



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 26 October 2022
at 4:00pm**



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Local Planning Panel

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1 DA/1017/2021/A - SECTION 4.55(2) MODIFICATION OF AN APPROVED CHILD CARE CENTRE INCLUDING INCREASE IN CHILDREN NUMBERS - 94 DAVID ROAD, CASTLE HILL

EXECUTIVE SUMMARY

DA No: DA/1017/2021/A (Lodged on 7 July 2022)

Description: Section 4.55(2) application to modify the design of an approved child care centre and increase the number of children from 52 to 56

Property: Lot 6 DP 800015, No. 94 David Road, Castle Hill

Applicant: Mr Darren Laybutt

Owner: Mrs Tanu Arora and Mr Kamal Deep Arora

Estimated Value: \$1,606,000 (original cost of works)

Ward: C Ward

- The proposal generally complies with the Hornsby Local Environmental Plan 2013, the Hornsby Development Control Plan 2013, State Environmental Planning Policy (Transport and Infrastructure) 2021 and the Child Care Planning Guideline with respect to landscaping, privacy, noise, traffic and safety, scale, site suitability, contamination, setbacks, tree preservation and sunlight access.
- A total of 14 submissions have been received in respect to the modification 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 and a condition imposed by the Panel is proposed to be modified/deleted.
- It is recommended that the application be approved.

RECOMMENDATION

THAT pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, Development Application No. DA/1017/2021 for demolition of all existing structures and construction of a 52 place child care centre with basement parking at Lot 6 DP 800015, No. 94 David Road, Castle Hill be amended as detailed in Schedule 1 of LPP Report No. LPP58/22.

BACKGROUND

Application History

On 30 September 2021, the DA/1017/2021 was lodged for a childcare centre with 55 children and basement carparking.

On 6 April 2022, amended plans and supporting documentation were submitted under DA/1017/2021 to amend the proposal to address issues raised in submissions and by Council. The amendments included a reduction of children from 55 to 52 places.

On 25 May 2022, the Hornsby Local Planning Panel approved DA/1017/2021 for demolition of existing structures and construction of a childcare centre for 52 children with basement carparking, subject to conditions including the following amendments:

New condition No. 1A to read:

1A. Amendment of Plans

- a) *The approved plans are to be amended as follows:*
 - i) *The small car staff car parking space located parallel to the western wall of the basement is to be deleted as marked in red on the approved plans.*
- b) *These amended plans must be submitted with the application for the Construction Certificate.*

Amend condition No. 12 of the consent for the preparation of a Construction Management Plan due to a minor error in the wording of the condition; and

Amend condition No. 72 to read:

72. Landscaping Establishment and Maintenance

The landscape works must be maintained into the future to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This must include but not be limited to automated watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

On 7 July 2022, the subject modification application to increase the number of children from 52 to 56 was submitted for Council's consideration.

SITE

The 900.5m² site is located on the south-western side of David Road, Castle Hill and contains a single storey dwelling house, swimming pool and shed.

The site experiences a 2.3 metre (5%) crossfall to the northern, front corner.

The immediate streetscape comprises of low-density residential development including a mixture of single and two storey dwelling houses. The site is within 300m from Oakhill Shopping Village, Oakhill Public School and Oakhill College.

The site is not bushfire or flood prone and is not burdened by any easements or restrictions.

APPROVED DEVELOPMENT

The approved development is for construction of a childcare centre for 52 children, comprising the following works:

- Demolition of the existing structures on the site.
- Construction of a two-storey centre-based childcare centre and basement car park with 14 car parking spaces, including one accessible space and one small space.
 - 7 car spaces are allocated to staff and 7 allocated to pick-up/drop-off.
 - 3 bicycle spaces are also proposed.
- Associated landscape works.
- The centre is proposed to operate from 7am to 6pm Monday to Friday.
- The 52 place centre would comprise the following age groups:
 - 0-2 years (4 children & 1 educator)
 - 2-3 years (15 children & 3 educators)
 - 3-5 years (33 children & 4 educators)
- The Centre would be run with a maximum of 9 staff members.

PROPOSED MODIFICATION

This Section 4.55(2) application proposes to modify the approved Child Care Centre by increasing the number of children from 52 to 56. Specifics of the modified development are as follows:

- Children/staff breakdown:
 - 0-2 yrs. - 8 children, 2 staff.
 - 2-3 yrs. - 20 children, 4 staff.
 - 3-5 yrs. - 28 children, 3 staff.
- Basement Floor Plan
 - Reinstatement of deleted staff car parking space.
 - Increase car parking spaces to 14 to accommodate a centre with maximum 56 children.
 - Centre line marking proposed to assist vehicle passing within basement.
- Ground Floor Plan
 - Front landscaping depths amended. DA approved 7m landscaping depths on both sides of the entry path now dimensioned as 6m and 7.5m front landscaped areas.
 - Front entry path and front entry door realigned.
 - Front entry door and window swapped to align with the entry pathway.
 - Increase to the 0-2 year's outdoor play area behind the 6m front landscaped area.
 - Use of stepped area above driveway ramp as transition area for the 0-2 year outdoor play area.
 - Addition of planter box in front of northern wall openings above the driveway ramp.
 - Increase to the size of the 0-2 year cot room.

- 0-2 year indoor playroom able to accommodate 8 children.
- Rear pavilion: 2 Rooms (each previously accommodating 15 children = 30 total) re-proportioned to accommodate 10 + 20 = 30 total. No change to the child capacity of the rear pavilion, but increased flexibility of staff ratios based on child age groups.
- One window added to southern elevation following room proportion changes.
- Larger fixed glass windows to western elevation above driveway following increase in the 0-2 year's indoor/outdoor transition area.
- Roof eave depths changed from 450mm to 600mm.
- Landscape/Streetscape Character
 - Street fencing updated to reflect realigned entry path and entry door.
 - Aluminium battens and screens made smaller to better compliment adjoining development facade.
 - Updated front facade perspective image showing vertical aluminium batten colour, added planter box above driveway, front entry path and front landscape wall openings.

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

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions over a 40 year period to 2056. The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

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. Further, the strategy cites changing demographics will affect the types and distribution of services required in neighbourhoods.

Between 2016-2036, the number of infants aged 0-4 years is projected to increase by 85,000 and there are projected to be 333,000 more children and young people aged 5-19 years. The identified challenge for Hornsby Shire would be to provide additional infrastructure for students and young people.

The proposed modified child care centre would be consistent with the objectives of the strategy by providing a further 4 child care places in addition to the approved 52 child care places 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”.

The relevant Environmental Planning Instruments, the Child Care Planning Guideline 2017 and the Hornsby Development Control Plan are discussed below.

2.1 Environmental Planning and Assessment Act 1979 - Section 4.55(2)

The proposal constitutes a modification under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*. Council pursuant to Section 4.55(2), Council may consider an application to amend development consent provided that, inter alia:

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if any at all), and*
- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *It has notified the application in accordance with—*
 - (i) *The regulations, if the regulations so require, or*
 - (ii) *A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.”*

Subsections (1) and (1A) do not apply to such a modification.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

With respect to (a), it is considered that the proposal as amended is substantially the same as the development originally approved.

Section 4.55(2)(b) is not applicable as the development is not an integrated development or a State significant development.

With respect to (c) and (d), the amended application was notified, and 14 submissions were received.

In accordance with Section 4.55(3), the Act requires Council as the consent authority to “take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified”.

With respect to an assessment of the matters referred to in Section 4.15(1) of the Act, these matters are generally addressed within the body of the original delegated report. With respect to the reasons given by the consent authority for the proposed modifications, the reasons provided in granting consent to this application are discussed in the body of this report and would continue to meet the desired outcomes of Council's planning controls and the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

2.2 Hornsby Local Environmental Plan 2013

The proposed modification would not alter the permissibility or original assessment of the development against the Hornsby Local Environmental Plan 2013 (HLEP) as detailed below.

2.2.1 Zoning of Land and Permissibility

The subject land is zoned R2 Low density residential under the HLEP. The objectives of the R2 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 R2 zone with Council's consent. The proposed modified development would provide facilities and services to meet the day to day needs of residents and would contribute to meeting the increasing demand for childcare the Hornsby Shire.

2.2.2 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 modification would remain unchanged in terms of height and would have a maximum height of 8.4m which complies with this provision.

2.2.3 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item, is not located in a heritage conservation area and is not within the immediate vicinity of any heritage items. Accordingly, no further assessment regarding heritage is necessary.

2.2.4 Earthworks

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

The original application was supported by a Geotechnical Assessment prepared by Martens Consulting Engineers dated 17 September 2021.

Council's original assessment concluded that the proposal would be satisfactory in regard to earthworks, subject to appropriate conditions regarding the preparation of dilapidation reports assessing impacts of excavation on adjoining properties and earthwork management measures.

No changes to the above are proposed under this modification application. The proposal complies with Clause 6.2 of the HLEP and is considered acceptable in this regard.

2.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

The application has been assessed against the requirements of chapter 3 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

2.3.1 Educational Establishments and Childcare Facilities

Chapter 3 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 aims to facilitate the effective delivery of educational establishments and early education and care facilities.

Section 3.23 of Chapter 3 requires Council to consider the relevant provisions of the Child Care Planning Guideline 2017 (CCPG).

The CCPG will generally take precedence over the HDGP with the exception of building height, side and rear setbacks and car parking rates.

An assessment of the modification 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:

2.3.1.1 Part 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, the amended proposal is considered consistent with these objectives.

2.3.1.2 Part 2 - Design Quality Principles

As per the discussion provided in response to Part 3 of the CCPG, the proposal is considered consistent with the design quality principles of Part 2 in relation to built form, landscaping, safety and amenity, privacy, solar access and noise.

2.3.1.3 Part 3 - Matters for Consideration

3.1 Site selection and location

Child care centres are a permissible land use within the subject R2 residential zone. The site is located 120m from the Oakhill Village Shopping Centre, 250m from Oakhill Drive Public School, 900m from Oakhill College, 500m from Marymount Mercy Centre, and 500m from Westminster Park and Erlestoke Park. The site, in view of the above, is close to compatible social uses, employment areas, community facilities, open space. The site is mid-way between bus stops along David Road (85m). It is well located to appropriate services and facilities.

The site is not identified as flood or bushfire prone and has a 2m crossfall which responds to the topography of the street.

No changes to the above are proposed under this modification application.

The following concern was raised in submissions with respect to the site selection and location:

- David Road is busy and a thoroughfare to local shops and schools.

Response: Council's Traffic Branch assessment identified that traffic generation is not considered an issue for this development. An analysis was submitted to Council which demonstrates that vehicles can safely enter and leave the site and the additional traffic generated by the proposed development would not change the level of service to the nearby intersection. This matter is further discussed under Part 3.8 of the CCPG discussion below.

In summary, Council raises no objection to the site location with respect to Section 3.1 of the CCPG.

3.2 Local, character, streetscape and the public domain interface

The site is within an established residential area. The prevailing character is for green front gardens, predominantly face brick with tile roof dwellings of a mixture of single and two storeys.

The SEE identified the following changes to the proposed development:

- The outdoor play area would be increased in size and relocated 6m from the front boundary.
- Alteration of the balustrading to the first floor balcony from timber-look aluminium battens to charcoal aluminium battens.
- The deletion of the windows to the room (now transition area) above the driveway and replacement with charcoal coloured aluminium battens.
- The addition of a planter box above the driveway entrance to assist in softening the less common element of the basement from the public domain. The additional landscaping also assists in offsetting the altered landscaping elsewhere in the front setback.

Response: The variation in 0-2 year outdoor space would result in a 6 metre front setback and slightly reduced landscape area. Landscape treatments within the front yard would be substantially the same, with the addition of planter boxes to the front of the 0-2 year outdoor space/above the driveway (refer to Figure 1 below), further complementing and maintaining the character of the area.



Figure 1: Ext. Colour and Materials – Into Architecture

Council considers that the modified proposal remains compatible in terms of character, streetscape and the public domain interface given the approved built form would be retained and appropriate landscape treatments would be substantially the same.

3.3 Building orientation, envelope and design

The proposed development orientates its windows and outlooks primarily to the street and rear. The outlook to neighbouring private open space, living rooms and windows has been restricted by balustrading and translucent glazing for the first floor outdoor play area. Windows have been restricted on side elevations. Larger setbacks and effective siting of buildings on the site has been adopted to assist in mitigating acoustic impacts to the outdoor play areas, in tandem with acoustic consultant guided fencing and acoustic measures.

The design of the building with the ground floor outdoor play areas between two separate parts of the building and the first-floor play area set back 16m from the rear boundary is considered a good design outcome in terms of reducing associated amenity impacts to adjoining neighbours.

Solar access is available to internal play areas, in balance with ensuring cross-ventilation and shading for warmer days.

Excavation works are required to construct the basement carpark; however, as discussed in Section 2.1.4, appropriate conditions are recommended in Schedule 1 of this report regarding the preparation of dilapidation reports, assessing impacts of excavation on adjoining properties and earthwork management measures. Additionally the amended design of the basement garage entry has reduced the visual impact of the basement from within the streetscape and is considered sympathetic to the surrounding residential developments.

Appropriate setbacks have been adopted as per the DCP to integrate the form within the streetscape. The height of the development is also compatible with the area. The front façade suitably defines and addresses the street.

A single secure entry is proposed for pedestrians off the street and is directly visible with a straight pathway. Casual surveillance to this pathway is possible from the reception area/director's office and is easily monitored. Access is not required through an outdoor play area.

The above discussion remains consistent with the modified proposal.

The centre would provide all the required services detailed in Part 4 of the CCPG. Accordingly, no objections are raised in regard to building design.

3.4 Landscaping

The objectives of Part 3.4 CCPG include providing landscaping that contributes to the streetscape and neighbourhood amenity.

The proposed landscaping would include a range of plantings across the site including 1x Coastal Banksia tree with a growth height of 12m, 8x Slender Weavers with a growth height of 8m, 6x Blueberry Ash trees with a growth height of 8m, 5x Water Gums with a growth height of 8m and 22x Lilly Pilly trees with a growth height of 6m. These larger trees would be intermixed with a number of shrubs and grass type plants.

This modification also proposes planter boxes to the front of the 0-2 year outdoor space/above the driveway to provide additional softening to this element of the proposal.

Landscaping would be provided within selected portions of the site along the boundaries of the site surrounding the play areas and screening/ softening along boundaries to reduce visual and amenity

impacts to adjoining neighbours. Council considers the proposed landscaping suitable for the proposed use as a child care centre.

The modified proposal is considered to meet the objectives of Part 3.4 of the CCPCG.

3.5 Visual and Acoustic Privacy and 3.6 Noise and Air pollution

Regarding visual privacy, a 6m front setback, substantial landscaping and fencing integrate to mask the front outdoor play area. The other indoor and outdoor areas are located behind the front building line and are not visible from public areas.

The creation of the detached rear portion of the centre with internal orientation and limited windows to the rear boundary helps reduce overlooking potential between the site and No. 15 De La Salle Place. The first floor outdoor play area is substantially setback from the rear boundary, and the side views are limited by the toilet and external storage locations and translucent acrylic glazing above the 1.2m high masonry segment to 1.8m in height. Limited to no overlooking potential exists.

Regarding acoustic privacy, the modified application is supported by a revised Noise Impact Assessment, prepared by Rodney Stevens Acoustics.

Council's assessment of the original proposal determined that the acoustic impacts were acceptable, subject to implementation of a plan of management, a number of acoustic measures, conditioned under Schedule 1 of the report.

Council engaged an external acoustic consultant to assess the modified proposal. This assessment is outlined as follows:

From the review of the Noise Impact Assessment (Report No. R210741R1 Revision 6 prepared by Rodney Stevens Acoustics (RSA) dated 27 June 2022), there are a number of errors/anomalies in Section 5.1.2. Specifically,

- *Indoor road traffic noise for the child care centre should be assessed in terms of LAeq,1hr during the peak hours, not the energy-average noise level over 24-hour period.*
- *It is not clear why the indoor road traffic noise level for the Cot Room (last row of Table 5.2) is 7dB lower than that compared to the Year 0-2 Indoor Playroom (first row of Table 5.2), given the Cot Room is nearer to the road.*

We recommend request be made to update the report to address the errors/anomalies. Albeit, despite of the above errors/anomalies, Acoustic Consulting Engineers' opinion is that with the implementation of the recommendations in Section 6.2 of the Report No. R210741R1 Revision 6, road traffic noise will achieve the indoor road traffic noise assessment objectives.

We understand that the application for the child care centre with a capacity for fifty-two (52) children has been approved. With the proposed the proposed increase of four (4) children aged 0-2 in the front play area, our opinion is that additional noise impact will be insignificant.

We recommend the following modifications to Condition 16(a) to 16(c):

- *16(a) change reference of Report No. R210741R1 Revision 5 dated 2 May 2022 to Report No. R210741R1 Revision 6 dated 27 June 2022 (or latest update);*
- *16(b) acoustic treatment must be shown and documented on the CC drawings and installed for the change reference of Report No. R210741R1 Revision 5 dated*

2 May 2022 to Report No. R210741R1 Revision 6 dated 27 June 2022 (or latest update); and

- *16(c) change reference of Report No. R210741R1 Revision 5 dated 2 May 2022 to Report No. R210741R1 Revision 6 dated 27 June 2022 (or latest update).*

We recommend the following addition to Condition 16:

- *16(d) noise from the child care centre shall comply with the assessment objectives in Report No. R210741R1 Revision 6 dated 27 June 2022 (or latest update) during operation. In the event of noise complaint(s) received, noise measurements shall be conducted to demonstrate compliance or otherwise and additional control measures (if required) shall be implemented to ensure the assessment objectives are achieved.*

Based on the above comments, Council requested an amended Noise Impact Assessment Report which adequately addressed the errors/anomalies identified above. As such, an amended condition of consent has been imposed in Schedule 1 of this report to require the amended Noise Impact Assessment (Report No. R210741R1 Revision 7, prepared by Rodney Stevens Acoustics dated 23 September 2022) to be complied with.

The modified proposal meets the objectives of Parts 3.5 and 3.6 of the CCPG and is considered acceptable, subject to conditions.

3.7 Hours of operation

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

No changes to the above are proposed under this modification application.

3.8 Traffic, parking and pedestrian circulation

The application proposes 14 car parking spaces comprising 7 staff spaces, and 7 visitor spaces (including 1 disabled space).

An amended Traffic and Parking Impact Assessment (TPIA) was prepared by McClaren Traffic Engineering and submitted with the subject modification application. The assessment concludes that the proposed parking arrangement is in accordance with Australian Standard AS2890.1 and would allow for vehicles to enter and exit in a forward direction.

The RMS Guide to Traffic Generating Developments has rates of 0.8 vehicle trips/ child during the 7-9am peak period and 0.7 vehicle trips/ child during the 4-6pm peak period for long-day care. The TPIA estimates that *'during the 7-9am period the traffic generated by the site equates to 44 vehicles trips (22 IN; 22 OUT) based upon a rate of 0.8 vehicle trips per child. For the 4-6pm period, the site generated traffic equates to 39 vehicle trips (20 IN; 19 OUT) based upon a rate of 0.7 vehicle trips per child as per the RTA Guide.'* The number of trips generated by the proposed development will not change the Level of Service (LoS) of nearby intersections. Traffic generation is not considered an issue of this modified development.

The HDCP has a parking requirement of 1 space per 4 children, giving a parking requirement of 14 spaces for the proposed child care centre with a capacity for 56 children. 14 parking spaces including 1 accessible parking space have been provided and shown on the drawings. The number of off-street car parking spaces complies in this regard, and all drop off /pickup parking spaces are to be 2.6m wide and staff parking 2.4m wide.

Council's Traffic Branch support the modified application on traffic and pedestrian safety grounds, subject to the following conditions:

- *All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.*
- *Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.*
- *All vehicular entry on to the site and egress from the site shall be made in a forward direction.*
- *All parking for people with disabilities is to comply with AS/NZS 2890.6:2009 Off-street parking for people with disabilities.*
- *Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.*

In addition, under the original application, the Panel resolved to adopt the Council officer's report recommendation and approve the proposed development, subject to the conditions contained in Schedule 1 of the report and the following amendment:

New condition No. 1A to read:

1A. Amendment of Plans

- a) *The approved plans are to be amended as follows:*
 - i) *The small car staff car parking space located parallel to the western wall of the basement is to be deleted as marked in red on the approved plans.*
- b) *These amended plans must be submitted with the application for the Construction Certificate.*

The modification application proposes to reinstate this car parking space to meeting minimum parking requirements. The amended Traffic and Parking Impact Assessment (TPIA) prepared by McClaren Traffic Engineering proposed the following justification with regards to the proposed off street parking design:

The proposed off-street car park has been designed in accordance with AS2890.1:2004 and AS2890.6:2009 (or better) where applicable. The following design features are relevant to note:

- *Parent / Visitor spaces with minimum dimensions of 2.6m width by 5.4m length.*
- *Staff spaces with minimum dimensions of 2.4m width by 5.4m length.*
- *Disabled parking spaces with minimum dimensions of 2.4m width by 5.4m length and adjacent shared space with minimum dimensions of 2.4m width by 5.4m length.*
- *Two-way driveway of 5.5m width and appropriate clearances to high objects.*
- *Compliant aisle widths throughout.*
- *Compliant gradients throughout.*
- *A line marked double white line to assist vehicles entering and exiting the basement.*

Based off the traffic engineers justification outlined above, Council raises no concerns with reinstating the required 14th car parking space within the basement.

The modified proposal meets the objectives of Parts 3.8 of the CCPG and is considered acceptable, subject to conditions.

In summary, the proposal is considered acceptable with regard to Part 3 of the CCPG.

2.3.1.4 Part 4 - Applying the National Regulations to Development Proposals

The following table sets out the proposal's compliance with the measures of Part 4 of the CCPG:

Child Care Planning Guideline 2017 - Part 4				
Control	Approved development	Proposed modification	Requirement	Compliance
Unencumbered indoor space (per child)	3.49m ² per child	3.28m ² per child	3.25m ² per child	Yes
Unencumbered outdoor space (per child)	7.1m ² per child	7.06m ² per child	7m ² per child	Yes
Storage				
- <i>External</i>	>0.3m ³ per child	>0.3m ³ per child	0.3m ³ per child	Yes
- <i>Internal</i>	>0.2m ³ per child	>0.2m ³ per child	0.2m ³ per child	Yes
On site laundry	Provided on site	Provided on site	Provided on site	Yes
Child toilet facilities	Provided on site	Provided on site	Provided on site	Yes
Administration space	Provided on site	Provided on site	Provided on site	Yes
Nappy change facilities	Provided on site	Provided on site	Provided on site	Yes
Solar Access for outdoor play	>30-60%	>30-60%	30-60%	Yes

As detailed in the above table, the proposed modified development complies with Part 4 of the CCPG.

Section 3.26 of the Transport and Infrastructure 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 Section 3.26 of the Transport and Infrastructure 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: The proposed child care centre is not located within the immediate vicinity of another centre.

- (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 900.5m² and is considered acceptable in size and dimension to accommodate the proposed child care centre.

- (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 site does not contain a heritage listed item and is not located in a heritage conservation area. No objections are raised in this regard.

In summary, the proposed modified centre-based child care centre would comply with key Transport and Infrastructure SEPP provisions and is assessed as satisfactory in this regard.

2.4 State Environmental Planning Policy (Resilience and Hazard) 2021

The application has been assessed against the requirements of Chapter 4 of State Environmental Planning Policy (Resilience and Hazard) 2021.

2.4.1 Chapter 4 Remediation of Land

Section 4.6 of the Resilience and Hazard SEPP states that consent 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.

A Detailed Site Investigation (DSI) accompanied the application for the approved development and concluded that *'subject to appropriate site validation works, we would consider the site to be suitable for the proposed childcare centre development'*. Accordingly, appropriate conditions of consent were imposed on the approved development and no changes to the above are proposed under this modification.

2.5 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of Chapters 2 and 9 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.5.1 Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of this policy aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

The proposed modification does not require any additional tree removal from what was approved in the original application, and further consideration of this policy is not required.

2.5.2 Chapter 9 Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury-Nepean River. The aim of this chapter is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of development are considered in the regional context.

Part 9.2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture, which were considered at the time of the assessment of the original application.

The proposed modification would not alter the original assessment and the existing conditions of consent address the requirements of chapter 9 of the Biodiversity and Conservation SEPP.

2.6 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.

2.7 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). As noted in Section 2.3.1 of this report, the Childcare Planning Guideline generally overrules the HDCP with the exception of setbacks and car parking. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP - Part 7 Community Uses				
Control	Approved	Proposed	Requirement	Compliance
Site Area	900.5m ²	900.5m ²	N/A	N/A
Floor Area	386m ²	366m ²	430m ²	Yes
Site Coverage	32%	32%	max. 40%	Yes

Height	8.4m	8.4m	8.5m	Yes
Number of Children	52	56	40	No
Recreation Space				
- Indoor	3.49m ² per child	3.28m ² per child	3.25m ² per child	Yes
- Outdoor	7.1m ² per child	7.06m ² per child	15m ² per child	No
Landscaping	36%	34%	Min. 40%	No
Car Parking (@ 1/4 children)	13 spaces	14 spaces	14 spaces	Yes
Setbacks				
- Front	7m	6m	6m	Yes
- East Side	2m	2m	2m	Yes
- West Side	2m	2m	2m	Yes
- Rear (ground floor)	3m	3m	3m	Yes
- Rear (first floor)	16m	16m	8m	Yes

ITEM 1

As detailed in the above table, the amended development generally complies with the prescriptive measures within the *HDCCP* with the exception of number of children, outdoor recreation space and landscaping. A brief discussion on compliance with relevant performance requirements and Part 1C General Controls is provided below.

2.7.1 Scale

The *HDCCP* limits the capacity of a child care centre in a residential zone to 40 places for a purpose built centre, or 60 places if at least 33% of all places are provided for 0-2 year old children if certain other requirements are met. Additionally, the *HDCCP* requires 15m² of outdoor recreation space per child.

Notwithstanding the above, Section 3.27 of the Transport and Infrastructure SEPP states that:

“(1) A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purposes of a centre-based child care facility — ...;

(2) This clause applies regardless of when the development control plan was made.”

Accordingly, the Transport and Infrastructure SEPP removes the limit on 40 places and 15m² outdoor recreation space per child as they are controls under a development control plan control. These limitations do not apply.

In line with the Transport and Infrastructure SEPP, the centre provides sufficient size per child to meet the indoor and outdoor area requirements, and there the capacity of the centre can be supported.

2.7.2 Landscaping

The proposal would include a range of plantings across the site including 1x Coastal Banksia tree with a growth height of 12m, 8x Slender Weavers with a growth height of 8m, 6x Blueberry Ash trees with a growth height of 8m, 5x Water Gums with a growth height of 8m and 22x Lilly Pilly trees with a growth height of 6m. These larger trees would be intermixed with a number of shrubs and grass type plants.

In support of the 6% landscape non-compliance detailed in the table above, it should be noted that the proposal was amended to improve landscaping within the front setback and improve the overall visual impact of the development from within the streetscape.

The main reason for this minor variation is due to the outdoor play areas not meeting the definition of landscape areas due to the use of a ground surface soft fall material rather than turf.

Whilst some of these soft fall areas could be turfed, in this instance it would be impractical for this to occur due to ongoing maintenance issues.

In line with the above, the proposal is acceptable with regards to Part 7.1.4 Landscaping of the HDCP and meets the objectives of Part 3.4 of the CCPG.

2.7.3 Waste Management

The child care centre would generate a demand for 20L/child/week for garbage and 10L/child/week for recycling. The minimum required bins are 1x 660L garbage bin serviced twice weekly, plus 1x 660L recycling bin serviced weekly as proposed in the Waste Management Plan.

The bin storage area would be located along the side fence and is well screened by landscaping in the front setback. It has sufficient space for the required number of bins.

The bin carting route is an accessible path of travel and about 2m wide. The gate would need to be wide enough to allow the 660L bins through (minimum width 960mm) which is conditioned in Schedule 1 of this report.

In addition, since the proposed child care centre is located within a residential area, waste collection times will be restricted to 6AM to 8PM weekdays and 8AM to 8PM weekends and public holidays.

No changes to the above are proposed under this modification application.

Subject to conditions, the proposal is acceptable with regards to Part 1C.2.3 Waste Management of the HDCP.

2.8 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. The original consent includes a condition requiring the payment of a contribution in accordance with the Plan. No changes to the contribution amount are required under this modification application.

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

21 trees would be removed or impacted by the development, 16 of which would be removed and 5 protected.

The original application was supported by an Arboricultural Impact Assessment prepared by Bellevue Tree Consultants, dated 17 September 2021.

Council's tree assessment of the proposed raised no objection to the removal of these trees as they were considered either exempt species under Table 1B.6(s) of the HDCP, of low retention value or unsuitable for retention on the site. Whilst tree loss is not ideal, there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity as conditioned in Schedule 1 and detailed in the approved Landscape Plan.

The Landscape plan proposes the planting of 1x Coastal Banksia tree with a growth height of 12m, 8x Slender Weavers with a growth height of 8m, 6x Blueberry Ash trees with a growth height of 8m, 5x Water Gums with a growth height of 8m and 22x Lilly Pilly trees with a growth height of 6m. These larger trees would be intermixed with a number of shrubs and grass type plants.

In addition, to ensure the protection of trees and bushland on the site, a project arborist with AQF Level 5 qualifications must be appointed to assist in compliance with the conditions of consent and to implement and monitor environmental protection measures during the construction of the approved development, as conditioned in Schedule 1.

No changes to the above are proposed under this modification application.

3.1.2 Stormwater Management

The original application proposed the installation of an on-site detention system located underneath the proposed driveway which would drain to Council's street drainage system.

Council's stormwater assessment raises no objections with the proposed method of stormwater disposal, subject to conditions.

No changes to the stormwater management are proposed under this modification application.

3.2 Built Environment

3.2.1 Access and Mobility

The original application was supported by an Access Report prepared by Access-i. Further, to ensure pedestrian and road safety, Council required the proposed drop off/parking spaces for the childcare centre within the basement to be re-arranged so that there is no pedestrian/vehicle conflict within the car parking aisle.

No changes are proposed in this regard and the modified development remains compliant with the relevant accessibility provisions and pedestrian and vehicle safety requirements.

3.2.2 Traffic

The assessment of traffic impacts is discussed in this report under Section 2.3.3 which concludes that traffic generation would not result in an unacceptable impact in terms of traffic and safety on the surrounding road network.

3.3 Social Impacts

The proposed child care centre would not result in an unacceptable social impact to the local community and would provide additional childcare facilities to meet the needs of local residents. This is consistent with the State Government's A Metropolis of Three Cities which identifies the need to provide an additional 85,000 child care places by 2036.

3.4 Economic Impacts

The proposal would have a minor positive impact to the local economy by generating an increase in local employment opportunities.

4. SITE SUITABILITY

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

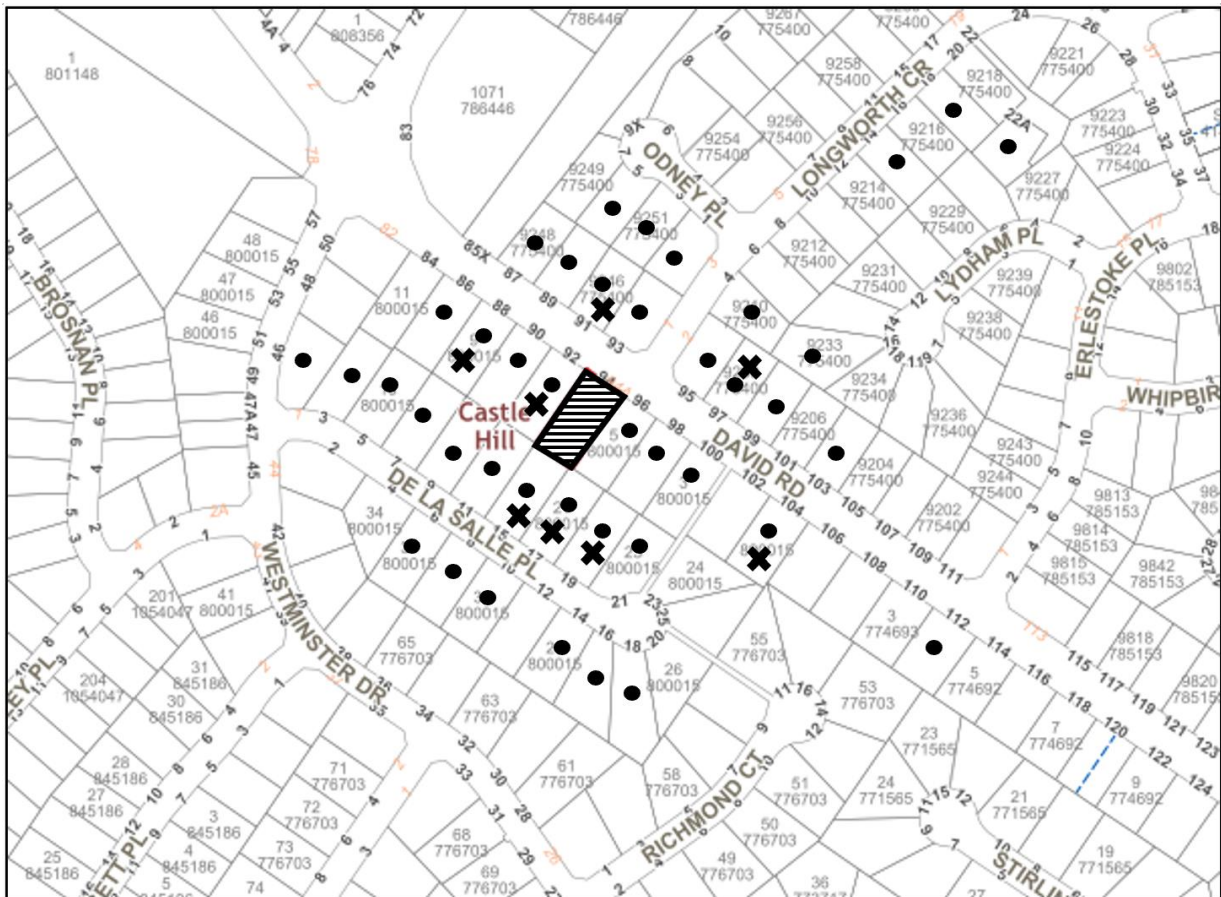
The subject site has not been identified as bushfire prone or flood prone land. The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

5. PUBLIC PARTICIPATION


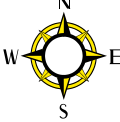
Section 4.15(1)(d) of the Act requires Council to consider *"any submissions made in accordance with this Act"*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 11 July 2022 and 1 August 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 14 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

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<ul style="list-style-type: none"> X SUBMISSIONS RECEIVED 		
<p>2 SUBMISSIONS WERE RECEIVED OUT OF MAP RANGE OR UNKNOWN</p>			

14 submissions objected to the development, generally raising similar concerns outlined under the original proposal. Issues raised included:

- Increase in number of children by 4 is unacceptable.
- The original DA approval should be revoked.
- Question about how the operations of the Centre would be managed/enforced and how any complaints would be handled.
- Increased traffic and safety problems, particularly in the morning and afternoon during local school drop off/pick-up periods with long queues along David Road.
 - Concern also regarding pedestrian safety.
- Limited on road parking availability in the area.
 - Local bus stops attract people to park all day along David Road.
- The number of child care centres that already exist within the surrounding area.

- Lack of demand for child care due to ageing population in the area.
- Increased noise impacts to the neighbouring properties.
 - Specifically noted by one neighbour that they work from home and this development will have significant amenity impact in this regard.
 - Concerns regarding the types of acoustic fencing proposed.
- Concerns regarding the proposed location/operations of the child care centre surrounded by residential properties.
 - Concerns regarding the number of children proposed.
 - Concerns that a precedent will be set, and similar commercial/business developments will pop up all over the area.
 - Concerns regarding de-valuing of properties as a result of this type of development.
- Lack of parking – concerns the 14 basement car parking spaces will be used by the staff and the parents will be required to park on the street.
 - Concerns regarding the car park design and lack of turning area.
- Overall concerns regarding insufficient landscaping on the site.
- Objections to the underground/basement car park - not in keeping with surrounding residential area.
- Lack of compliance with ages of children, quantity of children, outdoor space available in centre as per Table 7.1.2(b) of the HDCP - SEPP overrides this requirement.
 - Also, concern regarding outdoor play area in the front setback - non-compliant with HDCP.
- Concern regarding construction timeframes.
- Privacy impacts to adjoining properties due to the two storey structure.
- The proposed development/materials and finishes is not in keeping with the surrounding residential developments.
- Concern regarding geotechnical assessment and stability of the site. Concerns relating to damage to adjoining properties as a result of significant excavation.
- Lack of evacuation plan for the CCC.
- Overall extensive use of the residential site.

The merits of the matters raised in community submissions have been addressed in the assessment of the original development application and in this report with regard to the proposed modifications with the exception of the following:

5.1.1 Traffic Study Undertaken During Lockdown

As outlined in the supporting Traffic and Parking Study, the proponent collected traffic data on 18 March 2020. This was not during a lockdown period and schools were operating at the time. From Council's traffic observations and supporting data, the traffic volumes during this period would have

been around 85% of normal traffic conditions and the Traffic and Parking Study is considered acceptable in this regard.

5.1.2 Car Parking

As outlined under Part 1C.2.1 Transport and Parking of the HDCP, child care centres require 1 car parking space per 4 children. Therefore, given the modification application proposes 56 children, 14 car parking spaces would be required.

The application proposes 14 car parking spaces which meets the requirements of the HDCP.

5.1.3 Construction Timeframes

Some submissions raised concerns with how long the construction work would take and whether this could be controlled.

In response to these submissions, it should be noted that the only time constraints Council can impose on an applicant with regards to construction is that the works must be physically commenced within 5 years of the date of consent and all work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday (unless otherwise approved in writing by Council due to extenuating circumstances). No work is to be undertaken on Sundays or public holidays.

5.1.4 Lack of Details in Evacuation Plan

Concerns were raised that the evacuation plan was inadequate.

To address this concern, a condition is recommended in Schedule 1 of this report that Emergency and evacuation procedures/ plans must be in accordance with Clauses 97 and 168 of the Education and Care Services National Regulations and maintained in perpetuity.

5.1.5 Future Operations of the Child Care Centre and Complaints

Operation of the childcare centre is a matter for the staff and management to ensure compliance with conditions of consent.

The supporting Plan of Management outlines complaints procedures and policies that would be in place in order to resolve any complaints received. This includes details of who to contact in relation to the type of complaint.

If future concerns are raised that the Centre is in breach of any conditions of consent, customer service requests can be made through Council's Online Service Portal for Council's Compliance Team to investigate.

5.1.6 Acoustic Fencing

As outlined under Section 2.3.3 of the report, a thorough acoustic assessment was made by an acoustic consultant and further reviewed by a Council engaged acoustic consultant confirming that the adoption of the recommendations of the Acoustic Report would achieve an acceptable level noise criteria and suitable acoustic barrier fencing details.

Subject to the implementation of acoustic measures in accordance with the recommendations of the Noise Impact Assessment (Revision 7) prepared by Rodney Stevens Acoustics, dated 23 September 2022, the modifications to the proposed development would not result in unreasonable amenity impacts to neighbours.

5.2 Public Agencies

The modified development application was not required to be 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 modified 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 modification would be in the public interest.

CONCLUSION

The Section 4.55(2) application proposes to modify the design of an approved child care centre and increase the number of children from 52 to 56.

The modified 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 14 submissions during the public notification period. The matters raised have been addressed in the body of the report.

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

The reasons for this decision are:

- The proposed modified development is a permissible land use in the R2 Low density residential zone and the Panel acknowledges that the provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021 override any inconsistency with the Hornsby Local Environment Plan 2013 and the Hornsby Development Control Plan 2013.
- The proposed modified development generally complies with the requirements of the relevant environmental planning instruments, the Child Care Planning Guideline and the Hornsby Development Control Plan 2013.
- The modified development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity, privacy, noise, vegetation preservation, parking and traffic.

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 Madeleine Bayman.

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.  Architectural Plans
3.  Landscape Plan
4.  Management Plan

File Reference: DA/1017/2021/A
Document Number: D08494958

SCHEDULE 1

Date of this modification:	26 October 2022
Details of this modification:	To increase the number of children from 52 to 56 and alterations to the layout of the approved development.
Conditions Added:	16d)
Conditions Deleted:	1A
Conditions Modified:	1, 16a), 16b), 16c) and 70a)

ITEM 1
CONDITIONS OF APPROVAL
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 (modified)

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 Ref. No.
Dwg No. DA01	Demolition Plan	INTO Architecture	05/04/22	D08420178
Dwg No. DA02B (amended)	Site Plan	INTO Architecture	24/06/22	
Dwg No. DA04C (amended)	Basement Floor Plan	INTO Architecture	28/06/22	
Dwg No. DA05D (amended)	Ground Floor Plan	INTO Architecture	24/06/22	
Dwg No. DA06B (amended)	First Floor Plan	INTO Architecture	24/06/22	
Dwg No. DA07B	Roof Plan	INTO Architecture	24/06/22	

(amended)				
Dwg No. DA08B (amended)	Section A	INTO Architecture	24/06/22	
Dwg No. DA09D (amended)	Section B	INTO Architecture	24/06/22	
Dwg No. DA10B (amended)	Section C	INTO Architecture	24/06/22	
Dwg No. DA11C (amended)	Elevation North	INTO Architecture	24/06/22	
Dwg No. DA12A (amended)	Elevation South	INTO Architecture	24/06/22	
Dwg No. DA13C (amended)	Elevation East and West	INTO Architecture	24/06/22	
Dwg No. DA14C (amended)	External Colours and Materials	INTO Architecture	24/06/22	
Not indicated	Tree Protection Plan	INTO Architecture – edited by HSC	18/10/21	D08420178
Dwg No. L/01 'B' (amended)	Ground Floor Landscape Plan	A Total Concept	28/06/22	
Dwg No. L/02 (amended)	Level 1 Landscape Plan	A Total Concept	28/06/22	
Dwg No. L/03 (amended)	Landscape Details	A Total Concept	28/06/22	
Dwg No. L/04 (amended)	Landscape Specifications	A Total Concept	28/06/22	
Dwg No. SW- 000, Rev. B	Cover Sheet and Legend Stormwater Services	ADCAR Consulting	15/09/21	D08420178
Dwg No. SW- 100, Rev. B	Site Plan Stormwater Services	ADCAR Consulting	15/09/21	D08420178
Dwg No. SW- 0101, Rev. A	Basement Floor Plan Stormwater Services	ADCAR Consulting	14/09/21	D08420178
Dwg No. SW- 102, Rev. B	Ground Floor Plan Stormwater Services	ADCAR Consulting	15/09/21	D08420178
Dwg No. SW- 103, Rev. A	Level 1 Floor Plan Stormwater Services	ADCAR Consulting	14/09/21	D08420178
Dwg No. SW- 104, Rev. A	Roof Plan Stormwater Services	ADCAR Consulting	14/09/21	D08420178
Dwg No. SW- 104, Rev. A	Sediment and Erosion Control Plan Stormwater Services	ADCAR Consulting	14/09/21	D08420178

Supporting Documentation:

Document Title	Prepared by	Dated	Council Ref No.
Management Plan - Version 3.01 (amended)	Not indicated	29/06/22	D08446238

ITEM 1

Detailed Site Investigation	GeoEnviro Consultancy	15/03/22	D08372575
Noise Impact Assessment Rev. 7 (amended)	Rodney Stevens Acoustics	23/09/22	D08499509
Geotechnical Assessment	Martens Consulting Engineers	17/09/21	D08257702
Arboricultural Impact Assessment	Bellevue Tree Consultants	17/09/21	D08257685
Waste Management Plan	Darren Laybutt	20/09/21	D08257679
Traffic and Parking Assessment – Issue E (amended)	McLaren Traffic Engineering	29/06/22	D08446230
Construction Vehicle and Pedestrian Plan of Management Rev. 1.1	The Traffic Planner	02/05/22	D08400750

ITEM 1

1A. ~~Amendment of Plans (deleted)~~

- ~~c) The approved plans are to be amended as follows:~~
- ~~i) The small car staff car parking space located parallel to the western wall of the basement is to be deleted as marked in red on the approved plans.~~
- ~~d) These amended plans must be submitted with the application for the Construction Certificate.~~

2. Appointment of a Project Arborist

- a) To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports as specified by the conditions of consent.
- b) Details of the appointed project arborist must be submitted to Council and the PCA with the application for the construction certificate/subdivision works certificate.

3. Removal of Trees

- a) This development consent permits the removal of tree(s) numbered 1, 3 to 14 (inclusive), 17, 18 and 21 as identified on the Tree Location and Protection Plan of the Arboricultural Impact Assessment (AIA) prepared by Bellevue Tree Consultants, dated 17 September 2021.
- b) No consent is granted for the removal of tree(s) numbered 2, 15, 16, 19 and 20 as these trees contribute to the established landscape amenity of the area/street/scape.

Note: The removal or pruning of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2013 (HDCP).

4. 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) A separate Road Works Approval must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act 1993*.

- c) The Construction Certificate/ Road Works Approval plans must be consistent with the Development Consent plans.

5. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029, **\$16,060** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$1,606,000**.
- b) The value of this contribution is current as of 28 April 2022. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\begin{aligned} \$C_{PY} &= \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}} \\ \$C_{PY} &= \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}} \end{aligned}$$

Where:

\$C_{PY} is the amount of the contribution at the date of Payment.

\$C_{DC} is the amount of the contribution as set out in this Development Consent.

CPI_{PY} is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

CPI_{DC} is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of this Development Consent.

- c) The monetary contributions shall be paid to Council:
- (i) Prior to the issue of the Subdivision Certificate where the development is for subdivision.
 - (ii) Prior to the issue of the first Construction Certificate where the development is for building work.
 - (iii) Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work.
 - (iv) Prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

Note: It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Note: In accordance with Ministerial Directions, the payment of contribution fees for development with a cost of works of over \$10 million can be deferred to prior to Occupation Certificate.

Note: The Hornsby Shire Council Section 7.12 Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

6. Building Code of Australia

Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the *National Construction Code - Building Code of Australia*. All building work must be carried out in accordance with the requirements of the *National Construction Code - Building Code of Australia*.

7. Fire Safety Schedule

A schedule of all proposed essential fire safety measures to be installed in the building (e.g. hydrants, hose reels, emergency warning systems etc.) shall be submitted with the construction certificate application.

8. Disabled Access

The building is required to meet the requirements of the Disability (Access to Premises Buildings) Standards 2010.

9. Sydney Water – Approval

This application must be submitted to *Sydney Water* for approval to determine whether the development would affect any *Sydney Water* infrastructure, and whether further requirements are to be met.

Note: Building plan approvals can be obtained online via Sydney Water Tap in™ through www.sydneywater.com.au under the Building and Development tab.

10. Dilapidation Report

- a) Prior to the commencement of any works on site, the applicant must submit for approval by the Principal Certifying Authority (with a copy forwarded to Council) a 'Dilapidation Report' detailing the structural condition of the adjoining properties:
 - i) Lot 7 DP 800015, No. 92 David Road, Castle Hill.
 - ii) Lot 5 DP 800015, No. 96 David Road, Castle Hill.
- b) The report must include a photographic survey of the adjoining properties detailing their physical condition, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items. The report must be completed by a chartered structural/geotechnical engineer. A copy of the dilapidation report must be submitted to Council.

- c) In the event access to adjoining allotments for the completion of a dilapidation survey is denied, the applicant must demonstrate in writing that all reasonable steps have been taken to advise the adjoining allotment owners of the benefit of this survey and details of failure to gain consent for access to the satisfaction of the Principle Certifying Authority.

Note: This documentation is for record keeping purposes only and can be made available to an applicant or affected property owner should it be requested to resolve any dispute over damage to adjoining properties arising from works. It is in the applicant's and adjoining owner's interest for it to be as detailed as possible

11. Identification of Survey Marks

A registered surveyor must identify all survey marks in the vicinity of the proposed development. Any survey marks required to be removed or displaced as a result of the proposed development must be undertaken by a registered surveyor in accordance with Section 24(1) of the *Surveying and Spatial Information Act 2002* and following the Surveyor General's Directions No.11 Preservation of Survey Infrastructure.

12. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist and submitted to Council's Compliance Team via Council's Online Services Portal for review and written approval.

The CMP must include the following details:

- a) A Construction Traffic Management Plan (CTMP) including the following:
- i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
 - ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
 - iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
 - iv) The Plan shall be in compliance with the requirements of the Roads and Maritime Services *Traffic control at work sites Manual 2018* and detail:
 - a. Public notification of proposed works.
 - b. Long term signage requirements.
 - c. Short term (during actual works) signage.
 - d. Vehicle Movement Plans, where applicable.
 - e. Traffic Management Plans.
 - f. Pedestrian and Cyclist access and safety.

- v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must be able to be facilitated at all times.
 - vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not be permitted other than on the site and the plan must demonstrate this will be achieved.
 - vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
 - viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
 - ix) Swept path analysis for ingress and egress of the site for all stages of works.
 - x) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
 - xi) The total quantity and size of trucks for all exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
 - xii) The number of weeks trucks will be accessing and leaving the site with excavated fill material.
 - xiii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
 - xiv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
 - xv) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
 - xvi) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:
- i) Details of the excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
 - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with AS2601-2001 Demolition of Structures, and the Protection of the Environment Operations (Waste) Regulation 2005.
 - iii) General construction waste details including construction waste skip bin locations and litter management for workers.

- c) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
 - i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
 - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
 - iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
 - iv) Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
- d) A Construction Noise and Vibration Management Plan (CNMP) which includes:
 - i) Existing noise and vibration levels within the proximity of the proposed development site.
 - ii) Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
 - iii) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
 - iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
 - v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
 - vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- e) Identification of approved sediment and erosion control measures.
- f) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

Note: The CMP must be lodged via Council's Online Services Portal at: <https://hornsbyprd-pwy-epw.cloud.infor.com/ePathway/Production/Web/Default.aspx> and by selecting the following menu options: Applications > New Applications > Under 'Application Types': Management Plans.

13. Pedestrian Refuge Approvals

- a) A pedestrian refuge is to be designed on David Road in the vicinity of the proposed development site in accordance with TfNSW Technical Direction TDT 2011/01a, including all signage associated with the refuge.

Note: The design is to be submitted to Council at TrafficBranch@hornsby.nsw.gov.au for consideration by the Hornsby Local Traffic Committee prior to issuing of the construction certificate.

- b) A separate Section 138 Roads Act 1993 Approval must be obtained from Council for the approval to construct a pedestrian refuge in David Road. The pedestrian refuge must be designed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:
- i) The design of a pedestrian refuge must be approved by the Hornsby Local Traffic Committee.
 - ii) Submission of civil engineering drawings with construction details.

Note: The applicant is to lodge a S138 Road Act Application via the NSW Planning Portal. The LTC approval shall be obtained prior to lodging the S138 Roads Act 1993 application.

14. Validation Report

- a) A Validation Report must be prepared by a certified consultant as recognised under the Certified Environmental Practitioners Scheme - Site Contamination (CEnvP (SC)) and the Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification, verifying that the soils under site features A, B, D and E meet the Health Investigation Levels (HIL-A) detailed in the National Environment Protection (Assessment of Site Contamination) Measure 2013 and is suitable for its approved use in accordance with the recommendations of the Detailed Site Investigation, prepared by GeoEnviro Consultancy, dated 15/3/22, reference JE22735A Revision r1.
- b) The Validation Report must be submitted to the Principal Certifying Authority and a copy provided to Council prior to the issue of a Construction Certificate.

15. Mechanical Equipment

A mechanical plant noise assessment for all proposed mechanical equipment and site specific equipment must be undertaken by a suitably qualified Acoustic Consultant and a report certifying that the operation of all proposed equipment will not exceed 45dB(A) at any boundary upon installation, be submitted to the PCA.

16. Acoustic Treatment and Certification

- a) Acoustic fencing must be installed in accordance with the Noise Impact Assessment Revision 7 Ref: reference R210741R1, prepared by Rodney Stevens Acoustics, dated 23/09/22.
- b) Acoustic treatment must be installed for the proposed development in accordance with the recommendations contained within the Noise Impact Assessment Revision 7 Ref: reference R210741R1, prepared by Rodney Stevens Acoustics, dated 23/09/22.
- c) On completion of all works and prior to the issue of an Occupation Certificate, the certifier is to be provided with a certificate from a qualified acoustic consultant certifying that all acoustic works have been completed in accordance with the recommendations contained within the Noise Impact Assessment Revision 7 Ref: reference R210741R1, prepared by Rodney Stevens Acoustics, dated 23/09/22 and this consent.

- d) Noise from the child care centre must comply with the assessment objectives in within the Noise Impact Assessment Revision 7 Ref: reference R210741R1, prepared by Rodney Stevens Acoustics, dated 23/09/22 during operation. In the event of noise complaint(s) received, noise measurements must be conducted to demonstrate compliance or otherwise and additional control measures (if required) must be implemented to ensure the assessment objectives are achieved.

17. Stormwater Drainage

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with approved Stormwater Plans and the following requirements:

- a) Connected directly to Council's street stormwater pipe in David Road through construction of a pit. In accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following:
 - i) The connection to Council's drainage pit or pipeline must be inspected by a Council Engineer in the Planning Division. Prior to the connection, an 'Application for approval to connect stormwater drainage outlet to Council's system' must be made to Council and all fees paid.
Note: An inspection booking can be made by calling Council on 9847 6787.
 - ii) Prior to the issue of an Occupation Certificate a Compliance Certificate must be obtained from Council for the connection to Council's drainage system.

18. On Site Detention

- a) The on-site detention system is to be designed to limit discharge to 5 years ARI predevelopment rate and storage volume provided for up to 20 years ARI storm events.
- b) The calculation must include all impervious areas from the fully developed site.
- c) The structure of the on-site detention system under the driveway must be designed by a suitably qualified Structural Engineer.

19. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed and a Construction Certificate issued in accordance with Australian Standards AS2890.1, AS2890.2, AS3727 and the following requirements:

- a) A separate application under the *Local Government Act 1993* and the *Roads Act 1993* being an 'Application for Boundary Levels' must be submitted to Council to obtain design levels at the front boundary for the design of the internal driveway, prior to the issue of a construction certificate.
- b) The driveway be a rigid pavement.
- c) The driveway grade must comply with AS2890.1.

- d) Longitudinal sections along both sides of the access driveway shall be submitted to the principal certifying authority in accordance with the relevant sections of AS2890.1.

Note: A construction certificate shall be obtained prior to the commencement of these works and are to be completed prior to the issue of an occupation certificate.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

20. 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.

21. 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.
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

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

22. 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*.

23. Erosion and Sediment Control

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual *'Soils and Construction 2004 (Bluebook)'*, the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.

24. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 2, 15, 16, 19 and 20 as identified on the Tree Location and Protection Plan of the Arboricultural Impact Assessment (AIA) prepared by Bellevue Tree Consultants, dated 17 September 2021 must have tree protection measures for the ground, trunk and canopy installed by the project arborist for the duration of demolition and construction works, in accordance with the approved Tree Protection Plan prepared by the Tree Management Team dated 18/10/2021.
- b) Tree protection fencing for the trees to be retained numbered 15, 16, 19 and 20 must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) The installation of all required tree protection fencing must have a TPZ radius as listed in the Table below:

Tree number	TPZ radius from centre of tree
15, 16, 19 and 20	1.5m from the existing boundary fence

25. Waste Management Details

Prior to the commencement of any works, the on-going waste collection service must be cancelled, and the bins retrieved by the waste collection service provider.

Note: For residential properties, Council is the waste collection service provider.

26. Garbage receptacle

- a) A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.
- b) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.

- c) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- d) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

27. Construction Work Hours

All work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday (unless otherwise approved in writing by Council due to extenuating circumstances).

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

28. Work Zone

- a) All construction vehicles associated with the proposed development are to be contained on site or in a Local Traffic Committee (LTC) approved "Works Zone".
- b) The site supervisor to be advised that the Works Zone will be deemed to be in effect, and fees will apply, between the dates nominated by the supervisor, or when parking spaces are managed for the sole use of construction vehicles associated with the site.
- c) The Works Zone signs shall be in effect only for the times approved by Council, and the time is to be noted on the sign. E.g. 'Works Zone Mon-Sat, 7am-5pm'.
- d) The applicant is required to supply a sign posting installation plan for referral to the Local Traffic Committee, noting on it the duration of the Works Zone.
- e) The Works Zone is only to be used for the loading and unloading of vehicles. Parking of workers' vehicles, or storage of materials, is not permitted.

29. Demolition

To protect the surrounding environment, all demolition work must be carried out in accordance with Australian Standard AS2601-2001 Demolition of structures and the following requirements:

- a) Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *SafeWork NSW* in accordance with the *Work Health and Safety Regulation 2017* and be appropriately transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*.
- c) On construction sites where any building contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

30. Environmental Management

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, the site must be managed in accordance with the publication 'Managing Urban Stormwater', Landcom (March 2004) and the *Protection of the Environment Operations Act 1997*.

31. Street Sweeping

- a) During works and until exposed ground surfaces across the site have been stabilised, street sweeping must be undertaken following sediment tracking from the site.
- b) The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

32. 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.

33. Disturbance of Existing Site

During construction works, the existing ground levels of open space areas and natural landscape features, including natural rock-outcrops, vegetation, soil and watercourses must not be altered unless otherwise nominated on the approved plans.

34. Road Opening Permit

For any excavation in nature strip in relation to utility services a road opening permit is to be obtained from Council.

35. Landfill not Permitted

The importation of fill material associated with earthworks, or structural or engineering works, is not permitted as part of this consent.

36. Excavated Material

All excavated material removed from the site must be classified by a suitably qualified environmental consultant in accordance with the NSW Environment Protection Authority's Waste Classification Guidelines and Protection of the Environment Operations (Waste) Regulation 2014 prior to disposal to a licensed waste management facility. Tipping docket for the total volume of excavated material that are received from the licensed waste management facility must be provided to the principal certifying authority prior to the issue of an Occupation Certificate.

37. Survey Report

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority:

- a) Prior to the pouring of concrete at each level of the building certifying that:
 - i) The building, retaining walls and the like have been correctly positioned on the site.

- ii) The finished floor level(s) are in accordance with the approved plans.

38. Waste Management

Requirements of the approved Waste Management Plan shall be complied with during all site preparation works, demolition and throughout all construction works. When implementing the Waste Management Plan, the developer is to ensure:

- a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the *Protection of Environment Operations Act 1997*.
- b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the *Protection of Environment Operations Act 1997*.
- c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW.
- d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it.
- e) All materials and resources that are to be stored on site during construction works are contained on the site. The provisions of the *Protection of Environment Operations Act 1997* must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses.
- f) The storage of waste and recycling containers must be within the boundaries of the development site at all times. Public footways and roads must not be used for the storage of any waste and must be kept clear of obstructions during all construction works.
- g) Additionally, written records of the following items must be maintained during the removal of any waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:
 - i) The identity of the person removing the waste.
 - ii) The waste carrier vehicle registration.
 - iii) Date and time of waste collection.
 - iv) A description of the waste (type of waste and estimated quantity).
 - v) Details of the site to which the waste is to be taken.
 - vi) The corresponding weighbridge tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
 - vii) Whether the waste is expected to be reused, recycled or go to landfill.

Note: In accordance with the Protection of the Environment Operations Act 1997, the definition of waste includes any unwanted substance, regardless of whether it is reused, recycled or disposed to landfill.

39. Maintenance of Public Footpaths

- a) Public footpaths must be maintained for the duration of works to ensure they are free of trip hazards, displacements, breaks or debris to enable pedestrians to travel along the footpath safely.
- b) Any damaged/worn out footpaths must be replaced. The applicable fees for the restoration of any public asset of Council must be at the applicant's full expense.

40. Compliance with Construction Management Plan

The Council approved Construction Management Plan must be complied with for the duration of works, unless otherwise approved by Council.

41. Prohibited Actions within the Fenced Tree Protection Zone

The following activities are prohibited within the approved fenced tree protection zones unless otherwise approved by Council:

- a) Soil cutting or filling, including excavation and trenching.
- b) Soil cultivation, disturbance or compaction.
- c) Stockpiling storage or mixing of materials.
- d) The parking, storing, washing and repairing of tools, equipment and machinery.
- e) The disposal of liquids and refuelling.
- f) The disposal of building materials.
- g) The siting of offices or sheds.
- h) Any action leading to the impact on tree health or structure.

42. Maintaining the Health of Trees Approved for Retention

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered 2, 15, 16, 19 and 20 on the approved plans.

43. Maintaining Tree Protection Measures

Tree Protection Measures must be maintained by the project arborist in accordance with Condition No. 24 of this consent for the duration of works.

44. Approved Works within Tree Protection Zone Incursions

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
 - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
 - ii) The maximum diameter of roots permitted to be cut is 30mm.
- b) No changes of grade within the Tree Protection Zone of trees to be retained numbered 2, 15, 16, 19 and 20 on the approved plans are permitted.

45. Unexpected Finds

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the PCA and Council.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

46. Sydney Water – s73 Certificate

A s73 Certificate must be obtained from Sydney Water and submitted to the PCA.

Note: Sydney Water requires that s73 applications are to be made through an authorised Sydney Water Servicing Coordinator. Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

47. Asbestos Clearance Certificate

Should any asbestos be encountered during demolition or construction works, a licenced asbestos assessor is required to provide a Clearance Certificate to the Certifier prior to the issue of an Occupation Certificate, certifying that the asbestos has been removed and appropriately disposed of, and the site is now suitable for its approved use.

48. 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.

49. Creation of Easements

The following matter(s) must be nominated on the plan of subdivision under s88B of the *Conveyancing Act 1919*:

- a) The creation of an appropriate "Positive Covenant" and "Restriction as to User" over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- b) To register the OSD easement, the restriction on the use of land "works-as-executed" details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on-site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "works-as-executed" plan and supported by calculations.

Note: Council must be nominated as the authority to release, vary or modify any easement, restriction or covenant.

50. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road pavement, kerb & gutter, public drainage systems, driveways and on-site detention system. The plan(s) must be accompanied by a certificate from a registered

surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

51. Vehicular Crossing

A separate application under the *Local Government Act 1993* and the *Roads Act 1993* must be submitted to Council for the installation of a new vehicular crossing and the removal of the redundant crossing. The vehicular crossing must be constructed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- a) The vehicular crossing is to be constructed to the design levels obtained from Council.
- b) Any redundant crossings must be replaced with integral kerb and gutter.
- c) The footway area must be restored by turfing.
- d) Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

52. Construction of Engineering Works

All engineering works identified in this consent are to be completed and a Compliance Certificate issued prior to the release of the Occupation Certificate.

53. Preservation of Survey Marks

A certificate by a Registered Surveyor must be submitted to the Principal Certifying Authority, certifying that there has been no removal, damage, destruction, displacement or defacing of the existing survey marks in the vicinity of the proposed development or otherwise the re-establishment of damaged, removed or displaced survey marks has been undertaken in accordance with the Surveyor General's Direction No.11 Preservation of Survey Infrastructure.

54. Retaining Walls

All retaining walls must be constructed as part of the development and prior to the issue of an Occupation Certificate.

55. Submission of Excavated Material Tipping Dockets to Principal Certifying Authority

Tipping docket for the total volume of excavated material that are received from the licensed waste facility must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

56. External Lighting

- a) To protect the amenity of adjacent premises, all external lighting must be designed and installed in accordance with Australian Standard AS 4282 Control of the obtrusive effects of outdoor lighting.

- b) Certification of compliance with this Standard must be obtained from a suitably qualified person and submitted to the PCA with the application for the Occupation Certificate.

57. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being trees numbered 1, 3 to 14 (inclusive), 17, 18 and 21 must be offset through replacement planting of a minimum of 8 trees.
- b) All replacement plantings must be species selected from the 'Trees Indigenous to Hornsby Shire (as of 1 September 2011)' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- c) The location and size of tree replacement planting must comply with the following:
 - i) 7 replacement trees must be located in either front or rear setbacks and planted 4 metres or greater from the foundation walls of the approved development.
 - ii) 1 replacement tree must be located on the nature strip.
 - iii) The pot size of the replacement trees must be a minimum 45 litres.
 - iv) All replacement trees must be a minimum of 3 metres in height.
 - v) All replacement trees must have the potential to reach a mature height greater than 10 metres.

58. Final Certification

The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:

- a) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
- b) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- c) Dates, times, and reasons for all site attendance.
- d) All works undertaken to maintain the health of retained trees.
- e) Details of tree protection zone maintenance for the duration of works.
- f) A statement to confirm that tree replacement planting meets NATSPEC guidelines and the approved landscape plan.

Note: Copies of monitoring documentation may be requested throughout DA process.

59. Completion of Landscaping

A certificate must be submitted to the PCA by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans.

Note: Applicants are advised to pre-order plant material required in pot sizes 45 litre or larger to ensure nurseries have stock available at the time of install.

60. Waste Management Details

The following waste management requirements must be complied with:

- a) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifying Authority must ensure arrangements are in place for delivery of bins for the on-going use of the site and for regular scheduled commercial waste collection services to commence within 7 days of occupation.

- b) A report must be prepared by an appropriately qualified person, certifying the following:

- i) A comparison of the estimated quantities of each demolition and construction waste type against the actual quantities of each waste type.

Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report.

- ii) That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.

Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed to implement the approved Waste Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.

- iii) All demolition and construction waste was taken to site(s) that were lawfully permitted to accept that waste.

- c) The bin carting routes must be devoid of any steps.

Note: Ramps between different levels are acceptable.

- e) The bin storage bay must be accessible by persons with a disability while comfortably housing all of the bins required to be stored there. The floor of the bin storage bay must have a smooth and even surface that is finished so it is non-slip, sealed and impervious. The walls must be finished with smooth faced non-absorbent material capable of being cleaned. The bin storage bay must include adequate lighting and ventilation. The bin storage bay must include water or a hose for cleaning, and graded floors draining to garden or lawn (not stormwater. It can only drain to sewer if roofed). The doors must be wide enough to fit the 660L bins through and must be lockable.

Note that 660L bins are 1370mm wide, 850mm deep, 1250mm high; allow 75 mm between bins for ease of manoeuvring and to avoid damage to walls and doors from bins scraping against them.

61. Fire Safety Statement - Final

In accordance with the Environmental Planning and Assessment Regulation 2000, upon completion of the building, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

62. Food Premises Compliance

- a) The fit out and operation of the part of the building to be used for the manufacture, preparation or storage of food for sale, must be in accordance with Australian Standard AS4674-2004 Design and fit out of food premises, the *Food Act 2003*, and the *Food Regulation 2015 and the Food Standards Code* developed by Food Standards Australia New Zealand. Food Standards 3.2.2 and 3.2.3 are mandatory for all food businesses.

Note: Walls are to be of solid construction.

- b) Prior to the commencement of the business, the operator is required to contact Council's Public Health Team to arrange for a Health Officer to carry out an inspection of the premises to ensure compliance with the Australian Standard AS4674-2004 Design and fit out of food premises, the *Food Act 2003*, *Food Regulation 2015* and the Australia New Zealand Food Standards Codes.
- c) A letter of compliance provided by Hornsby Shire Council's Health Officer must be submitted to the Principal Certifier prior to an occupation certificate being issued.

Note: Council's Public Health team can be contacted on (02) 9847 6014.

63. Grease Trap & Dry Basket Arrestor Installation

An application must be submitted to *Sydney Water* for the installation of a grease trap and dry basket arrestor (floor and sink) in accordance with the Guidelines for the On-Site Pre-Treatment of Trade Wastewater Discharges - Sydney Water (May 2004).

64. Kitchen Exhaust Installation

A kitchen exhaust system must be designed and installed to effectively prevent air pollution in accordance with the *Protection of the Environment Operations Act 1997*.

OPERATIONAL CONDITIONS

65. Use of Premises

- a) The development approved under this consent shall be used for '*centre-based child care facility*' and not for any other purpose without Council's separate written consent.
- b) The child care centre shall accommodate a maximum of 52 children.

66. Hours of Operation

- a) The hours of operation of the premise are restricted to those times listed below:

Monday to Friday	7am to 6pm
Saturday, Sunday & Public Holidays	No work

- b) Staff and guardians/parents must not arrive or depart the centre outside of the approved hours of operation, unless as legislatively required for the supervision of children due to unforeseen circumstances (i.e. parent is late).
- c) All deliveries, service vehicles (inclusive of waste collection), cleaning and maintenance must be carried out within the approved hours of operation.

67. Fire Safety Statement - Annual

On at least one occasion in every 12-month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' certifying each essential service installed in the building.

68. Car Parking and Deliveries

All car parking must be constructed and operated in accordance with Australian Standard AS/NZS2890.1:2004 Off-street car parking and Australian Standard AS2890.2:2002 Off-street commercial vehicle facilities and the following requirements:

- a) All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
- b) Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- c) Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.
- d) All vehicular entry on to the site and egress from the site shall be made in a forward direction.

69. Sight Lines

Landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

70. Compliance with Plan of Management

- a) The development must be operated in accordance with the approved Plan of Management titled 'Management Plan (Version 3.01)', dated 29 June 2022 at all times, unless otherwise approved in writing by Council.
- b) Emergency and evacuation procedures/ plans must be in accordance with clauses 97 and 168 of the Education and Care Services National Regulations and maintained in perpetuity.

71. Noise

All noise generated by the development, inclusive of mechanical plant, must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).

72. Landscaping Establishment and Maintenance

The landscape works must be maintained into the future to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This must

include but not be limited to automated watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

73. Ongoing Waste Management

The waste management on site must be in accordance with the following requirements:

- a) The approved Waste Management Plan is to be implemented throughout the ongoing use of the development.
- b) All commercial tenant(s) must keep written evidence on site of a valid and current contract with a licensed waste contractor(s) for the regular collection and disposal of the waste and recyclables that are generated on site.
- c) Waste collection services must not take place between 8pm and 6am weekdays or 8pm and 8am on weekends and public holidays.

Note: Time-of-day service restrictions apply to commercial developments located near residential areas.

- d) A Work, Health & Safety (WHS) risk assessment is to be carried out by a suitably qualified person with qualifications in Work, Health & Safety Legislation with specific regard to waste management. The recommendations of the WHS Risk Assessment are to be implemented as required.
- e) All bins that are placed at the collection point for collection services must be taken back to their bin storage area on the same day of service.
- f) All commercial tenant(s) must have a sufficient number of bins to contain the volume of waste and recycling expected to be generated between collection services with lids closed.

- 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 2021*, 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 (Biodiversity and Conservation 2021 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). (HDGP 1B.6.1.c).

Disability Discrimination Act 1992

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.

Dial Before You Dig

Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au for free information on potential underground pipes and cables within the vicinity of the development site.

Telecommunications Act 1997 (Commonwealth)

If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

Asbestos Warning

Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *SafeWork NSW*) be engaged to manage the proper handling of this material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* on 13 10 50.

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