

Dear Mr Temay,

22 December 2021

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Property Development
Associate
Port Phillip City Council
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Planning Development Assessment
39 The Avenue, Balaclava – The Avenue Children's Centre

Introduction

Ratio Consultants has been engaged to assess the planning potential for the expansion of the existing childcare facility.

The Avenue Children's Centre and Kindergarten, is currently used as a child care centre and kindergarten with a capacity of 40 children.

The assessment has considered the opportunities and constraints to development presented by both the physical context and the planning controls of the Port Phillip Planning Scheme.

We have not reviewed whether there are any covenants of restrictions (if applicable) on title.

We have proceeded on the basis that the existing child care centre has been operating on the site for many years and there is no existing planning permit in place for the use and development. It is assumed that the child care centre have existing use rights under the planning scheme and this will need to be formally confirmed.

Site context

The subject site and the surrounds includes the following features:

- The rectangular lot is on the southern side of The Avenue, approximately 90 metres to the west of the intersection with Hotham Road. The total area of the lot is approximately 680 square metres with a frontage to The Avenue of 14.2 metres (approx.), with a lot depth of 47.8 metres (approx.).
- The site is located within the General Residential Zone – Schedule 1 and is located approximately 90 metres west of Hotham Street.
- The site is developed with a single-storey Victorian era building with a tile roof. A single-storey flat roof extension features at the rear of the building. The rear play area has a depth of approximately 17

metres and includes an established tree close to the eastern boundary.

- The building has a minimum setback to The Avenue of approximately 5 metres. The frontage is used as an outdoor play area for the facility, enclosed with a metal picket fence and featuring shade sails. There is no vehicle access from The Avenue.
- To the north of the site is The Avenue and opposite are two storey apartment buildings.
- To the east, 41 The Avenue is developed with a double-storey apartment building consisting of 8 dwellings. A vehicle accessway is on the western boundary shared with the subject site, leading to the at-grade car park at the rear. Balconies associated with the dwellings face the subject site.
- No. 37 The Avenue to the west features a single-storey Victorian era dwelling including a flat-roofed extension at the rear. It includes construction to the boundary along the southern section of the shared boundary with the subject site. Some vegetation features in the rear yard.
- The rear (southern) boundary abuts a laneway. The properties to the south of the lane front Gourlay Street and have rear car access to garages/at grade parking etc to the rear of the site along the lane.

Figure 1: Zoning of the subject site

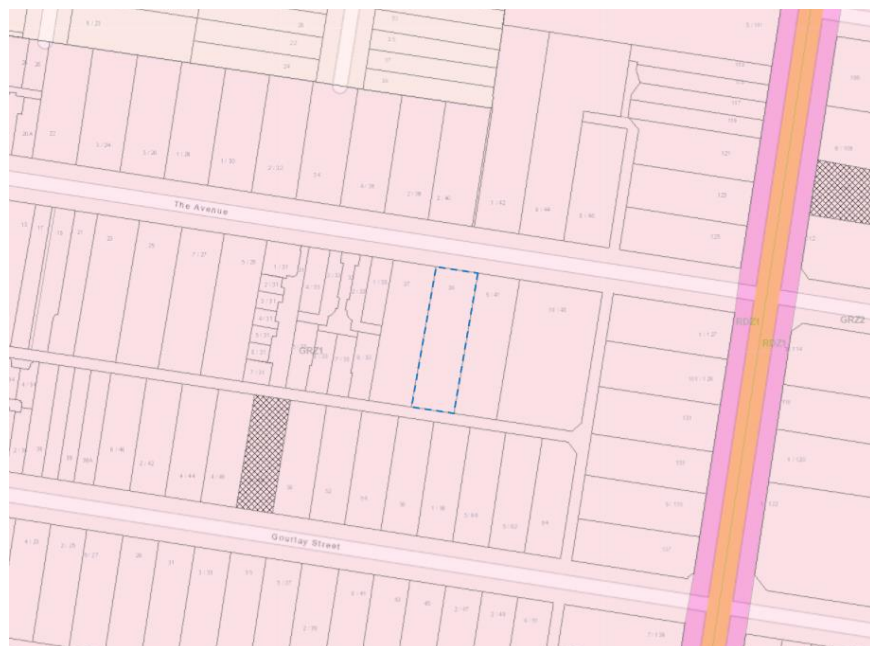


Figure 2: Aerial image of subject site and surrounds.



- The subject site is approximately 250 metres to the south-east of the Carlisle Street/Balaclava Major Activity Centre within the Port Phillip activity centre hierarchy.
- The land is within the Principal Public Transport Network (PPTN), positioned 450 metres to the east of Balaclava Road and within access of bus routes on Hotham Road to the east.

Planning Controls

Zoning and Overlays

- The land is within the General Residential Zone, Schedule 1 (GRZ1) and is affected by the Special Building Overlay – Schedule 1. The GRZ outlines that Child care and Kindergarten land uses are nested under the Education centre land use. Education centre is a Section 2 (permit required) use in the zone. A permit is required for building and works associated with a Section 2 use pursuant to Clause 32.08-9.
- The site is also located within the Special Building Overlay, Schedule 1 (SBO1). A permit is required for building and works pursuant to Clause 44.05-2 and Clause 6.0 of the schedule outlines that Melbourne Water are the relevant flood plain manager.

Particular Provisions

- It is understood that the child care centre use of the site is long-standing, and no existing planning permit applied to the use. It is likely that the use of the site benefits from existing use rights under Clause 63.01 if continuous use of the land for 15 years can be established.
- Clause 63.05 requires a use within Section 2 or 3 of a zone for which an existing use right is established may continue provided:

- *'No building or works are constructed or carried out without a permit. A permit must not be granted unless the building or works complies with any other building or works requirement in this scheme.'*
 - *'Any condition or restriction to which the use was subject continues to be met. This includes any implied restriction on the extent of the land subject to the existing use right or the extent of activities within the use.'*
 - *'The amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right.'*
- A planning permit will be required under Clause 63.05 for buildings and works.
- We understand that there are relevant legal principles for existing use rights in summary are:
 - A use may be intensified over time;
 - A use may be intensified even with a change of activities within the use;
 - The use to which land may be put may change, increase or decrease, so long as the same purpose is served; and
 - There can be greater amenity impacts created through the intensification of the use provided those impacts are reasonable in the circumstances.
- Where the Clause 52.06 'Car parking' requires a provision of car spaces of 0.22 spaces for each child. A waiver would be required pursuant to Clause 52.06-3.
- Clause 52.05 'Signage' would require a permit for any additional business identification signage.
- Clause 65 outlines relevant decision guidelines.

Planning Policy

Key policy providing direction on the siting and form for non-residential uses within residential areas are as follows:

- Relevant provisions of the Planning Policy Framework include:
 - Clause 19.02-2S 'Education facilities' which seeks to assist with the integration of education and early childhood facilities with local and regional communities.
 - Clause 15.01-2S 'Building design' has the objective of achieving building design outcomes that contribute positively to the local context and enhance the public realm.
 - Clause 18.01-1S 'Land use and transport integration' seeks to facilitate access to social, cultural and economic opportunities by effectively integrating land use and transport.
 - Clause 13.05-1S 'Noise abatement' contains the objective to assist the control of noise effects on sensitive land uses.

- Clause 22.01 'Non-Residential Uses in the Residential Zones' includes the following objectives:
 - *'To minimise the impact of non-residential uses on existing residential amenity.'*
 - *'To ensure that non-residential uses in residential zones are compatible with the residential nature of the area and serve the needs of the local community.'*
- Relevant policy direction of Clause 22.01-3 includes:
 - *'Discourage non-residential uses in residential zones unless there is a net benefit to the local community.'*
 - *Encourage non-residential uses to locate:*
 - *in buildings that were purpose built for predominantly non-residential uses;*
 - *on corner sites that have direct access to a road in a Road Zone;*
 - *on sites that are located adjacent to the boundary of a non-residential zone; and*
 - *within easy walking distance of public transport.*
 - *'Minimise the effect of non-residential uses on residential amenity by controlling numbers of operators, practitioners, staff levels, hours of operation, traffic and parking movements, light, noise and emissions, as appropriate.'*
 - *'Ensure non-residential uses do not result in significant changes to traffic conditions in local streets or significantly increase demand for on-street car parking.'*
 - *'Ensure the times of loading or unloading of deliveries do not adversely affect the amenity or traffic function of the area.'*
 - *'Ensure provision is made on site for appropriate waste storage and collection facilities. Waste facilities should be screened from neighbouring properties, streets and laneways.'*
- The policy also seeks to ensure that non-residential uses do not subject neighbouring residential properties to unreasonable noise, vibration or impacts associated with hours of operation, music, plant, deliveries, waste collection, dust and light spill. The policy includes direction to ensure amenity of existing residential properties is preserved including solar access to habitable room windows/private open space, overlooking and noise effects.
- Clause 22.06 'Urban Design Policy for Non-Residential Development and Multi-Unit Residential Development' seeks to protect solar access to habitable room windows and secluded private open space and to protect adjoining properties from overlooking and noise effects.
- With regard to neighbourhood character, Clause 21.06-1 'East St Kilda and Balaclava' seeks to ensure that the heritage and neighbourhood character of established residential areas is not compromised by new

development. New development is encouraged to respond to the prevailing low rise (one and two storeys) throughout most residential areas, apart from pockets of two and three-storey flats along main roads.

- Clause 21.05-2 'Urban Structure and Character' seeks to protect and enhance the varied, distinctive and valued character of neighbourhoods across Port Phillip and to ensure that the height and scale of new development is appropriate to the identified preferred character of an area. The policy includes wording that:
 - *'Require design responses to show how contributory heritage buildings outside the Heritage Overlay have been considered, where they form part of the neighbourhood character (these buildings are identified on the City of Port Phillip Neighbourhood Character Policy Map).'* (see figure 2).
 - *'Require new development to respect the preferred character of an area, having regard to preferred character statements in a Design and Development Overlay, approved Urban Design Framework or Urban Design Policy.'*
 - *'Ensure that the scale, massing and bulk of new development respects the scale and form of nearby buildings in areas where the existing built form character is to be retained.'*
 - *'Ensure adequate protection is provided to significant trees through the appropriate siting and design of new development.'*
 - *'Retain the low-rise scale of established residential areas.'*
 - *'In a streetscape with consistent roof forms, new residential development generally incorporates a similar roof form if visible from the front (principal) street.'*
 - *'In a streetscape with a consistent building scale, the height of any new residential development is the same or no more than 1 storey higher than the lower of the adjoining dwellings, with a maximum building height of 3 storeys. The additional storey should be sited and massed so that it does not dominate the streetscape or cause any adverse amenity impacts.'*
- The subject site is identified as a 'Contributory Heritage Place – Outside HO' on the incorporated Document 'City of Port Phillip Neighbourhood Character Map, Version 35, March 2021.'
- The Heritage Policy of Clause 22.04 does not apply to a development application for the site as it is not within the Heritage Overlay.

Figure 2: The subject site is identified as a Contributory Heritage Place – Outside HO in the City of Port Phillip Neighbourhood Character Map.



Advice

In our view there are two potential options for the site as follows each having their own planning issues to consider. The two potential options are:

- Retain and extend the existing building on the site to accommodate additional children.
- Demolish the existing child care building and design a purpose built child care centre for the site.

An architectural review to confirm if there is capacity within the existing layout for more than 40 children and how much surplus external outdoor play area there may be currently¹ would be useful having regard to the relevant child care regulations (which fall outside planning).

For instance a review of the indicative layout plan provided indicates that there appears to be around 400m² of outdoor area which may allow up to 57 children, assuming the internal areas also meet regulations.

Retain and extend the existing building/centre

In relation to the potential retention and extension of the existing building the following is noted:

¹ We understand that the outdoor space requirement is a minimum of 7m² per child and 3.25 square metres of indoor space per child.

- Relying on existing use rights, the site is already used as a child care centre that serves local community needs. Given the site is already used as a child care centre, some expansion of the existing use can be contemplated and the existing use rights provisions allow for a use to be intensified over time.
- Relying on existing use rights limits the considerations to any increase in intensity of the existing use. The existing use rights provisions of the scheme allow for an existing use to intensify and there can be greater amenity impacts created through the intensification of the use provided those impacts are reasonable in the circumstances.
- Having regard to Council's non-residential uses policy issues of the suitability of the location of the site in principle for a child care centre is not a critical consideration if existing use rights can be confirmed. This contrasts with the establishment of a new centre where threshold issues of the appropriateness of the location would be a key consideration. For instance Council's non-residential uses policy encourages non-residential uses to locate on corner sites that have direct access to a main road and on sites located adjacent to the boundary of a non-residential zone, which the site location would not strictly meet.
- The retention and re-use of the existing Victorian period dwelling on the site or its key presentation to the street as a residential dwelling aligns with Council's non-residential policy that encourages uses to locate in buildings that were purpose built for predominantly non-residential uses.
- Whilst there are no demolition controls applicable to the site that prevent the existing building from being demolished, the retention of the existing buildings presentation to the street would align with Council policy at Clause 21.05-2 that nominates the building on the site as being a contributory building outside the heritage overlay. As such, it is considered that retention of the existing building with a rear addition will likely be less contentious and more likely to receive support from Council having regard to neighbourhood character considerations.
- The rectangular shape provides an opportunity to provide a ground and first floor addition to the rear.
- A double-storey addition at the rear of the existing building could be accommodated within the site. There is more flexibility in the design response as the site is not within a Heritage Overlay or subject to Council's Heritage Policy at Clause 22.04 and as such less of the existing building would need to be retained and any addition could be more prominent when viewed from the street, rather than concealed.

- In relation to any rear extension to the existing building the extent of the site covered by buildings will be an important consideration in relation to the extent to which the site coverage and boundary setbacks is respectful of the residential context. Whilst not strictly applicable to any application to extend a child care centre any design should have regard to site coverage/garden area under the GRZ2, noting that the surrounding context includes examples of buildings that extend deeply into the backyard realm and appear to have relatively high site coverages. This will likely provide some flexibility for a potentially higher site coverage than would otherwise be appropriate.
- If development was to extend to the south into the existing open area, it will likely encroach on an established tree in the rear yard. which should be reviewed by a qualified arborist. The review would also consider vegetation on adjoining properties as it will be necessary to demonstrate that neighbouring trees can be retained.
- As the adjoining properties are residential, any first floor level addition to the existing building should comfortably meet the B17 envelope from side and rear boundaries.
- The General Residential Zone, non-residential uses policy and the existing use rights provisions require regard to be given to external amenity impacts. Noise attenuation measures for additional children will be required, due to the residential interfaces, and input from an acoustic engineer will be required to confirm that noise is effectively managed from ground level and any elevated open space areas.
- The form of any first-floor addition will be an important consideration and should comply with Standard B17. Immediately abutting secluded open space is limited through the location of a paved accessway associated with the property to the east and outbuildings within the SPOS of the property to the west. The overshadowing effects should be considered to the balconies at 41 The Avenue to the east and the SPOS of 37 to the west of the site.
- A key consideration will be the proposed car parking waiver, noting that there is currently no on-site parking associated with the 40 place centre. Advice would need to be sought from a qualified traffic engineer to ascertain if the further car parking waiver is appropriate in the context of the availability of on street parking during the hours of use of the centre and the further demand for on street parking that additional children will create. Given the general nature of child care centres being focussed on child drop off and pick up by car this is an important planning consideration that needs to be carefully reviewed.
- Discussions with Council's traffic engineers will be an important part of any application to ascertain likely level of support for a waiver.
- Lastly any addition to the existing building will need to meet minimum Melbourne Water floor level requirements under the Special Building

Overlay and discussions should be had with Melbourne Water to ascertain their requirements.

Overall there would appear to be reasonable potential to expand the existing child care centre on the site relying on existing use rights, by retaining the existing presentation of the building to the street and extending the ground floor and first floor level of the facility to the rear to allow for additional floor space and play area. The further car parking waiver will be a critical consideration and may limit the number of additional children that can be accommodated on the site under this scenario, where no on site parking is possible.

A new purpose built facility

The property is not within the Heritage Overlay and permit requirements relating to demolition or policy direction are not applicable to any future development application.

Whilst it has been identified as a Contributory heritage building on the basis of neighbourhood character, there is no Neighbourhood Character Overlay on the site requiring a permit for demolition. It is not afforded the higher level heritage protection of the Heritage Overlay which includes a permit requirement for demolition and the replacement building and works. The Heritage Policy at Clause 22.04 is also not applicable.

In our view demolition of the existing buildings on the site is not restricted by the planning scheme and therefore a contemporary purpose built child care centre on the site is possible.

There would be some merit in seeking legal advice on the potential for the demolition of the existing facility and provision of a new facility on the site to continue to rely on existing use rights. It is our understanding that there is a possibility that existing use rights can continue on and apply to any replacement building on the site. We say this because if existing use rights are retained, the threshold consideration of whether the site is suitably located for a child care centre pursuant to Council's non-residential uses policy, is limited to the consideration of the intensity of change, rather than suitability of location.

It would be beneficial to seek the advice of an architect in relation to the prospects of designing a purpose built child care centre on this site noting that the site is modest in size and width and this may create some design challenges in relation to footprint etc..

Any design response for the site should be respectful of the surrounding neighbourhood character as follows:

- A two storey building presenting to The Avenue;
- A front setback that is the average of the two adjoining front setbacks;
- Preferably a pitched roof form to respond to adjoining dwellings either side;

- Side setbacks that ideally meet standard B17 with a deeper upper level setback to respond to the lower scaled Victorian dwelling at 37 The Avenue.
- The design should have regard site coverage/garden area under the GRZ2, noting that the surrounding context includes examples of buildings that extend deeply into the backyard realm and appear to have relatively high site coverages. This will likely provide some flexibility for a potentially higher site coverage than would otherwise be appropriate.
- Any increase in intensity of the existing use will be required to demonstrate that the amenity of adjoining properties and the surrounding area is not unreasonably affected.
- First floor level addition to the existing building should comfortably meet the B17 envelope from side and rear boundaries.
- Noise attenuation treatments to play areas and the building with input from an acoustic engineer.
- A landscape plan demonstrating areas for planting.
- Floor levels to take into account Melbourne Water flood level requirements.

If a new purpose built facility is proposed there would be an expectation that car parking would be provided on site as part of any redesign, most likely in the form of a basement, so as to not rely solely on the on street parking.

Advice from a traffic engineer should be sought in relation to the number of spaces required on site and the design of any access ramp/basement and the capacity of The Avenue to accommodate additional vehicle movements. Any basement design will need to consider potential 'apex' requirements to address any Melbourne Water flood attenuation requirements.

Whilst not a large site, the site has some potential for a purpose built child care centre, particularly where existing use rights might extend to include any replacement building and intensity of use on the site.

It is likely that as part of any new building on the site that car parking would need to be provided.

Conclusion

Overall in conclusion:

- There would appear to be some potential to expand the existing child care centre on the site relying on existing use rights, by retaining the existing presentation of the building to the street and extending the ground floor and first floor level of the facility to allow for additional floor space and play area. The further car parking waiver will be a critical consideration and may limit the number of additional children that can be accommodated on the site under this scenario, where no on site parking is possible.

- The planning scheme presently does not prevent demolition of the existing building on the site from occurring. A purpose built child care centre on the site is a possibility particularly if legal advice confirms that any existing use rights extend to the replacement building.
- Any new building on the site needs to be respectful to the character of the area and reasonably limit amenity impacts to neighbouring residential properties. It is likely that any new design for the site will need to provide on site car parking.
- An architect should be engaged to review the site's potential to be developed having regard to the advice in this letter, noting that the sites width (i.e. 14 metres) and potential need for on site parking may create some design challenges that warrant further investigation.

Should you have any queries, please do not hesitate to contact the undersigned on (03) 9429 3111 or at travisf@ratio.com.au.

Yours sincerely



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