

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11687/2021  
PERMIT APPLICATION NO. TPA/52528

### CATCHWORDS

Section 79 *Planning and Environment Act 1987*, Monash Planning Scheme, Neighbourhood Residential Zone – Schedule 4, Vegetation Protection Overlay – Schedule 1, Childcare centre, access, visual bulk, landscaping, noise, visual amenity, neighbourhood character, need.

<b>APPLICANT</b>	Zwiers Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>RESPONDENTS</b>	M Wickramasinghe J and T Geisler
<b>REFERRAL AUTHORITY</b>	Head, Transport for Victoria
<b>SUBJECT LAND</b>	279-281 Jells Road WHEELERS HILL VIC 3150
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	20 and 21 April 2022
<b>DATE OF ORDER</b>	10 May 2022
<b>CITATION</b>	Zwiers Pty Ltd v Monash CC [2022] VCAT 502

### ORDER

#### Permit granted

- 1 In application P11687/2021 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/52528 a permit is granted and directed to be issued for the land at 279-281 Jells Road, Wheelers Hill in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - Use and development of a child care centre,
  - alteration of access to a road in Transport Zone 2 and
  - removal of vegetation within a Vegetation Protection Overlay

Alison Glynn  
Member



## APPEARANCES

For Zwiery Pty Ltd	Mr Chris Taylor, solicitor of Planning Property Partners. He called the following witnesses: <ul style="list-style-type: none"><li>• Mr Marco Negri, town planner.</li><li>• Mr Tim Vernon, Landscape architect.</li><li>• Mr Leigh Furness, traffic engineer.</li></ul>
For Monash City Council:	Mr David Vorchheimer, solicitor of HWL Ebsworth.
For Head, Transport for Victoria	No appearance
For Melanie Wickramasinghe	Ms Shenelle Teunissen
For J and T Geisler	Mr Trevor Geisler

## INFORMATION

Description of proposal	Based on the substituted application plans the proposal is for the use and development of a 129 place childcare centre. The proposal includes basement car parking for staff and client drop off/pick up and then two levels of building above ground. The ground level provides children activity rooms and outdoor play areas. The upper area accommodates staff amenity and administration.
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. <sup>1</sup>
Planning scheme	Monash Planning Scheme.
Zone and overlays	Neighbourhood Residential Zone – Schedule 4 ( <b>NRZ4</b> ) Vegetation Protection Overlay – Schedule 1 ( <b>VPO1</b> )

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<sup>1</sup> Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.



Permit requirements	<p>Use and development of a childcare centre in NRZ4.</p> <p>Removal two existing trees as directed by VPO1.</p> <p>Alteration of access to a road in a Transport Zone 1.</p>
Relevant scheme policies and provisions	<p>Clauses 11, 13, 15.01, 17.01, 18, 19.02, 21.04, 21.08, 22.04, 22.09, 32.09, 42.02, 52.06, 53.18, and 65.</p>
Land description	<p>The site has a 24.38 metre frontage to the west side of Jells Road and a depth of 101.19 metres, creating a site area of 2,467sqm. The property currently contains a large double storey house, swimming pool and rear pool house. The site has a single access to Jells Road via a central drive that has a loop driveway within the property.</p> <p>To the north of the site are seven dwellings immediately abutting the site with six of these having their rear yards facing the review site. The seven dwellings form part of a multi-unit development with a central drive north of these seven dwellings. To the rear are two dwellings across two sites. To the south are three dwellings, one of which faces Jells Road, with a side abuttal to the review site. To the rear of these are two dwellings facing Orli Court with rear yards facing the side of the review site.</p>
Tribunal inspection	<p>An accompanied inspection of the site as well as 3/275 and 6/275 Jells Road, to the north of the site was undertaken on 22 April 2022.</p>

## REASONS<sup>2</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Zwiers Pty Ltd (**the applicant**) has asked the Tribunal to review a deemed refusal by Monash City Council (**the council**) to grant a planning permit for a childcare centre at 279 – 281 Jells Road, Wheelers Hill (**the review site**). The refusal to grant a planning permit is supported by two objector parties to the proceeding that have dwellings to the north of the review site. A number of other statements of grounds from non-parties also support the council refusal.
- 2 The council's grounds of refusal and the statements of grounds of adjoining neighbours raise a number of matters that I summarise as three key questions I need to address:
  - a Is a childcare centre a suitable use of the review site having regard to relevant policies and provisions of the Monash Planning Scheme? In particular does the use acceptably meet the land use zone and clause 22.09 provisions of the Monash Planning Scheme (**the planning scheme**)?
  - b Does the proposed childcare centre development adequately respect the surrounding residential character of the area? In particular does the proposal result in excessive height, scale and bulk or insufficient landscaping opportunities to address the character setting?
  - c Does the proposal result in any unreasonable amenity impacts on the neighbourhood? In particular is the proposal likely to result in unreasonable noise, traffic, or car parking issues?
- 3 I address these issues below. In summary, I have concluded that a permit should be granted subject to a number of conditions. My reasons follow.

### IS THE SITE SUITABLE FOR A CHILDCARE CENTRE USE?

- 4 The council's oral submission to the Tribunal is that it accepts the use is permissible in the zone, but that a less intense form of the use is warranted given that the site is not in a preferred location set by policy for non-residential use and development in residential areas, set out at clause 22.09 of the planning scheme. Objector parties also question the need for a childcare centre at this site given there is an early learning centre to the north-west of the site and another childcare centre approximately 200 metres south of the site at 303-307 Jells Road.

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<sup>2</sup> 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.



## What is proposed?

- 5 The proposal is to establish a 129 place childcare centre through the development of a two storey building, with basement car parking. The proposal is based on plans substituted by interim order of the Tribunal on 22 April 2022. The substituted proposal includes ground and first floor plans as set out in figure 1 below. It also includes site works to generally reduce ground level of the site by up to one metre, and removing two cypress trees at the rear of the site that require a planning permit for their removal due to the provisions of VPO1 applying to the site.

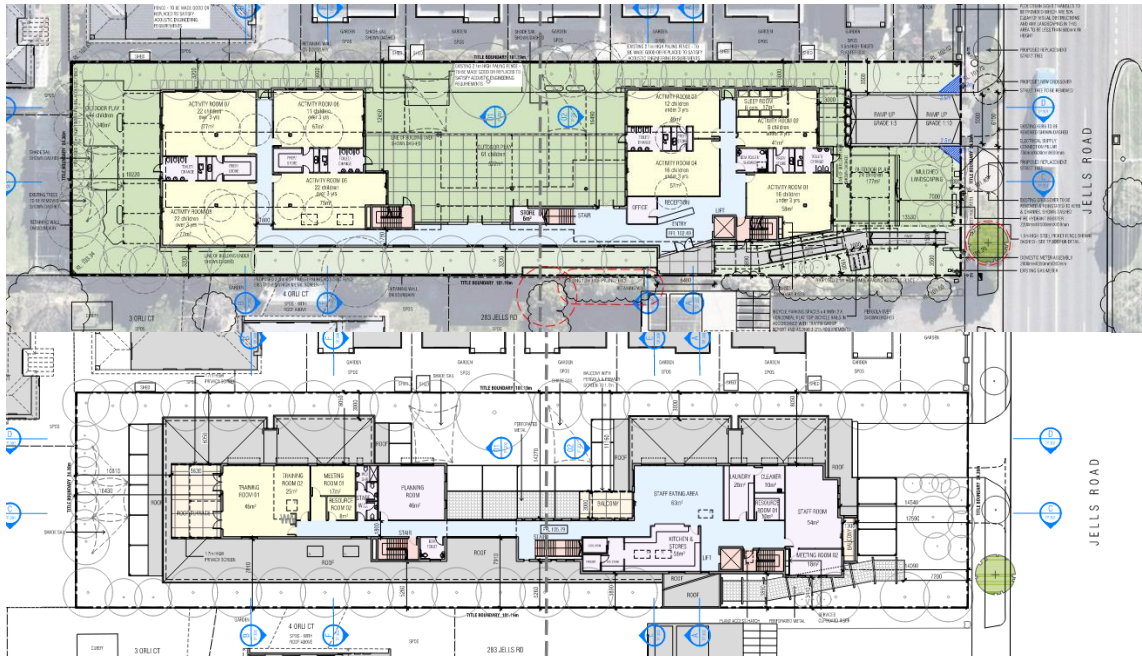


Figure 1 - Ground floor and upper level floorplans of the proposal.

- 6 The proposal relies on all car parking, including drop off and pick up of children, to be accessible via a basement, with the existing driveway to Jells Road moved slightly north to accommodate play space and landscaping space south of the new driveway. This also results in the need to replace an existing street tree.
- 7 The use is proposed to operate between 7:30am and 6:00pm, Monday to Friday. These operating hours are set out in the application material and the applicant submissions<sup>3</sup>.

## What is the physical context?

- 8 The site is relatively large, being close to 2500sqm in area. The site is currently developed with a large, double storey house sitting centrally to the site. It abuts a main road and is in residential environs. The site abuts a number of adjoining dwellings, many of which are on small lots. These

<sup>3</sup> The council submission incorrectly referred to the hours as being 7:30am and 6:30pm. An interim order dated 22 April 2022 alerted parties to what the Tribunal considered was an error in the council submission. Written confirmation was received from the council on 4 May 2022 that the its submission should have correctly referred to operating hours being 7:30am to 6:00pm.



include seven townhouses to the north of the site, six of which have their main secluded open space areas facing south toward the review site. The two objector parties have dwellings located within this row of adjoining townhouses.

- 9 The site contains a large double storey dwelling in the centre of the site, as well as a single storey pool house to its rear. Along the rear boundary are a row of cypress trees, two of which are sufficiently large to trigger the need for a planning permit for their removal in accordance with VPO1.
- 10 Jells Road has a service road to the east, but not on the west side where the site sits. The edge of the Wheelers Hill activity centre is located approximately 400 metres north of the site. An aerial image of the site and immediate surrounds is depicted in figure 2 below.



Figure 2 - Nearmap image of site and surrounds. Image date 4 February 2022. Site marked in blue shading.

## IS THE USE ACCEPTABLE?

- 11 Objectors to the proposal question if there is a need for a childcare centre on the site given there are already a number of other childcare centres nearby. They state that there has been no case made for the need for another childcare centre in the area which they say comprises mostly retirees, elderly people, parents with older children, and therefore there is little demand.
- 12 Economic viability of a centre is not a planning consideration. Rather the question of need in assessing planning proposals is relevant only to the extent that a social benefit may derive from meeting a need and that this may be a factor in balancing against competing disbenefits, such as adverse amenity impacts of a proposed use. As commented in *Hume Childcare Pty Ltd v Maroondah CC*<sup>4</sup>

[23] The Tribunal has often commented that in assessing whether a proposal services a local need, a proposal does not need to demonstrate economic viability. Economic viability is a matter

<sup>4</sup> [2020] VCAT 767 – Paragraph

that sits outside of planning considerations. The question of need, in a town planning sense, is usually to determine if there is a need for a service that may outweigh amenity impacts that may arise from the proposed use. For a non-residential use in a residential zone, this is in effect a question of whether the use, that may have character and amenity impacts that are different to residential use, can be justified and is reasonable because of the benefits the use brings to the area by way of fulfilling a local need for that use.

[24] An often-cited example of balancing need against amenity is that of the establishment of a helipad at the Alfred Hospital<sup>5</sup>. In that case, there were clear demonstrable amenity impacts, but the strong community need to have the helipad, in that specific location, outweighed the amenity concerns.

- 13 The council confirmed in its oral submissions at the hearing that it does not question need per se, but rather submits that the objectives of the zone and relevant policy to guide the use of non-residential uses in residential areas directs that this site is not an ideal location for a childcare centre and therefore should only support a lesser intensity of use.
- 14 The site is located in NRZ4 where the use of a childcare centre, as well as its development, requires a planning permit. The objectives of the zone include:
  - To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.
- 15 Clause 22.09 of the planning scheme, titled 'Non-Residential Use and Development in Residential areas' sets out policy to assess if a site is an appropriate location for a non-residential use. Clause 22.09-4 then sets specific locational criteria for particular non-residential uses, including childcare centres. These criteria state:
  - Locate discretionary non-residential uses in residential areas adjacent to existing activity centres and on higher order and busier streets and roads, and particularly on corner sites.
  - Avoid locating in heritage precincts and in lower order residential streets and cul-de-sacs.
  - Avoid a concentration of non-residential uses in any particular area where the cumulative impact on residential amenity is unacceptable.
  - Provide appropriate buffers and interface between commercial, residential and industrial land uses.
- 16 I am satisfied that the use sufficiently meets the location criteria because:

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<sup>5</sup> See *Alfred Hospital v City of Malvern* (1986) 4 PABR 334.



- The site is located on a higher order road. While not on a corner site, the proposal can provide entry and exit in a forward motion that has been accepted by the road manager.
- The site is not in a heritage area or lower order residential street.
- Nothing was put to me to indicate that the use on this site will lead to a cumulative impact of non-residential uses in the area. While there is another childcare centre nearby there is no indication that an excessive accumulation of amenity impacts arise from this location. I address specific amenity impacts below.
- The site does not provide a buffer between residential and commercial uses, but it is within walking distance to some other interconnected services including a local primary school, the Wheelers Hill Activity Centre and a number of bus routes (although there is no bus stop immediately proximate to the site).

- 17 In addressing if the location for the use is appropriate, the applicant also relied on the planning evidence of Mr Negri who referred to strategy at clause 21.16 of the planning scheme, (Wheelers Hill Neighbourhood Activity Structure Plan) . In particular Mr Negri’s evidence comments that clause 21.16 includes support for non-residential uses in the Wheelers Hill Neighbourhood Activity Centre area ‘if they provide services to the local community, are located on main roads, and do not detrimentally affect the residential amenity’. Mr Negri’s evidence is that the proposal responds to this land use direction as it is an area that sits within what can be described as part of the ‘Interface Residential areas’ in the Wheelers Hill Neighbourhood Activity Centre Structure Plan - September 2007.
- 18 Clause 21.16 works together with local policy at clause 22.06, (Wheelers Hill Activity Centre Policy). I noted at the hearing that my reading of the policy at clause 22.06 was, that given the policy states ‘this policy applies to land within and immediately surrounding the Wheelers Hill Neighbourhood Activity Centre as shown on the attached Precinct Plan’ the review site was not affected by this policy as it was not a site marked on the attached plan.
- 19 The applicant contends that the policy has some influence as the policy goes on to describe ‘interface’ areas as including land within 400 metres of the activity centre. I accept that this is a potential reading of the policy, although the introductory statement of the policy application is contradictory. The council, referring to the Wheelers Hill Activity Centre Structure Plan 2007, (that is a reference document to clause 21.16), also commented that the area of influence set out in the maps to this structure plan suggest that the 400 metres is to the core of the activity centre, not the southern edge.
- 20 As also commented by the applicant, nothing much turns on either interpretation given the policy comments in clause 21.16 about non-





residential uses are no different to the criteria set out in clause 22.09 as I have already addressed.

- 21 I am satisfied that the site meets the relevant location criteria set out in clause 22.09 and that a childcare centre is a use that services local community needs. While the use, per say may be acceptable, relevant amenity impacts still need to be considered to determine if the scale of the use is acceptable.

### **IS THE SCALE OF THE USE ACCEPTABLE?**

- 22 A number of amenity impacts were identified by objectors and the council that may impact the area and they say leads to a conclusion that the intensity of the proposed use is too great. I address these impacts below.

#### **Traffic and parking impacts**

- 23 The council has not refused the proposal due to any issue of car parking or traffic. This is noting that local policy at clause 22.09 for assessing non-residential uses in residential zones includes policy that:
- Car parking for a non-residential use should satisfy the needs of users without detriment to the local amenity.
  - Traffic generated by a non-residential use should be appropriate to the street and locality and not adversely affect the existing traffic pattern.
- 24 The only issue of note by the council traffic engineers is that three of the proposed car parking spaces in the plans considered by the council should be reserved for staff only as these are difficult to access. This is a matter that can be addressed by permit condition. The only other issue the council has with the access arrangement is its resulting loss of a street tree from the proposed basement access ramp. I discuss this further below in the discussion of street presentation.
- 25 The proposal was also referred to the Department of Transport, with Jells Road being a State managed road and therefore within a Transport Zone. The department is not opposed to the proposal, subject to some conventional permit conditions.
- 26 Objectors to the proposal question the capacity of Jells Road to absorb the additional traffic from the proposal and also how any overflow, on-street parking will be managed. As a question of traffic, objectors say that the increase in peak hour vehicles will cause further congestion and delays as currently occur at the intersection of Jells Road with Wellington Road to the south.
- 27 Mr Furness' traffic evidence is that conservatively, the proposal may generate an additional traffic load of 26 entry and 26 exit movements into Jells Road in its peak generating hour. This is a conservative figure and I agree is a likely over estimation of real traffic generated by users of the



centre. This is because it assumes all 129 children are on site<sup>6</sup>, and that each child is picked up or dropped off separately (e.g. none are siblings arriving and departing together) and none access the site by other means, including walking. However, I also accept that the projected number of staff travelling to the centre by car may be higher than Mr Furness estimates as his estimate is based on journey to work data for the broader Wheelers Hill area not this specific locality and use attributes. I consider any such under estimation, however, is more than accounted for in the likely over estimation of traffic generated by users of the centre. On balance I accept Mr Furness's projected traffic generation for the centre is a reasonable basis to assess traffic impacts.

- 28 During the AM, PM and school peak periods, the traffic in Jells Road is roughly between 650 and 900 vehicles per hour in each direction.<sup>7</sup> In any of the peak hours, the peak number of vehicle entry and exits to Jells Road from the childcare centre is relatively small and the intersection analysis provided by Mr Furness is that traffic has time to enter and exit the road safely and efficiently. It may add slightly to overall traffic volumes, but not in a way that I envisage will create major detriment to the traffic flows of Jells Road. With this I note that neither the council traffic engineer nor the Department of Transport object to the proposal. I also accept that as an arterial road, Jells Road is designed to accommodate traffic greater than may occur with the likely increase in traffic from the childcare use on this site.
- 29 The proposal includes a basement that provides 32 car spaces, four more than the planning scheme requires for 129 children. Even with this reduced to 30 car spaces to include greater landscaping (that I address further below) the on-site parking provision required by clause 52.06 of the planning scheme is exceeded. All relevant aspects of clause 52.06 of the planning scheme for the design and provision of on-site car parking are met.
- 30 Even if there are occasions where parents or staff choose not to park in the basement, then there is sufficient room in front of the site for on-street parking. I was advised by all parties that due to the speed of traffic, and the function of Jells Road, on-street parking is not attractive and does not regularly occur. This only reinforces that it is likely that users will prefer to use the basement parking that is available, rather than choosing to park on the street. If there is a need to park on the street it is achievable with parking available directly in front of the site.
- 31 In summary I find the use of the site for 129 children is acceptable when assessing it against any car parking or traffic issues.

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<sup>6</sup> I.e. No child is home sick, or away for other reason.

<sup>7</sup> The figures counted in Mr Furness' evidence show hourly traffic counts of 908 (AM peak), 638 (school peak) and 771 (PM peak) heading north, and 690 (AM peak), 816 (School peak) and 729 (PM peak) heading south.



## Noise impacts

- 32 The objectors comment that the proposal will result in unreasonable noise from children playing and also potential noise of cars entering and exiting the entry ramp to Jells Road. The council submits there may also be an unacceptable intensity of noise associated with the pedestrian entry that sits close to the southern side boundary of the site.
- 33 The southern entry in the substituted plans that are the subject of this review include a wall on the south boundary to better enclose the entry space. Most children are likely to enter and exit the site from the basement, but for those that do enter from the main entry I am satisfied this enclosed entry space provides an ability to attenuate any noise impacts.
- 34 The proposal is supported by an acoustic report that assesses potential noise from children playing, mechanical services, waste collection, and also traffic entering and exiting the basement ramp. It is based on the plans considered by the council that was for 149 children and had a design at a higher relative ground level of play areas to adjoining properties. The plans assessed in the acoustic report also included larger upper level terrace areas for staff use. The acoustic report concludes that provided a 2.1 metre high acoustic fence is provided around the play space any noise impacts can be appropriately managed.
- 35 At the hearing the applicant clarified that it is happy to accept permit conditions to:
- a Require the acoustic report to be updated to address the plans as amended.
  - b The requirement for a 2.1 metre high acoustic fence should refer to such a fence being provided, at existing natural ground level, and to a standard to address the findings of an acoustic report that would be updated by permit conditions. The notation on plans that state ‘existing 2.1m high paling fence to be made good or replaced to satisfied acoustic engineering requirements’ needs amendment. The condition should simply require an acoustically attenuated fence at a height of 2.1 metres.
- 36 The objectors commented that the noise assessment prepared as part of the permit application material utilises guidance from the Association of Australasian Acoustical Consultants Guidelines for Child Care Acoustic Assessment October 2013 (**the AAAC guidelines**), but that these guidelines are not included in the planning scheme.
- 37 The AAAC guidelines are not in the planning scheme, but in the absence of any other guidelines for assessing noise from childcare centres existing in the planning scheme, I am satisfied they provide a useful benchmark for assessment and have been similarly used in many other Tribunal cases.
- 38 Based on the acoustic report that assessed a more intense use and potentially more intensive design (that included higher ground levels, large



upper terrace areas and a basement ramp closer to the northern side boundary to existing houses) I am satisfied that noise from the proposal before me can be managed to maintain reasonable amenity. There will be some change in ambient noise, but there is nothing to indicate that unreasonable noise impacts will occur for the intensity of use proposed.

- 39 Permit conditions need to require the existing acoustic report to be updated to assess the plans as directed by condition 1, which in turn are based on the substituted plans, not the plans that form part of the existing acoustic report. Given the comments of the applicant about the 2.1 metre high acoustic fence, the report and plans should also be based on a 2.1 metre high acoustic fence (from existing natural ground level) being provided as part of the development of the 129 place childcare centre.

### **Overlooking and visual bulk**

- 40 There will be a distinct change in visual outlook from a number of the rear yards for a number of the adjoining dwellings where they currently face an open front or rear yard of the review site. However, the interface is well within the conventional tests for visual bulk, using the standard in clause 55.04-1 of the planning scheme as a benchmark. The proposed centre has an overall height at 111.04RL to the top of roof plant, with the pitch of the roof being a maximum of 110.54RL. This is lower than the existing house and is partly achieved by the lower overall ground level proposed for the centre. Relative to the 103RL of adjoining properties the building will be a little over eight metres high. This is well within the maximum nine metre (10 metres on a sloping site) height requirement in NRZ4.
- 41 The proposed wall height closest to the northern boundary of the review site is set in three metres from the rear of the adjoining properties and is only single storey at this setback. The upper level is set back at least eight metres from this adjoining, northern boundary.
- 42 Some neighbours, such as 5/275 Jells Road will face a reduced building form due to the proposed new building being lower and further set back than the existing dwelling on the review land. The existing dwelling, that sits close to properties such as 5/275 Jells Road has a sheer six metres high wall approximately two metres off the review site northern boundary<sup>8</sup>. The existing dwelling on the review site then has a pitched roof above with a ridge height approximately 2.4 metres higher (at RL112.18).
- 43 Other adjoining properties, including 3/275 and 6/275 Jells Road will have new building closer to their boundaries than the existing house and garden, but the new building will still be well within what I consider acceptable for the site context. This is because the height of the proposed building is lowered due to the drop in site level proposed and because there is a proposed three metre, landscaped pathway along the northern site boundary.

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<sup>8</sup> Based on the survey plan forming part of the application material that shows NGL at 103.54RL and a 'top of gutter' RL of 109.76 (6.22metres difference).



As the proposed building is south of the adjoining smaller rear yards of 275 Jells Road there is also no adverse impact from loss of sunlight or increased shadow.

- 44 The proposed upper level windows and balcony areas are screened to avoid any overlooking. The only unscreened area is an upper walkway that is not a habitable space and importantly is transparent to reduce its visual bulk and assist in the character response as I discuss below.
- 45 As a question of amenity impact, I am satisfied the building does not result in any unreasonable visual bulk to adjoining neighbours. The building form is well within the standard<sup>9</sup> that would be acceptable for a development of two or more dwellings on the land. The building does not result in any significant additional shadow to secluded private open space and is located in a way that it should not appear to dominate or loom over any adjoining secluded private open space. I address the broader issue of neighbourhood character below.

### **Other use issues**

- 46 The objectors raise a number of other potential issues including that the proposal may result in a loss of property values and that the use may extend to form other uses due to a request to allow staff to stay on-site up to 9pm at night.
- 47 Firstly, as is the general principle of assessing planning proposals, the question of the impact on property values is not accepted as a valid argument. What is relevant is the issue of the impact on amenity and the orderly planning of an area as directed by the objectives of the *Planning and Environment Act 1987*.
- 48 In relation to the use of the centre out of childcare operating hours for staff use, I firstly note that any such use would need to be for staff undertaking work for the centre itself, not another use of the building. The permit proposal I am assessing is for a childcare centre on this site, not any other use that may occupy the building. If an alternative use, as suggested by Mr Geisler occurred, it would need to be in accordance with uses allowable in the zone and potentially subject to a new planning permit.

### **Hours of operation**

- 49 The application is for operating hours between 7:30am and 6:00pm. In discussion of draft permit conditions, the council included a draft condition that states that staff may remain at the centre for an hour after closure<sup>10</sup>. The applicant explained that this draft condition evolved from a request by the applicant to allow staff to stay on-site until approximately 9:00 or 9:30pm to accommodate time for staff meetings and training.

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<sup>9</sup> Clause 55.04-1.

<sup>10</sup> Noting the draft conditions incorrectly refer to closing at 6:30 and states staff, not children, may remain on-site until 7:30.





- 50 I see no need for such a condition. The hours of operation are the hours that the centre is open as a childcare centre for the care of children. It was agreed that this may include staff arriving shortly before and leaving shortly after the operating hours to service the needs of children arriving or departing at the start and end of the day. By example, I see this is no different to a shop or gymnasium being limited to certain trading hours, but staff arriving and departing just outside of these hours.
- 51 I also see that occasional, ancillary use of the centre outside of normal operating hours for staff meetings or training could occur within the ambit of a permit condition that limits the operating hours of the childcare centre. There is no need to include a condition for staff to stay until a different time. To do so only infers that staff will regularly be staying at the centre till late at night. The application material does not include any such notion and nor did the applicant indicate to me that this would occur. It was suggested that perhaps once a month staff have a meeting that may run until 9:00 or 9:30 at night.
- 52 The condition regarding operating hours also states that the operating hours must not be amended ‘without the written consent of the responsible authority.’ If necessary, a formalisation of hours needed by staff to attend the centre outside of normal operating hours could be considered via a secondary consent once the centre is operating, and staff scheduling can be specifically managed with the written authority of the council.

### **Conclusion**

- 53 I am satisfied that the proposed use does not result in any unreasonable amenity impacts by way of noise, traffic, on-street car parking overlooking, or visual bulk subject to the detail provided in the plans and the proposed operating hours set out in the permit application. In turn I am satisfied that the proposed scale and intensity of use is acceptable to this site. In saying this, I find that the hours of operation should be limited to that sought in the advertised application, being 7:30am to 6:00pm, Monday to Friday.

### **IS THE PROPOSED BUILT FORM AN ACCEPTABLE RESPONSE TO THE NEIGHBOURHOOD CHARACTER OF THE AREA?**

- 54 The development of the childcare centre needs a planning permit in accordance with the NRZ4 provisions. The NRZ4 schedule is titled ‘Dandenong Valley Escarpment Areas’. This is consistent with the neighbourhood character policy at clause 22.01 but not the housing policy at clause 21.04 that identifies the land as within an area of ‘Garden City Character’, being land along Jells Road. I give priority to the NRZ4 schedule provisions given they clearly apply to the site being within NRZ4. This schedule includes the following objectives that are relevant to the consideration of built form:



- To ensure new development maintains the important view lines to the Dandenong Ranges, along the streets and between buildings.
- To ensure development is defined by its spacious and generous garden settings, tall canopy trees and consistent built form and setbacks.
- To encourage open gardens to the street, and the planting and retention of significant trees.

55 The development does not impede any important view line to the Dandenong Ranges. In assessing the other two objectives, decision guidelines at sub-clause 7.0 of the schedule direct a need to consider:

- Whether the proposed development incorporates landscape scheme that contributes to the ‘Dandenong Creek Escarpment’. Specifically, whether the proposal:
  - Provides sufficient and well located open space, primarily unencumbered easements, to provide for a large trees [sic] to be retained or planted within the front, side and rear setbacks, and secluded open space areas. Environmental weeds and artificial grass should not be used.
  - Sites buildings to minimise the need to remove significant trees, and protect significant trees on the site and adjoining properties.
  - Minimises hard paving throughout the site including limiting driveway lengths and providing landscaping on both sides of driveways, and restricting the extent of paving within open space areas.
  - Maximises planting opportunities adjacent to the street by excluding hard paving such as car parking, turning circles and driveways.
  - Includes the potential to break up the appearance of building mass through the provision of space for trees and vegetation between dwellings on the same site.

56 The site currently has an open front yard with limited vegetation in the front and a formal garden setting to the rear. The vast majority of plants on the site are exotic. A preliminary arborist report prepared in October 2020, prior to the application being lodged with the council, identified 38 trees on the review site. Of these it identified 13 trees with ‘attractive amenity and been attributed an arboricultural value of ‘Moderate’. These include:

- four trees to the north of the circular drive being a group of Honey Locust (*Gleditsia triacanthos*) and *Robina*.
- a row of Cocos Palms (*Syagrus romanzoffiana*) by the existing pool.
- three Cypress (*XCupressocyparis leylandii* and *Chamaecyparis lawsoniana*) along the western (rear) boundary and,



- three scattered just-mature ornamental trees.
- 57 The proposal relies on removing all vegetation from the site and planting new vegetation. This includes deep rooted larger vegetation around the perimeter outside of the proposed basement car park. The council and objectors are critical that this basement occupies too much of the site reducing an ability to provide meaningful planting. The basement is set back 14 metres from the front of the site, 10 metres from its rear boundary and 2.8 – 3.5 metres from the side boundaries. The council is also concerned that there has not been adequate justification to remove two of the Cypress trees that trigger the need for a planning permit in accordance with VPO1. I address these issues below.

### **Removal of VPO1 trees**

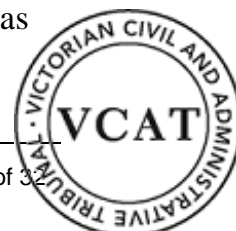
- 58 VPO1 seeks to conserve significant treed environments and ensure that new development complements the garden city character of the neighbourhood. The statement of significance in VPO1 states that ‘the tree canopy presents a “special” leafy character valued by the community in terms of consistent and visible vegetation’.
- 59 A permit is then required to remove or destroy any vegetation that is over 10 metres tall and has a trunk circumference greater than 500mm at 1200mm above ground level. Two of a number of cypress trees that extend along the rear property boundary exceed these trigger points.
- 60 Both of the cypress trees do not provide a traditional ‘canopy’ or ‘leafy’ character due to their more vertical nature and the form of their foliage. They are not seen from the street and offer limited landscape value to the surrounding area, other than to the immediate area of the review site rear yard and to the property to the rear of the site.
- 61 The applicant submits that if needed, the trees can be retained by moving a proposed retaining wall at the rear site boundary to inside the site, retaining the two trees at natural ground level. Mr Vernon’s landscape evidence is that he had prepared his landscape plan on an assumption the trees would be removed on the basis that they offer limited landscape value to the broader character of the area. His view is that a better long term solution is to plant new, native trees that can better contribute to the preferred neighbourhood character sought for the area.
- 62 As a whole of site landscape concept I find the removal of the two VPO1 protected trees acceptable, provided they do form part of a new and comprehensive planting regime that plants a greater number of new, and mostly native trees on the site. I agree with Mr Vernon that the existing two trees offer limited contribution to the ‘special’ leafy character of Monash and that a better medium to long term character solution to the site is to plant new, mostly native canopy trees.



## Removal of other trees and space for new planting

### Side and rear planting

- 63 Of the other medium retention value, non VPO1 protected trees to be removed, a number are palm trees that also have limited canopy value and landscape value to the broader character of the area. The more ornamental trees that offer some landscape value to neighbours are the Honey Locust trees to the north of the site. These trees have spreading crowns. Tree protection policy at clause 22.05 includes an objective to ‘promote the retention of mature trees and encourage the planting of new canopy trees with spreading crowns throughout Monash.’
- 64 I accept these can be removed, provided they are replaced with new canopy trees and the site is generally enhanced with meaningful, deep rooted planting space that can accommodate new planting of trees with spreading crowns.
- 65 Along the northern side of the review site, the proposed basement is set in mostly at 3.5 metres, partly at 2.8 metres. The applicant also offered that part of the central play space where there is currently a 3.5 metre basement setback, could be enlarged by removing car spaces No.s 11 and 12 and replacing these with an indent to the basement. This would provide for an increase in deep rooted planting space of at least 4 x 4 metres, that could accommodate a canopy tree within the play space itself, rather than just at its perimeter. Mr Vernon commented that he had no issue with this, although he was also of the view that such a tree would likewise be limited in view from the street.
- 66 While it would have limited view from the street I find that the loss of the medium retention, Honey Locust trees along the northern boundary, that offer landscape character to the immediate area should be compensated for through more canopy planting. I therefore find the provision of an additional space for a canopy tree located where car spaces 11 and 12 are currently located is an important element to address the character and landscape provisions of NRZ4 and the decision guidelines of VPO1, also noting the tree protection policy of clause 22.05.
- 67 At the hearing I also questioned if some of the perimeter planting could or should be located at natural ground level, rather than at the lower, cut in level of the proposed play space and walkways. This would enable new planting to be located at natural ground level adjacent to adjoining properties and may assist in protecting adjoining existing vegetation. Mr Vernon commented that either scenario could work, however, his view is that lowering all of the site to the play space level allows for landscaping to merge into the play area and accommodate a variety of planting.
- 68 The arborist report comments on the need to protect trees on adjoining sites and refers to a number of trees on the adjoining site to the south as well as some of the trees in rear yards to the north. The arborist report does not



appear to address all of the adjoining trees to the north. In addition to the two Callery Pears identified, a number of other Callery Pears site close to the review site boundary. The rear of 6/275 Jells Road also includes a row of bottlebrushes (*Callistemons*) planted along its fence line.

- 69 Mr Vernon acknowledged that any adjoining trees need to be protected through the inclusion of a tree management plan and identification of tree protection zones. He stated he was confident that the unlabelled trees and shrubs would be protected as they would have limited roots growing into the review site due to existing paving along this side of the review site boundary.
- 70 From my inspection, there is paving along this northern boundary of the review site, but it is not clear if it is on a concrete base, or a more permeable base that may have provided greater opportunity for tree roots to intrude into the review site. Regardless, the adjoining trees and shrubs should be protected through the proper identification of trees proximate to the review site boundary and a tree management plan to protect such trees. This can be addressed as permit conditions.
- 71 I am satisfied from Mr Vernon's evidence that the retaining wall at the edge of the property enables landscaping to be established at a lower level to integrate with the play spaces. This is up to one metre lower than natural ground level. It means that canopy trees planted will be relatively one metre lower than adjoining yards, but will still offer a softening effect to the proposed building as they will be at the same level as the new building.
- 72 If the tree management plan to protect trees on adjoining sites ultimately directs that in the retaining wall needs to move in, off the site boundary, there is sufficient room for this to occur while still allowing for canopy planting either side of a relocated retaining wall.

#### Front setback

- 73 The council opposes the use of part of the building front setback for play space stating this will limit the capacity to provide meaningful planting space in the front setback. The proposed play space is set back at least 7.6 metres, so that it aligns with the building setbacks of adjoining dwellings. This is also the setback preferred by character provisions of NRZ4. The landscape concept plan prepared as part of Mr Vernon's evidence shows canopy tree planting located forward of the play area, within the 7.6 metre front setback. This includes two Acacia Blackwoods that can provide canopy planting to the street.
- 74 This 7.6 metre setback for planting is consistent with other developments in the street. The width of the frontage remains predominantly open garden, consistent with the character objectives and the physical character of the area. I am satisfied this is an acceptable outcome.





## Other matters

- 75 Finally, the council and objectors are critical of the need to use artificial grass or flexible pavement in play areas over the basement car park and the extent of this non-natural surface area. The areas of artificial grass or pavement will not be visible from the street and are a conventional way of providing safe play spaces for children. While the NRZ4 design guidelines seek to avoid the use of artificial grass, I am satisfied that in this context the use of the proposed artificial surface is acceptable. The detail of where and the type of artificial surfaces proposed can be addressed in further detail in the provision of a detailed landscape plan required for in permit conditions.
- 76 The council submits that the landscaping is not sufficiently resolved, due to the changes offered by the applicant during the hearing and that some detail is lacking in Mr Vernon's landscape concept. I accept Mr Vernon's evidence that his focus in the plan was to identify the larger planting so as to address how the proposal meets character requirements and addresses off-site amenity. Details of exact design, such as fencing of internal play spaces can be addressed as part of design development, through relevant permit conditions.

## Conclusion

- 77 In summary, I am satisfied the landscape response is acceptable provided that, before development starts, a revised arborist report is provided and tree management plan established to protect adjoining vegetation, and that the landscape plan is amended to address any issues arising from the arborist report. The revised landscape plan should also include an additional canopy tree with the basement modified to remove car spaces 11 and 12. I note that the removal of the car spaces may result in a space that is not the full depth of the two car spaces, so that sight lines are maintained to cars either side, backing out of car spaces.

## **Is the new building form acceptable?**

- 78 Relevant decision guidelines of NRZ4 set parameters for assessment of development including:
- Whether the development complements the landscape setting of the NRZ4 area by including the following features:
    - Built form that is sufficiently recessed and articulated, as viewed from the open space adjoining the creek and neighbouring properties, to reduce visual bulk and ensure vegetation is the dominant element as viewed from the open space and adjoining properties.
    - Buildings that visually recede into a continuous backdrop of canopy trees by avoiding visually intrusive upper storeys and large expanses of blank walls.
    - Built form that steps down towards the creek valley with the slope of the land.



- The use of robust and low maintenance materials and finishes that blend with, rather than contrast with, the surrounding natural environment and will withstand weathering and create minimal adverse impacts (for instance, safe walking surfaces and limited reflective materials).
    - Appropriate side and rear boundary fencing, in terms of heights and material choices.
  - How vehicle crossovers are located and minimised in number to prevent traffic disruption, and preserve nature strips, front gardens and street trees.
- 79 Generally the council and objectors accept that the materials chosen are appropriate to the setting and do not take issue with the general architecture proposed. The council submits, however, that the proposed materials include a number of pre-fabricated and metal finishes. It says this is consistent with a commercial building, rather than responding to the residential context. I disagree with this submission. The materials chosen are similar to many modern domestic structures in the area, including the use of concrete blockwork, timber look cladding and Colorbond roofing. I am also satisfied that the design establishes a domestic tone and feel so that it can sit comfortably in its setting. I address specific interface issues below.
- 80 It is also worth noting that the site coverage is 38.8% and permeability is 69.3%, both of which are within the varied standards of NRZ4.

#### Presentation to Jells Road

- 81 As I have already set out in the discussion of landscaping, the council is concerned that there is play space in front of the proposed building. The NRZ4 provisions direct buildings to be set back at least 7.6 metres. The proposal does this by setting the pergola structure to the play space back at 7.6 metres. There is a need for permit conditions to clarify that any permeable paving area is also set back at 7.6 metres so as to be consistent with the NRZ4 provisions. The front 7.6 metres of the site can then provide for landscaped, garden space as sought by the character policy and NRZ4 provisions.
- 82 I am satisfied that the pergola structure and adjoining pedestrian entry can include structure to a 7.6 metre setback so as to define the development to the street, consistent with the setback provisions of NRZ4. The pergola is only single storey and can work with the overall structure proposed to create a domestic form, complementary to the NRZ4 character objectives.
- 83 The proposed front fence of the play space is an open palisade fence. I am satisfied this is consistent with other front fencing in the area, such as to the north of the site. I note, however, that there may be a need for the proposal to include clear screening behind the palisade fencing as acoustic attenuation for children from traffic noise associated with Jells Road. This



was not a matter addressed at the hearing by any party. I note that if any acoustic attenuation is sought to address external traffic noise onto the site, it should retain a transparent view into the garden setting of the site.

- 84 The council maintains that the proposed ramp entry to the development should be moved to a central location to the site so as to protect a street tree north of the existing driveway. This tree is relatively small and I am satisfied can be replaced. I accept the comments of the council that it is not juvenile but neither does it provide a particularly significant landscape feature in the street.
- 85 The location of the proposed ramp enables a wider landscape space to dominate the front setback, rather than placing the ramp in a central location that would break up the front of the site and potentially dominate the streetscape. On balance of tree removal and replacement of a new street tree, relative to the overall balance of providing a meaningful landscaping space to the street, I am satisfied that the proposal is acceptable.
- 86 I do share the council's concern that the electricity pillar should be moved to the north of the basement. This is to ensure that as much of the main front setback maintains an open garden aspect to the street, rather than being encumbered with servicing.

#### Presentation to side and rear boundaries

- 87 Objectors and the council are concerned that the development is out of character to the area as it will be too dominating due to the scale of the upper level area and its overall building height. In particular, the council submits that despite a two storey scale generally being considered acceptable, the scale of the building is excessive and results in a continual building form. The council submits that the built form is inconsistent with the surrounding residential character and will present more so as a commercial building;
- 88 The development is relatively modest in its upper level area, being well within amenity standards and is relatively low due to the proposed cut into the site. As I have already addressed in the discussion of visual bulk, the development is relatively modest in height and form compared to some other development in the area. The building has a singular mass, but this derives from its function as an institutional type of use. The elements at upper level are only staff spaces and do not include any play spaces. This ensures that the upper elements appear more domestic in form. They are well set in from side boundaries with these side and rear boundaries including sizeable landscape space to ensure that the garden setting objectives are achieved.
- 89 While the building extends some way down the length of the lot, it does so with generous side setbacks and the use of the glazed upper 'link' area between the front and rear building sections. In the surrounding area there are many other double storey buildings including the development at 275



Jells Road that has a row of double storey form down much of the length of its lot. While this adjoining development has separations between dwellings, they are not overly appreciable garden breaks between buildings. This adjoining development relies on landscaping to the review site side boundary as an existing buffer, rather than spaces between its dwellings for garden setting. The proposed childcare centre adopts a similar approach.

- 90 From my assessment I see no need to reduce or move the upper level form such as suggested by the council or objectors. I am satisfied that the building form, as proposed, provides an acceptable response to the neighbourhood character provisions and policies of the planning scheme.

## CONCLUSION

- 91 I am satisfied that both the built form and any impacts of the scale of use are reasonable for the site location. I find the proposal is not too intense and therefore, for the reasons given above, the decision of the responsible authority is set aside. A permit is granted in accordance with the conditions set out in Appendix A.
- 92 These conditions reflect the draft conditions provided by the council but are amended to address a number of matters. These matters generally relate to issues already set out in reasons above. Other specific changes include the following matters.
- 93 The notation that car parking spaces 16, 17, and 19 are retained for staff parking has been amended to refer to spaces 16 and 17 only. This accords with the spaces of potential concern identified by Mr Furness. Mr Furness' evidence is that he considers the access to car space 19 (and 20 as marked on the amended plans) is acceptable. He also considers it is not essential that spaces 16 and 17 be used only by staff but he acknowledged these spaces could be more difficult to manoeuvre due to their location. I therefore find it relevant that they are allocated to staff that will have fewer movements and will be regular users of the spaces, so will gain familiarity with moving in and out of the spaces.
- 94 I have not added in words 'except with the written consent of the responsible authority' in condition 4 that identifies the maximum number of children to be on site. While this was requested by the applicant, I agree with the council that such a change should be the subject of formal amendment to the permit given it has a number of potential consequential impacts on car parking, noise and general amenity.
- 95 The draft conditions directed that the hours of operation as 7:30am to 6:30pm. The advertised application identifies the proposed hours of operation as 7:30am to 6:00pm. The council provided written confirmation after the hearing that its written submission to the Tribunal included an error referring to closing time as 6:30pm. Both Mr Negri's planning evidence and the applicant's submissions refer to the hours of operation at



7:30am to 6:00pm. The condition relating to hours of operation should therefore also be 7:30am to 6:00pm.

- 96 A separate draft condition proposed that the outdoor play space can only operate between 8:00am to 6:30pm. The applicant seeks the outdoor play space to be available to children from the 7:30am opening. The acoustic report, that assessed a larger number of children on-site, did not direct any need to limit use of the play space during operating hours. I also accept the submission of the applicant that at this early time, the centre will not be at full operating capacity and therefore noise from play spaces should also be less disruptive than in times of peak occupation. I have therefore deleted the condition that restricted the hours of outdoor play as I find no need for the use of the outdoor play space to be less than the general hours of operation being 7:30am to 6:00pm.
- 97 I have modified the draft waste management condition that directed waste collection can only occur between 11:00am and 2:00pm. Mr Furness' evidence is that waste collection should not occur in peak drop off and pick periods that are between 7:30 and 10:00am and then between 3:00 and 6:00pm. I am satisfied that a half hour leeway between these times is sufficient. I therefore have extended the times for potential waste collection to 10:30am to 2:30pm.
- 98 I have included a new condition 6d) for the landscape plan to address any need to consider the impact of new planting of existing services on adjoining sites. This is noting Mr Geisler's concern that new planting may have roots that may impact an existing stormwater pipe that extends across the rear yards of the adjoining sites to the north.

Alison Glynn  
**Member**





## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO:</b>	TPA/52528
<b>LAND:</b>	279-281 Jells Road WHEELERS HILL VIC 3150

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Use and development of a child care centre,
- alteration of access to a road in Transport Zone 2 and
- removal of vegetation within a Vegetation Protection Overlay.

### CONDITIONS:

#### Amended Plans Required

- 1 Before the development starts, three copies of plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the Permit. The plans must be generally in accordance with the plans prepared by McCabe Architects dated March 2022 – Revision C and the Landscape Plan prepared by CDA Design Group Pty Ltd dated 4 April 2022 - TP01, but modified to show:
  - (a) the vehicle crossover design to provide for changes required by the Department of Transport (Ref PPR 35963/12) as set out in condition 34;
  - (b) vehicle crossover in accordance with Condition 6 of this Permit;
  - (c) the basement reduced in area to remove car spaces 11 and 12, so as to create space for an additional canopy tree with deep rooted planting space.
  - (d) the frontage pergola to be set back a minimum of 7.6 metres from the eastern, front title boundary;
  - (e) the electrical supply connection pillar moved to be north of the basement ramp.
  - (f) an acoustically attenuated boundary fence with a minimum mass of at least 7kg/m<sup>2</sup> and, a minimum height of at least 2.1 metres measured from natural ground level to the side and rear boundaries.
  - (g) All services shown must to be integrated into the development and a schedule of materials, colours and details must be provided for all service cabinets within the front setback of the site;



- (h) a notation that the basement car park is to be open during operating hours only;
- (i) a notation that parking spaces 16 and 17 are to be designated and clearly signed as staff parking only;
- (j) a notation to require any replacement street tree planting is to be undertaken by Council;
- (k) a Landscape Plan in accordance with Condition 6 of this Permit;
- (l) a Tree Management Report in accordance with Condition 7 of this Permit;
- (m) a Sustainable Design Assessment in accordance with Condition 14 of this Permit;
- (n) an Acoustic Report in accordance with condition 15; and
- (o) a Waste Management Plan in accordance with Condition 18 of the Permit.

all to the satisfaction of the Responsible Authority.

#### **No Alteration or Changes**

- 2 The development and use and the description of the use(s) as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

#### **Hours of Operation**

- 3 The use allowed under this permit may operate only during the following hours, except with the prior written consent of the Responsible Authority:
  - Monday to Friday (except Public Holidays) - 7:30am to 6:00pm.

#### **Number of children**

- 4 A maximum of 129 children are permitted on the site at any one time.

#### **Existing Street Tree Removal**

- 5 The removal and replacement of the existing street tree (*Lophostemon confertus*) must be undertaken under the supervision and approval of the responsible authority and at the cost of the developer.

#### **Landscape Plan**

- 6 Before the development commences, 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. When approved, the plan will be endorsed and will then form part of the Permit. The plan must be generally in accordance with the



Landscape Plan prepared by CDA Design Group Pty Ltd dated 4 April 2022 - TP01, but modified to show:

- (a) A survey and location of all existing trees, including canopy trees / significant plantings on adjoining properties within 3 metres of the site; using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
- (b) A planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;
- (c) Details of changes required by Condition 1 of this Permit including provision for an additional canopy tree within deep rooted planting area, subsequent to the deletion of car space 11 and 12.
- (d) The location of reticulated services on adjoining sites that may be impacted by roots of proposed new planting.
- (e) The location of any fencing internal to the site;
- (f) The detail and location of any retaining walls associated with the landscape treatment of the site noting any retaining wall structures must be located wholly within the review site boundary.
- (g) Details of all proposed surface finishes including pathways, accessways, and play areas;
- (h) An in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority;
- (i) The location of any external lighting;
- (j) Internal fencing, landscaping and planting within all children play areas.
- (k) Provision for new street tree to replace the street tree identified on plans as to be removed.

to the satisfaction of the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit.

### **Tree Management Plan**

- 7 Concurrent with the submission of amended plans in accordance with Condition 1 of this Permit and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the Permit. The Tree Management Plan must be prepared by a suitably qualified and experienced arborist. The Tree Management Plan must make specific recommendations in accordance with the *Australian Standard AS4970: 2009 - Protection of Trees on Development*



*Sites* and detail the following to the satisfaction of the Responsible Authority ensuring the trees to be retained remain healthy and viable during construction:

- (a) a Tree Protection Plan drawn to scale that shows:
    - i Any vegetation on adjoining land within three metres of the site property boundary and relevant Tree protection zones and structural root zones of this vegetation.
    - ii all tree protection fenced off areas and areas where ground protection systems will be used;
    - iii the type of footings, including posts to new perimeter fencing, within any tree protection zones;
    - iv no excavation within structural root zone areas.
    - v any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the Project Arborist; and
    - vi a notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones;
  - (b) details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist;
  - (c) supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and
  - (d) any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur, to the satisfaction of the Responsible Authority.
- 8 The recommendations contained in the approved Tree Management Plan must be implemented to the satisfaction of the Responsible Authority.

#### Trees to be protected

- 9 All trees specified in the endorsed Tree Management Plan are to be protected and maintained in accordance with the recommendations set out in the report, to the satisfaction of the Responsible Authority.



### Contractors to be advised of trees to be retained

- 10 The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained as detailed in the endorsed Tree Management Plan pursuant to Condition 7 of this Permit and are advised of any obligations in relation to the protection of those trees.

### Supervision of works by arborist

- 11 All buildings and works within the Tree Protection Zone and Critical Root Zone as specified in the endorsed Tree Management Plan must be supervised by a suitably qualified and experienced arborist, to the satisfaction of the Responsible Authority.

### No material near trees

- 12 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the construction period of the development hereby permitted without the prior written consent of the Responsible Authority.

### **Landscaping prior to occupation**

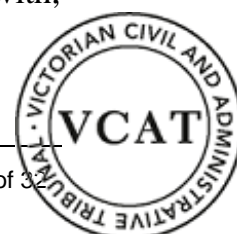
- 13 Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained, to the satisfaction of the Responsible Authority.

### **Sustainable Design Assessment**

- 14 Concurrent with the endorsement of plans, a Sustainable Design Assessment (in accordance with Clause 22.13 of the Monash Planning Scheme) including a Water Sensitive Urban Design Assessment, must be submitted to and approved by the Responsible Authority. When approved, the Sustainable Design Assessment will be endorsed and will then form part of the Permit.

### **Acoustic Report**

- 15 Concurrent with the endorsement of plans, an updated acoustic report must be submitted to and approved by the Responsible Authority. When approved the acoustic report will be endorsed and will then form part of the permit. The updated acoustic report must be based on the provisions, recommendations and requirements of the endorsed Acoustic Report prepared by Renzo Tonin & Associates, Rev 1 dated 29 April 2021 but updated to accord with condition 1 and condition 4.
- 16 Once approved the acoustic report must be implemented and complied with, to the satisfaction of the Responsible Authority.





- 17 Prior to commencement of the approved use, inspection of the constructed acoustic fencing shall be carried out by a suitably qualified acoustic consultant to the satisfaction of the Responsible Authority to confirm that the fencing has been constructed in accordance with the recommendations of the Acoustic Report pursuant to Condition 15 of this Permit. Once constructed the fence must be maintained to the satisfaction of the Responsible Authority.

### **Waste Management Plan**

- 18 Concurrent with the endorsement of plans, a Waste Management Plan must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the Permit. The Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Traffix Group dated June 2021 but modified to show:
- (a) separate glass recycling is to be planned for in accordance with the upcoming recycling industry changes and the Recycling Victoria Policy;
  - (b) waste collection hours to be between 10:30am and 2:30pm
  - (c) revised bin storage areas with capacity to store and service separated glass recycling; and
  - (d) suitable drainage point to the sewer for the washing of facilities within the bin room,

to the satisfaction of the Responsible Authority.

Once approved the Waste Management Plan must be implemented and complied with, to the satisfaction of the Responsible Authority.

### **Drainage**

- 19 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.
- 20 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.
- 21 The nominated point of stormwater connection for the site is to the south-east corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the Council drain.



### **Boundary Fencing**

- 22 Prior to the occupancy of the development, all fencing must be constructed in accordance with the endorsed plans and in a good condition, to the satisfaction of the Responsible Authority.

### **Plant / Equipment or features on roof**

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

### **Loudspeakers**

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

### **Vehicle Crossovers**

- 25 The existing redundant crossing is to be removed and replaced with kerb and channel. The footpath and naturestrip are to be reinstated to the satisfaction of Council. Any sections of the existing concrete naturestrip are to be reinstated to grass to the satisfaction of the Responsible Authority.
- 26 All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
- 27 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.

### **Car Parking and Driveways to be constructed**

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



### **Use of car parking spaces and driveways**

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

### **External lighting**

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

### **Urban Design**

- 32 The walls on the boundary of adjoining properties shall be cleaned, finished and reinstated in a reasonable manner, to the satisfaction of the Responsible Authority.

### **Completion of Buildings and Works**

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

### **Department of Transport**

- 34 Prior to the commencement of the use, the vehicle crossover must be constructed to have the edges of the crossover angled at 60 degrees to the road reserve boundary and with 3.0m radial turnouts, to the satisfaction of the Responsible Authority and at no cost to the Head, Transport for Victoria.
- 35 Prior to the commencement of the use, the disused / redundant vehicle crossover on Jells Road must be removed and the area reinstated to kerb and channel to the satisfaction of the Responsible Authority and at no cost to the Head, Transport for Victoria.
- 36 Vehicles must enter and exit the site in a forward direction at all times.

### **Permit Expiry**

- 37 This Permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
  - (a) The development has not started before two (2) years from the date of issue.
  - (b) The development is not completed before four (4) years from the date of issue.

In accordance with Section 69 of the *Planning and Environment Act 1987*, the Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or:



- (a) within six (6) months afterwards if the development has not commenced; or
- (b) within twelve (12) months afterwards if the development has not been completed.

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

**- End of conditions -**

