

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1503/2018
PERMIT APPLICATION NO. 857/2017

APPLICANT	Elwood Owns ELC Pty Ltd as trustee for Elwood Owns ELC Unit Trust
RESPONSIBLE AUTHORITY	Port Phillip City Council
RESPONDENTS	Melbourne Water, Vic Roads – Metropolitan North West Region, Mr Rodney Schaffer, Amy and Shane Thorp, Efthimios (Tim) Paronis, David Brown,
SUBJECT LAND	147-149 Brighton Road, Elwood
WHERE HELD	Melbourne
BEFORE	Nicholas Hadjigeorgiou, Member
HEARING TYPE	Compulsory conference
DATE OF HEARING	12 November 2018
DATE OF ORDER	16 November 2018

ORDER

Amend application

- 1 Pursuant to section 127 and 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: Perkins Architect
 - Drawing numbers: TP06 – TP15
 - Dated: 7 November 2018
- 2 The decision of the Responsible Authority is set aside.
- 3 In permit application. 857/2017 a permit is granted and directed to be issued for the land at 147-149 Brighton Road, Elwood in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
 - Use and development of a child care centre and associated signage.



- 4 The hearing scheduled to commence on 17 December 2018 for 4 days is vacated.

Nicholas Hadjigeorgiou
Member

APPEARANCES:

For Applicant

Mr David Passarella, Solicitor of Mills Oakley

Assisted by:

Jamie Govenlock, Urbis

Russell Fairlie, Ratio

Sean Collins

For Responsible Authority

Ms Kathryn Pound, Town Planner

For Respondents

Mr Rodney Schaffer, Ms Amy Thorp and Mr David Brown appeared in person.

Ms Felicity O’Sullivan, Town Planner of SJB Planning appeared for Mr Tim Paronis



REASONS

- 1 This order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
- 2 The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:
 - the responsible authority is of the opinion that the permit or amended permit is appropriate having regard to the matters it is required to consider under section 60 of the Act, including the balanced application of the strategies and policies of the relevant planning scheme and is otherwise in conformity with the provisions of the planning scheme and the *Planning and Environment Act 1987*;
 - the proposed orders will not result in any change to the proposed use or development which would materially affect any person other than the parties to the proceeding.
- 3 Based on the information available to the Tribunal, I consider it is appropriate to make these orders.

Nicholas Hadjigeorgiou
Member



APPENDIX A

VCAT REFERENCE NO:	P1503/2017
PERMIT APPLICATION NO:	857/2017
LAND:	147-149 Brighton Road, Elwood
WHAT THE PERMIT ALLOWS:	<ul style="list-style-type: none"> • Use and development of a child care centre and associated signage. <p>in accordance with the endorsed plans.</p>

CONDITIONS

AMENDED PLANS REQUIRED

1. Before the 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 an electronic copy must be provided. The plans must be generally in accordance with the plans entitled Ch BR, Drawing Nos. TP06, TP07, TP08, TP09, TP10, TP11, TP12, TP13, TP14 and TP15, dated 07/11/2018, prepared by Perkins Architects, but modified to show:
 - a) The landscape plan modified to show only low level plantings (that will not grow above 0.9 m) in the sight triangles of the access ramp.
 - b) A response to the following urban design matters:
 - i. Supply of accurate, coloured elevations, 3D views and sections to confirm the assumptions of this assessment.
 - ii. Resolution of the design and materiality of the vertical lift core, first floor frame and corromesh screen elements and top level folded roof structure.
 - iii. Extruded window fins and frames to be of a durable material, not cement sheet.
 - iv. Details of planter boxes including irrigation and drainage.
 - c) All plant, equipment and services (including air conditioning, heating units, hot water systems, etc.) which are to be located externally.



- d) All plan and elevation drawings fully dimensioned, including natural ground level, floor levels, and incremental and total wall and building heights and lengths, with heights to be expressed to Australian Height Datum (AHD).
- e) The balustrade/screening on the south elevation of the roof terrace to clear glazing with minimal obstructions located along the screening (including landscaping).

NO ALTERATIONS (DEVELOPMENT)

- 2. The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority, unless the Port Phillip Planning Scheme exempts the need for a permit.

LAYOUT NOT TO BE ALTERED (USE)

- 3. The layout and description of the use(s) as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

NO CHANGE TO EXTERNAL FINISHES

- 4. All external materials, finishes and colours as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

HOURS OF OPERATION

- 5. Without the further written consent of the Responsible Authority the use must operate only between the hours of 7.00am and 6:30 pm Monday to Friday.

NUMBER OF CHILDREN

- 6. Without the further written consent of the Responsible Authority no more than 100 children may be accommodated on the premises during operating hours.

SUSTAINABLE DESIGN ASSESSMENT & WATER SENSITIVE URBAN DESIGN

- 7. Before the development starts (other than demolition or works to remediate contaminated land) an amended Sustainable Design Assessment that is generally in accordance with the one prepared by Sustainability House dated 8 September 2017 but modified to address the matters identified by Council's ESD Advisor must be submitted to, be to the satisfaction of and approved by the Responsible Authority. When approved, the Assessment will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed.



IMPLEMENTATION OF SUSTAINABLE DESIGN & WATER SENSITIVE URBAN DESIGN INITIATIVES

8. Before the occupation of the development approved under this permit, a report from the author of the Sustainable Design Assessment approved pursuant to this permit, or similarly qualified person or company, must be submitted to the satisfaction of the Responsible Authority. The report must confirm that all measures and recommendations specified in the Sustainable Design Assessment have been implemented and/or incorporated in accordance with the approved report to the satisfaction of the Responsible Authority.

MAINTENANCE MANUAL FOR WATER SENSITIVE URBAN DESIGN INITIATIVES (STORMWATER MANAGEMENT)

9. Before the development starts (other than demolition or works to remediate contaminated land) a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority.

The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:

- inspection frequency
- cleanout procedures
- as installed design details/diagrams including a sketch of how the system operates

WASTE MANAGEMENT PLAN

10. Before the development starts (other than demolition or works to remediate contaminated land), a Waste Management Plan based on the City of Port Phillip's Waste Management Plan Guidelines for Developments must be prepared by a Waste Management Engineer or Waste Management Planner to the satisfaction of the Responsible Authority and endorsed as part of this permit. The Plan must include reference to the following:

- Land use type.
- The estimated garbage and recycling volumes for the whole development.
- Bin quantity, size and colour.
- The garbage and recycling equipment to be used.
- Collection frequency including all collections to be made during off-peak children drop-off and collection times
- The location and space allocated to the garbage and recycling bin storage area and collection point.
- The waste services collection point for vehicles.
- Waste collection provider.
- Scaled waste management drawings.
- Signage.



Once submitted and approved, the waste management plan must be carried out to the satisfaction of the Responsible Authority.

Traffic and Parking Management Plan

11. Before the use starts, a traffic and parking management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. Traffic and parking operations on and adjacent to the site must conform to this endorsed plan. Three copies of the plan must be submitted. The plan must include:
- (a) The location of all areas on-site to be used for staff and patron parking.
 - (b) Specification of staff numbers adequate to enable efficient operation of car parking areas on-site.
 - (c) The means by which the direction of traffic and pedestrian flows to and from car parking areas will be controlled.
 - (d) Measures to discourage patron car parking in staff parking spaces.
 - (e) Measures to preclude staff parking in designated patron car parking areas.
 - (f) Staffing and other measures to minimise conflict between staff vehicle arrival and departure and peak child drop-off and pick-up times.
 - (g) Servicing of the drainage and maintenance of car parking areas.

CAR AND BICYCLE PARKING LAYOUT

12. Before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and bicycles and access lanes as shown on the endorsed plans must, to the satisfaction of the Responsible Authority, be:
- a) Constructed;
 - b) Properly formed to such levels that may be used in accordance with the plans;
 - c) Surfaced with an all weather surface or seal coat (as appropriate);
 - d) Drained and maintained; and
 - e) Line marked to indicate each car space, visitor space, bicycle space, loading bay and/or access lane; and
 - f) Clearly marked to show the direction of traffic along access land and driveways.

CAR PARKING STACKER MAINTENANCE AND PROVISION

13. The mechanical car stackers are to be maintained in a good working order and be permanently available for the parking of vehicles in accordance with their purpose, to the satisfaction of the Responsible Authority.



Car stacker maintenance and management plan

14. Prior to the occupation of the approved development, the owner/permit holder must prepare and have approved in writing by the Responsible Authority, a car stacker system management plan including but not limited to the following:

- Allocation of car parking spaces according to vehicle size and type;
- Ongoing maintenance of the car stacker system;
- Instructions to both staff and visitors about the operation of the car stacker system; and
- Communicating to prospective residents about the availability of car stacker spaces and sizes.

Once approved this document must be complied with to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

PARKING AND LOADING AREAS MUST BE AVAILABLE

15. Car and bicycle parking and loading areas and access lanes must be developed and kept available for those purposes at all times and must not be used for any other purpose such as storage to the satisfaction of the Responsible Authority.

LIGHTING

16. External lighting of the areas set aside for access, car parking and driveways must be installed and be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.

VEHICLE CROSSINGS

17. Before the occupation of the development allowed by this permit, vehicle crossings must be constructed in accordance with Council's current Vehicle Crossing Guidelines and standard drawings to the satisfaction of the Responsible Authority. All redundant crossings must be removed and the footpath, naturestrip, kerb and road reinstated as necessary at the cost of the applicant/owner and to the satisfaction of the Responsible Authority.

APPLICANT TO PAY FOR REINSTATEMENT

18. Before the occupation of the development *allowed by this permit*, the applicant/owner must do the following things to the satisfaction of the Responsible Authority:
- a) Pay the costs of all alterations/reinstatement of Council and Public Authority assets necessary and required by such Authorities for the development.
 - b) Obtain the prior written approval of the Council or other relevant Authority for such alterations/reinstatement.



- c) Comply with conditions (if any) required by the Council or other relevant Authorities in respect of alterations/reinstatement.

PUBLIC SERVICES

19. Before the occupation of the development *allowed by this permit*, any modification to existing infrastructure and services within the road reservation (including, but not restricted to, electricity supply, telecommunications services, gas supply, water supply, sewerage services and stormwater drainage) necessary to provide the required access to the site, must be undertaken by the applicant/owner to the satisfaction of the relevant authority and the Responsible Authority. All costs associated with any such modifications must be borne by the applicant/owner.

COMPLETION OF LANDSCAPING

20. The landscaping as shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority before the occupation of the development and/or the commencement of the use or at such later date as is approved by the Responsible Authority in writing.

LANDSCAPING MAINTENANCE

21. The landscaping as shown the endorsed Landscape Plan must be maintained, and any dead, diseased or damaged plant replaced in accordance with the landscaping plan to the satisfaction of the Responsible Authority.

ARBORIST REPORT & TREE PROTECTION DURING CONSTRUCTION

22. Before the development starts, an updated Arboricultural report must be prepared, submitted and approved by the Responsible Authority. The updated report must be prepared by a suitably qualified Arborist and be generally in accordance with the report by Melbourne Arborist Reports dated 11 September 2017 but updated to allow for any changes in the affected trees to comply with AS 4970 - 2009 Tree protection on development sites setting out how the existing trees surrounding the site will be protected during construction, must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When approved the report and plan will be endorsed and form part of the permit. The tree protection measures outlined in the report must be complied with to the satisfaction of the Responsible Authority. The report must address tree protection measures for the trees located at 1 Byron Street.

ACOUSTIC FENCE

23. Before the occupation of the development, the acoustic fence/s must be erected in accordance with the endorsed plans. The design of the fence/s must be prepared in consultation with a qualified acoustic engineer. Details of the design and acoustic qualities of the fence must be submitted to, approved by and be to the satisfaction of the Responsible Authority.



WALLS ON OR FACING THE BOUNDARY

24. *Before the occupation of the development allowed by this permit, all new or extended walls on or facing the boundary of adjoining properties and/or a laneway must be cleaned and finished to a uniform standard to the satisfaction of the Responsible Authority. Unpainted or unrendered masonry walls must have all excess mortar removed from the joints and face and all joints must be tooled or pointed also to the satisfaction of the Responsible Authority. Painted or rendered or bagged walls must be finished to a uniform standard to the satisfaction of the Responsible Authority.*

STORAGE OF GOODS

25. Without the further written consent of the Responsible Authority no goods are permitted to be stored or left exposed outside the building so as to be visible from any public area.

SIGNS NOT ALTERED

26. The location of the sign (including the size, nature, position and construction) shown on the endorsed plan must not be altered without the prior written consent of the Responsible Authority.

NO ILLUMINATION OF THE SIGN

27. The sign must not be illuminated by internal or external lights and must not contain any flashing, intermittent or changing colour light except with the written consent of the Responsible Authority.

Melbourne Water conditions

28. Finished floor levels of the building must be constructed no lower than 7.91 metres to Australian Height Datum (AHD).
29. Finished floor levels of the basement apex must be constructed no lower than 7.2 metres to AHD.
30. Imported fill must be kept to a minimum on the property and must only be used for the sub floor areas of the building and driveway ramp.
31. A minimum three (3) metre setback measured from the southern boundary and maintained at natural surface level free of any obstructions is required for the conveyance of overland flow.
32. Any new fencing must be open style (50%) of construction to allow for the conveyance of overland flow.
33. Any new or modified stormwater connection to Melbourne Water's drainage system must obtain separate approval from Melbourne Water's Asset Services Team.



34. Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
35. Prior to the endorsement of plans, amended plans must be submitted to Council and Melbourne Water addressing Melbourne Water's conditions. Further information is required to determine if the acoustic fencing is suitable. Plans must be submitted with ground and floor levels to Australian Height Datum (AHD).

TIME FOR STARTING AND COMPLETION

36. This permit will expire if one of the following circumstances applies:
 - a) The development is not started within two (2) years of the date of this permit.
 - b) The development is not completed within two (2) years of the date of commencement of works.
 - c) The use is not commenced within two (2) years of the completion of the development.

The Responsible Authority may extend the periods referred to if a request is made in writing:

- before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet started; and
- within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

Time for Starting (sign)

37. This Permit will expire if the advertising sign(s) is/are not displayed within two (2) years from the date of this Permit.

The Responsible Authority may extend the time referred to if a request is made in writing before the Permit expires or within the three (3) months after the expiry date.

EXPIRY DATE (SIGN)

38. This permit for the sign expires 15 years from the date of issue.

--- End of Conditions ---

