



City of Parramatta	
File No:	DA/158/2017/A

SECTION 4.15 ASSESSMENT REPORT
Environmental Planning & Assessment Act 1979

DA No:	DA/158/2017/A
Subject Property:	Lot 1 DP 1249815, 49 North Rocks Road, NORTH ROCKS NSW 2151
Proposal:	Section 4.55(1A) modification to DA/158/2017 for amalgamation of three (3) allotments, demolition of existing structures and construction of a child care centre with associated car parking and signage. The proposed modification seeks to temporarily reduce the number of children and allow operation of the centre prior to the construction of a required roundabout.
Date of receipt:	18 October 2022
Applicant:	ANGSANA RANGE PTY LTD
Owner:	Angsana Range Pty Ltd
Property owned by a Council employee or Councillor:	The site is not known to be owned by a Council employee or Councillor.
Political donations/gifts disclosed:	None disclosed on the application form
Submissions received:	21 including petition with 87 signatures
Recommendation:	Refusal
Assessment Officer:	Darren Wan

Legislative Requirements

Relevant provisions considered under section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979	<ul style="list-style-type: none">• State Environmental Planning Policy (Resilience and Hazards) 2021• State Environmental Planning Policy (Transport and Infrastructure) 2021• Parramatta (former The Hills) Local Environmental Plan 2012 (PFTHLEP 2012)• The Hills Development Control Plan 2012 (THDCP 2012)• Draft Parramatta Local Environmental Plan 2020 (DLEP 2020).
Zoning	R3 – Medium Density Residential
Bushfire Prone Land	Yes
Heritage	No
Heritage Conservation Area	No
Designated Development	No
Integrated Development	No
Clause 4.6 variation	No
Delegation	Parramatta Local Planning Panel (PLPP) due to 10+ submissions

1. EXECUTIVE SUMMARY

Modification Application DA/158/2017/A was lodged on 10 October 2022 and seeks to temporarily reduce the number of children and allow operation of the centre prior to the construction of a required roundabout.

The application is made pursuant to s4.55(1A) of the Environmental Planning and Assessment Act 1979.

In accordance with the Parramatta Consolidated Notification Procedures, the Modification Application was notified between 27 October 2022 and 10 November 2022. In total, 21 submissions were received, including a petition with 87 signatures.

Key concerns raised in the submissions are as follows:

- Safety of the North Rocks Road/Speers Road Intersection, and Traffic Management;
- Lack of Transparency/Sign fell down; and
- Proposed use of the Child Care Centre is unclear, could be used as a school.

In accordance with the Environmental Planning and Assessment Act 1979, Section 9.1 – Directions by the Minister, this application is reported to the Parramatta Local Planning Panel for determination as the modified proposal received more than 10 submissions during the notification process.

Section 4.15 Assessment Summary

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

The modified proposal does not seek any fundamental amendments to the built form or operation of the child care centre, but rather a staging amendment to allow for the centre to operate at a reduced capacity prior to the construction of a required roundabout. It is of note that the intersection of North Rocks Road and Speers Road has been concluded to be currently already operating at close to its limits and there have been examples of accidents occurring at the intersection. On this basis, Council's Traffic and Transport Officer objected to the modified proposal as the additional traffic generated by the development, albeit at a reduced capacity, would still adversely impact on the safety of the traffic network for the locality.

Having regard to the matters for consideration under Section 4.15, and Section 4.55 of the Environmental Planning and Assessment Act 1979, it is recommended that Modification Application No. DA/158/2017/A be refused.

2. SITE DESCRIPTION AND CONDITIONS

The subject site is legally described as Lot 1 DP 1249815, 49 North Rocks Road, North Rocks. It is an amalgam of three allotments and has a total area of approximately 2,093.3m².

The subject site currently accommodates the completed 99 place Child Care Centre approved under DA/158/2017. The Child Care Centre is currently constructed, but not yet operational.

It is located within an established residential area characterised by single and double storey dwelling houses, as well as multi-dwelling developments.

It is also of note that since the approval, the site is now categorised as Bushfire Prone.



Figure 1: Zoning of the subject site and surrounds (Source: GIS Online)



Figure 2: Aerial image of the subject site and surrounding context (Source: Nearmaps)

3. THE PROPOSAL

Consent is sought to modify the approved delaying the construction of an approved roundabout at the corner of North Rocks Road and Speers Road until December 2023. To facilitate the delay, the applicant has suggested that the approved childcare centre be allowed to operate at a reduced capacity (from 99 places down to 80) until the roundabout is constructed.

The applicant requests that Council support the delay of the construction of the roundabout for the following reasons:

- **Construction timeframe** -The construction of the roundabout will take approximately 5 months to occur. Having regards to the forth coming La Nina weather event, the traditional late December/January shutdown of the construction industry that will reduce the availability of workers and supplies, the roundabout will physically be unable to be constructed prior to the centre being ready to commence operations;
- **Cost blowouts**-Due to the current shortage of construction materials in Australia as a result of the global supply chain crisis associated with the Covid Pandemic, the cost of the construction of the roundabout has increased to \$1.15million excluding GST. The original cost of the roundabout was anticipated to be \$650,000. The development requires some income from the operation of the operation of the centre to assist with paying for the increased cost of the roundabout;
- **Necessity for roundabout in 2023** -This modification is accompanied by a letter from McLaren traffic who were involved with the approval of the parent development application. This letter confirms that a satisfactory level of service for right turns from Speers Road into North Rocks Road will continue to be provided until 2024 without the roundabout, provided that the capacity of the childcare centre does not exceed 80 children. This report notes that the projected increase in traffic may be less as it does not take into account reduced traffic flows generally as a result of the Covid pandemic and the prevailing trend of many workers continuing to work from home for at least part of the working week; and
- **Delays in obtaining requiring approvals** – The proponent commended trying to obtain approval to satisfy condition 39 in November 2019. This approval was not received until November 2021.. Given these delays and the objectives of the Environmental Planning Act to encourage economic and orderly development, it is appropriate to allow the centre to commence operations at reduced capacity to assist with providing a valuable service to the community.

It is of note that following a request for additional information, the applicant provided further traffic studies and decided to further reduce the number of children from 80 to 60.

To facilitate the delay an additional condition (103A) and an amendment to an existing condition (110) is proposed in the following manner:

Condition 103.

An occupation certificate may be issued for the development and a service approval obtained from the Department of Education for the commencement of operations in January 2023 without the roundabout at the intersection of Speers Road and North Rocks Road being constructed.

Reason: to allow for operation of the centre prior to the construction of the Roundabout.

Condition 110.

The number of children within the child care centre is not to exceed 99 children at any one time. Notwithstanding the above, the number of children within the centre is not to exceed 60 until such time as a roundabout has been constructed and is operational at the intersection of Speers Road and North Rocks Road.

Reason: To comply with relevant legislative requirements.

All other conditions within DA/158/2017 will remain unchanged.

4. REFERRALS

Referral	Comment
Traffic	<p>Not Supported. Council's Traffic and Transport Officer objected to the modified proposal for the following reasons:</p> <p><u>Existing Conditions</u> <i>The applicant has undertaken SIDRA modelling at the intersection using revised counts which were undertaken on Wednesday 30 November 2022. This showed that the current Level of Service (LoS) at the intersection was rated as 'D' meaning that the intersection is performing close to its limits and an accident study is required as advised in the TfNSW Guide to Traffic Generating Developments. It is noted that with the counts undertaken in 2017 when the original DA was considered, the LoS was rated as 'B' meaning there was spare capacity.</i></p> <p><u>Accident History</u> <i>In accordance with Council's records, during the five year period between April 2017 and March 2022, there have been two injury (including one serious injury) crashes that have occurred at this intersection. Both crashes involved a vehicle turning right into Speers Road as opposed to a vehicle turning out of Speers Road. It is noted that there has been one other injury crash located near this intersection which was an off-carriageway crash type and not related to an intersection movement.</i></p> <p><u>Proposal</u> <i>The Childcare centre has been approved for 99 children. The current modification to the DA reduces this number to 60 students. This will result in additional 24 inbound and 24 outbound trip in the AM peak hour by the childcare centre. However, the LoS will be maintained at 'D' for the intersection.</i></p> <p><u>Other Considerations</u> <i>It is noted that the Project Manager for the development has reached out and advised the following:</i></p> <ol style="list-style-type: none"> <i>1. The childcare centre is 2 weeks away from practical completion excluding the roundabout</i> <i>2. Childcare centres generally do not reach full capacity with their enrolments within the first 12 months.</i> <i>3. TfNSW have requested a condition on the DA for the Woolworths site which would require a roundabout at the intersection of North Rocks Road and Speers Road to be operational before their OC.</i> <i>4. The Childcare developer and Woolworths developer are in discussions regarding the possibility of co-funding the roundabout. The email with this information is attached.</i> <p><u>Conclusion</u> <i>It is worth noting that only the right turn out of Speers Road has a LoS of 'D' with both the current conditions and the future conditions with the reduced childcare numbers. However, any additional traffic generated by the development is likely to make the existing situation worse and add to the risk of crashes at this intersection. As such, the proposal to open the childcare centre on reduced numbers without the roundabout being in place cannot be supported on Traffic grounds.</i></p>

5. ASSESSMENT UNDER SECTION 4.55

SECTION 4.55(1A)	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	The modification will create additional traffic impacts and is therefore not considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent, as modified, would result in a development that is substantially the same as the original development.

<p>(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The modification was notified in accordance with the relevant development control plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>All submissions received were considered as part of the assessment of this modification.</p>
<p>In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.</p>	<p>An assessment against the relevant matters contained within s4.15 are addressed further in this report.</p>
<p>ASSESSMENT OF WHETHER THE PROPOSAL IS SUBSTANTIALLY THE SAME</p>	
<p>In considering whether the development is substantially the same, the applicant bears the onus of satisfying the consent authority that the modified development is substantially the same as the original development (<i>Vacik Pty Ltd v Penrith City Council</i>, unreported, 24 February 1992). In this judgement, Stein J states that it is not appropriate to simply say that the nature of the development, in this case the use of the site as a residential flat building, as amended would be the same use and therefore substantially the same development. Stein J goes on to say that it is necessary to consider whether the proposed modified development would be essentially or materially or having the same essence as that which had been originally approved. These comments are reiterated in Trinvas Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 77.</p> <p>Bignold J in his decision in <i>Moto Projects No 2 Pty Limited v North Sydney Council</i> [1999] 106 LGERA 298, states that:</p> <p><i>“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.</i></p> <p><i>The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”</i></p> <p>As such, an assessment of the proposed modified development to determine if substantially the same as the original development requires an assessment of the quantitative and qualitative impacts of the modified proposal.</p> <p>Quantitative Assessment The only quantitative difference is the temporary reduction of children from 99 down to 60.</p> <p>Qualitative Assessment The modified proposal seeks to delay the construction of a roundabout which was critical to approval of the development during the original assessment.</p> <p>Records show that the North Rocks Road/Speers Road intersection having two injury crashes within the 5 year period between April 2017 and March 2022 (including one serious injury). The applicant has undertaken more recent traffic modelling which shows that the current Level of Service at the intersection was rated as ‘D’ meaning that the intersection is performing close to its limits.</p> <p>Any additional traffic generated by allowing the Childcare Centre to operate without the roundabout is likely to exacerbate the existing situation and add to the risk of crashes at this intersection.</p> <p>Conclusion Based on the above assessment, although the modified development is considered to be substantially the same as the original approved development, it is also considered to create additional environmental impact and therefore does not satisfy s4.55(1A)(a).</p>	

6. ENVIRONMENTAL PLANNING INSTRUMENTS

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021 – CHAPTER 3 EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES

The original application was assessed under the provisions of SEPP (Educational Establishments and Child Care Facilities) 2017, which has subsequently been repealed and replaced with SEPP (Transport and Infrastructure) 2021. Only the relevant provisions of the new SEPP and Childcare Guideline have been discussed below.

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

CLAUSE	MODIFIED PROPOSAL	COMPLIANCE
<p>3.23 – Matters for Consideration by Consent Authorities Before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.</p>	<p>The provisions of the Child Care Planning Guideline were considered in the assessment of the original application. The modified proposal will slightly change the traffic assessment of the development.</p>	<p>The modified proposal is considered to have adverse impacts to the surrounding traffic network and is not supported.</p> <p>Please see discussion in the compliance table below.</p>
CHILD CARE PLANNING GUIDELINE 2021		
Provisions		Comment
Part 2 – Design Quality Principles		
Principle 7 – Safety	The roundabout was a determining factor in the approval of the original application. Whilst it is understood there are financial and timing constraints, traffic counts provided by the applicant indicate that the intersection is already operating at close to capacity. In that respect, allowing the centre to operate at a reduced capacity without the roundabout would likely exacerbate the existing situation and add to the risk of crashes at this intersection.	
Part 3 – Matters for Consideration		
3.1 – Site Selection and Location		
<p>C1 <i>For proposed developments in or adjacent to a residential zone, consider:</i></p> <ul style="list-style-type: none"> Traffic and parking impacts of the proposal on residential amenity and road safety 	<p>Traffic and Parking – unacceptable. As discussed above, Council's Traffic Officer has indicated that the modified proposal will have an adverse impact on the surrounding traffic network, and the safety of the North Rocks Road/Speers Road intersection.</p>	

7. PARRAMATTA (FORMER THE HILLS) LOCAL ENVIRONMENTAL PLAN 2012

The development has been constructed and is awaiting the issue of the occupation certificate. This modification only seeks a delay in construction of a required roundabout at the intersection of North Rocks Road and Speers Road, citing financial and timing constraints.

As the development itself remains unchanged, and the modified proposal only seeks a staging amendment, the original assessment of the application under P(FTH)LEP2012 does not change.

8. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

The Draft Parramatta Local Environmental Plan 2020 was placed on public exhibition from 31 August 2020 to 12 October 2020. The draft LEP will replace the five existing LEPs that apply within the Local Government Area and will be the primary legal planning document for guiding development and land use decisions made by Council.

Whilst the draft LEP must be considered when assessing this application under Clause 4.15 (1) (a) (ii) of the Environmental Planning & Assessment Act 1979, the LEP is neither imminent nor certain and therefore limited weight has been placed on it.

Control	PLEP 2011	Draft LEP 2022
Zoning	R3 Medium Density Residential	R4 High Density Residential
Height	9m	11m
FSR	N/A	0.6:1

The changes proposed under the draft LEP will retain the R3 Medium Density Residential zoning on the site, increase the building height to 11m and create a new FSR control of 0.6:1. The modified proposal is not impacted by these changes.

9. THE HILLS DEVELOPMENT CONTROL PLAN 2012

The development has been constructed and is awaiting the issue of the occupation certificate. This modification only seeks a delay in construction of a required roundabout at the intersection of North Rocks Road and Speers Road, citing financial and timing constraints.

As the development itself remains unchanged, and the modified proposal only seeks a staging amendment, the original assessment of the application under HDCP2012 does not change.

10. DEVELOPMENT CONTRIBUTIONS

As the application has been recommended for refusal, the payment of a modified development contribution is not required.

11. BONDS

As the application has been recommended for refusal, the payment of modified bonds is not required.

12. EP&A REGULATION 2021

Applicable Regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia, compliance with the Home Building Act, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection would have been addressed by appropriate consent conditions, had the application been recommended for approval.

13. THE LIKELY IMPACTS OF THE DEVELOPMENT

The assessment demonstrates that the modified proposal will have an adverse impact upon the surrounding traffic network. By allowing the development to operate without the roundabout, it will adversely impact the safety of the intersection at North Rocks Road and Speers Road and is considered unacceptable. It is for this reason that the modified proposal is not considered to satisfy Section 4.55(1A)(a) and cannot be supported.

14. SUITABILITY OF THE SITE

The suitability of the site is not in question as the modified proposal only seeks a staging amendment to an approved development. In that regard, the original assessment of the suitability of the site for the development does not change.

15. PUBLIC CONSULTATION

In accordance with the Parramatta Council's Consolidated Notification Plan, the Development Application was notified and notified between 27 October 2022 and 10 November 2022. In total, 21 submissions were received, including a petition with 87 signatures. Key concerns raised in the submissions are addressed below.

Issue	Response
Safety of the North Rocks Road/Speers Road intersection/Traffic Management	<p>Concern was raised that the roundabout was a key safety feature when the Parramatta Local Planning Panel decided to approve the original application. Many of the submissions provided evidence and photos of recent crashes that have occurred at the intersection.</p> <p>In that regard, Council's Traffic and Transport Officer also raised concern over the safety of the intersection and it has been listed as a reason for refusal.</p>

Lack of Transparency/Not notified correctly/Sign hidden	It is noted that the notification of the modified proposal was done correctly, and in accordance with Council's Consolidated Notification Procedures. When a submitter called to inform Council that the original sign had been taken down and left on the ground, a Council Officer went out to replace the sign, and also place an additional sign on the Speers Road elevation of the site.
Use unclear, may not be used as a Child Care Centre	Concern was raised that the development may be used as a school or a tutoring centre in lieu of a Child Care Centre. It is of note that the original approval is for a Child Care Centre, and the modified proposal only seeks to delay the construction of the roundabout. No request has been submitted to change the use of the development.

16. PUBLIC INTEREST

As the operation of the child care centre will cause adverse safety impacts to the North Rocks Road/Speers Road intersection, the modified proposal is not considered to be in the public interest and is not supported.

17. CONCLUSION

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

The modified proposal does not satisfy the requirements under S4.55(1A) and is considered to have increased impacts on the traffic and safety of the surrounding locality. Having regard to the assessment of the proposal from a merit perspective, Council officers are not satisfied that the operation of the Child Care Centre before the construction of the required roundabout will result in a good outcome.

For these reasons, it is considered that the proposal is unsatisfactory having regard to the matters of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is recommended for refusal.

18. RECOMMENDATION

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979:

- A. **That** the Parramatta Local Planning Panel, exercising the function of the consent authority, **refuse** the requested modification to DA/158/2017/A to temporarily reduce the number of children and allow operation of the centre prior to the construction of a required roundabout.
- B. **That** Council advise those who made a submission of the determination.

REASONS FOR REFUSAL

1. **State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 3: Educational Establishments and Child Care Facilities**
 - a. The modified proposal is inconsistent with following Design Quality Principles prescribed under the Child Care Planning Guidelines 2021:
 - Principle 7 – Safety.
 - b. The modified proposal is inconsistent with the following Matters for Consideration prescribed under the Child Care Planning Guidelines 2021:
 - Part 3.1 – Site Selection and Location
2. **Environmental Planning and Assessment Act 1979**
 - a. The modified proposal is not of minimal environmental impact, and therefore does not satisfy the criteria prescribed under s4.55(1A)(a).
 - b. The modified proposal also has non-compliances with *SEPP (Transport and Infrastructure) 2021*. Accordingly, the proposal fails to satisfy the matters of consideration prescribed under s4.15(1)(a)(i).
 - c. The modified proposal is therefore not considered to be in the public interest and also fails to satisfy s4.15(1)(b), (d), and (e) of the *EP&A Act 1979*.