

Dear Mr Temay,

22 December 2021

Mr Tom Temay  
Property Development  
Associate  
Port Phillip City Council  
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**Planning Development Assessment  
46 Tennyson Street, Elwood – Elwood Children's Centre**

**Introduction**

Ratio Consultants has been engaged to assess the planning potential for the expansion of the existing childcare facility. The Elwood Children's Centre, is currently used as a Child care centre and Kindergarten with a capacity of 39 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 rectangle-shaped, positioned on the eastern side of Tennyson Street, approximately 80 metres to the south of the intersection with Hennessey Avenue.
- The total area of the lot is approximately 678 square metres. The street frontage is 15.2 metres, while the depth is 45.4 metres.
- The lot is oriented on a north-east to south-west axis.
- The site is developed with a double-storey Interwar period dwelling with an attic contained in the roof form. The upper level is incorporated into the intersecting gable-end roof form.
- A single-storey contemporary addition is located to the rear of the building.

- The property is identified as significant under the Heritage Overlay, Schedule 7 (HO7).
- The building is set back approximately 10 metres from the frontage. The front setback area is set behind a fence and hedge and is used for an outdoor play area for the facility which includes shade sails. The rear setback area of the site is also used for play areas associated with the child care centre and includes shade. Both the front and rear of the sites are used for play areas. No on site parking is provided for the existing child care centre.
- The building is constructed towards the northern boundary with an accessway (which appears unused) along the south-eastern boundary.
- Some smaller established trees feature in the front and rear setbacks.
- The adjoining property to the north, 44 Tennyson Street, is developed with a single-storey dwelling. The building is positioned towards the subject site. The dwelling's open space is positioned to the rear (east). This property is also graded Significant under the Heritage Overlay – Schedule 7 (HO7).
- To the south, 48 Tennyson Street is developed with a double-storey apartment building consisting of five dwellings and which is located within the General Residential Zone. The accessway for these dwellings abuts the boundary with the subject site, leading to a paved car parking area to the rear (east) of the building.
- The eastern boundary of the subject site abuts 17 Wimbledon Avenue which is developed with a double-storey apartment building. The interface with the subject site is predominantly a car port and paved vehicle accessway.

**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 200 metres to the south-west of the Carlisle Street activity centre.
- The land is within the Principal Public Transport Network (PPTN) which indicates a high level of public transport accessibility. Tennyson Street is a local street.

## Planning Controls

### Zoning and Overlays

- The land is within the Neighbourhood Residential Zone, Schedule 6 (NRZ6) and is affected by the Heritage Overlay, Schedule 7 (HO7).
- Under the NRZ6, 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 32.09-9.
- In addition to the policy framework, a relevant purpose of the NRZ is to allow educational and a limited range of other non-residential uses to serve local community needs in appropriate locations. Relevant design guidelines for non-residential use and development are at Clause 32.09-13.
- NRZ6 applies to Neighbourhood Residential Areas – Garden Suburban. The Schedule varies the maximum height limit for a dwelling or residential building to 10 metres and three storeys, which is not applicable to a child care centre but relevant to understand the maximum height context for the surrounding residential area.

- HO7 applies to the precinct of ‘*St Kilda, Elwood, Balaclava, Ripponlea*,’ which is generally bounded by Carlisle Street to the north, Glenhuntly Road to the south, Hotham Street to the east, and Broadway to the west. The schedule applies external paint controls.
- The subject property is graded Significant to the Heritage Overlay – HO7. Clause 43.01-1 requires a planning permit to demolish or remove a building and for building and works, including a fence and to display a sign.

#### Particular Provisions

- It is understood that the child care centre use of the site is long-standing, and no existing planning permit applies 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 permit would be required for buildings and works pursuant to Clause 63.05.
- We understand that there are relevant legal principles for existing use rights which 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:

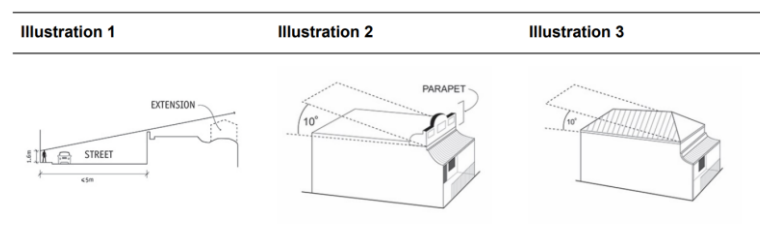
- Relevant State planning policy provisions in the Planning Policy Framework includes:
  - Clause 19.02-2S 'Education facilities' which seeks to assist with the integration of education and early childhood facilities with local and regional communities.
  - Clause 15.01-2S 'Building design' has the objective 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 potential 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.
- 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.
- 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.**



- With regards to neighbourhood character, the direction of Clause 21.06-2 'Elwood and Ripponlea' seeks to protect the existing suburban character in residential areas by encouraging the retention of large dwellings and single dwelling lots. Development is encouraged to respond to character elements including (as relevant to subject site):
  - *'Detached dwellings on large allotments with generous front, rear and side setbacks that allow for attractively landscaped large open space areas with established trees.'*
  - *'The consistent architectural character of many areas created by the predominance of Federation and inter-war dwellings with hip or gable roof forms.'*
  - *'Low building heights ranging from 1-2 storey for single residences and 2-3 storey for flats.'*
  - *'The highly consistent and intact inter-war streetscapes in the 'Poets' streets in the part of Elwood generally bounded by Barkly, Dickens, Mitford and Shelley Streets.'*
- 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.’*

### **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 presents as a constraint to proposals to significantly increase the facility’s capacity.

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 39 children and how much surplus external outdoor play area there may be currently<sup>1</sup> would be useful. For instance a review of the indicative layout plans provided indicates that there appears to be around 379m<sup>2</sup> of outdoor area which may allow up to 54 children.

For instance extending the building further to the rear 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 etc.

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<sup>1</sup> We understand that the outdoor space requirement is a minimum of 7m<sup>2</sup> per child and 3.25 square metres of indoor space per child.



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 NRZ 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 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 7 (HO7). Demolition of the significant-graded building in the precinct is highly unlikely to receive planning approval.

Some demolition of rear non-original additions to the original fabric will likely be possible, however retention of original fabric (i.e. front and side facades incl original roof form) as viewed from the public realm will be expected to be retained at the minimum.

Retention of the existing façade is a key policy design requirement for a significant heritage building within the policy direction of Clause 22.04, so works to the front façade are unlikely to be supported.

The mid-block positioning of the building and the gable-ended roof form provides some capacity to conceal a rear first floor level extension. The gables on the south-east and north-western facades would likely need to be retained as they are visible from the public realm and contribute to the building's presentation to the streetscape.

Considering the heritage context and preferred policy design response, a double-storey rear development could be contemplated provided it

achieved a building envelope consistent with the performance measure from Clause 22.04 detailed above.

It is possible that much of the original side facades and roof form will need to be retained subject to heritage advice (i.e. for instance the rear addition has retained the original heritage fabric in the round), with a rear FFL addition above where the current contemporary GFL addition is sited. Any ground and first floor level addition should be informed by expert heritage advice. An addition could be contemporary.

The heritage advice will also include the extent of demolition of original building fabric could be justified with support of a development proposal.

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 a rear external addition to the existing building that is positioned to the rear and recessive from the public realm/retains original fabric.

The heritage requirements present a practical restriction on the height of a prospective development to two storeys being less than the 10-metre, three-storey maximum of the NRZ6.

### **Rear Character**

Due to heritage constraints any extension in floor area for the existing child care centre will need to be focused to the rear of the site.

This needs to be balanced with the neighbourhood character provisions for Elwood that seek generous rear and side setbacks for landscaping.

The uniform rectangle lot size provides an opportunity for some rear extension at ground and/or first floor level provided setbacks are provided to the side boundaries and rear boundary for landscaping.

Whilst not strictly applicable to any application to extend a child care centre any design should have regard to being respectful of the garden area requirement of the NRZ<sup>2</sup> and have some regard to site coverage, to indicate that any proposal is a good fit with its residential context.

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

An arborist should be engaged to assess the arboricultural value of any existing trees on the site and on the adjoining properties that should be retained as part of any works.

### **Amenity**

The Neighbourhood Residential Zone, Non-residential uses policy and the existing use rights provisions require regard to be given to external

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<sup>2</sup> 35% for a site above 650m<sup>2</sup>

amenity impacts. The Neighbourhood Residential Zone raises external amenity expectations.

Additional children at the centre will require some consideration to be given to noise attenuation 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 proposed elevated open space areas (i.e. acoustic fencing/treatments).

The interfaces to properties to the south and east appear less sensitive from a bulk and overshadowing perspective given their use as vehicle car parking and accessways. No. 46 Tennyson Street to the north is constructed close to the boundary with the subject site and consideration should be given to providing generous compliance with the B17 side setback envelope to this interface and moderating the extent of the any FFL extension where adjacent to its rear secluded open space to limit visual bulk. As this SPOS is to the north of the subject site, overshadowing is unlikely to be of concern.

Overlooking protection would ideally be incorporated into a proposed design to address privacy concerns.

#### **Car parking**

A key consideration will be the proposed car parking waiver, noting that there is currently no on-site parking associated with the 39-place centre.

An increase in children will require a permit to waive the car parking 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.
- Demolition of the existing building is unlikely to be supported due to a significant heritage grading. There is potential for a well designed

rear first floor level addition that is consistent with heritage policy for significant graded heritage properties.

- 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 building should consider its overall site coverage, ability for landscaping and impact to any existing trees on site and on neighbouring properties.
- Preserving the amenity of neighbouring residential dwellings will be an important consideration with input from an acoustic engineer and setbacks from sensitive secluded open space.
- 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](mailto:travisf@ratio.com.au).

Yours sincerely



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