



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 26 June 2024
at 4:00pm**



TABLE OF CONTENTS

AGENDA AND SUMMARY OF RECOMMENDATIONS

GENERAL BUSINESS

Local Planning Panel

Item 1	LPP8/24 DA/1411/2023 - Construction of a 45 place Child Care Centre - 46 Lords Avenue, Asquith	1
Item 2	LPP4/24 DA/1125/2023 - Construction of 76 place Child Care Centre - 76 New Line Road, Cherrybrook	32

SUPPLEMENTARY AGENDA

AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

ACKNOWLEDGEMENT OF COUNTRY

Statement by the Chairperson:

"Council recognises the Traditional Owners of the lands of Hornsby Shire, the Darug and Guringai peoples, and pays respect to their Ancestors and Elders past and present and to their Heritage. We acknowledge and uphold their intrinsic connections and continuing relationships to Country."

AUDIO RECORDING OF LOCAL PLANNING PANEL MEETING

Statement by the Chairperson:

"I advise all present that tonight's meeting is being audio recorded for the purposes of providing a record of public comment at the meeting, supporting the democratic process, broadening knowledge and participation in community affairs, and demonstrating Council's commitment to openness and accountability. The recordings of the non-confidential parts of the meeting will be made available on Council's website once the Minutes have been finalised. All speakers are requested to ensure their comments are relevant to the issue at hand and to refrain from making personal comments or criticisms. No other persons are permitted to record the Meeting, unless specifically authorised by Council to do so."

APOLOGIES / LEAVE OF ABSENCE

POLITICAL DONATIONS DISCLOSURE

Statement by the Chairperson:

"In accordance with Section 10.4 of the Environmental Planning and Assessment Act 1979, any person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, and who has made a reportable political donation or gift to a Councillor or employee of the Council, must make a Political Donations Disclosure Statement."

If a Councillor or employee has received a reportable political donation or gift from a person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, they must declare a non-pecuniary conflict of interests to the meeting, disclose the nature of the interest and manage the conflict of interests in accordance with Council's Code of Conduct."

DECLARATIONS OF INTEREST

Clause 52 of Council's Code of Meeting Practice (Section 451 of the Local Government Act, 1993) requires that a councillor or a member of a Council committee who has a pecuniary interest in a matter which is before the Council or committee and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

The Councillor or member of a Council committee must not be present at, or in sight of, the meeting of the Council or committee:

- (a) at any time during which the matter is being considered or discussed by the Council or committee.*
- (b) at any time during which the Council or committee is voting on any question in relation to the matter.*

Clause 51A of Council's Code of Meeting Practice provides that a Councillor, Council officer, or a member of a Council committee who has a non pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

If the non-pecuniary interest is significant, the Councillor must:

- a) remove the source of conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official.*

OR

- b) have no involvement in the matter by absenting themselves from and not taking part in any debate or voting on the issue as if the provisions of Section 451(2) of the Act apply.*

If the non-pecuniary interest is less than significant, the Councillor must provide an explanation of why they consider that the interest does not require further action in the circumstances.

CONFIRMATION OF MINUTES

THAT the Minutes of the Local Planning Panel meeting held on 29 May, 2024 be confirmed; a copy having been distributed to all Councillors.

GENERAL BUSINESS

- *Items for which there is a Public Forum Speaker*
- *Balance of General Business items*

LOCAL PLANNING PANEL

Page Number 1

**Item 1 LPP8/24 DA/1411/2023 - CONSTRUCTION OF A 45 PLACE CHILD CARE CENTRE -
46 LORDS AVENUE, ASQUITH**

RECOMMENDATION

THAT the Hornsby Shire Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/1411/2023 for the demolition of existing structures, construction of a 45 place child care centre and erection of one sign at Lot 6 DP 21699, No. 46 Lords Avenue Asquith subject to the conditions of consent detailed in Attachment 1 of LPP Report No. LPP8/24.

Page Number 32

**Item 2 LPP4/24 DA/1125/2023 - CONSTRUCTION OF 76 PLACE CHILD CARE CENTRE - 76
NEW LINE ROAD, CHERRYBROOK**

RECOMMENDATION

THAT the Hornsby Shire Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/1125/2023 for the demolition of structures and construction of a childcare centre for 76 children with basement car parking at Lot 185 DP 626632, No. 76 New Line Road, Cherrybrook, subject to the conditions of consent detailed in Attachment 1 of LPP Report No. LPP4/24.

SUPPLEMENTARY AGENDA

1 DA/1411/2023 - CONSTRUCTION OF A 45 PLACE CHILD CARE CENTRE - 46 LORDS AVENUE, ASQUITH

DA No: DA/1411/2023 - PAN-391679 (Lodged on 11 January 2024)

Description: Demolition of existing structures, construction of a 45 place child care centre and erection of one sign

Property: Lot 6 DP 21699, No. 46 Lords Avenue, Asquith

Applicant: Mr Satya Vrat Sharma

Owner: Mr Satya Vrat Sharma and Taruna Sharma

Estimated Value: \$2,591,470

Ward: A Ward

Clause 4.6 Request: N/A

Submissions: 10

LPP Criteria: 10 or more unique submissions were received by way of objection

Author: George Papworth, Senior Town Planner

COI Declaration: No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT the Hornsby Shire Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/1411/2023 for the demolition of existing structures, construction of a 45 place child care centre and erection of one sign at Lot 6 DP 21699, No. 46 Lords Avenue Asquith subject to the conditions of consent detailed in Attachment 1 of LPP Report No. LPP8/24.

EXECUTIVE SUMMARY

- The application involves the demolition of existing structures, construction of a 45 place child care centre and erection of one sign.
- A total of 10 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

BACKGROUND

The site forms part of the Lords Avenue - Asquith precinct, which was rezoned from low density residential to high density residential on 2 September 2011 as part of Council's *Housing Strategy*.

On 14 October 2015, Council approved a five storey residential flat building comprising 25 units at 42 and 44 Lords Avenue, Asquith. This site is located to the south of the subject site and the site isolation of No. 46 Lords Avenue was considered under the assessment of this application. This development has subsequently been constructed.

A Pre-Lodgement Meeting, PL/64/2023, was held on 26 October 2023. Council advised that the application would not be supported in its current format with concerns regarding the non-compliance with setback controls, solar access, acoustics, and provision of outdoor encumbered play space which would be assessed by the NSW Department of Education.

The lack of articulation was also raised as a concern, it is noted that the designs submitted were indicative only.

On 11 January 2024, Development Application No. DA/1411/2023 was lodged for the demolition of existing structures, construction of a 54 place child care centre and erection of one sign.

On 28 February 2024, Council requested additional and amended information including a Site Management Plan (Remediation Works), Geotechnical Report, Erosion and Sediment Control Plan, Acoustic Report, Plan of Management, Waste Management Plan and Car Parking Assessment.

On 15 May 2024, Council requested additional or amended information including a reduction in the number of child places from 54 to 45 to reflect the car parking provisions on site, the deletion of the car parking space in the front boundary setback and amended elevations to include a more consistent fenestration pattern along the north and south elevations.

On 28 May 2024, the applicant provided the final set of amended plans addressing the matters raised by Council.

SITE

The 702.7m² regular shaped site is located on the east side of Lords Avenue and contains a detached dwelling with associated outbuildings. The site has a primary frontage of 15.38m to Lords Avenue, a northern and southern side boundary of 46.1m and a rear boundary of 15.38m.

The site experiences a fall of 2.2m from the rear east boundary to the front boundary.

The site is not bushfire prone or flood prone land.

The site is burdened by an Easement to Drain Water 1m wide (AK6773) along the full southern side boundary.

The site does not contain a heritage listed item, is not located in the vicinity of any heritage listed items and is not located within a heritage conservation area.

The site forms part of a precinct which has undergone redevelopment with five storey residential flat buildings constructed on a number of sites fronting Lords Avenue and Pacific Highway, Asquith. All adjacent sites to the subject site, being Nos. 443, 447, and 453-455 Pacific Highway and Nos. 42 and 48-50 Lords Avenue have been redeveloped.

The surrounding developments on the western side of Lords Avenue include single and two storey residential dwellings.

The site is located approximately 500m from Asquith Railway Station and in close proximity to the Asquith Commercial precinct.

PROPOSAL

The application proposes the demolition of existing structures and the construction of a three storey, 45 place centre based child care centre with basement parking for nine vehicles.

The child care centre would cater for a total of 45 children with the following breakdown:

- 0-2 years - 12 children
- 2-3 years - 15 children
- 3-5 years - 18 children

The child care centre comprises:

- *Basement Level*

The vehicular access to the basement car park would be provided from Lords Avenue. The basement would provide five staff car parking spaces, four visitor car parking spaces and a turning bay. A pedestrian path and lift would provide access to the levels above.

- *Ground Floor Level*

Two indoor play rooms, a kitchen, cot room, entry foyer, laundry, office and two bathrooms would be provided on the ground floor level. An external storage area is provided with access from the south elevation.

- *First Floor Level*

A large indoor playroom, an external play area, bathroom and storage/lobby area would be located on the first floor.

- *Second Floor Level*

A staff room, meeting/training room, bathroom and storage would be located on the second floor.

- *Roof*

Access would be provided to the roof level which would include a plant room and an area for the future provision of solar panels.

The child care centre would operate 52 weeks of the year with the hours of operation from 7am to 6pm Monday to Friday, closed on Saturdays, Sundays and Public Holidays, with a maximum of 10 staff at any one time.

One sign is proposed on the front elevation fronting Lords Avenue.

A total of seven trees would be removed or impacted by the proposed development.

ASSESSMENT

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

1. STRATEGIC CONTEXT

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

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 the next 40 years (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.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District over the next 20 years.

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 child care centre would be consistent with the objectives of the strategy by providing 45 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"*.

2.1 Hornsby Local Environmental Plan 2013

The Hornsby Local Environmental Plan 2013 (HLEP) applies to all land within Hornsby Shire. An assessment of the development against the relevant sections of the HLEP is provided below.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned R4 High Density Residential under the HLEP. The objectives of the R4 zone are:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high 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 R4 zone with Council's consent.

2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 16.5m. The proposal has a maximum height of 13m and complies with this provision.

2.1.3 Heritage Conservation

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

2.1.4 Earthworks

The objective of Clause 6.2 Earthworks of the HLEP is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The application proposes excavation associated with the basement carpark for a centre-based child care facility. This excavation would entail the removal of 1,182m³ of material from the site. At its deepest point, the excavation would be 4.1m below the existing ground level, with deepest excavation works being to the eastern part of the site, as the topography falls towards the west (front) of the site excavation depth reduces to 2.3m.

Matter for Consideration	Comment
(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development	The proposed excavations are unlikely to have a detrimental effect on the drainage patterns given that all stormwater from the development would be directed towards the street via an on-site detention system to the Lords Avenue drainage system. With respect to soil stability, appropriate conditions of consent have been recommended during the construction phase of the development. Upon completion of the development, it is anticipated that there will be no ongoing soil stability issues.
(b) the effect of the development on the likely future use or redevelopment of the land	The earthworks are required to facilitate the proposal which would allow the full development potential of the site to be realised.
(c) the quality of the fill or the soil to be	A condition is recommended to ensure that all fill

excavated, or both	material imported to, and all excavated material exported from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility.
(d) the effect of the development on the existing and likely amenity of adjoining properties	Appropriate conditions have been recommended to limit amenity impacts during the construction period including the submission of dilapidation reports assessing the impact of the excavation on the adjoining properties.
(e) the source of any fill material and the destination of any excavated material	A condition has been recommended that all excavated material removed from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility.
(f) the likelihood of disturbing relics	Council has no record of any historical items or events of note on the subject site, of either Aboriginal or European Heritage. It is therefore considered that the proposed works are unlikely to disturb any relics.
(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area	The proposed works would not be located in proximity any environmentally sensitive area. Subject to appropriate erosion and sediment conditions, it is considered that any adverse impacts can be mitigated.
(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development	Appropriate measures have been included as conditions of development consent to avoid, minimise and mitigate the impacts of the development.

2.2 State Environmental Planning Policy (Resilience and Hazards) 2021

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

2.2.1 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.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The applicant submitted a Combined Stage 1 Preliminary and Stage 2 Detailed Site Investigation Report, Ref: JN04860 - PSI_DSI - RN15679.1, prepared by EHO Consulting, dated 7 March 2024 and a supporting review CEnvP Review of Combined PSI & DSI Report prepared by CSI Australia dated 7 March 2024, for the proposed development.

Council's Environmental Protection assessed the Combined Report and the CEnvP Review determined that:

- *The CSI Australia review of the combined PSI & DSI determined it to be in line with the NSW EPA guidelines and that the site is considered to be suitable for its intended use as a childcare centre.*
- Section 10.1.3 states that visual evidence of potential asbestos containing material (PACM) was encountered on the surface immediately adjacent to the sampling point TP04 in the form of one fibrous cement sheet fragment. Samples of this fragment was collected and reported presence of asbestos.
 - The bulk 10L soil samples were screened for the presence of asbestos containing materials greater than 7mm in size. Materials suspected of being ACM were not observed during the field screening process.
- Section 13.2.1 states that additional fieldwork did not indicate any evidence to suggest the presence of additional ACM impact onsite. The excavated fill material did not comprise of any building or demolition waste suggesting the presence of asbestos fragments.
- Due to the age of the building and sheds on site, there is a potential for hazardous building materials to be present in the building and sheds. As such, a hazardous building material survey should be undertaken to assess the presence of hazardous material inside the building. Accordingly, a hazardous material survey has been conditioned.
- In the event of encountering unexpected finds of contamination during the construction works, the unexpected finds protocol outlined in Section 13.3 should be followed. Accordingly, a condition is recommended that a site specific unexpected finds protocol is required to be provided within the CMP.
- The land is suitable for the proposed construction of a centre based child care centre without further remediation.
- Consequently, no further information is required to satisfy Section 4.6 of the Resilience and Hazard SEPP.
- Conditions can be applied to ensure excavated material is appropriately assessed according to waste classification guidelines and unexpected finds are adequately addressed.

Based on the findings of the Combined PSI & DSI, it is determined that sufficient information has been provided to determine that the site is suitable for the proposed land use. Any remaining concerns regarding demolition of existing structures or unexpected finds can be managed through conditions of consent.

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 Transport and Infrastructure SEPP 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 2021 (CCPG).

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

An assessment of the 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.

The discussion provided below in response to Part 3 of the CCPG, demonstrates that the proposed development is considered consistent with these objectives.

2.3.1.2 Part 2 - Design quality principles

The discussion provided below in response to Part 3 of the CCPG, demonstrates that the proposed child care centre is 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

Part 3.1 - Site selection and location

The objectives of Part 3.1 of the CCPG are *to ensure that appropriate zone considerations are assessed when selecting a site; that the site selected for a proposed child care facility is suitable for use; that the sites for child care facilities are appropriately located and, that sites for child care facilities do not incur risks from environmental, health or safety hazards.*

In support of the application, it is noted that *Centre based child care facilities* are a permissible land use within the R4 High Density Residential zone. The proposed development would provide facilities and services to meet the day to day needs of residents and would contribute to meeting demand for childcare the Hornsby Shire.

For proposed developments in or adjacent to a residential zone, consideration should be given to the acoustic and privacy impacts, the setbacks and siting of buildings and traffic and parking impacts.

Acoustics and Privacy

In regard to acoustics and privacy impacts, an amended Acoustic Report (230725R1 Revision 3) dated 7 March 2024 prepared by Rodney Stevens Acoustics and an addendum letter (R230725R1) dated 8 March 2024 prepared by Rodney Stevens Acoustics details the potential noise impacts of the proposed development on surrounding land uses.

Council's Environmental Protection team assessed the report and determined that the amended Acoustic Report is satisfactory and that the site is suitable for the proposed use, subject to conditions of consent to ensure that the recommendations of the Acoustic Assessment are complied with in perpetuity.

The proposed siting of the building has considered the location of neighbouring dwellings and has been designed to ensure no adverse privacy or solar access impacts. The solar access to the existing five storey apartment block at No. 42 Lords Avenue to the south has been assessed on the building's north elevation which has limited windows to bedrooms, bathrooms, and secondary windows to living areas. The private open spaces of the apartments include privacy screens along the north elevation to protect the privacy of the residents.

The property to the north No. 48-50 Lords Avenue has an existing five storey apartment block. The privacy impacts to the existing five storey apartment block have been assessed on the building's south elevation which has limited windows to bedrooms, bathrooms, and secondary windows to living areas only. The private open spaces of the apartments include privacy screens along the south elevation to protect the privacy of the residents.

It is therefore considered that the proposed development would not impact on the solar access to living areas or private open spaces of neighbouring properties.

Traffic

A Transport Assessment prepared by Arc Traffic and Transport dated 18 December 2023 and a Technical Note prepared by Arc Traffic and Transport dated 15 March 2024 considers the traffic and parking impacts of the proposal on the existing road network.

The assessment concludes that the site benefits from good access to both rail and bus services, and pedestrian footpaths are provided in all local roads, providing excellent pedestrian access for what are anticipated to be a relatively high number of walk trips between the site and the adjacent residential population. The trip generation of the proposed child care centre would be moderate and would not have any impact on the operation of local roads or intersections. On-site parking has been provided in accordance with the peak parking demands identified in the Draft Guide to Transport Impact Assessment.

According to the Traffic Assessment the 85th percentile speed was less than 30km/h during the AM and PM peak periods. Council's Traffic Team has also referenced other data gathered for Lords Avenue and it confirmed that the 85th percentile speeds were less than 30km/h during the peak periods.

The Guide to Traffic Generating Developments has an environmental capacity goal of a maximum of 200 VTPH for local streets with a maximum of 300 VTPH. The traffic volume counts supplied by Arc Traffic and Transport give an AM peak period count of 66 VTPH and pm peak period count of 53 VTPH. Traffic generation is not considered an issue with the proposed development. The traffic impacts of the proposed childcare centre are therefore considered acceptable.

Parking

The Hornsby DCP has a parking requirement of 1 space per 4 children, giving a parking requirement of 12 spaces for the proposed child care facility with a capacity for 45 children. A total of 9 parking spaces including 1 accessible parking space have been provided and shown on the drawings, which is 3 spaces less than that required by the HDCP.

The Traffic Assessment by Arc Traffic and Transport states that the TEF Consulting's trip generation analysis established that child care centres with 40 to 65 children generate a rate of 1 parking space

per 5 children. The statement can be found from RMS Validation Trip Generation Surveys - Child Care Centres 2015 and in Chapter 5.6.8 of the Draft Guide to Transport Impact Assessment.

Council's Traffic Branch accepts the justification of the shortfall of parking from the CCPG and HDCP, since the 2015 RMS surveys of child care centres are accepted by TfNSW, and the updated rates are incorporated into the Draft Guide to Transport Impact Assessment.

Site Contamination

The applicant submitted a Combined Stage 1 Preliminary and Stage 2 Detailed Site Investigation Report prepared by EHO Consulting, reference JN04860 - PSI_DSI - RN15679.1 dated 7 March 2024 and a supporting review CEnvP Review of Combined PSI & DSI Report prepared by CSI Australia dated 7 March 2024, for the proposed development. The report concluded that the land is suitable for the proposed construction of a child care centre without further remediation. Any remaining concerns regarding demolition of existing structures or unexpected finds can be managed through conditions of consent.

The proposal meets the objectives of Part 3.1 of the CCPG, and the proposal is supported in this regard.

Part 3.2 - Local character, streetscape, and the public domain interface

The objectives of Part 3.2 of the CCPG are *to ensure that the child care facility is compatible with the local character and surrounding streetscapes; clear delineation between the child care facility and public spaces and, that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.*

Lords Avenue in the vicinity of the site is a mix of high and low density residential landscape setting with a streetscape predominantly comprising one and two storey dwelling houses on the west and five storey apartment blocks on the east side. The proposed child care centre would present to the streetscape as a three storey structure setback from the road and screened with appropriate landscaping to ensure that the development integrates into the existing mix of low and high density residential streetscape.

The proposed works are of an appropriate scale and would not pose detrimental impact to the public domain and would be consistent with the prevailing streetscape qualities.

The proposal meets the objectives of Part 3.2 of the CCPG and is supported in this regard.

Part 3.3 - Building orientation, envelope and design

The objectives of Part 3.3 of the CCPG stipulate that child care facilities should be orientated to respond to the streetscape and be of a scale that is compatible with adjoining development; the setbacks should be consistent with the predominant development within the vicinity and the built form should contribute to the area's character; and buildings are designed to create safe accessible environments.

The proposed child care facility would be setback from neighbouring dwellings to ensure visual privacy and minimise potential noise and overlooking of neighbours. The proposed child care facility has been designed to address the street frontage along Lords Avenue and is of a scale that is compatible with the adjoining development, with a maximum building height of 13 metres consistent with the high density residential landscape character of the area.

The proposed entry to the child care facility have been sited and designed to allow for accessible level access from the street and front car park area.

The proposal meets the objectives of Part 3.3 of the CCPG, and the proposal is supported in this regard.

Part 3.4 - Landscaping

The objectives of Part 3.4 of the CCPG encourages landscape design that contributes to the streetscape and amenity.

Landscaping is provided within the front, side and rear setbacks and while 7 trees would be removed to accommodate the proposed development, a minimum of 5 replacement trees selected from the 'Trees Indigenous to Hornsby Shire (as of 1 September 2011)' would retain and protect the amenity of adjacent properties.

The proposal meets the objectives of Part 3.4 of the CCPG, and the proposal is supported in this regard.

Part 3.5 - Visual and Acoustic Privacy

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

The proposed child care facility has been sited and designed to minimise opportunities for direct overlooking from public areas. The development is setback from the street frontage and the outdoor play spaces are located to the rear of the site and would be suitably screened and landscaped.

The dwellings to the north and south would be separated by appropriate acoustic barriers along the property boundaries. The first floor simulated outdoor place space is provided with 3m high acoustic barriers.

The proposed siting of the building has considered the location of neighbouring dwellings and has been designed to ensure no adverse privacy impacts. The private open spaces of the apartments to the south at No. 42 Lords Avenue include privacy screens along the north elevation of the private open spaces to protect the privacy of the residents.

The property to the north No. 48-50 Lords Avenue has an existing five storey apartment block. The privacy impact to the existing five storey apartment block has been assessed on the building's south elevation which has limited windows to bedrooms, bathrooms, and secondary windows to living areas only. The private open spaces of the apartments include privacy screens along the south elevation to protect the privacy of the residents.

The proposal meets the objectives of Part 3.5 of the CCPG and is considered acceptable.

Part 3.6 Noise and Air Pollution

The objectives of Part 3.6 of the CCPG include that a suitably qualified acoustic professional prepare an acoustic report to identify an appropriate noise level for a childcare centre facility.

The applicant provided an amended Acoustic Report (230725R1 Revision 3) dated 7 March 2024 prepared by Rodney Stevens Acoustics and an addendum letter (R230725R1) dated 8 March 2024 prepared by Rodney Stevens Acoustics who is a suitably qualified acoustic professional.

Council's Environmental Protection team assessed the report and determined that the amended Acoustic Report is satisfactory and that the site is suitable for the proposed use.

Acoustic recommendations are provided in Section 6 of the amended Acoustic Report and conditions of consent are recommended to ensure that the recommendations are implemented during

construction, and certification provided prior to occupation. Operational conditions include compliance with the nominated criteria and implementation of the operational Plan of Management.

Council's Environmental Protection team have determined that the Acoustic Report and Plan of Management have been prepared and reviewed by suitably qualified acoustic professionals and are satisfactory, subject to conditions.

The proposal meets the objectives of Part 3.6 of the CCPG and is considered acceptable.

Part 3.7 Hours of operation

Part 3.7 of the CCPG indicates that the hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays.

The proposed hours of use of the childcare facility are Monday to Friday from 07:00am to 6:00pm and complies with this requirement.

Part 3.8 Traffic, parking and pedestrian circulation

Part 3.8 of the CCPG indicates that a Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised.

Traffic

A Transport Assessment prepared by Arc Traffic and Transport dated 18 December 2023 and a Technical Note prepared by Arc Traffic and Transport dated 15 March 2024 considers the traffic and parking impacts of the proposal on the existing road network.

The assessment concludes that the site benefits from good access to both rail and bus services, and pedestrian footpaths are provided in all local roads, providing excellent pedestrian access for what are anticipated to be a relatively high number of walk trips between the site and the adjacent residential population. The trip generation of the proposed child care centre would be moderate and would not have any impact on the operation of local roads or intersections. On-site parking has been provided in accordance with the peak parking demands identified in the Draft Guide to Transport Impact Assessment.

According to the Traffic Assessment the 85th percentile speed was less than 30km/h during the AM and PM peak periods. Council's Traffic Team has also referenced other data gathered for Lords Avenue and it confirmed that the 85th percentile speeds were less than 30km/h during the peak periods.

The Guide to Traffic Generating Developments has an environmental capacity goal of a maximum of 200 VTPH for local streets with a maximum of 300 VTPH. The traffic volume counts supplied by Arc Traffic and Transport give an AM peak period count of 66 VTPH and pm peak period count of 53 VTPH. Traffic generation is not considered an issue with the proposed development. The traffic impacts of the proposed childcare centre are therefore considered acceptable.

Parking

The Hornsby DCP has a parking requirement of 1 space per 4 children, giving a parking requirement of 12 spaces for the proposed child care facility with a capacity for 45 children. A total of 9 parking spaces including 1 accessible parking space have been provided and shown on the drawings, which is 3 spaces less than that required by the HDCP.

The Traffic Assessment by Arc Traffic and Transport states that the TEF Consulting's trip generation analysis established that child care centres with 40 to 65 children generate a rate of 1 parking space per 5 children. The statement can be found from RMS Validation Trip Generation Surveys - Child Care Centres 2015 and in Chapter 5.6.8 of the Draft Guide to Transport Impact Assessment.

Council's Traffic Branch accepts the justification of the shortfall of parking from the CCPG and HDGP, since the 2015 RMS surveys of child care centres are accepted by TfNSW, and the updated rates are incorporated into the Draft Guide to Transport Impact Assessment.

The proposal meets the objectives of Part 3.8 of the CCPG and is considered acceptable.

2.3.2 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 2021 - Part 4			
Control	Proposal	Requirement	Compliance
Unencumbered indoor space	3.93m ² per child	3.25m ² per child	Yes
Unencumbered outdoor space	8.42m ² per child	7m ² per child	Yes
Storage			
- External	>0.3m ³	0.3m ³ per child	Yes
- Internal	>0.2m ³	0.2m ³ per child	Yes
On site laundry	Provided on site	Provided on site	Yes
Child toilet facilities	Provided on site	Provided on site	Yes
Administration space	Provided on site	Provided on site	Yes
Nappy change facilities	Provided on site	Provided on site	Yes
Solar Access for outdoor play	30%	30-60%	Yes

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

2.3.3 Centre-based child care—non-discretionary development standards

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: It is noted that while there are other child care centres within the vicinity of the site, a proposed child care centre can be located at any distance from an existing or proposed childhood

education and care facility in accordance with Section 3.26(2)(a) of the *Transport and Infrastructure SEPP*.

(b) *Indoor or outdoor space*

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

Comment: The regulations require a minimum of 3.25m² of unencumbered indoor play area and a minimum of 7m² of unencumbered outdoor play area per child. The application complies with this requirement.

- (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 702.7m² and is considered acceptable.

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

Comment: The centre would not be located within a heritage conservation area and is not in the vicinity of a heritage item.

In summary, the proposal complies with the *Transport and Infrastructure SEPP* provisions and is assessed as satisfactory in this regard.

2.4 State Environmental Planning Policy (Industry and Employment) 2021

The application has been assessed against the requirements of Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021.

2.4.1 Advertising and Signage

The proposed signage has been assessed against the requirements of Chapter 3 of the Industry and Employment SEPP. This Policy provides State-wide planning controls for advertising signs and prevails over other environmental planning instruments including the HLEP and the Hornsby Development Control Plan 2013. The aims of the Policy are to ensure that advertising and signage is compatible with the desired amenity and visual character of an area, to provide effective communication in suitable locations and to ensure signage is of high-quality design and finish. The proposed development includes a 4.8m x 1.2m business identification sign on the front elevation.

Council's assessment of the proposal with respect to the criteria in Schedule 5 of the Industry and Employment SEPP is provided below.

Industry and Employment SEPP - Advertising and Signage		
Control	Requirement	Comment
Schedule 5 - Assessment Criteria		
Character of the area	<i>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</i>	Yes - The signage is limited in scale and appropriate for the locality.
	<i>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</i>	Yes - The signage is consistent with the general theme of outdoor advertising the locality.
Special areas	Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No - The proposed signage is limited in scale and appropriate with respect to its setting.
Views and vistas	Does the proposal obscure or compromise important views?	No important views would be impacted.
	Does the proposal dominate the skyline and reduce the quality of vistas?	The proposal does not dominate the skyline or impact on vistas. All signage is below the maximum permissible building height and limited in size.
	Does the proposal respect the viewing rights of other advertisers?	The signage would not impact on the viewing rights of existing nearby signage.
Streetscape, setting or landscape	Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes - The scale, proportion and form is appropriate for the streetscape and landscape.
	Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes - The proposed signs contribute to the visual interest of the streetscape.
	Does the proposal reduce clutter by rationalising and simplifying existing advertising?	Yes, one sign is proposed.
	Does the proposal screen unsightliness?	No.
	Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No - all signage would be below the ridge level of the proposed buildings.

ITEM 1

	Does the proposal require ongoing vegetation management?	No vegetation management is required with respect to the proposed signage.
Site and building	<p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building, or both?</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both</p>	<p>Yes - The scale of the signage is considered appropriate having regard to the scale of the proposed buildings on the site.</p> <p>The proposed signage is compatible with the architectural design of the existing buildings.</p> <p>The signage is appropriate for the site and consistent with the proposed architectural theme.</p>
Associated devices and logos	Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	There are no devices, platforms, overhangs or protrusions as part of this proposal.
Illumination	<p>Would illumination result in unacceptable glare?</p> <p>Would illumination affect safety for pedestrians, vehicles or aircraft?</p> <p>Would illumination detract from the amenity of any residence or other form of accommodation?</p> <p>Can the intensity of the illumination be adjusted, if necessary?</p> <p>Is the illumination subject to a curfew?</p>	<p>No Illumination proposed</p> <p>No Illumination proposed</p> <p>No Illumination proposed</p> <p>No Illumination proposed</p> <p>No Illumination proposed</p>
Safety	<p>Would the proposal reduce the safety for any public road?</p> <p>Would the proposal reduce the safety for pedestrians or bicyclists?</p> <p>Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</p>	<p>No, the signage would not include flashing or moving images.</p> <p>No</p> <p>No, the signage would not obscure sightlines from public areas.</p>

As outlined in the table above, the proposal satisfies the assessment criteria under Schedule 5 and is consistent with the objectives of the Industry and Employment SEPP.

2.1 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.1.1 Chapter 6 Water Catchments

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. This chapter 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.

The plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; interrelationship of waterway and foreshore uses; foreshore and waterways scenic quality; maintenance, protection and enhancement of views and boat storage facilities.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would not impact on the water quality of the catchment and would comply with the requirements of chapter 6 of the Biodiversity and Conservation SEPP.

2.2 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.

2.3 Hornsby Development Control Plan 2013

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

HDCP - Part 3.4 High Density Residential & Part 7 Community Uses			
Control	Proposal	Requirement	Complies
Site Area	702.7m ²	N/A	N/A
Building Height	13m	16.5m	Yes
No. storeys	3	5	Yes

Number of Children	45	max. 60	Yes
Recreation Space			
- <i>Indoor</i>	3.93m ² per child	3.25m ² per child	Yes
- <i>Outdoor</i>	8.42m ² per child	7m ² per child	Yes
Setbacks			
- <i>Front</i>	9m	10m	No
- <i>Side (north)</i>	3m	6m	No
- <i>Side (south)</i>	3m	6m	No
- <i>Rear</i>	8.79m	10m	No
Basement Setbacks (Deep Soil Zone)			
- <i>Front</i>	8m	8m	Yes
- <i>Side (north)</i>	1.6m (240mm staircase)	4m	No
- <i>Side (south)</i>	1m	4m	No
- <i>Rear</i>	4.29m	7m	No
Car Parking (@ 1/ 4 children)	9 spaces	12 spaces	No

As detailed in the above table, there are a number of non-compliances with the HDCP controls which are discussed below including a brief discussion on compliance with relevant performance requirements.

2.3.1 Isolated Sites

Section 1C2.12 - Avoiding Isolated Sites of the *HDCA* adopts the planning principles established by the Land and Environment Court in the decision *Karavellas v Sutherland Shire Council* (Case No. 11658 of 2004) for the assessment of developments that would result in site isolation. It also provides a definition of site isolation, which is provided as follows:

An isolated site means a site whose size and location could potentially significantly limit development as a result of not being included in an adjoining development proposal. Sites may not be defined as isolated if they have the future potential to amalgamate with an alternate adjoining property.

In reviewing the development against the relevant LEC judgements and the requirements of Section 1C2.12 Avoiding Isolated Sites of the *HDCA*, it is evident that these planning requirements deal with

the isolation of sites adjoining a development site, not development sites that are being developed in isolation which is the case for this development.

With respect to the above, and the established fact that the site is being developed as a single allotment that is considered to be isolated, the planning principles in the NSW Land and Environment Court decision of *CSA Architects v Randwick City Council* [2004] NSWLEC 179 are relevant and applicable in the circumstances. In the *CSA Architects* case, the Court considered a development application for a residential flat building in which the major issue was the narrowness of the site and the consequent inability of the Applicant to comply with the DCP Guidelines for setbacks from side boundaries.

The following planning principle for “development on small or narrow sites” was set out in the *CSA Architects* case:

“Planning principle: development on small or narrow sites

Where the council has a policy for small or narrow sites, the Court should, where reasonable, apply that policy. (This is a valid principle for all matters before the Court.) In the absence of a council policy, the assessment of a proposal on a site that is below the preferred area or width should be considered both as a development on its own site as well as in the context of possible developments on neighbouring sites. The following questions should be asked:

- *Would approval of the application result in the isolation of neighbouring sites?*
- *Would it render the reasonable development of neighbouring sites difficult?*
- *Can orderly, economic and appropriate development of the subject site as well as neighbouring sites be achieved?*

The main criterion for assessing the proposal on its own site is whether it meets other planning controls, e.g.,

- *Does the proposal meet density, setback and landscaping controls? The most critical control for small and narrow sites is that for setbacks.*
- *Is its impact on adjoining properties and the streetscape worse because the development is on a small or narrow site?*

Where an application meets other planning controls and the area and width of the site does not exacerbate its impacts, the failure of the site to meet the preferred area or width would usually not be a reason for refusal.”

Council’s policy for small and narrow sites is articulated in Part 3.4.3 of the HDCP, which prescribes a minimum site width of 30m. No further policy is provided, as Part 3.4.3 of the HDCP does not encourage development on sites less than 30m width for development in R4 High Density Zones. Consequently, the provisions of the above planning principle are relevant considerations for this development. An assessment of the proposal against the above criteria is provided in the table below:

Planning principle: development on small or narrow sites	Compliance
Would approval of the application result in the isolation of neighbouring sites	No, both neighbouring sites, No. 42 and No. 48-50 have both been developed with 5 storey apartment blocks.

Would it render the reasonable development of neighbouring sites difficult?	No. The proposed development would be located at a non-compliant side setback distance, but this is not considered to constrain either No. 42 or No. 48-50 which have both been developed with 5 storey apartment blocks.
Can orderly, economic and appropriate development of the subject site as well as neighbouring sites be achieved	Yes. As discussed in the body of this report it is considered that orderly and appropriate development of the subject site can be undertaken. As discussed above, neighbouring allotments have already developed in an orderly manner.
Does the proposal meet density, setback and landscaping controls? The most critical control for small and narrow sites is that for setbacks	No. The building does not meet side and rear setback requirements of the HDCP and partially meets building separation controls for the ADG. This matter is discussed in the body of this report and is considered to be acceptable.
Is its impact on adjoining properties and the streetscape worse because the development is on a small or narrow site?	No. The proposed development is considered to have acceptable streetscape presence and acceptable impact to adjoining properties.

As detailed in the table above and within this planning report, the development of No. 46 Lords Avenue as a standalone allotment is considered to achieve an appropriate urban form in an orderly use of the site.

Consequently, it is considered that the proposed development complies with the minimum lot width requirements as prescribed in Part 3.4.3 Site Requirements of the HDCP and is considered acceptable.

2.3.2 Setbacks

The desired outcome of Part 3.4.5 Setbacks of the HDCP are to encourage “*well articulated building forms that are set back to incorporate landscaping, open space and separation between buildings*”, “*developments which have coordinated basement and services located to minimise loss of landscaped open space and reduction of deep soil zones*”, and “*setbacks that preserve and protect existing trees around the perimeter of sites and provide effective deep soil areas that are able to create a garden setting, including substantial tree canopy to all sides of the building*”.

This is supported by the prescriptive measure set out in Table 3.4.5 (a) Minimum Setbacks which prescribes a minimum front boundary setback of 10m which can be reduced to 8m for a maximum of 1/3 of the building width; minimum side boundary setback of 6m which can be reduced to 4.5m for non-habitable rooms only, to a maximum of 1/3 of the building width; and rear boundary setbacks of 10m, which can be reduced to 8m for a maximum of 1/3 of the building width.

It is noted that the CCPG will generally take precedence over the HDCP with the exception of building height, side and rear setbacks and car parking rates. Accordingly, an assessment under the HDCP has been carried out for side and rear boundary setbacks.

Due to the establishment that the site is being developed in isolation due to the fact that there are no alternative properties for amalgamation, a strict and unyielding application of the setback controls

would likely result in a large and thin, poorly proportioned built form, out of character with the surrounding residential environment. Setback controls in the Hornsby *HDCP* are however an important consideration as they are one of the main methods for controlling built form on site, due to the fact the *HLEP* does not adopt a FSR control.

Consequently, a merit-based assessment is required against the desired outcomes of Part 3.4.5.

2.3.2.1 Side Boundaries

The application proposes a 3 metre north and south side boundary setback with the access stairway to the basement encroaching 240mm which does not comply with the 6m side setback requirements of the *HDCP*.

Northern Side Boundary

It is noted that the development to the north at No. 48-50 has been constructed with a non-compliant 4 metre south side boundary setback. The development, as approved under DA/1041/2013, was amended to comply with Council's requirement to retain a significant tree group to the rear, with the loss of floor space at the rear due to the increased setbacks compensated by reducing the setback along the southern boundary. Privacy screens and highlight windows were approved for all living areas or single aspect balconies with a 4m setback to alleviate any adverse impact on the neighbouring properties.

The proposed development benefits from existing side boundary landscaping within the two neighbouring properties along the side boundaries to provide necessary screening and softening to adjoining properties. The ground level encroachments would be adequately screened by vegetation and acoustic boundary fencing.

It is noted that the building separation requirements under Part 2F of the Apartment Design Guide (ADG) requires a minimum separation distance of 9m between habitable and non-habitable rooms. As the development at No. 48-50 has been constructed with a 4m setback, a 5m setback would be required to comply with Part 2F of the ADG which would not result in the orderly and economic development of the isolated 15.38m wide site. The building separation of 7 metres is considered acceptable, noting that No. 48-50 was designed with highlight windows and privacy screens on the south elevation to minimise privacy impacts to the subject site.

Southern Side Boundary

It is noted that the development to the south at No. 42 has been constructed with a predominately compliant 6 metre north side boundary setback. The development, as approved under DA/1211/2014, included wrap-around balconies on the north elevation to provide articulation and included privacy mitigation measures in the form of full height privacy screens. The part of the north elevation that is setback 4m from the side boundary includes bedrooms and bathrooms, with only translucent windows provided to the bathrooms on the north elevation.

The proposed development benefits from existing side boundary landscaping within the two neighbouring properties along the side boundaries to provide necessary screening and softening to adjoining properties. The ground level encroachments would be adequately screened by vegetation and acoustic boundary fencing.

It is noted that the building separation requirements under Part 2F of the Apartment Design Guide (ADG) requires a minimum separation distance of 9m between habitable and non-habitable rooms. As the development at No. 42 has been constructed with a 6m setback, the building separation of 9m achieves the required 9m building separation.

2.3.2.2 Rear Boundary

The application proposes an 8.79m rear setback which does not comply with the 10m rear setback requirements of the HDCP.

In support of this non-compliance, it is noted that the rear setback does comply with the building separation requirements of the *SEPP 65 Design Quality of Apartment Development, Apartment Design Guide (ADG)*. The non-compliance would not be visually perceptible from the street. There are two existing trees (T11 & T12) which would be retained along a portion of the rear boundary which would assist in softening the built form from neighbouring developments.

2.3.2.3 Basement

The amended plans deleted the proposed carparking in the front setback which would minimise the loss of landscaped open space and provide deep soil zones. The proposed basement car park on the isolated site is a well-coordinated basement with services located within to minimise loss of landscaped open space and reduction of deep soil zones.

The proposed development benefits from existing side boundary landscaping within the two neighbouring properties along the side boundaries to provide necessary screening and softening to adjoining properties.

The rear boundary setback provides sufficient space for landscaping and ensures that existing trees along the rear boundary can be retained to provide established screening.

Submissions raised concerns regarding the structural integrity of the existing adjacent developments. In response to these concerns, it is noted that dilapidation reports would be conditioned for all adjacent developments prior to the commencement of any works on site.

Overall, the proposed setback variations do not generate any privacy impacts or sunlight access loss as a result of the numerical non-compliances and are considered acceptable.

2.3.3 Transport and Parking

The desired outcomes of Part 1C.2.1 Transport and Parking encourages '*development that manages transport demand around transit nodes to encourage public transport usage; car parking and bicycle facilities that meet the requirements of future occupants and their visitors; and development with simple, safe and direct vehicular access*'.

This is supported by prescriptive measures that '*car parking should be provided on site in accordance with the minimum parking rates in Tables 1C.2.1(c). A Car Parking Demand Assessment should be provided for any significant variation proposed to the minimum parking rates prescribed in Table 1C.2.1(c). Before granting approval to depart from on-site parking rates specified in Table 1C.2.1(c), Council will consider the Car Parking Demand Assessment and any other relevant planning consideration.*

2.3.3.1 Transport

A Transport Assessment prepared by Arc Traffic and Transport dated 18 December 2023 and a Technical Note prepared by Arc Traffic and Transport dated 15 March 2024 considers the traffic and parking impacts of the proposal on the existing road network.

The assessment concludes that the site benefits from good access to both rail and bus services, and pedestrian footpaths are provided in all local roads, providing excellent pedestrian access for what are anticipated to be a relatively high number of walk trips between the site and the adjacent residential population. The trip generation of the proposed child care centre would be moderate and would not have any impact on the operation of local roads or intersections. On-site parking has been provided in accordance with the peak parking demands identified in the Draft Guide to Transport Impact Assessment.

According to the Traffic Assessment the 85thth percentile speed was less than 30km/h during the AM and PM peak periods. Council's Traffic Team has also referenced other data gathered for Lords Avenue and it confirmed that the 85thth percentile speeds were less than 30km/h during the peak periods.

The Guide to Traffic Generating Developments has an environmental capacity goal of a maximum of vehicle trips per hour (VTPH) of 200 VTPH for local streets with a maximum of 300 VTPH. The traffic volume counts supplied by Arc Traffic and Transport give an AM peak period count of 66 VTPH and PM peak period count of 53 VTPH. Traffic generation is not considered an issue with the proposed development. The traffic impacts of the proposed childcare centre are therefore considered acceptable.

2.3.3.2 Parking

The Hornsby DCP has a parking requirement of 1 space per 4 children, giving a parking requirement of 12 spaces for the proposed childcare facility with a capacity for 45 children. A total of 9 parking spaces including 1 accessible parking space have been provided and shown on the drawings, which is 3 spaces less than that required by the HDCP.

The Traffic Assessment by Arc Traffic and Transport states that the TEF Consulting's trip generation analysis established that childcare centres with 40 to 65 children generate a rate of 1 parking space per 5 children. The statement can be found from RMS Validation Trip Generation Surveys - Child Care Centres 2015 and in Chapter 5.6.8 of the Draft Guide to Transport Impact Assessment.

Council's Traffic Branch accepts the justification of the shortfall of parking from the CCPG and HDCP rates, since the 2015 RMS surveys of childcare centres are accepted by TfNSW and the updated rates are incorporated into the Draft Guide to Transport Impact Assessment.

Council's Traffic Branch assessment raised no objections, subject to the recommended conditions of consent.

The proposed development meets the desired outcomes of Part 1C.2.1 Transport and Parking of the HDCP and is considered acceptable, subject to conditions.

2.3.4 Sunlight Access

The prescriptive measures of Part 7.1.6 of the HDCP state that *"on 22 June, 50 percent of the required principal private open space on any adjoining property should receive 3 hours of unobstructed sunlight access between 9am and 3pm"*.

The principal open space of all adjoining properties would receive a minimum of 3 hours of unobstructed sunlight access between 9am and 3pm on 22 June and would comply with the prescriptive measures of Part 7.1.6 of the HDCP.

The proposal meets the desired outcomes of Part 7.1.6 Privacy, Security and Sunlight of the HDCP and is considered acceptable.

2.3.5 Noise and Vibration

The desired outcomes of Part 1C.2.5 are that '*development designed and managed to minimise noise and vibration impacts on the occupants of residential dwellings and other noise sensitive land uses*'.

This is supported by prescriptive measure (f) requiring that '*Noise generating developments should be accompanied by an acoustic report that demonstrates the development is sited and designed to:*

- *minimise the effect of noise and vibration on surrounding sensitive landuses, and*
- *comply with relevant State Government and Council guidelines.*

The applicant provided an amended Acoustic Report (230725R1 Revision 3) dated 7 March 2024 prepared by Rodney Stevens Acoustics and an addendum letter (R230725R1) dated 8 March 2024 prepared by Rodney Stevens Acoustics who is a suitably qualified acoustic professional.

Council's Environmental Protection team assessed the report and determined that the amended Acoustic Report is satisfactory and that the site is suitable for the proposed use.

Acoustic recommendations are provided in Section 6 of the amended Acoustic Report and conditions of consent are recommended to ensure that the recommendations are implemented during construction, and certification provided prior to occupation. Operational conditions include compliance with the nominated criteria and implementation of the operational Plan of Management.

Council's Environmental Protection team have determined that the Acoustic Report and Plan of Management have been prepared and reviewed by suitably qualified acoustic professionals and are satisfactory, subject to conditions.

The proposal meets the desired outcomes of Part 1C.2.5 Noise and Vibration of the HDCP and is considered acceptable.

2.3.6 Waste Management

Council's Waste Management team have concluded that the site will require one 660L general waste bin serviced twice weekly (the submitted Waste Management Plan states weekly collection) and one 660L recycling bin serviced weekly.

While the bins will fit in the bin storage area shown on the plans, there would not be enough space to rotate the bins which is required to manoeuvre the bins in and out of position for servicing. The bin storage area would need to be increased from 3m by 2.1m to 3m by 2.5m to allow sufficient manoeuvring space. The additional 400mm can be easily achieved along the north side setback and accordingly, this requirement been conditioned.

The gate to the bin storage is shown as 850mm clear. The dimensions of 660L bins vary depending on the manufacturer, but at least one brand is 850mm wide which means it would not pass through the gate with ease. To address these concerns, the gate must be no less than 950mm clear. This requirement has been conditioned.

The waste storage facility must be screened by a visual barrier of at least 1.5m height or enclosed so that visual amenity is not reduced for customers, the public, visitors and staff. Screening must not rely on the growth of plants, but they may supplement it. This requirement has been conditioned.

2.3.7 Tree and Vegetation Preservation

The prescriptive measures of Part 1B.6.1 Tree Preservation of the HDCP state that:

- a) *“the prescribed trees that are protected by the Vegetation SEPP and/or Clause 5.10 of the HLEP and this section of the DCP include:*
- *all trees except exempt tree species in Hornsby Shire as listed in Table 1B.6 (a) or subject to a Biodiversity Offset Scheme,*
 - *all trees on land within a heritage conservation area described within the HLEP, and*
 - *all trees on land comprising heritage items listed within the HLEP.*
- b) *To damage or remove any tree protected under the HDCP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in this part (under the heading ‘Exempt Tree Work’).”*

There are 12 trees located within or immediately adjacent to the site. The applicant has submitted an Arboricultural Impact Assessment (AIA) provided by Horticultural Resources Consulting Group dated 28 November 2023.

The proposal would result in the removal of 7 trees numbered 1, 2, 5, 6, 9 (2 trees) and 10. Council's tree management assessment raised no objections to the removal of these trees as there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity.

Trees numbered 11 and 12 located on the rear boundary would also be impacted by the building envelope with Tree Protection Zone incursions of:

- T11 <13 percent (<10% after consideration of the supervised excavation technique)
- T12 <10 percent

The encroachment is considered a minor TPZ incursion as prescribed in the Australian Standard AS4970-2009 Protection of trees on development sites. As a result, there is no requirement to undertake any form of detailed root investigations. The TPZ incursions are minimal and the regrowth of roots can be compensated on the subject site and/or adjoining property to the rear. Trees 11 and 12 are a resilient species in relation to impacts resulting from development.

Accordingly, conditions of consent have been recommended to ensure appropriate replacement plantings and tree protection measures to the retained trees.

The proposal meets the prescriptive measures of Part 1B.6.1 Tree Preservation of the HDCP and is considered acceptable, subject to conditions.

2.3.8 Biodiversity

The desired outcome of Part 1C.1.1 Biodiversity of the HDCP is to encourage *“development that provides for the conservation of biodiversity including threatened species and populations, endangered ecological communities, remnant indigenous trees, regionally and locally significant terrestrial and aquatic vegetation”* and to encourage *“development that maintains habitat for native wildlife and wildlife corridors to provide for the movement of fauna species.”*

This is supported by the prescriptive measure that states that *“development should seek to:*

- *avoid potential adverse impact on biodiversity,*
- *if that impact cannot be avoided, minimise that impact, or*
- *if the impact cannot be minimised, to mitigate the impact.”*

The property has been identified as being adjacent to a threatened vegetation community identified as Turpentine-Ironbark Forest.

The proposal does not require the removal or modification of a significant area of vegetation or habitat, is generally consistent with the biodiversity element of HDCP 2013 and will not have a significant impact on matters listed under the NSW *Biodiversity Conservation Act 2016* (NSW BC Act).

The proposal meets the prescriptive measures of Part 1C.1.1 Biodiversity of the HDCP and is considered acceptable.

2.4 Section 7.12 Contributions Plans

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

2.5 Housing and Productivity Contribution

The Housing and Productivity Contribution came into effect on 1 October 2023 with the gazettal of Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023. The contribution will help deliver essential state infrastructure like schools, hospitals, major roads, public transport infrastructure and regional open space.

The Housing and Productivity Contribution applies to the development as it would result in an additional 620.4m² of commercial gross floor area.

Accordingly, the requirement for a monetary Housing and Productivity contribution is recommended as a condition of consent.

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

There are 12 trees located within or immediately adjacent to the site. The applicant has submitted an Arboricultural Impact Assessment (AIA) prepared by Horticultural Resources Consulting Group dated 28 November 2023.

The proposal would result in the removal of 7 trees numbered 1, 2, 5, 6, 9 (2 trees) and 10. Council's tree management assessment raised no objections to the removal of these trees as there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity.

Trees numbered 11 and 12 would also be impacted by the building envelope. The encroachment is considered a minor TPZ incursion as prescribed in the Australian Standard AS4970-2009 Protection of trees on development sites. As a result, there is no requirement to undertake any form of detailed root investigations. The TPZ incursions are minimal and the regrowth of roots can be compensated on the subject site and/or adjoining property to the rear. Trees 11 and 12 are a resilient species in relation to impacts resulting from development.

The proposal does not require the removal or modification of a significant area of vegetation or habitat, is generally consistent with the biodiversity element of HDCP 2013 and will not have a significant impact on matters listed under the NSW BC Act 2016.

Accordingly, conditions of consent have been recommended to ensure appropriate replacement plantings and tree protection measures to the retained trees.

3.1.2 Stormwater Management

The development proposes to connect to Council's drainage system located in Lords Avenue via below ground on-site detention (OSD) system to control the discharge of water from the site. Council's engineering assessment concludes that the OSD system is satisfactory, subject to conditions.

3.2 Built Environment

3.2.1 Built Form

The buildings would be located within a precinct identified with a future character of five storey residential flat buildings in a landscaped setting with underground car parking. The built form of the proposal would be consistent with the desired future character of the precinct.

3.2.2 Traffic

A Transport Assessment prepared by Arc Traffic and Transport dated 18 December 2023 and a Technical Note prepared by Arc Traffic and Transport dated 15 March 2024 considers the traffic and parking impacts of the proposal on the existing road network.

The assessment concludes that the site benefits from good access to both rail and bus services, and pedestrian footpaths are provided in all local roads, providing excellent pedestrian access for what are anticipated to be a relatively high number of walk trips between the site and the adjacent residential population. The trip generation of the proposed child care centre would be moderate and would not have any impact on the operation of local roads or intersections. On-site parking has been provided in accordance with the peak parking demands identified in the Draft Guide to Transport Impact Assessment.

According to the Traffic Assessment the 85thth percentile speed was less than 30km/h during the AM and PM peak periods. Council's Traffic Team has also referenced other data gathered for Lords Avenue and it confirmed that the 85th percentile speeds were less than 30km/h during the peak periods.

The Guide to Traffic Generating Developments has an environmental capacity goal of a maximum of 200 VTPH for local streets with a maximum of 300 VTPH. The traffic volume counts supplied by Arc Traffic and Transport give an AM peak period count of 66 VTPH and pm peak period count of 53 VTPH. Traffic generation is not considered an issue with the proposed development. The traffic impacts of the proposed childcare centre are therefore considered acceptable.

Parking

The Hornsby DCP has a parking requirement of 1 space per 4 children, giving a parking requirement of 12 spaces for the proposed childcare facility with a capacity for 45 children. A total of 9 parking spaces including 1 accessible parking space have been provided and shown on the drawings, which is 3 spaces less than that required by the HDCP.

The Traffic Assessment by Arc Traffic and Transport states that the TEF Consulting's trip generation analysis established that childcare centres with 40 to 65 children generate a rate of 1 parking space per 5 children. The statement can be found from RMS Validation Trip Generation Surveys - Child Care Centres 2015 and in Chapter 5.6.8 of the Draft Guide to Transport Impact Assessment.

Council's Traffic Branch accepts the justification of the shortfall of parking from the CCPG and HDCP, since the 2015 RMS surveys of childcare centres are accepted by TfNSW and the updated rates are incorporated into the Draft Guide to Transport Impact Assessment.

Council's Traffic Branch assessment raised no objections, subject to conditions of consent.

3.3 Social Impacts

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 the next 40 years (to 2056). 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 development would make a positive social contribution to the local community by providing by providing 45 child care places to support a growing population.

The social impacts of the development on the local and broader community have been considered with specific reference to the potential employment generation within the complex. It is estimated that the development would employ up to 10 people at any time post construction. This is consistent with the *State Government's Greater Sydney Region Plan - A Metropolis of Three Cities' which identifies the need to provide an additional 689,000 new jobs by 2031.*

The site is located approximately 500 metres from Asquith Railway Station and in close proximity to the Asquith Commercial precinct.

3.4 Economic Impacts

The development would result in a positive economic impact on the locality via employment generation during construction and increase in employment and demand for local services following completion of the development.

4. SITE SUITABILITY

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

Possible examples

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 12 January 2024 and 2 Mills Avenue in accordance with the Hornsby Community Engagement Plan. During this period, Council received 10 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<p>X SUBMISSIONS RECEIVED</p>		<p>PROPERTY SUBJECT OF DEVELOPMENT</p>	
---	--------------------------------------	---	--	---

ITEM 1

The 10 submissions received, objected to the development, generally on the grounds that the development would result in:

- Unacceptable traffic and parking on local streets.
- Unacceptable overshadowing of adjoining properties.
- Unacceptable noise from activities at the centre.
- Unacceptable impact on structural stability of adjacent buildings (dilapidation).
- Lack of articulation.
- Unacceptable waste management.
- Unacceptable impact on privacy of neighbouring properties.

No submissions supported or were neutral to the development.

The merits of the matters raised in community submissions have been addressed in the body of the report.

5.2 Public Agencies

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

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes the demolition of existing structures and construction of a 45 place child care centre and erection of one sign.

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

Council received 10 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 application is recommended.

The reasons for this decision are:





- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, solar access, amenity or privacy.

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

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Draft Conditions of Consent
2.  Architectural Plans
3.  Shadow Plans
4.  Plan of Management

File Reference: DA/1411/2023
Document Number: D08866549

2 DA/1125/2023 - CONSTRUCTION OF 76 PLACE CHILD CARE CENTRE - 76 NEW LINE ROAD, CHERRYBROOK

DA No: DA/1125/2023 (PAN-383116 - Lodged on 24 October 2023)

Description: Demolition of structures and construction of a 76 place child care centre

Property: Lot 185 DP 626632, No. 76 New Line Road, Cherrybrook

Applicant: Mr Darren Laybutt

Owner: Finlora Pty Ltd

Estimated Value: \$2,580,600

Ward: C Ward

Submissions: 24

LPP Criteria: 10 or more unique submissions were received by way of objection

Author: Tim Buwalda, Senior Town Planner

COI Declaration: No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT the Hornsby Shire Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/1125/2023 for the demolition of structures and construction of a childcare centre for 76 children with basement car parking at Lot 185 DP 626632, No. 76 New Line Road, Cherrybrook, subject to the conditions of consent detailed in Attachment 1 of LPP Report No. LPP4/24.

EXECUTIVE SUMMARY

- The application involves the demolition of structures and construction of a two-storey childcare centre for 76 children with basement car parking.
- 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 24 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

BACKGROUND

Site History

On 28 April 2020, the Local Planning Panel approved DA/258/2020 for the demolition of existing structures, Torrens title subdivision of one lot into two and erection of two dwellings as staged development.

Application History

On 12 December 2023, Council requested amended plans and documents to address setbacks, privacy, acoustics, Plan of Management, waste and engineering issues.

On 5 February 2024, Council received the amended information which was subsequently renotified to adjoining properties.

On 29 February 2024, Council requested amended information regarding the Plan of Management.

On 26 March 2024, Council requested additional information to address gross floor area, acoustics, kitchen details and Plan of Management.

On 3 April 2024, Council received the additional information.

On 19 April 2024, the applicant informed Council that a large tree (identified as tree 14) on Council's nature strip had a large branch and stem failure due to weather events.

Council's Tree Management Team informed the applicant that Tree 14 located on Council's land has been scheduled to be removed in July 2024 as it is now considered unsafe.

On 1 May 2024, the applicant provided amended plans to realign the proposed footpath and pedestrian entrance on Council's nature strip in response to the tree to be removed.

On 3 May 2024, Council requested additional information to reflect the proposed changes to the footpath and pedestrian entrance across all proposed architectural plans and an amended Plan of Management.

On 7 May 2024, Council received the amended architectural and landscaping plans and Plan of Management which are subject to this assessment.

SITE

The site comprises a single allotment of 1,073m² which has frontage to New Line Road, Cherrybrook and currently contains a single storey dwelling house. The site has a width of 21.9m and a depth of 55.9m.

The site experiences a fall of approximately 2m towards the front boundary with New Line Road.

The site is not bushfire. The southern side of the subject site is flood prone.

The site does not contain a heritage listed item, is not located in the vicinity of a heritage listed item and is not located within a heritage conservation area.

The property contains vegetation mapped as Blue Gum High Forest adjacent to the front boundary of the site. Blue Gum High Forest is listed as a Critically Endangered Ecological Community listed under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EP&BC Act) and the NSW *Biodiversity Conservation Act 2016* (BC Act).

The site is not burdened by any easements or restrictions. The site is benefitted by a right of carriageway, 4m wide, which burdens the adjoining allotment, SP 21015, Falcon Hill, a medium density strata community which adjoins the rear of the site. The right of carriageway provides access from the rear boundary of No. 76 New Line Road to the public road system at Greenoaks Avenue.

PROPOSAL

The application proposes the demolition and construction of a two-storey purpose built 76 place childcare centre with basement car parking.

The child care centre would cater for a total of 76 children with the following breakdown:

- 0-2 years: 8 children
- 2-3 years: 20 children
- 3-5 years: 48 children

The child care centre comprises:

- *Basement Level*

The vehicular access to the basement car park would be provided from New Line Road. The basement would provide 19 car parking spaces including 1 disabled car parking space, a bin storage area, fire stairs, a lift, pedestrian path and a vehicle turning area.

- *Ground Floor Level*

A lift, fire stairs, foyer, kitchen, bathroom, laundry, 0-2 indoor play area and outdoor area, cot room, bottle preparation room, directors' office, 2-3 and 3-5-year indoor play rooms, nappy room, and rear outdoor play area and internal and external storage would be provided on the ground level.

- *First Floor Level*

Bathrooms, staff room, 3-5 years indoor and outdoor play areas, internal and external storage and bathrooms would be located on the first-floor level.

The child care centre would operate 51 weeks of the year (closed between Christmas and New year) with proposed hours of operation from 7am to 6pm Monday to Friday, closed on Saturdays, Sundays and Public Holidays. The centre would operate with 11 staff.

No signage is proposed as part of this development.

A total of 14 trees would be removed by the proposed development.

ASSESSMENT

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

1. STRATEGIC CONTEXT

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

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 the next 40 years (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.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District over the next 20 years.

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 child care centre would be consistent with the objectives of the strategy by providing 76 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"*.

2.1 Hornsby Local Environmental Plan 2013

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

2.1.1 Zoning of Land and Permissibility

The subject land is zoned R2 Low density residential under the HLEP. The objectives of the 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 'centre-based child care facilities' and is permissible in the R2 zone with consent.

2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal has a maximum height of 8.45m and complies with this provision.

2.1.3 Heritage Conservation

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

2.1.4 Earthworks

The objective of Clause 6.2 Earthworks of the HLEP is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The application proposes excavation associated with the basement carpark for a centre-based child care facility. This excavation would entail the removal of 1,435m³ of material from the site. At its deepest point, the excavation would be 3.5m below the existing ground level, with deepest excavation works being to the eastern part of the site, as the topography falls towards the west (front) of the site excavation depth reduces to be consistent with existing ground level.

Matter for Consideration	Comment
(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development	The proposed excavations are unlikely to have a detrimental effect on the drainage patterns given that all stormwater from the development would be directed towards the street via an on-site detention system to the New Line Road drainage system. With respect to soil stability, appropriate conditions of consent have been recommended during the construction phase of the development. Upon completion of the development, it is anticipated that there will be no ongoing soil stability issues.
(b) the effect of the development on the likely future use or redevelopment of the land	The earthworks are required to facilitate the proposal which would allow the full development potential of the site to be realised.
(c) the quality of the fill or the soil to be excavated, or both	A condition is recommended to ensure that all fill material imported to, and all excavated material

	exported from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility.
(d) the effect of the development on the existing and likely amenity of adjoining properties	Appropriate conditions have been recommended to limit amenity impacts during the construction period including the submission of dilapidation reports assessing the impact of the excavation on the adjoining properties.
(e) the source of any fill material and the destination of any excavated material	A condition has been recommended that all excavated material removed from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility.
(f) the likelihood of disturbing relics	Council has no record of any historical items or events of note on the subject site, of either Aboriginal or European Heritage. It is therefore considered that the proposed works are unlikely to disturb any relics.
(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area	The proposed works would not be in proximity to any environmentally sensitive area. Subject to appropriate erosion and sediment conditions, it is considered that any adverse impacts can be mitigated.
(h) any appropriate measures proposed to avoid, minimise, or mitigate the impacts of the development	Appropriate measures have been included as conditions of development consent to avoid, minimise, and mitigate the impacts of the development.

2.2 State Environmental Planning Policy (Resilience and Hazards) 2021

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

2.2.1 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.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The applicant submitted an Environmental Investigation Report (Phases 1 & 2) prepared by Sydney Environmental Group, report No. 2255-PSIDSI-01-220923.v1f, dated 22 September 2023 for the proposed development.

The reports conclude that the site can be made suitable for the proposed use subject to a Remedial Action Plan (RAP) being implemented to remediate the identified benzo(a)pyrene impacts within the site.

A RAP has been submitted prepared by Sydney Environmental Group, Report No. 2255-RAP-01-260923.v1f, dated 26 September 2023 which has been assessed by Council's Environmental Protection Team who considers the RAP sufficient. Appropriate conditions have been recommended to ensure the site is appropriately remediated and the land is suitable for the proposed use post remediation.

A validation report would be required post remediation confirming that the site is suitable for the intended use. This validation report would be required to be submitted prior to the issue of a Construction Certificate to ensure Council can be satisfied that the site is remediated before the land is used as a Childcare centre.

Subject to appropriate conditions, Council is satisfied that the land is suitable for the proposed development.

2.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of chapters 2 and 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.3.1 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.

Part 2.3 of the policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

Section 3.1.1 of this report provides an assessment in accordance with Part 1B.6.1 of the HDCP.

2.3.2 Chapter 6 Waterways

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. This chapter 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.

The plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; interrelationship of waterway and foreshore uses; foreshore and waterways scenic quality; maintenance, protection and enhancement of views and boat storage facilities.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would not impact on the water quality of the catchment and would comply with the requirements of chapter 6 of the Biodiversity and Conservation SEPP.

2.4 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 which seeks to encourage sustainable residential development.

The proposal includes a BASIX certificate in accordance with the requirements of the SEPP including the list of commitments to be complied with at the construction stage and during the use of the premises. The BASIX certificate achieves the minimum scores for thermal comfort, water and energy.

The proposal is acceptable in this regard.

2.5 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.

2.5.1 Educational Establishments and Childcare Facilities

Chapter 3 of the Transport and Infrastructure SEPP 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 2021 (CCPG).

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

An assessment of the application against Part 1.3 *Planning objectives*, Part 2 *Design quality principles*, Part 3 *Matters for consideration* and Part 4 *Applying the National Regulations to development proposals* is provided below.

2.5.2 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.

The discussion provided below in response to Part 3 of the CCPG, demonstrates that the proposed development is considered consistent with these objectives.

2.5.3 Part 2 - Design quality principles

The discussion provided below in response to Part 3 of the CCPG, demonstrates that the proposed application is consistent with the design quality principles of Part 2 in relation to built-form, landscaping, safety and amenity, privacy, solar access and noise.

2.5.4 Part 3.1 - Site selection and location

The objectives of Part 3.1 of the CCPG are *to ensure that appropriate zone considerations are assessed when selecting a site; that the site selected for a proposed child care facility is suitable for use; that the sites for child care facilities are appropriately located and, that sites for child care facilities do not incur risks from environmental, health or safety hazards.*

In support of the application, it is noted that *centre based child care facilities* are a permissible land use within the R2 Low density residential zone. The proposed development would provide facilities

and services to meet the day to day needs of residents and would contribute to meeting demand for childcare the Hornsby Shire.

For proposed developments in or adjacent to a residential zone, consideration should be given to the acoustic and privacy impacts, the setbacks and siting of buildings and traffic and parking impacts.

In regard to acoustics and privacy impacts, an amended Acoustic Report No. 7856-1.1R Rev. C prepared by Day Design Pty Ltd Consulting Acoustical Engineers dated 3 April 2024 details the potential noise impacts of the proposed development on surrounding land uses. Council's Environmental Protection Team assessed the report and determined that the amended Acoustic Report is satisfactory and that the site is suitable for the proposed use.

The proposed siting of the building has considered the location of neighbouring dwellings and has been designed to ensure no adverse privacy or solar access impacts. The application proposes a 1.5m high privacy screen along the perimeter of the first-floor level balcony to reduce privacy impacts to the adjoining residential development, Falcon Hill at No. 30-34 Greenoaks Avenue, Cherrybrook.

A Traffic and Parking Impact Assessment prepared by McLaren Traffic Engineering and Road Safety Consultants dated 29 January 2024 considers the traffic and parking impacts of the proposal on the existing road network. The assessment concludes that the proposed childcare centre would provide sufficient on-site car parking and the traffic generation would not adversely impact the existing local street networks. Council's Traffic Branch concurs with the findings of the report and note that traffic generation would equate to 61 trips in the AM and 54 trips in the PM during the two hour peak traffic period which is considered acceptable. The traffic impacts of the proposed childcare centre are therefore considered acceptable.

The applicant submitted a Combined Stage 1 Preliminary and Stage 2 Detailed Site Investigation Report No. 2255-PSIDSI-01-220923.v1f prepared by Sydney Environmental Group, dated 22 September 2023 for the proposed development.

The report concludes that a Remedial Action Plan (RAP) is required to be prepared to detail the steps required to remediate the identified benzo(a)pyrene impacts within the site to a level suitable for the land-use scenario.

A RAP has been submitted prepared by Sydney Environmental Group, Report No. 2255-RAP-01-260923.v1f, dated 26 September 2023 which has been assessed by Council's Environmental Protection Team who considers the RAP sufficient. Appropriate conditions have been recommended to ensure the site is appropriate remediated and the land is suitable for the proposed use post remediation.

The proposal meets the objectives of Part 3.1 of the CCPG and the proposal is supported in this regard.

2.5.5 Part 3.2 - Local character, streetscape and the public domain interface

The objectives of Part 3.2 of the CCPG are *to ensure that the child care facility is compatible with the local character and surrounding streetscapes; clear delineation between the child care facility and public spaces and, that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.*

Development in the vicinity of the site is a low density residential landscape setting with a streetscape predominantly comprising one and two-three storey dwelling houses. The proposed child care centre would present to the streetscape as a two storey structure setback from the road and screened with

appropriate landscaping to ensure that the development integrates into the existing low density residential streetscape.

It is noted that the application proposes a basement level entry within the front elevation which does increase the bulk and scale of the development, however the first-floor level has been appropriately setback to ensure the development maintains a two-storey scale when viewed from New Line Road. Furthermore, the development complies with the 8.5m building height development standard.

The proposed works are of an appropriate scale and would not pose detrimental impact to the public domain and would be consistent with the prevailing streetscape qualities.

The proposal meets the objectives of Part 3.2 of the CCPG and is supported in this regard.

2.5.6 Part 3.3 - Building orientation, envelope and design

The objectives of Part 3.3 of the CCPG stipulate that child care facilities should be orientated to respond to the streetscape and be of a scale that is compatible with adjoining development; the setbacks should be consistent with the predominant development within the vicinity and the built form should contribute to the area's character; and buildings are designed to create safe accessible environments.

The proposed child care facility would be setback from neighbouring dwellings to ensure visual privacy and minimise potential noise and overlooking of neighbours. The proposed child care facility has been designed to address the street frontage along New Line Road and is of a scale that is compatible with the adjoining development, with a maximum building height of 8.45 metres consistent with the low density residential landscape character of the area.

The proposed entry to the child care facility have been sited and designed to allow for accessible level access from the street and basement car parking.

The proposal meets the objectives of Part 3.3 of the CCPG and the proposal is supported in this regard.

2.5.7 Part 3.4 - Landscaping

The objectives of Part 3.4 of the CCPG encourages landscape design that contributes to the streetscape and amenity.

Landscaping is provided within the front, side and rear setbacks and while 14 trees would be removed to accommodate the proposed development, a minimum of four replacement trees from the '*Trees Indigenous to Hornsby Shire (as of 1 September 2011)*' would retain and protect the amenity of adjacent properties. In addition to the four replacement trees, it is noted that the proposed landscape plan provides sufficient landscaping to positively contribute to the streetscape and amenity of the locality.

The proposal meets the objectives of Part 3.4 of the CCPG, and the proposal is supported in this regard.

2.5.8 Part 3.5 - Visual and Acoustic Privacy

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

The proposed child care facility has been sited and designed to minimise opportunities for direct overlooking from public areas. The development is setback from the street frontage and the outdoor play spaces are suitably screened and landscaped. The dwellings to the north and east and the community recreational area to the south would be separated by appropriate acoustic barriers setback within the property boundaries. Furthermore, the application includes a 1.5m (1m balustrading and 0.5m acoustic (privacy) panels above) along the perimeter of the first-floor level outdoor space to reduce acoustic and privacy impacts to adjoining residential properties. The 0.5m acoustic barrier would be obscure glazing to minimise the opportunity of overlooking.

It is noted that the application proposes windows within the northern elevation for the first-floor level indoor play area and staff room which would allow overlooking to the adjoining properties to the north of the site. As a consequence, a condition is recommended to ensure these windows are highlight windows with a minimum sill height of 1.5m above finished floor level to reduce the opportunity of overlooking.

The proposal meets the objectives of Part 3.5 of the CCPG and is considered acceptable.

2.5.9 Part 3.6 Noise and Air Pollution

The objectives of Part 3.6 of the CCPG include that a suitably qualified acoustic professional prepare an acoustic report to identify an appropriate noise level for a childcare centre facility.

The applicant provided an amended Acoustic Report, report No. 7856-1.1R Rev C prepared by Day Design Pty Ltd Consulting Acoustical Engineers dated 3 April 2024. Council's Environmental Protection Team have assessed the Acoustic Report and concluded that the amended Acoustic Report has performed a sufficient assessment to establish the background noise level for the location, develop noise criteria consistent with the relevant standards and assessed operational noise sources with the use of the facility.

Acoustic recommendations are provided within the amended Acoustic Report and conditions of consent are recommended in Attachment A of this report to ensure that the recommendations are implemented during construction, and certification provided prior to occupation. Operational conditions include compliance with the nominated criteria and implementation of the operational Plan of Management.

The Acoustic report proposes to construct a 2.1m high acoustic barrier setback 1m from the northern and southern boundaries within the rear yard and a 1.5m (1m balustrading and 0.5m transparent {privacy} acoustic barrier) along the perimeter of the first floor level outdoor play areas.

The application also includes a Plan of Management version 1.16, dated 7 May 2024 which includes the recommendations of the acoustic report to minimise noise impacts to adjoining properties such as limiting outdoor play to a total of 4 hours per day and closing windows and doors during indoor play.

Council's Environmental Protection Team have determined that both the Acoustic Report and Plan of Management have been prepared and reviewed by suitably qualified acoustic professionals and are therefore satisfactory, subject to conditions.

As the subject site is not within close proximity to an industrial development, no Air Quality Assessment Report is required to be prepared and submitted.

The proposal meets the objectives of Part 3.6 of the CCPG and is considered acceptable.

2.5.10 Part 3.7 Hours of operation

Part 3.7 of the CCPG indicates that the hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays.

The proposed hours of use of the childcare facility are Monday to Friday from 7:00am to 6:00pm and complies with this requirement.

2.5.11 Part 3.8 Traffic, parking and pedestrian circulation

Part 3.8 of the CCPG indicates that a Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised.

The Hornsby DCP has a parking requirement of 1 space per 4 children, giving a parking requirement of 19 spaces for the proposed child care facility with a capacity for 76 children. A total of 19 parking spaces, including 1 disabled parking space have been provided in a basement car park, which complies with the 1 space per 4 children requirement.

It is noted that Council's HDCC controls nor the CCPG contain any additional requirements for staff car parking, it is generally considered that the number of staff parking is included within the 1 space per 4 children calculation.

A Traffic and Parking Impact Assessment prepared by McLaren Traffic Engineering and Road Safety Consultants dated 29 January 2024 considers the traffic and parking impacts of the proposal on the existing road network. The assessment concludes that the proposed childcare centre would provide sufficient on-site car parking and the traffic generation would not adversely impact the existing local street networks. Council's Traffic Branch concurs with the findings of the report and note that traffic generation would equate to 61 trips in the AM and 54 trips in the PM during the two hour peak traffic period which is considered acceptable. The traffic impacts of the proposed childcare centre are therefore considered acceptable.

The proposal meets the objectives of Part 3.8 of the CCPG and is considered acceptable.

2.5.12 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 2021 - Part 4			
Control	Proposal	Requirement	Compliance
Floor Space Ratio	0.434:1	0.5:1	Yes
Unencumbered indoor space	3.29m ² per child	3.25m ² per child	Yes
Unencumbered outdoor space	7.07m ² per child	7m ² per child	Yes
Storage			
- External (0.3m ³ /child)	25.3m ³	22.8m ³	Yes
- Internal (0.2m ³ /child)	23.1m ³	15.2m ³	Yes

On site laundry	Provided on site	Provided on site	Yes
Child toilet facilities	Provided on site	Provided on site	Yes
Administration space	Provided on site	Provided on site	Yes
Nappy change facilities	Provided on site	Provided on site	Yes
Solar Access for outdoor play	30%	30-60%	Yes

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

2.5.12.1 Floor Space Ratio

A submission was received which raised concern that the first-floor level balconies (outdoor play area) is not included in the Floor Space Ratio (FSR) calculations and states that as the balcony has a 1.5m high screen along the perimeter of the balcony, this should be included in the FSR calculations.

FSR is calculated using the Gross Floor Area definition which states the following:

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

- (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

In assessing the first-floor level balconies, it is noted that the balconies contain a 1m high masonry external wall balustrade and a 0.5m translucent (privacy) acoustic panels which has a total height of 1.5m.

It is noted that the 1m high masonry balustrade and 0.5m translucent privacy glass are not considered to be external walls for the following reasons:

- There is no definition of 'external wall' in the standard LEP instrument.

- In the absence of a definition, the National Construction Code is used which defines an external wall as an “*outer wall of a building which is not a common/separating wall.*” A side note of an external wall in the NCC is that the external wall is required to be weatherproofed to keep rain from entering the internal spaces.
- The balustrades do not serve as external walls as they do not separate an external and internal space by a weatherproofing wall, as the outdoor play area is not a weatherproofed space. Rather, it is the physical, full height walls of the building that separate the internal elements (i.e. indoor play area, toilets and the Level 1 lift lobby) and the external elements (i.e. the outdoor play area) that are to be built as external walls and are the outer wall of the building.
- The first-floor level outdoor play areas are not enclosed spaces and are open to the elements.
- The FSR calculation must be measured from the “*internal face of the external wall*” cannot be from the inside face of the balustrades as they do not serve as the external walls of the building.

Therefore, Council does not consider the 1m high masonry balustrade and 0.5m translucent (privacy) acoustic panels to be an external wall and therefore, does not include the first-floor level outdoor play areas in the FSR calculations as it does not meet the gross floor area definition.

It is noted that the applicant has provided an FSR calculation plan on Plan No. DA17A of the Architectural Plan Set which incorrectly includes the stairs and lift within the basement plan and the stairs within the ground floor plan. Council has excluded this area from the FSR calculations.

The proposed development has a gross floor area of 466.2m² which equates to an FSR of 0.434:1 which complies with the 0.5:1 FSR requirement of the Transport and Infrastructure SEPP.

2.5.13 Centre-based child care—non-discretionary development standards

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: Council received submissions that raised concerns in regard to the proximity to existing early childhood education and care facilities in the vicinity of the subject site.

In response to the concerns raised, it is noted that while there are other child care centres within the vicinity of the site, a proposed child care centre can be located at any distance from an existing or proposed childhood education and care facility in accordance with Section 3.26(2)(a) of the *Transport and Infrastructure SEPP*.

- (b) *Indoor or outdoor space*

- (i) *For development to which clause 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies - the unencumbered area of indoor space and*

the unencumbered area of outdoor space for the development complies with the requirements of those clauses, or

- (ii) *For development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies - the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause;*

Comment: The regulations require a minimum of 3.25m² of unencumbered indoor play area and a minimum of 7m² of unencumbered outdoor play area per child. The application complies with this requirement.

- (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 1,073m² and is considered acceptable.

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

Comment: The centre would not be located within a heritage conservation area and is not in the vicinity of a heritage item.

In summary, the proposal complies with the *Transport and Infrastructure SEPP* provisions and is assessed as satisfactory in this regard.

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). The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP - Part 3.1 Dwelling Houses & Part 7 Community Uses			
Control	Proposal	Requirement	Complies

Site Area	1,073m ²	N/A	N/A
Building Height	8.45m	8.5m	Yes
Floor Area	466.2m ²	430m ²	No, Clause 3.25 of T&I SEPP applies FSR of 0.5:1
Site Coverage	31%	max. 40%	Yes
No. storeys	3	max. 2 + attic	No
Number of Children	76 children	max. 60	No - Clause 3.27 T&I SEPP does not limit max.
Recreation Space			
- <i>Indoor</i>	3.29m ² per child	3.25m ² per child	Yes
- <i>Outdoor</i>	7.07m ² per child	7m ² per child	Yes
Landscaping	38%	min. 40%	No
Car Parking (1 per 4 children)	19 spaces	19 spaces	Yes
Setbacks			
- <i>Front</i>	8.25m	9m	No
- <i>Side (north)</i>	2m	2m	Yes
- <i>Side (south)</i>	2m	2m	Yes
- <i>Rear</i>	9.4m	8m	Yes

Clause 3.23 of the Transport and Infrastructure SEPP requires Council to consider the relevant provisions of the Child Care Planning Guideline 2021 (CCPG) and the CCPG will generally take precedence over the HDCP except for building height, side and rear setbacks and car parking rates. As detailed in the above table, the proposed development generally complies with the prescriptive measures of the HDCP in regard to building height and setbacks. A brief discussion on car parking rates, compliance with relevant performance requirements and Part 1C General Controls is provided below.

2.7.1 Scale

Submissions were received which raised concern to the scale of the proposed development.

The application proposes the construction of a two-storey childcare centre with basement car parking.

The development can appear to be three storeys when viewed from New Line Road, however it is noted that the first-floor level is stepped back to provide articulation and the basement floor level is

predominantly located below existing ground level. Furthermore, the development complies with the 8.5m building height development standard.

The two-storey dwelling house to the north of the development has a ridge height of RL.167.730 and the proposed development has a roof ridge height of RL.170.000. Therefore, the proposed development is consistent with the scale adjoining development.

It is noted that the application complies with the 0.5:1 Floor Space ratio as discussed in Section 2.5.12.1 of this report and generally complies with the setback requirements.

Therefore, no objections are raised on planning grounds to the proposed scale of the development.

2.7.2 Number of Children

The HDCP 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 HDCP requires 15m² of outdoor recreation space per child.

Notwithstanding the above, Clause 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 purpose 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 the capacity of the centre can be supported.

2.7.3 Setbacks

It is noted that the CCPG would take precedence over the HDCP with the exception of building height, side and rear setbacks and car parking rates.

The CCPG does not include a front setback provision, however reference is made to street setbacks defining the proportion and scale of the street which contribute to the character of the public domain.

In this regard, Councils DCP requires a 9m front setback for primary road frontages within Cherrybrook.

The application proposes a front boundary setback of 8.25m which does not comply with the 9m front boundary setback.

It is noted that only minor portions of the development do not comply with the 9m front boundary setback being the ground floor level balcony. The total area of non-compliant balcony is 1.3m² which is considered minor, and it is generally considered this non-compliance would have negligible impacts to the streetscapes of New Line Road.

The application provided amended plans at Council's request to comply with the side boundary setback of 2m which is considered acceptable.

The development meets the desired outcomes of Part 3.1.2 Setbacks of the HDCP and is considered acceptable.

2.7.4 Landscaping

The application proposes a minimum landscaped area of 38% of the subject site which does not comply with the 40% minimum requirement.

In support of the application, the applicant provided landscaping plans which proposes to plant 193 trees and shrubs within the development. These would include the following tree plantings:

- 1x *Allocasuarina torulosa* (Forest She-oak) mature height of 12m
- 1x *Angophora floribunda* (Rough Barked Apple) mature height of 15m
- 3x *Banksia integrifolia* (Coastal Banksia) mature height of 12m
- 16x *Elaeocarpus eumundi* (Quandong) mature height of 8m
- 6x *Syzygium 'Cascade* (Dwarf Weeping Lillypilly) mature height of 3m; and
- 10x *Viburnum Emerald Lustre* (Sweet Viburnum) mature height of 3m.

Council's Tree Management Team reviewed the proposed tree species and advised the Forest She-oak (*Allocasuarina torulosa*) is not suitable for the site and a condition is recommended that this tree be replaced with an *Angophora floribunda* (Rough Barked Apple). A condition is recommended to ensure the Landscape Plan is amended prior to issue of the construction certificate. conditions are also recommended in Attachment 1 to ensure that the Landscape Plan is complied with, and the approved landscaping is maintained during the operational use of the child care centre.

A condition is recommended ensuring that the landscaping is completed in accordance with the approved Landscape Plans and that the landscaping is maintained during the on-going use of the childcare centre. The Landscape Plan states that an irrigation system shall be installed on site. A condition is recommended to ensure the irrigation system is installed to ensure the trees and shrubs are maintained.

In support of the 2% non-compliance, it is noted that the application proposes Softfall play within the rear yard which would still provide absorption and infiltration of stormwater and is required to provide adequate outdoor play area for the childcare centre. It is generally considered that the 2% (21m²) non-compliance is negligible, and the application proposes adequate planting of trees and shrubs to mitigate the minor landscaping non-compliance.

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.

2.7.5 Sunlight Access and Security

The prescriptive measures of Part 7.1.6 of the HDCP state that "on 22 June, 50 percent of the required principal private open space on any adjoining property should receive 3 hours of unobstructed sunlight access between 9am and 3pm".

The principal open space of all adjoining properties would receive a minimum of 3 hours of unobstructed sunlight access between 9am and 3pm on 22 June and would comply with the prescriptive measures of Part 7.1.6 of the HDCP.

The HDCP provides that childcare centre developments should identify a safe, clear and direct pedestrian and cyclist entrance to the building from the primary street frontage and windows and lobbies should be designed and oriented to overlook the street and open spaces on the site.

The proposal as amended includes a direct pedestrian pathway / ramp from The Esplanade to the front reception area of the centre. Windows are positioned in a manner that minimise privacy conflicts with adjoining residential properties and primarily overlook the street and rear and allows for passive surveillance of these areas.

The proposal meets the desired outcomes of Part 7.1.6 Privacy, Security and Sunlight of the HDCP and is considered acceptable.

2.7.6 Privacy

As discussed at Section 2.5.8 of this report, the proposed development is considered acceptable with regards to Part 3.5 of the CCPG.

Submissions were received which raised concern to the anticipated privacy impacts of the proposed development to adjoining residences.

At Council's request the applicant provided amended plans which amended the proposed 0.5m acoustic panels above the 1m balustrading within the first-floor level outdoor play areas to '*translucent (for privacy) glass/acrylic panels*'. This ensures that a 1.5m high privacy screen is located around all proposed outdoor play areas within the first-floor level which is considered acceptable.

A condition is also recommended to increase the sill heights of windows within the first-floor level indoor play area and staff room to a minimum of 1.5m to reduce the opportunity of overlooking to the northern adjoining residences of No. 30-34 Greenoaks Avenue.

Subject to conditions the proposal is considered acceptable with regards Privacy.

2.7.7 Vehicular Access and Parking

The application proposes a two-way vehicle crossing to New Line Road and provides a total of 19 car parking spaces which includes one disabled car parking space within the basement car park.

Submissions have been received which raise concern to the insufficient car parking for a childcare centre catering to up to 76 children.

The HDCP has a parking requirement of 1 space per 4 children, giving a parking requirement of 19 spaces for the proposed childcare facility with a capacity for 76 children. A total of 19 parking spaces, including 1 disabled parking space have been provided in a basement car park, which complies with the car parking requirements.

It is noted that Council's HDCP controls or CCPG does not have any additional requirements for staff car parking, it is generally considered that the number of staff parking is included within the 1 space per 4 children calculation.

All vehicles are to enter and leave the site in a forward direction. Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

Appropriate conditions are recommended to ensure the car parking spaces, entry and exit comply with the relevant Australian Standards.

2.7.8 Noise and Vibration

Submissions have been received which raised concern to the unacceptable noise impacts to adjoining residential properties and the unrealistic noise mitigation strategies stated within the Plan of Management.

The applicant provided an amended Acoustic Report, report No. 7856-1.1R Rev C prepared by Day Design Pty Ltd Consulting Acoustical Engineers dated 3 April 2024 and the Plan of Management v1.16 dated 7 May 2024. Council's Environmental Protection Team have assessed the Acoustic Report and Plan of Management and noted that:

Acoustic Assessment

- The acoustic assessment prepared by Day Design is well prepared and includes a comparison of the results obtained from unattenuated and attenuated noise monitoring to establish the noise level difference at ground and first floor levels.
- Noise levels were observed to be higher at first floor than ground level due to less acoustic shielding and the background noise levels used to establish the project noise criteria were established as 43dBA.
- Outdoor play has been assessed against both greater than 4 hours play and up to a maximum of 4 hours play, using the applicable noise criteria provided by the AAAC guideline. The results of the predicted noise assessment have determined that outdoor play must be at a maximum of up to 4 hours per day, due to non-compliance with the more than 4 hours criteria.
- It is noted that the outdoor play areas are located to the front and rear of the site and are appropriate noise barriers such as boundary fencing, 2.1m high acoustic walls within the rear yard and 1.5m high acoustic barriers within the first-floor levels are proposed to reduce the noise impacts to adjoining properties to an acceptable level.
- Cumulative noise inclusive of indoor play, vehicles and mechanical plant was assessed appropriately and there are no exceedances predicted at any surrounding receivers provided the acoustic measures are complied with which includes closing of doors and windows during indoor play.
- Day Design also state that provided the building construction outlined in Section 6.4 and sound barrier walls recommended in Section 7.1 and 8.2 are satisfactorily implemented, the calculated internal level of road traffic noise will be below the noise criterion with external windows and doors closed in all indoor playrooms. Due to the closure of windows, alternative ventilation is required.
- Special events (Christmas, Easter, Mother's Day, Father's Day, and Grandparents Day) are discussed in Section 8.1.2 the amended report, with appropriate recommendations provided.
- Recommendations are provided in Section 8 including design and construction, installation of acoustic barriers, management controls and waste and maintenance controls.

Plan of Management

- The Plan of Management (PoM) dated 7 May 2024 is well prepared and generally reflects the recommendations of the acoustic assessment.

- The amended PoM provides that waste collection will take place during operational hours (7am to 6pm) however, will be targeted to be between 9am and 2pm to avoid peak parent visitor times.
- The proposed noise management is considered acceptable.
- The POM includes the noise reduction measures proposed in Section 6.4 and 8.1.1 recommended in the Noise Impact Assessment.
- The POM states that outdoor play should be limited to a maximum of 4 hours (total) per day which is considered acceptable and consistent without recently approved Child Care Centres.
- Special events are included in the amended plan, including the recommendations provided in the amended acoustic report.

Council's Environmental Protection team have determined that the Acoustic Report and Plan of Management have been prepared and reviewed by suitably qualified acoustic professionals and are satisfactory, subject to conditions.

Both the architectural plans and landscape plans reflect the recommendations of the Acoustic Report and compliance with the recommendations of the Acoustic Report would be ensured by conditions of consent.

It is generally considered that the noise mitigation measures proposed within the Acoustic Report and included within the POM are considered acceptable. A condition is recommended ensuring that the acoustic measures be implemented during the construction and certified by a qualified acoustic consultant. Furthermore, the POM must be implemented during the operation of the childcare centre.

Subject to these conditions, it is generally considered that the proposed childcare centre would have an acceptable noise impact which complies with the noise criteria to adjoining properties.

2.7.9 Waste Management

The bin storage area at the basement level has sufficient space for 8 x 240L bins which will be sufficient for the proposed childcare centre.

The application originally proposed for bins to be carted to the kerb for a kerb side collection.

Submissions were received which raised concerns to the traffic impacts of a kerb side collection and the safety impacts to pedestrians and staff carting the bins to the kerb.

At Council's request additional information was requested in regard to waste collection and the applicant provided amended plans which allowed for small rigid vehicles (SRVs) to enter the basement and turn around within the vehicle turning /loading area. Therefore, bin collection can occur on-site which is considered acceptable.

It is noted that the vertical clearance to the basement is 2.3m which does not comply with 3.5m vertical clearance required by the Australian Standard AS2890.2, however 3 waste collection service providers have stated that they have 2.1m high vehicles that are capable of servicing the site. Therefore the 2.3m vertical clearance is considered acceptable and appropriate conditions are recommended to ensure that the 2.3m vertical clearance is maintained to ensure vehicle safety for waste collection.

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. Should the application be approved, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

2.9 Housing and Productivity Contribution

The Housing and Productivity Contribution applies to the development as it would result in an additional 480.5m² gross floor area for commercial development. Accordingly, the requirement for a monetary Housing and Productivity contribution is recommended as a condition of consent.

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

The application is supported by an Arborist report prepared by Tree Repairs dated 9 October 2023 which identifies 18 trees within the vicinity of the development.

The application proposes the removal of trees numbered 1 to 12 inclusively and trees numbered 16 and 17 as these trees are located within the footprint of the proposed childcare centre. These trees have all being assessed as low retention value trees and include a mix of species such as: *Acer palmatum* (Japanese Maple), *Chamaecyparis obtuse* (Hinoki Cypress), *Fraxinus griffithii* (Himalayan Ash), *Olea europaea* (European Olive), *Syagrus romanzoffiana* (Cocos Palm), *Cupressus torulosa* (Bhutan Cypress), *Platyclusus orientalis* (Oriental Arborvitae), *Catunaregam spinosa* (Mountain Pomegranate), *Ceratopetalum gummiferum* (NSW Christmas Bush) and *Jacaranda mimosifolia* (Jacaranda). These trees are located within the subject site and are not considered viable for retention.

No objections are raised to the removal of these trees due to the low retention value and location within the subject site. As discussed in Section 2.7.4 of this report, the proposed Landscape Plan includes replacement planting of trees to offset the removal of trees. It is noted that five of the replacement trees are listed in Council's document: Trees Indigenous to Hornsby Shire and would have a mature height of a minimum 12m which is considered acceptable.

Tree numbered 13 is a *Grevillea robusta* (Silky Oak) located on the adjoining property to the south of the subject site and has moderate retention values. This tree would not be adversely impacted by the development and appropriate conditions are recommended for its retention.

It is noted that tree 14 was proposed to be retained and protected in accordance with the submitted arborist report. Tree 14 is identified as a *Eucalyptus saligna* (Sydney Blue Gum) located on Council's nature strip at the front of the site adjoining New Line Road.

Since the lodgement of this application, the tree suffered a catastrophic stem and branch failure during a weather event. Council's Tree Management Team assessed the tree and determined that it is not viable for retention. As a result, Council is in the process of removing this tree as it is located on Council's nature strip and is therefore not a matter for consideration for this application.

The application has provided an amended landscape plan and architectural plans in response to the removal of tree 14 which relocated the footpath on Council's nature strip and the pedestrian footpath to the development.

Tree 15 is identified as a *Pittosporum undulatum* (Sweet Pittosporum) located at the front of the subject site with a low retention value. Tree 18 is identified as a *Eucalyptus saligna* (Sydney Blue Gum) with a high retention value located on the adjoining property to the north. Both of these trees would not be adversely impacted by the development and appropriate conditions are recommended for their retention and protection.

The proposal meets the prescriptive measures of Part 1B.6.1 Tree Preservation of the HDCP and is considered acceptable, subject to conditions.

3.1.2 Stormwater Management

The application proposes the installation of an on-site detention system located underneath the driveway which would drain to Council's Street drainage system within New Line Road.

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

In addition, it is noted that the front south-east corner of the site is partly affected by an overland flow path which runs along the street drainage system to Edward Bennet Park. Council's stormwater assessment did not raise concerns with the extent of the flow path as it is considered extremely minor and would not result in flooding impacts to the subject site or to play areas for the proposed development which are elevated above the street level. Furthermore, the development would not create adverse flooding impacts to adjoining properties.

3.2 Built Environment

3.2.1 Built Form

The two-storey childcare centre would be located within a low-density residential area. The built form of the proposal would be consistent with the locality.

3.2.2 Access and Mobility

The application is supported by an Access Report Ref: 23524-R1.1, prepared by Access I Pty Ltd dated 4 October 2023 which supports the development.

3.2.3 Traffic

Submissions were received which raised concern to the lack of sufficient parking and the traffic impacts of the proposed development on the existing traffic of New Line Road.

The HDCP has a parking requirement of 1 space per 4 children, giving a parking requirement of 19 spaces for the proposed childcare facility with a capacity for 76 children. A total of 19 parking spaces, including 1 disabled parking space have been provided in a basement car park, which complies with the car parking requirements.

It is noted that both the HDCP and the CCPG do not have any additional requirements for staff car parking, it is generally considered that the number of staff parking is included within the 1 space per 4 children calculation.

A Traffic and Parking Impact Assessment prepared by McLaren Traffic Engineering and Road Safety Consultants dated 29 January 2024 considers the traffic and parking impacts of the proposal on the existing road network. The assessment concludes that the proposed childcare centre would provide sufficient on-site car parking and the traffic generation would not adversely impact the existing local street networks. Council's Traffic Branch concurs with the findings of the report and note that traffic generation would equate to 61 trips in the AM and 54 trips in the PM during the two hour peak traffic periods which is considered acceptable. The traffic impacts of the proposed childcare centre are therefore considered acceptable.

The Traffic and Parking Impact Assessment proposes a 'No Parking Zone' along New Line Road frontage, however Council's Traffic Branch, advised that it is not required, and this aspect of the development is not supported. Therefore, the existing on-street car parking on New Line Road would not be impacted by the development.

Council's Traffic Branch assessment raised no objections, subject to conditions of consent.

3.3 Social Impacts

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 the next 40 years (to 2056). 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 development would make a positive social contribution to the local community by providing by providing 76 child care places to support a growing population.

The social impacts of the development on the local and broader community have been considered with specific reference to the potential employment generation within the complex. It is estimated that the development would employ up to 11 people at any time post construction. This is consistent with the *State Government's Greater Sydney Region Plan - A Metropolis of Three Cities' which identifies the need to provide an additional 689,000 new jobs by 2031.*

3.4 Economic Impacts

The proposal would have a minor positive impact on 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 but is 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.

4.1 Flooding

The site is mapped as containing an overland flow path within the south-western corner of the subject site.

Council's engineering assessment has determined that the extent of the flooding is minor and would not restrict the proposed development as discussed in Section 3.1.2 of this report.

5. PUBLIC PARTICIPATION


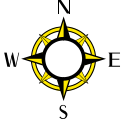
Section 4.15(1)(d) of the Act requires Council to consider "any submissions made in accordance with this Act".

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 26 October 2023 and 16 November 2023 in accordance with the Hornsby Community Engagement Plan. The application was subsequently re-notified between 9 February 2024 and 1 March 2024. During these periods, Council received 24 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.

NOTIFICATION PLAN



• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
<p style="text-align: center;">16 submissions from No. 30-34 Greenoaks Avenue Cherrybrook (Falcon Hill) 6 submissions from unknown location</p>			

A total of 24 submissions objected to the development, generally on the grounds that the development would result in:

- Unacceptable traffic on local streets
- Unacceptable overshadowing of adjoining properties
- Unacceptable noise from activities at the centre
- The removal of trees
- Development that is excessive in bulk and scale
- Inappropriate site for development due to other childcare facilities in the locality
- Lack of internal storage
- Setbacks are insufficient on southern and northern boundaries
- Loss of privacy to the pool and tennis court
- Unacceptable waste collection management
- Excessive excavation
- Right of access to Falcon Hill

The merits of the matters raised in community submissions have been addressed in the body of the report with the exception of the following:

5.1.1 **Boundary fencing would need consent from the strata community of Falcon Hill**

Submissions were received which raised concerns that the existing common boundary fence may need to be replaced.

Submissions also raised concern about the materials for the common boundary fencing and acoustic fencing.

Regarding the materials for the common boundary fencing, this is subject to negotiation and agreement between the relevant property owners and an appropriate condition is recommended.

It is considered to be a reasonable request that the applicant be required to construct/re-construct the boundary fence at nil cost to the neighbouring property owner. A recommended condition of consent has been included in Attachment A.

Regarding the acoustic fencing, Section 8.2 of the Acoustic Report No. 7856-1.1R Rev. C prepared by Day Design Pty Ltd Consulting Acoustical Engineers dated 3 April 2024 provides the following options for the fencing materials:

The proposed sound barrier fences specified in Section 6.4.1 may be constructed from 3 rail 'solid capped and lapped' timber, 10 mm thick solid polycarbonate (not hollow), 6.38 mm thick

laminated glass, masonry, or 9 mm fibre cement sheeting on timber or steel posts. The construction shall be free of visible air gaps to provide an impervious sound barrier.

As the acoustic fencing is setback 1m from the boundaries, the material of the fencing is not required to be detailed and a condition is recommended to ensure it meets the requirements of the acoustic report and be appropriately certified by a qualified acoustic consultant.

Submissions were also received which raised concern to the height of the 2.1m acoustic fence.

In response to these submissions, the acoustic 2.1m high fence is setback 1m from the side boundaries. Furthermore, the 2.1m high fence would be 0.3m higher than the existing 1.8m high common boundary fence. Therefore, it is generally considered that the proposed acoustic fencing would have negligible amenity impacts to adjoining properties.

5.1.2 Staffing and housing crisis.

Submissions were received raising concern to a current staffing crisis within the childcare industry.

In response to this submission, it is noted that staffing of the centre is not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Submissions also raise concern to the current housing crisis and stated that the subject site should be used to provide more housing opportunities.

In response to these submissions, it is noted that DA/258/2020 was previously approved on the subject site for the Torrens title subdivision of one lot into two and the construction of a dwelling house on each lot.

It is the decision of the owner of the site if they decide to act on DA/258/2020.

In response to these submissions, it is noted that this is not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

5.1.3 Increase to insurance for Stata complex

A submission was received which raised concern that the construction of a childcare centre adjacent to the Falcon Hill strata complex at No. 30-34 Greenoaks Avenue would increase the required insurance for the strata complex.

In response to this submission, it is noted that insurance premiums are not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

5.1.4 Property Values

A submission was received which raised concern that the construction of a childcare centre adjacent to residential development would decrease the value of adjoining properties.

In response to this submission, it is noted that property values are not a matter for consideration under Section 4.15 of the *Environmental planning and Assessment Act 1979*.

5.1.5 Cost of works insufficient.

The submissions raised concern that the cost of works is insufficient for a childcare centre of this size.

In response to this submission, it is noted that the cost of works for this development is consistent with other childcare centres that have been recently assessed by Council. Furthermore, the estimated cost of works is completed by a licenced builder and Council raises no concerns to the proposed cost of works.

5.1.6 Development incorrectly states the number of staff

Submissions were received raising concern to the number of staff required for a childcare centre of this size as cooks, programming staff and additional staff to cover breaks would be required.

In response to these submissions, it is noted that the Statement of Environmental Effects has stated that a total of 11 staff would be required to meet the requirements of Education and Care Services National Regulations 2011 due to the child/staff ratio. Council does not raise any further concerns to this matter.

5.1.7 Use of internal Road within No. 30-34 Greenoaks Avenue

Submissions received raised concerns that the internal road within the Falcon Hill residence at No. 30-34 Greenoaks Avenue would be used for construction vehicles during demolition and construction.

In response to these submissions, it is noted that a condition is recommended for a Construction Traffic Management Plan (CTMP) to be submitted and approved by Council prior to the issue of the Construction Certificate. The application does not propose to use the internal road within the Falcon Hill residence during demolition or construction or on-going operation of the childcare centre.

5.1.8 Removing public car parking spaces along New Line Road

The application originally proposed to create a no parking zone in front of the proposed childcare centre to improve traffic impacts from the development which would remove on-street car parking along New Line Road.

Council's Traffic Branch assessed this aspect of the application and does not support the removal of parking spaces along New Line Road and as it is generally considered that this is not required to improve traffic safety.

5.1.9 Insufficient storage

The submission raised concerns that the proposal did not provide sufficient internal and external storage for the proposed number of children.

As detailed in the compliance table in Section 2.4.12 of this report, the application complies with the required storage requirements and provides storage areas in excess of the minimum requirements.

5.1.10 Safety of the centre

Submissions were received which raised concern to the safety of the centre particularly for parents walking to the centre or where the children would go in the event of an emergency evacuation.

In response to this submission, it is noted that the applicant is proposing to construct a pedestrian footpath along Council's nature strip to connect to the pedestrian island within New Line Road to the south of the subject site.

This would allow sufficient pedestrian access to the subject site and allow for space in the event of an emergency evacuation. Appropriate conditions are recommended to ensure the proposed footpath is built to Council's requirements.

5.1.11 Safety, hygiene and running of the centre

Submissions have been received regarding the operation of the centre and the impacts of hygiene, safety and staffing of the centre.

In response to these submissions, it is noted that if this application is approved, the operator of the childcare centre would still be required to gain approval from the regulatory authority - The NSW Department of Education. The regulatory authority would assess the health and food safety requirements.

The application has been assessed against the relevant requirements of the Transport and Infrastructure SEPP and the CCPG and generally complies with these controls.

Therefore, the issues raised by the objectors in regard to hygiene and safety is not a matter for consideration under this application and would be assessed by the regulatory authority when the centre applies for a licence to operate.

5.1.12 Application should be referred to Transport for NSW

A submission was received which stated that the application should be referred to Transport for NSW (TfNSW) for comment.

It is noted that there is no requirement under the Transport and Infrastructure SEPP to refer this application for concurrence from TfNSW.

It is further noted that Council did refer this application to TfNSW when the application was lodged, however TfNSW rejected the concurrence referral and stated that as this section of New Line Road is not a classified road, there is no statutory referral requirement.

5.1.13 Excavation impacts to adjoining structures

Submissions were received which raised concern to the proposed excavation and possible impacts to adjoining structures.

In response to these concerns, the proposed excavation is considered acceptable as discussed in Section 2.1.4 of this report. Furthermore, a condition is recommended requiring a dilapidation report be completed prior to the commencement of building works for the structures within No. 30-34 Greenoaks Avenue that immediately adjoin the subject site.

5.2 Public Agencies

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

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes the demolition of existing structures and the construction of a two storey, 76 place childcare centre with basement car parking.

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

Council received 24 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 application is recommended.

The reasons for this decision are:





- The proposed development generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013; and
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, solar access, amenity or privacy.

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

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Draft Conditions of Consent
2.  Architectural Plans
3.  Landscape Plans
4.  Plan of Management

File Reference: DA/1125/2023

Document Number: D08849615