

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1424/2023

<b>APPLICANT</b>	Mariusz Maderski
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>RESPONDENT</b>	Fortune Alliance Development Pty Ltd
<b>SUBJECT LAND</b>	280-284 Highbury Road MOUNT WAVERLEY VIC 3149
<b>HEARING TYPE</b>	Compulsory conference
<b>DATE OF HEARING</b>	23 April and 6 May 2024
<b>DATE OF ORDER</b>	6 May 2024

### ORDER

#### Permit amended

- 1 In application P1424/2023 the decision of the responsible authority is varied.
- 2 Planning permit TPA/47694 is amended and an amended permit is directed to be issued for the land at 280 – 284 Highbury Road, Mount Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The amended permit allows:  

Buildings and works to the existing buildings and use of the buildings as a childcare centre and education centre, and alteration of vehicle access to a Road in a Transport Zone 2.

#### Hearing vacated

- 3 The hearing scheduled at **10:00am on 1 and 2 July 2024** is vacated. No attendance is required.

Alison Glynn  
**Senior Member**



## APPEARANCES

For applicant	Mariusz and Marianna Maderski
For responsible authority	Sally Moser and Jeanny Lui
For respondent	Clare Chadderton town planner of Keen Planning Pty Ltd.

## REMARKS

### Full settlement

- 1 This matter involves an application pursuant to section 82 of the *Planning and Environment Act 1987* for a review of the Monash City Council to amend an existing permit for use and development of a childcare centre to include the use of an education centre.
- 2 At the compulsory conference, the parties reached agreement and request orders by consent. This order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 3 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
  - the responsible authority is of the opinion that the amended permit is appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987 (Act)*, including the balanced application of the strategies and policies of the Monash Planning Scheme (**Planning Scheme**) and is otherwise in conformity with the provisions of the Planning Scheme and the Act;
  - the proposed orders will not result in any change to the proposed use and development which would materially affect any person other than the parties to the proceeding.
- 4 Based on the information available to the Tribunal, I consider it is appropriate to give effect to the settlement reached by the parties pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*.

Alison Glynn  
**Senior Member**



**APPENDIX A**

<b>PERMIT APPLICATION NO:</b>	TPA/47694/A
<b>LAND:</b>	280-284 Highbury Road MOUNT WAVERLEY VIC 3149
<b>WHAT THE PERMIT ALLOWS:</b>	
<ul style="list-style-type: none"> <li>Buildings and works to the existing buildings and use of the buildings as a childcare centre and education centre, and alteration of vehicle access to a Road in a Transport Zone 2.</li> </ul> <p>in accordance with the endorsed plans.</p>	

**CONDITIONS**

**Amended Permit Conditions**

- 1 Before the development starts, three copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. The submitted plans must clearly delineate and highlight any changes. When approved the plans will be endorsed and will then form part of the permit.
  - (a) The plans must be generally in accordance with the plans submitted with the application, but modified to show:
  - (b) Acoustic fencing constructed along the southern boundary (common boundary with 3 Jubilee Street) and western boundary (common boundary with 4A, 4B and 6 Coronation Street).
  - (c) The common boundary fence with 4A Coronation Street reconstructed to a revised height of 1.8 metres from the level of the pedestrian walkway on northern side of the common boundary (with 4A Coronation Street).
  - (d) Notation to read ‘the existing Highbury Road crossings to be removed and replaced with kerb and channel. The footpath and naturestrip are to be reinstated to the satisfaction of Council.
  - (e) **Reference on the site plan referring to the management of car parking of the child care centre and education centre in accordance with the Car Parking Management Plan under Condition 34.**
  - (f) **An additional two (2) car parking spaces within the Jubilee Street car park to be line-marked for staff.**



- 2 The development and use as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 3 Once the development and use has started it must be continued and completed to the satisfaction of the Responsible Authority.
- 4 A maximum of 145 children may be accommodated on site at any one time.
- 5 **The child care centre may operate only between the hours of 6am to 6:30pm Monday to Friday inclusive unless the Responsible Authority gives consent in writing.**
- 6 The amenity of the area must not be detrimentally affected by the use or development, through the:
  - (a) transport of materials, goods or commodities to or from the land;
  - (b) appearance of any building, works or materials;
  - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
  - (d) presence of vermin.
- 7 Before the development starts, a construction management plan must be prepared and submitted to the Responsible Authority for approval. The plan must be to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
  - (a) measures to control noise, dust and water runoff;
  - (b) prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
  - (c) the location of where building materials are to be kept during construction;
  - (d) site security;
  - (e) maintenance of safe movements of vehicles to and from the site during the construction phase;
- 8 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.
- 9 Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan for the collection and disposal of garbage and recyclables for all uses on the site. The Waste Management Plan shall provide for:
  - (a) The method of collection of garbage and recyclables for uses;
  - (b) Designation of methods of collection including the need to provide for private services or utilisation of council services;



- (c) Appropriate areas of bin storage on site and areas for bin storage on collection days;
- (d) Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
- (e) Litter management.

A copy of this plan must be submitted to Council for approval.

- 10 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.
- 11 All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.
- 12 A landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. The plan must show the proposed landscape treatment of the site including:-
  - the location of all existing trees and other vegetation to be retained on site
  - provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development
  - planting to soften the appearance of hard surface areas such as driveways and other paved areas
  - a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material
  - the location and details of all fencing
  - the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site
  - details of all proposed hard surface materials including pathways, patio or decked areas

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

- 13 Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.



- 14 Before the use and development permitted starts, 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;
  - (d) drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
  - (e) line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.
- 15 Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
- 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. The internal drainage system may include either:
- a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
  - shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
  - another Council approved equivalent.
- 18 All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council's Engineering Department prior to drainage works commencing. Further information regarding the design of the on-site detention system is provided in the notes section of this permit.
- 19 The nominated point of stormwater connection for the site is to the north-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the Council pit in the naturestrip to be constructed to Council Standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.
- 20 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
- 21 The existing redundant crossings are to be removed and replaced with kerb and channel. The footpath and naturestrip are to be reinstated to the satisfaction of Council.



- 22 Approval of each proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council's Engineering Department.
- 23 Provision of a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) on the north side of the Coronation Street crossing and on the edge of the exit lane of the Jubilee Street car park crossing to provide a clear view of pedestrians on the footpath of the frontage road.
- 24 The Coronation Street tandem parking spaces are to have a maximum grade measured parallel to the angle of parking of 1 in 20 and in any other direction 1 in 16, in accordance with Section 2.4.6 of the Australian Standard for *Off - Street Car Parking, AS/NZS 2890.1*.
- 25 The new vehicle crossing must be a minimum of 3.0 metres in width and constructed in accordance with the City of Monash standards.
- 26 The accessible parking space should be designed in accordance with the Australian Standard for *Off-Street Parking for people with disabilities, AS/NZS 2890.6*.
- 27 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council Standards.

**Condition required by VicRoads (Ref: 23369/17)**

- 28 Prior to the commencement of the use or occupation of the development, all disused or redundant vehicle crossings must be removed and the area reinstated to the satisfaction of the Responsible Authority (RA) and at no cost to VicRoads or the RA.

VicRoads conditions end-

**Education Centre (Conditions 29 to 31)**

- 29 **The education centre may only accommodate a maximum of 20 students at any one time.**
- 30 **The education centre may conduct classes only between the following hours unless the Responsible Authority gives consent in writing:**
  - **7:15pm to 8:15pm Monday and Tuesday;**
  - **9:30am to 1pm Saturday;**
  - **Closed on Wednesday, Thursday, Friday and Sunday.**
- 31 **The Education Centre must include a minimum interval of 20 minutes between classes on Saturdays.**
- 32 **The Education Centre must conduct a maximum of one (1) class on Mondays/Tuesdays and three (3) classes on Saturdays.**





- 33 The education centre can only be used to provide training facilities to child care workers, ancillary to the existing child care centre.**

**Car Parking Management Plan (Conditions 34- 35)**

- 34 Before the education centre use commences, an amended Car Park Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Car Park Management Plan will be endorsed and will form part of this permit. The amended Car Park Management Plan must be generally in accordance with the Car Park Management Plan prepared by Traffix Group dated July 2023 (Issue D), but modified to reflect the amended proposal (submitted to Council on 17 October 2023) with reduced number of students and operation hours and to modify Section 3.2 to state that Management is to request that staff park on-site.**
- 35 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.**

**Expiry**

- 36 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:**
- The development and use are not started before 2 years from the date of issue.
  - The development is not completed before 4 years from the date of issue.

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

**--- End of Conditions ---**

