

23 September 2022

Ms Claire Stephens  
Manager Development Assessment  
Development Assessment Services  
City of Parramatta Council

Dear Claire

**SECTION 4.55 (1A) MODIFICATION REQUEST  
STATEMENT OF ENVIRONMENTAL EFFECTS  
DA NUMBER: 158/2017 -CONSTRUCTION OF A 99 PLACE  
CHILDCARE CENTRE  
PROPERTY: 49 NORTH ROCKS ROAD, NORTH ROCKS**

This letter serves as a Statement of Environmental Effects for a modification to DA/158/2017 that was originally approved by the Sydney Central Planning Panel City of on 1 August 2018.

The approved development is described as:

*Amalgamation of three (3) allotments, demolition of existing structures and construction of a child care centre with 99 child places and associated car parking with 25 car parking spaces.*

This modification seeks approval to delay the construction of the approved roundabout at the corner of North Rocks Road and Speers Road until December 2023 and reduce the maximum number of centre attending the childcare centre to 80 until the roundabout has been constructed.

Since approval of the development application in 2018 and in accordance with the requirements of condition 39 of the development consent, detailed consultation occurred with Council staff over the design of the roundabout. These discussions commenced in 2019 with the first design submitted to Council in November 2019. This consultation was lengthy and it was not until 2 November 2021 that Council staff approved the final design of the roundabout.

Construction of the childcare centre is nearing completion and the centre would like to commence operations in January 2023.

The roundabout will take at least 5 months to be constructed.

The proponent 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 oof constructions 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.

### Suggested Consent conditions

The above modifications would likely require the modification of condition 112 and the imposition of a new condition. The suggested wording of these conditions is as follows:

*Condition 108: The number of children within the child care centre is not to exceed 99children at any time. Notwithstanding the above, the number of children within the*

centre is not to exceed 80 until such time as a roundabout has been constructed and is operational at the intersection of Speers Road and North Rocks Road.

Condition 103A. 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.

## SECTION 4.55 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Pursuant to S.4.55 (1A) of the Act, Council may consider an application to amend a development consent provided that, inter alia:

### **(1A) Modifications involving minimal environmental impact**

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- 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*
- c) *it has notified the application in accordance with:*
  1. *(i) the regulations, if the regulations so require, or*
  2. *(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1), (2) and (5) do not apply to such a modification.*

The application is substantially the same as the approved development, with the modification proposing no changes to the physical works being carried out, but rather the delay of the construction of the roundabout.

Accordingly, the modification is reasonably and appropriately considered 'substantially the same development' and are also 'of minimal environmental impact' that falls under the scope of Section 4.55(1A).

Section 4.55(3) of the Act is also relevant and states:

*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.*

This SEE addresses the requirements of section 4.15(1) of the EP& A Act. The reasons for approval by the panel are identified as:

1. The proposal will provide facilities that are in demand and will be beneficial for residents of the North Rocks area.
2. The proposal is of an appropriate density and form for the R3 Medium Density Residential zone in which it is located.
3. The proposal includes improvements to two civic assets – the intersection of Speers and North Rock Roads and the footpath along Speers Road. These new or improved assets will improve traffic and pedestrian circulation and safety.
4. The on-site parking to be provided is sufficient for the forecast demand and the proposed staggered opening and closing periods at the facility mean that it will not generate excessive local traffic.
5. For the reasons given above, the Panel considers the proposal to be a suitable use of the site and that its approval is in the public interest.

This modification remains consistent with the reason including condition 3 as is it will continue to deliver the civil assets that formed the reasons for approval. The minor proposed modifications do not undermine the planning merits of the approval and the modified development is considered to be consistent with them.

### STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

This SEPP came into effect on 1 March 2022 and incorporated the provisions of three now repealed SEPP's being:

- State Environmental Planning Policy (Coastal Management) 2018;
- State Environmental Planning Policy No 33—Hazardous and Offensive Development; and
- State Environmental Planning Policy No 55—Remediation of Land.

Chapter 2 of the SEPP contains controls for coastal management and it not applicable to this development.

Chapter 3 of the SEPP contains controls for Hazardous and Offensive Development. This development is not for Hazardous and Offensive development and accordingly this chapter is not applicable to this development.


Chapter 4 of the SEPP contains a state-wide planning framework for the remediation of contaminated land and to minimise the risk of harm. This issue was considered by the City of Parramatta as part of the assessment of the parent application and found to be satisfactory. It is also noted that no additional excavation is proposed as part of this modification.

### STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 (BIODIVERSITY AND CONSERVATION SEPP)

This SEPP came into effect on 1 March 2022 and incorporated the provisions of eleven now repealed SEPP's being:

- SEPP (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)
- SEPP (Koala Habitat Protection) 2020 (Koala SEPP 2020)
- SEPP (Koala Habitat Protection) 2021 (Koala SEPP 2021)
- Murray Regional Environmental Plan No 2—Riverine Land (Murray REP)
- SEPP No 19—Bushland in Urban Areas (SEPP 19)
- SEPP No 50—Canal Estate Development (SEPP 50)
- SEPP (Sydney Drinking Water Catchment) 2011 (Sydney Drinking Water SEPP)
- Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No 2 – 1997) (Hawkesbury–Nepean River SREP)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Sydney Harbour Catchment SREP)
- Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment (Georges River REP)
- Willandra Lakes Regional Environmental Plan No 1 – World Heritage Property (Willandra Lakes REP).

Chapter 2 of the SEPP contains planning rules and controls from the former Vegetation SEPP relating to the clearing of native vegetation in NSW on land zoned



for urban and environmental purposes that is not linked to a development application. This chapter seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the state, and to preserve the amenity of non-rural areas of the State through the appropriate preservation of trees and other vegetation. The subject site contains a childcare development under construction. It is noted that this modification does not seek approval for any additional vegetation removal with no modifications proposed to any physical works.

Chapter 3 – Koala habitat protection contains provisions from the Koala SEPP 2020 and, as an interim measure, applies in the NSW core rural zones of RU1, RU2 and RU3, except within the Greater Sydney and Central Coast areas. Given the sites location and zoning this chapter is not applicable to the development.

Chapter 4 – contains the land-use planning and assessment framework from the former Koala SEPP 2021 for koala habitat within Metropolitan Sydney and the Central Coast and applies to all zones except RU1, RU2 and RU3 in the short term. The site is not identified as containing koala habitat and accordingly this chapter is not applicable to this development.

Chapter 5 – contains the provisions from the former Murray REP, which establishes a consistent and co-ordinated approach to environmental planning and assessment along the River Murray. Given the sites location, this chapter is not applicable to this development.

Chapter 6 – Bushland in urban areas' contains the provisions from the former SEPP 19, which seeks to protect and preserve bushland within public open space zones and reservations. The site is not zoned Public Open Space and is not identified as being within a reservation and accordingly this chapter is not applicable to this development.

Chapter 7 – contains the provisions from the former SEPP 50, which aims to prohibit canal estate development. The development does not propose a canal development and accordingly this chapter is not applicable to this development.

Chapter 8 – contains the provisions from the former Sydney Drinking Water Catchment SEPP to support the water quality objectives for this catchment. The site is not identified as being within the Sydney Drinking Water catchment and accordingly this chapter is not applicable to this development.

Chapter 9– contains the provisions from the former Hawkesbury– Nepean River REP to protect the environment of this river system. The site is not identified as being within the Hawkesbury Nepean River catchment and accordingly this chapter is not applicable to this development.

Chapter 10 – contains the provisions from the former Sydney Harbour Catchment SREP to manage and improve environmental outcomes for Sydney Harbour and its tributaries. The subject site is subject to the broad planning principles contained within the chapter. This was considered as part of the parent development application and found by the City of Parramatta to be satisfactory.

Chapter 11 – contains the provisions from the former Georges River REP to manage and promote integrated catchment management policies along the Georges River and its tributaries. The site is not identified as being within the Georges River catchment and accordingly this chapter is not applicable to this development.

Chapter 12 – contains the provisions from the former Willandra Lakes REP, which seeks to protect, conserve and manage this World Heritage property. The site is not identified as being within the Willandra Lakes Precinct and accordingly this chapter is not applicable to this development.

## STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

This SEPP came into effect on 1 March 2022 and incorporated the provisions of four now repealed SEPP's being:

- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017;
- State Environmental Planning Policy (Major Infrastructure Corridors) 2020; and
- State Environmental Planning Policy (Three Ports) 2013.

Chapter 2 – contains planning rules and controls from the former Infrastructure SEPP for infrastructure in NSW, such as for hospitals, roads, railways, emergency services, water supply and electricity delivery. The development remains consistent with chapter 2.

Chapter 3 – contains planning provisions from the former Education and Childcare SEPP for child-care centres, schools, TAFEs and Universities. Given the proposed use of the development, this chapter is not applicable.

Chapter 4 – contains provisions from the former Corridor SEPP, including planning controls and reserves land for the protection of 3 corridors (North South Rail Line, South West Rail Link extension and Western Sydney Freight Line). The site is not

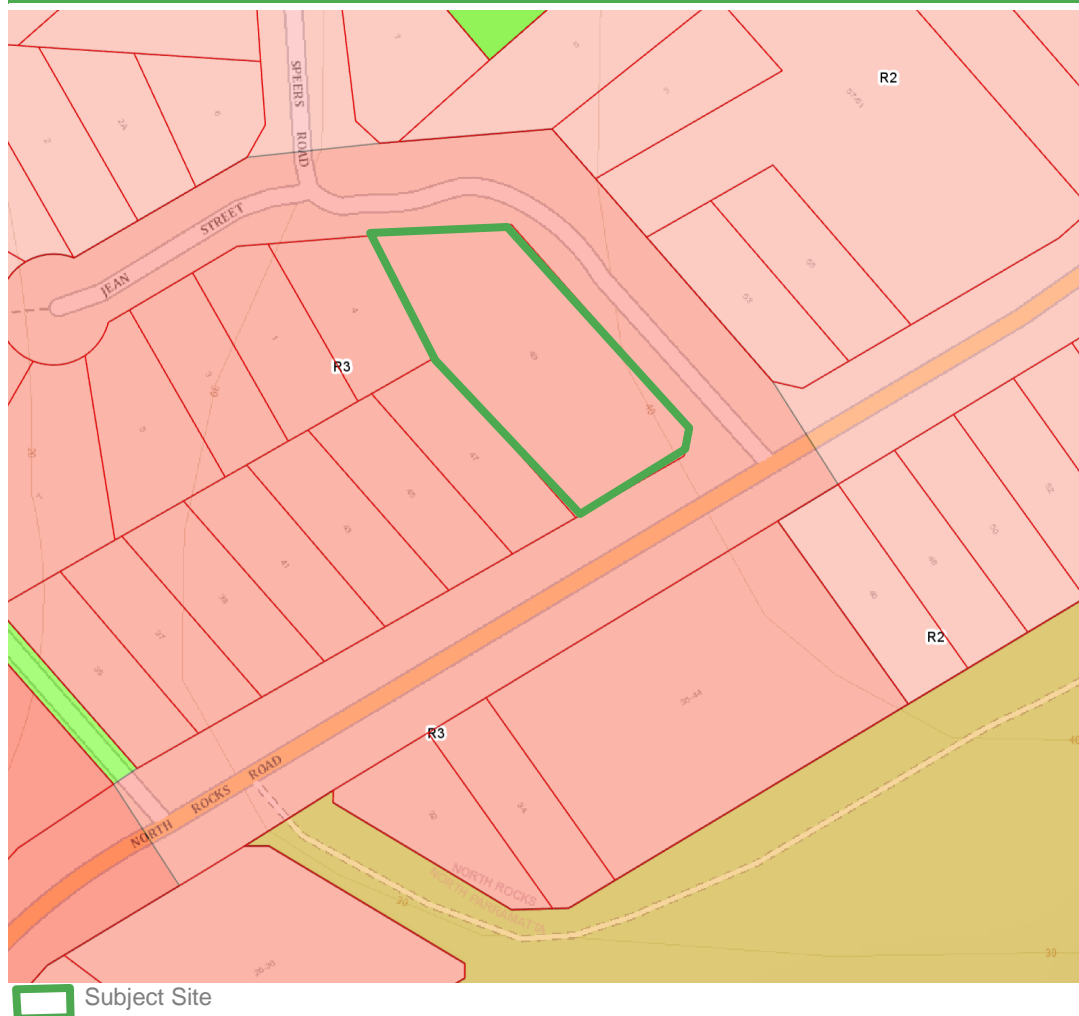
identified as being within any of these corridors and accordingly this chapter is not applicable to this development.

Chapter 5 – Contains the land-use planning and assessment framework from the former Three Ports SEPP for appropriate development at Port Kembla, Port Botany and Port of Newcastle. The site is not identified as being within any of these port precincts and accordingly this chapter is not applicable to this development.

### PARRAMATTA (FORMER THE HILLS) LOCAL ENVIRONMENTAL PLAN 2012

The development site is zoned R3 Medium Density Local Centre by Parramatta (former The Hills) LEP 2012, as indicated on the zoning map extract below.

**Figure 1: Zoning Map Extract Zoning Map Extract**





*Centre Based Childcare-care Facilities'* de remain permissible with consent within the subject site and the proposal remains consistent with the definition contained within the LEP:

- **Centre-based child care facility** means—
- (a) a building or place used for the education and care of children that provides any one or more of the following—
- (i) long day care,
- (ii) occasional child care,
- (iii) out-of-school-hours care (including vacation care),
- (iv) preschool care, or
- (b) an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)),
- Note—
- An approved family day care venue is a place, other than a residence, where an approved family day care service (within the meaning of the Children (Education and Care Services) National Law (NSW)) is provided.
- but does not include—
- (c) a building or place used for home-based child care or school-based child care, or
- (d) an office of a family day care service (within the meanings of the Children (Education and Care Services) National Law (NSW)), or
- (e) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
- (f) a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or
- (g) a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or
- (h) a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.
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The proposed modifications remain consistent with the relevant prescribed zone objectives that are stipulated as:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage medium density residential development in locations that are close to population centres and public transport routes

The modified development continues to provide a childcare centre that will contribute to providing a valuable service to meet the day to days needs of surrounding residents.. The site is well located and is located within proximity essential services, public transportation and recreation opportunities.

The table below provides detail on the development standards relevant to the current proposal as well as other relevant LEP provisions.

<b>Parramatta (former The Hills) Local Environmental Plan 2012</b>			
<b>Clause</b>	<b>Control</b>	<b>Comment</b>	<b>Complies</b>
<b>Zoning</b>	R3 – Medium Density Residential	Centre Based Child Care Centre's remains permissible with Council consent in the R3 – Medium Density Residential zone.	<b>Yes</b>
<b>Part 2 Permitted or Prohibited Development</b>			
<b>2.3</b>	Zone Objectives and Land Use Table	The proposal remains consistent with the zone objectives of the R3 – Medium Density Zone and will provide additional services in the catchment of public transport and services.	<b>Yes</b>
<b>Part 4 Principal Development Standards</b>			
<b>4.3</b>	Height of Buildings- 9m	The development site is identified as having a maximum building height of 9m as indicated on the Height of Buildings Map.  The building height is not altered by this modification. N/A.	<b>N/A</b>
<b>4.4</b>	Floor Space Ratio	The development is not identified as having a maximum FSR.  The FSR of the approved development is not altered by this modification.	<b>N/A</b>

### Part 5 Miscellaneous Provisions

5.10	Heritage Conservation	<p>The site does not contain any heritage-listed items and is not located within a heritage conservation area.</p> <p>The impact of the development on heritage items in the wider vicinity of the site was considered as part of the parent development application and found to be satisfactory. This modification does not alter the impact.</p>	Yes
5.21	Flood Planning	The site is not identified as being flood prone. Not applicable.	N/A

### Part 6 Additional Local Provisions

6.1	Acid sulfate soils	<p>The site is identified as containing Class 5 land</p> <p>This clause is not applicable to the development proposal as the works proposed are not within 500m of Class 1, 2, 3 or 4 land.</p>	N/A
6.2	Earthworks	No additional earthworks proposed.	N/A
6.4	Biodiversity Protection	The subject site is not identified as containing Biodiversity Land	Yes

## DRAFT PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2020

The Draft Parramatta Local Environmental Plan 2020 was exhibited until 12 October 2020 and seeks to provide a single planning framework for the future planning of the City of Parramatta. The changes proposed seek to harmonise and repeal the five existing LEPs currently applicable to the City of Parramatta local government area, those being:

- Holroyd Local Environmental Plan 2013,
- Parramatta Local Environmental Plan 2011;
- Parramatta (former The Hills) Local Environmental Plan 2012;
- Hornsby Local Environmental Plan 2013, and
- Auburn Local Environmental Plan 2010.

The relevant planning controls for the subject site, are not proposed to change under the Draft PLEP. Accordingly no further assessment of the DLEP controls is warranted

## CONCLUSION

The proposed minor modification of the development warrants support as it allows operations to commence and income generated to contribute to the construction of the roundabout.

Should you wish to discuss any of the matters in this letter I can be contacted on 9687 8899 or via an email at [brad@thinkplanners.com.au](mailto:brad@thinkplanners.com.au).

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