

DRAFT RESPONSIBLE AUTHORITY REPORT DATED 14 MARCH 2024

NO. 15 (LOT 9000) HILL VIEW TERRACE, EAST VICTORIA PARK – PROPOSED REDEVELOPMENT OF EDWARD MILLEN HOME AND GROUNDS COMPRISING WORKS TO EXISTING BUILDINGS AND/OR NEW BUILDINGS FOR COMMUNITY, COMMERCIAL, HOSPITALITY, RETAIL AND CHILDCARE USES

Form 1 – Responsible Authority Report (Regulation 12)

DAP Name:	Metro Inner JDAP
Local Government Area:	Town of Victoria Park
Applicant:	Hatch Roberts Day on behalf of Blackoak Capital
Owner:	Town of Victoria Park
Value of Development:	\$12.5 million
Responsible Authority:	Town of Victoria Park
Authorising Officer:	Robert Cruickshank
LG Reference:	DA 5.2023.438.1
DAP File No:	DAP/23/02602
Application Received Date:	27 November 2023
Report Due Date:	18 March 2024
Application Statutory Process Timeframe:	90 Days
Attachment(s):	<ol style="list-style-type: none"> 1. Aerial photo/location plan 2. Amended architectural plans dated received 12 March 2024 3. Amended Planning Report dated received 11 March 2024 4. Amended Landscape Masterplan dated received 5 February 2024 5. Amended 10 Design Principles Report dated 6 December 2023 6. Amended Transport Impact Assessment dated received 5 February 2024 7. Amended Acoustic Report for Child Care Centre dated received 1 March 2024 8. Amended Acoustic Report for uses within refurbished Rotunda and Mildred Creak buildings and adjacent grounds dated received 1 March 2024 9. Amended Waste Management Plan dated received 5 February 2024 10. Sustainability Design Report dated 8 November 2023

	<p>11. Heritage Impact Assessment dated September 2023</p> <p>12. Schedule of submissions dated received 5 February 2024</p> <p>13. Heritage advice from Department of Planning, Lands and Heritage dated 21 December 2023</p> <p>14. Design Review Panel final recommendation</p> <p>15. Land use definitions under conditional freehold tenure</p>
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Responsible Authority Recommendation

That the Metro Inner JDAP resolves to:

Approve DAP Application reference DAP/23/02602 and accompanying plans and technical documents (Attachments 2 to 11) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the Metropolitan Region Scheme and the provisions of the Town of Victoria Park Town Planning Scheme No. 1 subject to the following conditions :

Land Use

1. The production of goods associated with the Bakery, Brewery and Gelato is to be limited to the production of goods for sale on-site only so as to be consistent with the intent for these uses to be for small scale production.
2. The upper floor Office space within the Rotunda building is to be used for administrative purposes associated with managing the approved uses on the site only.
3. Prior to occupation of the development an event management plan is to be submitted for the Town’s approval for the market space addressing such matters as patron numbers, parking and traffic management, waste management, noise management, set-up and pack-up times, toilet facilities etc.
4. The number of children and staff attending the Child Care Premises is limited to a maximum of 104 children and 20 staff at any one time.

Hours

5. The hours of operation of uses being restricted as follows :
 - (a) the Child Care Premises - Monday – Friday from 6:30am to 7.00pm for staff; and from 7.00am to 6.30pm for parents and children.
 - (b) the Bar, Bistro, Microbrewery and Function space - to 10pm Sunday to Thursday and 12 midnight on Friday and Saturday.
 - (c) the Bakery and Café – to 3pm on any day.

- (d) there being a maximum of one market event each week which is to occur between the hours of 7am and 12 noon, unless otherwise approved by the Town for an occasional event.

Heritage

6. The following information shall be submitted to the Director, Historic Heritage Conservation, prior to an application for a Building Permit:
- a. Details of how compliance with the National Construction Code and services and access requirements will be achieved to avoid adverse impacts on heritage fabric and cultural heritage significance. It is likely that bespoke solutions specific to the heritage buildings will be required.
 - b. Details of proposed electrical, hydraulic, mechanical, and fire services. Consideration should be given to minimise the impact of routes, risers, plant location, penetration points, and fixings points.
 - c. Details of the approach to new openings within original walls that includes interpretation of the former internal layout, such as minimum retention of wall nibs of 450mm and a substantial portion of wall from ceiling (downstand to internal walls).
 - d. Requirements for the protection and monitoring of the heritage buildings during works.
 - e. A Construction Management Plan for the demolition and construction activities that includes requirements to minimise potential impacts on the adjacent heritage buildings (*Rotunda Building and Mildred Creek building*), including:
 - i. Demolition procedures that avoid blasting and dropping large sections of building on the ground during demolition and mitigate falling objects in proximity to heritage buildings.
 - ii. Monitoring of crack development in heritage buildings (where existing cracks are present) through crack control tell-tale plates.
 - iii. A requirement for alarmed monitoring of deformation, tilt, ground borne vibrations, and cracks, with the respective trigger levels to be set as follows:
 - ground-borne vibrations - 2mm per second; and
 - deformation, tilt and cracks – distance (mm) to be determined by a structural or geotechnical engineer based on the type of building and structural integrity of the structure.
 - iv. Upon receipt of the alert the following steps are to be carried out:
 - Cease works in and around the heritage buildings.
 - Ascertain what has caused the trigger event.
 - Seek alternative construction methods to mitigate any exceedance of the trigger levels.

- Access and review the crack control tell-tales to review any movement within the heritage buildings.
 - Recommence work upon satisfactory completion of the above.
- f. An Interpretation Management Plan to interpret the historical stories and heritage significance of the place, including details of proposed interpretation to be implemented.
7. Prior to the commencement of works, photographic records of the existing buildings and grounds are to be prepared by a registered Heritage Architect and submitted for the Town's approval.

Parking and access

8. Prior to the occupation or use of the development, all car parking spaces together with their access aisles to be clearly paved, sealed, marked and drained in accordance with AS2890.1 and thereafter maintained to the satisfaction of the Town.
9. With respect to the car park accessed off Baillie Avenue, a minimum of 21 car parking bays are to be marked and/or signposted for use by the child care centre during its hours of operation, with the remaining 9 bays in the car park being available for general use at any time.
10. Prior to the occupation of the development, the applicant is to submit and have approved by the Town a Parking Management Plan which addresses the following matters:
- (i) the measures to inform patrons and staff of:
 - on-site parking availability and use;
 - parking availability in the area;
 - available public transport to and from the site;
 - (ii) the measures to be implemented to encourage patrons and staff to walk or use public transport rather than drive to the site;
 - (iii) the measures to be implemented to manage parking on both a day-to-day basis and during peak periods; and
 - (iv) the availability of the child care centre car bays to other patrons when the child centre is not operating.
11. Bicycle facilities are to be provided on-site in accordance with Australian Standard AS 2890.3 and to the satisfaction of the Town. The bicycle parking facilities shall be installed and remain in place permanently unless otherwise approved by the Town.
12. Any letterbox, structure, wall or fence located within a 1.5 metre x 1.5 metre visual truncation at the intersection of any driveway and the front property boundary, is not to exceed a height of 750mm with the exception of:
- (i) one brick pier (maximum dimensions 350mm by 350mm); and/or
 - (ii) wrought iron or similar metal tubing style infill fencing.

13. Retained existing vehicle crossovers are to be upgraded to the Town's specifications. Any redundant portions of the vehicle crossover(s) are to be removed and the kerbing, verge, and footpath (where relevant) reinstated with grass or landscaping to the satisfaction of the Town.

Landscaping

14. Prior to the submission of an application for a building permit, the applicant is to submit detailed landscaping plans for the Town's approval including details of proposed tree species, the depth and width of structural root zones, tree protection zones etc. Such details are to be to the Town's satisfaction.
15. The landscaping plan shall include at least 116 new tree(s), or a lesser number agreed to by the Town, the species and height of which are to be provided to the satisfaction of the Town.
16. This approval is for the removal of only those trees identified on the Tree Removal Plan within the amended Landscape Masterplan dated 5 February 2024, unless otherwise approved by the Town.
17. Those existing trees to be retained identified on the Tree Retention Plan within the Landscape Masterplan dated 5 February 2024 are to be retained and protected in accordance with AS 4970-2009 Protection of Trees on Development Sites, to the satisfaction of the Town.
18. The landscaping areas shown on the approved detailed landscaping plan shall be installed and reticulated prior to occupation of the development, and be thereafter maintained by the landowner(s) for the life of the development to the satisfaction of the Town.
19. Existing trees located within the verge are a Town asset and as such must be retained except where otherwise approved for removal by the Town.
20. The Town's street tree(s) are to be protected from damage during all phases of development. Pruning of any street tree affected by the development on the subject site is to be undertaken by the Town, at the owner/applicant's cost.

Other matters

21. Prior to the submission of an application for a building permit, the interface between the eco-cultural path and both the child care centre and the adjoining residential development to the south are to be resolved to the Town's satisfaction, to improve the safety of this space for users.
22. Prior to occupation of the development, a signage strategy for future tenant and wayfinding signage is to be submitted for the Town's approval.

23. Complete details of the proposed external colours, finishes and materials to be used in the construction of the buildings are to be provided to the satisfaction of the Town prior to submission of an application for building permit. The development shall be constructed in accordance with the approved details and shall be thereafter maintained.
24. Prior to lodging an application for a building permit, a plan shall be submitted detailing the location of all external lighting, to the satisfaction of the Town. The lighting plan and subsequent lighting installed must demonstrate that any light spill to adjoining properties is minimised to acceptable levels and is in compliance with AS4282:1997. Lighting in accordance with the approved plan is to be installed prior to occupation or strata titling of the building(s), whichever occurs first.
25. Prior to occupation of the development (a) detailed plans shall be submitted for the Town's approval detailing the works to be undertaken to facilitate DFES access to the site via the existing track within Hill View Bushland; and (b) the necessary works shall be completed. All costs in preparing the design and implementing measures to ensure acceptable ongoing access are to be borne by Blackoak Capital. (see Advice Note below).
26. Prior to occupancy the applicant is obtain approval from the Town for the proposed public art concept.
27. All plant equipment, air conditioning units, hot water systems, water storage tanks, service metres, bin storage areas etc must be located to minimise any visual and noise impact on the occupants of nearby properties and screened from view from the street. Design plans for the location, materials and construction for screening of any proposed external building plant must be submitted to and approved by the Town prior to the submission of an application for a building permit.
28. Prior to the submission of an application for a building permit, an updated Sustainability Report is to be submitted for the Town's approval confirming that the final design achieves the "Sustainability Commitments" as outlined in the Sustainability Report (Table 31).
29. Prior to lodging an application for a building permit, the applicant must submit and have approved by the Town, and thereafter implement to the satisfaction of the Town, a Construction Management Plan.
30. Unless varied by other conditions of this approval, development being in compliance with the Acoustic Reports (prepared by Herring Storer Acoustics, dated received 1 March 2024) for the life of the development to the satisfaction of the Town.
31. The Waste Management Plan (prepared by Stantec, dated 5 February 2024) is to be implemented and complied with by the venue operator for the life of the development, including waste collection to occur between the hours of 10am to 2pm.

32. At all times provision must be made onsite for the storage and collection of garbage and other solid waste. A waste storage and collection area must be graded, drained and screened from public view, and the garbage collected regularly, to the satisfaction of the Town.
33. Deliveries to the site to be restricted to the day-time period (7am to 7pm Monday to Saturday; 9am to 7pm Sundays and public holidays) - as recommended by the commercial acoustic report).
34. Provide to the submission of an application for a building permit, an amended acoustic report is to be submitted for the Town's approval providing detail of the façade construction of the refurbished buildings and demonstrating that internal noise sources will comply with the *Environmental Protection (Noise) Regulations 1997*.
35. All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.
36. Prior to lodging an application for a building permit, stormwater disposal plans, details and calculations must be submitted for approval by the Town and thereafter implemented, constructed and maintained to the satisfaction of the Town.
37. Prior to occupation or use of the development, any redundant crossover/s must be removed and the verge and kerb reinstated to the specification and satisfaction of the Town.
38. To address the conditions of this approval, prior to the submission of an application for a building permit a covering letter (detailing compliance with each condition), copy of the final working drawings and relevant associated reports and information, are to be submitted by the applicant for clearance by the Town.
39. Pursuant to clause 26 of the Metropolitan Region Scheme, this approval is deemed to be an approval under clause 24(1) of the Metropolitan Region Scheme.
40. This decision constitutes planning approval only and is valid for a period of four 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.
41. The development, once commenced, is to be carried out in accordance with the approved plans, date stamped approved 28 March 2024 at all times, unless otherwise authorised by the Town.

Advice Notes

- AN1 The keeping of animals to comply with the Town's Health Local Law
- AN2 It is recommended that the venue operator negotiate with the owner(s) of the adjoining land to the south with respect to the boundary interface and matters such as wall and fence heights and material finishes.
- AN3 Regarding the requirement of LPP29 for a public art contribution, and the applicants intent for the alternative use of the funds to be provided towards programming and activation of the artists studios, it is recommended that the applicant engage with the Town's Public Arts Officer at an early stage.
- AN4 Recently completed Drainage swale works at end of Bushland sites internal road will need to be removed to accommodate the proposed turning area into the Fire Pump area. Drainage for road will require a full redesign at applicant's expense to prevent stormwater overland flowing into neighbouring property currently under development and the Ed Millen development site from the bushland site.
- AN5 It is recommended that the applicant consider the following comments from the Town's Design Review Panel in the design development :
- The potential pedestrian entry point at the two large fire tanks presents an opportunity for art or colour on the tanks.
 - Consider relocating one of these tanks, so as to allow for the preservation of an existing tree in this location.
 - The energy efficiency/energy savings achieved in the design are reliant almost entirely on the installation of Solar PV. Encourage further improvement of sustainability and improving the thermal performance of the new buildings to exceed regulatory requirements.
 - Further consider the animal shelter in terms of the location of the structural posts of the verandah within the fencing line of the yards. Current layout sites these posts within yards presenting a hazard to people and animals. Avoid use of glass in openings of the animal enclosures for safety.
 - Consider a dual name for the precinct to respect the aboriginal history.
 - Consider including additional glazing to the Childcare Centre to provide natural light and ventilation at both ends of the internal corridor and to both of the cot rooms.
- AN6 Any amendments or modifications to the approved drawings forming part of this development approval may require the submission of an application for amendment to development approval and reassessment of the proposal.

AN7 Should the applicant be aggrieved by this decision a right of appeal may exist under the provisions of the Town Planning Scheme or the Metropolitan Region Scheme and the applicant may apply for a review of the determination of Council by the State Administrative Tribunal within 28 days of the date of this decision.

Details: outline of development application

Region Scheme	Metropolitan Region Scheme
Region Scheme - Zone/Reserve	Urban zone
Local Planning Scheme	Town of Victoria Park Town Planning Scheme No. 1 (TPS 1)
Local Planning Scheme - Zone/Reserve	Local Scheme Reserve – Public Purposes - Civic Use and Community Purpose
Structure Plan/Precinct Plan	TPS 1 Precinct Plan P12 'East Victoria Park Precinct'
Structure Plan/Precinct Plan - Land Use Designation	N/A
Use Class and permissibility:	As per clause 14 of TPS 1, permitted uses of a Local Scheme Reserve are uses which give effect to any purpose for which the land may be lawfully used
Lot Size:	Lot 9001 – 4.722ha - comprises Edward Millen Park and Edward Millen Home and Grounds, the latter being an area of 1.4ha and the subject of an agreement for lease and this development application (herein referred to as the DA site)
Existing Land Use:	Existing buildings are vacant and grounds unused
State Heritage Register	Yes – State Register of Heritage Places (Place No. 2176)
Local Heritage	<input type="checkbox"/> N/A <input checked="" type="checkbox"/> Heritage List <input type="checkbox"/> Heritage Area
Design Review	<input type="checkbox"/> N/A <input checked="" type="checkbox"/> Local Design Review Panel <input type="checkbox"/> State Design Review Panel <input type="checkbox"/> Other
Bushfire Prone Area	No
Swan River Trust Area	No

Proposal:

The land is owned by the Town, with the DA site the subject of an agreement for lease with Blackoak Capital Ventures, who propose to carry out heritage restoration work on buildings, and for an initial period of 20 years will be responsible for managing the use of the land and all buildings (including paying rates, taxes, outgoings, insurance, service upgrades & ongoing maintenance costs of the buildings).

The DA site, being a portion of Lot 9000 and the area the subject of an agreement for lease, is identified in the following image :



Figure 2 - Site Details

Lease Area

The site contains a number of buildings of heritage value, with the site being listed on the State Register of Heritage Places and the Town's Heritage List, and there being a Heritage Agreement in place detailing conservation works required to be undertaken to the existing buildings.

In support of the development, the applicant has submitted a number of specialist technical reports and documents. These are referenced in the list of Attachments at the start of this report.

The information that has been submitted is extensive, but in summary the proposed development can be summarised as follows :

- The existing Rotunda building (two storey building) is to be restored for use as a bakery, café, retail and upper floor offices for the venue management.
- The existing Mildred Creak building is to be restored for use as a bar, bistro and micro brewery with indoor and outdoor spaces, museum/gallery and community function rooms available for hire by community groups or for functions.
- Other uses on-site include gelato ice cream, an artist studio within existing outbuildings, landscape spaces for community markets and productive gardens, animal pens and shelter, and a new building for child care purposes.
- Bar, bistro and brewery - to be the subject of a Tavern Restricted Licence which would prohibit the takeaway sale of alcohol and permit operations until 12 midnight at the latest. Anticipated to open around midday for lunch and close around 11pm – 12am. The microbrewery will produce approximately 150kL of beer per year, which will be for consumption on-site.
- Child care centre - maximum of 104 children; estimated 20 staff employed with 10-16 staff in attendance at any one time; provides daytime activation of the site;

to operate Monday to Friday (excluding public holidays) between 6.30am and 6.00pm, with outdoor play restricted to after 7am for noise compliance.

- Café and bakery - operate from approximately 6.30am to 2pm. Goods produced by the bakery will be consumed on-site in conjunction with the café.
- Markets - to operate on a Saturday or Sunday; expected to start around 8am and conclude around midday, although from time-to-time there may be an evening market on a Saturday from 5.30pm to 9.00pm; design provides for around 26 stalls and up to 200 people in attendance at one time; to be the subject of an event management plan.
- Petting zoo - provides opportunities for entertainment and social interaction for members of the public, particularly younger children; provides opportunities for children to learn about food production; subject to health requirements, eggs from poultry may be supplied to the hospitality venues; animals to be permanently housed on-site and managed by venue staff; enclosures to be locked after hours; the facility has been designed to comply with the Town's Health Local Law; approximately 4-6 'large animals' such as goats and sheep are proposed to be kept, as well as approximately 8-12 chickens.
- Demolition of minor structures which have minimal heritage value, namely the link between the Rotunda building and the Mildred Creak building, and demolition of the former Operating theatre building.
- Extensive conservation works to all other existing buildings in accordance with the Heritage Conservation Plan and Heritage Agreement.
- New freestanding buildings including the child care centre, stables, garden pavilion and new services building.
- The Heritage Impact Assessment (see Attachment 11) concludes that the overall impact of the proposed works upon the heritage value of the site will be positive.
- Two parking areas are provided on-site – a 30 bay car park accessed off Baillie Avenue which will principally serve the child care centre during its operation, and a 52 bay car park accessed off Hill View Terrace (ie. a total of 82 on-site bays within the lease area). This latter parking area is to connect to a 37 bay car park to be constructed by the Town as part of the adjoining parkland upgrade.
- After-hours the child care centre car park will be available for use by patrons of other uses on the site.
- Trees - 16 existing trees to be removed; five existing trees to be transplanted elsewhere on the site; and around 116 new trees to be planted on-site.
- A range of environmental and social sustainability measures are proposed including solar PV resulting in at least a 30% offset in operational energy use for each building, a 35% reduction in potable water and a 20% reduction in lighting power (see Sustainability Report at Attachment 1).
- In relation to acoustics and the proposed Child Care Centre, the submitted Acoustic Report (see Attachment 7) concludes that noise received at the neighbouring residences will comply with the Noise Regulations provided outdoor play is limited to after 7am and mechanical plant is barriered to at least 1m above the source height.

- In relation to acoustics and the hospitality uses, the submitted Acoustic Report (see Attachment 8) concludes that noise received at the neighbouring residences complies with the Noise Regulations.
- Waste collection will be undertaken by a private contractor. Waste collection for the child care centre will occur 4 times a week, from within the child care car park. Waste collection for the hospitality uses will occur 7 times a week, within the loading area accessed off the proposed Hill View Terrace car park. In both instances, waste is to be collected between the hours of 10am and 2pm (amended from the original proposal and that advertised). See Waste Management Plan at Attachment 9.
- A pedestrian path along the southern boundary providing a pedestrian link through the DA site to the nearby Hill View Bushland (described on the plans as 'Eco-Cultural Path').

Proposed Land Use	Various – discussed in further details below
Proposed No. Storeys	Existing Rotunda building is 2 storeys; all other existing and proposed buildings are single storey.
Proposed No. Dwellings	N/A

Background:

Further details on the extensive history and background of use of the site can be found within the Heritage Impact Assessment (Attachment 11) and both the State and local heritage listings.

In short :

- The Rotunda building was constructed in 1912 for use as a maternity hospital.
- The Rotunda building and other buildings on the site were later used for various medical purposes including treating patients with Spanish flu, ex-servicemen and/or members of the public with tuberculosis, geriatric and psychiatric patients, autistic children and physiotherapy and occupational therapy.
- The buildings have largely been unoccupied since 1998.
- In 1999 the site was entered onto the State Register of Heritage Places.

In 2006, Lot 9001 was transferred from the State Government to the Town of Victoria Park as conditional freehold tenure with a restriction limiting the use of the site to community, recreational or civic purposes.

Following ongoing representations from the Town, at a later time, amended tenure conditions for the Edward Millen Reserve have been approved by the Department of Planning, Lands and Heritage and the Minister permitting the land to be used for the purposes of "*Community, Recreational, Civic, Entertainment, Education, Cultural and Creative Industry, Heritage and Small Scale Production*".

In February 2020 the Council endorsed the Edward Millen Park Masterplan. The masterplan purpose is to determine community expectations and to guide major upgrades to the parkland. The Masterplan is largely focussed on the park upgrades, but also considers the public space adjacent to the heritage buildings and the interface of the park and future activated buildings. Relevant extracts from the Masterplan are contained below at both a broader scale and more specifically for the DA site.

Master Plan

LEGEND

- 1 Heritage avenue retained and re-surfaced with kerb upstands removed. Avenue reinforced with supplementary tree planting
- 2 Rotunda building entry space re-paved with high quality natural stone
- 3 Activated Rotunda space including alfresco seating/tables and lawn with seating positioned underneath the large tree
- 4 Future development zone
- 5 New paved axis connecting the Mildred Creek and Rotunda buildings to the edge streets
- 6 Generously proportioned landscaped terracing, edged with seat height walls
- 7 Circulation path graded to ensure universal access
- 8 Family shelters with lighting and BBQ's surrounded by planting
- 9 Park edge eco-zone planting including water-wise native species
- 10 New car park (approx. 49 spaces)
- 11 Cafe and 'changing places' toilet and change room facility
- 12 Cafe alfresco space
- 13 Feature seating node under landmark tree
- 14 Central focal point including space for performance, as well shade/rain shelter structure
- 15 New Trees
- 16 Nature play zone utilising bespoke play elements within expanses of native planting and tracks. Play features to include all abilities play, tree houses, cubbies, exercise and balancing elements, rope play, swings and benches. This area has a particular opportunity to integrate unique art pieces to double up as play
- 17 Expansive lawn spaces for ball play and dog walking
- 18 New entry point
- 19 Wayfinding node
- 20 Bicycle racks
- 21 Passive recreation area with picnic tables to serve as break-out space from heritage buildings
- 22 Proposed trees to create ecological connection to Hillview Terrace bushland





Notes

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| <ul style="list-style-type: none"> 2 Rotunda building entry space re-paved with high quality natural stone 3 Activated Rotunda space including alfresco seating/tables and lawn with seating positioned underneath the large tree 4 Future development zone 5 New paved axis connecting the Mildred Creek and Rotunda buildings to the edge streets | <ul style="list-style-type: none"> 19 Wayfinding node 20 Bicycle racks 21 Passive recreation area with picnic tables to serve as break-out space from heritage buildings 22 Proposed trees to create ecological connection to Hillview Terrace bushland |
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The major park upgrades are now to be undertaken by the Town commencing in mid-2024 and running for approximately 10 months.

In August 2023, the Town endorsed an Agreement for Lease with Blackoak Capital for the redevelopment of a 1.4ha portion of Lot 9001 (the DA site). The proposal includes a lump sum payment from Blackoak of \$2 million towards the adjoining park upgrade being undertaken by the Town (a \$7.5 million project). The lease is for an initial period of 20 years with five 10 year renewal options. The Federal Government has committed \$4 million of funding towards heritage restoration as part of the redevelopment. A condition of the funding is that construction is to commence by September 2024.

As identified in the aerial photo below and at Attachment 1, the DA site is adjoined by:

- Edward Millen Park to the north-east (described above).
- Baillie Avenue and residential dwellings to the north-west.
- Carson Street School to the west.
- A residential subdivision to the south-west, inclusive of 10 lots which will back onto the development site (herein referred to as 384 Berwick Street).
- Hill View Bushland to the south/south-east.
- A Department of Communities facility to the south/south-east.
- Hill View Terrace and residential dwellings to the east.

It should also be noted that the building identified in the image below, known as the Hill View Clinic building, was demolished in 2023.



In relation to the adjoining residential subdivision at 384 Berwick Street, development approval has been issued by the JDAP for the development of this site with 52 Grouped Dwellings (two storey and three storey dwellings). While the development approval remains valid, construction is yet to commence. This includes the construction of 10 dwellings adjacent to the common boundary with the development the subject of the current development application.

Legislation and Policy:

Legislation

- *Planning and Development Act 2005*
- *Planning and Development (Development Assessment Panels) Regulations 2011*

- *Planning and Development (Local Planning Schemes) Regulations 2015*
- Metropolitan Region Scheme
- Town of Victoria Park Town Planning Scheme No. 1 (TPS1)
- TPS1 Precinct Plan P12 – East Victoria Park Precinct
- Draft Town of Victoria Park Local Planning Scheme No. 2

State Government Policies

- State Planning Policy 7.0 – Design of the Built Environment (SPP7)
- Draft Position Statement – Child Care Premises (November 2022)

Local Policies

- Local Planning Policy 3 – Non-Residential Uses in or Adjacent to Residential Areas
- Local Planning Policy 6 – Family Day Acre and Child Care Premises
- Local Planning Policy 23 – Parking Policy (LPP23)
- Local Planning Policy 24 – Loading and Unloading (LPP24)
- Local Planning Policy 29 – Public Art Private Developer Contributions (LPP29)
- Local Planning Policy 37 – Community Consultation on Planning Proposals (LPP37)
- Local Planning Policy 39 – Tree Planting and Retention

Consultation:

Public Consultation

In accordance with Council's Local Planning Policy 37 'Community Consultation on Planning Proposals' (LPP 37), the proposed development was considered to be a 'significant application' and was advertised for a minimum of 28 days via the following methods:

- Letters to owners and occupiers of properties within approximately 200m;
- Newspaper notice published in Perth Now Southern;
- Notice published in the Public Notices section of Council's website.
- Notice published via the Town's social media channels; and
- Development plans and accompanying information being displayed for public viewing on the Town's website.

The consultation period commenced on 7 December 2023 and closed on 12 January 2024.

During the period for comment 48 submissions were received, 29 of these being in support, 9 objecting to the proposal and 10 neither supporting nor objecting to the proposal.

A schedule of submissions received inclusive of the applicant's response is provided at Attachment 12. A summary of the themes expressed in the submissions received, and the assessing officer's response to those matters, are as follows:

Submission theme/matter	Officer response
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<p>Objection: <u>Tree removal</u> (Note the application originally proposed the removal of 25 trees)</p> <p>Concerns regarding the number of trees being removed and the contribution of the trees from a shade, heat and wildlife perspective as well as their contribution to the heritage significance of the site. Removal of trees inconsistent with the Town's Urban Forest Strategy and actions to increase tree canopy coverage. The plans should be revised to reduce the number of trees removed.</p>	<p>The design has been reviewed such that 16 trees are now proposed for removal. An assessment of these 16 trees has been undertaken by Town staff, with it being concluded many of the trees are already in a poor condition or will be significantly impacted by proposed level changes. The matter is discussed further below.</p>
<p>Objection: <u>Petting zoo</u></p> <p>The keeping of animals for entertainment is an outdated notion. Concerns regarding the welfare of the animals. Potential associated impacts such as noise, odours and rodents.</p>	<p>The proposal has been designed to comply with the applicable standards of the Town's Health Local Law such as the location of stables relative to other premises, stall sizes and material finishes. While concerns are noted regarding the welfare of the animals, this is not a planning consideration. It is the responsibility of the operator to ensure the facility is managed in an appropriate manner as per applicable welfare standards and guidelines, with oversight from bodies such as the RSPCA.</p> <p>In relation to potential animal noise, the stables are located approximately 45 metres from the nearest residential properties. The noise of any animals is not expected to be of such a level to be a nuisance.</p>
<p>Objection: <u>Child Care Centre</u></p> <p>Concerns regarding the viability of another child care centre in the area. Concerns regarding the proximity of the child care centre to licensed premises on the same site.</p>	<p>The viability of another child care centre is a commercial decision for the developer.</p> <p>While accepting that both a child care centre and licensed premises are proposed on the same site, child care centres are highly regulated and in this context the children of the centre will be highly supervised and management measures will be in place that mitigate any adverse impacts that could otherwise occur from the proximity of the uses to one another.</p>
<p>Objection : <u>Land use compatibility</u></p>	<p>It is understood that as a school for children with special needs, children of the school will</p>

<p>Concern regarding compatibility of licensed premises adjacent to the school, which is a special needs school, and compliance with the EPA's Separation Distance Guidelines.</p>	<p>be highly supervised and management measures will be in place that mitigate any adverse impacts that could otherwise occur from the proximity of the uses to one another.</p> <p>As described by the applicant in their response to submission 47 in the Schedule of Submissions (see Attachment 12) the EPA's Separation Distance Guidelines are exactly that ie. they are guidelines. As pointed out by the applicant, the volume of alcoholic beverage manufacturing proposed at the premises is less than half of that which would ordinarily apply and for which the guidelines would apply. Furthermore the applicant proposes to install a vapour condenser on the brewery kettle to reduce odour emissions from the premises.</p>
<p>Objection: <u>Traffic impacts</u></p> <p>Concerns regarding traffic impact on surrounding roads, intersections and the adjacent school which utilises a number of buses at drop-off and pick-up times.</p>	<p>The Transport Impact Assessment concludes that the traffic generated by the development can be accommodated within the capacity of the surrounding roads and without any significant impact on any single intersection, commenting that traffic will be well spread out across multiple approach routes.</p> <p>It is accepted that bus drop-offs and pick-ups and associated bus queuing for the adjoining school occurs near the corner of Baillie Avenue and Carson Street, and in proximity to the proposed new car park for the child care centre. The Town is already planning for geometric road changes to enhance the legibility of the road, including an improved pick-up/drop-off zone in front of the school.</p>
<p>Objection : <u>Noise impacts from waste trucks</u></p> <p>The collection of the childcare waste after hours will have a significant impact on residents.</p>	<p>The Waste Management Plan has been revised such that waste collection will now occur between the hours of 10am and 2pm, with the noise modelling for this time confirming compliance with the applicable noise regulations.</p>
<p>Support : Revitalisation</p> <p>The works will bring back much needed life to the site. Adds vibrancy to the precinct and employment opportunities.</p>	<p>Agreed.</p>

Referrals/consultation with Government/Service Agencies

As the DA site is on the State Register of Heritage Places, the application inclusive of the architectural drawings and Heritage Impact Statement was referred to the Heritage Council for review and comments. The Heritage Council in correspondence dated 21 December 2023 (see Attachment 13) have advised that they support the proposal subject to conditions. The overall advice from the Heritage Council includes the following :

- *“The proposal represents appropriate adaptive reuse and new work that will support the long-term viable use of the place. The proposal respects and retains a visual setting that is appropriate to the cultural heritage significance of the place.*
- *Changes to the heritage buildings, including indicative new wall openings to create larger spaces, removal of partition walls, new external openings, and replacement of asbestos sheeting to the former Ward Block could be supported.*
- *Demolition of the link between the former Rotunda and Ward Block is a positive outcome, and demolition of the former Emergency Operating Theatre is acceptable given its poor condition and based on the overall positive conservation outcomes for the place.*
- *New freestanding buildings, including a new childcare centre, stables, garden pavilion and new services building are appropriately scaled and located to respect the cultural heritage significance and visual setting of the place.*
- *The proposal provides an opportunity to interpret the historical stories and heritage significance of the place and would benefit from an interpretation plan.*
- *The 2005 Heritage Agreement for the place is currently in default. As such, the Heritage Council is keen to see conservation works begin as soon as practicable.*
- *The proposal will have a major positive benefit on the cultural heritage significance of Edward Millen Home.”*

Advice

Design Review Panel Advice

The Town’s Design Review Panel (DRP) reviewed concept proposals for the development and provided preliminary feedback prior to the submission of this application for development approval.

Following submission of this application for development approval, further DRP meetings have been held.

It should be acknowledged that the applicant has been receptive to many of the comments made by the DRP, and this has resulted in improvements to the original proposal.

Noting the various strengths and weaknesses of the proposal, the DRP have recommended that the application be supported subject to conditions.

Refer to Attachment 14 to view the DRP’s final comments and recommendation on the proposal.

Items that the DRP consider require further resolution or attention through conditions include the following :

- The requirement to upgrade the heritage buildings to comply with the National Building Codes will require careful and sensitive detailing. As this is not required at a development application stage, the Town of Victoria Park should seek an opportunity to review the fine detailing and be able to provide comment.
- The appropriateness of the eco-cultural path siting and design needs to be reviewed for safety and aesthetics, with scope for alternative ways to achieve eco-cultural thematic links to be explored.
- Fencing detailing to be reviewed at building permit stage with a focus on appropriate permeability, height and materiality.
- Colour palette and building materials to be reviewed at building permit stage.
- Include additional glazing to the childcare centre to provide natural light and ventilation at both ends of the internal corridor and to both of the cot rooms.
- Updated Sustainability Report, confirming that the final design achieves the “Sustainability Commitments” as outlined in the DA Sustainability Report (Table 31) to be submitted with the building permit application.

Other Advice

Internal referral comments were sought from the Town of Victoria Park service areas of:

- Place Planning;
- Building;
- Street Improvement;
- Street Operations (Waste);
- Environmental Health; and
- Parks.

Comments from these service areas were provided to the applicant and resulted in further information being submitted. Internal referral comments have been considered in the assessment of this application.

Planning Assessment:

The proposal has been assessed against all the relevant legislative requirements of the Scheme and State and Local Planning Policies outlined in the Legislation and Policy section of this report. The following matters have been identified as key considerations for determination of the application :

- Proposed land uses;
- Heritage;
- Tree retention, removal and planting;
- Child care centre;
- Petting zoo;
- Markets;
- Hours of operation;

- Noise impacts;
- Parking;
- Traffic;
- Southern boundary interface;
- Public art;
- Clause 67 matters to be considered.

Proposed land uses

The DA site is a Local Scheme Reserve for Public Purposes - Civic Use and Community Purpose. Clause 14 of TPS 1 states that a permitted use of a Local Scheme Reserve is :

- “(a) a use which gives effect to the purposes for which the land is reserved under this Scheme; and
 (b) where the land is vested in a public authority, a Commonwealth agency or in the Council, a use which gives effect to any purpose for which the land may lawfully be used.”

As mentioned earlier in this report, the land is owned by the Town through the granting of conditional freehold tenure, with the uses permitted under the amended conditional tenure being "*Community, Recreational, Civic, Entertainment, Education, Cultural and Creative Industry, Heritage and Small Scale Production*". See Attachment 15 or the definition of these uses.

Having regard to legal advice received :

- the term “vested” as it appears in clause 14(b) of TPS 1 includes land with conditional tenure where the fee simple has been granted to a person subject to a limitation that the land be used for a specific purpose; and
- provided the proposed uses of the site are lawful having regard to the grant of the site to the Town as conditional tenure land, then as the site is reserved under TPS 1 those lawful uses are permitted uses under clause 14(b) of TPS 1.

The proposed uses have been assessed for alignment with the uses permitted under the condition freehold tenure as follows :

<i>Proposed use</i>	<i>Relevant use under condition freehold tenure</i>
Community space (where hired out for use by community groups)	Community
Child Care Centre	Education
Artist Studio	Cultural and Creative industry
Museum and Gallery	Heritage
Bakery; Microbrewery; Productive Gardens; Gelato	Small Scale Production
Retail; Markets; Café; Bar; Bistro; Community space (where used for functions and events); Offices (incidental to facilitate the entertainment uses); Petting zoo (incidental to the educational and entertainment and recreation uses).	Entertainment and Recreation

On the basis of the above the proposed uses of the site are uses that are able to be approved subject to consideration of associated planning and amenity matters.

In addition, the relevant TPS 1 Precinct Plan includes the following Statement of Intent for Reserves :

“In all reserves, the land will be used, maintained and enhanced primarily for recreational and/or community purposes. The development of any new buildings within these areas will generally not be permitted unless they are small in bulk and scale and unobtrusive in their setting.”

Uses permitted will only be those which are incidental to the recreational and community roles of the reserves. No activity or action will be permitted which destroys the integrity of these reserve areas, including all existing landscape elements.”

Furthermore, the Town’s draft Local Planning Scheme No. 2 (LPS 2) which Council endorsed for final approval at its February 2024 meeting, is a seriously entertained planning proposal that is to be given due regard. Under Draft LPS 2 the DA site is proposed to remain a Local Scheme Reserve ‘Civic and Community Uses’ with the following objectives :

1. *To provide for a range of community facilities which are compatible with surrounding development.*
2. *To provide for public facilities such as halls, theatres, art galleries, educational, health and social care facilities, accommodation for the aged, and other services by organisations involved in activities for community benefit.*
3. *To provide for complementary commercial land uses which have the potential to support, enhance or activate the use and amenity of the reserve.*

The proposal is considered to be consistent with the relevant provisions of both TPS 1 and draft LPS 2.

Heritage

As outlined above, the DA site is listed as having cultural heritage significance under both the State Register of Heritage Places and the Town’s Heritage List, with the statement of significance providing the following commentary :

“Edward Millen Home (fmr), a complex of hospital buildings comprising the former Rotunda Hospital (1912), a brick and tile building in the Federation Queen Anne style, fumatory building (1921) and former ward block (1921; 1936), set in landscaped grounds, has cultural heritage significance for the following reasons:

- *the place has aesthetic value due to the relationships between the former Rotunda Hospital and former ward block and their formal landscaped setting, including the formal, tree-lined approach;*
- *through an understanding of the buildings and landscape elements, the place has the potential to illustrate various aspects of the development of health care in Western Australia from 1912 to 1997;*

- *the place makes a contribution to the sense of place of those who have had associations with the place as a maternity hospital, sanatorium, psychiatric clinic and centre for autism;*
- *the quality of the architectural detailing retained in the former Rotunda Hospital and in the former ward block is of value;*
- *the former Rotunda Hospital is of aesthetic value as a fine example of Federation Queen Anne architecture, displaying internal and external detailing. It has landmark quality within the site;*
- *the Rotunda Hospital, established by midwife Elizabeth Baillie in 1912, provided women with an alternative to home birth. The Rotunda Hospital was established four years before King Edward Memorial Hospital, Western Australia's first public hospital for women;*
- *the site has value to the local community for the social amenity the park provides;*
- *the Rotunda Hospital is a rare example of a hospital built in a residential style, located close to the city on a large site which has generally retained its original building and landscape qualities; and,*
- *the place is representative of the type of rehabilitative care provided for ex-servicemen and tuberculosis in Western Australia.*
- *Due to the extent of original fabric remaining, the place is more authentic than other sites of a similar nature."*

In support of the application, a Heritage Impact Assessment (HIA) has been prepared (see Attachment 11).

Works proposed to the existing buildings include (but not limited to) :

- Demolition of the existing operating theatre building which has been assessed under the HIA as being in poor condition. It is proposed to remove this building and interpret it, together with constructing a similar sized back of house facility in its place.
- The link between the Rotunda and the Mildred Creek Building will be removed, to open up the pathway between the building and better connect the front and rear of the site.
- Removal of a metal shed constructed in the 1980s.
- Selective removal of internal walls to enable the adaptive reuse of the buildings.
- Extensive conservation works to retained buildings in accordance with the Heritage Conservation Plan.

The HIA considers the heritage impact of the above works to the existing buildings as well as the new buildings and works and concludes as follows :

"Finding an economic use for the place has proved to be a protected and difficult task. With the Town's competing demands, Edward Millen Home has not received the investment required to maintain all of the buildings and the setting. Rotunda aside, Edward Millen Home has not received the attention it requires for its effective conservation.

Reviewing the values collectively, the conservation work, renewed setting, interpretation, and adaptive re-use, will have a positive heritage impact. The work will see some poor and expedient works removed to make the reading of each building clearer.

There is substantial work to be done on Mildred Creek for conservation and compliance works and servicing. Also there is a great deal of asbestos removed to be completed on this building.

Weatherboards will be retained and conserved, while ACM cladding will be replaced with CFC to maintain the original aesthetic.

The emergency operating theatre is proposed to be removed and replaced with a utility building of about the same size which will be accompanied by interpretation. The building was never used for its intended purpose and is in very poor condition. Its loss is considered to be acceptable.

The significant heritage fabric will be conserved and adapted to accord with adaptation principles.

Taken as a whole, the proposed conservation, adaptation and new development has a beneficial impact on presentation and heritage values.”

The proposal was referred to the Heritage Council for review and comments. As outlined above, the proposal is supported by the Heritage Council subject to conditions.

Having regard to the above, the proposal is considered to be acceptable from a heritage perspective.

Tree retention, removal and planting

39 trees currently exist within the DA site. The application proposes both the retention and removal of trees within the DA site. Note, no trees are proposed to be removed from the adjoining parkland in association with this application.

Based upon the information initially supplied by the applicant, the application was originally advertised as proposing the removal of 25 existing trees of medium or high value, the transplanting of three existing trees elsewhere on the site, and the planting of 120 new trees

In response to Officer and community concerns, the applicant has reviewed and revised the proposal to the following :

Value	Existing Trees				New Trees	
	Total Existing	Retained	Transplanted	Removed		
High	27	12	5	10	Large	19
Medium	9	5	0	4	Medium	59
Low	4	1	0	2	Small	42
TOTAL	39 (36 high or	18 (17 high or	5 (5 high or medium	16 (14 high or	TOTAL	120

	medium retention value trees)	medium retention value trees)	retention value trees)	medium retention value trees)		
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Note – the assessment of the existing trees and their categorisation as either high, medium or low value, is based upon a tree audit undertaken by the Town in mid-2023.

The applicant has provided the following information in support of the proposed removal of the 16 trees :

“The majority of these species are non-native (7 Queensland Box trees, two non-native pine species and other non-native eucalypt and gum species). As demonstrated in Figure 10, trees have needed to be removed to accommodate parking areas, fire tanks and the childcare buildings. It is noted that in these parking areas, the existing non-native trees are proposed to be replaced with trees native to the South-West of Western Australia such as Eucalyptus rudis (commonly known as flooded gum) and Eucalyptus victrix, commonly known as the western coolabah or ghost gum).”

The location of the trees proposed for removal is identified in the plan below (taken from the Landscape Masterplan – see Attachment 4) :

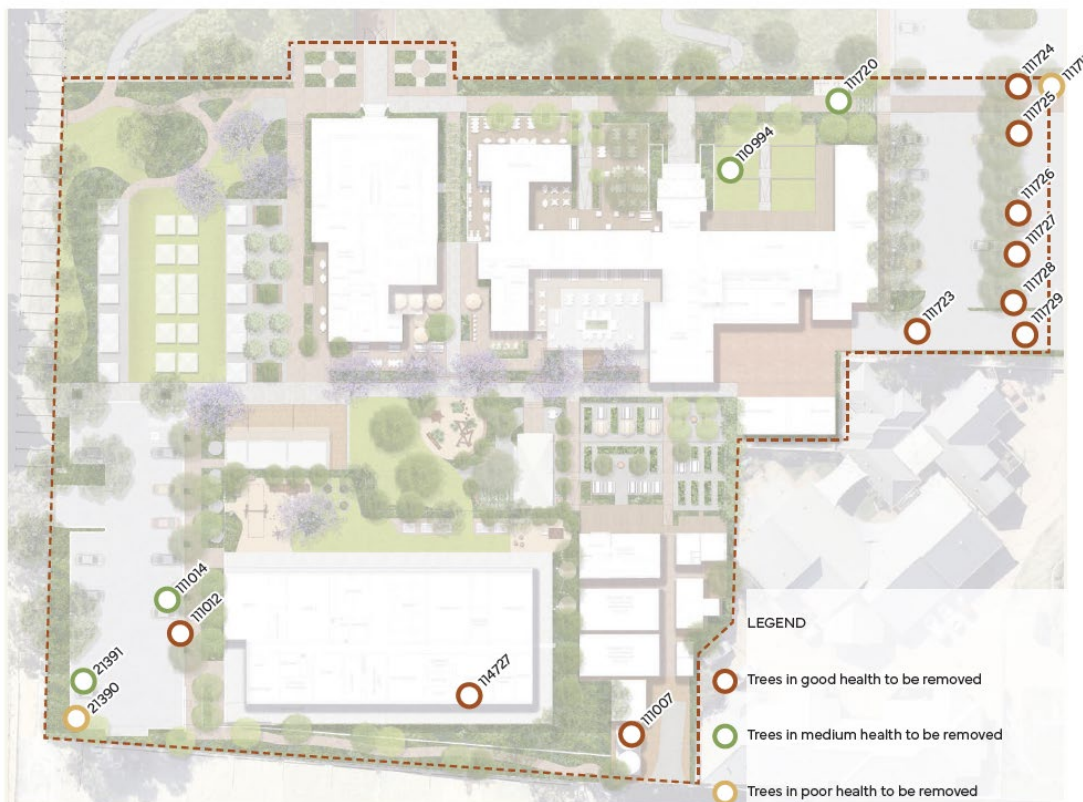


Figure 10 - Tree Removal Plan (See Design Studio)

A site inspection of the existing on-site trees was undertaken by Council’s Planning and Parks Officers, particularly to ascertain the merits of the 16 trees proposed for removal, with the following conclusions being reached :

- A number of the trees are dead, nearly dead or in poor condition;
- A number of the trees will be affected by proposed changes in ground level and therefore will not survive;
- 6 of the existing trees in the location of the car park accessed off Hill View Terrace are Queensland Box trees which are not a preferred species.
- There is an existing WA Peppermint tree (tree ID. 111723) at the southern end of the Hill View car park that appears to be in good condition, with an arborist assessment required to determine the impact of the proposed works on the tree if retained.

Accordingly, the applicant engaged an arborist to assess the impacts of the development on the existing WA Peppermint tree. It was concluded that if the tree was retained then the new car park construction would require excavation in close proximity to the tree including removing a substantial portion of the tree root base, and therefore potentially damaging and destabilising the tree. It was commented that even if the tree were to survive, then the tree would likely require substantial crown pruning to enable the passing of service vehicles, to the point that little live tree crown would remain. On this basis the arborist supported the removal of the WA Peppermint tree.

Having regard to the above and in the context that around 116 new trees are proposed to be planted, most which are WA natives, in addition to the 23 trees to be retained on-site, the proposal removal of 16 trees is supported.

The Town's Local Planning Policy No. 39 – Tree Planting and Retention (LPP39), applies to all applications including for a new non-residential development with a value exceeding \$200,000. Clause 2.2 requires new medium trees to be provided at a rate of one tree for every 300m² of lot area or 1 per tree worthy of retention that is removed. This number may be reduced to a rate of one tree for every 500m² for each tree worthy of retention that is retained on site.

23 trees worthy of retention are proposed to be retained within the lots. The provision of approximately 116 new trees on-site exceeds the new tree planting requirement of Local Planning Policy 39.

In reviewing the tree retention plan and the proposed landscaping plan, the Town's Parks Officers have expressed some concerns regarding the appropriateness of some tree species proposed as well as the adequacy of the size of tree protection and growth zones to ensure the long-term viability of the trees. This is a matter that requires further discussion between the proponent's landscape architect and the Town's Parks team. The following condition is recommended to address this matter:

“Prior to the submission of an application for a building permit, the applicant is to submit detailed landscaping plans for the Town's approval including details of proposed tree species, the depth and width of structural root zones, tree protection zones etc. Such details are to be to the Town's satisfaction.”

Child Care Centre

The application proposes the construction of a new purpose built building on the site for use as a child care centre. The applicant submits that the inclusion of the child care centre is beneficial in providing daytime activation of the site, as well providing

commercial viability to the restoration and ongoing maintenance of the heritage buildings on the site.

Details of the proposal include : maximum of 104 children; estimated 20 staff employed with 10-16 staff in attendance at any one time; to operate Monday to Friday (excluding public holidays) between 6.30am and 6.00pm, with outdoor play restricted to after 7am for noise compliance; a car park for 30 cars is provided adjacent to the child care building with access from Baillie Avenue; the child care parking can be utilised by patrons of the other on-site uses when the centre is not in operation; the outdoor play area is located on the north side of the building to mitigate impacts upon the future residential dwellings to the south.

As a result of feedback from the Town's Design Review Panel, the design of the building has been amended to more appropriately reflect the form and materials of the existing heritage buildings, but without replicating them.

Having regard to the relevant planning framework and the site context it is considered that the proposed use as a Child Care Centre is an acceptable use of the land subject to the use not impacting upon the amenity of adjoining residential properties specifically by way of traffic and noise etc (addressed below).

The objectives of the WAPC's Draft Position Statement for Child Care Centres includes to encourage the co-location of child care premises on scheme reserves intended for community and educational uses; to locate centres where they are compatible with residential uses; and to ensure no adverse impact upon adjoining residents and the locality.

The Town's Local Planning Policy No. 6 – Family Day Care and Child Care Premises (LPP6) Clause 2.1 requires that where a child care premises is proposed adjacent to or on land zoned for Residential purposes, the provisions of Local Planning Policy No. 3 – Non-Residential Uses in or Adjacent to Residential Areas (LPP3) shall apply.

LPP3 provides guidance for preferred locations of non-residential development on Residential zoned land being:

- a) Non-residential uses are generally encouraged to locate on sites which have access to main streets or major roads, and are discouraged from locating within a local access street or laneway. Other locations may be considered where it can be demonstrated that residential amenity can be protected;
- b) Should be located such that residential properties are not isolated between non-residential uses.

LPP6 also provides advice on suitable locations for child care premises as follows:

- i. within convenient walking distance of commercial, recreation or community nodes and education facilities;
- ii. located in areas where adjoining uses are compatible with a child care premises;
- iii. serviced by public transport;
- iv. considered suitable from a traffic engineering/safety perspective; and
- v. of sufficient size and dimension to accommodate the development.

The child care centre is located on a lot which has frontage to two higher order roads (Albany Highway and Hill View Terrace), but with the centre being located at the southern end of the site and with the car park for the centre having vehicle access from Baillie Avenue, the centre does rely upon access from a local road which is not

favoured. While this may be the case, the centre sits within a very large site with no adverse impacts upon the street or adjoining properties. The sites are located within a convenient walking distance of commercial, recreation and community nodes and education facilities.

The use as a child care centre is considered to be a compatible use with the adjoining school. While it is accepted that while some concerns have been expressed through public submissions regarding the compatibility of the proposed child care centre use with adjacent licensed premises, child care centres are highly regulated and in this context the children of the centre will be highly supervised and management measures will be in place that mitigate any adverse impacts that could otherwise occur from the proximity of the uses to one another.

The DA site is of sufficient size to accommodate the required outdoor play spaces, car parking and facilities for the centre.

In relation to noise, the applicant has submitted an acoustic assessment for the centre (see Attachment 7) which concludes that subject to no outdoor play occurring before 7am, that compliance with the applicable noise regulations will be achieved. See further comments below regarding the hours of operation.

As outlined below, the matter of traffic is considered by the Town to be acceptable.

Accordingly it is considered that the development satisfies the relevant Policy criteria and that the proposed land use is acceptable.

Petting zoo

The application proposes the construction of a new purpose built building on the site described as animal pens and/or petting zoo. The applicant submits that the inclusion of this activity/use provides opportunities for entertainment and social interaction for members of the public, particularly younger children, and opportunities for children to learn about food production.

Further details provided by the applicant include : subject to health requirements, eggs from poultry may be supplied to the hospitality venues; animals to be permanently housed on-site and managed by venue staff; enclosures to be locked after hours; the facility has been designed to comply with the Town's Health Local Law; approximately 4-6 'large animals' such as goats and sheep are proposed to be kept, as well as approximately 12 chickens.

Concerns have been expressed in a number of public submissions regarding the proposed petting zoo and contending that the keeping of animals in this fashion is outdated and is harmful to the welfare of the animals. While noted this is not a planning consideration. It is the responsibility of the operator to ensure the facility is managed in an appropriate manner as per applicable welfare standards and guidelines, with oversight from bodies such as the RSPCA.

Initial advice provided from the Town's Environmental Health Officers is that eggs produced by the chickens cannot be provided for on-site use by the hospitality venues.

In terms of relevant amenity considerations, animal manure will be regularly removed from the pens and temporarily stored within the back-of-house bin store, with

immediate removal from the site. This will need to comply with the provisions of the Town's Health Local Law. The noise of animals is not likely to be significant given the separation distance between the pens and the closest residential properties, and will need to comply with the provisions of the noise regulations.

Markets

The development plans show the grassed area between Baillie Avenue and the Rotunda building to be a 'pop-up market'. This is further described in the submitted Planning Report (see Attachment 3) as follows :

"It is envisioned that weekend markets would run weekly on Saturday or Sunday. Based on similar markets, the markets would start around 8.00am and conclude around midday. From time to time there may be an evening market on a Saturday from 5.30pm to 9.00pm. The current design provides space for approximately 26 stalls, with an expectation of up to 200 people to attend.

Markets would be subject to further approvals with the Town such as an event management plan."

The inclusion of a market space within the DA site is considered to be a positive outcome from an activation, community cohesion and local attraction perspective. It is noted that the proposed times for the regular market do not coincide with the peak times of other uses within the DA site. However even so, with an expectation for up to 200 people to attend the market at any one time this is a fairly intensive use of the land and it is expected that there may be traffic and parking issues to be managed while the markets are being run.

While the use of the space for market purposes is supported, it is recommended that a condition be imposed requiring the submission of an event management plan for the market space addressing such matters as patron numbers, parking and traffic management, waste management, noise management, set-up and pack-up times, toilet facilities etc.

Hours of operation

The hours of operation of the various land uses are described above and are generally acceptable with the exception of the morning start time of the child care centre (6.30am proposed), and the night-time operation of the hospitality uses (potentially until 12 midnight).

The child care centre is proposed to operate Monday to Friday (excluding public holidays) between 6.30am and 6.00pm, with outdoor play restricted to after 7am for noise compliance.

Under the Town's Local Planning Policy 6 'Family Day Care and Child Care Premises' it is stated that *"as a general rule, the hours of operation of a child care premises should be limited to between the hours of 7am and 7pm Monday to Friday ... unless otherwise agreed to by Council."*

While the intent to prevent the use of the outdoor play area until after 7am is noted and is required for compliance with the applicable noise regulations, this will require appropriate management by staff. Rather than relying upon self-enforcement measures to ensure compliance with the Noise Regulations, it is considered more appropriate, and more aligned with the Town's LPP6, to instead allow the centre to open from 6.30am for staff only, with children attending only after 7am. This has been consistently applied by the Town and the JDAP in the approval of a number of child care centres. Accordingly a condition of approval is recommended to this effect.

In respect to the proposed licensed premises within the development (namely the bar, bistro, microbrewery and function space) the information supplied by the applicant indicates that these facilities will operate until 11pm – 12 midnight (no specific days mentioned). Furthermore the applicant has clarified that a 'Tavern Restricted' liquor licence is being sought from the Department of Racing, Gaming and Liquor. Under the Liquor Control Act, a 'Tavern Restricted' liquor licence prohibits the takeaway sale of alcohol and permit operations until 12 midnight on any day (excluding specific public holidays).

The Town's Local Planning Policy No. 3 'Non-Residential Uses in or Adjacent to Residential Areas' outlines that *"hours of operation for all non-residential uses will be considered having regard to the nature and intensity of the use and the context of the site and surrounding areas."*

In view of the above, and in the absence of the application not limiting the days for which a 12 midnight closure is proposed, the potential operation of the licenced facilities until 12pm midnight everyday is considered to have an unreasonable impact on nearby residential properties. Alternatively a 12pm closure is considered reasonable on Friday and Saturday nights, with a 10pm closure on all other nights. Accordingly a condition of approval is recommended to this effect.

Noise impacts

Noise impacts associated with the child care centre and petting zoo are already addressed above. More generally, the noise related impacts of the uses excluding the child care centre are addressed in the Acoustic Report at Attachment 8.

The report considers noise emissions from the below listed noise sources for compliance with the provisions of the *Environmental Protection (Noise) Regulations 1997* :

- mechanical services – compliant on the basis of 1m high barriers above the noise source;
- deliveries – compliant given that deliveries are to occur during the day;
- restaurant, brewery and function space patrons noise – assessed to be compliant with operation until 11pm – 12 midnight;
- community market patron noise – compliant with a noise management plan to be prepared if a regular event, particularly dealing with set-up prior to 7am;
- external live acoustic music – compliant for small scale live music;
- waste collection – exempt given collection hours are between 10am and 2pm; and
- cars – exempt for cars moving and starting; compliant for closing of car doors.

Based on the acoustic modelling, the proposed development will comply with the noise regulations.

Parking

The Town's Local Planning Policy 23 'Parking' (LPP 23) contains provisions relating to the design and provision of parking areas for developments, which includes the provision of minimum parking ratios for land uses.

Based upon the land uses proposed and the minimum parking ratios outlined in LPP23, the Town's calculation is that a minimum of 269 car bays are required (excluding the markets). This calculation assumes that all proposed land uses are operating simultaneously.

In support of the application a Transport Impact Assessment (TIA) has been submitted (see Attachment 6). The TIA calculates that 241 car bays are required (excluding the markets). This a difference of 28 bays from that calculated by Council Officers. It appears that the discrepancy is largely due to the TIA utilising parking ratios based upon those that have been used elsewhere for similar facilities (in many cases 1 bay per 4 people or seats, rather than being based upon floor area as per the Town's LPP23). The applicant's traffic consultant contends that basing the parking requirements on actual seating rather than the floor area is a better representation of overall parking demands for a realistic situation.

The TIA then further analyses the anticipated peak periods for the different land uses forming part of the development. For example, the licensed venues operate at less than 100% capacity during the day; the bakery and café are not open in the evening; the child care centre is not open on weeknights or weekends. This is presented at Table A4 of the TIA, and is considered to be a reasonable methodology accepting that the different land uses across the site have differing parking demands at certain days and times. Based upon this methodology, the TIA calculates an estimated peak weekday parking demand of 162 bays (being over the lunch/afternoon period) and a peak weekend parking demand of 192 bays excluding the market (being over the lunch/afternoon period).

In terms of parking provision, the applicant contends that parking is available as follows:

- 82 bays on the DA site to be delivered as part of the development, comprising 30 bays in the car park accessed from Baillie Avenue and 52 bays in the car park accessed from Hillview Terrace.
- 37 bays within the car park to be constructed by the Town for the park upgrade (accessed from Hill View Terrace).
- Spare parking capacity for 65 vehicles within the vicinity, mainly using the grassed verge along Baillie Avenue (noting a peak existing parking demand of 25 spaces within the area).

On this basis, the applicant contends that the total parking capacity available for use by the development is 183 spaces, which represents a shortfall of 9 bays at the peak demand period (lunch/afternoon period on a weekend), but is otherwise sufficient at all other times. The applicant's position is that this shortfall can be addressed through cars parking further along Albany Highway.

While the applicant's position is understood, it needs to be pointed out that :

- the applicant's assessment does not consider the likely increased parking demand when the adjacent park is redeveloped. An expected increase in the patronage of the park will in turn reduce the extent of available parking for patrons of the uses within the DA site. The applicant's assessment has assumed the existing parking demand of up to 25 spaces for verge or on-street parking will be maintained, which is not considered to be realistic.

In fairness to the applicant, the Town does not have figures estimating the likely increased patronage of the park once upgraded, and therefore neither the applicant or the Town are able to be certain as to the likely increased park patronage and consequent availability of public parking bays.

- Existing on-street bays on the western side of Baillie Avenue may need to be removed to not obstruct the reversing of vehicles parking on the park-side of the verge at 90 degrees.
- in relation to the proposed 30 bay car park accessed from Baillie Avenue and located directly adjacent to the child care centre, the parking requirement of LPP23 for the child care centre is 21 bays. Therefore during the operation of the child care centre there is a 9 bay surplus of car bays for this use, thereby allowing these additional 9 bays to be available by patrons of other uses on the site, in addition to all 30 car bays being available for use by patrons when the child care centre is closed.
- The above figures are based upon the applicant's methodology of calculating the car parking requirement for certain uses based upon the number of people/seats rather than based upon the floor area as per LPP23. Utilising the LPP23 parking standards, and accepting the applicant's peak parking demand assumptions, the required number of parking bays as per the Town's calculations reduces to 215 bays (from 269 bays) at the peak parking time as opposed to the applicant's calculation of 192 bays being required at this time.

Clause 77D of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* states the following in relation to considering carparking shortfalls:

"77D. Variation of minimum on-site parking requirement in relation to development

(1) The local government may —

(a) vary a minimum on-site parking requirement that applies to development so that the minimum number of car parking spaces that must be provided as part of the development is a lower number; or

(b) waive a minimum on-site parking requirement that applies to development.

(2) The local government must not vary or waive a minimum on-site parking requirement under subclause (1) in relation to development unless the local government is satisfied —

(a) those reasonable efforts have been made to comply with the minimum on-site parking requirement without adversely affecting access arrangements, the safety of pedestrians or persons in vehicles, open space, street trees or service infrastructure; and

(b) that —

- (i) *in the case of a variation — the lower number of car parking spaces would be adequate for the demands of the development, having regard to the likely use of the car parking spaces, the availability of off-site parking facilities and the likely use of alternative means of transport; or*
- (ii) *in the case of a waiver — it is not necessary for car parking spaces to be provided as part of the development, having regard to the availability of off-site parking facilities and the likely use of alternative means of transport.”*

Taking all of the above into account it is considered that the applicant's parking demand calculations and assumptions are reasonable and probably more reflective of the actual parking demand than the ratios prescribed by LPP23. However it is considered that the extent of parking available for patrons of the proposed uses within the DA site is likely to be less than what the applicant has estimated. This is principally due to the proposed upgrade of the adjacent park and the likely increased park patronage which in turn reduces the extent of available public parking to less than what the applicant has assumed. There is therefore expected to be a larger shortfall between the number of parking bays required and the number of bays available than what the applicant contends.

The upgrade of the park is a Council project, and at this time it is unknown as to how popular the upgraded park will be and to what extent it will place increased pressure upon available public parking. In this respect, it is within the control of the Town as the owner of the land and having responsibility to manage public and on-street parking, to implement measures should the parking demand for the upgraded park exceed the parking availability. Similarly should the combined parking demand for the upgraded park and development of the DA site exceed availability, then the Town can intervene to address this.

On this point, the Town's approved Integrated Transport Strategy has a number of goals including supporting mode-shift away from private vehicles. The associated Parking Management Plan outlines the Town's strategy for parking related decision-making and business planning to respond to the objectives identified in the Strategy.

A relevant action within the Parking Management Plan is to *“Review minimum parking requirements, with consideration for maximum parking requirements, to allow development that is oriented towards active and public transport access, rather than access by private vehicle.”*

The Parking Management Plan identifies that the methodology underlying minimum parking ratios is considered to lack accuracy and efficiency, often resulting in the oversupply of parking, not being reflective of actual parking demands and not providing an incentive for the use of alternative transport modes.

Considering all of the above, on balance the parking provision for the development is supported taking into account the likely use of the car parking spaces, the availability of off-site parking facilities and the likely use of alternative means of transport.

Traffic

The submitted TIA also assesses the traffic impact of the development on the surrounding road network and intersections inclusive of the following :

- The proposed development is estimated to generate a total of 3420 vehicle trips per average weekday, with 203 and 402 trips during the weekday AM and PM peak hours respectively.
- The Hill View Terrace driveway will carry 2470 vehicles per day, followed by 530 vehicles per day using the on-street and verge parking along Baillie Avenue, and 420 vehicles per day using the proposed driveway off Baillie Avenue to the new on-site car park.
- Traffic access to and from the site is available via multiple available approach routes. Accordingly development traffic flows will be spread out rather than being focussed on any one location, in which case there will be no significant impact on any single road intersection.
- All driveway intersections will perform at an acceptable or manageable level.

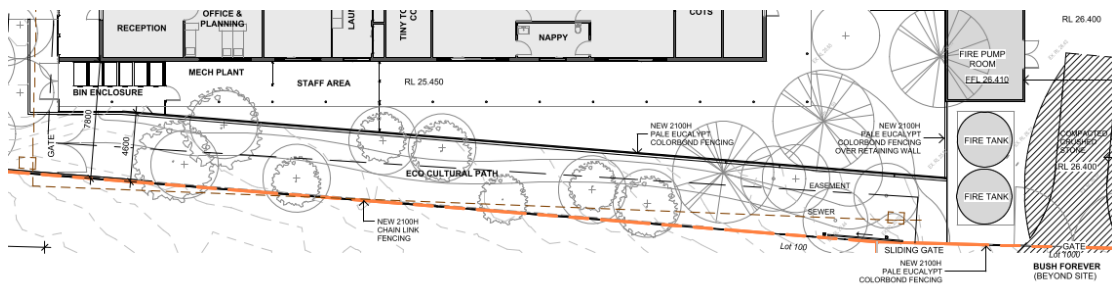
The TIA has been reviewed by the Town’s Engineering team, and was found to be generally acceptable in which case the development is supported from a traffic impact perspective.

Southern boundary interface

As described and illustrated earlier in this report, the Edward Millen Park Masterplan notes the area to the south of the existing heritage buildings as being a ‘Future Development Zone’ with the area immediately along the southern boundary being described as ‘Proposed trees to create ecological connection to Hill View Terrace bushland’. It is understood that the intent of this connection is to provide a physical pedestrian connection between the DA site and the nearby Hill View bushland.

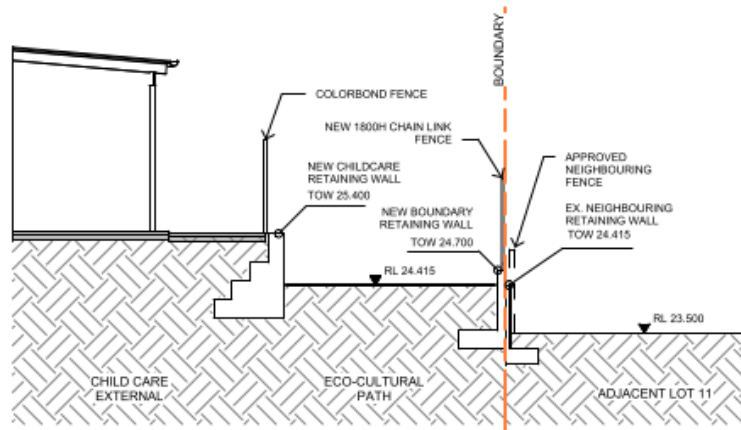
The ‘Future Development Zone’ is to be developed with the child care centre building, the animal pen, garden pavilion, productive gardens and service zone. This is acceptable noting that there ‘Future Development Zone’ was left to be a flexible space with no identified use or built form controls to suit the needs of the lessee.

In terms of the area described as ‘Proposed trees to create ecological connection to Hill View bushland’ the development application drawings include a 4.6 metre wide space along the southern boundary described as ‘eco-cultural path’ which contains a path and landscaping providing a link between the site and the Hill View bushland. A gate is provided at either end of the path, on the basis that the gate and the link is to be open during trading hours and will be locked at night for security.



To the northern side of the eco-cultural path is a retaining wall (approximately 1.0m high) with a 1.8m high solid colorbond fence above, separating the path from the child care centre. To the southern side of the eco-cultural path is the adjoining residential subdivision at 384 Berwick Street (dwellings yet to be constructed) with a retaining wall and approved 1.6m high solid wall above.

This is depicted in the section drawing below :



4 BOUNDARY SECTION
SCALE 1 : 100

The design and safe use of the eco-cultural path has been identified by the DRP as a concern and one that remains unresolved. This is reflected in the following DRP commentary (see Attachment 14) :

The eco-cultural link behind the Childcare Centre is inherently unsafe, with a long path sleeved between two high fences (that will both be solid once the houses are constructed). There is no opportunity for surveillance and no lighting. Concern for personal safety will limit use (even during the day). This safety issue cannot be resolved through the addition of lighting – an alternative approach is required that has clear sightlines, good surveillance at all times, and direct, short connection from active public spaces to the bushland. Such a link would need to be in the vicinity of the garden production zone, possibly west of the glass houses. If the path cannot be resolved in a direct and safe fashion, then removal of the link is recommended, with the area to be included in the Childcare playground.

Acknowledging that the issue requires further resolution it is recommended that a condition be imposed requiring the interface between the eco-cultural path and both the child care centre and the adjoining residential development to the south to be resolved to the Town’s satisfaction, so as to improve the safety of this space for users.

While the DRP’s comments are noted that an alternative could be to explore a path running through the centre of the site and linking back to the Hill View bushland, the Masterplan indicted the intent for the link to be along the southern boundary and the current design for the DA site has been developed on this basis. A potential relocation

of the path to the centre of the site appears problematic, would require redesign and presents challenges from an access and security perspective.

The Officers view is that the path should remain in its current location, but that the applicant and the Town, in both the role as landowner and a planning authority, work together on achieving a better design outcome for this space. A condition is recommended to this effect.

In order to address level differences between the DA site and the adjoining residential subdivision, with the latter generally being lower, retaining walls currently exist along a portion of the boundary. Works are proposed on the DA site adjacent to the southern boundary such as the eco-cultural path and the car park for the child care centre, involving further level changes which necessitates the construction of additional retaining walls along the southern boundary. For the majority of the southern boundary the finished levels on the DA site will generally be higher than the finished level of the lots within the adjacent residential subdivision.

While new retaining walls of up to 1.2m high are proposed towards the western end of the southern boundary, the top of these walls will be below the height of the approved 1.6m high solid fence to the adjoining dwellings. However a 1.8m high chain link fence is proposed to sit above the proposed new retaining walls, meaning that this fence will sit above the top of the approved solid fence by around 1.7m.

It should be noted that the approved plans for the adjoining residential subdivision to the south (first presented to a DRP meeting in June 2020; lodged as DA in October 2020; and DA in approved in May 2021) were premised upon the area at the rear of the DA site remaining open space, hence the description of the adjacent dwellings as 'parkland lots' and the fencing treatment being a 1.6m high fence and visually permeable gate. However the relevant RAR referenced advice provided to the developer of the adjoining land that access between the dwellings and the DA site cannot be supported and outlining the designation of the rear of the site as a 'Future Development Zone' under the Masterplan. It was commented in the RAR that a landscape buffer along the southern edge of the DA site would be a favourable outcome however the interface between the two sites would need to be considered further once the intent of the lessee of the DA site is known.

The design intent for the approved adjoining dwellings at 384 Berwick Street to interface with public open space on the DA site is a flawed premise, given the approval of the Edward Millen Masterplan designated the land as a 'Future Development Zone' and in consideration of the current development application proposal.

While the adjoining dwellings were granted development approval in 2021, they have not yet commenced construction and it is understood that as a result of a change in the developer of the land and other factors, that most of the lots are back on the market for sale.

In such circumstances, and now in the knowledge of the current development proposal for the DA site, it is reasonably expected that the designs for the adjoining dwellings will be amended to respond to the development proposal.

Accordingly the concerns expressed above regarding the interface between the approved adjoining dwellings and the proposed development on the DA site, particularly in terms of retaining wall and fence heights are not expected to occur.

It would be appropriate for the developer of the adjoining residential subdivision and Blackoak to meet and work together on developing designs for a mutually acceptable interface.

Public Art

The Town's Local Planning Policy 29 calls for a public art contribution of 1% for developments exceeding \$2 million.

The applicant has indicated the intent for the funds being provided towards the programming and activation of the artist studios within the site., consistent with the Town's Strategic Community Plan and Arts and Culture Strategy which identify a demand for cultural infrastructure, in particular the potential for creative maker spaces.

This approach has been reviewed and supported by the Town's Arts Officer.

Deemed Clause 67

The application is required to be considered against the relevant matters listed under clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. In this case, the table below outlines the relevant matters for consideration in the left-hand column and the Officer's assessment in the right-hand column :

(b) <i>The requirements of orderly and proper planning;</i>	This report details the acceptability of the development from a land use, traffic, parking, noise and general amenity perspective in which case the proposal is considered to be consistent with orderly and proper planning.
(g) <i>any local planning policy for the Scheme area;</i>	An assessment of the development application against the Town's Local Planning Policies has been addressed in this report.
(j) <i>in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve;</i>	Addressed within the report.
(k) <i>the built heritage conservation of any place that is of cultural significance;</i>	Refer to HIA and commentary within this report.
(l) <i>the effect of the proposal on the cultural heritage significance of the area in which the development is located;</i>	Refer to HIA and commentary within this report.
(m) <i>the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the</i>	The refurbishments works to the existing buildings are supported. The new building on the site respect the existing heritage buildings in form and materials, with the scale of the new buildings being acceptable.

<i>height, bulk, scale, orientation and appearance of the development;</i>	
<i>(n) the amenity of the locality including the following: (i) environmental impacts of the development; (ii) the character of the locality; (iii) social impacts of the development;</i>	<p>The development proposes the retention of 23 existing trees within the DA site, with 16 trees proposed for removal. Approximately 116 new trees are proposed to be planted on the DA site. The retention of mature trees and planting of new trees aligns with the objectives of the LPP39.</p> <p>The character of the locality and the site context are discussed within this report.</p> <p>In reference to the social impacts of the development, the revitalisation of the site will benefit the community.</p>
<i>(p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;</i>	<p>As outlined in the report, 16 existing trees within the DA site are proposed for removal. The Town's Parks team are accepting of the removal of these trees, also noting that approximately 116 new trees are proposed.</p>
<i>(s) the adequacy of – (i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;</i>	<p>The development application has been reviewed by the Town's Engineering team and has been found to be generally acceptable. These matters are discussed within the report.</p>
<i>(t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;</i>	<p>The development application and TIA has been reviewed by the Town's Engineering team. These matters are discussed within the report.</p>
<i>(y) any submissions received on the application;</i>	<p>The development application was formally advertised in accordance with the Town's LPP37. The majority of submissions support the proposal.</p>
<i>(za) the comments or submissions received from any authority consulted under clause 66;</i>	<p>Addressed within the report.</p>

Conclusion:

The proposed development will result in a revitalisation of the site and activation and improvements to heritage buildings that are in need of significant capital investment to ensure their ongoing longevity. The proposed adaptive reuse of the buildings is expected to deliver a development that will benefit the community for many years to come.

Approval of the development represents a further step in progressing from an underutilised site to one that is activated and provides community benefit.

As outlined within this report Council Officers are satisfied that the proposed development satisfies relevant planning and amenity considerations with conditions recommended to ensure the appropriate ongoing management of the site in a manner that does not negatively impact upon the amenity of nearby properties. Officers are satisfied that relevant matters to be considered under Clause 67 of the deemed provisions within the *Planning and Development (Local Planning Scheme Regulations 2015)* are met.

On balance, it is recommended that this application for development approval is approved, subject to the recommended conditions and advice notes.