 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P848/2018  Permit Application no. TPA/48185 |

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| APPLICANT | Australia Childcare Group Pty Ltd |
| responsible authority | Monash City Council |
| Referral Authority | Vic Roads - Metropolitan South East Region |
| RESPONDENTs | Adrian Hughes & Others, Diptiman Yadav, Phillip Langford, Dorota Galicka-Thomas, Evan Thomas, Kendra Anderson, Garry Busowsky, Clive Robert Cooper |
| SUBJECT LAND | 308-310 Blackburn Road GLEN WAVERLEY VIC 3150 |
| WHERE HELD | Melbourne |
| BEFORE | S.R. Cimino, Member |
| HEARING TYPE | Compulsory conference |
| DATE OF HEARING | 28 March 2019 |
| DATE OF ORDER | 2 April 2019 |

# Order

### Strike out parties

1. Pursuant to section 87 of the *Victorian Civil and Administrative Tribunal Act 1998* and with the agreement of all parties present at the compulsory conference, the following persons are struck out as parties to the proceeding because they failed to attend the compulsory conference as directed by the Tribunal:

Kendra Anderson

Garry Busowsky

### Amend application

1. Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| Prepared by: | Ernest Edmund Group |
| Drawing numbers: | TP-01 to TP-20, all marked Revision A |
| Dated: | 28 March 2019 |
| Prepared by | John Patrick Landscape Architects |
| Drawing Number | L-VCAT01 |
| Date | 8 March 2019 |

### Grant permit

1. In Application no. P848/2018, the Responsible Authority’s decision is set aside.
2. In permit application no. TPA/48185 a permit is granted and directed to be issued for the land at 308-310 Blackburn Road GLEN WAVERLEY VIC 3150 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

* Use and development of a childcare centre;
* Removal of vegetation under the Vegetation Protection Overlay Schedule 1;
* Alteration of access to a road in the Road Zone Category 1.

1. The hearing listed to commence on **5 August 2019** is cancelled and the dates vacated.

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

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# Appearances

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| For applicant | Ms L. Eastoe, solicitor, Best Hooper |
| For responsible authority | Mr C. Smith, town planner |
| For respondent | Mr Adrian Hughes for Adrian Hughes and Others  Mr Evan Thomas in person and for Diptiman Yadav and Clive Robert Cooper  Ms Dorota Galicka-Thomas in person  Mr Philip Langford  No appearance for Kendra Anderson and Garry Busowsky |

# reasons

1. This matter involves an application under Section 77 of the *Planning and Environment Act 1987* to review Monash City Council’s decision to refuse a permit for the use and development of the subject land for a childcare centre.
2. At the compulsory conference, the parties in attendance reached agreement based on amended plans which essentially reduce the size of the building, increase setbacks, improve landscaping, maintain parking above the rate required under Clause 52.06 and reduce the number of child care places to 70.
3. In giving its consent, the Council confirms that the changes shown on the substituted plans do not give rise to new issues in terms of impacts on the amenity of neighbouring properties and notice of amended plans is not required.
4. The parties attending the compulsory conference also agree that that those not attending should be struck out as parties. I agree that in circumstances where the parties attending the compulsory conference have reached agreement, it is appropriate to strike out those who have not attended as their failure to attend prejudices the ability for the agreement to be implemented.
5. I regard the consent of the responsible authority to be a confirmation to the Tribunal that:
   * + - 1. the responsible authority is of the opinion that the permit is appropriate having regard to the matters it is required to consider under section 60 of the Act, including the balanced application of the strategies and policies of the relevant planning scheme and is otherwise in conformity with the provisions of the planning scheme and the *Planning and Environment Act 1987*;
         2. the proposed orders will not result in any change to the proposed use or development which would materially affect any person other than the parties to the proceeding.
6. Based on the information available to the Tribunal, I consider it is appropriate to make these orders pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*.

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

# Appendix A – Permit Conditions

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| Permit Application No | TPA/48185 |
| Land | 308-310 Blackburn Road GLEN WAVERLEY VIC 3150 |

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| What the permit allowS |
| In accordance with the endorsed plans:   * Use and development of a childcare centre; * Removal of vegetation under the Vegetation Protection Overlay Schedule 1; * Alteration of access to a road in the Road Zone Category 1. |

## 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.

The plans must be generally in accordance with the plans by Ernest Edmund Group, drawing nos. TP-01 to TP-20 (inclusive) all marked Revision A and dated 28 March 2019 plans but modified to show:

* 1. Provision of not less than 16 car spaces.
  2. Car spaces 12 and 14 converted to a turning bay area.
  3. The turning bay area, adjacent to car space 8, converted to a car space.
  4. Within the east boundary setback the play area south of the baby room to be set aside for landscaping only and not used for a play area.
  5. Measures to ensure that the landscape area within the east setback is not used as a play area.
  6. Any changes required by the acoustic report required by condition 2.
  7. The following changes to the basement car park:
     1. not less than 6 spaces set aside for staff
     2. Not less than 6 spaces set aside for parents.
     3. The remaining spaces set aside for joint use.
     4. Any tandem space to be allocated for staff.
  8. A corner splay or area at least 50% clear of visual obstruction (or with a height of less than 1.2m), which may include adjacent landscaping areas with a height less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) on both sides of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.

1. Prior to the endorsement of plans, an acoustic report prepared by a suitably qualified acoustic engineer must be submitted to and approved to the satisfaction of the Responsible Authority. This report must include:
   1. Detail of the design of acoustic fencing along the north and east boundaries.
   2. Detail of acoustic measures for first floor balcony.
   3. Treatment/screening around any rooftop plant equipment.
   4. The acoustic fence along the north boundary must be a height of 2m, except towards the frontage where its height must taper down the front boundary to the satisfaction of the Responsible Authority.
   5. The height of the acoustic fence on the east boundary must be a height of 2.4m, except where its height must taper down to 1.95m, commencing at the front of the house at 29 Fiander Avenue down toward the Fiander Avenue frontage, to the satisfaction of the Responsible Authority.
   6. The acoustic fencing to be constructed using a suitable timber cladding material that achieves a mass of a least 10 kg/m2.
   7. The fence shall have no gaps or holes in it, or the likelihood of such occurring through natural causes or deformations thus allowing noise to pass through.
   8. The fencing must be designed and built in an acceptable manner so that noise will not pass underneath it.
   9. Details of any acoustic treatment to the first floor east facing wall and windows to attenuate the emission of noise.
   10. Any other acoustic measures (physical or operational) required to minimise noise to adjoining residential properties.
2. Before the use commences, the acoustic fencing and other measures as required by the endorsed acoustic report under condition 2 must be erected and maintained to the satisfaction of the Responsible Authority
3. The use and development must comply with the recommendations of the endorsed acoustic report, required under condition 2, at all times to the satisfaction of the responsible authority.
4. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
5. There must be not more than 70 children on the premises at any one time.
6. Unless with the prior written consent of the Responsible Authority the childcare centre must only operate between the following hours:

* Monday to Friday – 7.00 am to 6.00 pm

1. Adequate provision shall be made for the storage and collection of garbage and other solid wastes and these facilities are to be located on the site to the satisfaction of the Responsible Authority.
2. 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.
3. Noise from the premises must comply with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1).
4. The amenity of the area must not be detrimentally affected by the use or development, through the:
   1. transport of materials, goods or commodities to or from the land;
   2. appearance of any building, works or materials;
   3. emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
   4. presence of vermin.
5. The construction works associated with the permitted development must only be carried out during the following hours:

* Monday to Friday (inclusive) – 7:00am to 6pm;
* Saturday – 9am to 1pm;
* Saturday – 1pm to 5pm (only activities associated with the erection of buildings);

unless otherwise approved in writing by the Responsible Authority.

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 prior to the commencement of any works. This plan must be generally in accordance with the John Patrick Landscape plan L-VCAT01 dated 8.3.2019, but modified to show:
   1. Any changes required under condition 1.
   2. Provision of canopy trees with spreading crowns within the dedicated landscape areas of the site.
   3. 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.
   4. the location and details of all fencing.
   5. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
   6. 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.

1. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.
2. The proposed vehicle crossing is to be constructed in accordance with the Monash City Council standards.
3. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The on-site drainage system must prevent discharge from all driveways onto the footpath. Such a system may include either:

* a trench grate (150 mm minimum internal width) located within the property; and/or
* shaping the driveway so that water is collected in a grated pit on the property; and or
* another Council approved equivalent.

### VicRoads condition

1. Prior to the commencement of the use of the development hereby approved, all disused or redundant vehicle crossings on Blackburn Road must be removed and the area reinstated to the satisfaction of the responsible authority and at no cost to VicRoads.

### End of VicRoads conditions

1. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
2. 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 is not started before 2 years from the date of issue*.*
* The development is not completed before 4 years from the date of issue*.*
* The use is not commenced within 2 years from completion of the development.

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

**– End of conditions –**