



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 3 December 2025
at 4:00 PM**



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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 5 November, 2025 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 LPP21/25 DA/784/2025 - DEMOLITION AND CONSTRUCTION OF A CHILDCARE CENTRE - 61 CARDINAL AVENUE, BEECROFT

RECOMMENDATION

THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, refuse Development Application No. DA/784/2025 for the demolition of existing structures and construction of a 60 place childcare centre with basement car parking at Lot 31 DP 1208231 No. 61 Cardinal Avenue, Beecroft for the reasons detailed in Schedule 1 of LPP Report No. LPP21/25.

SUPPLEMENTARY AGENDA

**1 DA/784/2025 - DEMOLITION AND CONSTRUCTION OF A CHILDCARE CENTRE - 61
CARDINAL AVENUE, BEECROFT**

DA No:	DA/784/2025 (PAN-551600 - Lodged on 21 July 2025)
Description:	Demolition of existing structures and construction of a 60 place childcare centre with basement car parking
Property:	Lot 31 DP 1208231, No. 61 Cardinal Avenue, Beecroft
Applicant:	Audaa Pty Ltd
Owner:	Mr Mourad Gergis and Mrs Fefi Gergis
Estimated Value:	\$1,725,485.14
Ward:	C Ward
Clause 4.6 Request:	Nil
Submissions:	87 submissions in objection and 1 petition containing 86 signatures
LPP Criteria:	10 or more unique submissions were received by way of objection
Author:	Katrina Maxwell, 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 Local Planning Panel, exercising the functions of Council as the consent authority, refuse Development Application No. DA/784/2025 for the demolition of existing structures and construction of a 60 place childcare centre with basement car parking at Lot 31 DP 1208231 No. 61 Cardinal Avenue, Beecroft for the reasons detailed in Schedule 1 of LPP Report No. LPP21/25.

EXECUTIVE SUMMARY

- The application is for demolition of existing structures and construction of a 60 place childcare centre with basement car parking.
- The proposal does not comply with the non-discretionary development standards under Section 3.26 of the State Environmental Planning Policy (Infrastructure and Transport) 2021 for unencumbered indoor and outdoor play space.
- A total of 87 submissions in objection and one petition containing 86 signatures have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be refused.

BACKGROUND

On 3 July 2018, DA/620/2018 was lodged with Council for demolition of existing structures and construction of a centre-based childcare centre for 60 children.

On 30 November 2018, the application was withdrawn as Council was not supportive of the development due to significant concerns raised during the preliminary assessment, including impacts on nearby heritage listed trees.

APPLICATION HISTORY

- On 21 July 2025, the subject Development Application No/784/2025 was lodged with Council.
- Between 23 July 2025 and 11 August 2025, the development application was placed on public notification.
- On 6 August 2025, Transport for NSW comments were received.
- On 18 September 2025 a meeting was held with the applicant.
- On 23 September 2025 Council sent correspondence to the applicant requesting additional information to be provided within 21 days (14 October 2025). The requested information included:
 - To address the non-compliant side setback on the southern boundary, the entire basement carpark was requested to be moved 2m off the boundary to allow for a 2m landscaped setback.
 - The ground floor, including the elevated play area, to be amended to comply with 2m southern side setback requirement. Planter boxes cantilevered over the basement ramp would not be easily maintained and are to be removed from the plans.
 - The development to be redesigned to comply with the minimum 3m secondary street setback to Grace Avenue.
 - All structures, including retaining walls, fire stairs, acoustic walls, and the driveway ramp, to be amended to comply with the applicable boundary setbacks.
 - The elevated play areas were to be relocated/redesigned unless they were appropriately screened with landscaping from adjoining properties.

- The private open spaces at 59 and 59A Cardinal Avenue appeared to be overshadowed by the proposed development at all times. The design was required to be amended to ensure that these areas receive at least 3 hours of sunlight between 9am and 3pm on 22 June.
- On 25 September 2025, the applicant provided a response to Council's correspondence dated 23 September 2025, however it did not make the required changes to facilitate a satisfactory development outcome.
- On 26 September 2025, Council reiterated concerns regarding the proposed development and requested that amended sketch plans be provided to Council within seven days (3 October 2025). The applicant submitted an amended floor plan, amended Plan of Management, Waste Management Plan and justification letter to Council.
- On 3 October 2025, the applicant was advised that Council still had substantial concerns regarding the amended plans. The applicant was given the opportunity to either provide a full amended plan package to support the 26 September 2025 sketch plans, within 21 days (24 October 2025) or advise Council within 7 days (10 October 2025) as to whether they were intending to provide further amended plans.
- On 10 October 2025, the applicant wrote to Council with a justification of the proposal. The applicant advised that they wished for Council to finalise its assessment based on the Architectural plans dated 15 October 2025.

THE SITE

The 971.1m² site is a corner lot with a frontage width of 18.29m to Cardinal Ave and a frontage width of 53.24m to Grace Avenue. The site contains a brick and tile dwelling house and ancillary structures.



Figure 1: Aerial view of the site

The site has an 8% fall from the rear northwestern corner to the front southeastern corner of the site.

The site is located over the NorthConnex Tunnel and is not identified as bushfire prone or flood prone land.

The site is not a heritage item, and is not in a heritage item, However, the site is located adjacent to a Landscape heritage item listed under Schedule 5 of the Hornsby Local Environmental Plan 2013 (HLEP) being item No. 68 (Street Trees) - Cardinal Avenue, Beecroft.

The site is generally surrounded by low-density residential dwellings, with Beecroft Public School and Beecroft Train Station to the east of the site, West Pennant Hills Public School and a retail district to the northwest of the site, and Mount St Benedict College to the northeast of the site.

PROPOSAL

The application proposes demolition of a dwelling house and ancillary structures and the construction of a 60 space childcare centre with basement carparking consisting of:

- The basement level would contain 15 car parking spaces, one motorcycle space, a lift and storage
- The ground floor would contain 3x playrooms (classrooms), cot room, kitchen, staff room, garbage room, office, storerooms, and separate toilets for children and staff.

Stormwater from the basement would be pumped out to the street drainage. Roof water and surface water would be conveyed to an OSD tank be located under the basement ramp and then conveyed to a stormwater pit in Cardinal Avenue.

Entry to the proposed basement car park would be via the existing crossing in Cardinal Avenue. Cars would exit the carpark via a new crossing proposed to be constructed along Grace Avenue.

Proposed earthworks include approximately 3m of cut to RL157.3 for construction of the basement carpark with locally deeper excavations possibly being required for footings, service trenches, crane pads and lift overrun pits.

Seven trees would be removed by the development. Four trees would be potentially impacted by the development.

Operational Details

The proposed childcare centre would accommodate 60 children with the following mix:

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

The children would be accommodated across three separate indoor play areas in accordance with the above age and number distributions. There are three outdoor play areas proposed.

The centre will operate with up to 11 educators on-site at any one time and one additional staff member (cook).

The centre proposes the following hours of operation:

- Monday-Friday: 7:00am - 6:00pm
- Weekends and Public Holidays: Closed

It is expected that all deliveries will be undertaken within the proposed car parking area outside peak drop off/ pick up times (9:30am - 3:00pm).

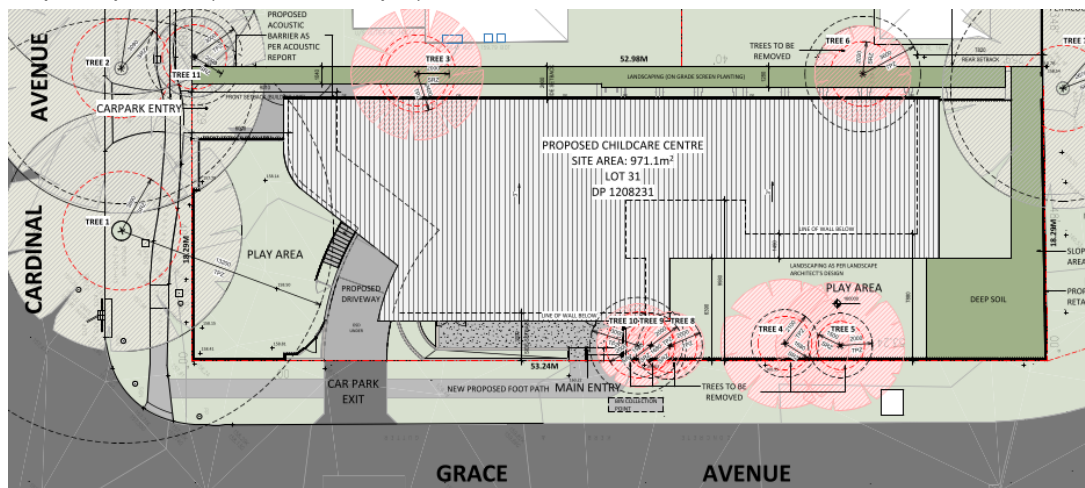


Figure 2: Extract of Site Plan (Source: AUDAA)

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 North District Plan 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 childcare centre would be consistent with the objectives of the strategy by providing 60 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 Aims of Plan

Subclause (2) of Clause 1.2 Aims of Plan under the HLEP states the following aims applicable to the subject proposal:

The particular aims of this Plan are as follows—

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to facilitate development that creates—*
 - (i) *progressive town centres, thriving rural areas and abundant recreation spaces connected by efficient infrastructure and transport systems, and*
 - (ii) *a well-planned area with managed growth to provide for the needs of future generations and people enriched by diversity of cultures, the beauty of the environment and a strong economy,*
- (b) *to guide the orderly and sustainable development of Hornsby, balancing its economic, environmental and social needs,*
- (c) *to permit a mix of housing types that provide for the future housing needs of the community near employment centres, transport nodes and services,*
- (d) *to permit business and industrial development that meets the needs of the community near housing, transport and services, and is consistent with and reinforces the role of centres within the subregional commercial centres hierarchy,*
- (e) *to maintain and protect rural activities, resource lands, rural landscapes and biodiversity values of rural areas,*
- (f) *to provide a range of quality passive and active recreational areas and facilities that meet the leisure needs of both the local and regional community,*
- (g) *to facilitate the equitable provision of community services and cultural opportunities to promote the well-being of the population of Hornsby,*
- (h) *to protect and enhance the scenic and biodiversity values of environmentally sensitive land, including bushland, river settlements, river catchments, wetlands and waterways,*
- (i) *to protect and enhance the heritage of Hornsby, including places of historic, aesthetic, architectural, natural, cultural and Aboriginal significance,*

While the proposed childcare centre would provide for the needs of the community and future generations near housing, it is not considered orderly, nor environmentally sustainable development.

The 971.1m² site is not capable of accommodating an environmentally sustainable development due to the size of the centre, whilst complying with the required setbacks, landscaping and indoor and outdoor

play area requirements which protect the amenity of both the occupants and the neighbouring properties.

The site has an irregular topography which cannot accommodate a development which would demonstrate visual consistency with the low density residential area.

The open undercroft carpark would be visually prominent when viewed from the adjoining properties and would be commercial in appearance.

In this regard the proposed development would not be orderly and sustainable in accordance with the objectives of the HLEP.

2.1.2 Zoning of Land and Permissibility

The subject land is zoned R2 Low density residential zone 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 childcare facility' and is permissible in the R2 zone with Council's consent.

However, the proposed childcare centre for 60 places is not considered to be situated at a suitable location without adversely affecting neighbouring properties.

In addition, the general appearance of the development, including the under-croft car parking area would not complement the existing low density residential character of the surrounding area.

The proposal is considered to be inconsistent with the zone objectives.

2.1.3 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 7.4m and complies with the maximum permissible height standard.

However, the definition of building height under HLEP, includes plant and lift overruns. It is noted that no details of plant, equipment or services has been provided. The BCA Compliance Assessment submitted with the application indicates that 20% of the roof would accommodate the installation of solar PV panels. If Council was of a view to approve this development application, amended plans would be required to show the location of any rooftop plant, equipment or services to confirm compliance with the 8.5m maximum building height development standard.

2.1.4 Floor Space Ratio

There is no mapped maximum floor space ratio under Clause 4.4 of the HLEP. Pursuant to Clause 3.25 of the Infrastructure and Transport SEPP, consent must not be granted for the purposes of a centre-based childcare facility in the R2 zone if the floor space ratio for the building on the site of the facility exceeds 0.5:1.

2.1.5 Heritage Conservation

The objectives of Clause 5.10 Heritage Conservation of the HLEP include “to conserve the environmental heritage of Hornsby” and “to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views”.

The subject property is not listed as a heritage item itself or located within a heritage conservation area (HCA). However, it is in the vicinity of a Landscape heritage item listed under Schedule 5 of the HLEP:

- Item No. 68 (Street Trees) - Cardinal Avenue, Beecroft. The item is significant as being a:

This large group of native trees are remnant components (canopy trees) of the Blue Gum High Forest (BGHF) community. Blue Gum High Forest in the Sydney Basin Bioregion (BGHF) is listed as a critically endangered ecological community in the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and NSW threatened Species Conservation Act 1995. The BGHF community is typically defined by a mixed age structure and diverse floristic composition. This remnant group is dominated by mature Sydney Blue Gum (Eucalyptus saligna), Blackbutts (Eucalyptus pilularis) and Turpentine (Syncarpia glomulifera). Although fragmented and reduced to only scattered remnant canopy trees, the group is considered to be significant in terms of its natural, representative, rarity, ecological/ biodiversity, genetic, visual and aesthetic values. The dramatic size and scale of these mature trees create.

The primary heritage concern relates to the potential impact on the heritage listed trees located within the Cardinal Avenue road reserve. These trees form a part of a significant group of remnant native vegetation located both within the public verge and in adjacent private gardens. Canopies of these trees extend over the verge, roadway, and into neighbouring private properties.

As per the submitted SEE and Arborists Report, the location of the existing driveway from Cardinal Avenue will remain unchanged. The report does not describe negative impacts to the two existing heritage listed mature trees (T1 and T2) located on the front verge. However, a new driveway crossover from Cardinal Avenue proposes vehicle access to the basement car park in close proximity to these trees.

It is noted that Council's Tree Management Team anticipate significant impacts to tree number T2 associated with the cut for the driveway entry on the Cardinal Avenue frontage. The comments note that the Arborist report lacks an explanation of how the impacts of the proposed works on these trees will be managed.

Given the significance of the listed trees, the concerns raised in the previous heritage advice, and concerns raised by Council's Tree Management Team, the application is not supported from a heritage perspective. Additional information should be provided regarding the suitability of works and potential impacts to heritage listed trees.

The proposal is not supported in its current form on heritage grounds due to the potential adverse impacts on the heritage listed Cardinal Avenue Street trees and their contribution to the significance of the setting and the significance as a group.

The proposal does not comply with Clause 5.10 Heritage Conservation of the HLEP and therefore the development cannot be supported.

2.1.6 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 construction of the basement and the driveways. This excavation would entail the removal of 1100m³ of material from the site. At its deepest point, the excavation would be 3.9m below the existing ground level, with the majority of the excavation works being confined to the basement.

The Waste Management Plan prepared by Audaa dated 15 October 2025 provides that of the 1100 tonnes of material are proposed to be excavated from the site, 9 tonnes are proposed to be reused on site, 900 tonnes would be transferred to a scrap and recycling centre (Knight's Syndicate, Rouse Hill) and 110 tonnes would be disposed of at Eastern Creek Landfill. It is noted that while it is indicated that 90 tonnes of excavated material would be reused on site for topsoil landscaping and support for retaining walls, the Cut and Fill Plan dated 15 October 2025 does not indicate that there would be any fill placed on the site.

A Construction Environmental Management Plan (CEMP) was prepared by EIAustralia (dated 23 June 2025); however, it did not provide information on how many expected truck movements would be required to remove the excavated material from the site and dispose of at a registered landfill site and/or recycling centre. However, the CEMP does identify the need to develop traffic management plans, including use of designated haul routes, and identify traffic controls at induction including approved parking areas for construction traffic.

There is no commentary in the Traffic and Parking Impact Assessment by McLaren Traffic Engineering and Road Safety Consultants (dated 10 April 2025) regarding construction traffic movements.

The following table sets out the proposal's compliance with the matters for consideration under Clause 6.2 of the HLEP.

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 Cardinal Avenue drainage system. If the application was recommended for approval this matter could be addressed by conditions of consent.
(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	If the application was recommended for approval this matter could be addressed by conditions of consent.
(d) the effect of the development on the existing and likely amenity of adjoining properties	If the application was recommended for approval this matter could be addressed by conditions of consent.
(e) the source of any fill material and the destination of any excavated material	Excavated material would be used in top soil landscaping, disposed of a material recycling centre or disposed of Eastern Creek Landfill.
(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	There is no drinking water catchment or environmentally sensitive area within close proximity to the site.
(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development	If the Development Application was recommended for approval further details would be required to confirm this.

2.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

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

2.2.1 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 1.2.6.1 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 1.2.6.1 of the HDCP.

2.2.2 Chapter 6 Water Catchments

The site is located within the catchment of Sydney Harbour. The aim of this chapter is to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained. This chapter provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

The plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; maintenance of a working harbour; 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 have minimal potential to impact on the Sydney Harbour Catchment and would comply with the requirements of Chapter 6 of the Biodiversity and Conservation SEPP.

2.3 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.

2.3.1 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.

An examination of Council's records and aerial photography has determined that the site has been historically used for residential purposes. It is not likely that the site has experienced any significant contamination, and further assessment under chapter 4 of the Resilience and Hazards SEPP is not required.

Under Clause 4.6(2) and 4.6(4) of the Resilience and Hazard SEPP, before determining an application for consent to carry out development that involves a change of use of land for child care purposes on land in relation to which there incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, Council must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

A review of the Geotechnical Investigation prepared by EIAustralia identified that fill material was encountered to a depth of 0.5m within Borehole BH1 and in the upper 0.1m within borehole BH2. Landfilling is a potentially contaminating activity identified in Table 1 to the contaminated land planning guidelines. Additionally, given its age, the dwelling house may contain lead.

Due to the lack of information available regarding the nature and extent of any past potentially contaminating agricultural and landfilling activities at the site, on 15 September 2025, Council requested that the applicant submit a Preliminary Environmental Site Investigation (PSI). On 26 September 2025, the applicant requested that Council waive the requirement for a PSI or revise the scope of what was required.

Due to the architectural plans not being satisfactory, Council did not pursue the provision of a PSI.

Council cannot be satisfied that the development complies with Clause 4.6 of the Resilience and Hazard SEPP. As Clause 4.6 of the SEPP is a jurisdictional precondition which has not been met, Council must recommend refusal of the development application.

2.4 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.

2.4.1 Educational Establishments and Childcare Facilities

Chapter 3 of the 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.

2.4.1.1 Part 1.3 - What are the Planning Objectives?

The planning objectives contained within Part 1.3 of the CCPG include requirements that childcare 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 inconsistent with these objectives.

2.4.1.2 Part 2 - Design Quality Principles

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

2.4.1.3 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 childcare facility is suitable for use; that the sites for childcare 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 childcare facilities are a permissible land use within the R2 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 this instance the siting of the building and non-compliant side, rear and secondary street setbacks are considered to create unreasonable acoustic and privacy issues. At present, insufficient information has been provided to confirm whether the development would result in adverse traffic safety impacts.

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 childcare facility is compatible with the local character and surrounding streetscapes; clear delineation between the childcare 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

The proposal complies with the 8.5m height development standard pursuant to HLEP. However, the proposal fails to demonstrate how the childcare facility would satisfy local character and streetscape objectives of the Part 3.2 of the CCPG. The bulk, scale and form of the building would be incompatible with predominant form of the surrounding low density development.

In particular, concern is raised with the interface of the development along the southern boundary. The setbacks of the development from site boundaries are not compliant with the requirements of the HDCP. The proposed childcare centre would result in overshadowing of the adjoining residential land. The 25m long retaining wall along Grace Avenue would have a height of up to 1.1m which presents a

solid masonry wall along the boundary with a 1.2m palisade fence proposed on top of the wall, resulting in a total fence height of 2.3m along the street frontage. Additionally, the basement stairs egress into Outdoor Play Area 3, and sandpit which shade sail would be visible from the streetscape of Grace Avenue.

On the Cardinal Avenue and Grace Avenue frontages large expanses of masonry retaining wall (up to a height of 2.2m on Grace Avenue and 1.6m on Cardinal Avenue) would flank the basement ramps.

Minimal landscape screening is proposed to provide visual relief from the large expanse of masonry which would be visible from the Cardinal and Grace Avenue frontages.

Part 3.3 Building orientation, envelope and design

The objectives of Part 3.3 of the CCPG stipulate that childcare 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.

Part 3.4 Landscaping

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

Sparse landscape screening is provided along the Grace Avenue and Cardinal Avenue frontages. Shrubs and ground covers are proposed along the Grace Avenue and Cardinal Avenue frontage to a mature height of 400mm to 1m, and consist of Seascape Lomandra, Paroo Lilly, Dwarf Lilly Pillies and Rosemary. Three Orange Jasmine and three Tick bush to a height of 2m and 2.5m respectively are proposed. Dwarf Lilly pillies to a height of 3m in the north-western corner of the site and would provide some screening of the sandpit from the Grace Avenue frontage.

No canopy trees would be provided along street frontages although it is noted that the canopy trees within the road reserve on Cardinal Avenue would be retained. As the site would be recessed lower than the street along Grace Avenue, and the total fence height including retaining walls would be up to 2.3m, much of the proposed landscaping would not be highly visible from the Grace Avenue streetscape.

Part 3.5 Visual and Acoustic Privacy and Part 3.6 Noise and Air pollution

The objectives of Part 3.5 Visual and Acoustic Privacy and Part 3.6 Noise and Air pollution are as follows:

- *Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through*
 - *appropriate site and building layout*
 - *suitably locating pathways, windows and doors*
 - *permanent screening and landscape design.*
- *Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:*
 - *appropriate site and building layout*
 - *suitable location of pathways, windows and doors*

- *landscape design and screening*
- *Provide an acoustic fence along any boundary where the adjoining property contains a residential use. An acoustic fence is one that is a solid, gap free fence*
- *Ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure.*

Privacy to Childcare Occupants

A full length glass door (labelled D02) would be located within the bathroom servicing the 3-6 year old class room. While the intent of this glass door is likely to provide supervision of the children when educators are in the outdoor play area. This door would be elevated from the existing ground level and would face Cardinal Avenue. The 1.2m high balustrade screening this door is not considered adequate privacy attenuation.

Privacy to Adjoining Properties

Two submissions raised concerns regarding privacy. The submissions assert that the elevated rear play area is considered to result an unacceptable privacy impact.

The applicant has provided the following justification regarding privacy:

The play area is raised to the rear boundary and southern side of the site. The elevated rear outdoor play area has been setback 2m from the southern side boundary and limited to only the rearmost 5m of the site, which corresponds with the natural rise in ground level towards the rear boundary. The elevated play area has a nil setback to the rear property boundary.

...the outdoor play areas do not overlook any residential areas and are orientated towards the rear of the site.

This section of the site is already elevated relative to neighbouring properties, and the revised design ensures that:

- *The rear play area has been setback 1m from the southern side boundary and lowered to align with the floor level of the building.*
- *The new acoustic fencing around the rear play area will be setback 1m from the southern side boundary to mitigate noise and maintain privacy*

An objection was received from an adjoining property owner to the south. The adjoining neighbours are concerned that the proposed acoustic fence would not mitigate noise from children in the outdoor play areas. The development would adversely affect the enjoyment of their north-facing courtyard which is used for passive recreation and relaxation in the sun.

Outdoor play areas are pushed to the boundaries of the site, causing privacy and noise impacts. As a result, the projected noise levels raise concerns for the objector, particularly in relation to sleep disturbance during the day.

A further objection raises concerns the intrusion of noise onto adjoining properties causing or contributing to a lack of peace and mental health concerns.

Part 3.7 Hours of operation

No objections are raised to the proposed hours of operation as they are consistent with Objective C29 of the CCPG which limits hours of operation between 7:00am to 7.00pm on weekdays.

Part 3.8 Traffic, parking and pedestrian circulationTraffic

In regard to traffic impacts, the applicant submitted a Traffic and Parking Impact Assessment Ref: 240793.01FE issue F, prepared McLaren Traffic Engineering & Road Safety Consultants dated 10 April 2025 with the application which estimates that the proposed development would generate an additional vehicular peak movement of:

- 49 vehicles between 8:00am and 9:00am.
- 48 vehicles between 2:45pm and 3:45pm.

While traffic generation is not generally considered to be an issue for this proposal, a number of submissions raised concerns regarding vehicle collisions and vehicle/pedestrian conflict. If Council was of a mind to approve the development application, a 7 day average daily traffic (ADT) count on Cardinal Avenue in the vicinity of 61 Cardinal Avenue would have been required to be undertaken during the public school term. Council raised this concern with the applicant but did not formally request this information due to fundamental design issues with the proposal.

Parking

Part 3.8 requires that off-street car parking should be provided at the rates for child care facilities specified in a DCP that applies to the land.

The HDCP has a parking requirement of 1 space per 4 children. The proposal will accommodate a maximum of 60 children on the Site. The proposal would also have up to 12 staff members on site at any one time.

A total of 15 car parking spaces, eight bicycle spaces and one motorcycle space would be provided with two access driveways along the Cardinal Avenue and Grace Avenue frontages which complies with the requirements of the HDCP.

However, the original plans of the basement carpark submitted with the development application (dated 8 April 2025) a set of fire isolated stairs (1.6m wide) is shown on the basement plan adjoining the northern side of the two "small staff car" parking spaces. It is noted that the basement stairs are still shown on the ground floor plan of the architectural plans dated 15 October 2025, however, are now absent from the basement floor plan.

As the basement has now been reduced in width by 1.5m compared to the architectural plans originally submitted with the development application, should fire egress stairs be required to meet Part D2 Provision for Escape of the Building Code of Australia 2022, it is unclear whether the carparking spaces and/or aisle width would continue to be compliant with AS2890.1:2004 Off-Street Carparking.

Pedestrian Access

Clause 3.8 of the CCPG requires "*separate pedestrian access from the car park to the facility*", "*defined pedestrian crossings and defined/ separate paths included within large car parking areas*", "*separate pedestrian and vehicle entries from the street for parents, children and visitors*", "*pedestrian paths that enable two prams to pass each other*", "*delivery, loading and vehicle turnaround areas located away from the main pedestrian access to the building and in clearly designated, separate facilities*".

There is no delineated pedestrian pathway within the basement carpark. The original plans of the basement carpark submitted with the development application (dated 8 April 2025) identified a pedestrian pathway running along the northern side of the basement. However, the pedestrian pathway was removed in favour of providing additional deep soil planting along the southern side of the site. It is

noted that the basement stairs are still shown ground floor plan but are now absent from the basement floor plan. Therefore, it is unclear whether the fire egress from the basement is still compliant.

The proposal fails to meet the objectives of Part 3.8 of the CCPG and is considered unacceptable

2.4.2

Part 4 - Applying the National Regulations to Development Proposal

The *Childcare Planning Guideline 2021* regulates aspects of the childcare centre including unencumbered indoor and outdoor space, storage, amenities and solar access.

- *Development should be located near public transport.*
- *integrate car parking into the building and site landscaping design in residential areas.*
- *Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:*
 - *clearly defined street access, pedestrian paths and building entries.*
 - *low fences and planting which delineate communal/private open space from adjoining public open space.*
 - *minimal use of blank walls and high fences separate pedestrian access from the car park to the facility.*
 - *defined pedestrian crossings included within large car parking areas.*
 - *separate pedestrian and vehicle entries from the street for parents, children and visitors' pedestrian paths that enable two prams to pass each other.*

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 space			
- External (3.25m ³ per child)	185m ²	min. 195m ²	No
- Internal (7m ³ per child)	370m ²	min. 420m ²	No
Storage			
- External (0.3m ³ per child)	24m ³	min. 18m ³	Yes
- Internal (0.2m ³ per child)	15.6m ³	min. 12m 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	32-33%	30-60%	Yes
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2.4.3 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.

Indoor and Outdoor Unencumbered Space

Correspondence was provided to the applicant dated 15 September 2025 that the proposed development does not comply with the required unencumbered indoor and outdoor spaces.

A minimum of 195m² of unencumbered indoor space is required. The proposal provides for 185m² of unencumbered indoor space. This is a 5% variation to the development standard.

In respect to the unencumbered outdoor space, 420m² is required and only 370m² is proposed. This is a 12% shortfall.

The guideline requires that when calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play. When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered.

The applicant submitted calculation diagrams as part of the architectural plan set. The applicant has included part of a bathroom in the calculation of unencumbered outdoor play area. The applicant's calculations of unencumbered outdoor space do not deduct the fire stairs, area adjacent to stairs, garden beds or dense hedges from the calculation.

It was recommended to the applicant would need to reduce the number of childcare places to meet both indoor and outdoor open space requirements.

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

Comment: The site has an area 971.1m². Given the non-compliances with side, rear and secondary street setbacks, the lack of landscaping and insufficient outdoor play areas, the site area is not considered sufficient to accommodate the proposed development.

- (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. It is however in the vicinity of a heritage item. Council's Heritage Planner has raised objections to the proposed development due to the potential for damage to heritage listed street trees in Cardinal Avenue.

Solar Access for outdoor play

The childcare planning guidelines require that outdoor play areas have a minimum of 2 hours solar access between 8am and 4pm during Winter months, for at least 30% (or 2.1m²) of the 7m² of space per child required.

Comment:

The applicants shadow study does not accurately denote the extent/boundaries of the outdoor play spaces as it does not show features to be excluded from the outdoor play spaces as per the guidelines. The shadow cast by the palisade (semi-open) fence is shown on the applicant's Shadow study. It is unclear whether the shadowing from the fence has been included in the applicant's calculations of solar access. However, it has been included in Council's assessment of solar access.

It is noted that the required outdoor play area based on 60 children is 420m², Therefore Council's calculations for solar access has been assessed having regard to this requirement. Based on the required outdoor play area, 32% of the required outdoor play space would receive solar access at 9am, and 33% of the outdoor play space would receive solar access at 12pm. Therefore 30% outdoor play spaces would receive the 2 hour solar access required under Section 3.26 of the SEPP.

In Summary

The proposal does not comply with the non-discretionary development standards of unencumbered indoor space and unencumbered outdoor space.

If a development does not comply with a non-discretionary development standard, section 4.15(3) of the Act allows the consent authority to apply Clause 4.6 when considering and determining the development. However, pursuant Section 3.26(3), a Clause 4.6 written request is not required as a development can still be approved even though a standard specified in subsection (2) is not complied with.

However, development applications that do not meet Section 3.26 of the Transport and Infrastructure SEPP require the concurrence of the NSW Department of Education before they can be determined. Given the recommendation for refusal, the development application was not referred to the NSW Department of Education for concurrence.

Therefore, while the development does not comply with Section 3.26 of the Transport and Infrastructure SEPP, this has not been included as a reason for refusal.

2.4.4 State Environmental Planning Policy (Sustainable Buildings) 2022

The application has been assessed against the requirements of Chapter 3 of State Environmental Planning Policy (Sustainable Buildings) 2022 which seeks to encourage the design and delivery of more sustainable buildings.

Chapter 3 sets out the Standards for non-residential development that involves—

- (a) *the erection of a new building, if the development has an estimated development cost of \$5 million or more, or*
- (b) *alterations, enlargement or extension of an existing building, if the development has an estimated development cost of \$10 million or more.*

As the cost of works for this development is \$1,725,485.14, Chapter 3 of the Sustainable Buildings SEPP does not apply.

2.5 Draft Environmental Planning Instrument

There are no current draft environmental planning instruments.

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

Section 3.42 of the Act 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 2024

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2024 (HDCP). The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP - Part 7 Community Uses			
Control	Proposal	Requirement	Complies
Site Area	971.1m ²	N/A	Yes
Building Height	7.4m	max. 8.5m	Yes

Maximum Floor Area	327m ² (GF only)	max. 430m ²	Yes
Number of Children	60	max. 40	No
Recreation Space			
- <i>Indoor (3.25m² per child)</i>	185m ²	min. 195m ²	No
- <i>Outdoor (7m² per child)</i>	370m ²	min. 420m ²	No
Setbacks			
- <i>Front</i>			
<i>Building</i>	6m	6m	Yes
<i>Ancillary Structures</i>	0m	6m	No
- <i>Secondary Street (north)</i>	0.7m	3m	No
<i>Basement stairs</i>	0m	3m	No
- <i>Side (south)</i>			
<i>Building (ground floor)</i>	1-1.2m	2m	No
<i>Building (First Floor)</i>	0.7m	2m	No
<i>Acoustic Wall</i>	0m	2m	No
<i>Retaining Wall</i>	0m	2m	No
<i>Driveway Ramp</i>	0.76m	2m	No
- <i>Rear</i>			
<i>Building (protruding basement)</i>	Nil	3m	No
<i>First floor balustrade</i>	0m	3m	No
<i>Acoustic Wall</i>	0m	3m	No
<i>Retaining Wall</i>	0m	3m	No
Car Parking (@ 1/ 4 children)	15 Spaces	15 spaces	Yes
Landscaped Area (min 40%)	556.7m ²	min. 388.5m ²	Yes
Landscape Side Setbacks	0.7m	min. 2m	No

The CCPG will generally take precedence over the HDCP with the exception of building height, side and rear setbacks and car parking rates. As detailed in the above table, there are a number of non-compliances with the HDCP. A brief discussion on compliance with relevant prescriptive controls and performance requirements is provided below and Part 1.3 General Controls are addressed in Section 3 of the report.

2.7.1 Site Requirements

The desired outcomes of Part 7.1.1 Site Requirements of HDCP are “community uses with a site area that contributes to the achievement of desired urban design outcomes” and “community uses located to be readily accessible to users, promote the health and safety of the future occupants of the facility and minimise potential land use conflicts”.

The prescriptive measures under Part 7.1.1 Site requirements under the HDCP are “community uses should not be situated in a street or portion of a street, ending in a cul-de-sac” and preference to be given to “community uses to be located at corner sites, sites adjacent to non-residential uses, sites with a frontage to a park, and walking distance (i.e. 400m) public transport facilities, local shopping facilities, schools, or other community facilities, and co-located with other community uses.”

The site is within a low density residential setting. The nearest commercial/retail area is West Pennant Hills approximately 365m walking distance from the site. The predominant land use on the eastern side of Pennant Hills Road is residential with pockets of public parklands and private recreational facilities. It is noted that there is a bus stop at the front of 42 Cardinal Avenue approximately 56m from the site. However, this is a school bus stop with a single daily departure Monday to Friday at 7:38am. The nearest Railway Station is approximately 1km from the site.

Not only does the proposal not comply with the contextual aspect, but the overall design of the childcare facility is also generally not in accordance with the desired outcomes under Part 1 and 7 of the HDCP. These non-compliances are associated with the site specific constraints such as the shape and slope of the site.

The proposal does not meet the desired outcomes of Part 7.1.1 Site requirements of the HDCP and is considered unacceptable.

2.7.2 Scale

The desired outcome of Part 7.1.2 of HDCP is to encourage “development with a height, scale and intensity that is compatible with the character of the area”. This desired outcome is supported by the prescriptive control that in the R2 zone, the height and site controls for dwelling houses in Part 3.1 of the HDCP are applied. Under Part 3.1 of the HDCP, the floor level of the lowest residential storey of a dwelling house is to be sited a maximum of 1.5m above natural ground level.

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

The top most point of the basement/undercroft area would be 2.5m above existing ground level and therefore is not considered a basement under the HDCP. Therefore, it must be treated as a storey.

The undercroft carparking area and raised outdoor play area would be visually prominent and out of character with the low density residential character of the area.

While the building was reduced in height by 900mm, it is still considered incompatible with the character of the area. the visual impact of the undercroft carpark would be commercial in appearance, and inconsistent with the leafy character of the Beecroft area. Additionally, the 35m length of the building setback 1 to 2m from the southern boundary is a scale of building which would have an adverse impact to the adjoining properties to the south.

2.7.3 Number of Childcare Places

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 and 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. These limitations do not apply.

However, consistent with the Transport and Infrastructure SEPP, the centre does not provide sufficient area per child to meet the indoor and outdoor area requirements, and the capacity of the centre cannot be supported. Additionally, the numerous non-compliance with the HDCP including setbacks and landscaping indicate overdevelopment of the site which could be resolved through a reduction in childcare places. By reducing the number of childcare places, the basement car park and ground floor could be reduced in size to produce a building is more in keeping with the scale and character of the R2 zone.

The proposal does not satisfy the desired outcome of Part 7.1.2 Scale of HDCP and is considered unacceptable.

2.7.3 Setbacks

The desired outcomes of Part 7.1.3 Setbacks of the HDCP are to encourage “*setbacks that are compatible with adjacent development and complement the streetscape*”, and “*setbacks that allow for the retention of significant landscape features and respect site constraints*”.

These desired outcomes are supported by prescriptive controls requiring community facilities (including educational establishments) within the R2 zone to comply the setback controls for dwelling houses within Part 3.1 Dwelling Houses of HDCP except for purpose built centres when the minimum side setback should be 2m.

The Hornsby Development Control Plan (HDCP) requires purpose-built centres to provide:

- *A minimum front boundary setback of 6 metres.*
- *A minimum side boundary setback of 2 metres,*
- *A minimum rear boundary setback of 3 metres and*
- *A minimum setback of 3 metres from a secondary side boundary.*

All buildings and structures such as retaining walls, acoustic walls, terraces and basement ramps are to be clear of the side and rear setback controls.

Additionally, Part 7.1.3 of the HDCP provides that the setback of buildings and ancillary facilities from the property boundary may need to be increased to maintain landscape features.

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.

Front Setback

The minimum front setback for a community facility in the R2 zone is 6m. The building itself complies with the 6m front setback requirement. However, 400mm high retaining walls would have a nil setback from the front property boundary and the raised sandpit and shade sail would be setback 1.5m from the front property boundary. The applicant in a meeting indicated that the sand pit would be relocated away from the front boundary, however the sand pit is not shown on the amended architectural plans. The landscape plan has not been updated to reflect the amended architectural plans dated 15 October 2025.

Southern side setback

To justify the non-compliance with the side boundary setback, the applicant argued that as these elements (such as the basement level and retaining walls) are located at or below finished ground level and therefore do not constitute a “building” or “structure” within the meaning of the DCP setback definition.

However, as the height of the basement level exceeds 1m above the existing ground level, it is considered a storey and is required to comply with the minimum 2m side setback required for purpose built childcare centres in the R2 zone. The intent of the 2m side setback requirement is to provide for a 2m deep soil planting strip to maintain screen planting and maintain amenity to adjoining properties.

When the development application was initially submitted, the basement level had a nil setback to the southern side boundary. Council advised the applicant that this was unacceptable due to the resulting adverse impacts on the adjoining properties to the south.

Amended plans were subsequently submitted proposing a southern side boundary setback to the elevated basement/under croft carpark of 1m-1.2m, which does not comply with the 2m side boundary setback requirement. It is noted that retaining walls and acoustic barriers would have a nil setback from the southern boundary. Retaining wall details are not clearly shown landscaping and civil engineering plans and the only details of the retaining walls are provided on the architectural plans. A 1.6m retaining wall supporting the basement ramp would have a nil setback to the southern property boundary.

The Acoustic Report prepared by Acouras dated 17 April 2025 depicts a 1.8m acoustic walls along a portion of the southern side boundary and the entire length of the rear boundary. The basement and raised play area have been relocated off the boundary however, amended plans of the acoustic walls have not been provided. Therefore, is assumed the acoustic walls would continue to sit on existing ground level/retaining walls. This would result in the acoustic walls extending approximately 900mm above the raised play area. It is not clear whether this would provide appropriate acoustic attenuation.

While, the built form ground floor complies with the minimum 2m side setback to the southern boundary, the basement setback non-compliance would result in a number of adverse amenity impacts including visual intrusion, overshadowing and lack of landscape screening.

Secondary Street Setback

The minimum secondary street setback is 3m. The development has a secondary street frontage to Grace Avenue to the north. It is noted that on the northern elevation of the building, the basement level complies with the definition of a basement and only the ground floor of the building protrudes above existing ground level.

While the secondary street setback of the building was revised by reducing the building footprint, ensuring the building itself is now setback 3m.

A number of ancillary structures such as retaining walls, raised (unroofed) entry courtyard and the basement stairs, raised sandpit (and shade sail), play equipment, retaining wall supporting basement ramp, and raised pathway into the site would still have a non-compliant setback from the property boundary with Grace Avenue. The basement stairs would have walls or fencing, and possibly a roof around them to prevent access to the fire stairs to the children in the play area, although no elevation plans or sections are provided to confirm this.

Rear Setback

The minimum rear setback for a purpose built childcare centre in the R2 zone is 3m. The play area would be raised up to 1.4m above the existing ground level and is therefore required to comply with the rear setback control. It's noted that finished levels of the rear play area have not been provided on the site plans. Some of the plans denote that a portion of the play area along the rear boundary would be "sloped" however sufficient level details have not been provided to confirm this.

As the play area would be raised up to 1.4m above existing ground level, the 1.8m acoustic fence would sit on top of the raised play area giving a total height of 3.2m flush with the rear boundary.

Although the subject site backs on to a battle-axe driveway affording some separation distance between dwellings and private open space, several shrubs and landscaped screening would be removed along the rear boundary. The loss of landscaping and construction of structures hard up on the rear boundary would have an adverse impact on the streetscape of Grace Ave. It is proposed to plant Dwarf Lilly Pilly up to a height of 3m which may not clear the height of the 3.25m high boundary structure.

Additionally, the 3.25m structure on the common boundary with the battle-axe handle at 40 Grace Avenue would create sight distance issues for vehicles exiting 40 Grace Avenue.

Council is of the opinion that, to achieve compliance with the relevant development controls, consideration should be given to redesigning the car park level by reducing the number of parking spaces and increasing the setbacks of the basement from the boundaries. This would, in turn, likely require a reduction in childcare places.

The cumulative impact of these non-compliances is indicative of overdevelopment of the site and results in unreasonable impacts to adjoining properties, particularly to the south and rear. As the childcare centre is purpose-built, there is no reason why the development can not to be designed to comply with Council's development controls.

The proposal does not comply with desired outcomes of Part 7.1.3 Setbacks of the HDCP and is considered unacceptable.

2.7.4 Landscaping

The desired outcomes of Part 7.1.4 Landscaping of HDCP to encourage "*landscaping that is compatible with the character of the locality*" and "*landscaping that retains existing landscape features*". These desired outcomes are supported by prescriptive controls "*landscaping should be provided around the site to soften the development when viewed from adjoining land*" and "*that a minimum of 40% of the site is to be landscaped*".

The desired outcomes of Part 1.3.2.9 Landscaping are "*Landscaping that integrates the built form with the locality and enhances the tree canopy*" and "*Landscaping that improves the environmental performance of the development*".

Prescribed controls under Part 1.3.2.9 include incorporating landscaping in the site planning of a development to soften the visual impact of building, carparks and roads, to improve the aesthetic quality of the development and to screen undesired elements.

The proposal would involve the removal of seven trees (including a neighbouring tree) to accommodate the development.

A Landscape Plan prepared by iScape Landscape Architecture dated 10 April 2025 (Rev. B) was submitted with the application. Although the architectural plans were amended removing the elevated planter boxes on the southern elevation of the proposed building, revised landscape plans were not provided.

One tree, a Pear tree would have a mature height of 10m and would be planted in the front north eastern corner of the site. This is a tall narrow tree which would not provide significant canopy.

The Landscape Plan includes 16 Dwarf Lilli Pilli trees with a mature height of 3m to be planted along the rear western property boundary. Some or all of these trees would be planted on the raised playground area and would not benefit from deep soil planting. This is a screening hedge plant rather than a canopy tree.

40% Landscape Requirement

The HDCP also requires minimum landscaping area of 40%. The proposed development provides only 12% landscaped area, which is located predominately at the front of the site. It is unclear how the landscaping identified on the landscape plan, particularly within the rear of the site and Play Area 3 would be achieved.

The architectural and landscaping plans show deep soil planting under raised ground slabs. The area shown in light green in Figure 3 below would be over the proposed basement and would consist of decking to the rear and the light green area to the northern side would sit above the basement and be covered in artificial turf.

While deep soil planting is shown on the architectural/landscaping plans. The majority of rear outdoor play area is elevated and cantilevered over the deep soil area, resulting in no opportunity for soft landscaping in this location. The majority of the area on the site that does contain deep soil would be covered with artificial turf.

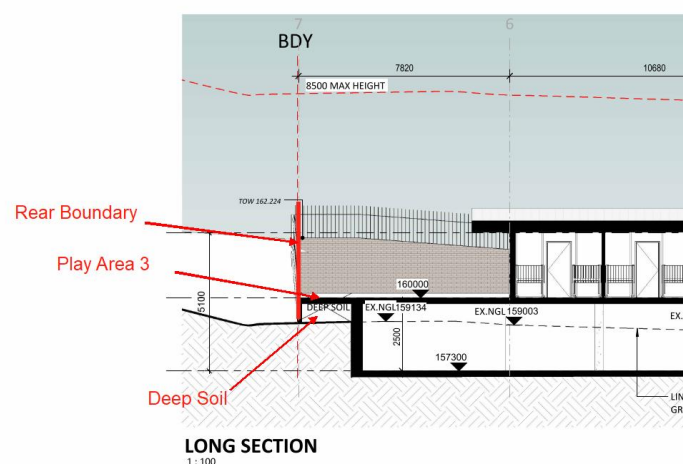


Figure 3: Long Section of Site Showing Deep Soil Under Play Area (Source Audaa Pty Ltd)

Landscape Screening

The prescriptive controls of Part 7.1.4 Landscaping of HDCP include:

- *Landscaping should be provided around the site to soften the development when viewed from adjoining land.*
- *Where a children's outdoor play space adjoins a residential property, screen planting along the common boundary with the residence should be provided.*
- *In residential areas car parking should be visually recessive and preferably located at basement level to maintain the landscaped setting. Where parking in the front setback is compatible with the streetscape, car parking forward of the building line should provide a 2-metre minimum landscaped setback from all property boundaries.*

While the carparking would not be within the front setback, the open undercroft carpark would be 1.2m from the southern property boundary and highly visible from the adjoining properties to the south. The proposed 1.8m boundary fence would not be sufficient to provide visual relief, and acoustic and privacy attenuation to the adjoining properties.

Council requested that a clear delineated 2m deep soil planting strip is required along the entirety of the southern side boundary. The landscape strip was to be capable of supporting plant and tree growth and must not include any buildings, structures, or hard-paved surfaces. The applicant provided amended plans depicting a 1.2m landscaping strip along the southern boundary. An amended landscaping plan was not provided with the amended architectural plans. Accordingly, the species of landscaping proposed along the southern boundary has not been provided. Therefore, its mature height and ability to grow within a 1m wide south facing landscaping strip is unknown.

Between the southern elevation of the basement and the southern property boundary the site would be excavated. The southern elevation would be 7m in height from its excavated level. Therefore, any landscape screening within this landscape strip would need to have a mature height of between 5 to 7m to provide meaningful screening of the development from the adjoining properties.

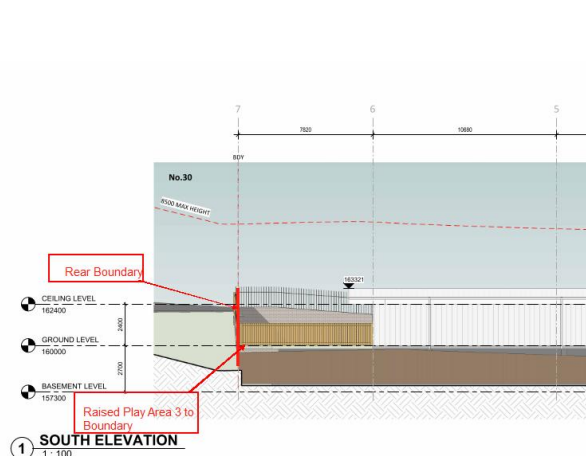


Figure 4: Southern Elevation showing raised play area

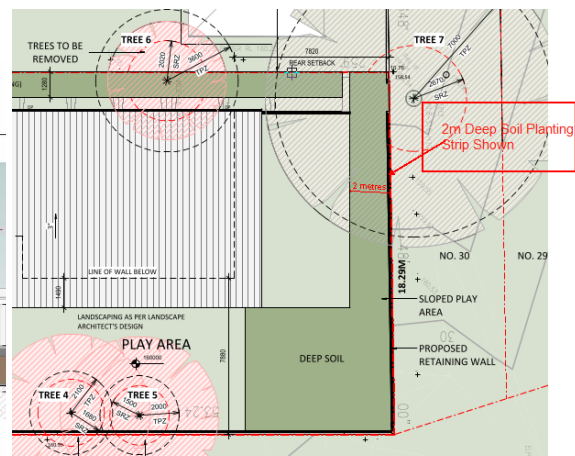


Figure 5: Site Plan Showing 2m deep soil at rear flush with the rear boundary

Landscaping - Fencing

In the R2 zone, fencing controls for dwelling houses as specified in Part 3.1 of the HDCP apply.

Pursuant to Part 3.1 of the HDCP, within front setbacks, fences should not be higher than 1.2m. Front fencing should be constructed from predominately lightweight materials with the design allowing at least 50 percent openings. As the site is a corner site, it is considered that 50% of the secondary street frontage should also have fencing no higher than 1.2m in height. Side and rear boundary fences should be a maximum of 1.8m high, sited behind the front building line.

Acoustic fencing would be provided along the southern boundary, and along the rear boundary above retaining walls. The acoustic fences would have a height of 1.8m above their respective retaining walls.

Palisade fencing along the Cardinal Avenue and Grace Avenue frontage would sit above a retaining wall up to 400mm in height. The palisade fence would be 1.2m high along the Grace Avenue and 1.5m high along the Cardinal Avenue frontage. A cumulative fencing height of up to 1.6-1.9m in height is inconsistent with the front fence requirements in the R2 zone. It is unclear whether the Play Area would retain its natural slope or be levelled with cut and/or fill. Therefore, the effectiveness of the fence for providing visual screening of the development when viewed from the street cannot be fully assessed.

It is noted that a number of structures such as the basement stairs and the sandpits and respective shade sails have not been shown on the northern elevation plans. Elevational landscape plans have not been provided. Due to their siting, the incompatible visual appearance of these structures cannot be adequately screened with landscaping. It is unclear whether the fencing would effectively screen these structures as the height of the structures is unknown.

The proposal does not meet the desired outcomes of Part 7.1.4 Landscaping of the HDCP and is considered unacceptable.

2.7.5 Open Space

The desired outcomes of Part 7.1.5 Open Spaces of HDCP are *“outdoor play spaces that provide a safe, functional and educational environment for children”*, and *“outdoor play space that is designed to limit land use conflicts with neighbouring properties and incorporate best practice design”*.

These desired outcomes are supported by prescriptive measures that

“An outdoor play space should be designed to:

- *be located in the side or rear setback of the site (not the primary front setback area),*
- *have separate outdoor play spaces for children aged under 2 years, and children aged 2 or more years, and*
- *have a maximum grade of 1 in 8”*

Outdoor Play Area 1 would be in the form of a 25m² raised deck facing Cardinal Avenue and would be accessed from the age 3-6 play room.

Outdoor Play Area 2 would be within the front setback of Cardinal Avenue. It would be accessed either from stairs down from Play Space 1, or alternatively from a pedestrian gate facing Grace Avenue. It is unclear how people with disabilities would access this play area without leaving the site and entering via this gate. This is also identified in the Access Compliance Assessment report by New Crown Consulting (dated 16/05/2025) which states *“a performance solution will be pursued at Construction Certificate stage if feasible”*.

Outdoor Play Area 3 is the largest play space (278m²) and would be accessed via the 0-2 year and 2-3 year old indoor play areas. This play area wraps around the building and would be at the northern side and rear of the site, with a frontage of 26.5m facing Grace Avenue.

The outdoor play spaces are located within the frontages of Cardinal Avenue and Grace Avenue are inconsistent with the prescriptive measure of Part 7.1.5 Open Spaces of HDCP. Additionally, children aged 0-3 years old would be playing in combined outdoor play spaces which is also inconsistent with the prescriptive measures.

The proposal is inconsistent with the desired outcomes of Part 7.1.5 Open Spaces of HDCP and is considered unacceptable.

2.7.6 Privacy, Security and Sunlight

The desired outcomes of Part 7.1.6 Privacy, Security and Sunlight of the HDCP are to encourage *“development designed to provide reasonable privacy and sunlight to adjacent properties”* and *“development designed to provide high levels of security”*.

Privacy

The prescriptive control requires that *“for development at the interface of a residential area, development should encourage views from the community use to the horizon rather than downward onto residential areas”*.

The raised outdoor Play Area 1 (deck) facing Cardinal Avenue would have a 2.8m width of deck facing the adjoining property to the south has the potential to overlook the adjoining property to the south. The 1.2m high balustrade would not adequately screen this deck from overlooking the adjoining property.

The carpark would attract a consistent volume of visitors dropping off and picking up children during the peak hours during morning and afternoon. Notwithstanding, the nature of carpark as a purely ancillary area accommodating the parking needs of the patrons, it is anticipated that the level of social activities occurring in the carpark would be less likely. Given the carpark being a non-habitable ancillary space where the patrons would spend a short period of time, there would be minimal impact regarding loss of privacy.

Security

The prescriptive controls pertaining to security are to *“identify safe, clear and direct pedestrian and cyclist entrance to the building/s from the primary street frontage”* and *“windows and lobbies should be designed and oriented to overlook the street and communal open spaces on the site”*.

As discussed, in Section 3.2.9 of this report, security of the development is detailed within the CPTED Assessment and Plan of Management. If Council were of a mind to approve the development application, conditions would be imposed on any consent to ensure site security.

Sunlight

Prescriptive controls under Part 7.1.6 Privacy, Security and Sunlight require that *“on 22 June, development should not overshadow more than 50% of adjacent public open space areas including parks and recreational facilities between 9am and 3pm”* and *“On 22 June, 50% of the principal private open space on any adjoining residential property should receive 3 hours of unobstructed solar access between 9am and 3pm”*.

The applicant has submitted shadow diagrams demonstrating the solar access to adjoining properties to the south on 22 June (Winter Solstice).

The private open spaces of 59 and 59A Cardinal Avenue would be overshadowed at all times between 9am and 3pm on June 22 and would result in an unacceptable impact to the adjoining properties.

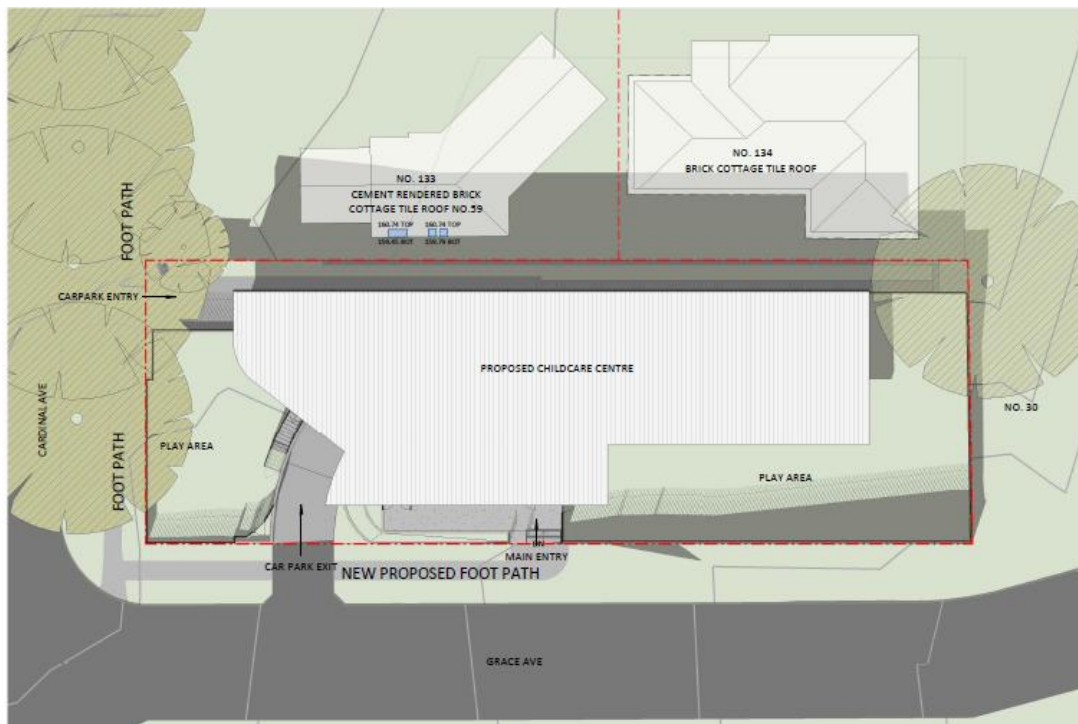


Figure 6: Extract of Shadow Diagram Showing Overshadowing of 59 and 59A Cardinal Avenue (winter 12pm)

An objection was received from a property owner immediately adjoining the subject site on the site. The objectors north-facing courtyard would be completely overshadowed by the development between the hours of 9am and 3pm on 22 June. This north facing courtyard is where the objector enjoys passive recreation and relaxation in sunshine. This courtyard also functions as a service courtyard and the objector's clothesline would also be completely overshadowed by the development on 22 June.

The proposal does not comply with the desired outcomes of Part 7.1.6 Privacy, Security and Sunlight of the HDCP and is considered unacceptable.

2.7.7 Design Details

The Desired Outcome of Part 7.1.8 Design Details is to encourage *“development that complements the streetscape”* This desired outcome is supported by prescriptive controls that *“building design should complement the desired future character of the zone, and include consideration of setbacks, materials, textures and colours, scale of building, height and bulk, roof form, pitch, landscaping, facades, window placement, fences and driveways, street trees, and balance between solid walls and openings”*.

To support the desired outcomes, prescriptive controls require that *“buildings should provide elevations that address the street. Buildings on corner allotments should be designed to address both street frontages”* and that *“roof fixtures and lift overruns or service plants should be incorporated into the design of the roof to minimise visual intrusiveness and support an integrated building design”*.

Council advised the applicant that concerns were raised regarding the bulk and scale of the development. The applicant provided the following in response:

In direct response to Council's previous concerns regarding bulk, scale, and amenity impacts to adjoining properties at 59 and 59A Cardinal Avenue, the design has been substantially refined through a reduction in overall building and basement levels by approximately 900mm.

Specifically:

- *The basement floor level has been reduced by 300mm from RL 157.6 to RL 157.3.*

- *The ground floor ceiling height has been lowered by a further 600mm, resulting in a total reduction of approximately 900mm in overall building height. The revised building envelope provides a clear reduction in visual bulk and scale when viewed from the adjoining southern properties:*
- *Along the southern boundary, the building is now set back a minimum of 2m, in full compliance with Section 7.1.3 (Community Uses Child Care Centres) of the Hornsby DCP.*
- *The southern façade height has been reduced to ensure that the ridge line of the adjoining dwelling at 59 Cardinal Avenue sits above the proposed building roofline.*
- *The reduced height and compliant setback substantially decrease the building's visual prominence, particularly from the private open space areas and rear yards of 59 and 59A Cardinal Avenue.*
- *The undercroft garage area has been recessed further into the site's natural slope, ensuring that the southern interface reads as a single storey at street and ground level, consistent with the established pattern of development along Cardinal Avenue.*

As a result of this redesign, the child care centre now sits noticeably lower within the site and presents as a visually recessive, two-storey residential form that integrates comfortably with the surrounding dwellings.

Council Response

The raised basement would have a height above existing ground level of 2.7m and is considered a storey. The raised basement would be setback 1.0m - 1.2m from the southern side boundary and therefore the amended development does not comply with the southern side setback as stated by the applicant.

While the development may read as a single storey dwelling at Cardinal Avenue, it would still read as a two storey building 35m long abutted against the southern site boundary of the site. No attempt has been made to provide meaningful visual relief to the adjoining properties to the south such as breaking the building into pavilions, providing an articulated wall length, compliant side setbacks, a variety of building materials and/or finishes, recessed walls flanked by additional landscape screening or other such visual relief.

Monotonous building materials are proposed along the southern boundary, comprising of masonry for the enclosed portion of the basement, and lightweight cladding for the entire first floor of the childcare centre, only broken up with glass brick windows. The southern elevation lists the ground floor elevation as being finished in light weight cladding, however there is no light weight cladding listed in the Materials and Finishes Schedule dated 15 October 2025. It is more likely that the ground floor of the southern elevation would be rendered in "Royal Beige" as per the materials and finishes schedule and consistent with the other elevations of the building.

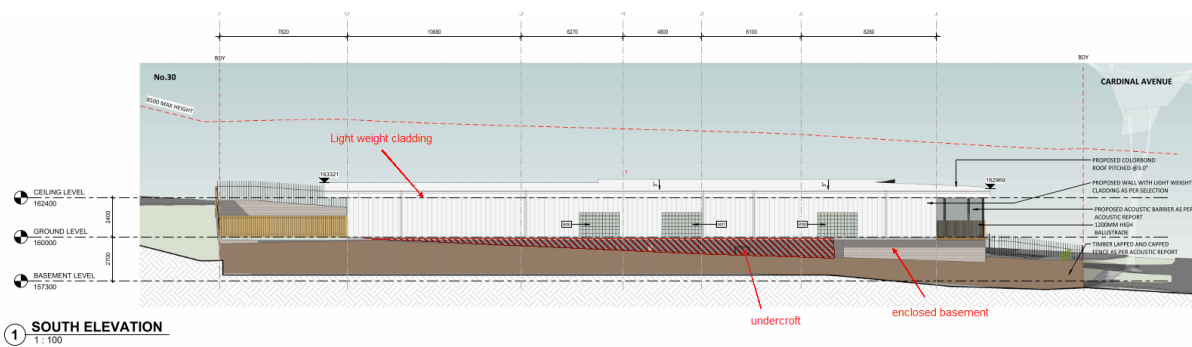


Figure 7: Extract of South Elevation (Source: Audaa Pty Ltd)

The result of the building mass on the southern boundary of the site, is that northern facing windows and private open spaces of 59 and 59A Cardinal Avenue would be always overshadowed between 9am and 3pm on 22 June.

Additionally, the raised playground would be setback 2m from the southern side setback. The play area would be raised 0.9m above existing ground level. An amended landscape plan has not been provided, so based on the architectural plans dated 15 October and the landscape plans dated 10 April 2025, a 1.8m high acoustic barrier would be installed at existing ground level and therefore would only screen up to a height 0.9m of the outdoor play area. It is unclear what landscaping screening of the raised play area would be proposed as this is not specified on the landscape plan.

The basement ramp and a portion of the basement/undercroft carpark would be unroofed along the southern boundary of the site would create a visual void when viewed from the adjoining properties to the south. It is noted no details of any basement garage doors have been provided. Opportunity exists to provide a decorative screening element within the basement doors.

It is noted that a 1-1.2m landscape strip would be provided along the southern boundary of the site between the basement/undercroft carpark and the southern boundary. However given the lack of details regarding the proposed landscape screening, it is unknown whether the landscape screening would provide sufficient, if any visual relief of the built form.

The cumulative result of these design issues and non-compliant setbacks is a development that is incongruent with the leafy garden setting of Beecroft. The proposal is inconsistent with the desired outcome of Part 7.1.8 Design Details of the HDCP and is considered unacceptable.

2.7.8 Heritage

The desired outcomes of Part 9.13.1 Development in the Vicinity of Heritage Items are “*new work located in the vicinity of heritage items is sympathetic to the heritage significance of the item and its setting*” and “*development near heritage items retains and enhances public domain views to the item*”.

As discussed in Section 2.1.5 of the report, the subjected property is not listed as a heritage item itself or located within a heritage conservation area (HCA). It is however, located in the vicinity of a Landscape heritage item listed under Schedule 5 of the HLEP:

- Item No. 68 (Street Trees) - Cardinal Avenue, Beecroft.

The proposed development has the potential to impact on the heritage listed trees located within the Cardinal Avenue road reserve. These trees form a part of a significant group of remnant native vegetation located both within the public verge and in adjacent private gardens. Canopies of these trees extend over the verge, roadway, and into neighbouring private properties.

As per the submitted SEE and Arborist report, the location of the existing driveway from Cardinal Avenue will remain unchanged. The report does not describe negative impacts to the two existing heritage listed mature trees (T1 and T2) located on the front verge. However, a new driveway crossover from Cardinal Avenue is proposed to provide vehicle access to the basement car park.

It is noted that Council's Tree Management Team anticipate significant impacts to T2 associated with the cut for the driveway entry on the Cardinal Ave frontage. The comments note that the Arboricultural Impact Assessment lacks an explanation of how the impacts of the proposed works on these trees will be managed.

Given the significance of the listed trees and concerns raised by Council's Tree Management Team, the application is not supported in its current form on heritage grounds due to the potential adverse impacts on the heritage listed Cardinal Avenue street trees and their contribution to the significance of the setting and the significance as a group.

The proposal does not comply with the desired outcomes of Part 9.13 Development in the Vicinity of Heritage Items and Heritage Conservation Areas and is considered unacceptable.

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. However, given the recommendation for refusal a contributions fee has not been levied in this instance.

2.9 Housing and Productivity Contribution

The Housing and Productivity Contribution applies to the development as it would result in an additional 334m² gross floor area for commercial development. However, given the recommendation for refusal a contributions fee has not been levied in this instance.

2.10 Planning Agreements

Section 4.15 (1) (a)(ii) of the Act requires Council to consider the provisions of any planning agreement. The development does not include a Planning Agreement.

2.11 Environmental Planning and Assessment Regulation 2021

Section 61 of the Environmental Planning and Assessment Regulation 2021 (the Regs) contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- If demolition of a building proposed - provisions of AS2601

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the Regs are relevant to the proposal.

Section 63 (considerations for erection of temporary structures) of the Regs is not relevant to the proposal.

These provisions of the Regs have been considered and would be addressed in draft conditions (where necessary) if consent were to be granted.

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

Part 1.2.6 Tree and Vegetation Preservation of HDCP requires the consent of Council to remove trees protected by the HDCP. The subject site and adjoining land contain tree species protected by the tree preservation measures contained in Part 1.2.6.1 of the HDCP.

An Arboricultural Impact Assessment Ref: AIA19/11/2024 prepared by Arbor Express dated 21 April 2025 was submitted with the application. Council's assessment of the proposal included a detailed examination of the existing trees on site.

The proposed development would necessitate the removal of seven trees from the site (including one neighbouring trees). The trees to be removed consist of 1x Chinese Hackberry, 2x Lilly Pilly, 2x privet, an unspecified exotic, 1x crepe myrtle. The tree on the adjoining property is a Box Elder. Chinese Hackberry and Privet are considered weeds. Crepe Myrtle and Box Elders are non-native species. The Lilly Pillies are native species.

Two trees to be removed are identified as 'significant trees' in accordance with the Tree and Vegetation provisions of the HDCP.

Council's Tree Management Officer and Heritage Planner raised concerns regarding the potential impact on trees numbered T1, T2 and T11 which are street trees potentially impacted by resurfacing of the driveway, construction of a retaining wall on the front boundary and the construction of the sand pit. These trees consist of Brush Box, Sydney Blue Gum and Illawarra Flame Tree which form part of Heritage Item No. 68 (Street Trees) - Cardinal Avenue, Beecroft.

Council's Tree Management Officer reviewed the AIA and found that there would be significant impacts to T2, as a result of regrading the driveway. The incursion into the TPZ of T1 and T2 is considered to be underestimated in the AIA. Council's Tree Management Officer considers this incursion to be far greater. There would be significant impacts to T2 with the cut for the driveway entry on the Cardinal Avenue frontage. There is no explanation within in the AIA as to how the impacts to these trees would be managed in the current proposal.

Council's Tree Management Officer recommended that the applicant consider deleting the access driveway from Cardinal Avenue and provide a combined entry and exit point onto Grace Avenue as there are no impacts to trees or vegetation on this frontage. However, this is not feasible due to increased traffic being directed onto Grace Avenue close to the intersection with Cardinal Avenue.

The applicant has advised they will not be making any changes to the vehicle access crossing (between the road and property boundary) except for maybe resurfacing it. If Council were of a mind to support this development application, driveway long sections/ cross sections to AS2890 would have been required to confirm that the gradient and width of the vehicle access crossing/driveway would not change.

It was also recommended that the sand pit be relocated out of the TPZ of T1 and T2 to minimise impacts to the TPZs of these trees. The applicant has advised that this would be a raised sandpit and would not have an impact on the roots of trees. However, amended plans have not been received to

demonstrate this. Additionally, no details of footings for the retaining walls have been submitted to demonstrate whether they would have an impact on the TPZ of T1 and T2.

Due to the potential damage to T7 (Box Elder) on the neighbouring property at 40 Grace Avenue as a result of the construction of the raised playground area to the rear boundary within the structural root zone of this tree, Council recommended this tree to be removed and requested that the applicant obtain owners consent from the adjoining property owner to remove this tree. To date this adjoining owner's consent has not been provided. Council cannot consent to the removal of this tree without the adjoining owner's consent.

The proposal does not comply with Part 1.2.6 Tree and Vegetation Preservation of HDCP.

3.1.2 Biodiversity

The desired outcomes of Part 1.3.1.1 Biodiversity of HDCP are to ensure "*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 "*development that maintains habitat for native wildlife and wildlife corridors to provide for the movement of fauna species*".

The site is mapped on the NSW Biodiversity Values (SBV) Map; however, it is underdetermined if any native trees within this area are proposed for removal.

Council's Natural Resources Team recommended the driveways be amended so that the driveway on Grace Avenue is both an entry and exit driveway and the driveway on Cardinal Avenue be removed as there are no impacts to trees or vegetation on the Grace Avenue frontage. It is also recommended that the sand pit be relocated out of the TPZ of T1 and T2 to minimise impacts to the TPZs. The request to redesign the driveway is not feasible due traffic management issues. It is noted that the works to the driveway would constitute resurfacing rather than demolition of the existing driveway and the construction of a new driveway.

The proposal does not with the desired outcomes of Part 1.3.1.1 Biodiversity of HDCP.

3.1.3 Stormwater Management

The Desired Outcomes of Part 1.3.1.2 Stormwater Management of HDCP are "*development that protects waterways from erosion, pollution and sedimentation, and maintains or improves water quality and aquatic habitats*" and "*water management systems that minimise the effects of flooding and maintains natural environmental flows*".

These desired outcomes are supported by prescriptive controls regarding sediment and erosion control, on-site stormwater management and for stormwater to be gravity drained to Council's drainage system.

Civil engineering plans were submitted by NY Civil Engineering dated 23 April 2025 in support of the development application.

An on-site detention system would be located under the Grace Avenue driveway which would then be conveyed to a pit in the kerb on the Cardinal Avenue frontage. A pump out basement is proposed.

Three submissions raised concerns regarding potential stormwater issues. Predominately relating to the risk of stormwater overflow from the development flowing downslope onto properties to the south. The submissions assert that this is an existing situation which will worsen with the introduction of the additional roof area and hardstand paving as a result of the proposed development.

The development application was referred to Council's Engineer who had no objections to the proposal. If council was to approve to the development application, conditions of consent would be imposed to ensure appropriate stormwater management and disposal from the site.

The proposal generally complies with the Desired Outcomes of Part 1.3.1.2 Stormwater Management of HDCP.

3.1.4 Earthworks and Slope

The desired outcomes of Part 1.3.1.4 Earthworks and Slope of HDCP are as to ensure “*development that is designed to respect the natural landform characteristics and protects the stability of land*” and “*development that limits landform modification to maintain the amenity of adjoining properties and streetscape character*”.

These desired outcomes are supported by the following prescriptive controls

- *Development should be sited on the area of land presenting the least topographic constraints and away from ridge lines.*
- *Earthworks involving filling should not exceed 1 metre in height from the existing ground level.*
- *Excavation that extends outside of the building platform should be limited to a depth of 1 metre from the existing ground level, unless the excavation is required to:*
 - *achieve a high quality built form, or*
 - *provide for safe vehicular access to the site, and*
 - *it maintains the amenity of adjoining properties and the desired streetscape character.*

The application is supported by a Geotechnical Investigation Ref: E26734.G03_Rev1 prepared by EIAustralia dated 16 June 2025. The Geotechnical Investigation identifies that a Bulk Excavation Level (BEL) of RL 157.4AHD is assumed, which includes allowance for the construction of the basement slab. To achieve the BEL, excavation depths of up to 3m below existing ground level have been estimated. Locally deeper excavations may be required for footings, lift overrun pits, crane pads, and service trenches. The basement extends up to the northern and southern site boundaries and has a minimum setback of 2.3m from the western and 8m from the eastern site boundary.

A retaining wall is proposed along the Grace Avenue frontage. A retaining wall on Southern side boundary. Retaining wall dimensions have not been provided on the architectural plans. A retaining wall 26.8m in length and up to 1.2m in height would be located along the Grace Avenue property boundary east of the building. This retaining wall would retain excavation. However existing ground levels of adjoining properties and complete bottom of wall (BOW) and top of wall (TOW) dimensions have not been provided making an assessment of the extent of retaining walls challenging. A Cut and Fill Plan was submitted by Audaa Pty Ltd (dated 15 October 2025) with this development application however it lacked sufficient information to make an informed assessment regarding the extent of cut and fill. Due to the lack of information the extent of landform modification cannot be accurately assessed.

Insufficient information has been submitted to determine whether the proposal complies with the desired outcomes of Part 1.3.1.4 Earthworks and Slope of HDCP and therefore the proposal considered is considered unacceptable.

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 inconsistent with the locality, which predominately comprises of one and two storey dwelling houses with other forms of low and medium density housing scattered throughout the area.

The main issue pertaining to the built form, is the presentation of the building to the adjoining properties to the south. The building would have a largely unarticulated length of 35.2m which would be setback 1-2m from the southern boundary. The raised rear play area would also add to the bulk and scale of the building when viewed from 59A Cardinal Avenue.

The proposal is considered to be inconsistent with the context of the site, in that the proposed buildings are not of an appropriate scale, mass form and in character with the surrounding residential development.

3.2.2 Transport and Parking

The desired outcomes of Part 1.3.2.1 Transport and Parking of HDCP are to encourage “*car parking and bicycle facilities that meet the requirements of future occupants and their visitors*” and “*development with simple, safe and direct vehicular access*”. To address Part 1.3.2.1 Transport and Parking of HDCP.

The desired outcomes of Part 1.3.2.1 Transport and Parking of HDCP are:

- a. *Direct vehicular access to main roads should be avoided and/or access points consolidated.*
- b. *For development (other than single dwelling houses on existing lots), vehicle access and parking should be designed to allow vehicles to enter and exit the site in a forward direction.*
- c. *Design and dimensions of car parks, loading areas and driveways should comply with AS2890.1 and AS2890.2.*
- d. *Planning and design layout of parking areas for people with disabilities should be in accordance with AS2890.6 and AS1428.1.*
- e. *Planning and design layout of loading and manoeuvring areas should be provided in accordance with AS2890.2 and:*
 - *preferably be located to the side or rear of buildings,*
 - *screened from view from local and main roads, and*
 - *located so that vehicles do not stand on any public road, footway, laneway or service road.*
- f. *Planning and design layout of bicycle parking (rails, racks or lockers) should be designed in accordance with AS2890.3*

A Traffic And Parking Impact Assessment was prepared by McLaren Traffic Engineering 10 April 2025 in support of this development application.

3.2.2.1 Traffic

A Traffic and Parking Impact Assessment Ref: 240793.01FE issue F, prepared McLaren Traffic Engineering & Road Safety Consultants dated 10 April 2025 has been submitted with the application

which estimates that the proposed development would generate an additional vehicular peak movement of:

- 49 vehicles between 8:00am and 9:00am.
- 48 vehicles between 2:45pm and 3:45pm.

It is noted that the opening hours of the childcare centre would be Monday to Friday: 7:00am - 6:00 pm. The TfNSW "Guide to Transport Impact Assessment identifies AM period being between 6:30am and 9.30am) and PM period being between 2:30pm and 6pm.

The total number of predicted vehicular trip movements per day was not provided in the Traffic and Parking Impact Assessment. Using the TfNSW Guide to Transport Impact Assessment (2024) the TPIA has estimated traffic generation of 49 trips in the AM and 48 trips in the PM site peak hour. The TPIA analysis of the intersections of Cardinal Avenue with Pennant Hills Road and Grace Avenue will continue to operate at level of service (LoS) in both AM and PM peak hours.

Notwithstanding, Council's Traffic Engineer has determined that traffic generation is not considered an issue with the proposed development.

36 submissions were submitted raising traffic concerns including increased traffic generation as a result of the development (including during hours of darkness), the potential for vehicle collision or vehicle/pedestrian conflict due to blind spots at the corner of Cardinal Avenue and Grace Avenue, given alleged previous casualties in the area. Concerns were also raised regarding Grace Avenue being narrow and that emergency vehicles would not be able to access the site. The objectors' concerns also extended to the potential traffic Impacts to the wider road network

The development application was referred to Council's Traffic Engineer who requested additional information to complete their traffic assessment including a 7 day ADT count on Cardinal Avenue in the vicinity of 61 Cardinal Avenue, with the survey to be carried out outside school holiday periods. These counts can identify locations that may not be suitable for a Child Care Centre due to vehicle speeding issues. As such, insufficient information has been submitted to determine whether the development would contribute to safety concerns for drivers or pedestrians.

Given the concerns Council has regarding the architectural plans, this information has not been requested and has been not provided. If Council were of a mind to approve the development application this information would have been required.

3.2.2.2 Car Parking

Part 1.3.2.1 Transport and Parking of the HDCP requires 1 car parking space per 4 children. Therefore, for a 60 place childcare centre, 15 car parking spaces are required. 15 car parking spaces are provided, therefore complying with the numerical requirement.

Twenty four submissions were submitted raising concerns regarding carparking. Including concerns regarding no designated drop off/pick up areas, some parents would not use the basement car park contributing to on-street car parking congestion, Concerns are raised with the dimensions of the car parking spaces and that there is not sufficient manoeuvrability in the basement car park. Concerns were also raised that parents would park at the childcare centre all day and commute to work.

The HDCP has a parking requirement of 1 space per 4 children, giving a parking requirement of 15 spaces for the proposed CCC with a capacity for 60 children. A total of 15 parking spaces have been shown on the plans provided. disabled parking space have been provided in a basement car park, which complies with the car parking requirements.

3.2.2.3 Vehicle Access

The proposed development will have an entry driveway off Cardinal Avenue and an exit driveway onto Grace Avenue. This ensures that all vehicles are to enter and leave the site in a forward direction.

The egress driveway grade of 5% for 4m is too short (creating a steep driveway) and does not comply with AS2890.1:2004 Off-Street Carparking.

Council's Traffic Engineer identified that any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath. The fence and retaining wall flanking the exit ramp would be splayed to provide sight distance

If Council were to recommend approval of the development application a condition of consent would have required that the applicant provide 'NO STOPPING' signs from driveway exit onto Grace Avenue to Cardinal Avenue on both sides of Grace Avenue. This would have addressed concerns regarding vehicle collision on the intersection of Cardinal Avenue and Grace Avenue.

A further condition would have required the applicant to provide a 1.5m wide footpath along the site boundary from Cardinal Avenue to the western boundary of the site on Grace Avenue to connect with the existing footpath on Cardinal Avenue.

3.2.2.4 Pedestrian Access

Twenty-four submissions were received regarding concerns for pedestrian safety during construction and operation. Concerns were raised regarding the safety of children who would be walking to the centre with their parents/caregivers and with impact of the childcare centre on primary and high school students walking to their respective schools.

For people walking to the site, the main pedestrian entry would be from Grace Avenue via a proposed 1.5m wide pedestrian pathway on Grace Avenue.

If Council were inclined to approve the development application further information would be required. A count of pedestrians crossing Grace Avenue at Cardinal Avenue, and a count of vehicles turning into and out of Grace Avenue for the periods 7:30am to 9:30am and 2:00pm to 4:00pm would be required. However, given the recommendation for refusal the pedestrian counts were not requested.

Long sections and cross sections of the proposed pedestrian pathway Grace Avenue would have also been required in to demonstrate compliance with AS1428.1 Design for Access and Mobility and Council's engineering specifications.

However, as most people would drive to the site, the main pedestrian access to the site would be from the basement carpark and then via the lift or stairs into the building. There is no delineated pedestrian pathway within the basement carpark. It is unlikely that a delineated pedestrian pathway could be provided in the basement having regard to the 5.8m aisle width of the carpark.

Insufficient information has been provided to demonstrate that proposal complies with the desired outcomes of Part 1.3.2.1 Transport and Parking of HDCP.

3.2.3 Accessible Design

The Desired Outcomes of Part 1.3.2.2 Accessible Design of HDCP are to encourage "*publicly accessible buildings that provide a safe and continuous path of travel for people with impaired mobility*" and "*residential development that includes adaptable units and accessible residential accommodation to address potential demand*".

The application is supported by an Access Compliance Assessment Report (DA Stage) Ref: NEW240902 rev 6, prepared by New Crown Consulting dated 16 May 2025 which supports the development.

A new 1.2m wide footpath is proposed in the road reserve of Grace Avenue. No details were provided to demonstrate that the pedestrian pathway can comply with AS1428.1:2021 Design for Access and Mobility.

Council's Traffic Engineer also recommended the construction of a pedestrian pathway 1.5m wide on the Grace Avenue road reserve to provide safe pedestrian access to the site.

As the pathways would be on Council's road reserve, the scope for cut and fill to facilitate the appropriate gradient is limited. If Council were of a mind to approve the development application, long sections and cross-sections of the pathway would be required.

3.2.4 Building Code of Australia

A BCA Compliance Assessment Report (DA Stage) was prepared by New Crown Consulting (dated 16/05/2025) in support of this development application.

The proposed building classification is Class 9b (childcare) and Class 7a (carpark).

THE BCA Report specifies that the building has a floor area of more than 500m², therefore a Fire Hydrant system is required. Accordingly, a hydraulic engineer is required to assess and confirm if a street hydrant is possible, or if an internal hydrant system is necessary. The application did not include hydraulic engineering details to confirm either option.

The development application was referred to Council's Building Surveyor who identified that no details of services and plant such as fire hydrants, sprinkler boosters or pumps has been provided.

In some instances, a fire rated wall is required around these services. It is unclear whether a fire rated wall is required around the proposed services. Depending on the design of the fire rated wall, detrimental visual amenity impacts on the streetscape can result.

Additionally, it is unknown whether the proposed location of the fire hydrants and associate plumbing would have an adverse impact on the heritage listed Cardinal Avenue street trees.

Amended architectural plans (dated 15 October 2025) depict basement fire stairs proposed leading in the outdoor play to provide egress however the opening to these stairs is not shown on the ground floor plans. This is considered to be in error.

The BCA Report was based on the architectural plans dated 8 April 2025. An updated BCA report was not provided to reflect the amended architectural plan set dated 15 October 2025. So, while the BCA report identifies that "*Alternative exits in basement carpark and ground floor are located further than 9m apart, in compliance with clause D2D6*" it is unknown whether the amended architectural plans would still comply.

Due to the concerns Council has regarding the architectural plans, details demonstrating compliance with the BCA were not requested. In the absence of details regarding services and plant as well as fire egress, Council cannot be satisfied that the development complies with the requirements of the National Construction Code and BCA.

3.2.5 Waste Management

The desired outcomes of Part 1.3.2.3 Waste Management of the HDCP are to encourage “*development that maximises re-use and recycling of building materials*” and “*waste storage and collection facilities that are designed to encourage recycling, located and designed to be compatible with the streetscape, accessible, clean and safe for users and collectors*”.

The application includes a Waste Management Plan (WMP) Rev 2 prepared by Audaa dated 23 June 2025 in support of the proposal.

The WMP includes 4x 240L general waste and 4x 240L recycling bins are to be taken to the kerbside by an administrator and waste is to be collected weekly by a private contractor from Grace Avenue.

This development application was referred to Council’s Waste Management Team who raised concerns regarding the size of the proposed waste storage room, as there is insufficient space within this room to manoeuvre the bins in and out of the waste room. Additionally, it has not been demonstrated that the bin room has an accessible path of travel.

Bins can be presented to the street. There are no collection issues from a waste perspective. However, if the bin room is too small the waste contractor would be required to undertake additional waste pickups. Any additional truck movements would need to be reflected in the traffic report.

The proposal does not comply with the desired outcomes of Part 1.3.2.3 Waste Management of HDCP and is considered unacceptable.

3.2.6 Noise and Vibration

The desired outcomes of Part 1.3.2.4 Noise and Vibration of the HDCP are to encourage “*development designed and managed to minimise noise and vibration impacts on the occupants of residential dwellings and other noise sensitive land uses*”.

Part 1.3.2.4 of the HDCP contains prescriptive controls for construction noise management, noise sensitive development, and noise generating development.

3.2.6.1 Acoustic Impact

Sixteen submissions were received raising concerns over the loss of acoustic amenity during the operation hours of the childcare centre. The submissions raise issues of noise from the outdoor play area, children indoors, and vehicle movements. The submissions assert that the noise mitigation measures such as hard fencing landscape screening is insufficient to ameliorate noise impacts to adjoining properties. The proposal would not comply with *NSW EPA Noise Policy* for Industry and contradicts Part 1.2.6.2 of the HDCP. The proposed childcare centre would result in noise disruption to people who sleep during the day, people working from home, elderly residents, or families with young children.

The applicant provided an Acoustic Report Ref: SYD2024-1134-R001G prepared by Acouras dated 17 April 2025 and the Plan of Management prepared by Max Gergis dated 4 July 2025.

The Development Application was referred to Council’s Environmental Protection Officer for assessment. Council’s Environmental Protection Officer concluded that the Acoustic Report does not provide sufficient information for Council to consider the requisite likely environmental impacts of the proposed development in accordance with section 4.15(1)(b) of the Act. The Acoustic report by Acouras dated 17 April 2025 does not adequately consider the following:

- Sensitive Receivers - No. 59A Cardinal Avenue Beecroft is not identified as an affected residential receiver despite being located immediately adjoining the proposed development site

- Clarification of the dates of the unattended background noise monitoring is required
- The Acoustic Report identifies project noise criteria for mechanical plant, however, does not include an assessment of the predicted noise levels from mechanical plant associated with the proposed development.
- Whilst it is acknowledged that final plant selection will not be determined until the construction certificate stage, an assessment of indicative mechanical plant and equipment noise levels is required to demonstrate the proposed development can comply with appropriate noise criteria.
- The Acoustic Report must provide predicted noise levels at the nearest affected residences from all outdoor play areas, including those located at ground level and the upper-level outdoor play area
- The updated report must include an assessment of sleep disturbance associated with staff arrivals, setup, cleaning or other on-site activities prior to 7am
- This shall include the cumulative noise emission resulting from:
 - Indoor play,
 - Mechanical plant and equipment including, but not limited to, air conditioning, lift plant, any proposed carpark automatic doors.
 - Drop off and pick up,
 - Other activities/operations (not including outdoor play).

Council provided correspondence to the applicant dated 15 September 2025 advising that the acoustic report was insufficient however given the amended Architectural plans received 15 October 2025, Council advised the applicant not to provide an amended acoustic report.

The acoustic report shows a 1.8m high acoustic wall on the boundary. However, amended architectural plans show the raised outdoor play area is raised up to 1.4m above existing ground level and setback 2m from the southern side boundary. This means if the acoustic fence is constructed at existing ground level, the acoustic fence would not adequately screen the raised outdoor play area. Landscaping screening would be provided along the southern elevation of the elevated play area. The type of vegetation for landscaping screening is not labelled and therefore the height of this screening is not provided. It is unknown if the landscape screening would have any acoustic benefit to the adjoining properties.

On 3 October 2025 Council advised the applicant that given the significant design issues associated with this development application; Council is not requesting additional/amended technical documents.

3.2.6.2 Vibration

Additional concern was raised in the submissions regarding the impact of vibration from the excavation of the basement on the North Connex Tunnel. However, the geotechnical report prepared by EIAustralia dated 16 June 2025 concluded that *“given the shallow depth of bedroom, the relatively low expected column loads for a single-storey building with a single level basement, and the depth and setback of the North Connex tunnel and ramps, we are of the opinion that the proposed development will not have any adverse impacts on the tunnel”*.

Additionally, the development application was referred to Transport for NSW (TfNSW) who provided advice (dated 6 August 2025) that *"TfNSW raises no objection to the DA as the proposed development is unlikely to have a significant impact on the North Connex tunnel"*

Insufficient information has been submitted to confirm compliance with the desired outcomes of Part 1.3.2.4 Noise and Vibration of HDCP and therefore the proposal is considered acceptable.

3.2.7 Plan of Management

The intent of a Plan of Management is to demonstrate a strong commitment to good management of the operation of a business, particularly in relation to managing potential impacts on adjoining and surrounding land uses and premises, as well as the public domain.

The Plan of Management (PoM) prepared by Max Gergis (dated 4 July 2025) was submitted with the development application. Council requested clarification about whether after hours events would be held, proposed hours for deliveries, water collection and maintenance, and use of outdoor areas consistent with the acoustic report. An amended Plan of Management was prepared by Max Gergis (now undated).

The proposal has been assessed having regard to the Land and Environment Court's Planning Principle for Plans of Management, including the proposed complaints handling process.

The Land and Environment Court's Planning Principle established in Renaldo Plus 3 Pty Limited v Hurstville City Council regarding the adequacy and appropriateness of a plan of management is assessed below.

- *Do the requirements in the Management Plan relate to the proposed use and complement any conditions of approval?*
- *Do the requirements in the Management Plan require people to act in a manner that would be unlikely or unreasonable in the circumstances of the case?*
- *Can the source of any breaches of the Management Plan be readily identified to allow for any enforcement action?*
- *Do the requirements in the Management Plan require absolute compliance to achieve an acceptable outcome?*
- *Can the people the subject of the Management Plan be reasonably expected to know of its requirements?*
- *Is the Management Plan to be enforced as a condition of consent?*
- *Does the Management Plan contain complaint management procedures?*
- *Is there a procedure for updating and changing the Management Plan, including the advertising of any changes?*

An amended Plan of Management was prepared by Max Gergis (now undated). Includes provisions to ensure operation is Consistent with Acoustic Report and provides a discussion on how it complies with the planning principles. The Plan of Management is considered generally acceptable.

If Council were of a mind to approve the development application conditions of consent would have been imposed to ensure compliance with the Plan of Management.

3.2.8 Air Quality

The Desired Outcome Part 1.3.2.6 Air Quality of the HDCP is “*development designed and managed to minimise air quality impacts on the occupants of residential dwellings and other sensitive land uses*”.

This desired outcome is supported by prescriptive controls that “*any development that is likely to, or capable of, generating levels of air emissions exceeding the requirements of the Protection of the Environment Operations Act 1997 should incorporate appropriate measures to mitigate against air pollution*” and “*Land uses that have the potential to generate offensive odour should be sited and designed to minimise odour impacts on adjoining land*”.

Two public submission raised concerns about air quality impacts arising from the semi-open basement/undercroft carparking areas. The open portion of the undercroft would face the properties to the south being 59 and 59a Cardinal Avenue with a setback to the common boundary of 1m. The objectors raised concerns that fumes and other pollutants would escape from the basement carpark and funnel directly on to the properties to the south.

The BCA Compliance Assessment by NSW Crown Consulting (dated 16/05/2025) identifies that the Basement carpark is to be provided with mechanical ventilation compliant with AS1668.1 and AS1668.2 to comply with this clause.

It Council were of a mind to approve the development application additional information would be requested to identify whether the basement car park was to be naturally or mechanically ventilated. This could be in the form of a National Construction Code (Building Code of Australia) compliance report, prepared by an appropriately qualified accredited certifier or BCA consultant, in consultation with a suitably qualified and experienced Heating Ventilation and Cooling (HVAC) Engineer, including:

- Identification of how the proposed development design complies with:
 - National Construction Code 2022, of particular reference Part F6 Light and Ventilation applicable to the Class 7a (carpark), including the performance requirement: F6P5 Disposal of contaminated air [2019: FP4.5]:
 - Contaminated air must be disposed of in a manner which does not unduly create a nuisance or hazard to people in the building or other property.
 - AS/NZS 1668.2 :2024 *The use of ventilation and air conditioning in buildings*. Part 2: Mechanical ventilation in buildings.

The staff bathroom is not naturally ventilated and would rely on mechanical ventilation. No details of mechanical ventilation of the bathroom have been provided. It is noted that there are no air conditioning unit, plant, equipment or plant rooms depicted on the architectural plans.

Part 1.3.2.6 Air Quality of HDCP restricts the use of gas stovetops due to internal air quality concerns. It is unclear whether the stovetop in the kitchen would be gas or electric.

Insufficient information has been provided to consider the proposal complies with the desired outcome Part 1.3.2.6 Air Quality of the HDCP and therefore considered unacceptable.

3.2.9 Crime Prevention

The Desired Outcome of Part 1.3.2.7 Crime Prevention of HDCP is “*Development designed to reduce crime risk and minimise opportunities for crime*”. This desired outcome is supported by the prescriptive control requiring a CPTED assessment. A CPTED assessment (Safer by Design Evaluation) is required for large scale and/or crime sensitive development including Major commercial/ retail developments, major community facilities, and other high risk land uses.

Section 6 of the Statement of Environmental Effects by Myriad Consulting (dated July 2025) provides an assessment against CPTED Principles.

Additionally, the Plan of Management prepared by Max Gergis (undated) provides for Emergency lighting, Secure keypad access for authorised families and staff and CCTV for safety and security monitoring.

One public submission raises concerns that a basement driveway door has not been shown on the architectural plans which could lead to illegitimate access to the site. If Council were of a mind to support the development application, an amended plan condition could have required details of the basement doors to be provided prior to the issue of the Construction Certificate.

The proposal generally complies with the desired outcome of Part 1.3.2.7 Crime Prevention of HDCP and is considered acceptable.

3.2.10 Services and Lighting

The Desired Outcomes of Part 1.3.2.10 Services and Lighting of the HDCP are “*development that provides necessary services to cater for future occupants*” and “*development that integrates required services in building and site design to minimise impacts on the streetscape*”.

- *Any services and structures required by the providers should be located within the basement, or concealed within the facade, with appropriate access. Where this is not possible, an alternative method of minimising street impact should be demonstrated, such as screening with landscape or built elements.*
- *With the exception of dwelling houses, all buildings should accommodate proposed or future air conditioning units within the basement or on rooftops, with provision of associated vertical/horizontal stacks to all sections of the building.*
- *Air conditioning units and mechanical plant located on the roof should be well screened and integrated into the building form.*
- *Air conditioning units and mechanical plant should be sited away from adjacent sensitive land uses and/or screened by walls or other acoustic treatments. Lighting*
- *External and security lighting should be positioned to avoid light spillage, particularly to adjacent sensitive areas in accordance with AS 4282*

The proposed location of the air conditioning unit is unknown. This is not identified in the Architectural Plans nor Acoustic Report. The BCA Report identifies that the building will be provided with a heating/cooling system, that rooftop services may be provided and that solar panels would be located on 20% of the roof area. The BCA Report also identifies that the basement and bathrooms would be mechanically ventilated.

There are no details of any fire hydrants, sprinkler boosters or pumps shown on the architectural plans or landscape plans,

Insufficient information has been provided to confirm whether the proposal complies with desired outcomes of Part 1.3.2.10 Services and Lighting of the HDCP.

3.3 Social Impacts

The proposed childcare centre would provide an extra 60 child care spaces and therefore an appropriately designed development would make a positive social contribution to the local community.

However, the applicant has not demonstrated that there is a shortage of childcare places in the locality that would justify the need for a 60 place childcare centre.

According to 2021 Census data, 420 (4.1%) of the population are between the ages of 0-4 which is below the NSW and Australian percentage of 5.8%. In the Beecroft area 182 children (5.3%) attend preschool which is lower than the NSW average of 6.8%.

The Hornsby Shire Council Community Atlas identifies that the 2025 population forecast for Beecroft - Cheltenham is 9,950 and is forecast to grow to 11,682 by 2046. In the Beecroft- Cheltenham area they are currently 393 persons between the ages of 0 and 4 years old. This is expected to increase by a further 120 0-4 year olds by 2046.

Twelve submissions raised that there is insufficient demand for a childcare centre as there are many childcare centres operating in the area, with some of these childcare centres operating under capacity.

The amenity impacts to adjoining properties as a result of the proposed development, such as traffic, noise, visual bulk and privacy concerns outweigh the potential social benefits.

A childcare centre with fewer childcare places and a smaller building form would be more conducive in providing the social benefit of childcare while protecting the amenity of adjoining properties and the community.

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 is not identified as bushfire prone or flood prone land.

The site is not capable of accommodating the proposed development. This is evidenced by the numerous non-compliances with the Transport and Infrastructure SEPP, the HLEP and the HDCP and the potential for adverse amenity impacts to the adjoining properties,

It was recommended to the applicant that the number of childcare places be reduced to provide a building of bulk and scale commensurate with the site and the locality. However, the applicant declined this recommendation.

The scale of the proposed development is inconsistent with the capability of the site and is considered unacceptable.

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 23 July 2025 and 11 August 2025 with the Hornsby Community Engagement Plan. During this period, Council received 87 submissions and one petition. 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	
20 SUBMISSIONS RECEIVED OUT OF MAP RANGE				

A total of 87 submissions and 1 petition containing 86 signatures objected to the development, generally on the grounds that the development would result in:

- | | | |
|--|---|---|
| ○ Traffic | ○ Sunlight Access | ○ Non-Compliant Site Layout |
| ○ Car Parking | ○ Outdoor Play Areas | ○ Too many childcare centres Nearby |
| ○ No Emergency Vehicle Access | ○ Stormwater | ○ Procedural Matters |
| ○ Fire Safety | ○ Waste Management | ○ Lack of demonstrated community benefit |
| ○ Pedestrian Safety | ○ Streetscape/Character | ○ Reduction in Residential Accommodation |
| ○ Noise and Disruption | ○ Bulk and Scale | ○ Public Interest |
| ○ Air Quality | ○ Visual Impact | ○ Guidelines for delivering quality childcare for NSW |
| ○ Compatibility in the R2 Low Residential Zone | ○ Site Location/ Selection | |
| ○ Privacy | ○ Compliance with Childcare Planning Guidelines | |

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 Traffic

Thirty six submissions raised concerns regarding traffic impacts. Concerns included dangers associated with a blind spot at the intersection of Cardinal and Grace Avenues. All traffic entering the site via Grace Avenue or parking on Grace Avenue must exit the same way, compounding risk and congestion at the only access point.

Safety concerns associated with the egress driveway adjacent to neighbouring property on Grace Avenue.

Some submissions asserted that peak hour traffic generation has been underestimated. The traffic assessment was undertaken during school holidays and would not reflect true peak traffic movements including:

- Safety of pedestrians crossing Grace Ave at the intersection with Cardinal Ave.
- Consider allowing right turn from Cardinal onto Pennant Hills Road
- Traffic banks up on Cardinal Ave during peak hour and it's impossible to get in and out of Grace Avenue

Potential vehicle/pedestrian conflict particularly with school children alighting from school buses; and

- Grace Avenue is narrow, and Cardinal Avenue is quite narrow and cannot afford too many cars traveling and parking.
- Public road safety - there is keep clear area on the corner of 61 Cardinal Avenue and Grace Avenue Beecroft for a reason, the traffic at peak times (work hours, school hours) banks up, making the area a hazard to enter and exit from for active transport users
- Grace Avenue is narrow there would be insufficient on-street carparking and no access for emergency vehicles in the event of an emergency situation
- Right-turn outbound traffic is inaccurately claimed as only 20% this is unrealistic given many Grace Avenue residents will make a right turn to drive to Beecroft Station and shopping centre.
- Cardinal Avenue's 25-degree gradient uphill makes vehicles hill starts very risky.
- The carpark exit is too close to the intersection.
- Those exiting cannot properly see oncoming traffic due to trees, signage and the road angles and the steep climb up Cardinal Avenue.

Council Comment

If Council were inclined to recommend approval of the development, additional information would have been requested consisting of a 7-day vehicle tube count on in the vicinity of 61 Cardinal Avenue including speed and vehicle volume data. This survey would be required to be carried out outside school holiday periods and all raw data is to be forwarded to Council.

Council has insufficient information to make an informed decision as to whether the traffic generated by this development would be appropriate in the residential locality and context.

5.1.2 Car Parking

Twenty four submissions raise concerns regarding the proposed internal carparking arrangements as well as potential impacts to on-street carparking in the local streets.

Concerns have been raised regarding the dimensions of the carparking spaces, the functionality of the turning bay as well as the gradient and location of the basement ramp. Concerns are raised that the basement carpark and access ramps would not comply with AS2980.1:2004 and the location of the proposed carpark exit is inappropriate

Some submissions assert that there is no designated Drop Off and/or Pick Up Zone “Kiss and Ride”. While other submissions discuss that dropping off /picking up children to a childcare centre can be time consuming. Therefore, parents would be parked on the site longer than forecast in the traffic report. An additional claim is the possibility that some parents may commute to work and leave cars at the centre which would occupy car parking otherwise used by parents or staff.

The public objections assert that if basement carpark does not function well, there would be additional car parking congestion on Grace Avenue and Cardinal Avenue as a result of the development. Some parents would not use the basement carpark and will park on the street. Insufficient onsite and on-street car parking could lead to illegal or unsafe parking. On street car parking restricts vision to drivers.

To remedy potential car parking congestion on Grace Avenue, Council should require a “No Stopping” zone or require that Grace Avenue be widened to accommodate two-way traffic.

Council Comment

This development application was referred to Council’s Traffic Engineer for comment. If Council were to approve this development application, a condition of consent would have required “No Stopping” Signs along Grace Avenue, however it is clear that a number of local residents currently park on Grace Avenue and if the “No Stopping” signs were installed, those residents would no longer be permitted to park on the street.

5.1.3 Emergency Vehicle Access

Grace Avenue is a narrow cul-de-sac with no secondary egress. Nine submissions assert that in the event of fire, medical emergency, or evacuation, traffic congestion would delay access by emergency vehicles. including elderly residents and young children.

Further, the submissions raise concerns that the Plan of Management fails to propose any fire safety measures which fails to meet evacuation planning expectations under the NSW Childcare Design Guideline (2017), which requires childcare centres to provide clear, safe evacuation routes and demonstrate access for emergency services at all times.

Council Comment

In response, this development application was referred to Council’s Traffic Engineering Team. If Council were of a mind to approve the development application, a condition would have been imposed requiring the installation of “No Stopping” restrictions on Grace Avenue for approximately 15m from Cardinal Avenue. By restricting vehicles from parking in proximity to the intersection, emergency vehicles will be able to enter Grace Avenue.

5.1.4 Pedestrian Safety

Given the location of the site among mature gum trees and the nature of the childcare centre, there is a fire risk posed by accumulated leaf litter on the roof.

This location will put the health and safety of very young children, adults, drivers, cyclists, local residents and pedestrians at a much higher risk, of potential accidents and injury, due to the increased

vehicular activity from the major access roads and to our local streets, in particular Cardinal and Grace Avenue.

- Unsafe to drop off/pick up children due to the steep slope of the hill.
- The tree lined nature strips impair the pedestrians view of an approaching vehicle therefore can make it difficult to judge the timing of a safe crossing.
- No pedestrian crossings nor traffic lights in the vicinity

There is only one pedestrian pathway in Cardinal Avenue, on the side where the proposed centre would be built, again, impacting its use and safety, forcing residents and visitors to cross the street and use the other side where the ground is uneven and has no path. Creating another hazard and unnecessary risk.

The probability of accidents would be high when drivers are trying to park or to cross the road so they can collect their children. In my experience, children attending childcare are collected after 5pm, during peak hour when traffic is heavy and vision is poor, especially in autumn and winter.

Council Comment

In response, childcare centres are accessed by pedestrians ranging in abilities, from toddlers that are short in stature with no understanding of vehicle speeds. These young pedestrians are below the height of many current vehicle bonnets and can be difficult for drivers to see. This lack of vision to young children has unfortunately led to some being run over by parents and relatives in their own driveways. Council is determined to avert any injuries or fatalities in child care centre car parks.

If Council were of a mind to approve the development application, a condition of consent would have required A Pedestrian Access Management Plan (PAMP) detailing how pedestrian movements will be changed and managed during various stages of development to be submitted prior to the issue of a Construction Certificate.

5.1.5 Noise and Disruption

Sixteen submissions were raised regarding acoustic issues arising from the proposed childcare centre.

These submissions raise concerns regarding accuracies with the acoustic report. The objectors assert that the acoustic report is based solely on desktop modelling, not on-site data or external expert validation.

In respect to the childcare centre proposal, the objectors raise concerns that the proposed development includes an outdoor play area with no buffer which will result in noise pollution from loud children. The acoustic report also does not consider any noise from children indoors - there are a large number of external sliding doors, which (when left open) would significantly increase the noise heard from the street. The acoustic report also does not consider noise from vehicle movements.

The objectors state that the proposal breaches the NSW EPA Noise Policy for Industry and contradicts Part 1.2.6.2 of the Hornsby DCP, which requires new developments to protect neighbouring amenity and minimise environmental disturbance.

With hard fencing and minimal vegetation, the design creates a reflective noise environment that amplifies sound into neighbouring homes.

While the only proposed noise mitigation to 59 and 59A Cardinal is a timber fence. This fence is not adequate to control noise from the centre. The concrete 'lid' for the planter boxes (the floor of the child care level above) is the only horizontal setback relief (0.9m). The proposed basement car park is

enclosed on three sides only and is predominantly open on the southern boundary facing the dwellings on 59 and 59A. There would be a short wall only on the southern boundary.

The childcare centre would result in noise disruption to people who sleep during the day, people working from home, elderly residents, or families with young children

There is no detail of any mechanical plant and equipment including air-conditioning units and ventilation and therefore the acoustic impact of this plant and equipment cannot be properly assessed.

Council Comment

In response, Council's Environmental Protection Officer assessed this development and asserted that the acoustic Report does not provide sufficient information for Council to consider the requisite likely environmental impacts of the proposed development in accordance with section 4.15(1)(b) of the Act.

5.1.6 Air Quality

Three submissions raise concerns regarding the potential for fumes and other pollutants to escape the basement carpark and funnel directly to the properties to the south (59 and 59A Cardinal Avenue). There is no indication of any mechanical extraction of fumes and pollutants from the basement,

Council Comment

In response, if Council were of a mind to approve the development application, Council would have requested recommended the applicant be requested to submit additional information identifying whether the basement car park will be naturally or mechanically ventilated. This could be in the form of a National Construction Code (Building Code of Australia) compliance report, prepared by an appropriately qualified accredited certifier or BCA consultant, in consultation with a suitably qualified and experienced Heating Ventilation and Cooling (HVAC) Engineer, including the following:

1. Identification of how the proposed development design complies with:
 - a.) National Construction Code 2022, of particular reference Part F6 Light and Ventilation applicable to the Class 7a (carpark), including the performance requirement: F6P5 Disposal of contaminated air [2019: FP4.5]:

Contaminated air must be disposed of in a manner which does not unduly create a nuisance or hazard to people in the building or other property.

5.1.7 Compatibility in the R2 Low Density Residential Zone

Nine submissions raise concerns with the character of the development and the compatibility of the development with the R2 zone. The submissions state that the building mass overwhelms the site, creating an urban footprint entirely out of character with the surrounding low-density residential neighbourhood. Further, the site is within a quiet area unsuitable for commercial activity and Grace Avenue consists of post war houses built close together after the second world war. The proposal is inconsistent with the general pattern of development in the vicinity of the site.

Council Comment

In response, the objectives of the zone have been discussed in Section 2.1.2 of this report and the character of the locality has been discussed in Section 2.4.1.3 of this report.

5.1.8 Loss of Housing Opportunities

Objections are raised that the demolition of a dwelling house would reduce the available residential accommodation in the area. The site could accommodate a dual occupancy or similar development.

Council Comment

In response, Council must assess the development application as proposed. Childcare centres are permitted in the R2 zone.

5.1.9 Privacy

Two submissions raise concerns regarding privacy loss as a result of the proposed childcare centre. These submissions are concerned that the development does not comply with Part 1.3.2.5 of the HDCP regarding protection of residential privacy and interface management for non-residential uses in R2 zone.

Council Comment

In response, Council has concerns regarding the raised outdoor play area overlooking to southern side and rear.

Acoustic fences 1.8m high are proposed on the rear and side boundaries. However, the raised outdoor play area would be 900m above existing ground level. Therefore, these acoustic fences are unlikely to effectively screen the raised outdoor play area.

5.1.10 Sunlight Access

Six submissions were raised in relation to loss of sunlight access to adjoining properties. The submissions assert that the proposal does not comply with the min. 3-hour sunlight access provisions under the HDCP for properties to the south.

Council Comment

In response, it is agreed that the proposal does not comply with the minimum 3 hour sunlight access requirement. A detailed discussion of sunlight access is provided in Section 2.7.6 of this report.

5.1.11 Outdoor Play Area

Two submissions were raised in relation to the inappropriateness of the outdoor play area.

The submissions assert that the play area should not be located in front of the site facing Cardinal Avenue on the corner of Grace Avenue as it would have an unreasonable impact on neighbouring properties. The proposed boundary fencing and landscaping surrounding the play area at the front of the site would not provide relief to adjoining properties.

Further, the positioning of a sandpit beside the entry driveway, adjacent to the front fence in the vicinity of the dangerous intersection of Cardinal and Grace Avenues and footpath raises health and safety concerns. A shade sail would be placed over the sandpit and clearly visible from both the Cardinal Avenue and Grace Avenue frontages contributing to bulk.

As with the plantings on the Grace Avenue frontage an increase in the depth of planting by widening garden beds, using a far greater number of plants, a broader palette of plants to create better biodiversity, a progression of plant heights throughout the borders may go some way to ensure the minimal impact on neighbours assured by the applicant.

To truly blend into the existing streetscape the garden on the Cardinal Avenue frontage should be of a design that minimises the bulk of the building settling it into its landscape, a style that is in keeping with

adjoining and surrounding neighbours and utilising a plant palette that is consistent with that observable in surrounding properties. All play areas should be at the rear of the property.

Council Comment

In response, the applicant expressed a willingness to relocate the sandpit within Outdoor Play Area 2 (at the front of the site). However, amended landscape plans have not been provided which would show this detail. It is agreed that the sandpits and shade sails should be shown in architectural elevation/section plans and in landscape elevation plans.

5.1.12 Stormwater

Three submissions were received regarding the potential for stormwater run-off into adjoining downslope properties as a result of the additional roof area and hardstand areas on the site.

If the drainage from the proposed retaining walls and built structures above are not adequately catered for or of a sufficient capacity to direct run off away from the south side of the site, then all properties south of the proposed development could suffer negative and ongoing impacts to their properties.

Significant slope and stormwater runoff issues will be worsened by increased hard surfaces, contrary to Clause 4.4(e) which requires play areas to be well-drained and free from environmental hazards.

The stormwater design fails to model the steep slope or runoff impact on neighbouring properties, which is in breach of HDCP Part 7.1.2.

The stormwater plan fails to account for the steep gradient of the site, roof area and concrete carpark

Existing issues with localised water pooling and runoff on Cardinal Avenue There is no hydraulic modelling or downstream flood mitigation.

The site and surrounding properties already experience pooling and water runoff during moderate rainfall. Without a site-specific hydraulic report or downstream impact modelling, the proposal poses an increased risk of overland flow, erosion and stormwater damage - particularly steeply downhill from the proposed car park.

This fails the stormwater requirements under Part 7.1.2 of the HDCP - stormwater management must not increase risk to surrounding properties

Council Comment

In response, the development application was referred to Council's Development Engineer who raised no objections to the proposal subject to conditions of consent. Stormwater is discussed in Section 3.1.3 of this report.

5.1.13 Waste Management Plan

Submissions were received concerned with the proposed waste management arrangements for the site. Concerns were raised that the proposed kerb side collection of bins would not be practical given the steep slope of the site, the limited and narrow street frontage, and volume of waste likely to be generated. Additionally, the proposal lacks a bin enclosure or private collection plan risking disruption to traffic and safety during waste pickup. Without a private contractor waste plan or screened bin zone, public amenity will be compromised, and collection logistics will obstruct traffic and pedestrian flow. Waste storage would be inadequate, unhygienic, and create disruption.

Council Comment

In response, a detailed discussion of waste management is provided in Section 3.2.5 of this report.

5.1.14 Public Interest

One submission states that the proposed location for this childcare centre is considered to be not in the public interest. The location of the site is not in the public interest having regard for the amenity impacts on neighbouring residents, traffic and parking issues and pedestrian circulation,

Further, a new centre would not appear to fulfill an existing shortfall in community services, while imposing significant externalities upon the neighbourhood.

Beecroft already has multiple established childcare providers with capacity in the area, such as Kids Planet and Heritage House.

The proposed site is not within reasonable walking distance to the local amenities at Beecroft Village or the Beecroft Railway Station. There is no local bus service that connects the Childcare Centre and Beecroft Railway Station or shops

Additionally, demolition of the dwelling house would add to the shortage in housing supply.

Council Comment

In response, Given the adverse amenity impacts to adjoining properties and the opportunity to either redesign the development and/or reduce the number of childcare places to reduce the amenity impacts to adjoining properties, it is considered that the development is not within the public interest.

5.1.15 Demand for Childcare places

Twelve submissions asserted that there is a lack of demand for a childcare centre in Beecroft as evidenced by a number of childcare centres currently operating in the area, with some of these centres operating below capacity.

Council Comment

In response, market forces and competition are not matters for consideration under Section 4.15 of the Act. Applicants are not required to justify the need for a commercial business.

5.1.16 Non-compliance with the Childcare Planning Guidelines.

Twelve submissions raise concerns that the development does not comply with a number of controls within the NSW Department of Planning, Industry and Environment 'Childcare Planning Guideline 2021'. Some of the non-compliances identified by the objectors include site layout, lack of setbacks, deep soil zones and green space buffers, insufficient outdoor play area which are located within front and secondary street frontages. Further the objectors state that the development is incompatible with the R2 zoning and clearly breaches the intent and form controls including a requirement for a built form that reflects and integrates with the surrounding residential streetscape. Principle 7 of the Guideline encourages "well designed vehicular parking and access minimise traffic safety risks on children". The objectors assert this has not been achieved.

Council Comment

In response, a detailed assessment against the Childcare Planning Guidelines is provided in Section 2.4 of this report.

5.1.17 Aboriginal Heritage

One public submission requests that an Aboriginal Heritage Due Dilligence Assessment be undertaken.

Council Comment

Council undertook a search of the NSW Aboriginal Heritage Inventory Management System (AHIMS), and no Aboriginal objects or places were identified within a 200m radius from the site. No further assessment regarding Aboriginal heritage is required.

5.2 Public Agencies

The development application was referred to the following Agencies for comment:

5.2.1 Transport for NSW

The subject site is located in proximity to the NorthConnex tunnel and the subsurface beneath the subject property was compulsorily acquired by TfNSW for the NorthConnex Project.

The development application was referred to TfNSW under Section 2.121 of the Transport and Infrastructure SEPP.

TfNSW provided correspondence on 6 August 2025 that no objection is raised to the development application.

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 not considered to have satisfactorily addressed Council's and relevant agencies' criteria and would not provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the refusal of the proposed development would be in the public interest.

CONCLUSION

The application proposes demolition and construction of a 60 place childcare centre.

The development does not meet the desired outcomes of Council's planning controls and is unsatisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Council received 87 submissions and 1x petition containing 86 signatures 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, refusal of the application is recommended.





The reasons for this decision are detailed in Schedule 1.

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.  Architectural Plans
2.  Landscape Plan
3.  Traffic Impact Assessment
4.  Statement of Environmental Effects

File Reference: DA/784/2025

Document Number: D09182155

SCHEDULE 1**ITEM 1**

1. In accordance with Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal is unsatisfactory having regard to the Hornsby Local Environmental Plan 2013 as follows:
 - 1.1 The proposal does not comply with the objectives of the R2 Low Density Residential zone of the Hornsby Local Environmental Plan 2013 as the development would not complement the existing low density residential character of the surrounding area.
 - 1.2 The development does not meet the requirements of Clause 5.10 Heritage of the Hornsby Local Environmental Plan 2013 due to potential impacts to Heritage Item 68 (Street Trees).
 - 1.3 The consent authority is not satisfied that the development meets the requirements of Clause 6.2 Earthworks of the Hornsby Local Environmental Plan 2013 as insufficient details have been provided to confirm the extent of landform modification required to facilitate the proposed development.
2. In accordance with Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, The consent authority is not satisfied that the development is suitable for the proposed use as required by Section 4.6 Remediation of Land” of State Environmental Planning Policy (Resilience and Hazards) 2021.
 - 2.1 The development application does not provide sufficient information for Council to be satisfied that the land is not contaminated, or if the land is contaminated, that the land will be made suitable for the proposed child care purpose as a Preliminary Site Investigation Report was not submitted with the development application.
3. In accordance with Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the consent authority is not satisfied that the development complies with Chapter 3 Educational establishments and childcare facilities of State Environmental Planning Policy (Transport and Infrastructure) 2021 as the proposed development:
 - 3.1 Does not comply with Section 3.1 Site Selection and Location as the siting of the building and the non-compliant side and rear setbacks would contribute to adverse impacts to adjoining properties.
 - 3.2 Does not comply with Section 3.2 Local Character, Streetscape and the Public Domain Interface as the masonry retaining walls to the boundaries and basement ramps would have an adverse impact on the streetscape. The unarticulated 35m long southern elevation would contain monotonous building materials and would not be in character with the R2 Low Density Residential zone.
 - 3.3 Does not comply with Section 3.5 Visual and Acoustic Privacy as outdoor play areas would be located in proximity to front, side and rear boundaries with little screening or landscaping to provide visual and acoustic relief to adjoining properties
 - 3.4 Does not comply with Section 3.6 Noise and Air Pollution as the impact of potential fumes from the basement/undercroft carpark is unknown. No details of plant or services have been provided including mechanical ventilation and air-conditioning.

- 3.5 Does not comply with the Section 3.8 Traffic, Parking and Pedestrian Circulation as further information is required to satisfy Council that the development would not constitute a traffic or pedestrian safety risk. Additionally, no delineated pedestrian pathway is provided in the basement.
- 3.6 Does not comply with Section 3.26 Centre-based Childcare - non-discretionary development standards
 - a. The proposal does not comply with the required minimum unencumbered indoor play space.
 - b. The proposal does comply with the required minimum unencumbered indoor play outdoor play space.
- 4. In accordance with Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the desired outcome and the prescriptive measures of the Hornsby Development Control Plan 2024 as follows:
 - 4.1 The development does not comply with the desired outcomes of Part 1.2.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan 2024 as the application has not demonstrated that trees numbered T1, T2, and T7 would not be adversely impacted by the development.
 - a. Insufficient details have been submitted to confirm that the proposed re-grading of the access crossing on Cardinal Avenue would not have an adverse impact on the street trees numbered T1 and T2.
 - b. There would be unacceptable impact on tree numbered T7 on the adjoining property as a result of the proposed retaining wall on the western (rear) boundary of the site.
 - 4.2 The proposal does not comply with the desired outcomes of Part 1.3.1.4 Earthworks and Slope of the Hornsby Development Control Plan 2024 as insufficient information has been provided to demonstrate the extent of cut and fill and retaining structures.
 - 4.3 The proposal does not comply with the desired outcomes of Part 1.3.2.3 Waste Management of the Hornsby Development Control Plan 2024 as it has not been demonstrated that the proposed waste room is of sufficient area to accommodate effective manoeuvring of waste bins.
 - 4.4 The proposal does not comply with the desired outcomes of Part 1.3.2.5 Noise and Vibration of the Hornsby Development Control Plan 2024 as the Acoustic Report does not provide sufficient information for Council to consider the requisite likely environmental impacts of the proposed development in accordance with section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
 - a. Insufficient information has been submitted to confirm that the development would not have an adverse impact on the acoustic amenity of adjoining properties.
 - 4.5 The proposal does not comply with the desired outcomes of Part 1.3.2.6 Air Quality of the Hornsby Development Control Plan 2024 as it has not been demonstrated that the undercroft car parking area would not have an adverse impact on the air quality of adjoining properties.

- 4.6 The development does not comply with the desired outcomes of Part 7.1.3 Setbacks of Hornsby Development Control Plan 2024 as it has not been demonstrated that the development complies with site, rear or secondary street setbacks resulting in adverse amenity and visual impacts.
 - 4.7 The development is inconsistent with of Part 7.1.4 Landscaping of the Hornsby Development Control Plan 2024 as it cannot be demonstrated the development complies with required landscape including deep soil planting requirements.
 - 4.8 The proposal is inconsistent Part 7.1.5 Open Spaces of the Hornsby Development Control Plan 2024 and is considered unacceptable as outdoor play areas would be located within the front setbacks of Cardinal Avenue and Grace Avenue.
 - 4.9 The development is inconsistent with of Part 7.1.6 Privacy, Security and Sunlight of the Hornsby Development Control Plan 2024 as the private open spaces of Lot 133 DP 866050 and Lot 134 DP 866050, Nos. 59 and 59A Cardinal Avenue would be overshadowed at all times between 9am and 3pm on June 22.
 - 4.10 The proposal is inconsistent with the desired outcome of Part 7.1.8 Design Details of the Hornsby Development Control Plan 2024 as it presents a 35m long unarticulated wall along the southern boundary with no visual relief and insufficient landscape screening.
 - 4.11 The proposal does not comply with the desired outcomes of Part 9.13 Development in the Vicinity of Heritage Items and Heritage Conservation Areas of the Hornsby Development Control Plan 2024 as the proposal would have an adverse impact on heritage listed street trees in Cardinal Avenue.
5. The proposed development is unsatisfactory in respect of Section 4.15(1)(b) of *Environmental Planning and Assessment Act 1979* as the proposal, fails to provide sufficient information to enable a full and proper assessment of the development application, specifically:
- 5.1 An updated Acoustic report is required with additional information to address deficiencies identified with the submitted acoustic report including but not limited to:
 - a. Lot 134 DP886050, No. 59A Cardinal Avenue Beecroft is not identified as an affected residential receiver despite being located immediately adjoining the proposed development site.
 - b. Clarification of the dates of the unattended background noise monitoring is required.
 - 5.2 An updated Plan of Management is required to demonstrate how the centre will be operated consistent with the Acoustic Report, including specific recommendations of and modelled operational arrangements.
 - 5.3 Provide details of the proposed fire hydrants, sprinkler boosters or pumps that are proposed as well as architectural plans demonstrating their streetscape impact.
 - 5.4 The Waste Management Plan does not detail any excavated materials resultant from the construction of the basement carpark.
 - 5.5 An amended Construction Management Plan is required. The Construction Management Plan is to include a Construction Noise and Vibration Management Plan.

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- 5.6 Owners' consent has not been provided by the owner of Lot 30 DP 1208231, No. 40 Grace Avenue, Beecroft for the removal of tree numbered T7.

ITEM 1