

**1.3 444-454 WAVERLEY ROAD, MOUNT WAVERLEY  
TO CONSTRUCT AND USE OF A BUILDING ON THE LAND FOR A CHILD CARE  
CENTRE, CAFE (FOOD AND DRINK PREMISES) AND TREE REMOVAL  
(TPA/52770)**

**EXECUTIVE SUMMARY:**

This application proposes to construct a double storey building to be used as a child care centre including food and drink premises (café), and removal of vegetation.

The application was subject to public notification. Seventeen (17) objections including a petition containing 329 signatures to the proposal have been received.

Key issues to be considered relate to appropriateness of the built form, design detail, loss of vegetation, overshadowing, overlooking, drainage impacts, car parking and vehicle access, impact on the existing bicycle-pedestrian (shared) path, external amenity impacts and appropriateness of the non-residential uses in this location.

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

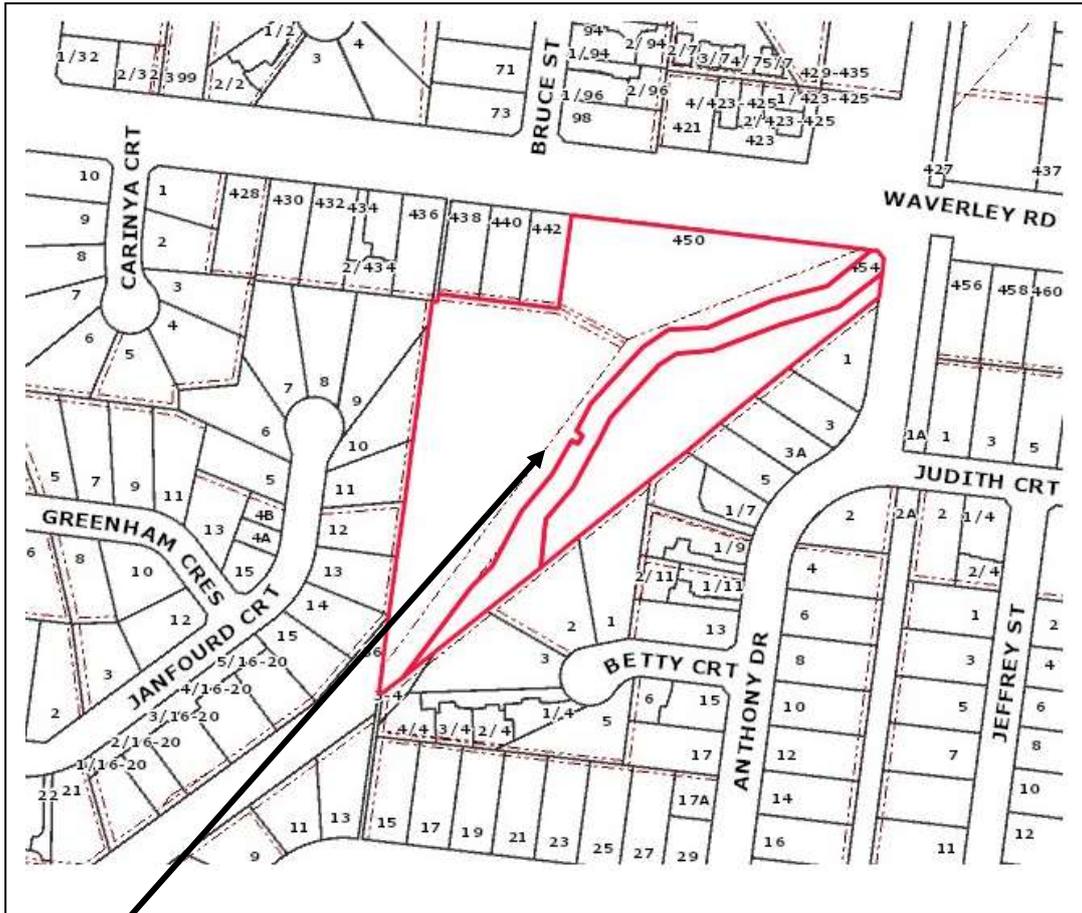
**The reason for presenting this report to Council is the proposed development cost of \$10.5 Million.**

**The proposed development is considered appropriate having regard to the relevant provisions of the Monash Planning Scheme. It is recommended that Council resolve to issue a Notice of Decision to Grant a Planning Permit, subject to conditions.**

<b>RESPONSIBLE DIRECTOR:</b>	<b>Peter Panagakos</b>
<b>RESPONSIBLE MANAGER:</b>	<b>Catherine Sherwin</b>
<b>RESPONSIBLE PLANNER:</b>	<b>Jeanny Lui</b>
<b>WARD:</b>	<b>Mount Waverley</b>
<b>PROPERTY ADDRESS:</b>	<b>444-454 Waverley Road, Mount Waverley</b>
<b>EXISTING LAND USE:</b>	<b>Developed with a bicycle and pedestrian path</b>
<b>PRE-APPLICATION MEETING:</b>	<b>Yes</b>

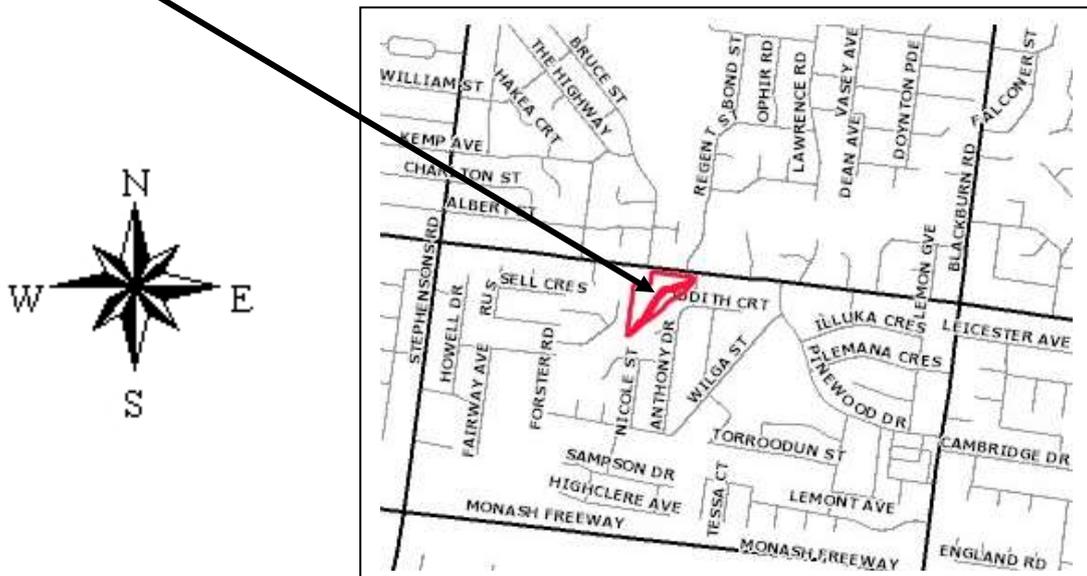
<b>NUMBER OF OBJECTIONS:</b>	<b>Seventeen (17) objections including one petition with 329 signatures</b>
<b>ZONING:</b>	<b>Neighbourhood Residential Schedule 2</b>
<b>OVERLAY:</b>	<b>Vegetation Protection Overlay (VPO1) Land Subject To Inundation (LSIO)</b>
<b>RELEVANT CLAUSES:</b> <u><b>Planning Policy Framework</b></u> Clause 11.01-1R- Settlement – Metropolitan Melbourne Clause 11.02-1S- Supply of Urban Land Clause 13.02-1S Bushfire Planning 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- Walking Clause 18.02-2S&R- Cycling Clause 18.02-4S- Roads Clause 19.02-2S- Education Facilities Clause 19.03-3S- Integrated Water Management	<u><b>Local Planning Policy Framework</b></u> Clause 21- Municipal Strategic Statement) 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><b>Particular Provisions</b></u> Clause 52.06- Car Parking Clause 52.17- Native Vegetation Clause 53.18- Stormwater Management in Urban Development Clause 65 – Decision Guidelines
<b>STATUTORY PROCESSING DATE:</b>	<b>8 May 2022</b>
<b>DEVELOPMENT COST:</b>	<b>\$10.5 Million</b>

### LOCALITY PLAN



**SUBJECT SITE**

### NEIGHBOURHOOD PLAN



**RECOMMENDATION:**

That Council resolves to issue a **Notice of Decision to Grant a Planning Permit (TPA/52770)** for the buildings and works to construct and use a building on the land for a child care centre and a café (food and drink premises), tree removal including removal of native vegetation, at 444-454 Waverley Road, Mount Waverley subject to the following conditions:

**Amended Plans Required**

1. Before the development and use starts, one copy of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit.

The plans must be generally in accordance with the plans submitted to Council on 9 March 2022 (TP04, TP05 & TP05a Revision C dated 25 January 2022, TP04a Revision B dated 25 January 2022, TP06 & TP07 Revision A dated 25 January 2022, TP08 & TP09 dated 23 March 2022 and TP11 Revision A dated 22 March 2022), but modified to show:

- a) A 3 metre wide drainage easement to be created to protect Council's existing 375 mm and 450mm outfall drains from the Anthony Drive properties. A notation on the plans to read: 'The existing stormwater drain on the west side of the properties at 1 to 7 Anthony Drive to be replaced by a 300 mm stormwater drain, each property reconnected to the new drain and the creation of a 3 metre wide drainage easement to the satisfaction of Council;
- b) All easements (carriageway, drainage and floodway) in accordance with the Section 173 Agreement (AG681522S);
- c) On the Waverley Road frontage, the provision of a corner splay or a defined area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property boundaries) from the western edge of the exit lane of the vehicle crossing to ensure that a clear view of pedestrians using the footpath along the frontage road is provided;
- d) The accessible parking spaces designed in accordance with the Australian Standard for *Off-Street Parking for people with disabilities, AS/NZS 2890.6*. The vehicle path to and from each accessible space shall have a minimum headroom of 2200mm. The headroom above each dedicated space and adjacent shared area shall be a minimum of 2500mm;

- e) All windows on the first floor, south east elevation to be labelled 'obscure glazing';
- f) Site permeability increased to no less than 40% of site area;
- g) Reference to the acoustic treatment and controls to the child care centre and café in accordance with the Acoustic Report prepared by Acoustic Control Pty Ltd, dated 9 June 2021;
- h) An external lighting plan in accordance with the requirements of conditions 5 and 9;
- i) Changes required in accordance with the Waste Management Plan as requested in condition 10; and
- j) Changes required to satisfy the Sustainable Management Plan in accordance with Condition 12.

all to the satisfaction of the Responsible Authority.

#### **Layout not to be Altered**

2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

#### **Landscaping Plan**

3. Concurrent with the endorsement of any plans requested pursuant to Condition 1, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must be generally in accordance with the Landscape Concept Plan prepared by Blue Landscape Architects (Revision TP1) dated 4/6/2021 except that the plan must show:
  - a) The revised building layout in accordance with the amended development plan (TP04, TP05 & TP05a Revision C dated 25 January 2022, TP04a Revision B dated 25 January 2022 and TP06 & TP07 Revision A dated 25 January 2022) and changes required under condition 1 of this permit;
  - b) The ground floor play areas where they are not located above the basement carpark to be constructed of permeable materials. Details of the relevant materials must also be provided;
  - c) Use of non-invasive, clumping species of bamboo (including provision of appropriate root barriers) and planting of indigenous climbing/ screen plants along the new shared path;
  - d) The hydrant booster enclosure, electricity supply, gas and water meter boxes designed to be incorporated into the landscape setting;
  - e) The detail of all proposed paving;

- f) The location of external lighting (if any); and
- g) The provision of an in-ground, automatic watering system linked to rainwater tanks on the land servicing the main garden areas.

all to the satisfaction of the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit.

- 4. Before the uses start, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority thereafter.

#### **Lighting Plan**

- 5. Concurrent with the endorsement of any plans requested pursuant to Condition 1, a Lighting Plan prepared by a suitably qualified or experienced Lighting Engineer must be submitted to and approved by the Responsible Authority. The Lighting Plan must show:

- a) Location of any external lighting;
- b) Intensity of lighting limited so as not to cause any loss of amenity to occupiers of nearby land and/or excessive light spill to public open space conservation areas to the satisfaction of the Responsible Authority.

When approved, the plans will be endorsed and then form part of the Permit.

- 6. All external lighting must be designed, baffled, located and maintained to prevent light spill from the site causing any unreasonable amenity or environmental impacts on the locality, to the satisfaction of the Responsible Authority.

#### **Easements, Shared Path & Section 173 Agreement**

- 7. The existing shared user path behind the properties at 1 to 7 Anthony Drive must be removed when the new shared path is constructed within the subject land to the satisfaction of the Responsible Authority. The cost of the removal of the existing path will be met by the permit holder. Ongoing pedestrian and cyclist access through the site must be provided at all times to the satisfaction of the Responsible Authority. The Responsible Authority may provide its written consent to alternative arrangements including the timeframe for removal of the existing shared path and temporary pedestrian and cyclist access through the site during construction works.
- 8. Prior to commencement of the use hereby permitted, all requirements of the existing Section 173 Agreement (AG681522S) registered on the Title

must be fully satisfied or the Agreement amended accordingly to the satisfaction of the Responsible Authority and respective parties to the Agreement.

9. Prior to commencement of the use hereby permitted all easements required by this permit and the existing Section 173 Agreement (AG681522S) must be created and registered on Title to the satisfaction of the Responsible Authority.

#### **Waste Management Plan**

10. Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be approved by the Responsible Authority. The plan must be generally in accordance with the Waste Management Plan prepared by Ratio Consultants, dated 19 May 2021 but revised to show the:

- a) Inclusion of the TPA number to the introductory section; and
- b) Provision of scaled plans detailing the proposed waste collection process including; bin collection areas, the strategy for bin transfer from storage area to collection point & transfer routes and gradients; and plans for hard waste and e-waste collection and disposal;

to the satisfaction of the Responsible Authority

When approved, the plans will be endorsed and then form part of the Permit. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

#### **Construction Management Plan**

11. Prior to the commencement of any site works (including any demolition, vegetation removal and excavation), a Construction Management Plan (CMP) must be submitted to and approved by the Responsible Authority. Once approved, the CMP will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The CMP must address the following issues:

- a) Pedestrian and cyclist access through and around the construction site including ongoing connections to the adjoining shared user path network;
- b) Appropriate measures to control noise, dust and water and sediment laden runoff;
- c) Appropriate measures to prevent silt or other pollutants from entering into the Council's drainage system or onto the road network;

- d) Appropriate measures relating to removal of any hazardous or dangerous material from the site, where applicable;
- e) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site so as to prevent material leaving the site and being deposited on Council's road network or drainage system;
- f) A program for the regular cleaning and maintenance of the surrounding road surfaces;
- g) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves;
- h) Measures to provide for public safety and 24 hour site security;
- i) A plan showing the location of parking areas for all construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to the surrounding location. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
- j) A Traffic Management Plan showing truck routes to and from the site;
- k) A swept path analysis, using the largest truck anticipated on site, demonstrating the ability of trucks to enter and exit the site in a safe and timely manner.
- l) Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the CMP;
- m) The provision of 24 hour contact details of key construction site staff; and
- n) Restriction on hours of work on site, including demolition, excavation or general construction works, to the following hours:
  - Monday to Friday (inclusive) – 7.00am to 6.00pm;
  - Saturday – 9.00am to 1.00pm;
  - Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines)
  - No works are permitted on Sundays or Public Holidays.Unless prior written consent is provided by the Responsible Authority these hours cannot be varied.

The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with by all contractors to the satisfaction of the Responsible Authority.

**Sustainable Management Plan (SMP)**

12. Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Management Plan (in accordance with Clause 22.13 *Environmentally Sustainable Development Policy* and Clause 53.18 *Stormwater Management in Urban Development*) must be submitted to and approved by the Responsible Authority. Upon approval the Sustainable Management Plan will be endorsed and become part of this planning permit. The development must incorporate the sustainable design initiatives outlined in the endorsed Sustainable Management Plan to the satisfaction of the Responsible Authority

**Use of Land**

13. There must be no more than 184 children in the Child Care Centre premises at any one time.
14. The Child Care Centre use may operate only between the hours of 6:00am to 7pm Monday to Friday.
15. The Food and Drink Premises may operate only between the hours of 6:00am to 7pm Monday to Friday and 7am to 4pm Saturday & Sunday.

**Tree Protection & Removal of Native Vegetation**

16. All existing vegetation shown on the endorsed plans marked to be retained, must not be removed, destroyed or lopped without the further written consent of the Responsible Authority.
17. Prior to the commencement of any works permitted by this permit, all trees that are to be retained, or are located within or adjacent to any works area, must be marked and provided with a protective barricade to ensure the retention. The installation and maintenance of these barriers must be verified by a qualified landscape architect or horticulturist.
18. All work within the dripline of any tree to be retained (including trees on site and adjoining properties) shall be supervised by a qualified landscape architect or horticulturist who shall ensure that the works are done in a manner which protects and minimises any damage to those trees.
19. No building material, demolition material earthworks, machinery or vehicles shall be parked, stored or stockpiled under the canopy line of any tree identified as “to be retained” during the construction period of the development hereby permitted.

**Car Parking and Accessways**

20. A minimum of 40 parking spaces are to be provided for the child care centre use and 5 parking spaces are to be provided for the food and drink premises at all times and suitably labelled/signed as such.
21. Before the uses start, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
  - a) constructed to the satisfaction of the Responsible Authority;
  - b) properly formed to such levels that they can be used in accordance with the plans;
  - c) surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
  - d) drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority; and
  - e) line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.

Parking areas and access lanes must be kept available for these purposes at all times.

22. Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
23. The loading and unloading of goods from vehicles must only be carried out on the subject land.

**Privacy screens**

24. Prior to the uses start, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority. Note: The application and use of obscure film fixed to transparent windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.

**Services and Plant Equipment**

25. All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view, to the satisfaction of the Responsible Authority.

26. No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
27. No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.

#### **Drainage & Stormwater**

28. The site must be drained to the satisfaction of the Responsible Authority.
29. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
30. The unused portion of the property must be kept drained, tidy and mown at all times to the satisfaction of the Responsible Authority.
31. Prior to occupation of the approved premises, drainage easements (3 metres wide or as specified by City of Monash Engineering Department) are to be created to protect Council's existing 375 mm and 450mm outfall drains from the Anthony Drive properties and any additional drainage assets required by this permit as specified by the Responsible Authority. The existing stormwater drain on the west side of the 1-7 Anthony Drive properties to be replaced by a 300 mm stormwater drain, each property reconnected to the new drain and the creation of a 3 metre wide drainage easement to the satisfaction of Council.

#### **Satisfactory Continuation**

32. Once the development and/or use has started it must be continued and completed to the satisfaction of the Responsible Authority.

#### **Department of Environment, Land, Water & Planning (DELWP) Conditions**

33. Before works start, the permit holder must advise all persons undertaking the vegetation removal or works on site of all relevant permit conditions and associated statutory requirements or approvals.
34. The total area of native vegetation proposed to be removed totals 0.0102 hectares, comprised of:
  - a) 1 large scattered tree
  - b) 1 small scattered tree.

35. To offset the permitted clearing in accordance with *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017), the permit holder must secure general offset of 0.018 general habitat units:
  - a) Located within the Port Phillip and Westernport Catchment Management boundary or Monash City Council municipal area
  - b) With a minimum strategic biodiversity score of at least 0.152. The offset(s) secured must also protect 1 large tree.
36. Before any native vegetation is removed evidence that the required offset by this permit has been secured must be provided to the satisfaction of the Responsible Authority. This evidence must be one or both of the following:
  - a) An established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10-year management actions and ongoing management of the site, and/or
  - b) Credit extract(s) allocated to the permit from the Native Vegetation Credit Register.
37. A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence, a copy of the endorsed offset evidence must be provided to Planning Approvals at the Department of Environment, Land, Water and Planning Port Phillip regional office.
38. Where the offset includes a first party offset(s), the permit holder must provide an annual offset site report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.
39. Within 6 months of the conclusion of the permitted clearing of native vegetation under this permit, the offset requirements can be reconciled with the written agreement of the responsible authority and the Department of Environment, Land, Water and Planning.
40. A suitably qualified wildlife handler or zoologist is to be present when felling trees/removing native vegetation, to ensure affected wildlife is not harmed. If displaced wildlife that cannot be relocated on site to an appropriate location away from the construction footprint, or injured wildlife is captured, please contact DELWP on 136 186 for further advice.

41. Within the area of native vegetation to be retained and any tree protection zone associated with the permitted use and/or development, the following is prohibited:
  - a) Any vehicle or pedestrian access, trenching or soil excavation, and
  - b) Storage or dumping of any soils, materials, equipment, vehicles, machinery, or waste products, and
  - c) Entry or exit pits for underground services, and
  - d) Any other actions or activities that may result in adverse impacts to retained native vegetation.
  
42. Before any works start a Construction Environment Management Plan (CEMP) is developed to the satisfaction of the Responsible Authority. The CEMP should include:
  - a) Measures to address Conditions 32, 39 and 40
  - b) Measures to control erosion and sediment laden water runoff
  - c) Where any construction wastes, equipment, machinery and/or earth is to be stored/stockpiled during construction
  - d) Tree/vegetation protection measures and zones
  - e) The location of trenching works, boring, and pits associated with the provision of services
  - f) The location of any temporary buildings or yards
  - g) Measures to remediate any areas on Crown land that are disturbed during construction
  - h) Reasonable precautions to ensure that any soil and equipment is free from noxious/environmental weed seeds and other vegetative material that can grow prior to transporting any soil and equipment to or from the site
  
43. That a Landscape Plan that enhances the creek interface and protects retained native vegetation is developed and implemented to the satisfaction of the Responsible Authority.

**Melbourne Water Conditions (Ref: MWA- 1215179)**

44. The building setbacks adjacent to Scotchmans Creek must not be further reduced without the further review and written approval by Melbourne Water, to ensure adequate setback from the waterway.
  
45. Prior to commencement of construction a Site Environmental Management Plan (SEMP) must be submitted to Melbourne Water for approval, specifying relevant actions in a practical way to ensure that

they are implemented effectively. The SEMP must include a site map detailing the location and design of all measures including the following:

- a) Silt fencing
- b) Access tracks
- c) Spoil stockpiling
- d) Trenching locations
- e) Machinery/Plan Locations

46. Any new or modified stormwater connection to Melbourne Water's drainage system must obtain separate approval from Melbourne Water's Asset Services Team.

#### **Time for Starting and Completion**

47. In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

- (a) The development is not started before two (2) years from the date of issue.
- (b) The development is not completed before four (4) years from the date of issue.

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

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

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

#### **NOTES**

- A. This is **not** a Building Permit. Building Permit approval must be obtained prior to the commencement of the above approved works.
- B. Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department. A refundable security deposit is to be paid prior to any drainage works commencing.
- C. All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.

- D. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing.
- E. The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:
- a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
  - shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
  - another Council approved equivalent.
- F. No work must be commenced in, on, under or over the road reserve without having first obtaining all necessary approval under the Road Management Act 2004, the Road Safety Act 1986, and any other relevant acts or regulations created under those Acts.
- G. The nominated point of stormwater connection for the site is to the south-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the Council pit in the reserve to be constructed to Council standards. *(A new pit is to be constructed to Council standards if a pit does not exist, is in poor condition or is not a Council standard pit).*
- Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.
- H. One copy of the plans for the drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of works. The plans are to show sufficient information to determine that the drainage works will meet all drainage conditions of the permit.
- I. All infrastructure proposed over the newly created drainage easement requires a Building Over Easement approval obtained from the Council.
- J. Unless no permit is required under the planning scheme any signs must not be constructed or displayed without a further permit.
- K. The proposed vehicle crossing is to be constructed in accordance with the City of Monash standards.
- L. Disabled access to the building must be provided to the satisfaction of the Responsible Authority. All work carried out to provide disabled access must be constructed in accordance with Australian Standards Design for Access and Mobility AS 1428.1.

- M. The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.
- N. Any works within the road reserve must ensure the footpath and nature strip are to be reinstated to Council standards.
- O. All new crossings are to be no closer than 1.0 metre measured at the kerb to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
- P. Noise from the premises must comply with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1).
- Q. Any request for a variation of this Permit shall be lodged with the relevant fee as determined under the Planning & Environment (Fees) Regulations 2016.
- R. Any request for time extension of this Permit shall be lodged with the relevant administration fee at the time the request is made.
- S. The recommendations and requirements of the approved Cultural Heritage Management Plan must be implemented to the satisfaction of the Cultural Heritage Advisor.

Notes required by Department of Environment, Land, Water and Planning

- T. Before any works on public land start, a permit to take protected flora under the *Flora and Fauna Guarantee (FFG) Act 1988* may be required. To obtain an FFG permit or further information, please contact Simon Denby, Program Manager- Natural Environment Programs at the Knoxfield regional office of the Department of Environment, Land, Water and Planning on (03) 0436 920 161 or email [simon.denby@delwp.vic.gov.au](mailto:simon.denby@delwp.vic.gov.au).

**BACKGROUND:**

**History**

The site had been subject to various planning permits over time however, the majority of these have not been acted upon and have since lapsed. These permits are summarised below.

**Planning Permit TPA/24220** was issued on 27 April 2001, allowing the development of a three storey 90 bed aged care facility on the western side of the creek, with 41 self contained support care units (33 located on the eastern side of the creek and 8 located on the western side of the creek).

The permit has now expired.

**Planning Permit TPA/32146** was issued on 29 September 2005 allowing the development and use of a 147 bed aged care facility and 41 self-contained supported care units, the removal of vegetation, reduction of car parking and alteration of access to a road in a Road Zone Category 1. Construction works associated with the aged care facility were completed in 2008 however construction of the approved self-contained supported care units has never been undertaken. The permit has now expired.

This permit included extensive requirements negotiated between Melbourne Water, Council and the landowner, including works within the waterway corridor, creation of various drainage and carriageway easements, construction of a shared path through the site including ongoing access entitlement and agreement relating to costs associated with constructing and implementing the permitted works. This permit required a Section 173 Agreement with relevant parties in relation to the above requirements. The subsequent S173 Agreement (AG681522S) was registered on the Title of the land on 10 August 2009 and remains on title.

**Planning Permit TPA/45487** was issued on 18 May 2017 at the direction of VCAT to allow the development of a three storey aged care facility on the eastern side of the Scotchman's Creek including tree removal. Council had previously refused the proposed development. In granting Planning Permit TPA/45487 VCAT determined:

- The construction of a three storey building is an acceptable response to this site and neighbourhood. The building is setback adequately from property boundaries and the creek
- The site is large enough to accommodate an elongated three storey building.
- New landscaping along the creek area will be of high standard that will benefit residents of the aged care facility and general public using the shared pathway.
- The proposal will allow for deep soil planting of taller canopy trees.
- There is no unreasonable overshadowing impacts from the new three storey building on the adjoining dwellings.
- Tree removal is acceptable as the retention of the remaining trees are incorporated into a comprehensive landscape design which maintain and enhance the landscape qualities of the creek environs and wider neighbourhood.

The development was not commenced before 18 May 2020 and the permit has expired.

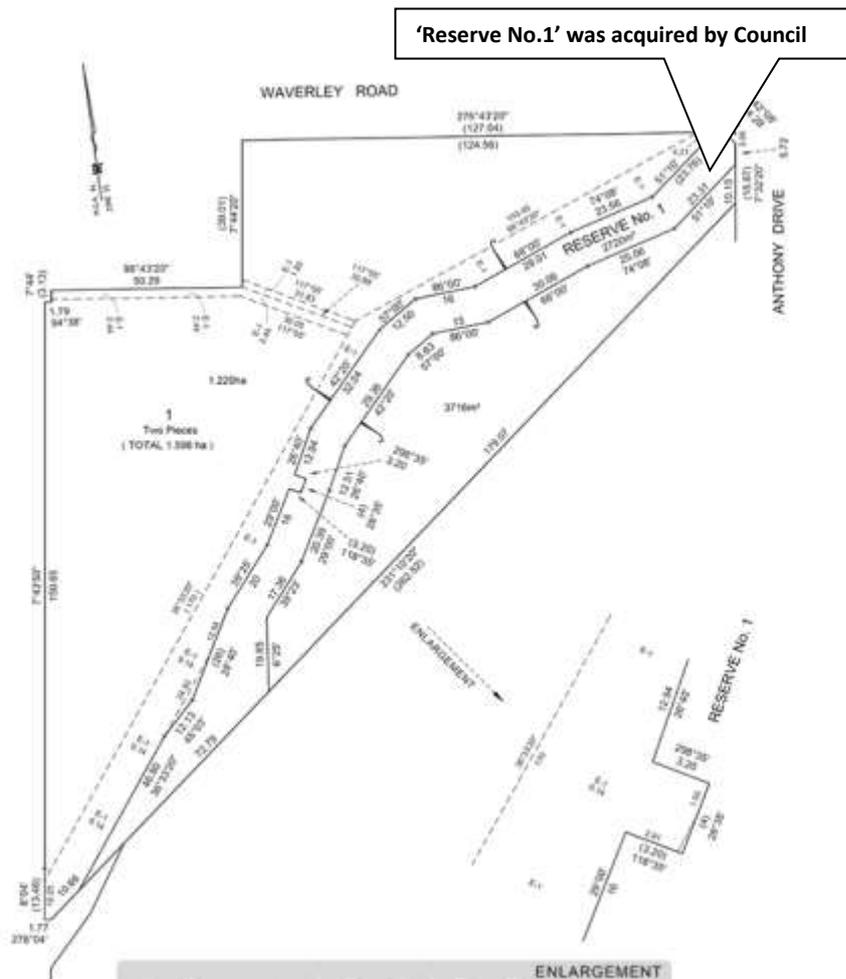
**Planning application TPA/53350** was lodged to Council on 16 November 2021 to subdivide the land into two lots. Lot 1 is proposed to contain the parcel of land west of Scotchmans Creek; and lot 2 contains the parcel of land east of the Creek. The Creek and the new shared path is excluded from both the lots in this subdivision. Additional information has requested by Council officers requiring an assessment against the relevant subdivision policies in relation to the proposal.

The application has been not yet been determined.

Scotchmans Creek Trail

Council acquired a parcel of land of approximately 2,720 square metres that abuts Scotchmans Creek in September 2020 to preserve it as public open space. The existing shared path that runs along the south-eastern boundary of the land will be relocated closer to the creek to sit on the land that was acquired. Relocation of the shared path is scheduled to commence in April 2022.

The following diagram shows the land acquired by Council and the relocated share path location:



The new shared path will be located along the southern edge of the open space corridor. The remaining land not acquired by Council remains in private ownership and includes the parcel of the land that is subject to this current application.

### **The Site and Surrounds**

The subject land is located on the south-west corner of the intersection of Waverley Road and Anthony Drive in Mount Waverley. The land is a large irregular shaped parcel having an overall area of approximately 1.97 hectares.

Scotchman's Creek runs through the centre of the site dividing the site into two separate portions. The western side is developed with a three storey residential aged care facility with vehicle access from Waverley Road. The eastern side is currently largely undeveloped except for the existing shared pedestrian and cycle path along the eastern boundary. The shared path is to be relocated towards north-west by Council. The new shared path will be located along the south-east of the Scotchman's Creek.

This application applies to the eastern portion, east of the new shared path. The land size of this portion is approximately 3700 square metres.

The topography of the land is varied, with a steep slope in parts and along the banks of the creek. The site is heavily vegetated, including a number of mature indigenous trees. There are also numerous easements encumbering the land.

The subject land is surrounded by residential properties on the east, south and west sides. Built form of dwellings within the immediate surrounding area typically comprises of large detached dwellings many of which are orientated to Scotchman's Creek.

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

### **Existing Section 173 Agreement**

Planning Permit No. 32146/A required a Section 173 Agreement between Council, Melbourne Water and the Owner of the land. The agreement was registered on Title in August 2009 and provides for:

- Creation of carriageway, drainage and floodway easements.
- Construction of the shared pathway.
- Completion of works within the creek corridor.
- Preparation of a waterway corridor rehabilitation plan.
- Public open space contribution obligations.
- Indemnity liability relating to use of the shared path.

All the requirements applicable to the portion of the development site have been satisfied. Easements to be created are located on the other portion which is not affected by this proposed development. Recommended permit conditions will require the easements to be indicated on the plans for endorsement; and to be satisfied prior to the use of this development starts.

**PROPOSAL:**

The application proposes the construction of a two storey child care centre to accommodate 184 child care places, a food and drink premises (café) and removal of vegetation.

Key details of the proposal are summarised as follows:

- The main building comprises a double storey building to the front of the site and two single storey playrooms located to the west and south of the main building. A basement car park is located underneath building.
- 46 car spaces located within the basement, accessed via the widened crossover from Anthony Drive, near the corner of Waverley Road.
- The child care centre will accommodate a maximum of 184 children.
- A food and drink premises (café) with a leasable floor area of 148 square metres.
- Pedestrian access will be from Anthony Drive.
- Proposed hours of operation:
  - Child care centre: Monday to Friday, 6am to 7pm.
  - Food and drink premises: Monday to Friday, 6am to 7pm.  
Saturday & Sunday, 7am to 4pm.
- Removal of eleven trees on site including 1 tree identified as native vegetation.

**Amended Plans After Advertising:**

Amended plans (Revisions A, B & C dated 25 January 2022 and 22 March 2022) were lodged with Council on 9 March 2022 after the public notification period. The amended plans sought to provide increased building setbacks adjacent to the south-eastern boundary to allow for the upgrade of drainage infrastructure and additional upper level façade articulation adjacent to the south-eastern boundary.

On the amended plans, the entire building is setback a minimum of 3 metres from the south-eastern boundary; and the first floor wall is better articulated on the south-east elevation. The maximum number of childcare places remains at 184.

In addition, the following changes were made in respond to comments from the Council's Transport Engineer:

- Updated new shared path alignment along the Scotchmans Creek.

- Boundary gates along the new shared path amended to swing internal rather out onto the shared path, this satisfied initial concerns raised by Council's Traffic Engineer.
- Bicycle parking spaces along the Scotchmans Creek were removed.
- The crossover to Anthony Drive was amended due to the location of existing stormwater pits.

The amendments are not expected to cause any further impact to the adjoining properties and re-advertising of the amended proposal was not deemed necessary.

This report is prepared based on the amended plans (TP04, TP05 & TP05a Revision C dated 25 January 2022, TP04a Revision B dated 25 January 2022, TP06 & TP07 Revision A dated 25 January 2022, TP08 & TP09 dated 23 March 2022 and TP11 Revision A dated 22 March 2022).

Attachment 1 details the amended plans.

### **PERMIT TRIGGERS:**

#### Zoning

The subject land is located within the Neighbourhood Residential Zone Schedule 2 (NRZ2) under the provisions of the Monash Planning Scheme.

Pursuant to Clause 32.09 *Neighbourhood Residential Zone*, a permit is required to use the land for a child care centre and a food and drink premises.

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*'.

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

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.

#### Overlays

Clause 42.02: Vegetation Protection Overlay (VPO1)

The land falls within the VPO1. Pursuant to Clause 42.02-2 *Vegetation Protection Overlay*, a permit is required to remove significant vegetation with a trunk circumference greater than 500mm at 1200mm above ground level and is higher than 10 metres.

11 trees are proposed for removal, 6 of them are greater than 10 metres in height and therefore require a permit under this provision. The remaining vegetation to be removed does not require a permit.

**Clause 44.04: Land Subject to Inundation Overlay (LSIO)**

The land is also subject to the LSIO. Pursuant to Clause 44.04-2 *Land Subject to Inundation Overlay*, a permit is required to construct a building or to construct or carry out works. Any application must be referred to Melbourne Water.

**Particular Provisions****Clause 52.17: Native Vegetation**

Pursuant to the provisions of Clause 52.17-2 a permit is required to remove, destroy or lop native vegetation. One tree proposed to be removed is identified as native vegetation and requires a permit under this provision. The application was referred to the Department of Environment, Land, Water and Planning (DELWP).

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

**CONSULTATION:**

The Applicant was advised that this application is scheduled to be considered at the April Council meeting. In addition, a letter has been sent formally advising them of the details of the Council meeting. The Applicant has been advised that the application is recommended for approval, and an outline of the recommended conditions has been provided.

**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 three (3) large signs were displayed at the frontages of the site.

In response, seventeen (17) objections were received including an objection from the Friends of Scotchmans Creek and Valley Reserve with a petition containing 329 signatures opposing the development.

The objections included the following concerns:

- Building height.
- Neighbourhood Character.
- Interface with the Scotchmans Creek Corridor.
- Visual bulk and poor design response to the adjoining residential interface.
- Loss of significant vegetation
- Construction impacts.
- Car parking, vehicle access and increase in traffic volumes causing traffic jam and safety hazards.
- Safety concerns of pedestrians and cyclists.
- Impact on the existing bicycle/pedestrian path.

- Amenity impacts including:
  - Overshadowing
  - Overlooking
  - Noise from playground, vehicle movements entering and exiting the car park and rooftop equipment
  - Lighting.
- Proposed commercial use are not appropriate in residential area.
- Does not satisfy the purpose, decision guides and local character objectives of the Neighbourhood Residential Zone.
- Lack of permeable space and stormwater management.
- The land should be used as a parkland.
- Loss of property values.

Attachment 4 details the location of objectors.

### **Referrals**

#### **External Referral**

##### **Department of Transport (Ref: PPR 38413/21)**

The application was referred to the Department of Transport in accordance with the requirement of Clause 66.02-11 *Use and Development Referrals* for the proposed child care centre which is classified as an 'education centre' under Clause 73.03.

The Department of Transport did not raise any concerns nor require any conditions.

##### **Melbourne Water (Ref: MWA-1215179)**

The application was referred to Melbourne Water in accordance with the requirement of LSIO in Clause 44.04-5. Melbourne Water advised that the proposal is considered satisfactory subject to permit conditions. Requirements included submission of a Site Environmental Management Plan to Melbourne Water for approval prior to works commencing.

##### **Department of Environment, Land, Water and Planning (DELWP)**

The application was referred to DELWP in accordance with the Native Vegetation requirement of Clause 66.02-2 for the proposed removal of native vegetation. DELWP advised that they are satisfied that the applicant has taken adequate steps to avoid and minimise the proposed native vegetation removal and that the required offsets can be secured. It recommended that the proposed native vegetation removal be approved subject to the provision of net gain planting offset requirements.

## **Internal Referral**

### Traffic Engineer

Council's traffic engineers have no concerns with the application. Amended plans submitted have addressed issues previously raised including gates not to open to the shared path; visitor bicycle spaces not to be located within Council land; the two spaces near the pedestrian area at the end of the basement car park to be allocated to staff; and provision of heavy-duty lids to the service pits affected by the proposed vehicle crossovers.

### Drainage Engineer

Council's drainage engineers have identified that the existing 375mm and 450mm stormwater drains from the Anthony Drive properties will be affected by the proposal and a 3 metre wide drainage easement is required to protect these drains. The existing stormwater drains on the west side of the 1-7 Anthony Drive properties are to be replaced by a 300mm storm water drainage with each property connection re-established to this new drainage. To address this requirement, proposed conditions 1a and 30 require the provision of the replacement stormwater drain.

### Waste Services

Council's Waste Services advised that the proposed Waste Management Plan will require amendments to meet all Council's requirements.

## **DISCUSSION:**

### **State Planning Policy Framework (PPF)**

There is general support in both the State, Regional and Local Planning Policy Frameworks for the proposal. Clause 11.02-1S (Supply of Urban Land) seeks to ensure sufficient supply of land available to meet forecast demand for different uses including community uses.

Clause 15 (Built Environment and Heritage) requires development to respond to its context in terms of character and landscape. Development should achieve 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.

Clause 17.02-1S (Business) encourages development that meets the community's needs for retail, entertainment, office and other communal services. Strategies include ensuring commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.

Clause 18.02-1S, 2S & 3S (Walking, Cycling & Public Transport) encourages to facilitate an efficient and safe walking, bicycle & public transport network and increase the proportion of trips made by walking, cycling and public transport.

The proposed development is consistent with these objectives. The proposed use of child care centre is considered appropriate to the location of the subject land. The proposed buildings are well setback from the front boundary, designed with high architectural quality and have appropriate regard to the adjoining suburban context including the Creek interface and surrounding residential properties. The development is designed to provide a connection to the creek corridor via the new shared path and encourages walking and cycling trips.

#### **Local Planning Policy Framework (LPPF)**

The local planning policy framework seeks to ensure new development has regard for the 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. It identifies the site to be within Character Area “Creek Abuttal Areas” and presents limited redevelopment potential. The *“neighbourhood character of this area will be defined by its spacious garden settings, tall canopy trees and consistent built form. New development will be designed to complement the established planting patterns and topography. There will be consistency in front setbacks and the maintenance of larger setbacks from the creek which will provide areas for planting and sustaining larger trees. Vegetation will dominate the streetscape and buildings will be recessive and normally hidden from view behind vegetation and tall trees...New development will be well landscaped retaining the ‘open landscape character’ of the nearby creek environment and will taper down in scale closer to the creek. Development will visually connect to the creek environment through the use of colour and materials for buildings and fencing that blend with, rather than contrast with it’.*

The proposed design responds to the Creek interface by using a majority of single storey built form and significant first floor setbacks to minimise visual impacts to the Creek interface. Existing trees are proposed to be retained to further enhance the landscape outcome to the Creek interface and properties on Anthony Drive.

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. Developments are to be designed and managed to minimise the impact of urban stormwater runoff on waterways.

The land is located within a Land Subject to Inundation Overlay and has been designed in consultation with Melbourne Water having regard to flooding. Council's Drainage Engineers have also reviewed the proposal which have been discussed in the Referral section.

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 Sustainability Management Plan is required to be prepared and submitted. This will be requested via permit conditions if a permit was to issue.

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.*

While determining the appropriateness of the child care centre and food and drink premises uses, it is vital to minimise and mitigate the impact of these uses on nearby residential amenity and ensure the built form suitably integrates with the surrounding context. Assessment of the proposed uses will be discussed in the assessment section of this report.

**Neighbourhood Residential Zone, Schedule 2**

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.*” It is critical to consider the constraints of this particular site and the intensity of the proposal to satisfy the purpose of the zone and objectives to the Schedule 2 which are as follows:

- *To emphasize the visual dominance of landscaping, particularly along the interfaces with the creek corridors.*
- *To ensure new development transitions down in scale towards the creeks, respecting and reinforcing the natural topography.*
- *To respect and enhance the existing character and functions of the open spaces along the creek corridors.*

The Decision Guidelines for non-residential uses within the Neighbourhood Residential 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 development is constrained by the irregular shape, slope of the land, and the sensitive interfaces of the Creek and adjoining residential properties. The proposed building is designed to be predominantly single storey with a small double storey component towards the front section of the land where the adjoining residential properties are higher than the subject land, and the built form of existing buildings on those properties are larger and more pronounced being single storey with under croft level or two storeys.

The proposed child care centre has a maximum height of 8.729 metres on the eastern elevation; and 8 metres on the western elevation. Whilst the maximum building height in Clause 32.09 *Neighbourhood Residential Zone* does not strictly apply to the application as the proposal is not for a residential building, the proposed building does not exceed the maximum building height of 10 metres that is specified as a maximum had the development been residential.

The design of the child care centre incorporates the majority of the ‘external play spaces’ to western side of the building, towards the Creek interface to provide an ‘open setting’ to this interface. The proposed setbacks of the building will provide opportunities for deep soil planting and landscaping to soften the appearance of

the building to this interface. The proposal has the ability to provide additional screen planting between the proposed building and the eastern boundary to further soften the residential interface. The design response is consistent with the objectives of the NRZ.

The proposed food and drink premises in the front section of the building proposes glazed facades and outdoor seating provides connections with the shared path and will enhance the functions of the existing open space to the Creek. This is considered an appropriate design response in the context of the site and its surrounds.

### **Assessment**

#### **Proposed uses of child care centre and food and drink premises**

The proposal has been assessed against the criteria set out in Clause 22.09 *Non Residential Use and Development in Residential Areas* to determine if the proposed child care centre and food and drink premises are considered appropriate at the subject site.

#### *Locational criteria*

- *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.*

The subject site is a large parcel of land, over 3,700 square metres, with easy access to Waverley Road, which meets the main road location criteria for non-residential use. The proposed vehicle access is from Anthony Drive where there is already an existing vehicle crossover, and pedestrian access to the food and drink premises and child care centre is focussed to Waverley Road. The proposed use of a child care centre will cater for the needs of the local community and is a supported use in residential zones, subject to an appropriate design response.

#### *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 land has a small street frontage to Anthony Drive and the proposed building is setback over 32 metres from the frontage causing minimal impacts to the Antony Drive streetscape. Whilst the building form is contemporary and of a larger scale than the adjoining residential properties, it is not considered unreasonable given the land size.

The proposed building is designed predominately single storey with a small section of double storey. The proposed built form and setbacks are consistent with the adjoining residential properties and the building will sit comfortably in this mixed suburban environment.

The proposed food and drink premises and child care centre have been designed to be orientated toward the Creek so as to increase connectivity of the site activities with the new shared path and the open space to the Creek. The food and drink premises will also facilitate visitors to the Scotchman's Creek Trail, bringing additional community benefits.

#### Neighbourhood Character, Built Form & Design Detail

New development must be designed to ensure the design response respects the existing neighbourhood character, contributes to the preferred future character and responds to the features of the site. The height and setbacks of the buildings must also respect the existing or preferred neighbourhood character and limit the impact on the amenity of existing dwellings.

The site abuts a residential interface to the southeast and creek interface to the northwest, which requires a design that is responsive to this context. The proposal responds to this site context by proposing a majority single storey with a small double storey component with building height ranging between 3 to 8.72 metres (with a highest ridge height of RL 88.40), which is consistent with the built form and height of the adjoining residential properties.

The building design is a contemporary response to the suburban context and setbacks to property boundaries are appropriate. The setback to the Anthony Drive boundary is over 32 metres. A driveway is proposed within this setback leading down to the basement car park, providing vehicle access to the development. Majority of the existing trees along the north-western side of the land will be retained to maintain the leafy character to the Waverley Road streetscape.

The setbacks from the eastern boundary adjoining the residential properties of Anthony Drive varies between 3 to 4 metres for ground level; and 3 to 5.75 metres for the upper level. The minimum setback of 3 metres on ground level is sufficient for meaningful screen planting along this boundary to soften the proposed built form from the residential interface. The proposed first floor is well articulated with an acceptable level of visual interest. The proposed 2.4 metres high acoustic wall near the rooftop café will limit external amenity impacts from the rooftop café or the services. The two storey built form will sit comfortably in this context given it adjoins the properties at 1, 3 & 3A Anthony Drive to the east where each of those properties contains a single storey with under-croft level or two storey building siting higher than the subject site.

Setbacks to the rear end of the site varies between 50 to 64 metres due to the irregular shape of the site. This setback is significant and allows retention of significant trees meeting the Garden City Character objectives, and minimise impacts to the adjoining residential properties to the south-east of the site.

The building is well articulated to the creek interface and contains a range of setbacks to the boundary adjacent the shared path. The closest point to this boundary is 1 metre and the furthest is over 17 metres on ground level; the first level is generally setback over 3 metres from this boundary. Given the majority of the building is single storey, and the significant setbacks provided to the shared path boundary, any visual impact to the shared path and the open space to the creek will be minimal. The majority of the significant trees along the shared path will be retained to assist in softening this interface.

In addition, the proposed food and drink premises provides a glazed façade and outdoor seatings to the Creek interface, which will provide an active frontage to the Creek. The glass balustrades of the child care centre is also a visual permeable element that improve the connectivity with the shared path and enhance the functions of the existing open space to the Creek.

A diversity of building materials and finishes are proposed which includes face brickwork, expose concrete, painted cement sheet, aluminium cladding or battens, painted brickworks, with a mixture of timber pergola, glass louvre and painted steel balustrade. These materials are respectful of the building material and colours of the nearby residential buildings, and will sit well with the Creek environ.

#### External Amenity Impacts

As discussed previously, Clause 55 does not apply to this development however its standards can be used as a guide to demonstrate if the proposal will cause unreasonable external amenity impacts.

#### *Overlooking*

The applicant has demonstrated that overlooking to adjoining properties to the adjoining residential properties is satisfactory. The finished floor level of the child

care centre is generally in accordance with the natural ground level of the land, which is lower than the land on the east adjoining properties. The proposed 2 to 2.4 metre high acoustic fence along the eastern boundary is sufficient to prevent unreasonable overlooking from the ground level of the building into adjoining properties.

Potential overlooking from the upper level windows is addressed by the use of highlight and obscured windows at first level along the eastern elevation.

#### *Overshadowing*

The proposed double storey built form will generate a small amount of additional shadow to the adjoining residential properties at 1, 3 and 3A Anthony Drive.

The shadow diagrams demonstrate that whilst these adjoining properties will experience additional shadow, the additional shadow cast is not excessive or unreasonable.

#### Landscaping

##### *Vegetation Removal*

The subject land is substantially vegetated with 90 existing trees on the site; 23 trees are located within proximity of the proposed development including two trees on the adjoining residential properties. The application proposes to remove 11 trees of which 6 trees would require a planning permit for removal under the provision of the Vegetation Protection Overlay. The extent of vegetation removal includes 1 tree of high retention value, 2 trees of moderate retention value, and 8 trees of low retention value.

An arborist report was submitted by the Applicant with the application. Vegetation to be removed are predominantly Victorian native eucalypt species ranging in height from 4 metres to 22metres. The vegetation to be removed is primarily concentrated in two pods adjacent to the proposed driveway within the front setback and towards the middle of the site, adjacent the rear of No. 7 Anthony Drive. The high retention value tree proposed to be removed is identified as a mature Spotted Gum (*Corymbia maculate V Spotted Gum*) having a height of 22 metres and canopy spread of 16 metres. It is located near the northeast corner of the site, towards the front entry of Anthony Drive. It is proposed for removal to facilitate the construction of vehicle and pedestrian access to the development.

The other two medium value trees are 10 and 13 metre high Eucalyptus. Both trees are mature but one is heavily lopsided to the south-east and one heavily leans to the west. One of the trees is located towards the Waverley Road frontage of the site, which is required to be removed to facilitate vehicle and pedestrian access. The other tree is located further inside the site, the Arborist raised safety concerns due to its position heavily leaning towards the proposed child care centre.

All the trees proposed for removal were permitted to be removed under the previous planning permit TPA/45487 except an *Apple Tree* (Tree no.9 in the arborist report). In the previous development, the Tribunal agreed to the removal of a total of 23 trees on site which included 1 tree of high retention value; 10 trees of moderate retention value and 12 trees of low retention value. The Tribunal considered the proposed retention of the remaining trees on site was able to be incorporated into a comprehensive landscape designed prepared by the landscape architect, which will *maintain and enhance the landscape qualities of the creek environs and wider neighbourhood (Blue Cross Community Care Services Pty Ltd v Monash CC [2017] VCAT 670)*.

The table below shows the trees previously approved for removal by the Tribunal and the proposed tree removal in the current proposal:

	<b>Tree Numbers (in the Arborist report for current application)</b>
<b>Trees previously approved for removal by the Tribunal</b>	1, 2, 3, 5, 6, 7, 8, 12, 13, 14*, 15, 16*, 17* & 18* <i>and other trees located within 1 Betty Court which is not affected in this application</i>
<b>Trees proposed for removal in this proposal</b>	1, 2, 3, 5, 6, 7, 8, 9, 12, 13 & 15
<b>Additional tree to be removed from the previous development</b>	9 ( <i>Apple Tree</i> )

*\*Tree proposed for retention in this proposal*

The current proposal will retain 4 additional significant trees adjacent to the child care centre, in addition to the 67 trees retained throughout the subject site. 3 of the 4 trees (No. 14, 16 & 17) are located towards the south-eastern section of the land, behind the properties of 7 Anthony Drive and 1 Betty Court. Tree 18 is located along the new shared path.

Overall, the design response seeks to retain 10 trees within the proximity of the proposed child care centre, 7 of which are considered significant, being 12 to 22 metres in height. The majority of these trees are located near the southeast and southwest section of the site, providing a visual buffer to the residential and Creek interfaces; and maintain the visual dominance of landscaping along the Creek corridor.

The proposal is considered to be consistent with the objectives of the *Neighbourhood Residential Zone Schedule 2* and the *Vegetation Protection Overlay Schedule 1*; to maximise retention of significant trees, retain an open landscaped character and to emphasis visual dominance of landscaping to maintain the natural and treed environs of Scotchman's Creek precinct.

Having regard to native vegetation requirements, the majority of vegetation appears to have been planted. An independent biodiversity assessment was submitted by the Applicant which identified one small patch of native vegetation near the southern end of the Scotchman's Creek. The assessment concluded that

no national or state significant flora or fauna species were recorded or identified during the field survey; and that vegetation within the study area did not meet the condition thresholds that define any national or State-significant communities due to the absence of key indicator species, low diversity of native flora and high cover of exotic vegetation. The report did not specify any offsets requirements for the proposed removal of vegetation, but suggested that informal offsets involving the planting of an equivalent number of trees to those as lost be included as part of the future landscape plan. The removal of native vegetation was also permitted by the Tribunal in the previous development.

#### *Proposed landscaping*

A varieties of trees are proposed to be planted throughout the site to provide a comprehensive landscape outcome. The proposal retains majority of the vegetation along the Creek corridor, with proposed additional medium to large canopy trees along the Creek interface. Proposed trees along the Creek corridor include *Acacia dealbata* 'Silver Wattle' (15-30m x 10m); *Acacia melanoxylon* 'Blackwood' (15m x 8m); *Eucalyptus viminalis* 'Manna Gum' (25m x 12m); and *Corymbia citriodora* 'Scentuous Dwarf' (7m x 4m). The larger trees are proposed along the relocated shared path, outside the main play areas of the child care centre. Other small to medium trees ranging between 5-7 metres high trees are proposed within the child care centre, closer to the buildings and play areas.

Similar trees are also proposed along the eastern boundary, adjacent the rear of the Anthony Drive & Betty Court properties. A number of medium sized trees such as *Corymbia citriodora* 'Scentuous Dwarf' (7m x 4m) are proposed within the 3 metre basement setback to provide deep soil planting along the boundary; ample of shrubs up to a mature height of 7 metres are also provided along this boundary to soften the residential interface. A large *Eucalyptus radiata* 'Narrow-leaved peppermint gum' (15-20m x 12m) is proposed at the end of site, behind the property at 3 Betty Court.

The proposal to retain a large number of existing significant trees in front of and adjacent to the relocated shared path will provide a landscape outlook to the shared path; and a landscaped interface to the streetscape. The proposed small to medium trees along the eastern boundary will assist in providing privacy to the occupants of the adjoining residences, and soften the visual appearance of the proposed child care centre.

Overall, the proposed landscape response is satisfactory. It includes different landscaping treatments along the Creek corridor, within the child care centre and along the residential interface; and is respectful of the Creek and environs.

#### *Impacts on neighbouring trees*

Two neighbouring trees are located in proximity of the proposed development, including a *Grevillea robusta* A Queensland Silky Oak (20m x 14m) at 2/7 Anthony Drive & and a *Eucalyptus viminalis* I (22m x 22m) at 1 Betty Court. Both trees are in healthy and good condition. The arborist advised that there is no encroachment

of the Tree Protection Zone (TPZ) of the *Grevillea robusta* A Queensland Silky Oak; and a minor encroachment (1%) into the TPZ of the *Eucalyptus viminalis* I from Playroom 7, the impact to these trees is negligible. Standard tree protection measures will be included in permit conditions should one be issued.

#### Construction Impacts

A construction management plan including details of staging of the construction works and construction vehicle access traffic management plan should be a requirement of any permit issued. A construction management plan to minimise amenity and construction impact of the proposed development on the surrounding area, provide for details of construction staging, construction vehicle access, and ongoing shared path access including a requirement for the relocated shared path to be fully constructed prior to demolition of the existing shared path. The extent of excavation and any required stabilisation measures will be considered by the appointed Building Surveyor as part of the Building Permit process.

#### Car Parking, traffic and access

The requisite car parking spaces required under Clause 52.06 would be provided as shown in the following table:

Use	Number of children/ leasable floor area	Clause 52.06 Requirement	Car spaces required	Car spaces provided
Child Care Centre	184 children	0.22 spaces to each child	40 spaces	40 spaces
Food and Drink Premises	148 square metres	4 spaces per 100sqm of leasable floor area	5 spaces	5 spaces
<b>Total</b>			45 spaces	46 spaces

The proposed development does not generate any bicycle parking requirements pursuant to Clause 52.34-3 of the Monash Planning Scheme, however the proposal provides a total of 10 bicycle parking spaces 6 spaces within the basement (near the lift lobby) & 4 staff parking within the ground level service yard.

A traffic report was provided with the application. The report noted that due to spatial constraints at the site entrance/ exit, the provision of a passing area of at least 6.1 metres cannot be provided. The report suggested that the proposed width of 5.5 metre is appropriate and a swept path assessment was provided demonstrating satisfactory access. Council's Traffic Engineer considers this arrangement acceptable.

The report indicated that the maximum predicted traffic generation is 154 vehicles/peak hour, which consists of 85 vehicles entering and 69 exiting the

morning peak and vice versa in the afternoon peak. This translates to one vehicle entering/ exiting in just under a minute. Council's Traffic Engineer advised that it is likely that this may result in vehicles passing each other within the property i.e. on the ramp or in the car park and the likelihood of these movements occurring at the site entry point is low. In addition, the proposed 7.3 metres wide vehicle crossing provides ample manoeuvring area for two vehicles to negotiate the crossing should this happen. Council's Traffic Engineer is satisfied that the road network can accommodate these traffic movements.

The report also identifies that additional traffic is likely to primarily access the site via Waverley Road. Council's Traffic Engineer considers that the nearby intersection of Waverley Road/Anthony Drive restricts vehicle movements to left-in/left-out only and further turning restrictions apply along Waverley Road will assist drivers to enter and exit the site more safely than an uncontrolled intersection. The proposed development is expected to have a negligible impact on the local traffic network.

#### Relocated Shared Path

The Scotchman's Creek Trail Upgrade Project supported by the Federal Government involves relocation of the existing shared path from the south-east boundary to the north-west along Scotchman's Creek, on land acquired by and now owned by Council. The relocated shared path will also incorporate the main pedestrian access to the development orientated towards Waverley Road. The shared path will provide for an internal connection with the existing Scotchman's Creek bridge with the subject land. Its primary purpose however remains as part of the vital connecting for the Scotchmans Creek Trail.

The submitted proposal provides for indicative detail of the relocated shared path. The proposed food and drink premises is designed to orientated to the new shared path to increase connectivity of the site activities with the shared path. The pedestrian entrance to the proposed child care centre is also proposed to be connected to the new shared path.

The shared path provides a vital link in the bicycle path network including relatively unimpeded connections through to the city. The upgrade of Scotchman's Creek Trail is part of Council's ongoing Walking and Cycling Strategy Program to improve safety and accessibility for shared path users. Construction of the new shared path is scheduled to commence shortly.

#### Sustainable Design Assessment

A Sustainability Management Plan (SMP) is required under Clause 22.13-4 of the Monash Planning Scheme which will be requested via permit conditions.

#### Noise

A note relating to noise impacts and the requirement to comply with relevant EPA requirements will be placed on any permit that is to issue.

Additional requirements will be placed on any permit issued relating to opening hours of the child care centre and food and drink premises, and waste collection to protect residential amenity of adjoining residential areas.

#### Cultural Heritage Management Plan Requirement

The land is located within an area identified as having cultural heritage sensitivities and as such may require preparation of a Cultural Heritage Management Plan (CHMP) under the *Aboriginal Heritage Act 2006*.

A CHMP prepared by Andrew Long & Associates has been previously prepared for the subject land in support of the previous planning permit application. The assessment was prepared based on the previous development of a hospital/retirement village, and was approved. The report recommended that due to the fact that no Aboriginal cultural heritage was identified in the section of the activity area which is subject to the present assessment there are no specific recommendations to be fulfilled ahead of the commencement of the activity in this area aside from a cultural heritage induction to be provided by a heritage advisor and the RAP to key personnel involved in ground disturbing works

Andrew Long & Associates provided further advice with this application submitting that the previously approved CHMP remains valid for the current proposed development which seeks to develop and use the land for a child care centre. The advice concluded that the proposed development will not result in an increased potential for impact to as yet unidentified Aboriginal cultural heritage and does not require the approved CHMP to be amended. A note will be placed on any permit that is issued to satisfy the recommendations of the approved CHMP.

#### Bushfire Planning

Clause 13.02-1S *Bushfire planning* applies to this application as a small portion of north-east section of the subject land is located within the designated bushfire prone area, which is show in the map below:



This policy is to strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life. Relevant strategies include prioritising the protection of human life over all other policy considerations; identify bushfire hazard and undertake appropriate risk assessment. Bushfire risk should be considered when assessing planning applications for the use and development of a child care centre in a designated Bushfire Prone Area.

The Designated Bushfire Prone Area covers a small portion of the site at entrance to the site where the proposed driveway is to be located. The proposed building and outdoor play areas of the child care centre are located outside this area. The applicant has confirmed that the development will be compliant with all fire safety requirements of the Fire Engineer, and all staff on site will be trained with the required emergency safety measures including evacuation procedures.

The development is considered to have low risk of bushfire to people, property, and community infrastructure; and compliance with the fire safety requirements of the Fire Engineer would be adequate. Impacts on the biodiversity of the area will be minimal given no specific bushfire protection measures are required.

#### **Objections not previously addressed**

- **Interface with the Scotchmans Creek Corridor**  
The two pod playrooms are single storey and will be screened by the boundary fence along the new shared path. Retention of existing trees between the Creek and the shared path (Trees 10, 19, 20 and 22) will also assist in softening the visual appearances of these buildings to the Creek interface.  
  
The recommendation of non-invasive clumping species of bamboo and planting of indigenous climbing/ screen plants long the new shared path can be achieved via permit conditions.
- **Retention of significant trees**  
Tree removal has been discussed in the body of this report. The trees have been previously approved for removal by the Tribunal, and this application proposes to retain a larger number of significant trees on site including 7 trees ranging between 12 to 22 metres in height.
- **Lack of permeable space and stormwater management**  
Conditions of the permit will require site permeability to be increased to not less than 40% of site area. The permeability of the development is 39% which is close to the required permeability of 40% for a standard residential development in the Zone. The development could be further improved by replacing the ground floor play areas where they are not on top of the basement carpark with permeable materials. Permit conditions will also

require information to be provided to detail the proposed stormwater management and demonstrates how the objectives and standards of Clause 53.18 *Stormwater Management in Urban Development* are satisfied.

- Safety concerns of pedestrians and cyclists  
Council's Traffic Engineer reviewed the proposed development and associated traffic report; and advised that the maximum predicted traffic generation is expected to have a negligible impact on the local traffic network. The Department of Transport had no objection to the predicted traffic demand and did not raise any concerns with the proposal.

Bicycle parking spaces have been relocated from Council land to the development site.

- Lighting impact  
The proposed opening time of the café is coincided with the child care centre opening hours between 6am to 7pm Monday to Friday. The proposed opening hour between 7am to 4pm on Saturday and Sunday is generally consistent with the daylight hours even in winter and is unlikely to cause unreasonable lighting impact to the Creek.

Nevertheless, conditions of the permit will require a Lighting Plan to be submitted and approved by Council. Lux levels and baffled lighting, in accordance with the Lighting Plan will ensure that any impact on surrounding residential properties and conservation areas within the adjoining public open space corridor is minimised and appropriately managed.

- Roof top equipment and noise  
Roof top equipment is located behind the café and will not be visible to the Scotchmans Creek corridor. A 2.4 metre high acoustic brick wall is proposed to screen the equipment from the adjoining residential properties. The overall height of this wall is 4.16 to 5.7 metres from natural ground level which will fit well with the two storey component of the building. The adjoining residential properties will not be unreasonably affected by the noise or appearance of the roof top equipment.
- The land should be used as a parkland.

The subject land is zoned Neighbourhood Residential and is owned by a private entity. The proposed development and use are allowed within the zoning of the land.

Council recently acquired a portion of the land for addition to the open space network.

- Loss of property values.  
This is not a planning consideration.

**CONCLUSION:**

The proposed development is considered appropriate given the locality and relevant objectives of state, regional and local policies relating to adequate provision of social infrastructure and facilities respond to the needs of existing and future populations, building design and objectives in relation to the Neighbourhood Residential Zone. The design response has been developed having appropriate regard to objectives of the zone, overlays and particular provisions.

The proposed architecture is of a high standard and respectful of the neighbourhood context. The proposed building will be setback adequately to property boundaries to limit off site amenity impacts to the residential and Creek interfaces and allow for landscaping opportunities to maintain and enhance the garden city character of the area.

Overall, the proposal is considered appropriate in both its concept and design and it is recommended that a Notice of Decision be issued subject to conditions.

**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.