

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P92/2021
PERMIT APPLICATION NO. 177/2020/P

CATCHWORDS

Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time

APPLICANT	Hope Early Learning Centre Pty Ltd
RESPONSIBLE AUTHORITY	Frankston City Council
RESPONDENTS	Barbara Nugana for Living Lifestyles Trust, Joanna Nugara, Ruwan Nugara, Karen Bartlett, Roger Barlett, Troy Johnson and Others, Derinya Primary School Council
REFERRAL AUTHORITY	The Head, Transport for Victoria
SUBJECT LAND	91 Overport Road FRANKSTON SOUTH VIC 3199
HEARING TYPE	Hearing
DATE OF HEARING	31 August 2021, 1, 2 and 3 September 2021
DATE OF ORDER	26 November 2021
CITATION	Hope Early Learning Centre Pty Ltd v Frankston CC [2021] VCAT 1393

ORDER

Amend permit application

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

Prepared by:	Thomas Anderson Design
Drawing numbers:	Drawing Nos. 1, 2a, 2b, 3 to 7 (inclusive) all Revision I
Dated:	All dated 13 July 2021

Permit granted

- 2 In application P92/2021 the decision of the responsible authority is set aside.
- 3 In planning permit application 177/2020/P a permit is granted and directed to be issued for the land at 91 Overport Road, Frankston South in

accordance with the endorsed plans and the conditions set out in Appendix

A. The permit allows:

- To use and develop the land for a Childcare Centre in a General Residential Zone (GRZ), removal of substantial trees and to undertake building or construct or carry out works in the tree protection zone of substantial trees in a Significant Landscape Overlay Schedule 3 (SLO3) and to construct a building in a Design and Development Overlay Schedule 1 (DDO1).

Laurie Hewet
Senior Member

APPEARANCES

For applicant

Mr D Scally of Best Hooper Lawyers

Mr Scally called expert evidence from:

- Ms C Dunstan, traffic engineer
- Mr J Growcott, acoustic engineer
- Mr J Patrick, landscape architect.
- Mr D Iles, town planner

For responsible authority

Ms A Kellock, town planner

For referral authority

No appearance

For respondents

Mr J A Ribbands of Counsel appeared for T Johnson & Ors.

Mr Ribbands called expert evidence from:

- Ms K Morland, town planner

Mr Ribbands also called lay evidence from:

- Mr T Johnson & Ms J Walde.

Ms K Bartlett appeared for K and R Bartlett

Ms B Nugara appeared for Living Lifestyle Trust

Mr J Nugara appeared on his own behalf

Mr Nugara called expert evidence from:

- Mr E Ratiner, visual graphics

INFORMATION

Description of proposal	Childcare Centre
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. ¹
Planning scheme	Frankston Planning Scheme
Zone and overlays	Clause 32.08: General Residential Zone (GRZ1) Clause 42.03: Significant Landscape Overlay (SLO3) Clause 43.02: Design and Development Overlay (DDO1).
Permit requirements	Clause 32.08-2: A permit is required to use land for a Childcare Centre. Clause 32.08-9: A permit is required to construct a building or carry out works for a use in section 2. Clause 42.03-2: A permit is required to remove, destroy or lop vegetation. Clause 43.02-2: A permit is required to construct a building or construct or carry out works.

¹ Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.

Land description

The site is located on the north east corner of Overport Road and Derinya Drive, Frankston South.

It has a frontage to Overport Road of 25.91m, a corner splay of 6.4m, and a depth of 83.97m. The site has an area of about 2688m². A double storey dwelling currently occupies the site.

Vegetation is scattered across the site.

Overport Road is a Council main road and is included in the Road Zone Category 2. It runs in a generally north/south direction with a traffic lane and kerbside parking in each direction.

Derinya Drive is a local access street which runs east/west adjacent to the review site before bending to the south and reconnecting with Overport Road to the south. A primary school is located at the southern intersection of Overport Road and Derinya Drive.

The site is in an established residential area. Single storey dwellings abuts the review site to the north and the east.

A single storey dwelling oriented to Derinya Drive is located on the south east corner of Overport Road and Derinya Drive. Single and double storey dwellings are located opposite the site on the western side of Overport Road.

Tribunal inspection

I inspected the site and the surrounding neighbourhood after the hearing.

REASONS²

- 1 This is an application to review the failure of the Responsible Authority to grant a permit within the prescribed time in respect of a permit application for a childcare centre at 91 Overport Road, Frankston South. The Responsible Authority ultimately decided that had it not been for the application for review it would have granted a permit subject to conditions.
- 2 There are objectors to the application who oppose the grant of a permit. Mr Ribbands who represented many of the objectors, outlined the basis of the objector's concerns in the following terms:
 - The proposed centre conflicts with the prevailing residential use of the area.
 - The development falls well short of meeting neighbourhood character objectives.
 - There is an unacceptable impact on vehicle movement and safety in the surrounding streets.
 - There is an absence of need for such a facility.
- 3 Additional matters raised by objectors include concerns about the acceptability of the proposal's internal layout, play areas, management arrangements and opportunity for learning experiences. The review site's inclusion in a Bushfire Prone Area is also identified by objectors as a factor that constrains the grant of a permit.
- 4 Having considered the submissions, the evidence, statements of grounds, relevant planning scheme provisions, and having inspected the review site and the surrounding area, I have concluded that the relevant issues for determination in this case can be categorised as follows:
 - Is the proposed use acceptable on this site?
 - Does the proposal achieve an acceptable response to the preferred character of the neighbourhood?
 - Are the proposal's car parking and traffic impacts acceptable?
 - Does the proposal contribute to unacceptable neighbour amenity impacts?
- 5 I am satisfied that this proposal is acceptable.
- 6 The review site is well located being situated on a corner site with a frontage to a collector road. The site is zoned GRZ1, a zone that includes a

² The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

relevant purpose to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations. The site has limited sensitive residential interfaces, enabling potential amenity impacts to be contained to acceptable levels. The scale, form and design of the building will allow it to sit comfortably in this neighbourhood. Adequate car parking is provided on site. The surrounding street network will accommodate increased vehicle movements associated with the proposal without significant adverse impact on the functioning and safety of that network.

7 My reasons for granting a permit are set out below.

IS THE PROPOSED USE ACCEPTABLE ON THIS SITE?

8 The respondent objectors submit that the proposed use conflicts with the local policy for non-residential uses in residential zones at Clause 22.04. They further submit that this policy is intrinsically linked to neighbourhood character policies which are intended to protect this neighbourhood's unique, vegetated character.

9 Clause 22.04 applies to a range of uses, including medical centres, childcare centres, display homes, restaurants, home based businesses, tourist and visitor accommodation and similar uses. The policy is based on the recognition that Residential zones accommodate a range of non-residential uses that provide services to the local community. The policy seeks to ensure that non-residential uses are responsive to their residential setting and maintain appropriate standards of residential amenity.

10 The objectives of the policy are:

- To ensure that non-residential uses are appropriately located having regard to access and amenity considerations.
- To ensure that the scale of development is consistent with nearby housing.
- To reduce adverse amenity impacts on nearby housing.

11 The policy read in its entirety is:

- Non-residential uses be located: –
- In areas that are appropriate to their use and that will have minimal impact on the amenity of the locality and nearby housing, including by:
 - Fronting a primary or secondary arterial road on at least one side if the non-residential use is likely to cause traffic and noise impacts to residential neighbours or if the use is proposed to provide services outside standard business hours (e.g. childcare centres and medical centres).

- Avoiding illuminated signs and outdoor security lights where they may cause a disturbance to residential neighbours.
 - Providing adequate on-site parking and drop off points where appropriate to ensure that residential streets do not become congested by associated car parking. –
 - To provide a focal point (e.g., adjoining existing or planned activity centres or by clustering similar uses).
 - Where they are readily accessible by road and non-vehicular routes.
 - The built form of non-residential uses: –
 - Be of a domestic architectural character.
 - Be essentially domestic in scale.
 - Include low key advertising signs.
 - Include features to reduce noise and loss of privacy and to enhance the appearance of development, including landscaping, screening, acoustic fencing and the siting of buildings and works, including car parking, that responds to surrounding housing and the streetscape.
- 12 The respondent objectors point out that the proposal does not provide a focal point as encouraged by policy because it does not adjoin existing or planned activity centres and it is not part of a cluster of similar uses. In this respect they submit the proposal does not respond to that aspect of policy that encourages the concentration of non-residential uses to limit adverse impacts on residential areas. The objectors acknowledge that a clustering of non-residential uses is not a mandatory requirement, but it is a relevant component of policy that must be considered.³
- 13 In this case, they submit that the review site's isolation from like uses and from activity centres, makes the site inherently unsuited for the proposed use.
- 14 It is further submitted that Clause 22.04 needs to be read in conjunction with the neighbourhood character policy at Clause 22.08. Under that policy the review site is included in the Frankston South Character Precinct 8 (FS8). The preferred character statement for FS8 is:
- The remnant bush landscape will be maintained, spaciousness of the area and its relationship to the Sweetwater Creek environs will be strengthened.

³ *ASL Alliance No 2 Pty Ltd v Frankston CC* [2020] VCAT 1276, and *Sunland Group v Frankston CC* [2007] VCAT 236.

- 15 It is the objector's position that the effect of Clause 22.04 with its encouragement for non-residential uses to cluster with similar uses or at the edge of activity centres, combined with the inclusion of this neighbourhood in character precinct FS8, creates a significant barrier to the grant of a permit. It is the objector's submission that the planning scheme does not create a sense of expectation of a higher-level activity for this site.
- 16 The objectors also refer to a lack of demonstrated need for the proposed use. In these circumstances they submit that the status quo of the neighbourhood character should not be upset to facilitate the development of a facility which has no demonstrated need.

Findings about the acceptability of the proposed use.

- 17 The starting point for the assessment of the application is the zoning of the land.
- 18 The site is included in the GRZ1, a zone that allows a wide range of non-residential uses including but not limited to childcare centres. Some non-residential uses (e.g. medical centre and place of worship) are permitted in the GRZ1 without a permit, subject to compliance with nominated conditions.
- 19 Other non-residential uses, including childcare centres, are permitted with a permit.
- 20 The fact non-residential uses are permitted in areas zoned GRZ1, reflects a long-standing policy position embedded in planning schemes⁴ that residential areas generally benefit from residents having convenient access to a range of services provided by those uses. This policy position is reflected in the zone purpose that relevantly states in part:

To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.
- 21 Not all permitted uses will be acceptable on all sites in all residential areas. The GRZ1's decision guidelines set out those factors that need to be considered when deciding whether a particular proposal is acceptable or not.
- 22 At Clause 32.08-13 general decision guidelines require consideration, in addition to those at Clause 65, of the Planning Policy Framework and the purpose of this zone. For non-residential uses specifically, the following matters are called up:
 - Whether the use or development is compatible with residential use.
 - Whether the use generally serves local community needs.

⁴ Clause 11, 19, 22.04.

- 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.
- 23 In relation to these decision guidelines, there is a long line of Tribunal decisions that establish the principle that childcare centres are appropriate uses in residential areas. I have not been presented with submissions or evidence in this case that persuade me to depart from that principle.
- 24 I observe in this respect that this principle as a general concept was not strongly opposed by the parties during the hearing. The issues in dispute focus primarily on the acceptability of this proposal in this locality.
- 25 My assessment of the proposal therefore proceeds on the basis that the proposed childcare centre is compatible with residential use. There are many very good reasons which underpin the long established principle that childcare centres are appropriately located in residential areas, not the least of which is that, notwithstanding the commercial basis of their operation, they 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.
- 26 As to whether this proposal can be said to generally serve local community needs, I was presented with some very general demographic information for the Frankston South area, which the objectors submit indicates a lack of need for childcare centres because the percentage of children in the 0 to 5 age group has declined from 12% in 2006 to 10.9%.⁵
- 27 In the absence of a demonstrated need, the objectors submit that the proposal cannot be said to generally serve local community needs.
- 28 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

⁵ I was also referred to the Council's Child and Family Plan 2014-2018 in support of the submission that there is an absence of need for a childcare centre in this location.

the use. However, the lack of a demonstrated need will rarely be a ground for refusing to grant a permit⁶.

- 29 The extent to which a proposal is required to meet a local need to satisfy the decision guidelines and the policy provisions of the planning scheme, has also been considered by this Tribunal over a long period. The Tribunal has consistently held that non-residential uses often serve a wider catchment than the immediate neighbourhood. The fulfilment of a local need test under the planning scheme does not require that every customer, patient or patron of that use, or a specified proportion of them, must reside within an area which could be defined as local.⁷
- 30 The policy at Clause 22.04 provides more specific guidance about non-residential uses, especially about the preferred location for them. The policy broadly complements the decision guidelines at Clause 32.08-13.
- 31 The policy needs to be read in its entirety to arrive at a conclusion about whether this proposal responds acceptably to it.
- 32 The proposal does not provide a focal point by adjoining existing or planned activity centres or by clustering with similar uses. That is a relevant factor, but it is not the end of the story. The policy does not preclude non-residential uses from locating elsewhere. A conclusion must therefore be drawn about the suitability of the site under local policy by reference to the totality of the policy rather than one aspect of it.
- 33 A favourable consideration for this proposal is that the site does front a primary or secondary arterial road on at least one side. That favourable consideration must be balanced against the failure of the proposal to cluster or provide a focal point.
- 34 The balancing exercise I am required to carry out will be informed by my assessment of the proposal's response to neighbourhood character, its amenity impacts, the car parking and traffic effects to be generated by the proposal.
- 35 Before assessing those matters it is appropriate that I record my finding that the inclusion of the review site in the FS8 character precinct does not elevate the use compatibility considerations above those that apply more generally for a non-residential use in the GRZ1.
- 36 The proposal is required to be acceptably respectful of the preferred character of the neighbourhood, but that will typically necessitate a consideration of matters including the design, height, setback and appearance of the proposed buildings and works, the landscaping, the

⁶ My finding on this point follows the decision of the former Planning Appeals Board in *Shell Company of Australia Ltd and Others v City of Frankston and Another* [P82/1527 8APA 126].

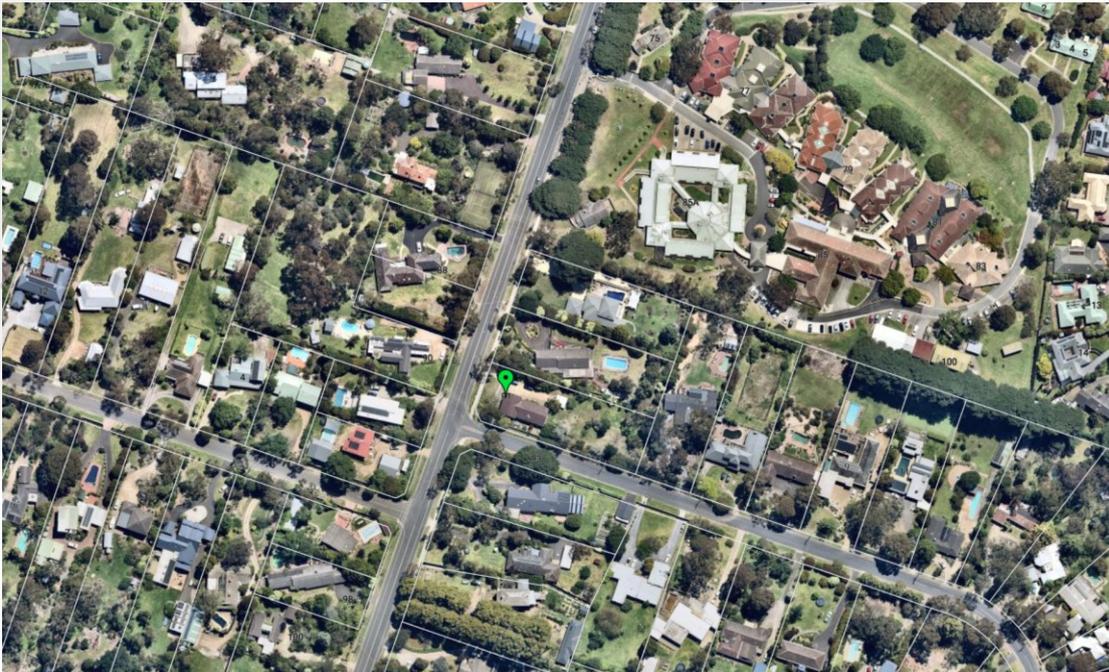
⁷ See for example *Trustees of the Ukrainian Catholic Church in Australia v Melbourne CC* [2008] VCAT 2388.

provision, location and design of car and bicycle parking and associated accessways.

- 37 The scale and intensity of the use and development may have neighbourhood character implications. I address that aspect of the proposal subsequently.

DOES THE PROPOSAL ACHIEVE AN ACCEPTABLE RESPONSE TO THE PREFERRED CHARACTER OF THE NEIGHBOURHOOD?

- 38 The review site is shown in its local or immediate context in the following image.



Source: Near map Aerial Imagery dated 1 November 2021.

- 39 The site is located on the north east corner of Overport Road which is a main road included in a Road Zone Category 2, and Derinya Drive which is a local street. The site forms part of an established residential area. The character of this residential area is described in the neighbourhood character policy at Clause 22.08 of the Frankston Planning Scheme in the following terms:

An area of large houses in extensive grounds, in a rural bush setting. There is remnant bush vegetation in public reserves, roadside reserves and private gardens, including those adjoining Sweetwater Creek. House and garden designs are individualistic, but it is the rural bush landscape that unifies the character of the area. Open or farm fence style front boundary treatments assist in allowing the vegetation to ‘flow’ across individual properties.

- 40 The preferred character statement encourages the maintenance of remnant bush landscape and spaciousness of the area. The relationship to the Sweetwater Creek environs is to be strengthened.

41 The preferred character is to be achieved by reference to design objectives and design responses in the policy. These are included at Clause 22.08-6 that applies to Frankston South generally and to individual precincts. In relation to FS8 the design objectives emphasise the retention and planting of indigenous vegetation, encouragement for buildings to reflect the existing rhythm of dwelling spacing and ensuring buildings and extensions do not dominate the streetscape and wider landscape setting.

42 The design responses included in the policy include:

- Provide open front fencing or post and wire style fencing, other than along heavily trafficked roads.
- Minimise building site coverage and areas covered by impervious surfaces.
- Buildings should be sited to create the appearance of space by providing setbacks on all boundaries and to reflect the existing spacing of buildings in the street.

43 The objectors rely on the evidence of Ms Morland in support of their submission that this proposal is not respectful of the preferred character of the neighbourhood.

44 Ms Morland concludes that the current proposal:

.....does not maintain the 'remnant bush landscape' or maintain the 'spaciousness of the area', as is the preferred character for the area in Clause 22.08.

The proposal will result in a significant detrimental impact on the landscape character of the area.

The proposal does not comply with the local non-residential uses in residential areas policy in Clause 22.04.

The measures required to mitigate potential amenity impacts on the adjoining properties exacerbate non-compliance with Clause 22.08.

Due to the site constraints, in particular the preferred neighbourhood character and local policy, the proposal does not comply with the relevant policies in the Frankston Planning Scheme.

45 Other objectors broadly agree with Ms Morland's evidence. They emphasise the review site's location within an area characterised by its sense of spaciousness and the prominence of vegetation contributing to its landscape character.

46 The amount of vegetation removal and the possible impact of construction on retained vegetation is also identified as a failing of the proposal. In this respect it is submitted that the landscape character objectives of the SLO3 are not met.

47 I was also presented with an analysis prepared by Mr Johnston which assessed building footprints of existing dwellings in the neighbourhood

with that of the proposed childcare centre. The analysis sought to demonstrate that the proposal, because of its building footprint and site coverage would be an excessive and anomalous presence in this neighbourhood.

- 48 The objectors submit that the proposal has failed to strike an acceptable balance between providing adequate space for the intended use (play areas and car parking) and an appropriate landscape outcome that sympathetically responds to the neighbourhood character. They submit the application conflicts with the preferred character of the neighbourhood because of the use of extensive fencing fronting Derinya Drive coupled with a large car park area on Overport Road. In their submission these essential or fundamental components of a childcare centre are inappropriate in this neighbourhood and are not capable of being accommodated.
- 49 Concerns are also expressed about what was described as the formalised or structured landscape treatment proposed for the site, which in the objector submissions does not reflect the informal landscaping and flow of vegetation characteristic of the neighbourhood.

Findings on neighbourhood character issues.

- 50 The review site forms part of a neighbourhood that exhibits a vegetated landscape character. The planning scheme includes policies and guidelines that seek to ensure that developments respect that character to maintain and enhance the landscape values of the area.
- 51 The planning scheme's policies and guidelines do not however amount to a prohibition on new development. Nor do they amount to a requirement that new development must replicate existing development patterns.
- 52 This proposal achieves an acceptably respectful response to the preferred character of the neighbourhood.
- 53 My findings on this issue are in part informed by the fact that the review site currently makes no significant contribution to the character of the neighbourhood. It comprises a nondescript double storey dwelling. The dwelling is exposed to Overport Road with no significant landscaping or vegetation in the front setback. The front setback comprises a paved looped driveway which extends from the access point near the northern boundary and traverses the front of the dwelling. A 1.8m (approx.) high slatted fence runs along part of the southern side boundary enclosing an area of secluded private open space which is adjacent to the dwelling. The site has scattered vegetation.
- 54 The proposal incorporates several design and layout features that assist with its integration into the character of the area. While it is necessary for the building to incorporate functional design features associated with a childcare centre, it nevertheless adopts a low profile, single storey form oriented to and generously setback from Overport Road. It has a domestic scale and a design language comprising a residential material palette.

- 55 I am satisfied the proposal is acceptable having regard to the design objectives of DDO1. My findings on this point are relevant because DDO1 sets parameters for what the planning scheme considers acceptable for new buildings in this locality.
- 56 Importantly, the building is set back a significantly greater distance than the 7.5 metres from any road frontage, and it does not exceed 7 metres in height. At a height of 6.5m the proposed building is well below the maximum height permitted under DDO1 (9.0m). The total floor area of all existing and proposed outbuildings does not exceed 100 square metres.
- 57 The amount of the site covered by buildings does marginally exceeds 25% and the total amount of the site covered by buildings, swimming pool or impervious surfaces does exceed 50%. These however are discretionary provisions and have the effect of triggering the need for a permit under the overlay. When a permit is triggered, consideration must be given to the design objectives of the overlay to decide whether the proposal is acceptable or not.⁸
- 58 The proposal responds acceptably to the design objectives of DDO1 because of its building height and setbacks and because the deviations from the site coverage provisions are minor and have no perceptible impact on the character of the neighbourhood.
- 59 It is also significant that the review site is physically distant from Sweetwater Creek. The provision of DDO1 relating to Sweetwater Creek which require a permit for any buildings or works within 20 metres of the Sweetwater Creek Reserve or the top of the Sweetwater Creek bank are not applicable.
- 60 The proposal has achieved the design and layout outcomes detailed above to accommodate the intensity of the proposed use. I have adopted the number of children (110) proposed to be catered for as an indication of the proposal's intensity of use. I am therefore satisfied that the intensity of the use has not created a development that has adverse neighbourhood character implications.

⁸ A permit is not required under DDO1 where nominated conditions are met. One of those conditions is that there is no existing dwelling or approval for a dwelling on the lot. The Council submits that because the existing dwelling on the site is to be removed, a permit is required under DDO1. The applicant submits that a permit is not required because there is a dwelling on the lot and the fact that it is to be removed does not enliven the need for a permit. I also received submissions that the amount of the site covered by impervious surfaces exceeds 50% when features including artificial grass, sand pits and shade sales are included in the calculation. I am satisfied that the amount of the site covered by impervious surfaces is greater than 50% and a permit is therefore required. I have however excluded artificial grass from the calculation because it is a permeable surface. I have assessed the application against the discretionary standards contained in DDO1 and against the design objectives to inform myself about the acceptability of the built form and site layout having regard to the objectives of DDO1.

- 61 The proposal also responds in an acceptable manner to the landscape character objectives of the SLO3.⁹ The proposal involves the removal of ten trees for which a permit is required under SLO3. Other vegetation to be removed is exempt from the need to obtain a permit under the exemption provisions of the overlay. The trees to be retained are predominantly those that have been graded as having at least a moderate protection value because of their arboricultural condition or contribution to the character of the area. Much of the vegetation to be removed is either exempt from obtaining a permit as detailed above or has been graded of generally low protection value. Retained vegetation including vegetation on neighbouring properties can be protected by the adoption of an appropriate management regime.
- 62 I am satisfied therefore that the proposal has demonstrated the adoption of the avoidance hierarchy (avoid, minimise, mitigate principles) in relation to substantial trees on the site. In addition, Mr Patrick's landscape concept plan demonstrates that the proposal provides the opportunity for landscaping that will assist with the effective integration of the built form into the neighbourhood. The front setback landscaping extends into and through the car park area in a manner that can soften the visual impact of that space. The proposed landscaping also extends along the southern side street boundary to visually soften the impact of the fencing and the building along that boundary.

ARE THE PROPOSAL'S CAR PARKING AND TRAFFIC IMPACTS ACCEPTABLE?

- 63 The proposal provides 24 on site car parking spaces in compliance the required car parking rate for childcare centres specified at table 1 of Clause 52.06-5¹⁰. Because the proposal complies with the requirement at Clause 52.06-5 a permit is not required in relation to the quantum of car parking provided by the proposal.
- 64 The amount of car parking provided on site is therefore not a matter before me.
- 65 I note that objectors made detailed submissions about the quantum of car parking. In summary they submit that having regard to the number of children to be accommodated and the consequent staffing arrangements associated with that number of children, not enough car parking is being provided and there will be consequential overflow parking in the surrounding street network.
- 66 There may be some merit in the objector submissions on this point, but the relevance of those submissions is limited in circumstances where the applicant is not applying for a dispensation from the requirement to provide

⁹ The objective is: To maintain the well vegetated landscape character of Frankston South.

¹⁰ Clause 52.06-5 requires car parking to be provided at a rate of 0.22 spaces per child.

car parking in accordance with table 1 of Clause 52.06-5. It is not open to me to make a finding that more car parking should be provided. Nor is it open to me to make a finding that the proposal should be refused because not enough car parking is provided.

- 67 In relation to traffic related matters, the objectors have presented me with submissions and visual material seeking to demonstrate traffic congestion at the Overport Road and Derinya Drive intersection specifically and in the surrounding area generally.
- 68 The objectors submit that the design and layout of the proposed car park will exacerbate existing problems encountered by residents accessing Overport Road via Derinya Drive. Because the proposal does not provide a drive through layout, vehicles in the car park will be required to do a series of manoeuvres within the car park, creating potential for conflicts on site. The inconvenience and danger associated with those manoeuvres will, in their submission encourage parents to park in Overport Road or on Derinya Drive.
- 69 Much of the concern raised by objectors related to claimed traffic problems at school drop off and pick up times associated with the Derinya Primary School which is located to the south at the intersection of Overport Road and the southern end of Derinya Drive.
- 70 The objectors question the validity of the applicant's traffic evidence because they point out that the traffic surveys have been carried out while COVID 19 restrictions were in place. They also question, based on their own observations, the degree of saturation encountered at the Overport Road and Derinya Drive intersection, opposite the review site.
- 71 Ms Dunstan provided expert traffic evidence on traffic and car parking matters.
- 72 Ms Dunstan's evidence references surveys undertaken between the hours of 7am to 9:30am and 3pm to 6:30pm on Thursday 15 July 2021, with additional counts undertaken during the school pick-up period of 3 to 4pm. The Derinya Primary School was operating during these hours. While COVID 19 related restrictions were in place at that time metropolitan Melbourne was not in lockdown.
- 73 The surveys show that on Overport Road, a higher volume of traffic was observed in the AM peak (1,085 vehicles), followed by the 3-4pm school pick-up period (920 vehicles) and the PM peak (719 vehicles). Ms Dunstan estimates that Overport Road carries in the order of 9,020 vehicles per day which is consistent with its classification in a Road Zone Category 2. Ms Dunstan concluded that Overport Road operates within its environmental capacity of between 5,000 to 10,000 vehicles per day, albeit at the top end of that range.
- 74 In Derinya Drive, a two-way traffic volume of 170 and 50 vehicles was observed in the AM peak and the PM Peak respectively with 164 vehicles

observed during the 3-4pm period. Ms Dunstan estimates that Derinya Drive carries in the order of 1,100 vehicles per day which is well below its environmental capacity of 3,000 vehicles per day.

- 75 Ms Dunstan concludes that the additional traffic movements associated with the proposal (estimated at 520 vehicle trip ends per day) can be accommodated within the road network without disrupting the functioning or safety of the network.
- 76 Ms Dunstan confirmed that the proposed car parking layout on site is compliant with relevant dimensions and standards and the sight lines to and from the site are compliant with relevant Australian Standards.
- 77 The Council has assessed the application. Its traffic engineers have described Overport Drive as a local collector road that provides access to properties and connectivity between local access roads to the main roads. The Council concluded that traffic generated from the proposal is expected to have minimum impact on Overport Drive and the surrounding road network.
- 78 The Council also concluded that the dimensions of all car parking spaces including those that are adjacent to the proposed retaining wall and disabled parking spaces are all satisfactory. Proposed staff car parking spaces in tandem arrangement is acceptable, and the dimensions of the accessway and the car parking layout is acceptable with all vehicles able to reverse and exit in a forward direction.
- 79 The application was also provided to the Department of Transport for comment. It advised Council in a letter dated 24 June 2020 that it does not object to the application, subject to conditions.
- 80 The Council's assessment broadly coincides with Ms Dunstan's evidence.
- 81 As I have indicated the objectors are sceptical about the validity of the traffic evidence for the reasons outline above. In broad terms, they say that the traffic conditions presented by Ms Dunstan does not correspond with their lived experiences.
- 82 This is not an unusual occurrence. Residents are regularly frustrated with the traffic conditions they observe in their local area. Notwithstanding those frustrations, the traffic conditions are often (although not always) consistent with the traffic engineering and traffic safety standards that apply to those areas. In circumstances where it can be demonstrated that the design and safety standards are not being met, it is typically incumbent on the Council and/or the relevant road authority to implement measures intended to address the non-compliances. These measures often involve changes to traffic signage, speed limits, intersection design and car parking restrictions.
- 83 In this case I have been presented with expert traffic evidence to the effect that the existing road network is functioning in accordance with accepted standards. This evidence has been formulated using conventional and

professionally collected data and subsequent analysis. The evidence has also attested to this proposal's compliance with design standards. The witness conclusions about the proposal's acceptable impact on the functioning of the road network has been formulated on that information and is soundly based.

84 My findings in this respect does not mean that the proposal will not have an impact, but I am satisfied that the impact is within acceptable traffic engineering parameters.

85 I also acknowledge that there will be and have been circumstances where the traffic conditions experienced by residents departs from that presented in the evidence. This is also not unusual. The video presented to me showing queuing at the Derinya Drive and Overport Road intersection appears to be caused by a banking up of traffic on Overport Road. This circumstance may indicate the need for changes to the control of that intersection, or the management of volumes on Overport Road. In any event that is a matter for the Council to address if it formed the view that queuing was unacceptable based on its assessment of the design and functioning of the intersection.

86 The relevant issue for me in this case is to assess the impact of the proposed use on the functioning and safety of the road network.

87 Having regard to the particular traffic generating characteristics of childcare centres, with children drop off and pick up typically spread throughout the AM and PM peaks in contrast to the more concentrated peaks associated with schools and kindergartens, I am satisfied that this proposal will not contribute to increased vehicle movements that cannot be accommodated within the surrounding road network.

88 There are therefore no traffic engineering reasons that would justify a refusal of this application.

DOES THE PROPOSAL CONTRIBUTE TO UNACCEPTABLE NEIGHBOUR AMENITY IMPACTS?

89 The review site benefits from having only two residential abuttals, a site feature that assists in the management of amenity impacts. The abutting properties are to the east at 3 Derinya Drive and to the north at 89 Overport Road. They are both substantial dwellings set on large lots in established gardens.

90 The proposal does not contribute to amenity impacts in the form of overlooking, overshadowing or loss of daylight that can be considered unacceptable.

91 In terms of the proposal's visual impact, the proposed building's height (6.5m) and setbacks from side and rear boundaries, combined with the perimeter landscaping and the retained vegetation including vegetation on

the neighbouring properties, are sufficient to ensure that the proposal will not have an unacceptable impact when viewed from offsite positions.

- 92 In relation to acoustic impacts Mr Growcott provided a comprehensive analysis of the likely noise sources associated with the proposal which included children playgrounds, mechanical services and waste collection.
- 93 Mr Growcott recommended a series of management arrangements and also recommended noise control screening in the form of acoustic fencing.
- 94 Subject to the incorporation of Mr Growcott's recommendations I am satisfied that the proposal will not contribute to unacceptable amenity impacts.

OTHER MATTERS

The site's location in a bush fire prone area.

- 95 The review site is not located in area affected by a Bushfire Management Overlay. Consequently, the relevant provisions and requirements of the Overlay are not applicable to this application. These requirements include a referral to the CFA.
- 96 The applicant has however consulted with the CFA who provided correspondence to the effect that the bushfire risk for this site is low and that a BAL construction assessment conducted by a building surveyor at the building permit stage, as is required for a site included in a bushfire prone area, will afford adequate protection to address the low risk.
- 97 I have however imposed a condition requiring a bushfire management plan to be prepared and approved by the responsible authority in consultation with the CFA.
- 98 Subject to the implementation of that condition I am satisfied the proposal is acceptable.

Reference to previous Tribunal decisions

- 99 During the hearing I was referred to several Tribunal decisions which had considered applications for childcare centres in Frankston South in the general vicinity of the review site in this case.¹¹
- 100 The Tribunal in two of those decisions refused to grant a permit at least partly on character and policy grounds while in the third case, a permit was granted at 118 Overport Road, because that site exhibited a different context to the low-key character of other parts of Overport Road. The decision for the site at 118 Overport Road followed an earlier decision by the Tribunal to refuse to grant a permit on the same site.

¹¹ *ASL Alliance No. 2 Pty Ltd v Frankston CC* [2020] VCAT 1276, *Sunland Group v Frankston CC* [2007] VCAT 236, *Living Lifestyles (Childcare) v Frankston CC* [2007] VCAT 2205, *Living Lifestyles Trust v Frankston CC* [2007] VCAT 501

- 101 In each of the decisions to which I was referred the Tribunal arrived at their decisions having regard to the circumstances of each case, the site contexts, the details of the proposed use and the design response of each proposal.
- 102 The Tribunal's decisions in each case can be distinguished on their own facts and circumstances, notwithstanding that the same or very similar planning scheme provisions applied.

Internal layout and management arrangements

- 103 I received submissions criticising aspects of the proposal's layout and management, including the internal layout, room sizes, outdoor play area locations, orientation and sizes.
- 104 It was submitted that the proposal failed to provide an appropriate experience for the children who would attend.
- 105 It was submitted that these issues are relevant to the consideration of the planning merits of the proposal, notwithstanding that they are also matters which are covered by guidelines for childcare centres which are administered by other regulatory authorities.
- 106 I do not agree with those submissions.
- 107 The various regulations and guidelines applying to the operation of childcare centres under separate legislation exist for a purpose. It is the responsibility of the authorities charged with applying those regulations and guidelines to ensure that each childcare centre achieves compliance.
- 108 In the circumstances of this case, the operator of the childcare centre will be required to demonstrate to the appropriate authorities that this proposal achieves compliance with the regulations and guidelines.
- 109 If the operator is unable to achieve compliance the proposal will not proceed. If compliance necessitates changes to the plans approved under this permit, a planning permit amendment process will need to be pursued.
- 110 The objectors who raised concerns about the adequacy of play areas etc. should take some comfort from the fact that these are matters which receive due consideration by those charged with the regulation of childcare centres.

CONCLUSION

- 111 It follows from the above reasons that it is my conclusion that the decision of the responsible authority should be set aside and a permit issued.
- 112 In deciding the conditions to be included on the permit I have had regard to the "without prejudice" conditions provided to the Tribunal by the responsible authority and the submissions and evidence of the parties in addition to the matters which arise from my reasons.

Laurie Hewet
Senior Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	177/2020/P
LAND:	91 Overport Road FRANKSTON SOUTH VIC 3199

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- To use and develop the land for a Childcare Centre in a General Residential Zone (GRZ), removal of substantial trees and to undertake building or construct or carry out works in the tree protection zone of substantial trees in a Significant Landscape Overlay Schedule 3 (SLO3) and to construct a building in a Design and Development Overlay Schedule 1 (DDO1).

CONDITIONS:

- 1 Before the use and/or development starts, amended plans to the satisfaction of the Responsible Authority 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 drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans submitted identified as Ref 19-0584, Issue TP1, dated 6/7/2021, prepared by Thomas Anderson Design but modified to show:
 - (a) All trees growing on the site and on the adjoining properties within 3m of the boundaries must be clearly illustrated on all relevant plans to demonstrate canopy width, trunk location and clearly labelled in accordance with the Development Impact Assessment Report prepared by Arbor Survey dated 8 April 2020 and clearly state whether the tree is to be retained or removed.
 - (b) The Tree Protection Zone and Structural Root Zone for all trees to be retained and the tree protection fence/ground protection locations must be illustrated on all relevant plans.
 - (c) A Landscape Plan in accordance with Condition 3.
 - (d) An Arborist Report in accordance with Condition 6.
 - (e) Any design changes recommended within the arborist report required by Condition 6.
 - (f) A Tree Management Plan in accordance with Condition 7.

- (g) Tree Protection Conditions noted in accordance with Condition 8 and 9.
- (h) A Waste Management Plan in accordance with Condition 17.
- (i) A Construction and Environment Management Plan in accordance with Condition 18.
- (j) Location of any mechanical equipment in accordance with Condition 19.
- (k) Location of outdoor lighting in accordance with Condition 20.
- (l) Location of wheel stoppers for each proposed car space in accordance with AS2890.1-2004.
- (m) Dimensions of bicycle spaces in accordance with AS3890.3-2015.

No Alterations

- 2 The use and/or development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

Landscape Plan

- 3 Before the commencement of buildings and works, a detailed landscape plan generally in accordance with the landscape concept plan prepared by John Patrick landscape Architects P/L dated 13/07/2021 Rev A must be provided and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The concept plan must be modified to show:
 - (a) details of surface finishes of pathways and driveways and retaining walls;
 - (b) a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, size at maturity and quantities of each plant;
 - (c) Select alternative canopy tree to *Elaeocarpus reticulatus* (potential risk of spread to natural reserves) and replace the three *Melaleuca salicina* with an upright tree along the pathway (minimum mature height 7m);
 - (d) Nature strip Council trees must only be shown where a payment is made to Council for their installation. Provide notation Payment to be made to Council for new tree plantings.

Trees are not to be sited over easements.

All species selected must be to the satisfaction of the Responsible Authority.

Prior to Occupation

- 4 The landscaping as shown on the endorsed landscape plan must be carried out and completed to the satisfaction of the Responsible

Authority including payment for any new Council trees before the occupation of the development and/or commencement of the use or at such later date as is approved by the Responsible Authority in writing.

- 5 The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged trees are to be replaced.

Arborist Report

- 6 Before the commencement of buildings and works, an arborist report must be prepared to the satisfaction of the responsible authority in relation to the following trees nominated for retention on the subject site: Tree No's 5, 6, 7, 52, 53 and 57. Once approved, the report will be endorsed and form part of this permit. The report must be generally in accordance with the Australian Standard AS4970-2009 – Protection of Trees on Development Sites and include:
 - (a) Details of the level of encroachment of the proposed buildings and works, including acoustic fencing and retaining walls, into tree protection zones.
 - (b) Details of any design changes or construction techniques necessary to ensure the ongoing survival of the trees, which must avoid locating the acoustic fencing closer to Derinya Drive.
 - (c) Any tree protection measures necessary during construction to protect the trees.

The recommendations of the endorsed arborist report must be implemented to the satisfaction of the responsible authority.

Tree Protection Management Plan

- 7 A Tree Protection Management Plan prepared in accordance with Frankston City Council's 'Arboricultural Report Writing Guide' must be submitted by a suitably qualified and experienced Arborist in relation to the management and maintenance of all trees on subject site and on adjoining land must be approved by the Responsible Authority prior to the commencement of any works (including any demolition, levelling of the site, excavations, tree removal, delivery of building/construction materials and/or temporary buildings). The Tree Management Plan must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detail the following where relevant but not limited to ensuring that the trees remain healthy and viable during and following construction:
 - (a) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ), tree protection fence locations and any relocations required and any areas where ground protection systems will be used;
 - (b) A clear photograph of each tree;

- (c) Any specific damage/faults evident within each tree prior to demolition or construction. These photographs must be supplied within the TPMP as a preliminary dilapidation report.
- (d) Restricted activities in the TPZ;
- (e) Key supervision and monitoring stages of the development including pre-demolition, pre-construction, and post construction stages;
- (f) Details of any TPZ encroachments including:
 - i Details of exploratory root investigation
 - ii Alternative construction techniques
 - iii Supervision
 - iv Details of any root pruning
- (g) Methods for installation of services e.g.; sewerage, storm water, telecommunications, electricity etc;
- (h) Remedial works as required including a detailed photographic diagram specifying what pruning will occur;
- (i) Final Certification of Tree protection template. The Final Certification Report Template as required in the Tree Protection Management Plan must be completed and submitted to the satisfaction of the Responsible Authority before the occupation of the development and/or commencement of the use or at such later date as is approved by the Responsible Authority in writing.
- (j) Any particular tree protection measures specified in the approved Arborist Report required by Condition No. 6 of this permit.

Tree Protection

- 8 Tree protection must be carried out in accordance with the Australian Standard AS 4970-2009 Protection of trees on development sites to the satisfaction of the Responsible Authority.
- 9 Prior to the commencement of the development (including vegetation removal), a Tree Protection Fence defined by a 1.8 metre high (minimum) temporary fence constructed using steel or timber posts fixed in the ground or to a concrete pad, with the fence's panels to be constructed of cyclone mesh wire or similar strong metal mesh or netting with a high visibility plastic hazard tape, must be installed at the edge of the defined tree protection zones of trees to be retained as per the Arborist report prepared by Arbor Survey dated 8 April 2020, to the satisfaction of the Responsible Authority. A fixed sign is to be provided on all visible sides of the Tree Preservation Fencing, stating "Tree Preservation Zone – No entry without permission from Frankston City Council".

The requirements below must be observed within this area –

- (a) Coarse mulch laid to a depth of 50-100 mm (excluding street trees).

- (b) No vehicular or pedestrian access.
- (c) The existing soil level must not be altered either by fill or excavation.
- (d) The soil must not be compacted or the soil's drainage changed.
- (e) No fuels, oils, chemicals, poisons, rubbish or other materials harmful to trees are to be disposed of or stored.
- (f) No storage of equipment, machinery or material is to occur.
- (g) Open trenching to lay underground services e.g.: drainage, water, gas, etc. must not be used unless approved by the Responsible authority to tunnel beneath.
- (h) Nothing whatsoever, including temporary services wires, nails, screws or any other fixing device, is to be attached to any tree.
- (i) Tree roots must not be severed or injured.
- (j) Machinery must not be used to remove any existing concrete, bricks or other materials.

The tree protection fence must remain in place for the duration of building and works to the satisfaction of the Responsible Authority.

Drainage

- 10 Provision of a Stormwater Detention System with a volume capable of retarding the 10 year ARI flow from the development site back to a 5 year ARI pre-development value to the satisfaction of the Responsible Authority.
- 11 Prior to commencement of development construction detailed design plans and drainage computations of the internal stormwater drainage system including the method of connection to the existing Council drainage infrastructure are to be submitted and approved to the satisfaction of the Responsible Authority.
- 12 Water Sensitive Urban Design principles (WSUD) are to be incorporated into the drainage design, which may include but not be limited to the following components or a combination thereof:
 - i On-site stormwater detention and rainwater tanks.
 - ii Soil percolation
 - iii Stormwater harvesting and Re-use of stormwater for garden watering, toilet flushing, etc
 - iv On-site 'bio-treatment' to reduce dissolved contaminants and suspended solids.
- 13 Vehicle crossing shall be constructed to Frankston City Council's standards and specifications to the satisfaction of the Responsible Authority.

- 14 All disused vehicle crossings shall be removed and the area reinstated to kerb and channel and landscaped to the satisfaction of the Responsible Authority.
- 15 Concrete kerbs and barriers shall be provided to the satisfaction of the responsible authority to prevent direct vehicle access to an adjoining road other than by a vehicle crossing.
- 16 Where the development involves work on or access to Council controlled land including roads, reserves and right of way, the owner, operator and their agents under this permit must at all times take adequate precautions to maintain works to the highest public safety standards, to the satisfaction of the Responsible Authority.

Precautions must include, appropriate signage to AS 1743 Road Works Signing Code of Practice, the provision of adequate barricading of works, including trenches of Service Authorities and any other road openings, sufficient to ensure public safety.

All relevant permits must be obtained from Council for works within the existing road reserves, in addition to the planning permit.

Waste Management Plan

- 17 Prior to the use commencing, an amended waste management plan must be submitted to the Responsible Authority for approval that is reflective of the current proposal. Such plan must provide details of a regular garbage collection service to be provided by the owner of the site, including information regarding the type of refuse bins, type/size of trucks, means of accessing bins and frequency and timing of refuse collection, to the satisfaction of the Responsible Authority. Once approved, such plan must be implemented to the satisfaction of the Responsible Authority.

Construction and Environment Management Plan

- 18 Prior to the commencement of any stage of the development a Construction Management Plan must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed to form part of the permit. Any plans submitted must be consistent with all other documents approved as part of this permit. The information must be drawn to scale with dimensions and three copies must be provided. The Plan is to include details of the following:
 - (a) Contact Numbers of responsible owner/contractor including emergency/24 hour mobile contact details.
 - (b) Identification of possible environmental risks associated with development works.
 - (c) Response measures and monitoring systems to minimise identified environmental risks, including but not limited to creek protection, vegetation protection, runoff, erosion, dust, litter, noise and light.

- (d) Location and specifications of sediment control devices on/off site.
- (e) Location and specification of surface water drainage controls.
- (f) Proposed drainage lines and flow control measures.
- (g) Location and specifications of fencing for the protection of trees and/or vegetation as required by the permit.
- (h) Location of all stockpiles and storage of building materials.
- (i) Location of parking for site workers and any temporary buildings or facilities.
- (j) Details to demonstrate compliance with relevant EPA guidelines.
- (k) Target of recycling and re-using a minimum of 80% of construction and demolition waste by weight.
- (l) Hours during which construction activity will take place.

Urban Design

- 19 Air-conditioning plant, compressors and exhaust fans must be located so as to minimise adverse amenity impacts on abutting and nearby residential properties, to the satisfaction of the Responsible Authority.
- 20 Outdoor lighting, external sign lighting and building illumination must at all times be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
- 21 All fences must be maintained in sound condition, to the satisfaction of the Responsible Authority.

Acoustic Fencing

- 22 Before the use starts, the acoustic fencing and all other recommendations must be carried out and completed and any recommendations must be implemented in accordance with the Acoustic Assessment Report prepared by Watson Moss Growcott dated August 16 2021. The details of the design and acoustic qualities of the fence must be to the satisfaction of the Responsible Authority and must demonstrate achievement of noise attenuation measures and limits required in the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1.

Number of Children

- 23 No more than 110 children may be present on the premises at any one time.

Hours of Operation

- 24 The use may only operate between the hours of 6:30am to 6:30pm (Monday to Friday).

Amenity

- 25 The development or use must not detrimentally affect the amenity of the area including through the:
- (a) Transport of materials, goods or commodities to or from the land.
 - (b) Appearance of any building, works or materials.
 - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - (d) Presence of vermin.

to the satisfaction of the Responsible Authority.

Noise levels emanating from the premises must not exceed those required to be met under EPA publication 1826.4 *Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues* (Noise Protocol).

Department of Transport

- 26 The demolition and construction of the development must not disrupt bus operations on Overport Road without the prior written consent of the Head, Transport for Victoria.
- 27 Any request for written consent to disrupt bus operations on Overport Road during the demolition and construction of the development must be submitted to the Head, Transport for Victoria not later than 8 weeks prior to the planned disruption and must detail measures that will occur to mitigate the impact of the planned disruption.

Satisfactorily Completed

- 28 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Bushfire Management Plan

- 29 Before the use commences a bushfire management plan must be submitted to and approved by the responsible authority. The responsible authority's approval of the bushfire management plan must have regard to any comments provided by the CFA.

Permit Expiry

- 30 This permit will expire if one of the following circumstances applies:
- i The development is not started within two years of the date of this permit.
 - ii The development is not completed within four years of the issued date of this permit.
 - iii The use is not commenced within two (2) years of the date of this permit.
 - iv The use is discontinued for a period of two (2) years.

In accordance with Section 69 of the Planning and Environment Act 1987, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

- End of conditions -