

**1.4 279-281 JELLS ROAD, WHEELERS HILL
USE AND DEVELOPMENT OF A TWO STOREY CHILD CARE CENTRE ABOVE
BASEMENT CAR PARK AND REMOVAL OF VEGETATION
(TPA/52528)**

EXECUTIVE SUMMARY:

This application proposes the use and development of a two storey child care centre with basement car parking.

An appeal has been lodged with the Victorian Civil and Administrative Tribunal (VCAT) against Council's failure to determine the application within the prescribed time. Council is unable to determine the application but must form a position on the application.

The application was subject to public notification. Twenty nine (29) objections to the proposal have been received.

Key issues to be considered relate to amenity impacts in relation to the visual bulk and scale of the development, loss of existing vegetation and insufficiencies of landscaping opportunities.

This report assesses the proposal against the provisions of the Monash Planning Scheme including the relevant state and local planning policy framework, and issues raised by objectors.

The permit applicant had requested in writing that the matter not be considered at the October 2021 Council meeting whilst they considered the issues raised by objectors and Council Officers. Whilst officers were happy to accommodate this request in good faith, and acknowledging that it is their right to seek this application, it is disappointing that the applicant's consideration of the issues resulted in an application for review being lodged, rather than in changes to address the issues raised by objectors and Council.

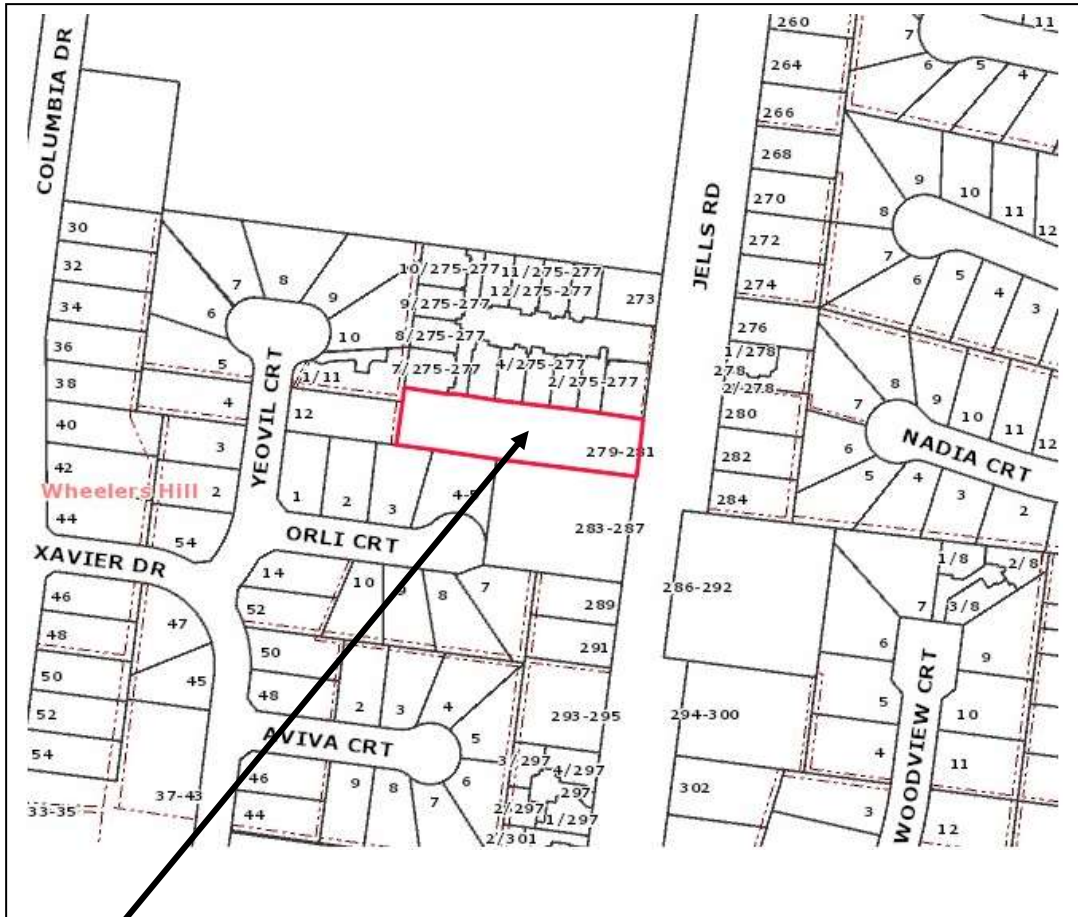
This process does not of course affect Council's consideration of the application, nor does it provide a different process before VCAT where the proposal will still be considered on merit, including the Tribunal having regard to the views of objectors and Council.

The reason for presenting this report to Council is the proposed development cost of \$6.0 Million.

The proposal is considered inconsistent with the relevant provisions of the Monash Planning Scheme and it is recommended that should Council have decided the application, that it be refused.

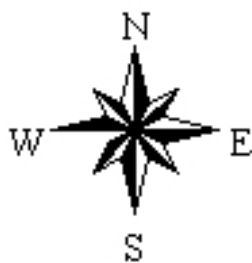
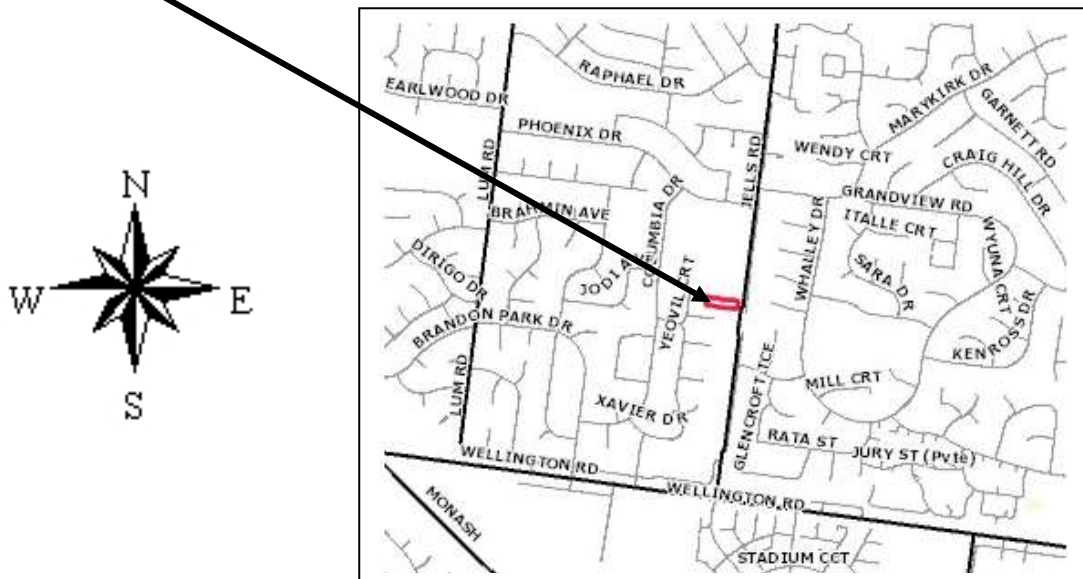
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Anne Maree Roberts
WARD:	Mulgrave
PROPERTY ADDRESS:	279-281 Jells Road Wheelers Hill
EXISTING LAND USE:	Two storey dwelling
PRE-APPLICATION MEETING:	No
NUMBER OF OBJECTIONS:	Twenty nine (29)
ZONING:	Neighbourhood Residential, Schedule 4
OVERLAY:	Vegetation Protection Overlay (VPO1)
RELEVANT CLAUSES: <u>Planning Policy Framework</u> Clause 11.01-1R- Settlement – Metropolitan Melbourne Clause 11.02-1S- Supply of Urban Land Clause 12.05-2S - Landscapes Clause 13.07-1S- Land Use Compatibility Clause 15.01-1S&R- Urban Design Clause 15.01-2S- Building Design Clause 15.01-4S & R- Healthy Neighbourhoods Clause 15.01-5S- Neighbourhood Character Clause 15.02-1S- Energy and Resource Efficiency Clause 17.01-1S&R- Diversified Economy Clause 17.02-1S- Business Clause 18.01-1S- Land Use and Transport Planning Clause 18.02-1S & R- Sustainable Personal Transport Clause 18.02-4S- Car Parking Clause 19.02-S- Education Facilities	<u>Local Planning Policy Framework</u> Clause 21- Municipal Strategic Statement) Clause 21.04- Residential Development Clause 21.08- Transport and Traffic Clause 21.13- Sustainability and Environment Clause 22.01 – Residential Development and Character Policy Clause 22.04- Stormwater Management Policy Clause 22.05 – Tree Conservation Policy Clause 22.09- Non-Residential Use and Development in Residential Areas Clause 22.13- Environmentally Sustainable Development Policy <u>Particular Provisions</u> Clause 52.06- Car Parking Clause 53.18- Stormwater Management in Urban Development Clause 65 – Decision Guidelines
STATUTORY PROCESSING DATE:	25 September 2021
DEVELOPMENT COST:	\$6,000,000

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



RECOMMENDATION:

That Council resolves that if it were in a position to make a decision, it would determine to **Refuse the application for a Planning Permit (TPA/52528)** for the use and development of a Child Care Centre, alteration of access to a road in a Road Zone, Category 1 and removal of vegetation within a Vegetation Protection Overlay at 279-281 Jells Road, Wheelers Hill subject to the following grounds:

1. The proposal is inconsistent with Clause 22.09 of the Monash Planning Scheme - Non-residential Use and Development in Residential Areas, as it fails to have appropriate regard to the residential environment and the amenity of the neighbourhood.
2. The proposed built form does not adequately respect the surrounding residential character of the area, due to excessive height, scale and bulk and insufficient landscaping opportunities.
3. The proposed development would adversely affect the amenity of neighbouring properties.
4. The proposed development does not satisfy the objectives of the Schedule 4 to the Neighbourhood Residential Zone and is considered a poor design outcome for the site.

BACKGROUND:**History**

Planning Permit TPA/12629 was refused on 20 December 1998 for the development of six single storey dwellings on the site. This was not pursued at VCAT.

The Site and Surrounds

The site is located on the western side of Jells Road and approximately 570 metres north of Wellington Road in Wheelers Hill. The property is a rectangular shaped allotment located with a frontage of 24.38 metres and a depth of 101.19 metres. The site has a total area of approx. 2,467 square metres. The site is relatively flat within the rear half of the property, with a slight fall of 300 mm from the north to the south. The front half of the property has a fall of 1.9 metres towards the front and fall of 500 mm from north to south.

The site is currently occupied by a double storey dwelling, setback approximately 35 metres from the frontage with a swimming pool and outbuilding (pool house)

to the rear of the dwelling. Vehicle access to the site is from a crossover located in the centre of the frontage leading to long central driveway and vehicle turn around area forward of the dwelling. The property has a very open frontage with minimal landscaping including low hedge planting along the driveway edge and a 1.8m high rendered pier and metal picket front fence with recessed vehicle gates. Located either side of the vehicle crossing is a Council street tree. To the rear of the dwelling the property has established landscaping comprising of mixture of smaller exotic species and including two canopy trees.

Land use in the immediate area surrounding the site is residential and well separated from non-residential use. The area is described as follows:

North: - 277 Jells Road contains 14 double storey townhouses with the secluded open space area and the windows of 7 dwellings facing the site. Six of the dwellings are setback in the range of 5 metres from the boundary and dwelling 7 is approximately 2.4 metres. There is a 2.1 metre high fence running the full length of the boundary.

South: There are three adjoining properties along the southern boundary.

283 Jells Road contains a single storey dwelling setback approximately 1 metre from the boundary with a swimming pool and large open space area to the rear. The property has an area of 2,645 square metres and extends to Orli Court along the rear boundary. Vehicle access is provided via a horseshoe style driveway resulting in two-vehicle crossovers to the frontage of the site.

4 Orli Court contains a double storey dwelling with a generous front setback and open space area located to the rear. The dwelling is setback 5 metres from the boundary with secluded open space and several windows facing the site.

3 Orli Court contains a double storey dwelling setback approximately 9m from the boundary. There is a substantial secluded open space area and several windows facing the site.

West: There are two properties along the rear boundary.

12 Yeovil Court contains a two storey dwelling that is setback approximately 20 metres from the boundary and has a large secluded open space area facing the site.

11 Yeovil Court partially adjoins the rear boundary of the site for a length of 6.4 metres. This property contains two double storey dwellings with the secluded open space of the rear dwelling facing the site.

East: Immediately to the east is Jells Road which is an arterial road within in the Road Zone, Category 1. Across Jells Road are residential properties with a frontage to the service road. The dwellings are predominantly two storey with a

combination of fencing styles. The property immediately to the east supports a single storey dwelling.

An aerial photograph of the subject site and surrounding land can be found attached to this report (Attachment 2).

PROPOSAL:

The application proposes the removal of all existing buildings on the site and the establishment of a child care centre to accommodate 148 children. It is proposed to relocate the existing facility operating from The Body Shop site in Wheelers Hill to the subject site in the event that a permit is issued. The building is to be double storey with a basement car park. The main features of the proposal are as follows:

Use

- Accommodates 148 Children and 40 Staff members.
- Contains 8 Activity rooms.
- Provision of external outdoor play spaces.
- Hours of operation 7.30am-6.00pm Monday to Friday.

Development:

- The contemporary building would have a maximum height of 8.2 metres to the plant screening on the roof and constructed in a mixed palette of materials consisting of pre- finished cladding, render and profiled metal cladding.
- The ground floor area of 997 square metres provides for child care and play facilities at ground floor and has the following features:
 - 8 activity spaces with a total floor area of 521 square metres, art room and library, amenities, sleeping room, office, entry/reception area, stairs and lift.
 - The building would be setback 14.53 metres from the frontage with the frontage area used as an outdoor play space for 28 children. Three shade sails and retaining walls to be used for seating would be constructed in the frontage.
 - Within the middle portion of the site is an outdoor space with an area of 533 square meters to be used by 76 children. This space is to be provided with artificial turf, sand pit and shade sails.
 - The setback from the rear boundary of 10.22 metres would also be used as play space with an area of 310 square metres for 44 children. Within this space there is a pergola extending from the building and provision for three shade sails, sand pit and artificial turf.
- The first floor has a total floor area of 746 square metres and is to provide staff amenity and training facilities with the following features:
 - Two terraces, staff room, kitchen and stores, laundry associated storage rooms, eating space, two meeting rooms, three training rooms, planning room two resource room, store and amenities.

- The first floor is setback 12.59 metres from the front boundary and will cantilever over the ground floor.
- The first floor will cantilever over the ground floor at the rear and will be setback 10.12 metres from the rear boundary.
- The front entrance to the building is along the southern (side) elevation and recessed 27 metres from the front boundary.
- A 1.5 metre high steel picket front fence is to be recessed 1 metre from the frontage to enclose the play area and continues along the pedestrian entrance to the building.
- Along the entrance path is a perforated metal pergola described as an entrance “arbour” leading from the frontage. The structure has a length of 25 metres and has a height of 3.6 metres at the frontage.

Proposed Setbacks

	Front (East)	Rear (West)	Side (North)	Side (South)
Basement	3.7 m to 14.09 m	10 m	1.54 m to 3.25 m	Zero to 4.6 m
Ground Level	14.53 m	10.2m building 6.0 pergola	2.03m to 3.2 m	Zero to 3.2m
Level 01	12.59 m	10.2 m	2.03m to 3.2m	2.0 m to 3.89 m

Car parking:

- The basement car park has a floor area of 1,492 square metres and would provide for 32 standard car spaces and 1 accessible space.
- Access is to be from a new vehicle crossover with a width of 5.5 metres at the northern end of the frontage and would require the removal of one of the Council street trees.

Landscaping

- The existing vegetation on the site is to be removed including two canopy trees at the rear of the site with a height greater than 10 metres.
- The frontage is to be provided with a terraced landscape and provide for a play area of 200 square metres. Much of the area is to be provided soft rubber matting with shade sails and a sand pit. Several retaining walls are to be provided for seating. The plan proposes the planting of canopy trees in the frontage.

Attachment 1 details plans forming part of the application.

PERMIT TRIGGERS:

Zoning

The subject site is located within the Neighbourhood Residential Zone, Schedule 4 (NRZ4) under the provisions of the Monash Planning Scheme.

Pursuant to the Zone (Clause 32.09-2), a permit is required to use the land for Education Centre (Child Care Centre).

A permit is also required to construct a building or construct or carry out works for the use pursuant to Clause 32.09-9.

Under the Monash Planning Scheme a “child care centre” is defined as: *‘Land used to care for five or more children who are not permanently resident on the land’*.

Clause 32.09—4 (minimum garden area requirement) and Clause 32.09-10 (maximum building height requirement) do not apply to the application given the proposal does not constitute a dwelling or residential building.

Overlay

The land also falls within a Vegetation Protection Overlay (VPO1) and under Clause 42.02-2 a permit is required for the removal of significant vegetation with a trunk circumference greater than 500 mm at 1200 mm above ground level and is higher than 10 metres.

Two trees to be removed are greater than 10 metres in height and therefore require a permit under the controls. The remaining vegetation to be removed is exempt.

Particular & General Provisions

Pursuant to Clause 52.06-3, a Permit is required to reduce the number of car parking spaces required under Clause 52.06-5. The proposal meets the car parking requirement generated by the proposed use and therefore a permit is not required.

Pursuant to Clause 52.29 (Land Adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a Category 1 Road), a planning permit is required to create or alter access to a road in a Road Zone, Category 1.

Attachment 3 details the zoning and overlays applicable to the subject site and surrounding land.

CONSULTATION:

The Applicant has been formally advised that this application is coming to the November Council meeting and a letter has been sent advising them of the details of the Council meeting.

The Applicant has been verbally advised that this application is recommended for refusal, and an outline of the grounds has been explained.

Council received advice from VCAT on 5 November 2021 that the applicant lodged an appeal against Council's failure to determine the application within the prescribed time (60 days from the receipt of further information). The applicant had requested in writing that the matter not be considered at the October 2021 Council meeting as they wished to respond to the issues raised by objectors and Council Officers. Whist officers were happy to accommodate this request in good faith, and acknowledging that it is their right to seek this application, it is disappointing that the applicants chose not to make further changes to address the issues raised by objectors and Council and instead opted to lodge a review at VCAT.

Public Notice

The application was advertised in accordance with section 52 of the *Planning and Environment Act 1987* by way of notice sent to the surrounding property owners/occupiers, and a sign displayed on the frontage of the site.

In response twenty nine (29) objections were received. Issues of objection included the following concerns:

- Damage to adjoining properties during construction of a basement;
- Dust and noise pollution during construction and no compensation is planned;
- No need for a further child care centre as 2 are within the immediate vicinity and 10 within 6 km radius;
- Does not satisfy the purpose, decision guidelines and local character objectives of the Neighbourhood Residential Zone;
- Poor response to Council's "Non-Residential Use and Development in Residential Areas Policy" in terms of location, urban design and performance criteria;
- Contrary to neighbourhood character;
- Visual bulk and poor design response to the most sensitive interface to the north with impacts to the SPOS of 7 adjoining properties;
- Inadequate provision for meaningful landscaping due to excessive basement and ground floor building envelopes resulting in excessive hard surface coverage;
- Visual impact from the continuous length and built form;
- Commercial scale and appearance of the building. Different materials should be used;
- High walls in proximity to rear yards and unnecessary first floor balcony spaces;
- Excessive first floor building envelopes giving rise to mass and bulk impacts and need for high privacy screening;
- The building envelope needs to be reduced and roof terraces removed;
- Increase the setbacks from boundaries;
- Unacceptable traffic and car parking impacts as a result of the number of proposed places and staff;

- No drop off area is provided resulting in vehicles needing to park in Jells Road and the service road;
- The “No Parking” status on Jells Road should be maintained;
- Noise associated with the vehicles entering and exiting the basement due to ramp location near open space and windows. Ramp should be located on the southern boundary adjoining an existing driveway;
- Noise impacts due to proximity of play areas and services to backyards and habitable windows to the north;
- Noise impacts from air conditioners;
- Excessive number of child-care places and staff – use too intense for a mid-block setting;
- Overlooking;
- Overshadowing;
- Shade sails and other structures provided in ground level outdoor areas and further restricting tree canopy planting;
- Roof top screening of 1.7 metres increases the height;
- No detail provided on elevations of multiple solar panels;
- Monash Council appears to be riding rough-shod over residents rights, favouring commercial enterprises;
- Loss of property values;
- Jells Road is gradually becoming more commercialised with medical centres, restaurant, shops and retirement homes and a child care centre and significantly changing the character of this “residential” area;

Attachment 4 details the location of objector properties.

Referrals

External Referral

Department of Transport

The application was required to be referred to the Department for alteration to the vehicle access to a Road Zone, Category 1. The Department advised of no objection, subject to the inclusion of conditions requiring minor modifications.

Internal Referral

Traffic Engineer

Council’s Traffic Engineers have no concerns with the application and have advised:

- All parking spaces, including the accessible space, and access arrangements including ramp grades and headroom clearances are in accordance with the relevant requirements and are considered appropriate.
- Parking spaces 16, 17 and 19 are difficult to access and are to be designated as staff spaces and are to be cleared signed accordingly.

- Council reserves the right to alter the restrictions adjacent to the site frontages (including to No Stopping) if any parking or traffic issues arise.
- 2 bicycle rails are provided at ground level in excess of the Planning Scheme requirements.
- The traffic generation assessments and SIDRA analysis undertaken by Traffix Group demonstrate that the predicted traffic generation is able to be accommodated by the surrounding road network and is considered satisfactory.

Drainage Engineer

No concerns subject to standard conditions, including submission of a drainage plan for approval.

Waste Services

Council's Waste Services advised that the submitted Waste Management Plan requires amendment to meet all Council's requirements.

Horticultural Services

Council's Horticultural Services division do not support the removal of the street tree at the northern end of the site. Both street trees have been assessed as being in good condition and well established. The tree nominated to be removed is semi mature with reasonably good immediate amenity, very good future amenity, and a useful life expectancy in excess of 25 years.

It has been recommended that there is to be no excavation within 3.0 metres of the tree base.

DISCUSSION:

Consistency with State and Local Planning Policies

"Plan Melbourne: Metropolitan Planning Strategy 2017-2050" is the Metropolitan Strategy that planning authorities must consider when assessing applications for planning permits. The key directions that are of particular relevance to the proposal are to ensure the adequate provision of social infrastructure and facilities respond to the needs of existing and future populations. However, any development and use to accommodate growth must achieve high quality design outcomes. Planning for urban growth needs to consider the impact of the development of new facilities on neighbourhood character and landscape considerations. The proposed development and use must be considered in the context of all other policy.

State Planning Policy Framework (PPF)

Relevant policy to consider includes:

Clause 11.02-1S (Supply of Urban Land) seeks:

"To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses."

Clause 15.01 -1S (Urban Design) seeks to:

“To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.”

15.01-2S (Building Design) seeks to:

“To achieve building design outcomes that contribute positively to the local context and enhance the public realm.”

These Clauses require that development achieves architectural and urban design outcomes that contribute positively to a local urban character and enhance the public realm and minimise detrimental impacts on neighbouring properties. Recognition should be given to the setting in which buildings are designed and the integrating role of landscape architecture.

Relevant strategies seek to:

- *Ensure development responds and contributes to the strategic and cultural context of its location.*
- *Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.*
- *Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.*
- *Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.*
- *Ensure development is designed to protect and enhance valued landmarks, views and vistas.*
- *Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.*
- *Ensure development provides landscaping that responds to its site context, enhances the built form and creates safe and attractive spaces.*
- *Encourage development to retain existing vegetation.*

The proposed development is inconsistent with these objectives and does not provide appropriate regard to the adjoining context including the need to respond to the sensitive interface of the established residential areas on all boundaries. The design response and scale of the development is excessive and has no regard to the impact on the surrounding established residential areas.

Local Planning Policy Framework (LPPF)

The local planning policy framework seeks to ensure new development has regard for overarching Garden City Character principals consistent with Council policy. The provision of appropriate landscaping elements in new development being fundamental in implementing these policies.

Clause 21.01-1 – Municipal Profile - ‘Garden City Character:’ this clause mentions that:

“The City of Monash is known for its garden city character, consisting of leafy,

low-rise suburbs with well vegetated private gardens and wide streets with street trees. This characteristic is highly valued by the community and visitors to the municipality. High canopy trees are a dominant feature, particularly towards the east of the municipality.....The garden city character of Monash reflects the historical development of the area and contemporary community values. It therefore has strong cultural and community significance for Monash residents.”

Clause 22.01 (Residential Character Policy) applies to all residential land and identifies the site is within Character Area “Dandenong Valley Escarpment.” The policy identifies the area presents limited redevelopment potential and the *“neighbourhood character of this area will evolve within a landscape that has a large number of native trees spread throughout both the public and private realm. This provides an overhead canopy which unifies the diverse built-form of some neighbourhoods and provides a strong relationship with the semi-natural landscape of the Dandenong Valley. An important characteristic of the area is the view lines to the Dandenong Ranges, along streets and between buildings. New dwellings, or additions to dwellings, will seek to maintain these views.*

Building scale, height and bulk will continue to enhance and reinforce the existing landscape and built form character and will generally be similar within neighbourhoods. Large scale contrasts between buildings will be discouraged except where existing trees and shrubs soften the junction between buildings or where there is a graduated change in scale.”

Clause 22.04 – (Stormwater Management Policy) requires all designs have consideration of increases in hard surface areas and consequential impacts on the drainage system and water quality. It is policy that developments are designed and managed to minimise the impact of urban stormwater runoff on waterways.

Clause 22.05 – (Tree Conservation Policy) applies to all land in Monash with key objectives in maintaining and enhancing the Garden City Character of Monash and ensuring new development provides for new canopy trees with spreading crowns. It is policy that:

- *Existing semi-mature and mature canopy trees be retained wherever possible to ensure maintenance of the tree canopy.*
- *Existing street trees be retained and protected.*
- *Semi-mature canopy trees with spreading crowns be planted as part of any new development, in open space areas, along boundaries adjacent to neighbouring open space and in front setback areas to reinforce the Garden City Character of the area.*

Clause 22.13 (Environmentally Sustainable Development Policy) provides a framework for early consideration of environmental sustainability at the building design stage. For a development of this size a Sustainable Design Assessment is required to be prepared and submitted. The submitted assessment prepared by

BEAC – Building Environmental Assessment Company Pty Ltd included a BESS analysis of the design and concludes that the proposal achieves best practice.

Clause 22.09 (*Non-Residential Use and Development in Residential Areas Policy*) provides performance and locational criteria to ensure any non-residential use minimises impact on residential amenity. Of critical importance is the ability for development of increased scale to appropriately integrate with the built form and character of the surrounding area. The objectives of the policy are:

- *To ensure that development is appropriate having regard to the residential environment of the surrounds and that the amenity of the neighbourhood is not adversely affected by a business conducted in a residential area.*
- *To ensure that all built form in residential areas is respectful of residential character.*
- *To ensure that adequate and well-located vehicle parking is provided for all new developments.*

ASSESSMENT

Non-Residential Use and Development in Residential Areas Policy

The built form and scale of the proposed development is inappropriate for the locality and does not suitably integrate with the established character of the surrounding area. The proposal fails to comply with the relevant performance and location criteria specified under Clause 22.09-4 of the policy as outlined below:

Locational criteria

The following locational criteria is to be considered for the location of a childcare centre in a residential zone:

- *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.*

This proposal does not satisfy the locational criteria of the Policy. Whilst the site is on a higher order street, it is not a corner site or adjacent to an existing Activity Centre. The mid-block location means the property does not have the benefit of a second street frontage to provide separation and the opportunity to focus some of the activity associated with a large child care centre away from the adjoining residential uses to mitigate impact. The location and building design with a substantial basement with minimal setbacks results in insufficient landscape buffers to the adjacent residential properties. This minimises meaningful

landscaping opportunities along the perimeter of the site, particularly along both the side boundaries.

Urban design criteria

This policy identifies the following urban design criteria to be satisfied:

- *Apply creative design solutions that enhance the quality of all residential areas, particularly in relation to streetscape issues, scale of buildings, provision of open space and setbacks to ensure adequate landscaping.*
- *Take into account the preferred future character statement for the applicable residential character type identified in Clause 22.01-4.*
- *Maintain and enhance the established canopy treed environment throughout the municipality, continuing its significance in defining the garden city character of Monash.*
- *Maintain a consistency of street setbacks and building height with existing residential neighbourhood and residential scale.*
- *Retain existing residential buildings wherever feasible*

The development does not satisfy the above criteria after consideration of the following:

Neighborhood Character and Streetscape

- The treatment of the front setback and presentation of the property is out of keeping with the adjoining residential use and development and will present as a commercial property. The property has a frontage of 24 metres of which the access ramp and associated pedestrian sight splays will occupy a length of 10 metres towards the northern boundary. When accounting for the 3 metre wide pedestrian access along the southern boundary, the area available for landscaping is reduced to a length of approximately 10 metres within the centre of the site and is also to accommodate a fire hydrant booster setback 500 mm from the front boundary. The entire open area is to be fenced as a play area and within the space it is proposed to provide shade sails, soft rubber matting and seating, further limiting the area available for meaningful landscaping.
- While there is no objection to the style and height of the front fence, the enclosure of the frontage along both the northern and southern sides to provide a safe play area encloses and divides the frontage.
- The property does not provide a sense of address to the street with the entrance to the building recessed deep within the property along the southern boundary and requiring the 3.6 metre high entrance arbour to guide visitors to the premises entrance. This structure, coupled with the fencing to enclose the southern and northern sides of the play area is out of keeping with surrounding residential properties.
- The proposal is not consistent with the desired future character of the area (Dandenong Valley Escarpment) of the Residential Development and Character Policy where large scale contrast between buildings is discouraged

except where existing trees and shrubs soften the junction between buildings or where there is a graduated change of scale.

- The proposed material finishes include a number of pre-fabricated and metal products consistent with a commercial building. It is considered the use of more typical residential building materials (particularly the northern and southern walls) would assist in reducing visual bulk impacts. Concern was also been raised by objectors regarding the proposed 'opal blue' material having reflective properties.
- Whilst a two storey scale is generally considered acceptable, the continuous built form, scale and bulk of the proposed building would be inconsistent with the surrounding residential development having an imposing style, minimal setbacks and extensive hard surface areas, which is more typically found in a commercial setting.
- The size of the basement is excessive and restricts opportunities for deep soil planting along both side property boundaries of the site. The basement has a floor area of approximately 1500 square metres and has a length of 76 metres along the southern boundary. The setback varies toward the front of the site, but for the majority of the length, the setback is 1.5 metres and in one section extends to the boundary due to the location of the fire escape stair within the basement. The presence of the stair extending to the boundary and requiring a pathway also at ground level, reduces the setback and limits opportunities for planting.
- Along the northern boundary a pathway is provided adjacent to the full length of the building. Within the limited setback area there is provision for storage sheds further reducing landscaping opportunities.
- The setback of the building at ground floor along the southern boundary in most parts is 2 metres but is further reduced to approximately 1 metre to accommodate a pathway running from the front boundary and almost the full length of the boundary. Within this space it is proposed to provide an acoustic fence and a retaining wall resulting in an insufficient space to provide screen planting.
- To reduce the overall height and visual impact of the building it is proposed to excavate and cut the building into the site. However, as a result, any planting along the boundary to limit visual bulk impacts to adjoining would need to be approximately 3 metres in height and realistically will not be achieved within the limited space provided.
- The presentation along the northern elevation at ground floor provides for recession with an open area in the centre of the building to account for outdoor play areas. However, the first floor partly overhangs this area and reduces the effectiveness of the variation. This open area in the middle of the site has minimal landscaping potential when allowing for the first floor overhang reducing the area available to a width of between 2.03 metres and 3.2 metres. This area is also to accommodate artificial turf, sand pits and shade sails.

- The overhang of the first floor, particularly towards the front of the site would exacerbate the bulk and scale of the building and is totally uncharacteristic of surrounding built forms.
- The area to establish generous landscaping at the rear of the site is reduced by the pergola extending from the building to be 6 metres from the rear boundary. However within the setback, the space is further reduced by locating an outdoor play area that will accommodate shade sails, artificial turf and a dry creek play zone and effectively reducing the area to a narrow strip along the fence.

Neighbourhood Residential Zone, Schedule 4

Although the land is located within a residential zone there is discretion to allow for a limited range *“non-residential uses to serve local community needs in appropriate locations.”* However, concerns relate more to the constraints of this particular site and the intensity of the proposal to satisfy the purpose of the zone and objectives to the Schedule 4 which are as follows:

- *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.*

The Decision Guidelines for non-residential uses within the zone are as follows:

In the local neighbourhood context: Whether the use or development is compatible with residential use.

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

The proposed child care centre is to accommodate 148 children and up to 40 staff on a site constrained by a high number of sensitive interfaces. The applicant has not demonstrated that the site is suitable to accommodate the level of proposed development and intensity of the use after considering the design response results in a compromised site layout with regard to the following:

- The building form and presentation within a residential setting.
- The excessive size of the basement and minimal setbacks that also requires the removal of a healthy Council street tree.

- The need to develop the front setback as a dedicated play area with associated structures including the entrance arbour, rather than an open landscape garden presentation as required.
- The other remaining open areas over the site while generous in area, allow for minimal landscaping as a result of being required as play areas with associated structures and rubber matting or artificial turf to accommodate the number of children on the site. This indicates the proposed use is too intense.
- The recessed entry to the side of the building.
- The scale of the first floor dedicated to staff is excessive and unnecessary given the size of the centre resulting in minimal setbacks from the side boundaries.
- The need to provide high acoustic fencing extending to the frontage along the southern boundary as a result of the layout.
- The need to excavate the building to achieve compliance with setbacks to mitigate impact. However whilst reducing the height, this further reduces the ability to establish meaningful landscaping particularly along both the side boundaries.

The applicant is relying on the numerical standards of Clause 55 (Rescode) being satisfied in order to justify the proposal. Although Clause 55 does not apply to this development, the standards can at times be used as a guide in applications for non-residential development. The Schedule 4 to the Neighbour Residential Zone lists the following Clause 55 variations.

Assessment under Clause 55 (Rescode)

	Clause 55 Variation	Assessment
Minimum Street Setback (A3 and B6)	Walls of buildings should be set back at least 7.6 metres from the front street and site setback 3m.	<u>Complies</u> A front setback of 14.530 metres is provided.
Site Coverage A5 and B8	50%	<u>Complies</u> 40%
Permeability A6 and B9	30%	<u>Does not comply</u> 29%
Landscaping (B13)	New development should retain or provide at least one canopy tree plus one canopy tree per 5 metres of site width with a minimum mature height equal to the height of the roof.	<u>Complies</u> With a width of 25 metres 6 canopy trees would be required. Two existing trees are to be removed at the rear. However there is limited opportunity for meaningful canopy planting over the site.
Side and rear setbacks (A10 & B17)	Side setbacks – 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres. Rear setback – 5 metres	<u>Complies</u>

Private Open Space (A 17 and B28)	A dwelling should have private open space consisting of an area of 75 square metres, with one part of the private open space to consist of secluded private open space at the side or the rear of the dwelling or residential building with a minimum area of 35 square metres, a minimum dimension of 5 metres and convenient access from a living room and clear of all structures and services.	<u>N/A</u>
Front Fence Height (A20 and B32)	A front fence within 3 metres of a street should not exceed 1.2 metres	<u>Does not Comply</u> The fence has a height of 1.5m.

The proposed development does not satisfy all the numerical variations to Clause 55 and the two storey height requirement of the zone. Further, it would be expected that any residential development within the zone would be provided with separation between buildings, particularly at first floor. The provision of a basement and continual two storey walls with minimal side setbacks and location of roof plant with associated screening is more typically associated with purpose built commercial buildings in a commercial zone or an apartment building in zones targeting more intense forms of development. It would also be expected that a residential development on a site of this size would provide for a balanced landscaping programme across the whole site. The proposed landscaping plan, whilst nominating canopy trees in the frontage and along the rear boundary is relying on screen planting along the side setbacks, particularly along the southern boundary. This is not the response sought in the Schedule to the zone or the residential character policy.

Amenity Impacts

It is considered that the proposal will result in unreasonable amenity impacts to adjoining properties. In particular:

Bulk and Massing

The design, height, setback and appearance of the proposed development is not an acceptable outcome for adjoining residential properties. The scale of the building is excessive and results in a continual building form with minimal recession and variation to reduce the visual impacts.

The number of adjoining properties has not been suitably considered with the dominant length mass and bulk of the building extending deep into the property, with minimal separation from the secluded open space of adjoining properties provided.

The length of the building with limited visual breaks will result in unreasonable amenity impacts to adjoining properties and is contrary to the neighbourhood character guidelines. The south facing ground floor wall presents as a flat wall

with a length of 45 metres, a wall height of up to 4 metres and is located adjacent to areas of secluded private open space. This will result in unreasonable visual bulk impacts.

At the front of the site the basement is setback 1.54 meters from the northern boundary for a length of 35 metres and then is provided with a setback of 3.25 metres. However, part of the ground floor to accommodate Activity Room 6 projects over the basement and reduces this setback effectively by 1m.

The location of the pedestrian entry point to the building on the southern boundary, rather than being located centrally within the frontage of the site results in additional noise impacts to adjoining properties with activity associated with centre arrival and departure. To address this issue a 2.1 metre high acoustic fence is proposed to be constructed along the full length of the southern boundary, extending to the property frontage.

The scale of the first floor of the building is considered excessive and unnecessary, with 746sqm of floor area including two outdoor terrace areas dedicated for staff. The proposed first floor will result in unreasonable amenity impacts to adjoining residential properties to the north and south. It is also likely that this space will be used for additional care rooms and rooftop play spaces in the future.

The presence of the first floor outdoor terraces results in a need to provide privacy screens to address direct overlooking into the SPOS areas of at least four of the seven adjoining dwellings to the north at No 275-277 Jells Road. This will further increase heights and bulk along the northern boundary elevation, resulting in unnecessary visual impact. These outdoor terrace areas are not considered necessary as they are not proposed as play areas for children.

Overlooking

The applicant has demonstrated that overlooking to adjoining properties to the south is generally satisfactory and complies with the Standard of Rescode. This is to be addressed by the use of highlight windows at first floor along the southern elevation. Along the northern elevation it is proposed to provide a combination of obscure glazing to windows within 9m of the boundary and raised planter boxes around the perimeter of the roof decks. However to be effective in addressing overlooking to the SPOS of the adjoining properties to the north, additional privacy screens would be required with consequent visual impacts to the neighbours.

Overshadowing

The shadow diagrams demonstrate that whilst the adjoining properties to the south will experience additional shadow, the additional shadow cast is within the standards of Rescode and is satisfactory.

Car Parking, traffic and access

The majority of objectors have raised concerns relating to inadequate car parking and traffic generation. The prescribed number of car parking spaces required

under Clause 52.06 have been provided on site. The development has a statutory requirement to provide 32 car spaces for 148 children and 33 spaces have been provided.

Use	Number of Children	Clause 52.06 requirement	Car Spaces Required	Car Spaces Provided
Child Care Centre	148	0.22 spaces to each child	32 spaces	33 spaces
Total			32 Car Spaces	33 Car Spaces

Council's Traffic Engineers have not identified any significant concerns with the proposal and are satisfied that the basement complies with the standards required for ramp grades, access, parking space dimensions and headroom clearances.

It has been recommended that three parking spaces (16, 17 and 19) are to be designated to staff as they are difficult to access. The Engineers are also satisfied that the predicted traffic generation is able to be accommodated by the surrounding network. Council reserves the right to alter the parking restrictions adjacent to the site frontage, including the "No Stopping" restriction if any parking or traffic issues arise. This matter has been raised by several objectors

The submitted traffic report has identified that

"Childcare centres operate differently compared to primary schools and kindergartens. Staff members arrive initially before the childcare centre opens, with staff numbers increasing slowly as child attendance increases throughout the day. As childcare centres do not have set start or finish times (only operating hours), parents do not drop off or pick up children at the same time. Rather, the manner in which children are dropped off and picked up is spread throughout the morning and evening periods. Parents will often drop kids off or pick them up on the way to dropping/collecting other children from nearby schools, on the way to work (which can have varying start times) and on the way home from work (which can also have varying finish times). This is in sharp contrast to primary schools or kindergartens where set start and finish times result in a high level of traffic generated within a relatively short timeframe.

On this basis the application has satisfied the criteria of Clause 52.06 of the Planning Scheme.

Waste Management

The Waste Management Plan submitted with the application proposes the storage and collection of waste bins to be provided in the basement. Collection would be undertaken by a private contractor. This arrangement is generally acceptable as it would reduce impact to the adjoining properties, however the submitted plan requires further revision to comply with Council's requirements. In the event a permit was to issue, this could be addressed as a condition.

Other Issues Raised by Objectors:*Need for a Child Care Centre*

Several objectors raised the concern that an additional child care centre is not warranted in this location due to the location of other facilities in the locality. In response the applicant provided a “Needs Assessment” report. It has been submitted that the proposed child care centre is intended to replace the existing facility within the same catchment area as the Body Shop site in Wheelers Hill. If the development is approved, the proposal would provide a net increase of 25 places. Although the need for additional places may be required within the local area, the location and design response in this case is unsatisfactory.

This issue was raised by objectors and examined by VCAT in P777/2018 Poppy Patch Pty Ltd v Monash CC (TPA/47955). In this case VCAT found the lack of need for a centre would not warrant refusal of the application.

- 7 *“Mr Stow did submit that there is no need for a childcare centre. He says that there are ample vacancies within the childcare centres in the area. Need for a centre may be a relevant factor in a planning decision but lack of a need will rarely be a ground for refusing to grant a permit (see for example Smith v Nillumbik SC [2017] VCAT 74). This Tribunal has found that the market for child care is complex and not just contained to the immediate local area. I accept that this childcare centre may provide for a specific part of the community, by offering a smaller centre in terms of number of children for example.*
- 8 *The key issue before me is whether this is a suitable design response. As set out in Council’s submission: Council’s concerns relate more to the constraints of this particular site, and the intensity of the proposal in relation to those constraints. Council says that this is a very challenging site and identifies the site’s size, slope, a rear easement and the need to retain significant trees within the Vegetation Protection Overlay as constraints.”*

Loss of Vegetation

Existing vegetation is to be removed to accommodate the development. As the site is within a VPO, there are two canopy trees that trigger a permit requirement for their removal under the controls. All other vegetation to be removed from the site is exempt from the need for a permit. The arborist report identifies 13 trees on the site as having an arboricultural value of “moderate” and states *“These trees are attractive amenity features of the property and should be retained throughout the proposed development if possible.”*

The two canopy trees requiring permission for removal are Cypress trees having a height of 12-13 metres and are within this group identified as having medium retention value. Justification for their removal has not been provided. Given the

trees are located to the rear boundary of the site, it would be expected that these could be accommodated within any design for the site.

Structural Damage

In response to the concerns relating to structural damage as a result of the basement construction, it is advised this is not a relevant planning consideration and would be assessed by the relevant Building Surveyor in the event a planning permit was to issue.

Urban Design Analysis

In response to issues raised by Council Officers and objectors, the applicant provided a peer review by an Urban Designer. This review dated 10 September 2021 included all background material including the objector submissions. The review concluded that the overall response was satisfactory. The review included recommendations for some minor amendments to external materials and detailing and landscaping to include the southern wall being treated with frames or tensile wires to allow for climbing plants to soften the facade. Council however, considers that the suggested changes do not address the fundamental issues with the scale and intensity of the proposed development and use for this site.

CONCLUSION:

The proposed child care centre development and use is not considered satisfactory as it fails to adequately comply with the relevant provisions and policies contained in the Monash Planning Scheme. The proposal does not respond to the constraints of the site, having numerous sensitive interfaces along all boundaries and would have a significant impact on neighbouring amenity.

It is recommended that the application should not be supported.

LIST OF ATTACHMENTS:

Attachment 1 – Proposed Development Plans.

Attachment 2 – Aerial Photograph (January 2021).

Attachment 3 – Zoning and Overlays Map.

Attachment 4 – Objector Properties Location Map.