

Dear Mr Temay,

22 December 2021

Mr Tom Temay
Property Development
Associate
Port Phillip City Council
99a Carlisle Street
ST KILDA VIC 3182

**Planning Development Assessment
17 Eildon Road, St Kilda – Eildon Road Children’s Centre**

Introduction

Ratio Consultants has been engaged to assess the planning potential for the expansion of the existing childcare facility. The Eildon Road Children’s Centre is currently used as a Child care centre and Kindergarten with a capacity for 44 children.

The assessment has considered the opportunities and constraints to development presented by both the physical context and the planning control 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 lot is irregular-shaped, positioned on the western corner of the intersection of Eildon Road and Inverleith Crescent. The total area of the lot is 670 square metres and is located in the General Residential Zone – Schedule 1.
- The site is developed with a double-storey period brick building with a tiled roof that includes gabled ends. The building is constructed to the northern boundary and extends for almost the width of the lot close to the frontage. The building is graded significant under Heritage Overlay – Schedule 5 (HO5) (Figure 2).
- There is a modest front setback enclosed by a high brick pier and picket infill fence is used as a play area. The rear of the lot, also used

as a play area, tapers in width towards the west, with the rear boundary only 3.5 metres wide. The rear play area includes a tree and shade sails.

- No car parking is provided on site associated with the child care centre.
- The adjoining property to the north, 1 Inverleigh Crescent, is developed with a double-storey building with rear contemporary addition. This property is also graded significant under the Heritage Overlay – Schedule 5 (HO5).
- To the south, 15 Eildon Road is developed with a double-storey building set on the western side of the lot. The interface with the subject site features a converted single-storey garage. The dwelling's open space is to its north alongside the outdoor the play area of the child care centre.

Figure 1: Aerial image of subject site and surrounds.



Figure 2: The subject site is identified as a Significant Heritage Place – Inside HO in the City of Port Phillip Heritage Policy Map.



- The site is located in a predominantly residential area approximately 100 metres to the south east of the Fitzroy Street activity centre.
- It is also within the study area for the Precinct Structure Plan area of the St Kilda Major Activity Centre, which is currently under preparation.
- The land is within the Principal Public Transport Network (PPTN) which indicates a high level of public transport accessibility.

Planning Controls

Zoning and Overlays

- The land is within the General Residential Zone, Schedule 1 (GRZ1) and is affected by the Design and Development Overlay, Schedule 6 (DDO6) and the Heritage Overlay, Schedule 5 (HO5).
- Under the GRZ1, 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 also required for building and works associated with a Section 2 use pursuant to Clause 32.08-9.
- In addition to the policy framework, a relevant purpose of the GRZ is to allow educational and a limited range of other non-residential uses to serve local community needs in appropriate locations. Relevant decision guidelines for non-residential use and development are at Clause 32.08-13.
- HO5 applies to the precinct of St Kilda Hill which includes the areas generally bounded by Fitzroy Street to the north, Barkly Street to the

east, Carlisle Street to the south, and Port Phillip Bay to the west. HO5 applies external paint controls. The subject property is graded significant to the Heritage Overlay – HO5. Clause 43.01-1 requires a planning permit to demolish or remove a building, for buildings and works, including a fence and to display a sign.

- DDO6 applies to the St Kilda Area, including Fitzroy Street, The Esplanade and Acland Street. The subject site is within Area DDO6-5 – Acland Street Residential Areas (between Fawcner and Fitzroy Streets). A permit is required for buildings and works and an application is required to consider the design objectives, the preferred character statement and requirements for the St Kilda Hill area.
- Under DDO6, the preferred character for the precinct in summary is a high-quality residential heritage area set on St Kilda Hill, which has a leafy, tranquil and urbane character and consists of a high-standard but varied architecture and a mix of residential types reflecting the varied eras of the precinct.
- The design objectives for the precinct are:
 - *To ensure development complements the low scale and character of the area.*
 - *To ensure development responds to the heritage and the setting of St Kilda Hill.*
 - *To ensure the landscaped character of the area is maintained*
- The Mandatory design requirement, which cannot be varied by a permit, is that *'buildings must not exceed 9.5 metres in height'*.
- A permit may be issued for the following discretionary design requirements:
 - *'Buildings should be set back from all site boundaries and provide for adequate landscaping.'*
 - *'Buildings should respond to the scale, siting, built form and grain of the area.'*

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.
- Clause 52.06 'Car parking' requires that the number of parking spaces based on a rate of 0.22 spaces per child must be provided to the satisfaction of Council. Where a reduction or waiver of car parking requirement is required, a planning permit is 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 and heritage areas are as follows:

- Relevant State planning policy provisions in the Planning Policy Framework includes:
 - 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 15.03-1S 'Heritage conservation' seeks to ensure the conservation of places of heritage significance.
- Objective 5 within Clause 21.04-1 'Housing and Accommodation' seeks to minimise amenity conflicts between residential and non-residential uses. The strategies include discouraging non-residential

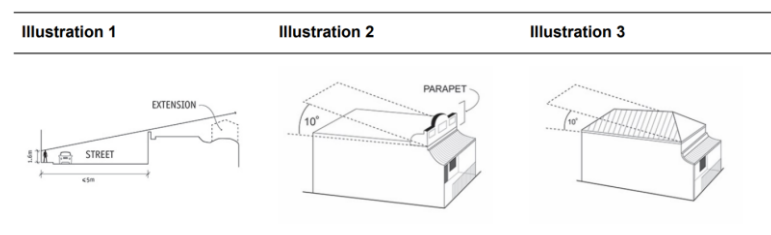
uses from locating in residential areas, except where a net community benefit to the local community can be demonstrated and the amenity of the area will not be adversely affected.

- Neighbourhood character guidance at Clause 21.06 for St Kilda includes encouraging development to respond to the diverse architectural styles and forms
- 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 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.'*
- 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.
- The subject site is identified as a 'Significant Heritage Place – Inside HO' on the incorporated Document *City of Port Phillip Heritage Policy Map, Version 35, March 2021*. Heritage Policy at Clause 22.04 provides direction for the assessment of applications within the Heritage Overlay. In summary:
 - Demolition of individually significant buildings should be refused unless the building is structurally unsound and the replacement works display design excellence.
 - Partial demolition of a heritage place is allowed where it will not affect the significance of the place and the proposed addition is sympathetic to the scale and form of the place.
- Where additions/alterations are proposed to a heritage place, Clause 22.04-2 includes the following key provisions:
 - *'Do not change the original principal facade(s) or roof.'*

- *'Are distinguishable from the original parts of the heritage place to be conserved, if a contemporary architectural approach is used.'*
- *'Do not obscure or alter an element that contributes to the significance of the heritage place.'*
- *'Maintain an existing vista or viewlines to the principal facade(s) of a heritage place.'*
- An upper storey addition is to be sited and massed behind the principal facade so that it preferably is not visible, particularly in intact or consistent streetscapes (see Performance Measure 1)

Figure 3: Performance Measure 1 illustration from Clause 22.04-2.



- On a corner site, the upper storey addition is to be sited and massed so it is visually recessive from the front of the building, maintaining the scale of the heritage place as the dominant element in the front (principal) streetscape.

Advice

Overall the modest size of the site and heritage constraints mean that demolition of the existing building is highly unlikely to be supported.

This is a key constraint to any substantive increase in the number of children that the existing centre could accommodate.

There is potential for some modest increase in the capacity of the facility subject to a design that responds to the site's heritage and physical constraints, subject to further investigation. The key constraint of the site is heritage which is addressed below.

It will be important to read this planning advice in conjunction with meeting the relevant child care regulations for indoor floor space and outdoor play areas. Although they are outside the direction of the Port Phillip Planning Scheme, the design requirements for child care facilities are a consideration of the appropriateness of a proposal. An architectural review to confirm if there is capacity within the existing layout for more than 44 children and how much surplus external outdoor play area there may be currently¹ would be useful.

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

For instance extending the building further to the rear (west) outside of the existing building footprint will reduce the available outdoor area, but could be compensated for by an additional outdoor area at first floor level. Also, it may be possible that the existing internal layout and outdoor play areas are sufficient to allow an increase in current capacity, thus limiting the permit requirement to a car parking waiver.

If an extension to the floor space is required, based on the heritage constraints of the site, this will need to be sited to the rear of the existing period heritage building at either ground or first floor level, which might include for instance a rear FFL elevated play area.

Appropriateness of location for child care centre

Having regard to the GRZ and the policy context, the starting point is that the site already is used as a child care centre that serves local community needs. A child care centre is a use that can integrate with a residential area and can serve 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.

The considerations in our view are limited to a consideration of any increase in intensity of the existing use. The existing use rights provisions of the scheme allow for an existing use to intensify and whilst there can be greater amenity impacts created through the intensification of the use provided those impacts are reasonable in the circumstances.

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.

Heritage

The existing building on the site is individually significant to Heritage Overlay – Schedule 5 (HO5). Given the significant grading of the property demolition in totality is not a realistic proposition.

Some demolition of rear non-original additions to the original fabric will likely be possible, however original fabric viewed from the public realm will likely need to be retained.

Retention of the existing façade is expected for a Significant heritage building. It is noted however due to the corner location of the site, the side gabled end facades and roof form of the building is visible from the public realm from both Eildon Road and Inverleith Court and this appears to be original fabric.

The buildings south, east and west facades are thus visible elements in the public realm will most likely need to be retained.

From a heritage perspective a rear ground floor level addition would be most likely possible. Any first floor level addition would need to be sited behind the gabled roof ridgeline, behind the principle façade and also set in from side boundaries, so that it appeared as a recessive element from the public realm and retained the side gabled facades to the public realm.

The height any addition should be modest and lower than the existing gabled end.

Any ground and first floor level addition should be informed by expert heritage advice. An addition could be contemporary.

The first floor addition could also be developed for use as an outdoor play area or as internal floor space for the child care centre.

Accordingly any expansion of the existing child care centre will need to retain the existing building with either an internal reconfiguration or an external addition to the existing building that is sited to the rear and recessive from the public realm.

The heritage requirements present a practical restriction on the height of a prospective development to two storeys and will need to be of a modest height and less than the mandatory 9.5m maximum height allowed under DDO6-5.

Size of site and irregular shape

The size of any ground and/or first floor addition to the rear to meet heritage constraints will also be limited by the tapering of the site boundaries at the rear of the site

Development at ground level at the rear of the premises is less constrained by heritage considerations but the site's physical context presents limitations.

Any first floor level addition to the existing building should comfortably meet the B17 envelope from side and rear boundaries.

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 and DDO6.

Whilst not strictly applicable to any application to extend a child care centre any design should have regard being respectful of the garden area requirement of the GRZ², to indicate that any proposal is a good fit with its residential context.

Development further to the west is likely to encroach on an established tree in the rear yard which should be reviewed by a qualified arborist, along with other trees on neighbouring properties that any extension will be required to demonstrate can be retained.

² 30 per cent for a site of up to 650m² and 35% for a site above 650m²

Amenity

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 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 comfortably comply with Standard B17 and limit shadow impacts to secluded open spaces at 15 Eildon Road and 1 Inverleigh Court and any north facing windows.

A modestly scaled first floor level addition setback to exceed B17 would limit bulk impacts.

Car parking

A key consideration will be the proposed car parking waiver, noting that there is currently no on site parking associated with the 44 place centre.

An increase in floorspace will require planning permit approval will trigger a requirement for car parking which will require a permit pursuant to Clause 52.06-3 to waive the requirement and continue not providing on-site parking.

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.

Conclusion

Overall in conclusion:

- Subject to further investigations some modest additional children's capacity at the existing child care centre may be possible.
- Given the use is existing some increase in the intensity of the use is contemplated by the existing use rights provisions.
- Due to heritage constraints the existing building will most likely be required to be retained with any additional floor space internalised or located to the rear at ground/first floor level. Any additions should be informed by heritage advice and should be well setback and modest in height.

- Any extension to the rear of the heritage dwelling should consider its overall site coverage and impact to any existing trees on site and on neighbouring properties.
- Amenity impacts to neighbouring residential dwellings will be a important consideration and additions should be setback and modestly scaled to limit bulk/shadow impacts. Acoustic advice should be sought to recommend acoustic treatments.
- Advice should be sought from a qualified traffic engineer in relation to the appropriateness of further reliance on on-street parking.

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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