NZS 2890.6;
- e) Any design changes required by the arborist report endorsed under condition 14 of this permit’;
- f) All common boundary fence details and a notation to read ‘no front fence’ along the Myrtle Street boundary on the ground floor plan;
- g) Contour details and finished floor levels of the proposed building to demonstrate compliance with the Melbourne Water requirements under condition 44 and any subsequent design changes;
- h) Any design changes identified in the landscape plan endorsed under condition 3 of this permit;
- i) Any design changes required in accordance with the Waste Management Plan as requested in condition 6; and
- j) Further details on the “childcare centre” sign located on the front parapet of the building including whether it is illuminated. If so, details of the proposed method of illumination including Lux must be provided.

all to the satisfaction of the Responsible Authority.

Layout not to be Altered

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

Landscaping Plan

- 3 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. The Landscape Plan must be generally in accordance with the Landscape Concept Plan prepared by Keystone Alliance Pty Ltd dated 12 October 2023 but modified to show:
 - a) Any changes required under Condition 1;
 - b) Any recommendations contained within the arborist report endorsed under condition 14 of this permit.
 - c) Any hydrant booster enclosure, electricity supply, gas and water meter boxes be designed to be incorporated into the landscape setting;



- d) The detail of all proposed paving including permeable paving within the tree protection zone of the street tree
- e) The location of external lighting (if any); and
- f) The provision of an in-ground, automatic watering system linked to rainwater tanks on the land servicing the main garden areas.

all to the satisfaction of the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit.

- 4 Before the use starts or occupation of the building, 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 thereafter.
- 5 All landscaping works shown on the endorsed landscape plan(s) must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.

Waste Management Plan

- 6 Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be approved by the Responsible Authority. The plan must be generally in accordance with the Waste Management Plan prepared by SALT (Version F01) dated 29 June 2022 but revised to show the changes to the amended development layout in accordance with the amended plans prepared by The Ellis Group Architects (Issue P5) dated 1 September 2023, and changes required under Condition 1.

When approved, the plans will be endorsed and then form part of the Permit. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Construction Management Plan

- 7 Prior to the commencement of any site works (including any demolition, vegetation removal and excavation), a Construction Management Plan (CMP) must be submitted to and approved by the Responsible Authority. Once approved, 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) Pedestrian and cyclist access through and around the construction site including ongoing connections to the adjoining shared user path network;
 - b) Appropriate measures to control noise, dust and water and sediment laden runoff;



- c) Appropriate measures to prevent silt or other pollutants from entering into the Council's drainage system or onto the road network;
- d) Appropriate measures relating to removal of any 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 or drainage system;
- f) A program for the regular cleaning and maintenance of the surrounding road surfaces;
- g) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves;
- h) Measures to provide for public safety and 24 hour site security;
- i) A plan showing the location of parking areas for all construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to the surrounding location;
- ⌘) A Traffic Management Plan showing truck routes to and from the site;
- k) A swept path analysis, using the largest truck anticipated on site, demonstrating the ability of trucks to enter and exit the site in a safe and timely manner.
- ⌘) Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the CMP;
- ⌘) The provision of 24 hour contact details of key construction site staff; and
- n) Restriction on hours of work on site, including demolition, excavation or general construction works, to 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)
 - No works are permitted on Sundays or Public Holidays.

Unless prior written consent is provided by the Responsible Authority these hours cannot be varied.



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.

Sustainable Management Plan (SMP)

- 8 Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Management Plan must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the Sustainability Management Plan prepared by Frater Consulting Services dated 19 August 2022 but amended to show the changes to the amended development layout in accordance with the amended plans prepared by The Ellis Group Architects (Issue P5) dated 1 September 2023, and changes required under Condition 1.

Car Parking Management Plan (CPMP)

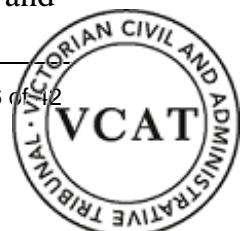
- 9 Before the use commences, a Car Park Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Car Park Management Plan will be endorsed and will form part of this permit. The Car Park Management Plan must address, but not be limited to, the following:
 - a) The management of car parking spaces including details of how to maximise use of the on site car park;
 - b) Details of way-finding, cleaning and security of end of trip bicycle facilities;
 - c) A schedule of all proposed signage including directional arrows and signage, informative signs indicating location of disabled bays and bicycle parking, exits, restrictions, pay parking system etc;
 - d) The collection of waste and garbage including the separate collection of organic waste and recyclables, which must be in accordance with the Waste Management Plan required by this Permit; and,
 - e) Details regarding the management of loading and unloading of goods and materials.

Ongoing Car Park Management Plan Requirement

- 10 The provisions, recommendations and requirements of the endorsed Car Park Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Detailed Site Investigation

- 11 Prior to the commencement of buildings and works on the site, including demolition, the Detailed Site Investigation report prepared by Environmental Earth Sciences dated 19 October 2022 must be endorsed and form part of this permit.



Use of Land

- 12 There must be no more than 90 children in the childcare centre premises at any one time.
- 13 The childcare centre use may operate only between the hours of 6:30am to 7pm Monday to Friday.

Tree Protection

- 14 Prior to the commencement of buildings and works a revised arborist report must be prepared to the satisfaction of the responsible authority. Once approved, the report will be endorsed and form part of this permit. The report must be generally in accordance with the report prepared by Urban Forestry Victoria Pty Ltd dated 15 June 2022 and the requirements of the *Australian Standard, Protection of Trees on Development Sites (AS 4970-2009)* but modified to include:
 - a) A revised calculation of the encroachment into the Tree Protection Zone of the street tree including any encroachment by driveways, retaining walls or services.
 - b) Details of any changes recommended to the proposed development including landscaping, accessways, retaining walls or services considered necessary to maintain the health and viability of the street tree;
 - c) Details of any tree protection methods necessary to protect the tree during construction such as tree protection fencing.
- 15 All works must be undertaken in accordance with the recommendations of the arborist report endorsed under condition 14 to the satisfaction of the responsible authority.

Car Parking and Accessways

- 16 A minimum of 19 parking spaces are to be provided for the childcare centre use at all times and suitably labelled/signed as such.
- 17 Before the uses start, areas set aside for parked vehicles and access lanes 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, except where specified by arborist report endorsed under condition 14 of this permit to protect the street tree;
 - 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.

- 18 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed in accordance with the City of Monash standards, to the satisfaction of the Responsible Authority.
- 19 Any redundant vehicle crossover must be removed and replaced with kerb and channel. The footpath and nature strip are to be reinstated to the Satisfaction of Council.
- 20 The loading and unloading of goods from vehicles must only be carried out on the subject land.

Services and Plant Equipment

- 21 All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view, to the satisfaction of the Responsible Authority.
- 22 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.
- 23 No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.
- 24 Air-conditioning and other plant and equipment installed on or within the buildings must be so positioned and baffled that any noise emitted complies with the appropriate Australian Standards and EPA requirements.

Drainage & Stormwater

- 25 A plan detailing the stormwater drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of any works. The plans are to show sufficient information to determine that the drainage and civil works will meet all drainage requirements of this permit.
- 26 The site must be drained to the satisfaction of the Responsible Authority.
- 27 No polluted and/or sediment laden stormwater runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 28 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.



Satisfactory Continuation

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

Signage

- 30 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.
- 31 The sign must be constructed and maintained to the satisfaction of the Responsible Authority.
- 32 No flashing, intermittent or changing colour light is permitted to be displayed, except with the prior written consent of the Responsible Authority.
- 33 If illuminated, the childcare centre sign located on the front of the building must only be illuminated between the hours of 6:30am to 7pm, except with the prior written consent of the Responsible Authority.

Suburban Rail Loop Authority (SRLA) Conditions (Ref: SCO15/2022/10)

- 34 Unless otherwise agreed in writing with the Suburban Rail Loop Authority, before the development starts (including demolition and excavation), detailed design drawings must be submitted to the satisfaction of the Suburban Rail Loop Authority. When approved, the plans will be endorsed by the Responsible Authority and will then form part of the permit. The plans must be drawn to scale with dimensions, be generally in accordance with the plans by The ELLIS Group Architects date stamped 30 June 22 and annotated as Issued for Town Planning Purposes Only, but modified to show:
- a) all excavation and footing details in accordance with the Engineering Report required by Condition SC3 (Engineering Report) below
 - b) excavation depths to be shown at Australian Height Datum (AHD) on floor plans and elevations;
 - c) foundations and footing designs of all buildings, structures and retaining walls, (including pile designs if proposed and associated loadings if applicable).
- 35 Unless otherwise agreed in writing with the Suburban Rail Loop Authority, before the development starts (including demolition and excavation) and before the submission of plans under Condition SC1 (Amended Plans), the permit holder must identify a suitably qualified engineer. The engineer will prepare an Engineering Report that will advise on design, management, and construction techniques of the development to prevent any impact on Suburban Rail Loop East and associated infrastructure.



- 36 Unless otherwise agreed in writing with the Suburban Rail Loop Authority, before the development starts (including demolition and excavation) and before the submission of plans under Condition SC1 (Amended Plans), an Engineering Report from a suitably qualified engineer appointed in accordance with Condition SC2 (Appointment of Engineer) must be submitted to and approved by the Suburban Rail Loop Authority. The report must outline the design, management, and construction techniques to be implemented prior, during and following construction to prevent any impact on Suburban Rail Loop East and associated infrastructure. Once approved, the Engineering Report will form part of the planning permit. All relevant structural and geotechnical issues must be considered, and the report must demonstrate the following:
- a) that the building footings will not compromise the structural integrity of, or damage or displace Suburban Rail Loop East and associated infrastructure. In this case, demonstrating that the increase in unfactored loading from the footings and piles, if adopted, at RL 92.2 m AHD beneath the south eastern corner of the building does not exceed 50 kPa would be considered to satisfy this requirement (unloading from basement excavations should not be included in this assessment);
 - b) any hold points that will require an inspection by the Suburban Rail Loop Authority (in accordance with Condition SC5 (Inspection by SRLA) (below) and approval prior to releasing the hold points;
 - c) that the development and construction methods will appropriately manage and mitigate any impacts from construction vibration on the Suburban Rail Loop East and associated infrastructure.
- 37 All design, excavation and construction must be undertaken in accordance with the Engineering Report approved under Condition SC3 (Engineering Report) (above), unless alterations or modifications are approved in writing by the Suburban Rail Loop Authority.
- 38 Where any alterations or modifications to the plans endorsed under Condition SC1 (Amended Plans) are not consistent with the Engineering Report prepared in accordance with Condition SC3 (Engineering Report) (above), the prior written consent of the Suburban Rail Loop Authority must be obtained.
- 39 Unless otherwise agreed in writing with the Suburban Rail Loop Authority, before development starts (including demolition and bulk excavation), a Demolition and Construction Management Plan must be submitted to the satisfaction of the Suburban Rail Loop Authority. The Demolition and Construction Management Plan must include details of (but not be limited to) management proposals to minimise impacts to Suburban Rail Loop East and associated infrastructure during demolition and construction, and must set out objectives and performance and monitoring requirements for:



- a) the demolition and construction program;
 - b) any demolition, excavation or construction mitigation measures identified in the Engineering Report approved under Condition SC3 (Engineering Report).
 - c) protection of infrastructure to ensure Suburban Rail Loop East and associated infrastructure is not damaged during demolition or construction;
 - d) measures to ensure that all works on the land will be carried out in accordance with the Demolition and Construction Management Plan.
- 40 All demolition and construction works must be carried out in accordance with the approved Demolition and Construction Management Plan. The Demolition and Construction Management Plan must be implemented at no cost to the Suburban Rail Loop Authority.
- 41 Unless otherwise agreed in writing with the Suburban Rail Loop Authority, the permit holder must ensure that no Suburban Rail Loop East infrastructure, assets, or services are damaged or altered as a result of the development. Any damage must be rectified to the satisfaction of the Suburban Rail Loop Authority, at the full cost of the permit holder.
- 42 Any boreholes, geotechnical investigations or intrusive ground investigations must be first approved in writing by Suburban Rail Loop Authority. Any submission to Suburban Rail Loop Authority for approval must include, to the satisfaction of Suburban Rail Loop Authority, details of their location and depth, and the methods and management processes that will be adopted to avoid impacts to the Suburban Rail Loop structures.
- All boreholes must be backfilled to the satisfaction of Suburban Rail Loop Authority using a grout bentonite mix (3% bentonite) or satisfactory equivalent and in accordance with Southern Rural Water (SRW) licence conditions.
- 43 No development (including demolition and excavation) may commence until confirmed in writing by Suburban Rail Loop Authority (having regard to Suburban Rail Loop operations in proximity to the subject site). The permit holder must give Suburban Rail Loop Authority at least 10 business days' notice of the expected date of commencement.

Melbourne Water Conditions (Ref: MWA-1292576)

- 44 To minimise damage to the building from flooding, the building must be constructed with finished floor levels no lower than 300 millimetres above surrounding finished ground surface levels.

Expiry of permit for use & development

- 45 This permit as it relates to use will expire if the use does not commence within five (5) years after the issue date of this permit.



In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the period referred to in this condition.

- 46 This permit will expire if one of the following circumstances applies:
- a) The development is not started within three years of the issue date of this permit.
 - b) The development is not completed within five years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

– End of conditions –

