

**Planning Application YR-2021/916 - 25-27 Songbird Avenue Chirnside Park – Planning Report – Planning Report**

**APPLICATION DETAILS**

<b>Site Address</b>	25 and 27 Songbird Avenue Chirnside Park
<b>Application No.</b>	YR-2021/916
<b>Proposal</b>	Use and Development of a Childcare Centre
<b>Existing Use</b>	Single Dwelling on both lots
<b>Applicant</b>	U. Bhatia
<b>Zone</b>	Neighbourhood Residential Zone Schedule 1 - NRZ1
<b>Overlays</b>	Significant Landscape Overlay Schedule 23 – SLO23 <ul style="list-style-type: none"><li>• Clause 32.09-2 - Use of the Land for as a Childcare Centre.</li><li>• Clause 32.09-9 - A permit is required pursuant to construct a building or construct or carry out works for a use in Section 2</li></ul>
<b>Permit trigger/s</b>	
<b>Submissions</b>	Thirty-two (32) objections and one (1) in support
<b>Encumbrances on Title (Covenants/Section 173 Agreements)</b>	No
<b>Reason for Council Decision</b>	More than 10 Objections
<b>Ward</b>	Chirnside

**SUMMARY**

The application proposes the use and development of the land as a childcare centre at 25 and 27 Songbird Avenue in Chirnside Park. An assessment by council of the application is triggered under Neighbourhood Residential Zone Schedule 1 (NRZ1) for the use and development of the site. The proposal includes the development of a single-story building which is to be located across both lots. The plans also include a sealed carpark with 17 spaces along the western side of the development.

The childcare centre is proposed to accommodate up to 80 children and 15 staff on site at any one time. The operating hours proposed are between 6:30am and 6:30pm on Monday to Friday. The centre is proposed to be closed on weekends.

The application was advertised, and total of thirty-three submissions have been received, comprising thirty-two submissions in objection and one letter in support. The main grounds of objection are related to traffic, noise pollution, danger to pedestrians, vegetation impacts, car parking, oversaturation of the land use, decreased property value, and timing of the advertised traffic report.

An assessment of the proposal has determined that the proposal fails to meet the requirements of the Yarra Ranges Planning Scheme, and that the application cannot be supported on various grounds which are outlined in this report and attachment 1, concluding that a refusal should be issued.

## **RECOMMENDATION**

***That Council resolve to refuse Planning Application YR-2021/916 for Use and Development of a Childcare Centre at 25 and 27 Songbird Avenue Chirnside Park and issue a Notice of Refusal on the grounds in Attachment 1 to the report.***

## **DISCLOSURE OF CONFLICT OF INTEREST**

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

## **CULTURAL HERITAGE SIGNIFICANCE**

The application has been checked against the requirements of the *Aboriginal Heritage Act 2006* and *Aboriginal Heritage Regulations 2007 (Vic)* as to the need for a Cultural Heritage Management Plan (CHMP). It has been assessed that a CHMP is not required.

## **EXTRACTIVE INDUSTRY**

The site is not located within 500 metres of any extractive industry.

## **HUMAN RIGHTS CONSIDERATION**

The application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Yarra Ranges Planning Scheme), reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

## ENCUMBRANCES ON TITLE

There are no encumbrances or restrictions registered on the Certificate of Title for either lot.

## SITE LOCATION AND DESCRIPTION

The application proposes development of both 25 and 27 Songbird Avenue which is located on the northern side of Songbird Avenue. The two separate title allotments being lots 1833 and 1834 on Plan of Subdivision 089233 both have the same dimensions of 18.29 metres x 47.27 metres, with the unified allotment having a total area of 1,729.1 square metres.

Both 25 and 27 Songbird Avenue each contain a single brick dwelling, garden vegetation and associated domestic outbuildings. 27 Songbird Avenue is a double-storey dwelling while 25 Songbird Avenue is occupied by a single storey dwelling. Each of the lots contain vegetation that is scattered across the site, with a concentration towards the northern boundary and along the fence lines.

There is a 2.44 metre wide easement which runs across the northern boundary of both lots.

The sites have a slight fall of approximately 1.5 metres from the eastern boundary of 25 Songbird Avenue to the western side of 27 Songbird Avenue, with no notable slope north-south.

Currently, access to each of the sites is gained through a single crossover servicing each lot.



**Figure 1: Aerial Image of the subject and abutting sites**

## **SURROUNDING AREA**

- North – The site to the north is occupied by Chirnside Park Primary School, with the urban growth boundary existing along that same boundary. Beyond the school lies a series of single dwellings on larger lots in Green Wedge A Zone Schedule 1. Directly abutting the shared boundary is mixture of playground equipment while the main school building is centrally located on the site;
- East – To the east at 23 Songbird Avenue lies a medium density development, comprising two dwellings and a shared common property driveway. Both dwellings are single storey and have sparse vegetation, the common property driveway abuts the shared boundary of the site;
- South – To the south is Songbird Avenue itself, and the intersection with Glendale Drive (see Figure 1). The sites to the south opposite the proposal are also residential uses, with single dwellings continuing up both sides of Glendale Drive;
- West – The land between the subject site and Kimberly Drive is developed for residential purposes, with the immediate neighbouring dwelling at 29 Songbird Avenue being a single storey brick dwelling. 31 and 33 Songbird and the corner site of 62 and 64 Kimberly Drive have both been developed with medium density housing;
- Songbird Avenue is designated as a Local Road in Yarra Ranges Road hierarchy;
- Kimberly Drive itself is designated a Local Road in the Yarra Ranges Road hierarchy, although it is of larger scale and acts as a link between Chirnside Park Primary School, and Chirnside Park Shopping centre 600 metres to the south; and
- Across Kimberly Drive is the Chirnside Park Community Hub and Cire early learning centre, as well as the Kimberly Drive sports reserve.

## **PROPOSAL**

The proposal is for the use and development of a Childcare Centre which is detailed as follows:

### Use

Use proposes the following:

- maximum of 80 children;
- maximum of 15 staff; and
- hours of operation are between 6:30am and 6:30pm on Monday to Friday.

### Development

The development (Figures 2 and 3, and Attachment 4) can be summarised as follows:

- Demolition of the existing dwellings and outbuildings on both lots;
- Construction of a new purpose-built building centred around accommodating five (5) child care 'rooms', three (3) bathrooms, a separate disabled toilet, a

standalone single toilet, two (2) preparation area, a cot room, laundry, staff room, meeting room, office, kitchen, entry area and reception. There is also an 'airlock' in the form of a capture zone located immediately in front of the entryway;

- The building is proposed to have a maximum height of 6.104 metres;
- The building will be constructed with a metal skillion roof constructed of Colourbond monument, and the exterior walls will be a mix of brick and rendered finish with a distinct yellow theme;
- The building will have a footprint of 540 square metres and the site will have an impermeable area of 1015 square metres (64.6 percent site coverage);
- Both of the existing crossovers located at 27 and 25 Songbird Avenue are to be removed, with a single double crossover proposed to replace them in the south-western corner of the frontage;
- An outside play area of 563 square metres is proposed and would be accessed by each of the classrooms and the bathrooms. 65 square metres of landscaping in the northern setback is also provided;
- Seventeen (17) car parking spaces are provided on site including one disabled space;
- The new boundary fencing is proposed to be constructed as part of this application is as follows; and
  - 1.8-metre-high acoustic timber fencing on north, and east boundaries;
  - 1.8-metre-high acoustic timber fencing (in addition to retaining wall) on western boundary; and
  - 1.8-metre-high metal bar fence on southern boundary, front boundary.
- Vegetation is proposed to be removed within the site to accommodate the proposed childcare centre, specifically trees #2–8, 10, 11, 15 and 16 on the arborist report (Attachment 9). It is noted that of these ten (10) trees, none have a single stem with a DBH (Diameter at Breast Height) of 26cm or greater and therefore do not require a permit to remove.



**Figure 2: Proposed development layout**



**Figure 3 - Southern elevation of proposed development**

**HISTORY**

<b>Application Number and Decision Date</b>	No previous application history for either site.
<b>VCAT History</b>	No previous VCAT history for either site.
<b>Other History</b>	Nil

## PLANNING CONTROLS

<b>Zoning:</b>	Clause 32.09 – Neighbourhood Residential Zone Schedule 1
<b>Overlay:</b>	Clause 42.03 – Significant Landscape Overlay Schedule 23 (SLO23)
<b>State Planning Policy:</b>	<p>Clause 11.01 – Settlement</p> <p>Clause 12.05-2S Landscapes</p> <p>Clause 13.05-1S Noise abatement</p> <p>Clause 13.07-1S Land use compatibility</p> <p>Clause 15.01-1S Urban design</p> <p>Clause 15.01-2S Building design</p> <p>Clause 15.01-5S Neighbourhood character</p> <p>Clause 15.02-1S Energy and resource efficiency</p> <p>Clause 17.01-1S Diversified economy</p> <p>Clause 17.02-1S Business</p> <p>Clause 18.02-4S Car parking</p> <p>Clause 19.02-2S Education facilities</p> <p>Clause 19.02-4S Social and Cultural Infrastructure</p>
<b>Local Planning Policy:</b>	<p>Clause 21.03 Vision</p> <p>Clause 21.04 Land Use</p> <p>Clause 21.05 Settlement</p> <p>Clause 21.06 Built Form</p> <p>Clause 21.07 Landscape</p> <p>Clause 21.09 Environment</p> <p>Clause 21.11 Community Infrastructure</p> <p>Clause 22.01 Discretionary Uses in Residential and Industrial Zones</p> <p>Clause 22.05 Vegetation Protection</p>
<b>Schedule to Clause 51.03:</b>	Not Applicable
<b>Particular Provisions</b>	<p>Clause 52.06 – Car Parking</p> <p>Clause 65 – Decision guidelines</p>
<b>Other Requirements:</b>	Not Applicable

## PERMIT TRIGGERS

### *Zoning*

Under the Neighbourhood Residential Zone Schedule 1, a permit is required to construct or carry out buildings or works associated with a Childcare Centre. Additionally, a Childcare Centre is a 'permit required' (Section 2) use in this zone.

### *Overlays*

Under the Significant Landscape Overlay Schedule 23, no permit is required.

## CONSULTATION

### *Internal Referrals*

This application was referred to various business units or individuals within Council for advice on particular matters. The following is a summary of the relevant advice:

Department	Summary of Response	Conditions required
<b>Development Engineer - Traffic</b>	Consent subject to conditions; noted parking restrictions and "no stopping" area on Songbird Avenue, congestion during school times, and that the school was fully attended when the traffic volume assessment was undertaken.	Conditions requiring swept path diagram involving spaces no.16 and no.17; a trafficable accessway to assist vehicles at the northern end of the carpark; sealed parking areas; installation of a concrete crossing and removal of the old crossing; approval of a waste management plan; certification of works prior to occupation; maintenance and obstruction clearing; and forward entry and exit all to be included.
<b>Development Engineer - Drainage</b>	Consent subject to conditions.	Conditions requiring piped drainage to be constructed to all impervious areas; stormwater engineering plans and computations to be approved prior to commencement of works; inspection and certification of all civil



Department	Summary of Response	Conditions required
		works prior to occupation; piped outfall drainage to be constructed; Inspection fees; payment and return of a maintenance bond; and the maintenance of works for three months all to be included.
<b>Strategic Planning</b>	<p>Consent.</p> <p><u>State policy</u></p> <p>There is little in State planning policy to guide development of this kind. The proposed use most closely resembles social infrastructure, although it also qualifies as a commercial use. The use is not particularly consistent with the direction in 19.02-4S <i>Social and cultural infrastructure</i> that it be located in an activity centre, but it is common practice for childcare centres to be located within residential areas.</p> <p>The proposal is generally in accordance with 15.01-2S <i>Building design</i> and 15.01-5S <i>Neighbourhood character</i>. Although having a larger footprint than a typical dwelling, the basic proportions are those of a dwelling and the development will visually fit within its environment.</p> <p><u>Local policy</u></p> <p>The proposed use is generally in accordance with 22.01 <i>Discretionary uses in residential and industrial zones</i> and other aspects of the Local Policy. It is located immediately adjacent to a school. It will be a one-off use and not lead to any commercialisation of the surrounding area. Generally, while commercial, childcare centres are acceptable in residential areas.</p>	Not Applicable
<b>Family, Children, and Youth</b>	<p>Objection.</p> <p><b>Current Demand</b></p>	Not Applicable

Department	Summary of Response	Conditions required
<b>(Social Planner)</b>	<p>The report supplied by Ethos urban is thorough, however the catchment area specified leaves out Oxley College/Oxley Kids (and the associated 161 places).</p> <p>Only one Long Day Care service is noted in the report within the catchment area and only four others beyond the catchment up to 4.5km away. ACECQA (Australian Children’s Education and Care Quality Authority) and Council records indicated that there are 21 early childhood services within five kilometres with 13 reporting vacancies.</p> <p>Overall, the report overall does not provide an entirely inclusive or accurate view of the services around the proposed site.</p> <p><b>Future Demand</b></p> <p>Some pressures for additional kindergarten places may be felt in Chirnside Park but not until 2026.</p>	
<b>Arborist</b>	<p>Consent subject to conditions</p> <p>Trees #2–8, 10, 11, 15 and 16 do not have a single stem with a DBH of 26 cm or greater; they do not require a permit to remove in this SLO23 area.</p> <p>Trees #9 and 12–14 (on neighbouring lots) all have less than 10% TPZ encroachment; they will remain viable.</p>	<p>Standard conditions to be included to ensure retained vegetation is protected during construction.</p>
<b>Waste</b>	<p>Consent subject to conditions</p> <p>The waste management plan is satisfactory as the site can support collection by private collection. The waste management plan should be conditioned and endorsed as part of the planning permit.</p>	<p>Conditions regarding endorsement of the waste management plan included as part of the planning permit.</p>

### **External Referrals**

There were no external referrals required by the planning scheme.

### **Public Notification and Consultation**

Notification of the application was undertaken by:

- Placing of one sign on the land;
- Mailing notices to owners and occupiers of adjoining and/or nearby properties; and
- Placing the proposal on Council's website for a minimum of 14 days.

Number of Submissions: Thirty-three (33) submissions with thirty-two (32) objecting to the proposal and one (1) in support.

The main grounds of objection include the following:

- Traffic Impacts;
  - Timing of the traffic report (occurred during COVID-19 lockdowns);
  - Danger to pedestrians;
  - Too many cars parking on the street;
  - Proposed parking not sufficient;
  - Construction related traffic; and
  - Proximity to the school and similar hours of operation could lead to greater traffic in an already congested area
- Oversaturation of Childcare Centres in the area;
- Impact on council rates;
- Removal of vegetation;
- Amenity impact of a carpark in close proximity to neighbouring dwellings;
- Decreased property values;
- Damage to the road;
- Noise pollution; and
  - Increased noise during hours of operation;
  - Disruption to students at the abutting school while construction takes place; and
  - Increased vehicle noise
- Overdevelopment
  - Inappropriate scale and location.

The main grounds of support include the following:

- the childcare capacity that the centre will provide is needed in the local area.

## **ASSESSMENT/ KEY ISSUES**

The proposal has been assessed against the applicable planning policy provisions, zone and overlay provisions and is considered to be an unsatisfactory planning response to the Yarra Ranges Planning Scheme.

The following assessment will discuss the issues of the proposal in relation to the Planning Scheme with regards to the building and works and use of land for a Childcare centre.

### **Strategic Framework**

#### **Use of the land for a childcare centre**

As specified in Clause 32.09-2 (Neighbourhood Residential Zone – Schedule 1), a permit is required for the use of land relating to a childcare centre. In accordance with the Decision Guidelines of Clause 32.09-13, the responsible authority must consider, as appropriate, the Municipal Planning Strategy and the Planning Policy Framework.

Clause 13.07-1S (Land use compatibility), and Clause 22.01 (Discretionary Uses Residential and Industrial Zones) specify that the use and development of a site must be compatible with adjoining and nearby land uses, should minimise any adverse off site impacts, and should have a need/future demand demonstrated for the use.

In considering the surrounding area and the perception that childcare centres regularly co-exist in residential areas despite not being residential uses, commentary from the Victorian Civil and Administrative Tribunal (VCAT) ('the Tribunal') can be drawn from appeal for *Hope Early Learning Centre Pty Ltd v Frankston CC* [2021] (Attachment 12), with the presiding member stating that:

*“they (childcare centres) provide a community service and it can be expected that the need for them is generated by at least some of the residents of the locality within which the centre is located.”*

In considering the submitted Childcare Needs Assessment prepared by Ethos Urban, the applicant states that there is only one childcare centre in the catchment that provides the kind of Long Day Care which this proposal is to provide. The report estimates a total of 240 spaces to be required by 2026, with a shortfall of greater than 55 spaces if only approved future and existing centres within the catchment remain. In the view of the applicant, this constitutes a strong justification for the centre.

The map seen in Figure 4 was submitted by the applicant demonstrating their perceived catchment area:



Source: Ethos Urban with MapInfo

**Figure 4 – Identified Childcare Catchment (Source - Ethos Urban report)**

However, the applicant's submission has been reviewed by Council's Social Planners who notes the submission is misleading, as the proposed catchment area ignores several childcare centres in close proximity, such as Oxley College/Kids which provides 161 places only 700 metre from the subject site and does not generally follow the border of Chirside Park.

As demonstrated in Figure 4, much of the identified catchment area is rural land. Furthermore, the Long Day Care figures supplied by the applicant are considered to be misleading as while the report prepared by Ethos Urban mentions there are only four Long Day Care services within 4.5 kilometres, the ACECQA (Australian Children's Education and Care Quality Authority) notes 21 Early Childhood Services providing LDC within five (5) kilometres of the subject site, with 13 reporting vacancies and a cumulative 1728 places.

It was forecast in 2020 through a Council review of current child care capacity that some pressures for more spaces may be felt in the Chirside Park region by 2026, however this only applies to three year old kindergarten. The proposed centre proposes to provide 36 spaces which may alleviate pressures.

However, the proposal is not predominately seeking to provide three year old kindergarten to meet this future gap, instead proposing majority standard long day childcare.

The tribunal provides some further guidance when considering non-residential uses in residential areas. In *Hope Early Learning Centre Pty Ltd v Frankston CC* [2021] VCAT 1393 (26 November 2021) the member stated that:

*It is important to emphasise there is no obligation on the permit applicant to demonstrate a need for the childcare centre. While need for a use may be a relevant consideration, the demonstration of a need is not a precondition to the grant of a permit. If for example, an applicant can show a need for a proposed*

*use, then this factor may outweigh other considerations adverse to the use. However, the lack of a demonstrated need will rarely be a ground for refusing to grant a permit.*

Therefore, while the actual need for a childcare centre at the subject site is debatable, it is not something that council can make a ruling on an application over. However, demonstration of need can assist in the assessment of applications which might not meet other aspects of the Planning Scheme entirely. In *Hume Childcare Pty Ltd v Maroondah CC* [2020], (Attachment 13), the member stated that:

*The Tribunal has often commented that in assessing whether a proposal services a local need, a proposal does not need to demonstrate economic viability. Economic viability is a matter that sits outside of planning considerations. The question of need, in a town planning sense, is usually to determine if there is a need for a service that may outweigh amenity impacts that may arise from the proposed use. For a non-residential use in a residential zone, this is in effect a question of whether the use, that may have character and amenity impacts that are different to residential use, can be justified and is reasonable because of the benefits the use brings to the area by way of fulfilling a local need for that use.*

Additionally, it was noted that:

*The Tribunal has consistently held that non-residential uses often serve a wider catchment than the immediate neighbourhood...*

These determinations work both ways for the application, in that while there would be demand from outside of the catchment, there are also many more childcare centres outside of the catchment that have the capacity for more children.

Therefore, as highlighted in *Hope Early Learning Centre Pty Ltd v Frankston CC* [2021], while lack of need is something that council cannot directly determine an application based upon. where there is insufficient need in the vicinity of the proposal to outweigh or justify modifying the amenity or character requirements, or any other requirements that are imposed upon the proposal. In *Australian Childcare Developments Pty Ltd v Mornington Peninsula SC* [2006], (Attachment 10), the member stated:

*From the small amount of information provided as to the community need for this facility and I recognise that there is a need I would expect that this facility would service a wider area than the immediate local area. In this respect I consider that such a facility servicing a wider area need should be located on a higher order road not tucked away in a quiet residential street.*

It can therefore be summarised that while the proposal demonstrates the potential for a future need, a facility of this scale that would be servicing an area of the density of Chirnside Park would need to be located on an appropriate category of road to allow for the access to take place.

### **Access and catchment**

Songbird Avenue is designated as a Local Road in Yarra Ranges road hierarchy. It is considered that Songbird Avenue is not a collector road, or a main road, and does not meet the appropriate hierarchy to service a catchment broader than the immediate neighbourhood. The road network and access is discussed in further detail below.

Clause 22.01 (Discretionary Uses) governing discretionary uses in residential areas is particularly relevant given that there is not an identified critical demand for the proposed use. As there is not a critical overarching positive broader social or economic need of a scale to justify impacting the local residential amenity, the application needs to meet the requirements of the Clause on merit.

In Clause 22.01, it is policy that non-residential land uses:

- *Be clustered in or adjoining a commercial centre, close to public transport or situated on a main road and not contribute to ribbon commercial development along main or tourist roads;*
- *Be compatible with the surrounding neighbourhood, not lead to the transformation of a residential area into a quasi-commercial area and be of a scale and design that respects the environmental and built elements of the area;*
- *Be provided with setbacks from common boundaries with adjoining residential uses that ensure the protection of residential amenity and, where appropriate, provide for the establishment of effective landscaping and screening buffers; and*
- *Provide sufficient off-street car parking, with traffic access being located on or near a main road so as to minimise the need for cars to travel through local residential streets.*

The proposed use is not clustered in or adjoining a commercial centre, with Chirnside Park shopping centre approximately 600 metres to the south the closest non-residential 'cluster'. It is noted that by situating the childcare centre in close proximity to Chirnside Park Primary School, there is some clustering taking place. However, this does not alter the fact that the location of the proposal on Songbird Drive is not suitable for this intensity of use. Additionally, it can be reasoned that while some trips may be shared between the two uses, this somewhat goes against the notion that the traffic impacts would be softened due to parents making drop-off at a variety of times spread out across the morning. Overall, the clustering of these uses is not overly important to the determination of this development as while the proposal is in close proximity to similar uses, it is within a different streetscape context.

In terms of public transport, Bus Route 677 has a stop on Edward Road and is approximately 500m east of the site. It is the only public transit option in the area and is not adequate. This is seen in *ET Ceres Pty Ltd v Yarra Ranges SC [2019]*, (Attachment 11), where the member noted that:

*Policy states that non-residential uses should be clustered in or adjoining a commercial centre, close to public transport or on a main road. The review site is some distance from Collins Place, and Eithne Lane is not a main road. Although there is a bus route along Mt Dandenong Road, the nearest bus stop is in excess of 400 metres from Eothen Lane. I am not persuaded that the proposal meets the locational criteria of policy.*

When comparing the similarities of the site on Eothen Lane and overall context, it becomes quite clear that the proposed location on Songbird Avenue is equally inappropriate under this aspect of the Planning Policy Framework as this proposal is over 400m from Edwards Road and the transportation located on it and is in a distinctly non-commercial area. While the use is not overtly commercial and will not contribute to ribboning along Songbird Avenue as there is no other commercial development on the street, the development is not situated on a main road, with Songbird Avenue being

designated as a Local Road in Yarra Ranges road hierarchy. It also is not adjacent to a main road. Overall, the proposal does not meet this aspect of the policy.

The proposal is somewhat compatible with the surrounding neighbourhood, with a school to the immediate north accessed via Kimberly Drive, and green open space to the east as well. Kimberley Drive is also home to an existing childcare centre. It is noted that to the west and south however, this area of Chirnside Park is almost entirely residential and zoned Neighbourhood Residential Zone until a buffer of General Residential Zone is present to insulate the area from the Chirnside Park shopping centre. Further to the north lies areas of Green Wedge, across the Urban Growth Boundary which abuts the development's north wall, this is primarily residential with some light rural uses included. Within the context of some mixed uses in the area but a vast majority being solid residential, the proposal needs to be responding to a high standard to the requirements of Clause 22.01(Discretionary Uses) specifically.

The proposal provides ample setbacks, mainly due to the reasonable scaling of the size of the development and the consolidation of two separate lots. While the structure is slightly larger than an average dwelling in the area, it is not overly bulky or excessive in height and generally respects the scale of structure in the area. Setbacks of 6.256 metres to the east and 11.9 metres to the west are ample when considering the average setbacks of the area, however it must be noted that the western setback is occupied by a carpark. A landscape plan has been provided (Attachment 7) and all boundaries including the front setback will be vegetated with shrubs and small deciduous/evergreen trees. A 1.8 meter high fence around the three interfaces with other lots will provide adequate screening to mitigate both overlooking concerns into and out of the site. The vegetation proposed, as well as the retention of existing mature street trees will help maintain the landscape character of the area and soften the impact of the carpark and new structure.

The proposal meets the off-street car parking requirement, however again it must be stressed that Songbird Avenue is not a main road and neither is Kimberly Drive. The location of the proposal specifically contravenes the need to minimise the need for cars to travel through local residential streets, with many vehicles (approximately 40% according to the applicant's Traffic Report) already using Songbird Avenue as a cut-through to get to the school from Edward Road.

Clause 19.02-2S (Education Facilities) provides guidance regarding public transport proximity and the location of uses such as childcare centres. Again, while it is common for Childcare Centres to be located in dense residential areas where appropriate, they should primarily be situated in activity centres or in areas where public transport, safe walking, and cycling can be maximised, and that the road network is of sufficient capacity to service the demand. While there is a bus stop generally in the vicinity (a 500m, 8 minute walk to the Vista Drive/Edward Road stop as per Google Maps), it is unlikely that parents and carers would be utilising this method to drop and pick up children and the drop off zones are likely to remain congested in the afternoons specifically due to the closure of the school parking lot and the usual need for parents collecting such young children to actively park and leave the vehicle.

Overall, it is considered that the use of the land for a childcare centre is not acceptable based on the policy and objectives of Clauses 13.07-1S 1S (Land use compatibility), 19.02-2S (Education Facilities), and 22.01 (Discretionary Uses) of the Planning Policy Framework with reference to non-residential uses in residential areas.



## **Siting and Design**

The policies of Clause 15.01-1S (Urban Design), 15.01-2S (Building Design), 15.01-5S (Neighbourhood Character), and Clause 21.06 (Built Form) in the Planning Policy Framework promote appropriate and fitting development that, similar to the requirements of 13.07-1S (Land use compatibility), should promote positive responses and be compatibility with the surrounding area.

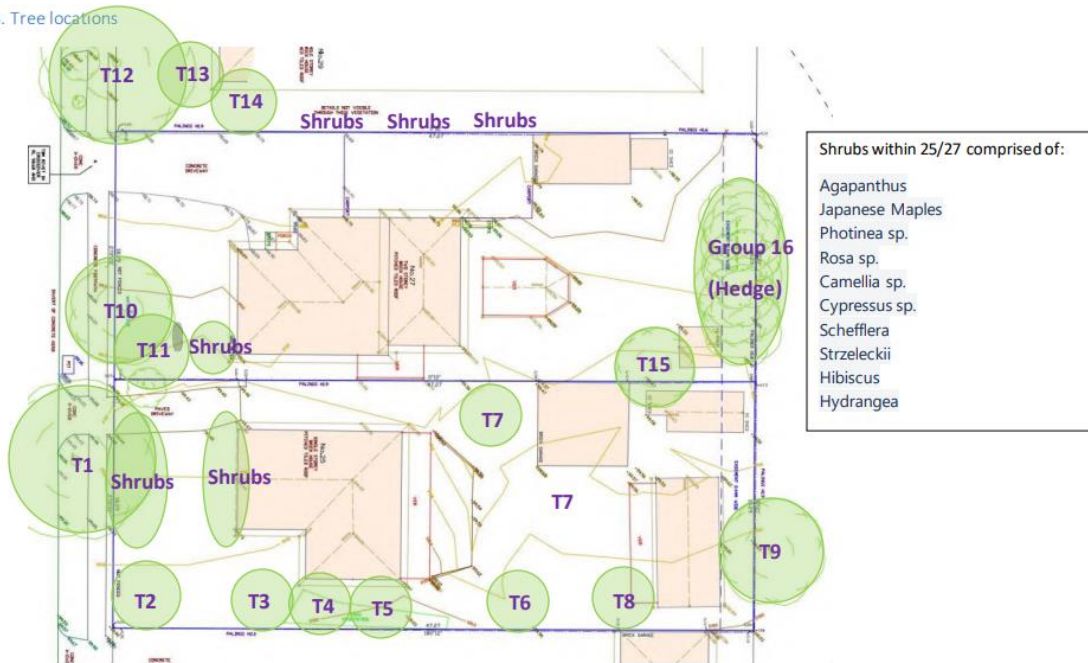
It is noted that there are no general assessment criteria for Childcare Centres in the Planning Scheme (such as for dwellings), however some of the broader principles and requirements of ResCode can be used as a general guide to determine suitable interaction with nearby dwellings, given the location in residential area.

Although having a larger footprint than a typical dwelling, the basic proportions are consistent with a dwelling and the development will visually fit within its environment. By retaining the single storey nature reflected in the area, the proposal avoids being inappropriately scaled or bulky. The combination of side setbacks of at least 6.256 metres, rear setback of 5.9 metres, 1.8 metres acoustic fencing, and the overall low bulk of the proposal in the street context removes overshadowing and habitable room window concerns. The front setback is in line with the neighbouring lots possessing variable setbacks, ranging from 5.5 metres to over nine (9) metres. Therefore, the proposed childcare centre's proposed 9.380 metre setback is in line with the existing neighbourhood and streetscape character. Its overall proportions and forms are typical of a contemporary single storey/low double storey dwelling and will not look out of place in this location, especially given the previous occupation of 27 Songbird Avenue with a double storey dwelling.

As mentioned above, the vegetation proposed, as well as the retention of existing mature street trees will help maintain and compliment the built form, softening the overall impact of the site from the streetscape.

The site covered by buildings, 31.2 percent, is acceptable in terms of ResCode standards and the Neighbourhood Residential Zone, and permeability/garden area is also acceptable at 35.4 percent. Council's Drainage Engineer had no objection to the proposed Childcare Centre's design, with a Stormwater Management Plan being submitted as part of the proposal. It is considered that the siting and design of the building is acceptable and that it responds appropriately to the relevant policies of the Planning Policy Framework.

### 3.4. Tree locations



**Figure 5 -Tree Designations from Future Tree Health Arboricultural Impact Assessment**

The Arborist assessment has been reviewed and accepted by Council’s arborist, who has no objection to the proposal provided standard tree protection measures to protect retained and adjoining vegetation is adhered to.

## Zone

### **Use and Development of a Childcare Centre in Neighbourhood Residential Zone – Schedule 1 (NRZ1)**

A childcare centre is a Section 2 use. Under the provisions of the Neighbourhood Residential Zone, a permit is required to construct or carry out building or works associated with a use in Section 2 of Clause 32.09-2.

The decision guidelines of Clause 32.09, Neighbourhood Residential Zone, is broadly complemented by the policy of Clause 22.01 (Discretionary Uses) outlined above. It is considered that the proposed development does not respond adequately to the following Decision Guidelines of Clause 32.09-13:

- *The safety, efficiency and amenity effects of traffic to be generated by the proposal; and*

The proposal overall will have a negative impact on traffic in the area, adding an additional 328 two-way trips per day, according to the submitted traffic report. The proposal is reliant upon and accessed via two local streets that already suffer from moderate congestion, especially during the afternoon school pickup period. Songbird Avenue specifically is designated a Local Street, and specifically should not be considered as an appropriate location for such a use to take place despite its current utilisation as a de-facto shortcut from Edward Road in the east to Chirnside Park Primary School.

- *The scale and intensity of the use and development.*

While the overall scale and intensity of the use and development are not particularly out of character for the general area, they are not located on a street that is appropriately sized. In *Australian Childcare Developments Pty Ltd v Mornington Peninsula SC [2006]*, a proposal for a childcare centre on a similar size and level of road, the member commented:

*Whilst the site is an adequate size to provide for the proposed use and to accommodate an appropriate number of onsite car spaces, the proposed built form on the site is in keeping with the single storey residential development in the area and Maori Street can potentially accommodate the increase in traffic that would be generated by the proposal I am not satisfied that this is the appropriate location for this use.*

Ultimately this application is recommended for refusal on grounds of being in an inappropriate location, on a local road and its resultant impact on the surrounding road network and amenity of the area. This proposal demonstrates a precedent that even with acceptable built form and layout, the overall location of a development can be the sole deciding factor on if the childcare use has been appropriately sited. In terms of this proposal, while it is of single storey intensity, and the street could accommodate the built form response, it is not deemed appropriate for the proposal to be sited on such a local residential road despite the fact it is currently used as a shortcut and sees significant spikes in traffic volumes during particular times of the day.

## **Amenity Impacts**

### Noise

The main amenity impact relating to the development is the potential noise generated. There are several sources for this, one such being the children utilising the 566 square metres outdoor play areas on the eastern half of the block. In the submitted planning report (Attachment 8), the applicant highlights that outdoor playing areas would only be used between the hours of 8:30am – 6:30pm, minimising any potential amenity impacts by reason of noise. Additionally, it should be noted that the applicant contends that very few children would be present this early in the day. A 1.8-metre-high acoustic fences, and a landscaping bands with shrubs along all boundaries of these outdoor areas are proposed to help reduce these impacts, though this is not substantiated by any measurements. Regardless, there would be more noise generated by the proposed childcare centre compared to a regular dwelling.

Overall, no complex noise management assessment has taken place and it is therefore difficult to determine the tangible impacts. The proposal is situated directly abutting a school and a certain degree of background noise likely already exists given the siting of the playground equipment to the north of the subject site. However, there is little reason to expect that the use would generate the same volume over the same periods of operation as a single dwelling, notably this is mentioned by several objectors.

### Traffic/Vehicle Noise

The noise of vehicles moving around on site, and vehicles making trips to and from the childcare centre will be addressed in the 'Car Parking' and 'Waste Management' sections below as the relevant reports and referrals address these issues directly.

Council's traffic engineers did not have any further comment on the noise impacts of the proposal.

### **Buildings and Works in the Significant Landscape Overlay – Schedule 23 (SLO23)**

No permit is required for the proposal under the SLO23 for buildings and works as:

- The buildings and works are at least 10 metres from a designated stream; and
- The buildings and works are at least 10 metres from a designated open Melbourne Water drain.

### **Vegetation removal in the Significant Landscape Overlay – Schedule 23 (SLO23)**

Under the provisions of the Significant Landscape Overlay a permit is required to remove, destroy or lop and vegetation specified in a schedule to the overlay. Schedule 23 states that a permit is required to remove, destroy or lop any indigenous vegetation or substantial tree. A substantial tree is defined as having a diameter at breast height (DBH) greater than 0.16 metres at 1.3 metres above the ground.

As there are no substantial trees proposed to be removed, and all other trees on site will remain viable, there is no permit requirement under the overlay.

Trees #2–8, 10, 11, 15 and 16 do not have a single stem with a diameter at breast height (DBH) of 26 centimetres or greater and do not require a permit to remove while Trees #1, 9 and 12–14 all have less than 10 percent tree protection zone (TPZ) encroachment and will remain viable. For more detail see Attachment 3 for the arborist report.

### **Traffic Impacts and Car Parking Assessment**

#### Car Parking – Clause 52.06

The proposal meets the car parking requirements of the Clause 52.06 with 0.22 of a space are required per child, and with the application is providing 17 spaces for 80 children which leads to this requirement to be met. No application to vary this requirement was required to be submitted and council's traffic engineers were satisfied that the provided car parking meets the standards of the clause. A disabled car space is also provided in the south-western corner of the carpark.

It is noted by the traffic engineers that although the carpark is not a public carpark, it will essentially function as a public carpark. Ultimately, it is predicted that any additional capacity can likely be used for other trips in the area. Given the car park at the school is closed for the afternoon pickup period, parents and carers collecting children from the school queue along Kimberly Drive and Songbird Avenue. This is echoed by the traffic report submitted by the applicant (Attachment 5), which notes that school related parking does occur as far Glendale Drive on Songbird Avenue, and that parking in the "no stopping" areas on Kimberly Drive was observed.

It is not unreasonable to assume that some parents and carers may utilise this parking area to make multiple trips in the area, meaning parents or carers could utilise the parking area at the childcare centre to pick up on one child there and the other child

at the primary school. This multiple trip practice may increase the average stay above the generally accepted five minutes for standard drop off and pickups which could lead to flow on effects to the waste collection services, amenity, and other aspects of the proposal.

### Traffic Impacts

According to the Traffic Report submitted by the applicant, there were an average of 693 vehicle trips per day (two way) measured by tube counts between 30 July and 5 August 2021 on Songbird Avenue, and an average of 2322 vehicles trips (two way) for the same period on Kimberly Drive. Over the peak hours, Songbird Avenue counted 159-179 in the AM and 131-154 in the PM. Kimberly drive was utilised much more heavily, with 330-356 trips in the AM and 293-337 trips in the PM. The peak counts were taken between 8am – 9am and 3pm – 4pm (peak hours for the school).

The counts resulted in an 60/40 split of peak hour traffic between Kimberley Drive and Songbird Avenue, both designated Local roads in council's register and as a Collector Street Level 1 and an Access Street Level respectively in Clause 56.06. Council has confirmed that the traffic count was taken while the school was operating, and in between the July 16 – July 27, 2021, and the August 5 – October 21 Melbourne Covid lockdowns. While the city was not in lockdown during the survey dates, it is unknown what impact lockdowns had on normal traffic movements for the area.

While there is guidance from the scheme in Clause 56.06 on what the acceptable level of traffic is on those specific designations of streets, Songbird Avenue is still not considered a "main road" of the type that a Childcare Centre should be located on given the nature of the proposed use as outlined in Clause 22.01. The Traffic Report (Attachment 5) cites that as Songbird Avenue is an Access Street Level 2, it can accommodate up to 3000 vehicle trips per day and therefore has the capacity to deal with an estimated 328 trips generated by the childcare centre. However, given Traffic Engineers noted congestion and queuing of up to 12 cars in the morning and some congestion during the afternoon peak school pick up times at around 3pm, it is debatable how applicable this limit is given a disproportionate amount of traffic is passing through the road in a very limited period of time as opposed to spread out over the whole day.

These factors are somewhat mitigated by the fact that a childcare centre inherently operates pickup and drop-off throughout the day limiting the load on the system compared to something such as a school. The SALT traffic report notes that three centres (ranging from 75 – 128 places) exhibited the following:

- 22 to 25 percent of children are dropped off between 8:30 – 9:00am; and
- Four to 12 percent of children are picked up before 4pm.

The numbers provided seem to indicate that no more than sixteen children are expected during the morning drop-off peak, and no more than eight during the evening peak. These numbers do not include the period 8:00 – 8:30am however, so a complete picture is not provided.

It is important to note issues with any overflow parking in peak drop-off and pickup times due to the 'No Stopping, 8am – 9:30am, 2:30pm – 4pm, Monday to Friday' parking restriction existing along the south side of Songbird Avenue, along with permanent 'No Stopping' parking restrictions that cover ten metres from either corner

of the Glendale Drive and Kimberley Drive intersection. The fact that Council's Traffic Engineering team have installed no stopping signs on Songbird Avenue demonstrates that there is a known congestion problem in the area. Whilst the proposal does try and ease the congestion in these areas through the provision of parking, the lack of on street parking limits the ability of the centre to accommodate additional peak capacity given a proportion of the car spaces will likely be occupied by the staff at the facility.

## **Waste Management**

A waste management plan prepared by SALT is at Attachment 6. A service area is located on the western side of the building where a total of four bins would be collected a total of five times a week (daily collection) from within the site. The operation of the site will require daily waste removal by a private waste contactor accessing and disposing of waste, as Council collection cannot be used to provide a waste collection service to the site.

Council's waste team has reviewed the application and found the private waste collection can meet their requirements. However, issues associated with the vehicle movements within the site were identified by Council's traffic engineers. The traffic report provides swept path turning circles for the waste collection vehicles which shows that to circulate within the site, there must be two vacant car parking spaces for the waste collection vehicle to manoeuvre. The report proposes that waste collection is to occur at off peak times or out of hours, to achieve the required vacant parking spaces to be available for this to occur.

To reflect this, the report proposes that, on weekdays, collections are to be scheduled to occur at off-peak times for the childcare centre to avoid conflict with child drop-off and pick-up activity. Weekday collections shall therefore take place between 10am – 3pm and from closing time to 8pm.

Council's traffic engineer deems that it is unfeasible for a waste vehicle to only collect the bins when there are two vacant spaces, and cannot guarantee that there will be two consecutive free spaces as required, without reducing the number of spaces available during operational hours. Furthermore, 3.00pm is approaching the peak afternoon pickup time for the school which may further impact the ability of the truck to safely manoeuvre around should the car parking space be occupied. If these spaces are not available, then the truck would be forced to reverse out backwards in contravention of one of the conditions of approval from Council's Traffic department, and a reversing manoeuvre of a large waste truck within a commercial car park onto a local road is deemed unsafe and unacceptable as a solution. Alternatively, collection further outside of hours, while in line with the EPA guidelines would cause an unreasonable detrimental amenity impact on the local area.

## **Planning Scheme Amendment C148**

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At the time of preparing this report Planning scheme Amendment C148 is yet to be gazetted, however the amendment is currently awaiting final approval from the Minister for Planning. As a result, the amendment is to be considered when assessing applications

C148 is considered as a seriously entertained document and the proposal needs to be considered against the proposed future planning controls. It is considered that the childcare development response to the updated MSS and LPP, however, C148 amendment would introduce the need for an ESD (Environmentally Sustainable Design) Assessment which would need to be considered as part of the application.

Clause 22.03 Environmentally Sustainable Development applies to applications where a permit is required to construct a commercial building greater in size than 500m<sup>2</sup> would trigger the need for a Sustainable Design Assessment. A Sustainable Design Assessment would therefore be required should this application be lodged post gazettal of the amendment as the proposals seeks to construct a building with a footprint of 540 square meters.

A Sustainable Design Assessment was not submitted as part of the application, and it is therefore not possible to determine the proposal's level of response to the objectives of Environmentally Sustainable Development policy as set out in planning scheme amendment c148.

### **Response to Submitters concerns**

The following is a response to the submissions made:

<b>Objections</b>	
<b>Grounds of Objection</b>	<b>Planning Assessment</b>
<p><b>Traffic Impacts</b></p> <ul style="list-style-type: none"> <li>• <b>Congestion on Songbird Avenue</b></li> <li>• <b>Impact on existing traffic generated due to school</b></li> <li>• <b>Lack of parking</b></li> <li>• <b>Unsafe re-entry on to Songbird Avenue</b></li> <li>• <b>Danger to pedestrians</b></li> <li>• <b>Additional noise from heavier traffic</b></li> <li>• <b>Timing of Traffic Report</b></li> <li>• <b>Construction impacts</b></li> <li>• <b>Cars exiting in a forward direction</b></li> <li>• <b>Songbird Avenue is not a suitable street</b></li> </ul>	<p>The applicant submitted a Traffic report, with several subsequent additional responses provided over the course of the Further Information period. Council's Traffic Engineer have questioned the accuracy of stating that traffic along Songbird Avenue in the afternoon pickup timeframe was minimal. Council also has concerns with the onsite movement and lack of turning circles for the waste track within the site.</p> <p>The application meets the parking requirements under the planning scheme under Clause 52.06.</p> <p>It was confirmed by both the Traffic Report and Council's Traffic Engineer that Songbird Avenue is utilised as a cut-through for traffic travelling to and from the school, and this is particularly notable in the afternoon pick times.</p> <p>As discussed, there are traffic issues which have not been satisfactorily resolved.</p>

<b>Objections</b>	
<b>Grounds of Objection</b>	<b>Planning Assessment</b>
<ul style="list-style-type: none"> <li>• <b>Songbird Avenue is already a significant shortcut route</b></li> <li>• <b>Damage to existing road</b></li> </ul>	
<b>Neighbourhood Character</b> <ul style="list-style-type: none"> <li>• <b>Carpark almost directly on the boundary</b></li> <li>• <b>Inappropriate location for the use</b></li> <li>• <b>Inappropriate level of development</b></li> <li>• <b>Existing subdivision proliferation</b></li> </ul>	<p>While the fencing and direct interface on the boundaries is a civil issue and not directly within Council's remit to comment on, it is noted that there are several relevant aspects of the scheme that can provide guidance.</p> <p>The assessment has established that while the structure is of an appropriate scale and design relative to the environment and built elements of the area, there are some significant issues with the siting of the proposal as highlighted in the discussion of the Zone above. Therefore, it can be considered that the objections citing the development being inappropriate at a locational level hold merit.</p>
<b>Saturation of use</b>	<p>There are twenty-one Early Childhood Services providing long day care places within a five kilometre radius of 25-27 Songbird Ave, Chirnside Park, providing a cumulative 1728 licenced places. Thirteen of these facilities report vacancies.</p> <p>Council's Social Planner commented that the Childcare Needs Assessment does not provide an entirely inclusive or accurate view of the services around the proposed site.</p>
<b>Noise impacts of the use</b>	<p>Acoustic fencing is specified on the plans as being placed on the three sides of the property abutting neighbouring sites, with the front fence not being acoustic.</p> <p>It can be expected that the noise of the centre while in operation would be mostly minimal given the background of the school immediately to the north, however the hours of operations are notably earlier and later than the school (specifically in the evening where pickups and drop-offs would be taking place up to 6:30) and not including any staff movement around this timeframe. This is expected and in line with other childcare centres which must make</p>



<b>Objections</b>	
<b>Grounds of Objection</b>	<b>Planning Assessment</b>
	<p>provision for before and after work pickups and drop-offs.</p> <p>Ultimately however, there is no way to determine either way if the proposal will meet any of these requirements or if it will be an acceptable amenity impact as no acoustic report was submitted.</p>
<b>Vegetation Removal</b>	The assessment has established that all the proposed removals (Trees #2–8, 10, 11, 15 and 16) could have taken place, as of right, without an application. The rest of the trees affected will be retained and will remain viable.
<b>Economic Impacts</b> <ul style="list-style-type: none"> <li>• <b>Decreased property values</b></li> </ul>	Impact on property value is not relevant planning consideration, and the cannot be considered as part of the planning assessment process.

<b>Letter of Support</b>	
<b>Grounds of Support</b>	<b>Planning Assessment</b>
<b>Additional spaces allow trips to serve multiple uses, dropping children off at the same location for both school and kindergarten.</b>	<p>This submission is not in accordance with the policy guidelines of Clause 22.01 of the planning scheme which notes that where possible, non-commercial uses should be clustered.</p> <p>Whilst the centre can be seen as providing complimentary services to the adjoining school, the road network is inadequate to support the required catchment and associated traffic and car parking demand to justify the use.</p>

## **CONCLUSION**

The proposed use and development of the land for a childcare centre is not consistent with the planning policy framework, and the purposes of the zone and overlay applicable to the site. While the proposal does meet a number of the requirements of the scheme, the overall location is inappropriate to the degree that the proposal is not appropriately sited or serviced by a main road, and the resultant detrimental impact outweighs the benefits of such a childcare centre in this location.

For the reasons outlined above, and those stated in the grounds of refusal (Attachment 1), it is recommended that the proposal be refused.

## ATTACHMENTS

(Any attachments to the report to be manually listed here. Ensure your attachments are listed in the order they are referenced in your report.)

1. Grounds of Refusal
2. Aerial Image
3. Planning Policy
4. Development Plans
5. Traffic Report (SALT)
6. Waste Management Plan
7. Landscape Plan
8. Town Planning Report
9. Arborist Report
10. VCAT Decision *Australian Childcare Development Pty Ltd vs Mornington Peninsula Shire Council* (2006)
11. VCAT Decision *ET Ceres Pty Ltd vs Yarra Ranges* (2019)
12. VCAT Decision *Hope Early Learning Centre Pty Ltd vs Frankston City Council* (2021)
13. VCAT Decision *Hume Childcare Pty Ltd vs Maroondah City Council* (2020)