

ADDENDUM – ORDINARY COUNCIL MEETING - 22 NOVEMBER 2022

Item 10.4.2 Proposed Change of Use to Child Day Care Centre and Associated Alterations and Additions - Lot 24, 11 Murray Street and Lot 11, 13 Murray Street, Bayswater

Applicant/Proponent:	Rpoint Properties (Directors: Kelly Chapman, Dean Fiore, Frank Fiore, Todd Fiore and Paul Fiore)
Owner:	Sikh Gurdwara Perth Inc (Committee Representatives: Jarnail Singh and Sarabpreet Singh) and The Best On Dellven Pty Ltd (Directors: Kelly Chapman and Dean Fiore)
Responsible Branch:	Development and Place
Responsible Directorate:	Community and Development
Authority/Discretion:	Quasi-Judicial
Voting Requirement:	Simple Majority Required

ADDITIONAL INFORMATION

The City has received an updated Transport Impact Statement (TIS) from the applicant following the concerns raised by officers that the traffic count data used in the original TIS was outdated and unsuitable, since it was obtained in 2017 and from a location in Murray Street approximately 450m from the subject site. In particular there was concern that the current traffic volume in Murray Street in the vicinity of the proposed child care centre is significantly higher than the traffic volumes indicated in the TIS, as reflected in the congestion which occurs in Murray Street and surrounding roads during peak travel periods.

The amended TIS now includes more recent, 2022 City of Bayswater traffic counts which were obtained in Murray Street in an appropriate location adjacent to the subject site. The amended TIS concludes that Murray Street carries well below the road capacity (50%). City officers have reviewed the amended TIS and consider the report and conclusion acceptable.

As noted in the officer's comments in the agenda report, there are a number of reasons why the proposed child day care centre is considered an appropriate development for the subject site. In particular the location of the proposed child care centre adjacent to the Bayswater Primary School and incorporating the existing non-residential use (former church) can be considered appropriate and the scale and form is considered to be consistent with the surrounding residential area given no significant changes are proposed to the existing structures on the site. Further, given the proposed development involves only minimal changes to the front setback area of the properties it is considered to be consistent with the existing character and streetscape of the locality, in accordance with the City's Character Protection Areas Policy. In addition, the proposed development is considered to retain the heritage value of the former church as detailed in the applicant's Heritage Impact Statement, given the adaptation requires little alteration to the former church building and that the development conserves and enhances the values established in the statement of significance for the place.

The City's policy *Flexible Application of Statutory Requirements For Buildings Contained within the City's Heritage List*, is intended to determine circumstances where Council will allow flexible application of statutory requirements in relation to development of heritage sites and/or buildings. In terms of the policy, the City is prepared to consider varying development standards, including car parking, in order to facilitate development that enhances or maintains the heritage aspects on a certain building and/or site. Applications for variations will be assessed on their merits i.e. a performance based approach.

However in this instance there is already an existing 27 car bays shortfall/variation for the approved use of place of public worship given there are only two onsite car bays provided and 29 car bays are required based on current car parking requirements for the place of public

worship. The above policy would have been more of a consideration if there was no current car parking shortfall/variation.

If the 27 car bay 'credit' is carried through to the proposed change of use, then it results in a surplus of 18 car bays for the child care proposal. However, notwithstanding the calculated surplus, consideration still needs to be given to the actual car parking requirements for the child care centre and how these are proposed to be met, given the potential impact on the existing amenity of the area.

The City officers' primary concern in relation to the proposed child care centre has been the undue impact of the proposed development on the amenity of the area given the additional traffic generated combined with the proposed use of on-street parking for child drop-off/pick-up purposes during peak periods, would exacerbate the existing traffic congestion and reduce the supply of on-street parking for other users in the area.

However, given the amended TIS has now shown that the additional traffic volumes generated by the child care centre during the day including peak periods will not result in a greater unacceptable level of congestion in the surrounding roads it is considered that the previous concerns have now been substantially alleviated and the proposal is now considered supportable. Notwithstanding, it is considered there is still a potential risk of the proposed child care centre unduly exacerbating congestion levels and reducing the available supply of on-street parking to the detriment of the surrounding area, if the operations of the centre relating to car parking and access are not appropriately managed. Accordingly it is considered that appropriate conditions of approval including a Parking and Traffic Management Plan would be required for the child care centre, to ensure that the operations of the centre do not unduly impact the amenity of the area.

The City has also further investigated the matter of landscaping variations for the proposal and is now satisfied that the species selection is suitable for the site.

The applicant provided an alternative recommendation for approval of the application at the Agenda Briefing Forum which includes a condition requiring a Parking and Traffic Management Plan as well as additional stringent conditions aimed at ensuring the proposed child care centre does not unduly impact the amenity of the area. In this respect, the additional conditions require that following 12 months of operation, the applicant is to submit a report which addresses the actual operation of the child care centre, including patronage patterns and origins, staffing and child numbers, travel modes, and implementation of the measures contained in the approved Parking and Traffic Management Plan. Further, the report is to include a traffic impact assessment completed by a suitably qualified traffic consultant, which analyses the impact of the development upon traffic and parking conditions in the area, and any recommended actions.

In addition to the above, a further condition requires for the first 12 months post occupancy of the child care centre, the number of children to be cared for onsite will be limited to a maximum of 72 children and 12 Staff at any one time. After 12 months post occupancy, the number of children to be cared for onsite is limited to a maximum of 80 children and 12 staff at any one time, to the satisfaction of the City of Bayswater.

These conditions have been added to enable the operations and intensity of the child care centre to be monitored and to identify issues which can be addressed and operations refined following a 12 month period of operation.

The City officers have discussed the below conditions with the applicant who has raised no concerns.

RECOMMENDATION IMPLICATIONS

In light of the above, the Officer's Recommendation has been amended as below.

That Council grants planning approval for the proposed change of use to child day care centre and associated alterations and additions at Lot 24, 11 Murray Street and Lot 11, 13 Murray Street, Bayswater, in accordance with the planning application dated 12 August 2022 and plans dated 28 September 2022, subject to the following conditions:

- 1. The development shall be carried out only in accordance with the terms of the application as approved herein, and any approved plan.**
- 2. Children are not permitted to arrive at the child care centre prior to 7:00am and are to leave the child care centre no later than 6:30pm Monday to Friday. The child day care centre is not permitted to operate on weekends or public holidays.**
- 3. Prior to the occupation of the development, the applicant is to submit and have approved by the City of Bayswater (approval not to be unreasonably withheld or delayed), a Parking and Traffic Management Plan which addresses the following matters:**
 - (a) The measures to inform patrons and staff of:**
 - i on-site parking availability and use;**
 - ii Parking availability in the area; and**
 - iii Available public transport to and from the site.**
 - (b) The measures to be implemented to encourage patrons to walk or use public transport rather than drive to the site; and**
 - (c) The measures to be implemented to manage parking during peak periods.**
- 4. A Memorandum of Understanding between the applicant and the City of Bayswater is to be prepared and executed by both parties to the satisfaction of the City prior to occupation of the development, which includes the following commitments by the proprietor/operator:**
 - (a) To implement the measures contained in the approved Parking and Traffic Management plan;**
 - (b) To provide a copy of the approved Parking and Traffic Management Plan to all patrons of the child care centre at the time of enrolment, and to require patrons to acknowledge the Parking and Traffic Management Plan;**
 - (c) To work with the City to resolve any issues that may arise from the operation of the centre; and**
 - (d) That should the business be sold, the applicant will inform the purchaser of the need to enter into the same or similar Memorandum of Understanding with the City.**
- 5. Upon 12 months of operation, the applicant is to submit a report which addresses the actual operation of the child care centre, including patronage patterns and origins, staffing and child numbers, travel modes, and implementation of the measures contained in the approved Parking and Traffic Management Plan. The report is to include a traffic impact assessment completed by a suitably qualified traffic consultant, which analyses the impact of the development upon traffic and parking conditions in the area, and any recommended actions.**
- 6. Upon 12 months of operations the applicant will conduct an internal review of functionality and operation of the bin storage area. The applicant agrees to work with the City to resolve any functionality issues.**

7. For the first 12 months post occupancy of the child care centre, the number of children to be cared for onsite will be limited to a maximum of 72 children and 12 Staff at any one time. After 12 months post occupancy, the number of children to be cared for onsite is limited to a maximum of 80 children and 12 staff at any one time, to the satisfaction of the City of Bayswater.
8. The fence and openings in the street façade are to provide visual permeability at street level, to the satisfaction of the City of Bayswater and in accordance with approved plans.
9. The use of reflective or obscure glazing is not permitted on street level windows and/or openings to the satisfaction of the City of Bayswater.
10. Any new dividing fence on the side and rear boundaries shall comply with the City of Bayswater Fencing and Floodlighting Local Law 2016, to the satisfaction of the City of Bayswater.
11. Any external services and utilities including air conditioning units shall be integrated into the design of the building and shall be located so as not to be visually obtrusive to the street and/or adjoining properties to the satisfaction of the City of Bayswater.
12. Prior to submission of a building permit application, outdoor lighting plans shall be submitted to and to the satisfaction of the City of Bayswater. The outdoor lighting is to be designed, baffled and located to prevent any increase in light spill onto adjoining properties.
13. A construction management plan, detailing how the construction of the development will be managed to minimise the impact on the surrounding area, shall be submitted to and to the satisfaction of the City of Bayswater, prior to the submission of a building permit application.
14. Landscaping and reticulation shall be completed in accordance with the approved detailed landscape plan prior to occupation of the development and thereafter maintained to the satisfaction of the City of Bayswater.
15. All vehicle crossings being upgraded, designed and constructed to the satisfaction of the City of Bayswater.
16. Prior to occupation of the development, the car parking areas shown on the approved site plan, including the provision of universally accessible (disabled) car parking, is to be constructed, drained, signposted as dedicated for either staff or visitor use only and line marked, together with suitable directional signage, and thereafter maintained to the satisfaction of the City of Bayswater.
17. Prior to occupation, bicycle bays shall be provided and marked in accordance with the approved plans, to the satisfaction of the City of Bayswater.
18. The recommendations and required works of the acoustic report prepared by ND Engineering (Revision 1 dated 9 August 2022) are to be implemented in their entirety to the satisfaction of the City of Bayswater.
19. A refuse and recycling management plan shall be submitted to and to the satisfaction of the City of Bayswater, prior to commencement of any works. The plan shall include details of refuse bin location, number of rubbish and recycling receptacles, vehicle access and maneuvering.
20. A suitably screened refuse bulk bin area, as denoted on the approved plans, shall be provided to the satisfaction of the City of Bayswater. The bin area is to be provided with a permanent water supply and drainage facility for wash-down. ~~and is to be screened by a gate and brick walls or other suitable material to a height of not less than 1.8m.~~

21. A separate application including plans or description of all signs for the proposed development (including signs painted on a building) shall be submitted to, and to the satisfaction of the City of Bayswater, prior to the erection of any signage.
22. On completion of construction, all excess articles, equipment, rubbish and materials being removed from the site and the site left in an orderly and tidy condition, to the satisfaction of the City of Bayswater.
23. All stormwater and drainage runoff produced onsite is to be disposed of onsite to the satisfaction of the City of Bayswater.
24. The redundant crossover on the road reserve is to be removed and the verge be reinstated to the satisfaction of the City of Bayswater.
25. Prior to occupation of the proposed development the subject of this application, Lots 11 and 24 are to be amalgamated into a single lot. Alternatively, the applicant may enter into a legal agreement with the City of Bayswater (City) whereby the applicant agrees:
 - (a) to effect the amalgamation of Lots 11 and 24 immediately prior to the expiration or sooner determination of the existing lease over Lot 11 (Lease) or within 3 months of becoming registered as the proprietor in fee simple of Lot ~~24~~ 11, whichever is the earlier; and
 - (b) to ensure that Lots 11 and 24 are used as a single site so long as the development on Lots 11 and 24 is used in accordance with this approval to ensure reciprocal use of the shared access and car parking over Lots 11 and 24; and
 - (c) that in the event Lots 11 and 24 are not amalgamated as at the date of the expiration or sooner determination of the Lease, the use under this approval must immediately cease and all structures and/or other improvements which straddle the boundary of Lots 11 and 24 must be removed to the satisfaction of the City.

The agreement shall be prepared by the City's solicitors to the satisfaction of the City and enable the City to lodge an absolute caveat over Lots 11 and 24. The applicant shall be responsible to pay all costs associated with the City's solicitor's costs of and incidental to the preparation of (including all drafts) of the agreement and the lodgement of the absolute caveat over the certificates of title to Lots 11 and 24.

26. All street tree(s) within the verge adjacent to the subject property are to be retained and shall have measures consistent with AS 4970-2009 undertaken to ensure its/their protection during construction of the subject development to the satisfaction of the City, including but not limited to the following:
 - (a) A minimum 2.0m radius tree protection zone (TPZ) shall be provided through 1.8m high fencing around the verge trees (chain mesh panels or other suitable material) during construction of the subject development.
 - (b) The above fencing is not to be moved or removed at any period during construction, and this zone is not to be entered for any reason; signage notifying people of the TPZ and the associated requirements is to be placed on each side of the fencing.
 - (c) All activities and works related to construction of the subject development, including parking of vehicles, storage of materials, and washing of concreting tools and equipment is prohibited within the designated TPZ unless prior approval is sought from the City of Bayswater.

- (d) Any roots identified to be pruned shall be pruned with a final cut to undamaged wood outside of the TPZ. Pruning cuts shall be made with sharp tools such as secateurs, pruners, handsaws or chainsaws. Pruning wounds shall not be treated with dressings or paints. It is not acceptable for roots to be 'pruned' with machinery such as backhoes or excavators.
 - (e) The tree(s) shall be provided with supplemental water during any construction period falling over summer, with a minimum of 150 litres being provided per week.
 - (f) Any new crossover shall maintain a minimum clearance of 2.0m from the base of a street tree(s).
27. In the event a street verge tree(s) required to be retained adjacent to the subject site is damaged, removed or suffers irreversible effects to its health during development and in the first three years after completion of the development, the landowner will be liable to pay for the amenity (Helliwell) valuation, plus the cost of a City provided replacement tree (s) and three years maintenance of the replacement street verge tree.

Advice Notes:

1. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect. Where an approval has lapsed, no development/use shall be carried out without the further approval of the City having first been sought and obtained.
2. This approval is not a building permit or an approval under any other law than the *Planning and Development Act 2005*. It is the responsibility of the applicant/owner to obtain any other necessary approvals, consents and/or licenses required under any other law, and to commence and carry out development in accordance with all relevant laws.
3. This approval is not an authority to ignore any constraint to development on the land, which may exist through contract or on title, such as but not limited to an easement or restrictive covenant. It is the responsibility of the applicant/owner to investigate any such constraints before commencing development.
4. This approval does not authorise any interference with dividing fences, nor entry onto neighbouring land. Accordingly, should the applicant/landowner wish to remove or replace any portion of a dividing fence, or enter onto neighbouring land, the applicant/landowner must first come to a satisfactory arrangement with the adjoining property owner. Please refer to the Dividing Fences Act 1961.
5. Kerbs, roadways, footpaths, open drains, stormwater pits, service authority pits and verge areas must be adequately protected, maintained and reinstated if required, during and as a result of carting and all works associated with this development.
6. The premises is to comply with the Environmental Protection (Noise) Regulations 1997 at all times.
7. The development/use hereby permitted shall comply with the Environmental Protection Act 1986, the Health Act 1911 and any relevant environmental protection or health regulations.