



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 28 October 2020
at 6:30PM**



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GENERAL BUSINESS

Local Planning Panel

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1 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO AN INDUSTRIAL UNIT COMPRISING THE INSTALLATION OF A 58SQM MEZZANINE LEVEL - 20 / 35 SEFTON ROAD, THORNLEIGH

EXECUTIVE SUMMARY

DA No: DA/558/2020 (lodged 15 July 2020)

Description: Alterations and additions to an industrial unit comprising the installation of a 58m² mezzanine level

Property: Lot 20 SP 101715, No. 20/35 Sefton Road Thornleigh

Applicant: Doosh Investments P/L as Trustee for Kerley Family

Owner: Trumen Norman Thornleigh Pty Ltd

Estimated Value: \$21,428

Ward: B

- The application involves the construction of a 58m² mezzanine floor at the rear of Unit No. 20.
- A total of 26 unique submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be refused.

RECOMMENDATION

THAT Development Application No. DA/558/2020 for alterations and additions to an industrial unit comprising the installation of a 58m² mezzanine level at Lot 20 SP 101715, No. 20/35 Sefton Road Thornleigh be refused for the reasons detailed in Schedule 1 of LPP Report No. LLP19/20.

BACKGROUND

The site was historically used for farming and agricultural purposes. Council records indicate industrial development occurring on the site from 1959.

On 19 December 2019, the Hornsby Local Planning Panel approved DA/510/2018 for the Torrens title subdivision of one lot into six as a staged development. The subject site, now known as No. 35 Sefton Road was created through this subdivision.

On 1 May 2019, the Hornsby Local Planning Panel approved DA/619/2018 for the construction of a one storey and two storey industrial building comprising 32 industrial units and 44 self-storage units, strata subdivision and landscaping. Council have subsequently approved two modifications to the development. The first involved the deletion of internal waste storage areas and the second included alterations to Unit No. 32 comprising an additional 4 car parking spaces and larger mezzanine level. Condition No. 57 of the consent applies to the subject unit which states.

57. Use of Premises

- a) *Light Industrial Unit Nos. 1 to 32 approved under this consent shall be used for 'light industry' purposes and not for any other purpose without Council's separate written consent.*

On 8 November 2019, Council approved DA/756/2019 for alterations and additions to the approved development of DA/619/2018 comprising internal mezzanine levels in 42 of the 44 self-storage units, and internal mezzanine levels in the industrial units numbered 10, 12, 15 and 16.

On 9 September 2020, DA/744/2020 was lodged for the construction of a 40m² mezzanine storage area to Unit No. 30/35 Sefton Road. The application is currently under assessment.

SITE

The 7,831m² site is located on the southern side of Sefton Road Thornleigh and is irregular in shape.

The site comprises a one storey and two storey industrial building comprising 32 industrial units and 44 self-storage units. 66 car spaces are provided within the complex.

Vehicle access to the site is from Sefton Road via a shared driveway with No. 35D and 35E Sefton Road.

The site is surrounded by a mixture of land uses with industrial to the east and north, medium density residential to the west and low density residential to the south.

The subject unit, No. 20 is located on the ground floor of the upper level and is situated within the centre of the site. The unit has a gross floor area of 81m² (as per the title) and is allocated 1 car parking space.

Unit No. 20 is currently vacant; however, the applicant has confirmed that the unit will be used as a warehouse or distribution premises.

PROPOSAL

The application proposes the construction of a 58m² mezzanine floor, staircase and handrails at the rear of Unit No. 20. The mezzanine would provide 3m of height clearance below and a 2.5-2.7m above.

The Statement of Environmental Effects (SEE) submitted with the application notes the following regarding the proposed future use of Unit No. 20:

The unit will be for the storage and distribution of camping materials such as canvas tents, gazebos, non-motorised caravans and accessories.

- Goods will be delivered to site occasionally (the equivalent of approx. 1 x 20' container per month).
- Courier trucks would visit the site 3-4 times per week for deliveries, with the occasional client visiting the site instead of being freighted to them.
- The proposed 1-2 staff members would not be increased as a result of the mezzanine level.

No change of use is proposed as part of this application.

ASSESSMENT

The development application has been assessed having regard to the *Greater Sydney Region Plan – A Metropolis of Three Cities*, the *North District Plan* and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

A Metropolis of Three Cities – the Greater Sydney Region Plan has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The *North District Plan* is a guide for implementing *A Metropolis of Three Cities - the Greater Sydney Region Plan* at a District level and is a bridge between regional and local planning.

The plans set strategy and actions for accommodating Sydney's future population growth and identifies key targets such as dwelling numbers, infrastructure planning, liability, sustainability and productivity. An important vision of the strategy involves managing and maintaining industrial land close to centres and transport in order to ensure critical services are available to support businesses and residents.

Part 5 of the *Metropolis of Three Cities* relates to "Productivity" and a key objective is to ensure industrial and urban services land is planned, retained and managed. It defines a light industry as a "wide range of business that service other business and populations. Include warehousing, freight and logistics, construction and building supplies, and domestic storage". The strategy notes that light industry should be located on mixed lot sizes depending on the sizes and needs of the business as well as being located close to surrounding residential and commercial community they directly serve.

The construction of the mezzanine level is considered generally consistent with *A Metropolis of Three Cities* and the *North District Plan*, by enabling further development of land that would serve a wide range of uses to support a growing population. Notwithstanding, the application cannot be supported for the reasons outlined in this report.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider "any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations".

2.1 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned IN1 General Industrial under the *HLEP*. The objectives of the IN1 zone are:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To permit other land uses that provide facilities or services to meet the day-to-day needs of workers in the area.*

The application acknowledges that the proposed mezzanine level is for storage ancillary to a “warehouse or distribution centre”. The *HLEP* provides the following definition for the land use:

Warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made, and includes local distribution premises.

Council notes that Condition No. 57 of DA/619/2018 restricts the use of the subject unit to “*Light Industry Purposes*” and no change of use is proposed as part of this application.

While “warehouse or distribution centre” and “light industry” are separately defined under the *HLEP*, Subdivision 10A, Clause 2.20A (Change of use of premises) of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* allows the owner/applicant to change the use of a “light industry” to a “warehouse or distribution centre” (other than local distribution premises) as exempt development. On 7 July 2020, the applicant confirmed that the unit is to be used as a “warehouse or distribution centre”. Accordingly, Council is not required to assess the proposal as a “change of use”. It is noted that a “warehouse or distribution centre” is also a permissible land use in the IN1 zone and would meet the zone objectives.

The SEE notes that customers may, from time to time collect items from the industrial unit. As a “warehouse or distribution centre” excludes retail sales, Council would recommend a condition that no retail sales occur directly from the site if approval were to be granted.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 10.5m. The proposal would not increase the height of the existing building and no further assessment is required in this regard.

2.1.3 Floor Space Ratio

In accordance with Clause 4.4 of the *HLEP*, the maximum floor space ratio (FSR) for the site is 1:1.

The original 1 and 2 storey industrial development was approved by the Hornsby Local Planning Panel with an FSR of 0.686:1 (DA/619/2018).

The application was modified under DA/619/2018/B with an increase in floor area of 31m². The floor area was further increased under DA/756/2019 with an additional 1,222m². Currently, DA/744/2020 proposes an additional 40m².

The subject proposal would add an additional 58m² of floor area, resulting in a total FSR of 0.86:1 (including DA/744/2020) which is compliant with the *HLEP* development standard.

2.1.4 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item and is not located in a heritage conservation area.

Accordingly, no further assessment regarding heritage is necessary.

2.1.5 Earthworks

Clause 6.2 of the *HLEP* states that consent is required for proposed earthworks on site. Before granting consent for earthworks, the consent authority is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

No earthworks are proposed as part of this development and no further assessment is required in this regard.

2.2 State Environmental Planning Policy No 55 Remediation of Land

State Environmental Planning Policy No. 55 (SEPP 55) requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated or requires remediation for the proposed use.

In accordance with the Conditions of Consent of DA/510/2018 and DA/619/2018 a site audit statement has been submitted for the site stating the land is suitable for industrial and commercial use. Accordingly, no further assessment is required under *SEPP 55*.

2.3 Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

As the proposal involves internal modifications only, no assessment is required under the plan.

2.4 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.5 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Hornsby Development Control Plan 2013			
Control	Proposal	Requirement	Compliance
Site Area	7,831m ²	N/A	N/A
Floor Space Ratio	0.86:1	1:1	Yes
Car Parking	1 space	2 spaces	No

As detailed in the above table, the proposed development complies with the prescriptive measures within the *HDCP* for FSR but not car parking. A brief discussion on compliance with relevant performance requirements and Part 1C General Controls is provided below.

2.5.1 Vehicle Access and Parking

As per the submitted strata plan, Unit No. 20 has 1 dedicated car space and a gross floor area (GFA) of 81m².

The *HDCP* has a parking requirement of 1 space per 100m² of GFA for an industrial development further than 800m from a train station. The applicant's submitted SEE incorrectly assumes a car parking rate of 1 space per 150m² GLFA for development sites within close proximity to a train station (i.e. <800m). The subject site is located approximately 1200m from Thornleigh train station

The proposal would add an additional 58m² of GFA resulting in a total of 139m². In accordance with the *HDCP*, car parking rates should be rounded up to the nearest number. This gives a requirement of 2 car parking spaces, resulting in a deficit of 1 space for the proposed development.

Council's traffic assessment requires strict compliance on car parking rates within the subject property as approval would set an undesirable precedent. The cumulative effect of approving industrial development with a shortfall of car parking spaces would have a significant impact on the surrounding local road network and internal driveway.

The proposal is inconsistent with the requirements of the *HDCP* as the development does not provide car parking that meets the requirement of future occupants and their visitors to Unit 20.

If the application were to be approved, Council would recommend the imposition of two conditions:

- To ensure that the mezzanine floor is used exclusively for storage, and not for another use that would result in additional car parking demand, a condition would be recommended that it be limited to a storage area only.
- A further condition would be recommended that no retail sales or direct customer collection occur from the premises.

With regard to traffic, Council utilises the Roads and Maritime Service's *Guide to Traffic Generating Developments 2002 (GtTGD)* to model traffic volume. The *GtTGD* provides a peak hour traffic generation of 1 trip per 100m² of GFA for factories/industry. Accordingly, modelling predicts an increase in 0.58 vehicle trips per hour (VTPH) within the AM and PM peak. It is considered that the additional vehicle trip is unlikely to result in any significant increase in overall traffic.

2.5.2 Noise

The subject unit, No. 20 is located within the centre of the site and directly surrounded on all elevations by industrial development. The additional floor area would be contained within the existing concrete unit which is located approximately 75m from any residential property to the west and 40m from any residential property to the south. Council does not consider that the additional floor area would result in any direct unacceptable noise impacts.

With regard to noise from traffic, it is considered that the additional 0.48 VTPH are unlikely to result in any significant changes to vehicle noise.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires the consent authority to consider *"the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*.

3.1 Natural Environment

The application would have a neutral impact on the natural environment. No vegetation would be removed, and no additional stormwater overflow would occur given the works would be internal only.

3.2 Social Impacts

The application would have a minor negative social impact on the local and broader community by setting an undesirable precedent for car parking shortfall.

3.3 Economic Impacts

The proposal would have a negligible economic impact on the local and wider community as the application is relatively minor in nature.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires the consent authority to consider *"the suitability of the site for the development"*.

The subject site has not been identified as bushfire prone or flood prone land and is considered to be capable of accommodating industrial development. Notwithstanding, as Unit No. 20 only has access to 1 car parking space, the site is not considered suitable for the proposed development.

5. PUBLIC PARTICIPATION



Section 4.15(1)(d) of the Act requires Council to consider *"any submissions made in accordance with this Act"*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 16 July 2020 and 10 August 2020 in accordance with the Hornsby Community Participation Plan. Council received 3 submissions within the formal notification period and 22 submissions thereafter. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
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26 submissions objected to the development, generally on the following grounds:

5.1.1 Additional Noise

Submissions raise concerns that the proposal would result in additional noise impacts to the adjoining residential properties to the south and west.

This matter is addressed in Part 2.5.2 of this report.

5.1.2 Hours of Operation

Multiple submissions raise concerns that the proposal seeks to operate between 7am to 4pm on Saturdays.

In response to this concern, no operating hours are proposed as part of this development.

Council notes that conditions of consent imposed under DA/619/2018 require the subject unit to operate within the hours of Monday to Saturday: 7am-7pm, Sunday: no work. These hours are consistent with the standard hours of operation for industrial land uses located adjoining residential areas permitted under Schedule 8 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

5.1.3 Size

Submissions raise concerns with the increase in scale of the industrial development at No. 35 Sefton Road.

In response to this concern, the additional floor area would be contained within the existing unit and would not be seen externally. As discussed in Part 2.1.3 of this report, the site complies with the *HLEP* FSR control relating to floor area.

5.1.4 Multiple Applications and Size of Development

Submissions raise concerns about the size of the development site as a whole with respect to multiple current applications at No. 35-35E Sefton Road (formally 50A Duffy Avenue).

In response to this concern, Development Applications No. DA/487/2020 and DA/581/2020 at No. 35E Sefton Road and DA/744/2020 at No. 30/35 Sefton Road are currently under assessment and do not form part of this application. The consent authority can only directly consider what is proposed as part of this application.

5.1.5 Incremental Increase in Floor Area Resulting in Adverse Impacts

Submissions raise concerns with the cumulative and incremental impact of the subject application with respect to floor area increased under DA/619/2018/B and DA/756/2019.

In response to concerns regarding incremental increases in floor area, the proposed FSR of 0.86:1 is less than the maximum floor area permitted under the *HLEP* development standard of 1:1. Council notes that FSR is the main control governing the size of the development on the subject site, and that it would be unreasonable to refuse an application on the grounds of scale when it is compliant with *HLEP* controls.

Regarding traffic volume increases and car parking demand, only 131m² (31m² in DA/629/2018/B, 100m² in DA/756/2019) has been approved to the light industrial unit development at No. 35 Sefton Road since the original approval of DA/619/2018. Based on RMS traffic modelling, this would result in 1.31 additional vehicle trips per AM and PM peak period. With regard to car parking, DA/619/2018/B and DA/756/2019 demonstrated sufficient car parking rates to cater for the additional 131m² of floor area.

The remaining additional floor area that has been approved by Council at No. 35 Sefton Road is for mezzanine levels within the self-storage units. Based on modelling and survey data, this equates to an additional 3.74 vehicle trips in the AM and PM periods (1 vehicle trip per 300m² of floor area) and no additional parking demand.

Consequently, approved alterations and modifications to the original industrial development (DA/619/2018) have resulted in a predicted 5.05 additional vehicle trips within the AM and PM periods and the demand for an additional 2 car parking spaces. Council considers that the site and the local road network has the capacity to cater for this increase. The acoustic impact of this increase has been

considered as part of Council's assessment of DA/619/2018/B, DA/756/2019 as well as this assessment.

5.1.6 On-site Sales

A submission raises concerns with on-site sales occurring from the premises.

In response to this concern, if approval were to be recommended conditions of consent would be required that restricts retail sales from the premises.

5.1.7 Statement of Environmental Effects

A submission raises concerns over comments made within the SEE regarding economic benefit of the proposal and the floor space ratio calculation (FSR).

Regarding the calculation of the FSR, Council acknowledges that the number provided within the SEE is not accurate and does not account for DA/619/2018/B and 756/2019. Notwithstanding, Council calculates that the proposal is compliant with the *HLEP* FSR control as discussed in Part 2.1.3 of this report.

Regarding the economic benefit, the submission notes that in order to provide an economic benefit to the owner/operator of the site, negative impacts would occur to nearby residents. In response to this concern, Council has assessed that the proposal is unlikely to result in any unacceptable impacts to neighbouring properties with regard to traffic generation and noise. Notwithstanding, the approval of the application with car parking shortfall is likely to result in an undesirable precedence for future applications within the precinct.

5.1.8 Dust

A submission raises concerns that the construction of the premises resulted in excess dust generation.

In response to this concern, the proposal involves the construction of an internal mezzanine level only. External dust is not anticipated to be generated as part of these works.

5.1.9 Property Values

A submission has been received raising concerns that the development would negatively impact property values of nearby properties.

In addressing this concern, Section 4.15 of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Local Environmental Plan 2013* does not require the consent authority to take into consideration the impact of a development on the value of nearby properties. Nonetheless, Council acknowledges that the proposed development complies with the development standards of the *HELP*.

5.1.10 Precedent

Submissions raise concerns that the approval of the development would result in an undesirable precedent.

In response to this concern, Council concurs that if the application were to be approved it may set an undesirable precedent as the subject unit would have a car parking shortfall.

5.2 Public Agencies

The development application was not referred to any Public Agencies for comment.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have unsatisfactorily addressed Council’s assessment criteria and would provide a development outcome that, on balance, would result in a negative impact for the community given the car parking shortfall. Accordingly, it is considered that the refusal of the proposed development would be in the public interest.

CONCLUSION

The application alterations and additions to an industrial unit comprising the installation of a 58m² mezzanine level.

The development fails to meet the desired outcomes of Council’s planning controls and would set an undesirable precedence for car parking within the locality and is unsatisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Council received a total of 26 unique submissions by way of objection. The matters raised have been addressed in the body of the report.

Having regard to the circumstances of the case, refusal of the application is recommended.

The reasons for this decision are:

- The proposed development does not comply with the requirements for car parking in accordance with the Hornsby Development Control Plan 2013.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 10.4 of the *Environmental Planning and Assessment Act 1979* in respect of the subject planning application.



RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Stephen Dobbs.

CASSANDRA WILLIAMS
Major Development Manager - Development
Assessments
Planning and Compliance Division

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Locality Plan
2.  Strata Plan
3.  Architectural Plans

File Reference: DA/558/2020

Document Number: D07979088

ITEM 1

SCHEDULE 1

1. In accordance with Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the desired outcomes or the prescriptive measures of the Hornsby Development Control Plan 2013 in respect to Part 1C.2.1 Transport and Parking as the development does not provide for a sufficient number of car parking spaces.
2. In accordance with Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the development would not be in the public interest as the proposal is contrary to the local planning controls and would create an undesirable precedence of car parking deficit in the locality.

- END OF REASONS FOR REFUSAL -

ITEM 1

2 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO AN INDUSTRIAL UNIT COMPRISING THE INSTALLATION OF A 40SQM MEZZANINE STORAGE AREA - 30/35 SEFTON ROAD THORNLEIGH

EXECUTIVE SUMMARY

DA No: DA/744/2020 (Lodged 9 September 2020)

Description: Alterations and additions to an industrial unit comprising the installation of a 40m² mezzanine level storage area

Property: Lot 30 SP 101715, No. 30/35 Sefton Road Thornleigh

Applicant: Harbourview Group Pty Ltd

Owner: JMPL Solutions Pty Ltd

Estimated Value: \$20,000

Ward: B

- The application involves the construction of a 40m² mezzanine level storage area at the rear of Unit No. 30.
- A total of 10 unique submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

RECOMMENDATION

THAT Development Application No. 744/2020 for alterations and additions to an industrial unit comprising the installation of a 40m² mezzanine level storage area at Lot 30 SP 101715, No. 30/35 Sefton Road Thornleigh be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. 31/20

BACKGROUND

Council records indicate industrial development occurring on the site from 1959.

On 19 December 2019, the Hornsby Local Planning Panel approved DA/510/2018 for the Torrens title subdivision of one lot into six as a staged development. The subject site, now known as No. 35 Sefton Road was created through this subdivision.

On 1 May 2019, the Hornsby Local Planning Panel approved DA/619/2018 for the construction of a one storey and two storey industrial building comprising 32 industrial units and 44 self-storage units, strata subdivision and landscaping. Council have subsequently approved two modifications to the development. The first involved the deletion of internal waste storage areas and the second included alterations to Unit No. 32 comprising an additional 4 car parking spaces and larger mezzanine level. Condition No. 57 of the consent applies to the subject unit which states.

57. Use of Premises

- a) *Light Industrial Unit Nos. 1 to 32 approved under this consent shall be used for 'light industry' purposes and not for any other purpose without Council's separate written consent.*

On 8 November 2019, Council approved DA/756/2019 for alterations and additions to the approved development of DA/619/2018 comprising internal mezzanine levels in 42 of the 44 self-storage units, and internal mezzanine levels in the industrial units numbered 10, 12, 15 and 16.

On 15 July 2020, DA/544/2020 was lodged for alterations and additions to an industrial unit (Unit No. 20) comprising the installation of a 58m² mezzanine level. The application is currently under assessment.

SITE

The 7,831m² site is located on the southern side of Sefton Road Thornleigh and is irregular in shape.

The site comprises a one storey and two storey industrial building comprising 32 industrial units and 44 sub floor self-storage units. 66 car spaces are provided within the complex.

Vehicle access to the site is from Sefton Road via a shared driveway with No. 35D and 35E Sefton Road.

The site is surrounded by a mixture of land uses with industrial to the east and north, medium density residential to the west and low density residential to the south.

The subject unit, No. 30 is located on the first floor and is situated toward the centre-western portion of the site. The unit has an existing gross floor area of 149m² (as per title) and includes a 33m² mezzanine floor office. The unit is allocated 2 car parking spaces.

PROPOSAL

The application proposes the construction of a 40m² mezzanine floor storage area at the rear of the unit. Access to the storage area would be via an existing internal staircase leading to the office mezzanine.

No change of use is proposed as part of this application.

ASSESSMENT

The development application has been assessed having regard to the *Greater Sydney Region Plan – A Metropolis of Three Cities*, the *North District Plan* and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

A Metropolis of Three Cities – the Greater Sydney Region Plan has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The *North District Plan* is a guide for implementing *A Metropolis of Three Cities - the Greater Sydney Region Plan* at a District level and is a bridge between regional and local planning.

The plans set strategy and actions for accommodating Sydney's future population growth and identifies key targets such as dwelling numbers, infrastructure planning, liability, sustainability and productivity. An important vision of the strategy involves managing and maintaining industrial land close to centres and transport in order to ensure critical services are available to support businesses and residents.

Part 5 of the *Metropolis of Three Cities* relates to "Productivity" and a key objective is to ensure industrial and urban services land is planned, retained and managed. It defines a light industry as a "*wide range of business that service other business and populations. Include warehousing, freight and logistics, construction and building supplies, and domestic storage*". The strategy notes that light industry should be located on mixed lot sizes depending on the sizes and needs of the business as well as being located close to surrounding residential and commercial community they directly serve.

The construction of the mezzanine level is considered consistent with *A Metropolis of Three Cities* and the *North District Plan*, by retaining industrial land and enabling further development of land that would serve a wide range of uses to support a growing population.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

2.1 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned IN1 General Industrial under the *HLEP*. The objectives of the IN1 zone are:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To permit other land uses that provide facilities or services to meet the day-to-day needs of workers in the area.*

Council notes that Condition No. 57 of DA/619/2018 restricts the use of the subject unit to “*Light Industry Purposes*” and no change of use is proposed as part of this application. No further assessment is required in this regard.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 10.5m. The proposal would not increase the height of the existing building and no further assessment is required in this regard.

2.1.3 Floor Space Ratio

In accordance with Clause 4.4 of the *HLEP*, the maximum floor space ratio (FSR) for the site is 1:1.

The original 1 and 2 storey industrial development was approved by the Hornsby Local Planning Panel with an FSR of 0.686:1 (DA/619/2018).

The application was modified under DA/619/2018/B with an increase in floor area of 31m². The floor area was further increased under DA/756/2019 with an additional 1,222m². Currently, DA/558/2020 proposes an additional 58m².

The subject proposal would add an additional 40m² of floor area, resulting in a total FSR of 0.86:1 (including DA/558/2020 if approval were obtained) which is compliant with the *HLEP* development standard.

2.1.4 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item and is not located in a heritage conservation area.

Accordingly, no further assessment regarding heritage is necessary.

2.1.5 Earthworks

Clause 6.2 of the *HLEP* states that consent is required for proposed earthworks on site. Before granting consent for earthworks, the consent authority is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

No earthworks are proposed as part of this development and no further assessment is required in this regard.

2.2 State Environmental Planning Policy No 55 Remediation of Land

State Environmental Planning Policy No. 55 (SEPP 55) requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated or requires remediation for the proposed use.

In accordance with the Conditions of Consent of DA/510/2018 and DA/619/2018 a site audit statement has been submitted for the site stating the land is suitable for industrial and commercial use. Accordingly, no further assessment is required under *SEPP 55*.

2.3 Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

As the proposal involves internal modifications only, no assessment is required under the plan.

2.4 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.5 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Hornsby Development Control Plan 2013			
Control	Proposal	Requirement	Compliance
Site Area	7,831m ²	N/A	N/A
Floor Space Ratio	0.86:1	1:1	Yes
Car Parking	2 space	1.89 spaces	Yes

As detailed in the above table, the proposed development complies with the prescriptive measures within the *HDCP*. A brief discussion on compliance with other relevant performance requirements and Part 1C General Controls is provided below.

2.5.1 Vehicle Access and Parking

As per the submitted strata plan, Unit No. 20 has 2 dedicated car parking spaces on title and a gross floor area (GFA) of 149m².

The *HDCP* has a parking requirement of 1 space per 100m² of GFA for an industrial development further than 800m from a train station.

The proposal would add an additional 40m² of GFA resulting in a total of 189m². In accordance with the *HDCP*, car parking rates should be rounded up to the nearest number, thus giving a requirement of 2 car parking spaces. The proposal is compliant in this regard.

To ensure that the mezzanine floor is used exclusively for storage, and not for another use that would result in additional car parking demand, conditions are recommended that it be limited to a storage area only and not be separately let.

With regard to traffic, Council utilises the Roads and Maritime Service's *Guide to Traffic Generating Developments 2002 (GtTGD)* to model traffic volume. The *GtTGD* provides a peak hour traffic generation of 1 trip per 100m² of GFA for factories/industry. Accordingly, modelling predicts an increase in 0.4 vehicle trips per hour (VTPH) within the AM and PM peak. Council's traffic assessment raises no concerns with the minor increase in traffic.

2.5.2 Noise

The subject unit, No. 30 is located within the centre-western portion of the site and directly surrounded on all elevations by industrial development. The additional floor area would be contained within the existing concrete unit which is located approximately 40m from any residential property to the west and 50m from any residential property to the south. Council does not consider that the additional floor area would result in any direct unacceptable noise impacts.

With regard to noise from traffic, it is considered that the additional 0.4 VTPH are unlikely to result in any significant changes to vehicle noise.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider *"the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*.

3.1 Natural Environment

The application would have a neutral impact on the natural environment. No vegetation would be removed, and no additional stormwater overflow would occur given the works would be internal only.

3.2 Social Impacts

The application would have a minor positive social impact on the local and broader community by providing additional industrial floor area which is consistent with the *State Government's Greater Sydney Region Plan - A Metropolis of Three Cities* which identifies the need to provide an additional 689,000 new jobs by 2031.

3.3 Economic Impacts

The proposal would have a minor positive impact on the local economy by providing a minor increase in industrial floor area.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider *"the suitability of the site for the development"*.

The subject site has not been identified as bushfire prone or flood prone land. The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

5. PUBLIC PARTICIPATION



Section 4.15(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 15 September 2020 and 6 October 2020 in accordance with the Hornsby Community Participation Plan. Council received a total of 10 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
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10 submissions objected to the development, generally on the following grounds:

5.1.1 Additional noise

Submissions raise concerns that the proposal would result in additional noise impacts to the adjoining residential properties to the south and west.

This matter is addressed in Part 2.5.2 of this report.

5.1.2 Hours of operation

Multiple submissions raise concerns that the approved hours of operation are not being adhered too by current owners and operators of No. 35 Sefton Road.

In response to this concern, no changes to the approved operating hours are proposed as part of this development. Council notes that the unit currently has approval to operate 7am-7pm Monday-Saturday with no work on Sundays. Any out of hours beach should be reported to Council's Compliance Branch for investigation.

5.1.3 Scale

A submission raises concerns with the increase in scale of the industrial development at No. 35 Sefton Road.

In response to this concern, the additional floor area would be contained within the existing unit and would not be seen externally. As discussed in Part 2.1.3 of this report, the site complies with the *HLEP* FSR control relating to floor area.

A further submission notes that the development does not meet the FSR control of 1:1 as common vehicle turning bays, service rooms, outdoor patios and toilets have been included in calculations.

In response to this concern, the FSR is calculated on the proportion of gross floor area (GFA) to the total site area. GFA is defined as follows:

Gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) The area of a mezzanine, and
- (b) Habitable rooms in a basement or an attic, and
- (c) Any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) Any area for common vertical circulation, such as lifts and stairs, and
- (e) Any basement:
 - (i) Storage, and
 - (ii) Vehicular access, loading areas, garbage and services, and
- (f) Plant rooms lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) Car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) Any space used for the loading or unloading of goods (including access to it), and
- (i) Terraces and balconies with outer walls less than 1.4 metres high, and

(j) *Voids above a floor at the level of a storey or storey above.*

In accordance with the above definition, common plant rooms, vehicle access and unloading areas to the self-storage units, outdoor courtyards and patios are excluded from the GFA calculation. On this basis, Council have calculated an FSR of 0.86:1 (including the current proposal).

5.1.4 Multiple applications

Submissions raises concerns about the size of the development site as a whole with respect to multiple current applications at No. 35-35E Sefton Road (formally 50A Duffy Avenue).

In response to this concern, development applications No. DA/487/2020, DA/558/2020 and DA/581/2020 at No. 35E Sefton Road and No. 20/35 Sefton Road are currently under assessment and do not form part of this application. The consent authority can only directly consider what is proposed as part of this application. As discussed above, Council anticipates that the additional 40m² of additional floor area is not likely to result in any significant noise or traffic impact to the site and surrounding properties.

5.1.5 Incremental Increase in floor area resulting in adverse impacts including traffic

Submissions raise concerns with the cumulative and incremental impact of the subject application with respect to floor area increased under DA/619/2018/B and DA/756/2019.

In response to concerns regarding incremental the increase in floor area, the proposed FSR of 0.86:1 complies with the 1:1 *HLEP* development standard. Council notes that FSR is the main control governing the size of the development on the subject site, and that it would be unreasonable to refuse an application on the grounds of scale when it is compliant with *HLEP* controls.

Regarding traffic volume increases and car parking demand, only 131m² (31m² in DA/629/2018/B, 100m² and DA/756/2019) has been approved to the light industrial unit development at No. 35 Sefton Road since the original approval of DA/619/2018. Based on RMS traffic modelling, and *HDCP* car parking rates, this would result in 1.31 additional vehicle trips per AM and PM peak period and 2 additional car parking spaces. Both DA/619/2018/B and DA/756/2019 demonstrated that a sufficient number of parking spaces were provided (an additional 4 spaces under DA/619/2018/B).

The remaining additional floor area that has been approved by Council at No. 35 Sefton Road is for mezzanine levels within the self-storage units. Based on modelling and survey data, this equates to an additional 3.74 vehicle trips in the AM and PM periods (1 vehicle trip per 300m² of floor area) and no additional parking demand given unloading spaces are provided outside of the units.

Consequently, alterations and modifications to the original industrial development (DA/619/2018) have resulted in a predicted 5.05 additional vehicle trips within the AM and PM periods and the demand for an additional 2 car parking spaces. Council considers that the site and the local road network has the capacity to cater for this increase. The acoustic impact of this increase has been considered as part of Council's assessment of DA/619/2018/B, DA/756/2019 as well as this assessment.

5.1.6 Office

A submission notes that mezzanine storage area may be used as an office given it contains windows and would result in additional parking.

In response to this concern, conditions are recommended that it be limited to a storage area only and not be sublet.

5.1.7 Security and crime

Submissions raise concerns that the subject industrial development at No. 35 Sefton Road has resulted in additional crime and lack of security in the vicinity. Additionally, submissions suggest that access gates be installed at the entrance of the site fronting Sefton Road.

In response to this concern, it is not anticipated that the proposed 40m² storage area would have any impacts on crime within the vicinity. Further, Council does not deem there would be a nexus with the subject development proposal and requiring security gates given the proposal is for a storage area and the subject site (No. 35 Sefton Road) does not front Sefton Road where security gates could be installed.

5.2 Public Agencies

The development application was not referred to any Public Agencies for comment.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council's and relevant agencies' criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

CONCLUSION

The application alterations and additions to an industrial unit comprising the installation of a 40m² mezzanine level storage area.

The development generally meets the desired outcomes of Council's planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Council received a total of 10 unique submissions by way of objection. The matters raised have been addressed in the body of the report.

Having regard to the circumstances of the case, approval of the application is recommended.

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development is not anticipated to create unreasonable environmental impacts to adjoining development with regard to acoustic amenity or privacy.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 10.4 of the *Environmental Planning and Assessment Act 1979* in respect of the subject planning application.



RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Stephen Dobbs.

CASSANDRA WILLIAMS
Major Development Manager - Development
Assessments
Planning and Compliance Division

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Locality Plan
2.  Development Plans

File Reference: DA/744/2020
Document Number: D08022497

Schedule 1**ITEM 2****GENERAL CONDITIONS**

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation, or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
10820 – A02	Site Plan	Antonio Blefari	05/08/2020	
10820 – A100	Floor Plans	Antonio Blefari	05/08/2020	
10820 – A400	S-01 S-02	Antonio Blefari	05/08/2020	

Supporting Documents

Document Title	Prepared by	Dated	Council Reference
Waste Minimisation and Management Plan	unknown	undated	D08008249

2. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must be consistent with the Development Consent plans.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**3. Building Code of Australia**

All approved building work must be carried out in accordance with the relevant requirements of the Building Code of Australia.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

4. Erection of Construction Sign

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
 - i) Showing the name, address and telephone number of the principal certifying authority for the work.
 - ii) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours.
 - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

5. Protection of Adjoining Areas

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.

Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.

6. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
 - i) Be a standard flushing toilet connected to a public sewer.
 - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.
 - iii) Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION**7. Construction Work Hours**

All works on site, including demolition and earth works, must only occur between 7am and 5pm Monday to Saturday.

No work is to be undertaken on Sundays or public holidays.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

8. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

9. Council Property

To ensure that the public reserve is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

OPERATIONAL CONDITIONS**10. Use of Premises**

- a) The mezzanine floor storage area approved under this consent shall be used for the storage of materials only and not for any other purpose without Council's separate written consent.
- b) The mezzanine floor storage area approved under this consent must not be subject to a sublease.

- END OF CONDITIONS -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

- The issue of a construction certificate prior to the commencement of any works. Enquiries can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Long Service Levy

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the Long Service Payments Corporation or Hornsby Council.

Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.

Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.

Tree and Vegetation Preservation

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and the *Environmental Planning and Assessment Act 1979*.

In accordance with these provisions a person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, lop or otherwise remove a substantial part of the trees or vegetation to which any such development control plan applies without the authority conferred by a development consent or a permit granted by Council.

Fines may be imposed for non-compliance with the *Hornsby Development Control Plan 2013*.

Note: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3m). (HDCP 1B.6.1.c).

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

Advertising Signage – Separate DA Required

This consent does not permit the erection or display of any advertising signs. Most advertising signs or structures require development consent. Applicants should make separate enquiries with Council prior to erecting or displaying any advertising signage.

3 DEVELOPMENT APPLICATION - DEMOLITION OF A TENNIS COURT, SHED, GARAGE AND DRIVEWAY AND CONSTRUCTION OF A PURPOSE BUILT ADDITION TO A DWELLING HOUSE AND CHANGE OF USE TO A 70 PLACE CHILD CARE CENTRE WITH A BASEMENT CAR PARK AND ASSOCIATED LANDSCAPING

EXECUTIVE SUMMARY

DA No: DA/259/2020 (Lodged on 8 April 2020)

Description: Demolition of a tennis court, shed, garage and driveway and construction of a purpose-built addition to a dwelling house and change of use to a 70-place child care centre with a basement car park and associated landscaping

Property: Lot 79 DP 9085, Pt Lot 80 DP 9085, Lot 81 DP 9085, Lot 82 DP 9085, Nos. 181 and 183 Beecroft Road, Cheltenham

Applicant: Tic Investments NSW Pty Ltd Atf Investment Trust

Owner: Tic Investments NSW Pty Ltd

Estimated Value: \$1,837,800

Ward: C

- The proposed child care centre does not comply with the *Hornsby Local Environment Plan 2013*, the *Child Care Guideline 2017* and the Hornsby Development Control Plan 2013.
- 53 submissions have been received objecting to the proposal.
- The application is required to be determined by the Hornsby Local Planning Panel as the proposal involves the partial demolition of a heritage item and 10 or more unique submissions have been received by way of objection.
- It is recommended that the application be refused.

RECOMMENDATION

THAT Development Application No. DA/259/2020 for the construction of a purpose-built addition to a dwelling house and change of use to a 70-place child care centre with a basement car park and associated landscaping at Lot 79 DP 9085, Pt Lot 80 DP 9085, Lot 81 DP 9085, Lot 82 DP 9085, Nos. 181 and 183 Beecroft Road, Cheltenham be refused for the reasons detailed in Schedule 1 of LPP Report No. LPP30/20.

BACKGROUND

On 10 May 2017, Hornsby Council at its meeting resolved to refuse DA/1341/2016 for the subdivision of four allotments into three lots.

On 19 November 2019, Council provided pre-lodgement advice (PL/76/2019) for the subject proposal.

On 8 April 2020, the subject application was lodged.

On 24 April 2020, Council requested a traffic report and a revised kitchen floor plan. On 24 April 2020 a traffic report was submitted. As of the date of this report, Council has not received a revised kitchen floor plan.

On 13 May 2020, contacted the applicant in order to obtain internal access to the existing dwelling house. On 3 July 2020, Council were provided internal access to the dwelling house.

On 13 July 2020, Council requested amended plans and additional information regarding heritage concerns and the car parking layout. As of the date of this report, Council has not received the requested amended plans.

On 26 August 2020, Council requested amendments to waste management. As of the date of this report, Council has not received amended plans.

On 26 August 2020, the applicant requested a formal extension to 26 September 2020 to provide amended plans and additional information. As of the date of this report, Council has not received the requested information.

SITE

The site is located on the north eastern intersection of Beecroft Road and Cheltenham Road. The site is irregular in shape and has a frontage of 61.98 metres to Beecroft Road and 61.875 metres to Cheltenham Road.

The site is comprised of four existing allotments with a total area of 4,099.74m². The site experiences a moderate grade to Cheltenham Road.

The development site contains a large, single storey Inter War period house set in well-landscaped gardens with a tennis court to the west. The existing dwelling house has been constructed over 3 lots (Lots 79, 80 and 81 in DP 9085). The dwelling house is in rendered masonry with a hipped and gabled, terracotta tile roof with rendered brick chimneys with brick detailing. There are gables to each side faced in fibro, battens and painted timber shingles. There is a large verandah to the front with a flat, metal roof supported by columns on splayed render bases with brick detailing.

The dwelling house is surrounded by gardens with a curved, gravel drive accessed off Cheltenham Road with stone gate pillars and metal gates. The garden has variety of mature trees including Palms, Deodar and Pepper and stone edged planter beds. The garden has a hedge to the front and side and a high brick wall to front of the tennis court. The dwelling house has paved patios and gardens to the rear.

A portion of the subject site (No. 183 Beecroft Road, Cheltenham) is listed as a heritage item (Item No. 267 - Garden) under the provisions of Schedule 5 (Environmental Heritage) of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

The property is located within the Beecroft/Cheltenham Plateau precinct of the Beecroft/Cheltenham Heritage Conservation Area (HCA), and within the immediate vicinity of heritage listed properties at

No. 179 Beecroft Road (Item No. 266 - Former church and grounds), No. 174 Beecroft Road (Item No. 265 - House) and No. 170 Beecroft Road (Item No. 264 - House).

PROPOSAL

The application involves the demolition of a tennis court, shed, garage and driveway and construction of a purpose-built addition to a dwelling house and change of use to a 70-place child care centre with a basement car park and associated landscaping as detailed below.

The centre would accommodate a total of 70 child and 14 staff in the following age groups:

- Ages 0-2: 30 children (8 staff required)
- Ages 2-3: 20 children (4 staff required)
- Ages 3+: 20 children (2 staff required)

The floorplan of the existing dwelling house would be re-configured for use as a child care centre and the existing northwest verandah would be demolished to allow for a small single storey addition. The re-configured floor plan and addition would comprise indoor play rooms, staff rooms, meeting rooms, cot rooms, bathroom, store room and a waiting area.

A purpose built 2 storey building would also be constructed and attached to the rear of the existing dwelling house. The ground floor of this building would comprise a kitchen, meal room, toilets, store rooms, laundry, indoor play rooms and an outdoor play space verandah. The first floor would comprise office and store rooms. Disabled access would be provided in the form of ramps to the child care centre.

Outdoor play space would be provided to the south of the new child care facility and would be divided into various age groups.

1.8m high acoustic fencing would be installed along the northern side boundaries and 1.8m high palisade fencing with a Perspex backing would be installed along the inside of the existing front boundary fence fronting Beecroft and Cheltenham Road.

A new basement level is provided beneath the new addition. This level provides parking for 6 cars and also includes a fire pump room. An additional 13 car parking spaces would be provided on-grade to the north of the existing dwelling house. Vehicle access would be via a new driveway and crossing off Cheltenham Road.

The development would require the removal of 15 trees.

The proposed operating hours of the child care centre would be 7:00am - 6:30pm Monday to Friday.

No signage is proposed as part of the development.

ASSESSMENT

The development application has been assessed having regard to the *Greater Sydney Region Plan – A Metropolis of Three Cities*, the *North District Plan* and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

A Metropolis of Three Cities – the Greater Sydney Region Plan has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies key targets such as dwelling numbers, infrastructure planning, liability, sustainability and productivity.

Part 3 of the strategy relates to "Infrastructure and Collaboration" and a key objective is to provide services and infrastructure to meet communities' changing needs. The strategy anticipates the number of infants aged between 0-4 years are projected to increase by 85,000 between 2016 and 2036 and as a consequence the number of early education and child care facilities will need to increase.

Further, the strategy cites changing demographics will affect the types and distribution of services required in neighbourhoods. The location of the proposed childcare centre would be accessible for nearby residents.

The proposed development would generally be consistent with *A Metropolis of Three Cities*, by providing additional services including job creation within a local neighbourhood.

The *North District Plan* provides a 20-year plan to manage growth and achieve the 40-year vision, while enhancing Greater Sydney's liveability, productivity and sustainability into the future. It is a guide for implementing *A Metropolis of Three Cities - the Greater Sydney Region Plan* at a District level and is a bridge between regional and local planning.

Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District.

Over the 20 years to 2036, projections show an expected increase of 6,150 children aged four years and under. The identified challenge for Hornsby Shire will be to provide additional infrastructure for students and young people. The proposed child care centre would generally be consistent with the objectives of the strategy by providing 70 additional child care places.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

2.1 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned R2 Low density residential under the *HLEP*. The objectives of the zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is defined as a '*centre-based child care facility*' and is permissible in the zone with Council's consent. Whilst the use of the land as a centre-based child care facility is

permitted in the zone, the application has failed to demonstrate that the impact of the works to achieve a childcare centre, particularly the impact on heritage would not have a detrimental impact on the locality.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposed building would be a maximum of 7.3m in height and would comply with this requirement.

2.1.3 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire and aims to conserve the heritage significance of heritage items and conservation areas including associated fabric, settings and view. Clause 5.10(4) requires the consent authority, before granting consent, to consider the effect of the proposal on the significance of the item or area concerned. An assessment is provided below in accordance with Council's local heritage provisions contained within Clause 5.10 of the *HLEP* as well as Part 9 of the Hornsby Development Control Plan (*HDCP*).

2.1.3.1 Subject Site

A portion of the subject site (No. 183 Beecroft Road, Cheltenham) is listed as a heritage item (Item No. 267 - Garden) under the provisions of Schedule 5 (Environmental Heritage) of the *HLEP*. The property is located within the Beecroft/Cheltenham Plateau precinct of the Beecroft/Cheltenham Heritage Conservation Area (HCA), and within the immediate vicinity of heritage listed properties at No. 179 Beecroft Road (Item No. 266 - Former church and grounds), No. 174 Beecroft Road (Item No. 265 - House) and No. 170 Beecroft Road (Item No. 264 - House).

The current house was built over 3 lots in the subdivision Deposited Plan 9085 that occurred in 1918 and were purchased in 2 parcels (Lots 79 and 80-81) in 1920. It was presumably the intent of the owner to construct a large house over the three lots and this is demonstrated in the siting of the existing dwelling house. Two of the lots front Beecroft Road and the third fronts Cheltenham Road and the house has been sited to face the latter with a large garden surrounding.

The garden at Nos. 181-183 Beecroft Road is historically and aesthetically significant as a good representative example of a large residential garden from the Inter-war periods. It is well maintained and retains many original and early features including two vehicle entrances with fine sandstone gate pillars, wrought iron gates, broad curved brick-edged gravel drive, boarder planting, a circular garden bed, ornamental trees and shrubs.

The garden is a unique landmark corner property retaining its original historic boundaries (combined Lots 79, 80 and 81 of DP 9085) which creates a significant visual setting for the contributory Inter-war period dwelling house. The garden size and layout are representative of the period that are traditionally large to allow for ornamental planting and garden prominence within the property.

The property is a rare example within the 'Cheltenham' 1917 subdivision. The house and garden are prime examples of the recognised architectural and landscape characteristics protected under the Beecroft Cheltenham Heritage Conservation Area.

2.1.3.2 Assessment

The historical background, physical description and an assessment of heritage significance of the dwelling has been sufficiently documented in the submitted Statement of Heritage Impact (SOHI) prepared by GBA Heritage. However, the SOHI does not adequately provide an assessment of impact on all the individual aspects of the proposal, nor does it include a detailed analysis of the heritage listed garden elements/layout or recognise the cumulative impact proposed on the garden's integrity, setting, significance and contribution to the streetscape and HCA.

Whilst undertaking the assessment of the proposal, Council notes that the *HDCP* permits reasonable change, sympathetic alterations and additions and new uses to occur to heritage items and contributory items within an HCA. Particularly to meet contemporary amenity or safety standards and to facilitate the ongoing viability of a place providing that it does not adversely affect the heritage significance. Change of use of the site to facilitate the proposed childcare centre could be considered a positive solution to ensure the long-term conservation of the heritage listed site. The proposed new use permits multiple opportunities for preservation and interpretation in and around the site including its setting, curtilage and significant elements within the garden and the contributory dwelling. Notwithstanding, the subject proposal would have an unacceptable and adverse impact on a number of elements significant in the heritage listed garden, the contributory dwelling and the character of the HCA. Council, through a request for additional information indicated that changes would need to occur for the proposal to be supported on Heritage grounds. As of the date of this report, no amended plans have been submitted to Council.

Individual heritage comments with respect to various aspects of the proposal are provided in the below table.

<i>Proposal</i>	<i>Comment</i>
1. <i>Demolition of the tennis court and shed</i>	<p>The tennis court is a modern landscape addition constructed in 1991. The allotment became associated with the heritage listed garden in 1947 by shared ownership only and remained undeveloped until 1991. The open green space is significant to the historic property boundaries, the curtilage and setting of the item, however the use as a tennis court, while complementary, it is not significant to the heritage value of the site.</p> <p>No concerns are raised to the demolition of the garage as it is considered a late addition.</p>
2. <i>Demolition and removal of the shed, later addition driveway and associated elements along the northern boundary of the site with the intention to create space for a new driveway and new parking lot to service the site.</i>	<p>Heritage listed gardens must retain significant layouts, primary features and structures. The SOHI fails to provide an adequate assessment of the garden along the northern boundary. The proposed large-scale demolition, excavation and removal of the entire northern section of the garden and modifications to the driveway would have an unacceptable impact on the item, it's integrity, it's setting and contribution to the HCA.</p> <p>The proximity of the Liquidambar (T1) to the northern boundary of the site restricts redevelopment of the existing driveway alignment. However, the subject site is heritage listed for its garden. This includes original elements, the traditional layout and Inter-War character. The following aspects are not supported by Council on heritage grounds:</p> <ul style="list-style-type: none"> • Removal of any original garden remnants including the shed (c1930), second driveway alignment and associated timber

	<p>posts. The alignment of the secondary carriageway located on the northern boundary is original and significant to the historic use of the land, exhibiting social hierarchy of different entrances, the integrity of the Inter-war driveway and access layout. The two-wheel strip driveway is an identified and traditional driveway form to be retained in the HCA.</p> <ul style="list-style-type: none"> • The garden beds generally follow the early garden configuration and contain contributory understorey plantings and its removal is not supported. • Any modification to the original driveway alignment, surface, boundary fencing, edging or gates. The driveway carriageway, edging, gravel surface, iron gates and stone fence are highly significant elements that should be retained and preserved in its original form. • Mass demolition, excavation and removal of soft landscaping and original garden paths. • Removal of the large flowering Cherry tree (T3) as it is a contributory landscape element to the heritage listed garden and HCA with prominent views from the Cheltenham Road entrance gates.
3. <i>Demolition of both verandahs on the north-western side of the dwelling to create space for the proposed addition.</i>	The proposed work is located away from the elevations viewable from Beecroft and Cheltenham Road and removes a verandah modification from 1986. Both are acceptable locations for change to facilitate modern requirements.
4. <i>Demolition of the existing bathrooms along with the partial demolition of bedroom four.</i>	The proposed work is located away from the elevations viewable from Beecroft and Cheltenham Road and removes a laundry fitout from 1986. It is an acceptable location for change to facilitate modern requirements. However, the proposed changes to Bedroom 4 are detrimental and would remove significant features of the floor plan. The window, corner fireplace and wall nubs should be retained to assist interpretation of the previous (current) layout. Construction of the internal store and water closet should be relocated, and an alternate use of the space proposed.
5. <i>Reconfiguration of the existing heritage listed dwelling floor plan to provide for the child care use</i>	<p>The proposed work is limited to spaces that have already been changed (Kitchen and Pantry), the removal of wardrobes and new openings in walls. These are potentially acceptable changes to facilitate modern requirements as the previous (current) floor plan can be interpreted and easily reversed.</p> <p>The number of existing door leaves to be removed is of a heritage concern. It is understood this is to achieve access requirements however, concessions should be considered to minimise removal of original fabric. Alternate performance solutions should be considered/</p>

	<p>investigated such as retention of doors in an open position, re-swinging or modify existing door leaves, retention of the original door openings and leaves to the current Sunroom to improve the heritage outcomes. Any original doors removed should be stored on site and/or reused within any approved development. All new doors within the original dwelling should match the period and style of the existing.</p> <p>Removal of the window to the current Bath 1 is regarded as unnecessary. An alternate solution should be used to obtain privacy for the proposed new use and retention of the original fabric.</p>
<p>6. <i>New landscaping and play areas to service the function of the childcare centre, with a 1.8 metre fence to be installed for acoustic and safety provisions.</i></p>	<p>The proposed new landscaping play areas and acoustic fence do not retain or conserve the significant garden and landscape character of the heritage item. The proposed changes in the area of exceptional significance would inherently impact the character of the garden, degrade the significance of the item, stand as intrusive elements within the formal landscape setting and for the case of structural items, obscure views from Beecroft Road.</p> <p>The following elements on the Landscape, Proposed Site and Ground Floor Plans for are not supported, being intrusive additions or alterations that would inherently impact the fundamental experience and setting of the heritage listed garden:</p> <ul style="list-style-type: none"> • 1.8m black palisade acoustic fence around the internal perimeter of the garden (Fence type 2 and 3). • 1.5m black palisade safety fence around the driveway (Fence type 4). • Removal of poisonous and/or thorny plants. • Garden edge around the rose garden. • Rubber surface and paving to existing driveway. • Safety gates within the existing driveway. • New hydrant with bollard protection on the perimeter of the driveway. • Sandpit with shade structure. • Gazebo cubby. • Removal of portion of hedge and provide timber arbour and hard surface for link between play areas. <p>The existing link between the two gardens adjacent the North-East elevation should be used to link the two play areas. The existing gravel surface and edging to the existing driveway should be retained, and no form of fencing, gates or additional edging would be supported within the area of exceptional significance.</p> <p>Further concerns are raised with the construction of structural items</p>

	within the front setback to Beecroft Road to maintain significant and public domain views to and from the item and respect the setting of the HCA. This includes the shade cover over the Children's Playspace 1 and the play structure located on the current tennis court.
7. <i>A new two storey building which will be connected to the rear of existing building and is provided with basement parking.</i>	<p>The proposal has been amended in response to the heritage comments provided by Council under the Pre-Lodgement Application. In particular:</p> <ul style="list-style-type: none"> • The new building has been modified to present as a more traditional built form in terms of design, detailing, colour, tone and materials, including a traditional hipped and pitched roof form • The first-floor component has been redesigned to respect the existing single-story dwelling and surrounding dwellings in the HCA • The new work sensitively respects the context, scale and character of the existing dwelling by the generous front setback to Beecroft Road to ensure prominent views are retained and the overall height not exceeding the height of the existing house. <p>Generally, no concerns are raised to the palette of materials and finishes. The mix of contemporary and traditional materials are an appropriate approach to blend the new purpose-built building with the original dwelling.</p> <p>However, the basement carpark, the extent of excavation, removal of deep soil planting, requirement of retaining walls with fencing and modification to the natural land form would have an unacceptable heritage impact on the item. A basement carpark would adversely impact the integrity of natural land form, the traditional landscape layout, the setting of the existing dwelling, the site's contribution to the HCA and significant views from Cheltenham Road.</p>

2.1.3.3 Heritage items in the vicinity

The proposed 1.8m acoustic fencing, gazebo, sandpit and shade cloths in the front building setback will be visible from Beecroft Road and will adversely impact public domain views and the streetscape setting of the adjacent heritage item (No. 266 - Former church and surrounds).

Modifications to the Cheltenham Road frontage such as alterations to the boundary fencing, a new pedestrian and vehicular gates, mass excavation, mass removal of landscaping and the new double driveway entrance will be highly visible and detrimental to the streetscape and setting of the HCA.

2.1.3.4 Summary

In summary, the proposal has little merit to be a sympathetic development with reasonable changes to facilitate the adaptive new use and the ongoing viability of the heritage item without adversely affecting the heritage significance of the garden, the house and contribution of the site to the HCA. The cumulative impact of the proposal would be considerable and irreversible.

The proposal does not maximise retention of the heritage values of the site and presents numerous non-compliances with the objectives of *Clause 5.10 Heritage Conservation* under the *HLEP* and desired outcomes and prescriptive measures within *Section 9.2* and *9.3* of the *HDCP*.

2.1.4 Earthworks

The objectives of *Clause 6.2* of the *HLEP* are to ensure that earthworks do not have a detrimental impact on the surrounding natural and built environment.

The application proposes up to 2.3m of excavation in order to construct a basement level carpark with further minor earthworks proposed to construct the ground level car park and driveway.

The submitted waste management plan indicates approximately 430m³ of excavation material would be required to be removed and would be either stockpiled on site for use during construction or taken off site to a facility.

Whilst the completed earthworks may not cause significant impacts to the surrounding natural and built environment in terms of drainage patterns or soil stability, the modification to the site is likely to have a detrimental heritage impact on heritage as indicated in *Section 2.1.3* of this report.

Additionally, Council notes that construction and truck access to the rear western portion of the site where the basement is proposed would be difficult. In this regard, a construction management plan was requested, however has not been submitted at the time of writing of this report. Council would also need to ensure that significant trees could be retained during earthworks and that stockpiling would occur in an acceptable location.

Accordingly, the development does not comply with *Clause 6.2(3)(h)* of the *HLEP* which requires Council to consider if appropriate measures are proposed in order to minimise the impact of the development.

2.2 State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017

State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 (Childcare SEPP) commenced on 1 September 2017.

Clause 23 of the *Childcare SEPP* requires Council to consider the relevant provisions of the *Child Care Planning Guideline 2017 (CCPG)*.

The *CCPG* will generally take precedence over the *HDCP* with the exception of building height, side and rear setbacks and car parking rates. An assessment of the application against *Part 1.3 Planning objectives*, *Part 2 Design quality principles*, *Part 3 Matters for consideration* and *Part 4 Applying the National Regulations to development proposals* is provided below:

1.3 What are the planning objectives

The planning objectives contained within *Part 1.3* of the *CCPG* include requirements that child care facilities are compatible with the existing streetscape, context and neighbouring land uses and that they seek to minimise adverse impacts of development on adjoining properties and the neighbourhood.

As per the discussion provided in response to *Part 3* of the *CCPG* below, the proposal is considered contrary to these objectives as the development would result in detrimental impacts to the heritage setting and significance of the item and the surrounding conservation area.

2 Design quality principles

As per the discussion provided in response to Part 3 of the *CCPG* below, the proposal is considered contrary to the design quality principles of Part 2 in relation to landscaping, amenity and heritage conservation.

3.1 Site selection and location

Part 3.1 of the *CCPG* encourages the siting of child care centres clear of potential environmental contaminants and major roads. In addition, Part 3.1 encourages that sites be absent from a high number of shared boundaries, and that the land characteristics be sympathetic and favourable to the amenity and privacy of adjacent properties.

Whilst the site is not directly located near public transportation nodes, it is located on a corner site of two relatively busy roads including the Transport for NSW classified Beecroft Road. The site is not bushfire or flood prone and is not within close proximity to incompatible development. The site is not located within the vicinity of any known heavy or hazardous industries, waste depots, service stations or the like.

Generally, Council raises no objections to the site location in respect to Part 3.1 of the *CCPG* with the exception of vehicle traffic. As discussed below under Part 3.8 of the *CCPG*, the application has not adequately demonstrated that the intersection of Beecroft Road, Cheltenham Road and The Promenade have capacity to cater for the additional traffic demand. Accordingly, Council is not satisfied that the proposed site is capable of supporting a 70-place child care centre.

3.2 Local, character, streetscape and the public domain interface

Part 3.2 of the *CCPG* notes that child care centre developments should contribute to and recognise existing streetscape qualities and integrate car parking into the building and site design.

It is considered that the proposal does not meet the objectives of Section 3.2 of the *CCPG* due to detrimental heritage and streetscape impacts. The *CCPG* states that “*new development should appropriately consider surrounding identified heritage items and identified heritage conservation areas. Local heritage provisions may apply to the proposal*”. As discussed in Section 2.1.3 of this report, the proposal does not appropriately consider heritage items and the surrounding conservation area.

A 1.8m timber paling fence is proposed along the northern side boundary, including forward of the building line in place of the existing fence low open style fence. The modern style fencing forward of the building line is not supported on heritage grounds.

Additionally, Council considers that the removal of 15 trees may result in significant visual changes to the site and its significance within the streetscape.

3.3 Building orientation, envelope and design

The objectives of Part 3.3 of the *CCPG* include that child care centres should be orientated to minimise visual privacy, minimise noise impacts and respond to the adjacent built form.

Generally, no objections are raised with regard to the new building's setbacks, height and roof form of the proposal. The new building has been modified since the original pre-lodgement meeting to present as a more traditional built form in terms of design, detailing, colour, tone and materials, including a traditional hipped and pitched roof form.

Notwithstanding, significant concerns are raised with the proposed driveway, car parking areas and structures within the front setback to Beecroft Road as detailed below under Section 2.9.3 of this report.

3.4 Landscaping

The objectives of Part 3.4 of the *CCPG* note that existing landscaping should be retained where feasible and the development should take into account the streetscape when siting car parking areas. The *CCPG* also encourages large trees within car parking areas to create a cool outdoor environment.

As discussed in Section 2.1.3 of this report, the proposed new landscaping, play areas and acoustic fence do not retain or conserve the significant garden and landscape character of the heritage item. The proposed changes in the area high significance would inherently impact the character of the existing garden, degrade the significance of the heritage setting, stand as intrusive elements within the formal landscape setting and for the case of structural items and obscure views from Beecroft Road.

Council notes that the car park would extend up to 1.3m from the northern boundary adjoining No. 2 the Promenade, 1m from No. 50 Cheltenham Road which may not allow for sufficient deep soil planting to provide for canopy trees to screen the car parking areas from neighbouring residential properties.

Whilst the proposed landscape plan, prepared by the Gardenmakers indicates the planting of hedging and screening surrounding the site on the northern boundary and north-western boundaries, it is not clear which species would be planted in each area. The landscape plan is therefore not considered adequate to undertake a landscape assessment of the proposal.

- 3.5 Visual and Acoustic Privacy and 3.6 Noise and air pollution

The objectives of Part 3.5 of the *CCPG* include that child care centres minimise overlooking of internal living areas and private open spaces at adjoining sites through appropriate building layout including pathways, window and door locations.

With regard to privacy, concerns are raised with the current location of the bin storage area 1m away from the shared boundary at No. 50 Cheltenham Road and 2m away from the dwelling house at that location. Council considers that an alternative storage area should be considered located away from the neighbouring dwelling. Further, minor visual privacy concerns are noted from the raised pathways and landing to access the facility. The landing at RL 118.48 would be located 1.2m above the existing ground level and may offer views into the neighbouring dwelling to the north if privacy screen planting is unable to properly establish.

Part 3.6 of the *CCPG* requires a suitably qualified acoustic professional to prepare an acoustic report to identify an appropriate noise level for a child care centre facility.

The application is supported by an acoustic assessment, prepared by Acoustic Logic. The Acoustic Report has identified two sensitive residential receivers of noise to be generated from the proposed child care centre, R1 at No. 50 Cheltenham Road located to the north of site and R2 at No. 61 Cheltenham Road located to the east of site across Cheltenham Road. Notwithstanding, the acoustic assessment does not take into account properties located to the west adjacent to the site (No. 2 The Promenade, Cheltenham and No. 179 Beecroft Road, Cheltenham). Further, the acoustic report does not consider the cumulative impact of the approved childcare facility adjoining the site at No. 179 Beecroft Road.

Based on noise monitoring, the assessment provides a background noise criteria of 42dB. Based on a calculation of background noise levels + 5dB, the assessment indicates that compliance would be achieved from outdoor play areas for both the R1 and R2 residential receivers subject to 1.8m high

timber paling fence being installed and the correct management of the number of children playing outside at once. Council also notes that given the large size of the centre, the only time during the period of 8am to 5pm where an outdoor class would not be scheduled is 1-2pm. This is likely to have an overall amenity impact on adjoining properties.

The acoustic assessment indicates that noise from traffic is unlikely to exceed noise limits for the closest residential receiver R1 at No. 50 Cheltenham Road subject to the boundary fencing being installed. Council raises concerns however with reversing vehicles and door closing to car spaces 13-18 which would be located within 3.5m to the dwelling to the north. Further concerns are raised that compliance can only be achieved through the installation of boundary fencing within the front setback to Cheltenham Road that is not contributory to the heritage conservation area.

With regard to noise incursion into the centre from Beecroft and Cheltenham Road, the acoustic assessment states that the proposal can comply with relevant noise criteria subject to the following recommendations: windows and doors be fitted with acoustic seals, windows be glazed, external walls that require penetrations use acoustic grade sealant, lightweight external walls use cement fibre sheeting and the roof be acoustically sealed and sealed gap free. If approval were to be granted, conditions of consent would be recommended that these measures be undertaken.

Part 3.6 of the *CCPG* indicates that a suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care centres close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines.

The application includes an air quality assessment, as required in the *CCPG* and the *HDGP*. The report concludes that the project site would be suitable for the proposed development, however recommends that long term monitoring would be suitable if any concerns were raised.

In summary, the proposal does not contain sufficient evidence to ensure that the centre could provide adequate acoustic and visual privacy. The proposal is not considered to meet the objectives of the *CCPG* relating to visual and acoustic privacy.

- 3.7 Hours of operation

No objections are raised to the proposed hours of operation of 7am to 6:30pm on weekdays as they are consistent with Objective C29 of the *CCPG* which limits hours of operation between 7am to 7pm on weekdays.

- 3.8 Traffic, parking and pedestrian circulation

Part 3.8 of the *CCPG* encourages centres to provide safe pedestrian access, safe vehicle access that does not obstruct traffic flow and parking that satisfies the needs of its users. An assessment regarding these objectives is provided below.

Parking and Pedestrian Safety

The *HDGP* has a parking requirement of 1 space per 4 children, giving a parking requirement of 18 spaces for the proposed centre with a capacity for 70 children. 18 parking spaces including 1 accessible parking space have been provided within the submitted plans. No objections are raised to the number of car parking spaces provided.

Pedestrian safety concerns are raised with the proposed layout of the carpark. A dedicated pedestrian path has not been provided within the car parking areas, away from reversing vehicles. Amended

plans were requested to address this concern however at the time of this assessment report, they had not been submitted.

Traffic

The RMS Guide to Traffic Generating Developments (GTGD) has rates of 0.8 vehicle trips/child during the 7:00-9:00am peak period and 0.7 vehicle trips/child during the 4:00-6:00pm peak period for child care centers. This provides traffic generation of 56 trips in the AM and 49 trips in the PM peak periods. Assuming 70 percent of the peak period occurs in the peak hour, there will be 39 vehicle trips in the AM peak hour and 34 vehicle trips in the PM peak hour.

The traffic and parking assessment provided with the application, prepared by VAGRA Traffic Planning states that *“that projected increase in the traffic generation potential of the site as a consequence of the development proposal is minimal and will not have any unacceptable traffic implications in terms of road network capacity”*. Council’s Traffic Branch cannot support this statement without a SIDRA analysis for the intersection of Beecroft Road with The Promenade and the intersection of Beecroft Road with Cheltenham Road. Council is aware that these intersections currently experience major traffic delay at peak hours. A SIDRA analysis was requested from the applicant however has not been submitted at the time of this report.

Access

The proposed centre would have a combined entry/exit driveway from Cheltenham Road. Concerns are raised with pedestrian sight lines when leaving the centre. A sight distance analysis was requested from the applicant however has not been submitted at the time of this report.

In summary and as per the above comments, Council considers that the development fails to meet key objectives of Part 3 of the CC PG and cannot be supported.

The following table sets out the proposal’s compliance with the measures of Part 4 of the CC PG:

Child Care Planning Guideline 2017 – Part 4			
Control	Proposal	Requirement	Compliance
Unencumbered indoor space	3.76m ² per child	3.25m ² per child	Yes
Unencumbered outdoor space	17.81m ² per child	7m ² per child	Yes
Storage - External - Internal	Not shown on plans 0.32m ³ per child	0.3m ³ per child 0.2m ³ per child	No Yes
On site laundry	Provided on site	Provided on site	Yes
Child toilet facilities	Provided on site	Provided on site	Yes
Administration space	Provided on site	Provided on site	Yes
Nappy change facilities	Provided on site	Provided on site	Yes

Solar Access for outdoor play	Shown on plans	30-60% solar access	Yes
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As detailed in the above table, the proposed development generally complies with Part 4 of the CCPPG with the exception of outdoor storage.

The provision of additional outdoor storage would be possible given the surplus outdoor play space. However, given the sites heritage significance, storage locations should be provided for assessment prior to determination.

Clause 25 of the SEPP contains non-discretionary development standards. This prevents the consent authority from imposing more onerous standards or refusing an application on the basis that they have not been complied with. An assessment of the application against Clause 25 of the SEPP has been carried out below:

Centre-based child care - non-discretionary development standards

- (a) *Location - the development may be located at any distance from an existing or proposed early childhood education and care facility;*

Comment: Whilst there are other child care centres within the vicinity of the site, including the adjacent centre at No. 179 Beecroft Road, the child care centre can be located at any distance from existing or proposed childhood education and care facility in accordance with Clause 25(a) of the Childcare SEPP.

- (b) *indoor or outdoor space*

- (i) *For development to which clause 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those clauses, or*
- (ii) *For development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause;*

Comment: The regulations require a minimum of 3.25m² of unencumbered indoor play area and a minimum of 7m² of unencumbered outdoor play area per child. The submitted plans indicate compliance with these requirements.

- (c) *Site area, site coverage and site dimensions - the development may be located on a site of any size, cover any part of the site and have any length of street frontage or any allotment depth;*

Comment: The site has an area of 4,099.74m² and is considered acceptable.

- (d) *Colour of building materials or shade structures - the development may be of any colour or colour scheme unless it is a heritage item or in a heritage conservation area,*

Comment: The subject site contains a heritage item and is located within a heritage conservation area. Notwithstanding, no concerns are generally raised to the palette of materials and finishes. The mix of contemporary and traditional materials are an appropriate approach to blend the new purpose-built building with the original dwelling.

2.3 Children (Education and Care Services) Supplementary Provisions Regulation 2019

On 1 September 2019, the *Children (Education and Care Services) Supplementary Provisions Regulation 2012* was repealed and the *Children (Education and Care Services) Supplementary Provisions Regulation 2019* came into force. Clause 28 of the repealed regulations provided the functional space requirements for child care centre premises, including maximum number of child places and minimum outdoor and indoor play area requirements.

The *Children (Education and Care Services) Supplementary Provisions Regulation 2019* does not stipulate provisions with regard to functional space requirements, and instead delegates these provisions to the *Child Care Planning Guideline 2017*.

2.4 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) commenced 25 August 2017 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3 of the *Vegetation SEPP* states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees. As the site contains a heritage listed item, all trees on site are protected.

The proposal indicates the removal of a total of 15 trees, with the arborist report stating that all are of medium or low retention value. Of most concern to Council, is the removal of trees 3 and 5 within the front setback to Cheltenham Road. Council notes however that the AIA indicates that the health of the trees is in apparent decline. Other concerns are raised with the major incursion (15%) into the tree protection zone (TPZ) of the neighbouring *Liquidambar styraciflua* Liquidambar (tree No. 1) from the construction of the driveway. Tree No. 1 is highly significant within the streetscape and canopy pruning would also be required to ensure that 3.5m of clearance is provided for construction vehicles. Notwithstanding, the AIA indicates that the tree could be retained with tree sensitive construction techniques.

On balance, the proposed tree removal could potentially be supported by Council subject to sufficient replacement planting and other heritage concerns being satisfied. Notwithstanding, these issues are not resolved, and replacement planting details have not been sufficiently provided. The application is therefore not considered acceptable in regard to tree removal.

2.5 State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) identifies matters to be considered in the assessment of development adjacent to particular types of infrastructure.

Frontage to a classified road

The provisions of Clause 101(2) of apply to the proposal as the site has a frontage to Beecroft Road, a classified State Road.

The clause requires the consent authority to consider the following:

- (a) *Where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *The safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*

- (i) *The design of the vehicular access to the land, or*
- (ii) *The emission of smoke or dust from the development, or*
- (iii) *The nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *The development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

In respect to Clause 101(2)(a), the application does not propose any vehicular access to Beecroft Road.

In respect to Clause 101(2)(b), Council requested traffic analysis data in order to determine whether the facility is likely to impact the intersections between Beecroft Road and Cheltenham Road. The requested information has not been submitted and Council is unable to determine if the development will impact the safety, efficiency and ongoing operation of the classified road.

With respect to Clause 101(2)(c), the application includes an acoustic and air quality report. This matter is discussed in Section 2.2 of this report.

Noise and vibrations

Clause 102 of *Infrastructure SEPP* applies to the proposal as the site has a frontage to Beecroft, a classified State Road. The Clause states the following

- (1) *This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of RMS) and that the consent authority considers is likely to be adversely affected by road noise or vibration:*
 - (a) *Residential accommodation*
 - (b) *A place of public worship*
 - (c) *A hospital*
 - (d) *An educational establishment or centre-based child care facility*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*

In regard to Clause 102(1), traffic data indicates that Beecroft Road has an annual average daily traffic volume of more than 20,000 vehicles and therefore the clause applies as the proposal is for a centre-based child care facility.

In regard to Clause 102(2), an assessment against noise and vibration incursion into the centre has been provided and is discussed in Section 2.2 of this report and is considered satisfactory.

2.6 State Environmental Planning Policy No. 55 Remediation of Land

State Environmental Planning Policy No. 55 (SEPP 55) requires that consent authority must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use. An examination of

Council's records and aerial photography has determined that the site has been historically used for residential purposes.

The application includes a Preliminary Site Investigation Report and a Hazardous Materials Survey Report, both prepared by Geotechnical Consultants Australia. Both documents indicate that the site is suitable for use as a child care centre and Council raises no objections in this regard. Notwithstanding the Hazardous materials Survey recommends the submission of a Demolition Management Plan to ensure that any potential contaminants are managed appropriately. A demolition management plan was subsequently requested from the applicant however has not been submitted.

2.7 State Regional Environmental Plan (Sydney Harbour Catchment) 2005

The application has been assessed against the requirements of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* as the land is located within the catchment of the harbour.

The submitted erosion and sediment control plan indicates that the site's northern boundary would be installed with sediment fencing. Notwithstanding, Council believes that sediment and erosion run-offs may occur on the site's southern boundary during rainfall and conditions of consent would be required if approval were granted that the site's southern boundary also contains sediment fencing during construction.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would comply with the requirements of the Policy.

2.8 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.9 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Hornsby Development Control Plan 2013 – Part 7 Community Uses			
Control	Proposal	Requirement	Compliance
Site Area	4,099.74m ²	N/A	N/A

Height	7.3m	10.5m	Yes
Storeys	2 + basement	2 + attic	Yes
Floor Area	989m ²	430m ²	No
Site Coverage	17%	30%	Yes
Number of Children	72	Max. 40	No
Recreation Space - <i>Indoor</i> - <i>Outdoor</i>	3.76m ² <i>per</i> child 17.81m ² <i>per</i> child	3.25m ² <i>per</i> child 7m ² <i>per</i> child	Yes Yes
Landscaping	59%	45%	Yes
Car Parking (@ 1/ 4 children)	18 spaces	18 spaces	Yes
Setbacks - <i>Beecroft Road (front)</i> - <i>Cheltenham Road (front)</i> - <i>Northern (side)</i> - <i>North-west (side)</i>	2m (shade cloth) 9.5m (existing) 1.35m (basement) 13m (existing)	9m 6m 2m 2m	No Yes No Yes

As detailed in the above table, the proposed development does not comply with a number of prescriptive requirements within the *HDGP*. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes. Council notes that the *CCPG* will generally take precedence over the *HDGP* with the exception of building height, side and rear setbacks and car parking rates.

2.9.1 Number of Children

Table 7.1.2(b) of the *HDGP* provides intensity controls to limit the size of child care centres. In residential zones, a maximum of 40 children is permitted for a purpose-built centre. The controls permit a capacity of 60 children when at least 33% of places are provided for 0-2-year old. The application proposes up to 70 children which does not comply with the above *HDGP* requirement.

As a consent authority cannot apply more onerous standards than required under the *Childcare SEPP*, the intensity controls of the *HDGP* as detailed above have no effect since commencement of the *SEPP*. The ages, age ratios, or numbers of children is not a matter for consideration in the *SEPP* or Guideline.

2.9.2 Scale

The *HDGP* encourages the scale of child care centres within R2 zones to be consistent with detached dwelling houses and therefore references controls contained within Part 3.1 (dwelling houses).

As per the above table the proposal would be consistent with the height, number of storeys and site coverage controls, however would not comply with the maximum floor area control of 430m². The

non-compliance with floor area is not considered a substantial issue given the large site area of 4099.74m².

2.9.3 Setbacks

Given the centre would be located within an R2 zone, dwelling house setback controls apply, with the exception of side setbacks. As per the above *HDCP* compliance table, there are several setback non-compliances as discussed below.

Beecroft Road Front Setback

Given Beecroft Road is a classified Road, a 9m front setback control applies to all buildings and structures. The proposed contains the following structures within the front 9m setback area:

- Shade Cloth (2m setback)
- Elevated play structure (3.6m)
- Covered sandpit (4m setback)
- Gazebo cubby (4m setback)

As discussed in Section 2.1.3, the inclusion of these structures within the front setback compromise the integrity of the heritage garden and cannot be supported.

Northern Side Setback

The basement car park would have a 1.35m side setback to the northern boundary adjoining No. 2 The Promenade which does not comply with the 2m control. Further, the ramp, landing and verandah adjoining No. 179 Beecroft Road would have a minimum setback of 1.75m. Whilst the non-compliances are minor, they reduce space for the planting of meaningful landscaping to surround the facility and contribute to an overall non-compliant application.

2.9.4 Transport and Parking

The proposed child care centre includes 18 off-street car spaces at the basement level which complies with the *HDCP* requirement of 1 space per 4 children. A discussion regarding transport and parking is provided in Section 2.2 of this report.

2.9.5 Waste

The application proposes a bin storage area located adjacent to the side boundary. As discussed in Section 2.2 of this report, this chosen location may have an amenity impact on No. 50 Cheltenham Road. Council have also assessed that the bin storage area would be marginally too small to cater for the size of the child care centre.

Further, the application states that the site would be serviced by a private contractor from the car park, however this is not considered in the traffic report and swept paths have not been provided to demonstrate a waste vehicle can manoeuvre and exit in a forward direction. Amended plans were requested from the application and to date, have not been submitted. Accordingly, the application cannot be supported on waste management grounds.

2.9.6 Acoustics

A discussion regarding acoustics is provided in Section 2.2 of this report.

2.10 Section 7.12 Contributions Plans

Hornsby Shire Council Section 7.12 Contributions Plan 2019–2029 applies to the development as the estimated costs of works is greater than \$100,000. Should the application be recommended approval, an appropriate condition of consent would require the payment of a contribution in accordance with the Plan.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation and Landscaping

Section 1B.6.1 of the *HDCP* prescribes works that can be undertaken with or without consent relating to trees. A discussion regarding tree removal and landscaping is provided in Section 2.4 of this report.

3.1.2 Stormwater

The application is supported by a stormwater concept plan prepared by ACOR Consultants.

The plan includes details of a pump out system for the basement and for all stormwater to be drained to Council's street drainage system on Cheltenham Road via below ground on-site detention system.

Generally, no objections are raised in this regard.

3.2 Built Environment

The proposal is considered to have a negative impact on the surrounding built environment as the proposal would not provide sufficient setbacks, deep soil planning and reduce the heritage significance of the subject item and contributory dwelling house.

3.3 Social Impacts

The proposed modification to the child care centre would provide 70 child care spaces in the locality which is considered to be a positive social contribution to the wider local community. Notwithstanding, Council considers that the proposal would have a detrimental impact to the surrounding development as described in Section 2.2 of this report.

3.4 Economic Impacts

The proposal would have a minor positive impact on the local economy by generating an increase in demand for local services.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider *“the suitability of the site for the development”*.

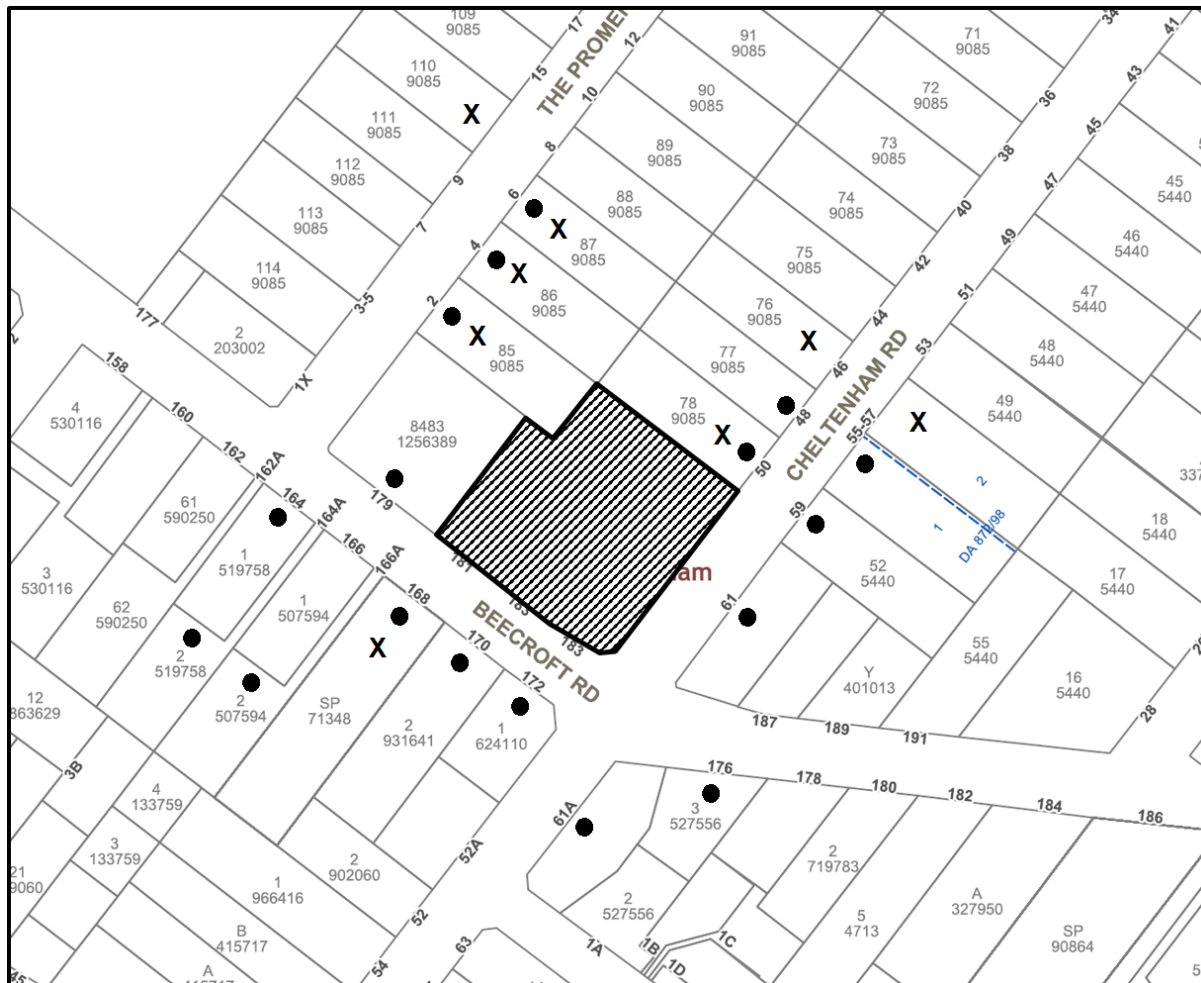
The subject site has not been identified as bushfire prone or flood prone land. The site is considered to be capable of accommodating a child care centre. Notwithstanding, the scale of the proposed development is not considered consistent with the capability of the site.

5. PUBLIC PARTICIPATION


Section 4.15(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 9 April 2020 and 7 May 2020 in accordance with the Hornsby Community Participation Plan. Council received 53 submissions objecting to the development and 1 neutral submission. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site. Other submissions were made by persons outside of the map area.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
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53 submissions objected to the development, generally on the following grounds:

5.1.1 Heritage Conservation

A discussion regarding heritage is provided in Section 2.1.3 of this report.

5.1.2 Unacceptable increase in traffic and traffic safety

Council have requested further traffic modelling which has not been provided. This matter is further discussed in Section 2.2 of this report.

5.1.3 Unacceptable off and on street car parking

The proposal complies with Council's numerical standards for car parking which takes into account child numbers and staff. Accordingly, there is no requirement to provide further car parking. This matter is further discussed in Section 2.2 of this report.

5.1.4 Unacceptable Pedestrian Safety

As discussed in Section 2.2 of this report, further information was requested regarding the carparking layout and pedestrian sight lines. As of the date of this report, the requested information has not been provided.

5.1.5 There are existing child care centres within the vicinity of the site

The child care centre can be located at any distance from existing or proposed childhood education and care facility in accordance with Clause 25(a) of the *Childcare SEPP*. No objections are raised in this regard.

5.1.6 Unacceptable noise, visual and amenity impacts from the centre to No. 50 Cheltenham Road

A discussion regarding amenity impacts is provided in Section 2.2 of this report.

5.1.7 The development would result in the removal of many trees

A discussion regarding tree removal is provided in Section 2.4 of this report.

5.1.8 The submitted documents provides conflicting locations of the bin storage area

Council notes that the location of the bin storage area varies slightly on different plans. If the application were recommended for approval amended plans would be requested.

5.1.9 Insufficient location of hydrant booster

Council does not support the location of the proposed hydrant booster as discussed in Section 2.1.3 of this report.

5.1.10 The notification sign was not displayed correctly

Submissions received note that the notification was not displayed for the required 14 days. In response to this concern, Council did not receive evidence that the sign was correctly displayed and if the application were to be supported Council would require the development to be re-notified for a further 14 days and the notification sign erected during this time.

5.1.11 No business case was submitted for the development

Council does not require a business case to be submitted with the application.

5.1.12 Boundary location may be incorrect on the submitted plans.

If approval were to be obtained, a condition would be required that a survey be undertaken to determine the exact boundary location prior to the installation of building foundations or the pouring of a concrete slab.

5.1.13 Scale of the centre is excessive

A discussion regarding the scale of the development is provided in Section 2.9.2 of this report.

5.2 Public Agencies

The development application was not referred to any Public Agencies for comment.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application has not satisfactorily addressed Council’s and relevant agencies’ criteria and would not provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would **not** be in the public interest.

CONCLUSION

The application proposes the demolition of a tennis court, shed, garage and driveway and construction of a purpose-built addition to a dwelling house and change of use to a 70-place child care centre with a basement car park and associated landscaping

The proposal is contrary to the planning objectives within Part 1.3 of the Childcare Planning Guideline 2017 in that the proposal is not compatible within the existing heritage streetscape and the proposal does not adequately minimise adverse impacts on adjoining properties and the surrounding neighbourhood. The proposal is contrary to the design principles of Part 2 in relation to heritage, landscaping and amenity. The proposal is contrary to the Part 3 considerations of the guideline with respect to Part 3.2 local character, streetscape and the public domain interface, Part 3.3 building orientation, envelope and design, Part 3.4 landscaping, Part 3.5 visual and acoustic privacy, Part 3.6 noise and pollution and Part 3.8 traffic, parking and pedestrian circulation.

The proposal is contrary to local planning controls and does not comply with the HDCP prescriptive measures for heritage and maximum number of children.

53 submissions have been received by Council objecting to the proposal. More than 10 of the submissions received are unique in respect to the concerns raised regarding the proposal. The Local Planning Panel is the determining authority for the application.

The application is recommended for refusal.

Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.




RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Stephen Dobbs.

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Attachments:

1.  Locality Plan
2.  Plans Architectural
3.  Landcape Plan

File Reference: DA/259/2020
Document Number: D08017295

SCHEDULE 1

1. In accordance with Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application is not consistent with the following objectives of the *Hornsby Local Environmental Plan 2013*:
 - 1.1 Clause 5.10 Heritage as the development would have an unacceptable impact on the heritage significance of the subject site and the surrounding heritage conservation area.
 - 1.2 Clause 6.2 Earthworks as appropriate measures have not been demonstrated that minimise the impact of the development.
2. In accordance with Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with Clause 23 of *State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017* and the *Child Care Planning Guideline 2017* as:
 - 2.1 The proposal is contrary to the planning objectives within Part 1.3 of the Guideline in that the proposal would result in detrimental impacts to the heritage setting and significance of the item and conservation area.
 - 2.2 The proposal is contrary to the design principles of Part 2 of the Guideline in relation to landscaping, amenity and heritage conservation.
 - 2.3 The proposal is contrary to the Part 3 considerations of the guideline with respect to Part 3.2 Local Character, Streetscape and the public domain interface, Part 3.3 Building Orientation, Envelope and Design, Part 3.4 Landscaping, Part 3.5 Visual and Acoustic Privacy, Part 3.6 Noise and Pollution and Part 3.8 Traffic, Parking and Pedestrian Circulation.
3. In accordance with Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal contains insufficient information in order for an assessment to be undertaken in accordance with the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.
4. In accordance with Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the development would result in an adverse environmental and amenity impact to the surrounding built environment as the proposal would not provide sufficient setbacks and would have an adverse impact on the heritage significance of the subject site and the surrounding heritage conservation area.
5. In accordance with Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the development would not be in the public interest as the proposal is contrary to the local planning controls.
6. In accordance with Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the desired outcomes or the prescriptive measures of the Hornsby Development Control Plan 2013 in respect to Part 1C.2.3 Waste Management and Part 7.1.3 Setbacks.

- END OF REASONS FOR REFUSAL -