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| City of Parramatta | |
| File No: | DA/517/2023 |

SECTION 4.15 ASSESSMENT REPORT Environmental Planning & Assessment Act 1979

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| DA No: | DA/517/2023 |
| Subject Property: | Lot 43 DP 8884, 5 Mary Street, NORTHMEAD, NSW 2152 |
| Proposal: | Demolition of existing structures and construction of a two storey 90 place childcare centre with a basement carpark that has 24 car parking spaces. |
| Date of receipt: | 28 August 2023 |
| Applicant: | JANSSEN GROUP PTY LTD |
| Owner: | Mr J P Maffina |
| 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: | Twenty-five (25) unique submissions |
| Recommendation: | Refusal |
| Assessment Officer: | George Anderson |

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 (Biodiversity and Conservation) 2021• State Environmental Planning Policy (Resilience and Hazards) 2021• State Environmental Planning Policy (Transport and Infrastructure) 2021• Parramatta Local Environmental Plan 2023 (PLEP 2023)• The Hills Development Control Plan 2012 (THDCP 2012) |
| Zoning | R2 Low Density Residential |
| Bushfire Prone Land | No |
| Heritage | No |
| Heritage Conservation Area | No |
| Designated Development | No |
| Integrated Development | No |
| Clause 4.6 variation | Yes |
| Delegation | - Parramatta Local Planning Panel (PLPP) due to receiving 10 or more unique submissions during the notification period. |

1. Executive Summary

The subject site is located on a rectangular shaped lot on the northern side of Mary Street and is known as 5 Mary Street, Northmead. The legal description of the site is Lot 43 DP 8884.

The application seeks approval for demolition of existing structures, tree removal and construction of a 90 place two-storey childcare centre over basement parking.

Council has received notice that the applicant has lodged a Deemed Refusal Appeal with the Land and Environment Court on 31 October 2023.

The applicant lodged a deemed refusal prior to the issue of a request for additional information by Council.

The issues with the current proposal arise from the provision or required areas for built form, bulk and scale, deep soil, site coverage, landscaping, amenity, parking, stormwater and acoustics.

The proposal does not demonstrate reasonable compliance with the statutory requirements with variation to some controls in the Child Care Planning Guidelines 2021 and the current DCP that cannot be supported.

The application was notified/advertised and received twenty-five (25) unique submissions with one (1) petition including forty-seven (47) signatures of objection. The issues raised related to traffic movement and congestion, safety/hazards for children and pedestrians, parking and site capacity, views, overshadowing, privacy concerns, accessibility, noise disturbance, impact on infrastructure, saturation of child care centres, bulk and scale, excavation, construction noise, character of the area and heritage in the surrounding locality.

Having regard to matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, it is recommended Development Application No. DA/517/2023 be refused.

In its context this development proposal is not able to be supported in terms of the development's context, function, environmental impacts and overall lack of public benefit.

For the above reasons and others raised throughout this report, Council cannot support the application and is recommending **refusal**.

2. Site Description and Conditions

The subject site is legally described as Lot 43 DP 8884 and commonly known as 5 Mary Street, Northmead and has an approximate area of 1,322m².

The lot currently comprises of a split-level dwelling with vehicular access provided off Mary Street. The site is located on sloping land, falling from the rear north-west corner of the site to the south-east frontage.

The site has a street frontage of approximately 20.115m to Mary Street and has a north-south orientation.

The site is located within close proximity to The Hills School, an existing child care at 182 Windsor Road, Northmead, a child care under construction at 32 Mary Street, Northmead and two (2) proposed child care centres at 11 Margaret Street, Northmead and 14 Windemere Avenue, Northmead. The area is characterised by established single storey and two storey dwellings as well as multi-dwelling, with commercial developments located directly to the North and South-west of the Site which is zoned R3 Medium Density pursuant to the provisions of Parramatta Local Environmental Plan 2023.

The site is located within the vicinity of Locally Listed Heritage Items at 20 Mary Street, Northmead and 4 Mary Street, Northmead. To clarify the location of the application site and specifically that the subject site, refer to the aerial image and photographs in **Figures 1 – 8** below.



Figure 1: Aerial view of the subject site and surrounds. Subject site outlined in red. Source: Nearmap: October 2023



Figure 2: Subject site as viewed from Mary Street. Source: Site Inspection.

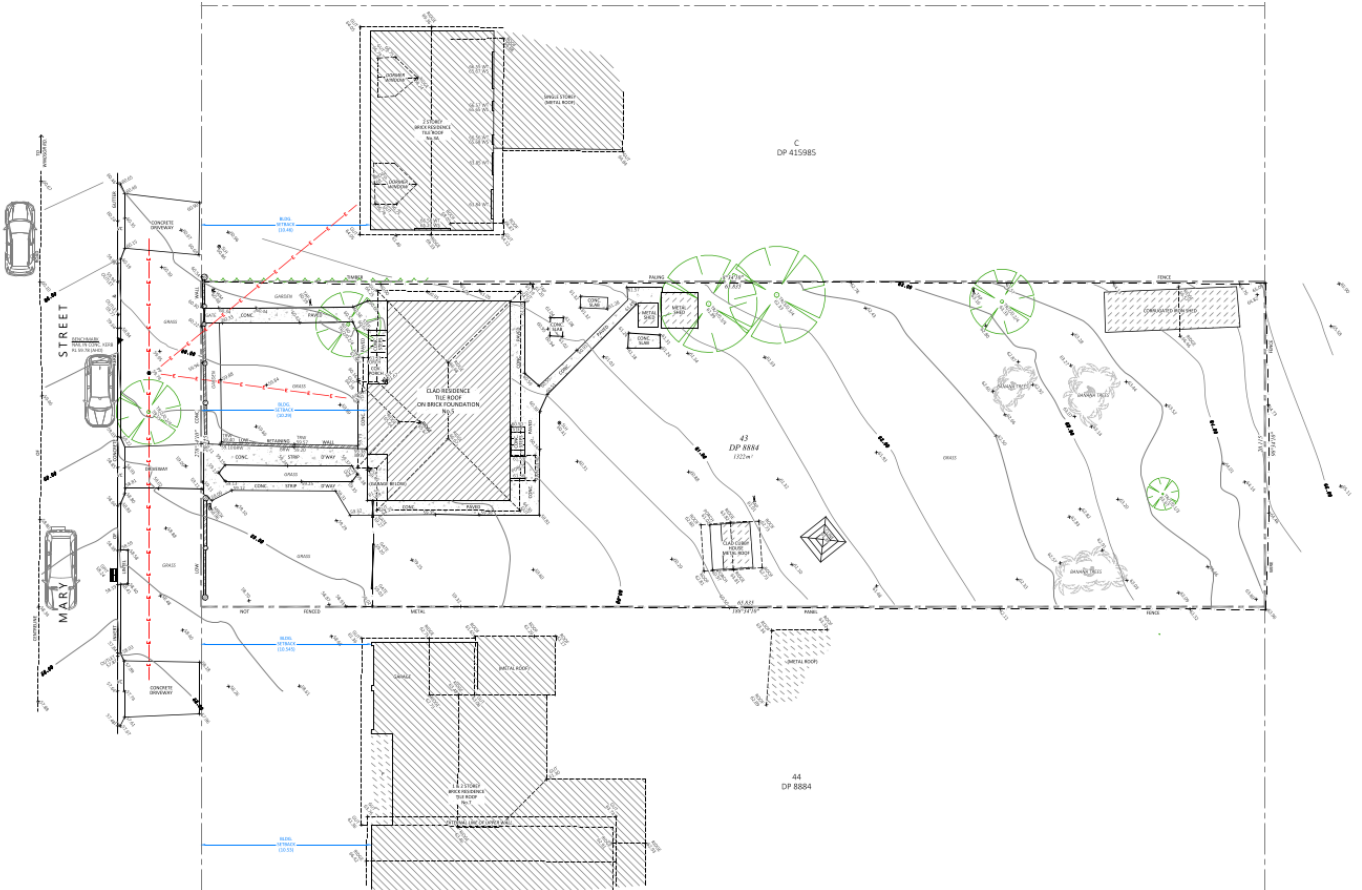


Figure 3: Survey Plan (Source: Summit Geomatic)

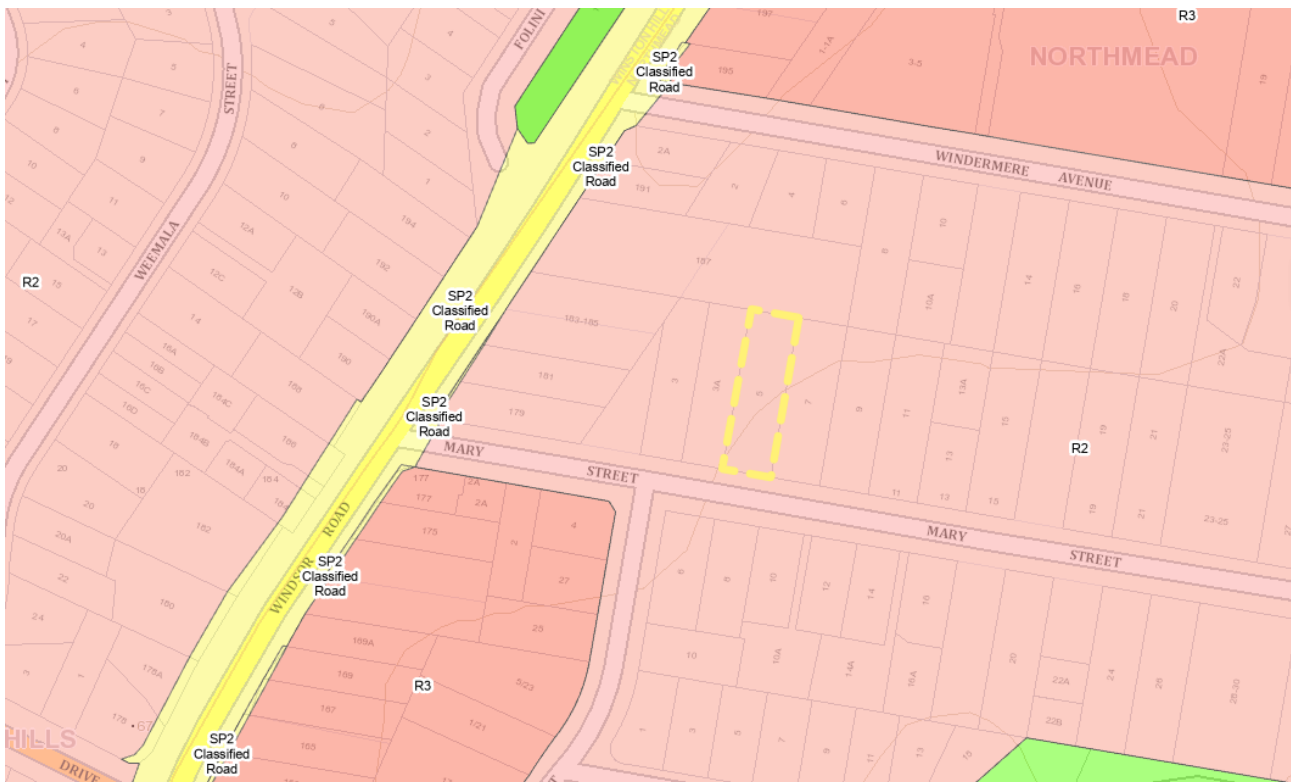


Figure 4: Zoning Map (NSW Spatial Viewer)

3. The Proposal

Development Application DA/517/2023 was lodged on 28/08/2023 for the construction of a two storey 90 place childcare centre. Specifically, the application seeks approval for:

- a) Enabling works which comprise:

- Demolition of all existing structures on site
 - Removal of 6 trees throughout the site
- b) Construction of a two storey child care centre

Basement Level

- Parking for twenty-four (24) vehicles, including fourteen (14) staff and ten (10) visitor spaces. One (1) being designated for an accessible space, and one (1) being shared visitor/delivery space
- Lift and stair access
- Lobby, Reception, Director's Office, Access WC
- Double width driveway access
- Bin store
- Services room

Ground Floor Level

- Lift and stair access
- Staff room
- Laundry
- Access WC
- Kitchen
- Two (2) Cot rooms
- Bottle prep room
- Nappy change room
- Kids WC
- Three (3) playrooms:
 - Playroom One (1): 20 Children (0-2 years)
 - Toy Storage
 - Craft area
 - Playroom Two (2): 20 Children (2-3 years)
 - Shared bathroom and
 - Shared Storage
 - Craft area
 - Outdoor play area.

First Floor Level

- Lift and stair access
- Accessible toilet
- Kids WC
- Indoor Storage
- Outdoor Storage
 - Playroom Four (4):
 - Toy storage
 - Craft area
 - Outdoor play area

Use

- Maximum capacity of 90 children with the following age breakdown:
- 0-2 years old – 20 children (5 staff)
- 2-3 years old – 20 children (4 staff)
- 3-6 years – 50 children (5 staff)
- The centre will be run by 14 staff
- The proposed hours of operation are to be 6:00am to 7:00pm, Monday to Friday.

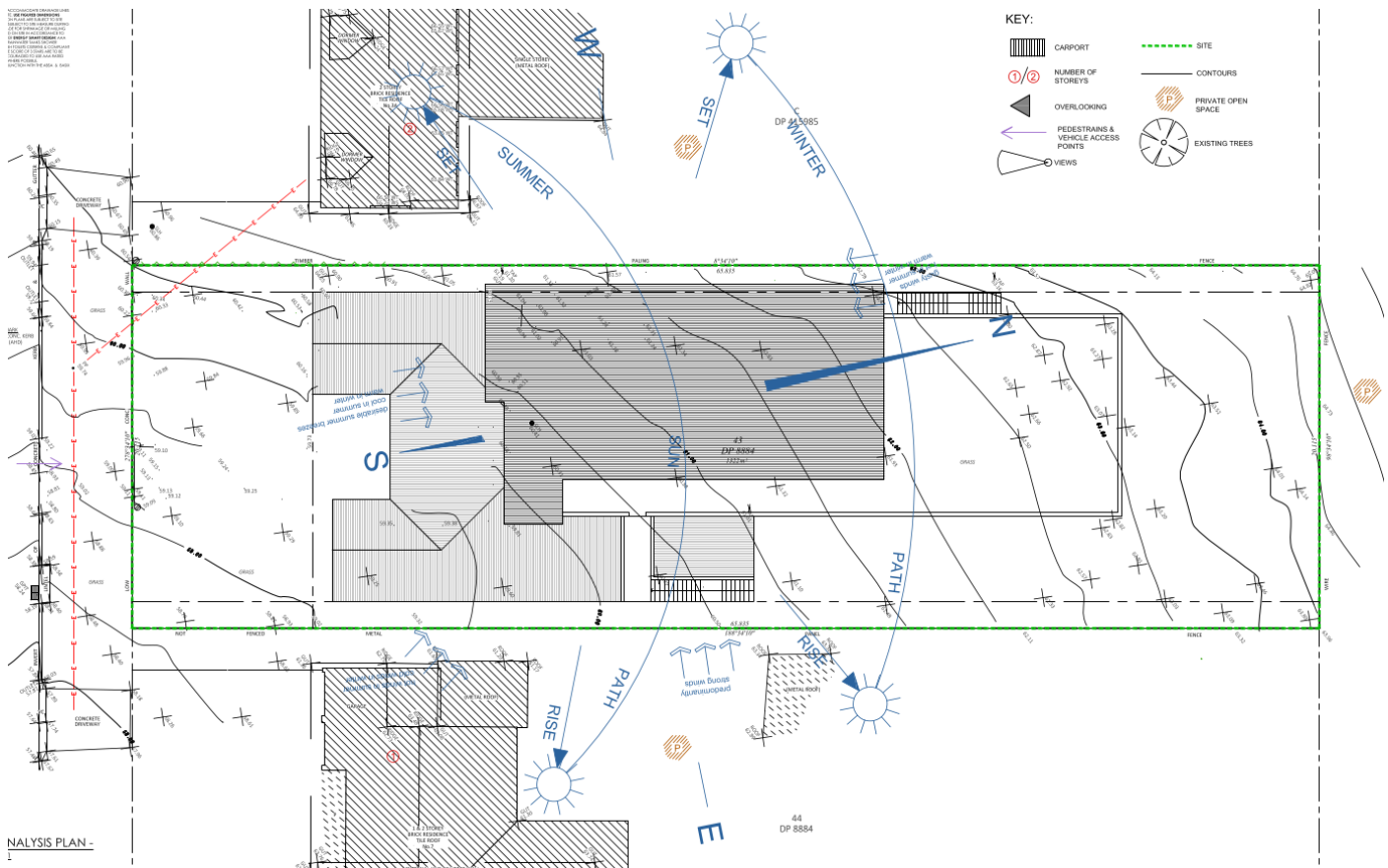


Figure 5: Site Plan. Source: Architectural plans prepared by Janssen Designs.

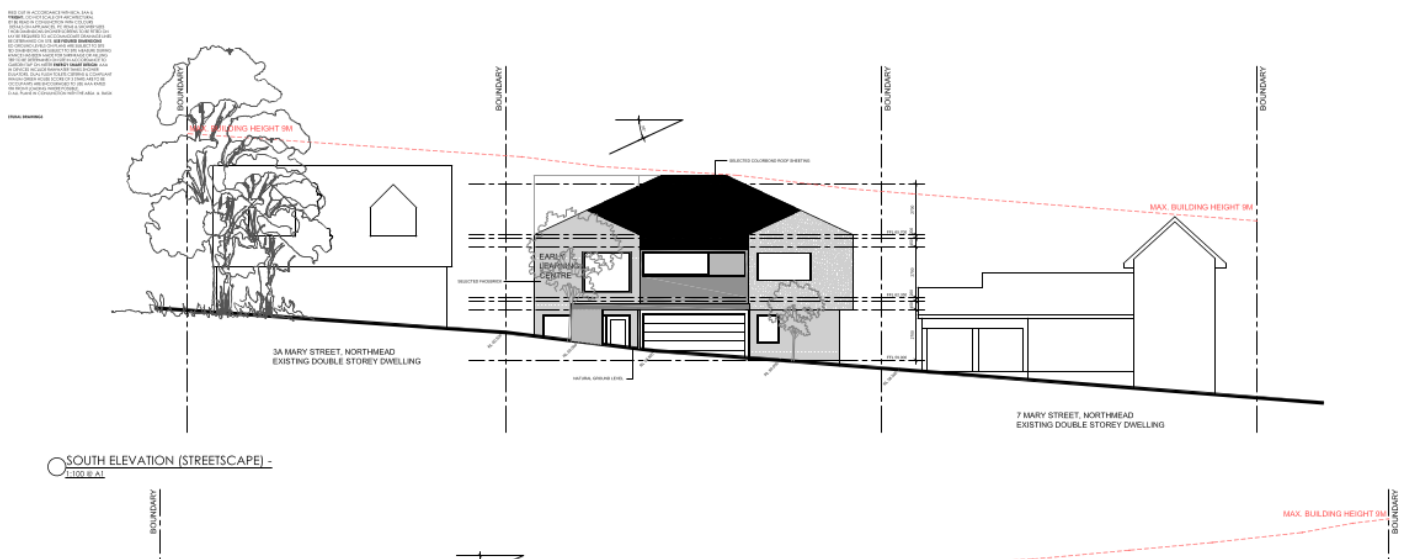


Figure 6: Streetscape (Mary Street) Elevation. Source: Architectural plans prepared by Janssen Designs.

4. Relevant Application History

| Date | Comment |
|-------------------|---|
| 28 August 2023 | DA/517/2023 was lodged for the Demolition of existing structures, tree removal and construction of a 90 place two-storey childcare centre over twenty-four (24) parking spaces. |
| 6 September 2023 | The application was notified to the neighbouring properties and advertised with a sign on the site as per Council's Consolidated Notification Requirements. |
| 27 September 2023 | |
| 28 September 2023 | The application was referred to the Design Excellence Advisory Panel (DEAP). |
| 31 October 2023 | A class 1 Deemed refusal Appeal was lodged with the Land and Environment Court. |

5. Referrals

The following section outlines the response and conditions recommended from each of the internal and external referrals in relation to the subject application.

| Referral | Comment |
|-----------------------------|---|
| Development Engineer | <p>Not Supported Based on the analysis of the information submitted by the applicant, the proposed development cannot be supported due to insufficient information.</p> <p><u>Additional information was required to enable a full and proper assessment as per below:</u></p> <ul style="list-style-type: none"> - Lower Ground Floor Plan – Stormwater Plan provide Longitude Section of the vehicular access Driveway Profile commencing from the Kerb line at the front to the Basement Floor, up to the first 900 x 900 GSIP. The cross-sectional details shall also include the proposed OSD tank profile with levels, including the invert level of the 900 x 900 GSIP invert Level (IL) and cover levels (CL).The RL (58.20) indicated on the basement floor pit appears to be cover level at the basement floor level. Please clarify this clearly and also identify the pits with appropriate pit numbers for identification. - The maximum storage water level within the OSD Tank (Drawing No. SW03) is RL 58.80 and the cover level of the 900 x 900 GSIP in Drawing SW02 is RL 58.20 and 600 mm lower than the maximum storage water level. Therefore, as the Lower Ground basement floor pit is connected to the OSD tank (HED), it is likely to be surcharged and back flow. This should be investigated in detail and avoided completely. In this situation, it is necessary to redesign all downpipe drainage from roof above to be directly connected into the OSD tank HED, via separate pipe system, without connecting into the 900 x 900 GSIPs in the basement. - In view of the above situation (item b), the Lower Ground Floor drainage system should be designed to be independent with necessary subsoil drainage details. A basement pump out system should be incorporated, if the basement drainage cannot be drained under gravity, to the street drainage system. Full details shall be provided. - Please provide the full invert and cover level of the proposed Silt Arrester pit at the front property boundary. Currently the stormwater discharge outlet from the OSD system, within the existing street gully pit outside the development site seems to be drowned. Therefore, a detailed assessment shall be made to ensure the OSD orifice is not drowned. If it is drowned, the OSD calculation Design Summary Sheet shall be revised accordingly, taking into consideration of the drowned orifice outlet, with additional storage capacity, as per the Upper Parramatta River Catchment Trust On-Site Detention Handbook details. |
| Landscaping | <p>Not Supported Based on the analysis of the information submitted by the applicant, the proposed development cannot be supported due to insufficient information.</p> <ul style="list-style-type: none"> - Soil depth and soil volume within planters / over the basement / on podium structure is inadequate. - Sections through the landscape and above the basement (though the planting on-structure) is missing. - There is no screening plants to the first-floor outdoor play space. - Some of the continuous screening to the rear (western boundary) is not a minimum 1m wide and needs to be increased. |
| Traffic | <p>Not Supported Based on the analysis of the information submitted by the applicant, the proposed development cannot be supported due to insufficient information.</p> <p>As this development application was lodged before the Parramatta DCP 2023 was in effect, the proposal is required to meet the provisions of the Hills DCP 2012. Accordingly, the development is required to provide 1 space per staff and 1 space per 6 children. As there</p> |

are 14 staff and 90 children, the development is required to provide 15 visitor spaces and 14 staff spaces.

Although 14 staff spaces are proposed, the development only provides 10 visitor spaces resulting in a shortfall of 5 parking spaces. Accordingly, the applicant must demonstrate that the proposed parking will be sufficient for the site. This could be by way of a parking survey of a similar sized childcare centre.

The Hills DCP does not require bicycle parking spaces.

The Traffic report notes that all loading will be done outside of the peak pick up and drop off periods by vehicles up to the size of a B99 vehicle.

The car park design is generally consistent with the requirements of AS 2890.1:2004. The car park provides adequate manoeuvring.

The vehicular access ramp gradients are consistent with the requirements of the Australian Standards.

In accordance with the TfNSW Guide to Traffic Generating Developments, the proposal will result in a total of 72 AM peak hour vehicle trips (36 in and 36 out) and 63 PM peak hour vehicle trips (32 in 31 out).

The applicant has conducted SIDRA modelling of nearby critical intersections to demonstrate that generally, the intersections performance will not be adversely impacted by the proposal. It is noted that the intersection of Mary Street onto Windsor Road does currently perform at an unsatisfactory level of service, however, it is considered that this is an existing condition, and the proposed childcare centre will not significantly add to this based on the modelling results.

Additional information was required to enable a full and proper assessment as per below:

- The relevant section of the Child Care Planning Guidelines are Objectives and Control C30 and C32 – Traffic, Parking and pedestrian circulation.
- Control 30 of the Childcare Guidelines provides that off streetcar parking should be provided at the rates for childcare facilities specified in a Development Control Plan that applies to the Land.
- The relevant Development Control Plan that applies to site is the Parramatta (former The Hills) DCP 2012. Table 1 of Part 2.1 General Parking Requirements of the Parramatta (former The Hills) DCP 2012 requires childcare centres to provide a minimum off street parking rates of 1 parking space per employee and 1 parking space per 6 children enrolled for visitors and/or parent parking.

The proposed development is for a 90-place childcare centre with a maximum number of 14 staff, resulting in the requirement for the childcare centre to provide a minimum of 29 off-street parking spaces. The proposed development provides 24 off-street parking spaces resulting in the proposed childcare facility failing to provide the minimum required off-street parking spaces and relying on the availability of on-street parking.

Universal Access

Could be supported, subject to conditions

Based on the analysis of the information submitted by the applicant, the proposed development cannot be supported due to insufficient information. The following could have been required via conditions of consent:

- Ensure compliance with the Vista Access Architects Pty Ltd Access Report
- Ensure the lift is suitable/fit for purpose
- Ensure low level thresholds are provided at the doors accessing the outdoor areas
- The abutments of varying surfaces are to provide level transitions
- Ensure equipment and furniture provide accessible and inclusive features

**Environmental Health
(Contamination)**

Not Supported

Based on the findings of the preliminary investigation, the site should be investigated by the way of a Detailed Site Investigation. The proposal does not satisfy the requirements of Council's controls and cannot be supported.

There appears to be asbestos contamination potentially from fibrocement sheds within the site. The Hazardous Material Survey may be submitted prior to building work commencing, as per conditions of consent. However, a Detailed Site Investigation report is required prior to determination, and is required to be submitted for further understanding of the potential contamination on site.

**Environmental Health
(Acoustic)**

Not Supported

Based on the analysis of the information submitted by the applicant, the proposed development cannot be supported due to insufficient information.

Additional information was required to enable a full and proper assessment as per below:

- There are no traffic intrusion calculations in relation to Windsor Road. The proposal is very close to Windsor Road on the west so the traffic noise level calculations would need to be accounted for (e.g., for sleep disturbance, on-road traffic & noise intrusion).
- The report uses the AAAC Guideline Centre Acoustic Assessment V3.0 suggested base criteria of 45dBA (for example noise criterion of outdoor play), however the guideline suggests to use the base criteria only when the measured background levels are below 40 dBA. The measured background daytime ground floor location A is 40 dBA, not below. Should the Report have referenced the measure background noise, there would be further non-compliances of an exceedance of predicated noise levels and the criterion could not be achieved with the noise controls implemented.
- A 2.3 metre high fence is proposed along the western boundary of the ground floor outdoor play area ground floor outdoor play area – this exceeds the 2 metre limit maximum height on a flat site as per Parramatta DCP (p37).
- Traffic noise intrusion non-compliance: Cot Room 2 – Alternative ventilation information must be provided however even with the window closed; it exceeds the noise criterion by 5dBA even after noise controls are implemented. These calculations also do not include the mechanical ventilation and equipment needed for Cot Room 2 (due to requirement that is to be closed at all times), which may cause a further exceedance in cumulative noise levels.
- Ventilation of kitchen and nappy change and toilets (required for centres with proposed 40+ children) – however, cumulative calculations have only measured indoor play areas, car park and mechanical.
- Are the sound power levels for the indoor and outdoor play area (which are then used to calculations throughout the report) based on the sound power levels presented in Table 6 of the report. This table show the sound power levels show calculations off 10 children at a time for each age group.
- Page 30 of the Report states 90 Children will be separated into groups of 2 x or 3x groups of 10 throughout the ground floor outdoor play area and first floor outdoor area. Do the calculations throughout the report throughout the report represent the 20-30 children playing at one time, as well as the 3-5 teachers accompanying the children (as per appendix C and D of the report)
- Noise associated with waste collection – Waste Management Plan provided state that the collections will take place between 5am to 7am each collection day. This will occur at least three times per week (once weekly for recycling, generate waste and sanitary waste).
- Even after noise controls have been implemented, the predicated noise just meets noise criteria for R2a – 7 Mary Street and R4c – 3A Mary Street (table 15 of the Report). The predicated cumulative noise for indoor play areas, car park and mechanical also just meets the noise criteria. Environmental Health has concerns that there is not room for any other sources of noise emission as this will exceed the noise criteria – what will be the possible mitigation strategies then if all the noise controls have already been implemented?
- Noise pollution emission calculations were based on assuming the windows would only be open 50% of the window area – this does not provide realistic calculations.
- Noise pollution is present and a hazard at this proposal and environmental health is not satisfied with the numbers and results presented in the Report.

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| Environmental Health (Food) | <p>Supported</p> <p>Based on the analysis of the information submitted by the applicant, the proposed development can be supported.</p> <p>Adequate information is provided for the proposed kitchen and Environmental Health can support this aspect of the proposal.</p> |
| Environmental Health (Waste Management) | <p>Not Supported</p> <p>Based on the analysis of the information submitted by the applicant, the proposed development cannot be supported due to insufficient information.</p> <p><u>Additional information was required to enable a full and proper assessment as per below:</u></p> <p>The applicant has submitted a brief waste management plan which indicates that a total of 8 x 240L is required (3 x 240L Recycling, 6 x 240L General Waste and 2x 240L Sanitary Bins) however there is only provision for 6 x 240L bins indicated on the complete plans.</p> <p>A waste storage room is to be provided on the premises and shall be constructed to comply with all the relevant provisions of Council's Development Control Plan (DCP) 2011:</p> <ul style="list-style-type: none"> - A waste storage room is to be provided on the premises and comply with the relevant provisions of the PDCP 2011. - The size being large enough to accommodate all waste generated on the premises, with allowances for the separation of waste types and bulky materials; - The floor being graded and drained to an approved drainage outlet connected to the sewer and having a smooth, even surface, covered at all intersections with walls; - The walls being cement rendered to a smooth, even surface and covered at all intersections; - Cold water being provided in the room with outlet located 1.5m above floor level to avoid damage and a hose fitted with a nozzle being connected to the outlet; - The room shall be adequately ventilated (either natural or mechanical) in accordance with the Building Code of Australia. - The Preliminary Site Investigation revealed that there is some asbestos contamination from fibrocement sheds within the site. The safe removal of this must also be addressed in the Waste Management Plan. |
| Design Excellence Advisory Panel (DEAP) | Refer to the discussion in Section 5.1. |
| External Agency | |
| Endeavour Energy | No objection. Subject to the imposition of recommended conditions. |
| Sydney Water Corporation | At the time of writing this report, comment remains outstanding. |

5.1 Design Excellence Advisory Panel (DEAP)

The development application was referred to the Design Excellence Advisory Panel (DEAP) on 28 September 2023. Council's Planner has responded to each comment.

1. *The Panel commends the Architect for the detailed presentation and notes the considered layout and site planning in response to the challenging site conditions and context.*

Planners comment: Noted

2. *The Panel makes the following recommendations to address outstanding issues and improvements to the current proposal:*
 - (i) *Site context: There is currently no footpath servicing the north side of Mary Street. The proponent should discuss with Council future footpath connections, given the size of the facility and the anticipated increase in pedestrian flows to and from the centre (and desirability to reduce need for vehicle drop-off). This could also include additional street tree planting to improve the neighbourhood amenity and streetscape.*
 - (ii) *Entry experience: The entry terrace and portico is relatively narrow and should be extended (possibly a deck or elevated slab) over the deep soil zone to provide a more generous area for social gathering and temporary area for prams parking.*

- (iii) *The Panel recommends further consideration be given to the design of the two front landscaped areas facing Mary Street. The Panel notes that fences and hedges are not currently proposed. If a defined edge is not desired, the landscape setting should be strengthened with appropriate planting to provide a more welcoming experience. The overall design should be integrated with the extended terrace suggested above.*
- (iv) *Given the residential character of the area, it is recommended that street CGI views are provided from either side to show how the built form is intended to relate with the neighbours.*
- (v) *Western boundary: consider extending the hedge planting along the western side of the site.*

Consider also amending the fire egress route to enable more substantial planting to occur.

Planners comment: Council agrees with DEAP’s comment. A number of alterations can be made to improve the design regarding landscaping and pedestrian access.

(vi) Landscape:

- Refer to Items i) – iv) above for associated landscape improvements.
- Increase pockets of deep soil along the side boundaries to allow for increased numbers and coverage of larger canopy trees to screen and shade the outdoor play areas
- Explore the opportunity to increase planting to the upper outdoor play area and to increase the quantum of shaded areas.

Planners comment: Noted.

(vii) Western elevation: Provide more articulation of the Western elevation particularly for the ‘box’ at the rear so that this long façade provides an improved interface with the neighbouring property. Additional tree planting along this boundary could also assist in softening the visual impact.

Planners comment: Council agrees with DEAP’s comment. The building requires variation regarding both materials and built form to reduce bulk along the western elevation.

(viii) Materiality: The Panel recommends changing the render finish to a high quality, more robust, masonry material that requires less maintenance in the longer term.

Planners comment: Council agrees with DEAP’s comment. A schedule of materials is required for the proposed development.

(ix) ESD considerations: Incorporate ESD initiatives such as Ceiling fans and PV panels. Consideration should also be given to the integrated placement of AC condensers in the latest obtrusive locations and with acoustic treatment.

Planners comment: Noted.

Panel Recommendation

The Panel broadly supports the proposal; minor improvements to the design are recommended to respond to the issues noted above. The Panel recommends that subject to the above issues being addressed to Council’s satisfaction, the Panel does not require to review the proposal again.

Planners comment: Noted.

PLANNING ASSESSMENT

6. Environmental Planning Instruments

7.1 Overview

The instruments applicable to this application are:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Parramatta Local Environmental Plan 2023 (PLEP 2023)

- The Hills Development Control Plan 2012 (THDCP 2012)

Compliance with these instruments is addressed below.

7.3 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 – CHAPTER 2 VEGETATION IN NON-RURAL AREAS

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the site. The aims of the plan are to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of the non-rural areas of the State through the preservation of trees and other vegetation.

The application proposes the removal of vegetation from the site. Council's Tree and Landscaping Officer has reviewed the application and raised no objections to the removal of the vegetation from the site.

7.4 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 – CHAPTER 6 WATER CATCHMENTS

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The aims of the Plan are to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole.

Given the nature of the project and the location of the site, there are no specific controls that directly apply to this proposal. Were the application recommended for approval any matters of general relevance (erosion control, etc) are able to be managed by conditions of consent.

7.5 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021 – CHAPTER 4 REMEDIATION OF LAND

The requirements of State Environmental Planning Policy (Resilience and Hazards) 2021 apply to the subject site. In accordance with Chapter 4 of the SEPP, Council must consider if the land is contaminated, if it is contaminated, is it suitable for the proposed use and if it is not suitable, can it be remediated to a standard such that it will be made suitable for the proposed use.

The site is not identified in Council's records as being contaminated. A site investigation has been lodged with insufficient information to adequately satisfy the requirements of Council's controls and cannot be supported. Council requires the following information to be included in the site inspection:

Geotechnical Consultants Australia were engaged to assess any potential contamination which may have impacted the site which involves reviews of historical uses, registers and records and soil testing.

The Detailed Site Investigation indicates there is some asbestos contamination potentially from fibrocement sheds within the site. As a result, all structures onsite should have a Hazardous Materials Survey conducted by a qualified professional prior to demolition. Further, a Detailed Site Investigation is required to sample Asbestos sampling collected and results are submitted prior to building work commencing.

A Detailed Site Investigation report is required to be submitted for further understanding of the potential contamination on site and an additional re-referral is required.

Given the current information provides insufficient information a proper assessment cannot be conducted by Council to determine in accordance with Clause 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the land is suitable for the proposed development being a childcare centre. Were the application recommended for approval, standard and special conditions relating asbestos, site audit statement, site investigation and contamination would be incorporated into a notice of determination.

7.6 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021 – CHAPTER 2 INFRASTRUCTURE

The relevant matters to be considered under Chapter 2 of the SEPP for the proposed development are outlined below.

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| Clause 2.48 – Electricity infrastructure | <p>The subject site is in the vicinity of electricity powerlines along the front boundary and western boundary of the site and is located within 5m of an exposed overhead electricity power line.</p> <p>The application has been referred to Endeavour Energy providing comment on 15 November 2023.</p> <p>The Landscape Concept Plan proposing planting of trees to the Mary Street and located within the south-western corner of the site will interfere with overhead power lines and is opposed by Endeavour Energy.</p> <p>The minimum required safety distances and controls for a building or structures and working near overhead power lines must be maintained at all times.</p> |
| Clause 2.98 – Development adjacent to rail corridors | The subject site is not adjacent to a rail corridor. |
| Clause 2.119 – Impact of road noise or vibration on non-road development | The subject site does not have frontage to a classified road. |
| Clause 2.120 – Impact of road noise or vibration on non-road development | <i>Mary Street</i> has an average daily traffic volume of less than 20,000 vehicles per day. As such, clause 102 is not applicable to the development application. |
| Clause 2.122 – Traffic-generating development | <p>The proposal does not generate more than 200 motor vehicles per hour and is not a site with access to a classified road or to a road that connects to a classified road.</p> <p>The proposed Childcare centre on Mary Street does not trigger Clause 2.122.</p> |

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

The relevant matters to be considered under this SEPP for the proposed development are outlined below.

| DEVELOPMENT STANDARD | PROPOSED | COMPLIANCE |
|--|--|---|
| <p>3.22 – Concurrence of the Regulatory Authority</p> <p>This clause applies to development for the purpose of a centre-based child care facility if:</p> <p>(a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations, or</p> <p>(b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.</p> | <p>Total no. of children = 90</p> <p>Minimum unencumbered space:</p> <p>Indoor – 292.5m²</p> <p>Outdoor – 630m²</p> <p>Proposed</p> <p>Indoor – 308.74m²</p> <p>Outdoor – 638.27m²</p> | <p>The application does not seek approval for a departure to Regulation 107 (indoor unencumbered space requirements) or Regulation 108 (outdoor unencumbered space requirements) of the Childcare Planning Guidelines.</p> <p>However, Council requires the outdoor play area to incorporate further landscaping and inclusion of internal storage lockers which would inevitably mean the proposal would not satisfy the requirements of Regulation 107 and Regulation 108. Council had not yet issued a request for further information; however, this would have been requested. For further information, refer to the assessment under Clause 3.26 of this table.</p> |
| <p>3.23 – Matters for Consideration by Consent Authorities</p> <p>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> | The proposal has been assessed against the relevant provisions of the Child Care Planning Guidelines. | Refer to table below for discussion. |
| <p>3.24 – Additional Matters for Consideration by Consent Authorities</p> <p>The consent authority must consider the following matters before determining a development application for development for the purpose of a centre-based child care facility on land</p> | N/A | N/A – The subject site is not located within land zoned IN1 General Industrial or IN2 Light Industrial. |

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| <p>in Zone IN1 General Industrial or Zone IN2 Light Industrial—</p> <p>(a) whether the proposed development is compatible with neighbouring land uses, including its proximity to restricted premises, sex services premises or hazardous land uses,</p> <p>(b) whether the proposed development has the potential to restrict the operation of existing industrial land uses,</p> <p>(c) whether the location of the proposed development will pose a health or safety risk to children, visitors or staff.</p> | | |
| <p>3.25 – Floor Space Ratio</p> <p>Development consent must not be granted for the purposes of a centre-based child care facility in Zone R2 Low Density Residential if the floor space ratio for the building on the site of the facility exceeds 0.5:1.</p> <p>This section does not apply if another environmental planning instrument or a development control plan sets a maximum floor space ratio for the centre-based child care facility.</p> | <p>The site is located in an R2 Low density residential.</p> <p>Maximum FSR = 0.5:1 or 661m²</p> <p>Proposed FSR = 0.46:1 or 618.6m²</p> | <p>Complies</p> |
| <p>3.26 – Non-Discretionary Development Standards</p> <p>(a) Location</p> <p>(b) Indoor and Outdoor Space</p> <p>(c) Site Area and Site Dimensions</p> <p>(d) Colour of Building Materials or Shade Structures</p> | <p><u>Location</u> – The site is within 1km radius of three (3) proposed or childcare centres being constructed. Part (2)(a) of the clause allows the development to be located at any distance from an existing or proposed early education and care facility.</p> <p><u>Indoor Space</u> – The proposal does not comply with the requirements under Regulation 107 of the Childcare Planning Guidelines as a full assessment of the unencumbered indoor play space cannot be completed. Details regarding the provision of any storage lockers for use by the children are not provided on the plans as those would need to be excluded from any calculations.</p> <p>Number of children: 90 Minimum unencumbered required: 292.5m² Total unencumbered space proposed: 638.27m²</p> <p>No – The proposal does not comply with the 3.25m² of unencumbered indoor space provided for each child as it has not considered area for storage lockers.</p> <p><u>Outdoor Space</u> – The proposal required a minimum of 630m² of outdoor unencumbered space of 90 children under Regulation 108 of Guidelines. The proposal provides sufficient outdoor play areas of 638.27m².</p> <p><u>Site Area and Dimensions</u> – The site is of satisfactory size and shape.</p> <p><u>Colour of buildings and materials</u> – (No) Council notes that no colours or material schedule has been provided for this development.</p> | <p>Does not comply.</p> |

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| | Note: Non-discretionary development standards subject of this clause have not been complied with and will be used as a basis for refusal of this application. | |
| <p>3.27 – Development Control Plans 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) <u>does not apply</u> to development for the purpose of a centre-based child care facility:</p> <p>(a) operational or management plans or arrangements (including hours of operation), (b) demonstrated need or demand for child care services, (c) proximity of facility to other early education and care facilities, (d) any matter relating to development for the purpose of a centre-based child care facility contained in— (i) the design principles set out in Part 2 of the Child Care Planning Guideline, or (ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates).</p> | The proposal has been assessed against the provisions of The Hills DCP 2012. It is noted that the provisions contained within THDCP 2012 pertaining to this clause have not been applied when assessing the proposed development. | N/A |

Compliance with Child Care Planning Guideline 2021

The Guideline identifies issues that must be taken into consideration when assessing the proposal for a Childcare Centre. It also refers to the application of the *National Regulations for Childcare Centres*. The table below responds to each consideration raised in the Guideline. The assessment against the National Regulations is addressed in a separate table.

| Provisions | Comment |
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| Part 2 – Design Quality Principles | |
| Principle 1 – Context | <p>The subject site is considered an appropriate location for the proposed childcare centre for the following reasons:</p> <ul style="list-style-type: none"> • The site has adequate vehicular access via Mary Street. The site also provides pedestrian access from the designated car parking spaces to the building. • The site is within close proximity to public transport and employment nodes. The site is located approximately 190m distance to multiple bus stops services by bus routes 600, 602, 603 and 614 which connects the site with Parramatta CBD. • The site is not a battle-axe allotment or located in a cul-de-sac and is not adjacent to an arterial road. • The proposal is not within proximity to any intensive, offensive and hazardous land uses. The predominant land uses. The predominant land uses within the surrounding locality generally comprises residential uses. |
| Principle 2 – Built Form | <p>The proposed built form exceeds the scale of nearby dwelling by proposing large outdoor play areas on balcony type structures and is additionally inconsistent with the proposed future built form of the area.</p> <p>While compliant with the FSR control, the proposal does not comply with the prescribed height of 9m (maximum 9.5m proposed). The current THDCP 2012 setback requirements and the Parramatta DCP 2023 (recently adopted on the 18h of September 2023) requires a rear setback to dwelling equal to 30% of the site length, and in this case would be 19.75m. The current rear setback for the proposal is 14.127m resulting in a built form that is inconsistent with surrounding development in scale and length of the built form proposed. The proposed childcare maintains a dominant roof form addressing Mary Street which will cause unnecessary bulk.</p> <p>The proposal does not meet the requirements of principle 2 – Built form.</p> |

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| Principle 3 – Adaptive Learning Spaces | <p>The subject site has been assessed on its adaptive learning spaces. It is noted that the proposed indoor space would facilitate adequate learning spaces for children and staff that are fit-for-purpose, enjoyable and easy to use. It is acknowledged that the proposed use is likely to offer a variety of settings, technology and opportunities for interaction.</p> <p>The proposal does meet the requirements of principle 3 – Adaptive Learning Spaces</p> |
| Principles 4 – Sustainability | <p>Due to the north facing orientation of the site, the indoor and outdoor play areas will receive a sufficient amount on sunlight. The ground floor indoor playrooms have multiple windows allowing for natural ventilation.</p> <p>It is noted that the sustainable measures imposed are considered appropriate. Council’s Environmental Health Officer has no objection subject to conditions of consent.</p> <p>The proposal does meet the requirements of principle 4 – Sustainability</p> |
| Principle 5 – Landscape | <p>The proposal lacks sufficient landscaping that would result in an attractive development and does not make outdoor spaces assets for learning. The child care centre is required to facilitate further landscaping to the side boundaries and rear of the site. Further, the first floor outdoor play area is required to incorporate further landscaping.</p> <p>Additionally, the proposal does not contribute to the landscape character of the area but has been identified to be detrimental to the existing locality.</p> <p>The proposal does not meet the requirements of principle 5 – Landscape.</p> |
| Principle 6 – Amenity | <p>The internal amenities of the proposal contribute to effective surveillance of the development, The proposal achieves good amenity or contribute to positive learning environments and the well-being of children and staff.</p> <p>The proposal does the requirements of principle 6 – Amenity.</p> |
| Principle 7 – Safety | <p>The childcare centre has clearly defined public and private spaces with controlled access for parents and children.</p> <p>The proposal has included an evacuation management plan which does not indicate a meeting point off site. If the development were to be supported this could be conditioned prior to occupational certificate however, insufficient information has been provided.</p> <p>The proposed levels of play areas on the Upper Ground Floor Plan contribute to effective surveillance of the development. Windows to the Staff Room, Kitchen and Cot Room 2 provide effective Crime Prevention Through Environmental Design (CPTED) to the streetscape.</p> <p>The proposal does not meet the requirements of principle 7 – Safety</p> |

Clause 4.6 Exceptions to Development Standards Building Height

The proposal does not comply with the maximum 9m building height development standard detailed in Clause 4.3 of the PLEP. The proposed building height is 9.5m.

The development proposal exceeds the maximum permissible building height by 0.6m which is a 6.6% variation to the development standard.

Clause 4.6 of Parramatta LEP 2023 allows Council to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

Clause 4.6(1) - Objectives of Clause 4.6

The objectives of clause 4.6 of the Parramatta LEP 2023 are considered as follows:

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances"

Clause 4.6(2) - Operation of Clause 4.6

The operation of clause 4.6 is not limited by the terms of Clause 4.6(8) of this LEP, or otherwise by any other instrument.

Clause 4.6(3) - The Applicant's written request 4.6

Clause 4.6(3) requires that the applicant provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- b) there are sufficient environmental planning grounds to justify contravening the development standard. "

The applicant has not submitted a written request justifying the variation to the height of building development standard.

It is noted that a request for a written Clause 4.6 was not made considering the extent of changes required to ensure compliance with other matters as required. Council to date has not received a written request nor amended plans and as such, cannot provide development consent pursuant to clause 4.6.

Notwithstanding, an assessment has been undertaken to determine whether compliance with the standard is 'unreasonable and unnecessary' and there are 'sufficient planning ground' as follows:

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below. These cases establish tests that determine whether a variation under Clause 4.6 of an LEP is acceptable and whether compliance with the standard is unreasonable or unnecessary.

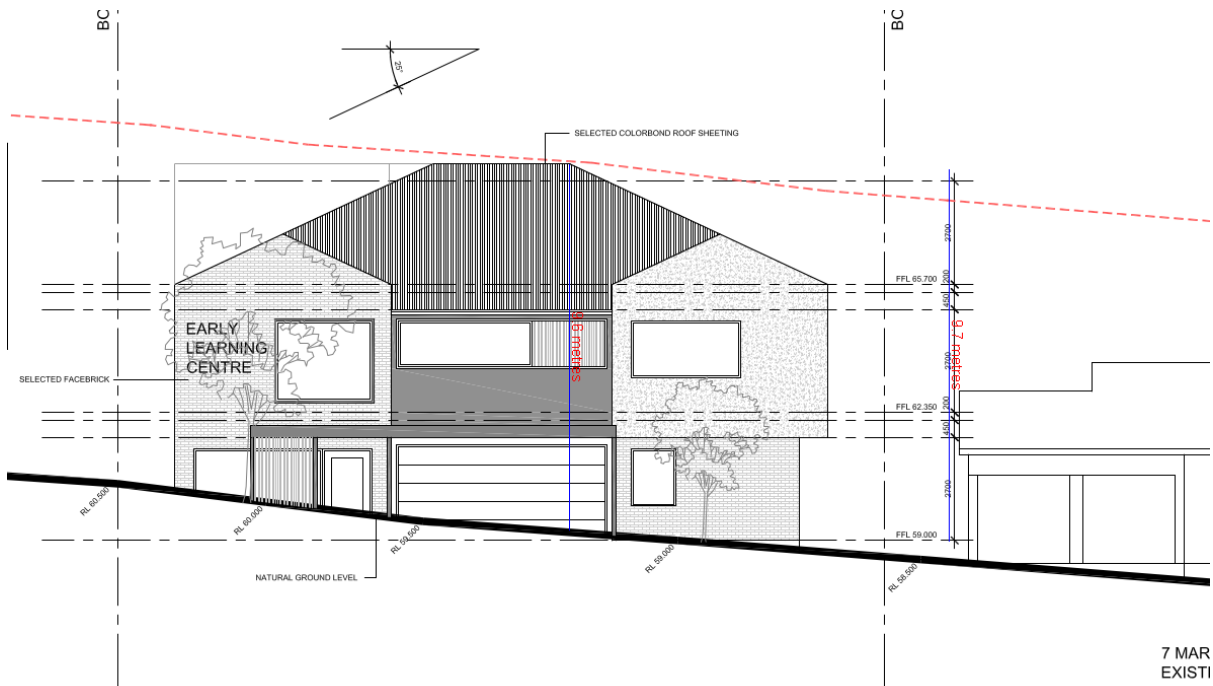


Figure 7: Streetscape (Mary Street) Elevation - Height. Source: Architectural plans prepared by Janssen Designs.

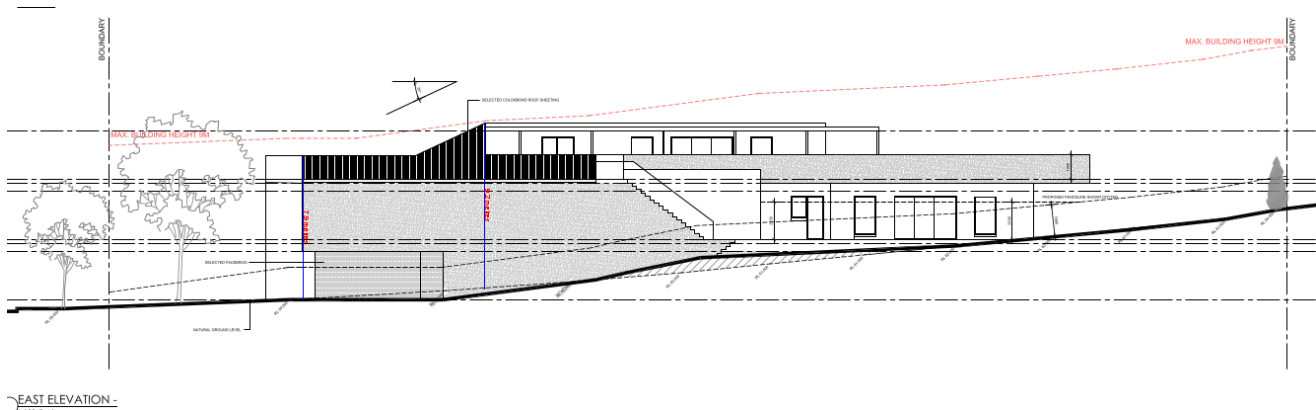


Figure 8: East Elevation - Height. Source: Architectural plans prepared by Janssen Designs.

Wehbe v Pittwater Council

Case law in the NSW Land & Environment Court has considered circumstances in which an exception to a development standard may be well founded. In the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 the presiding Chief Judge outlined the following five (5) circumstances:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Height of Buildings Objectives

- a) To ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,

Comment:

The proposed roof exceeds the height limit in the south-western corner of the site above Cot Room 2 and exaggerates the building form along the site. As a result, a portion of the building form proceeds beyond the 9m height limit set out under Clause 4.3 of the PLEP 2023. Developments within the immediate locality are characterised as single or two storey dwelling houses with both legacy and new multi dwelling developments located to the North, East and South. Whilst the development appears as a two-storey dwelling from the public domain.

- b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open spaces areas.

Comment:

The encroachment on the first floor element towards the front of the site results in poor amenity towards the lower level ground floor and adjoining lots.

Further, the height of the development leads to the unnecessary shadowing of the adjoining properties.

2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

Comment:

The proposed development seeks the construction of a 90-place childcare within an R2 low density residential zone. In this regard, the clause serves to set a standard height plane across all developments within the zone.

The standard height limit adopted within the R2 zone and also within the R3 zone located towards the North is 9m. Council has not abandoned the control and it can be seen that a departure to this control would threaten the continuity of developments within the locality.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

Comment:

There is no justification provided as to how a reduction in development height would thwart the objectives of the clause.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Comment:

There is no evidence of Council having abandoned the clause noting development approvals within the vicinity have complied with the development standard.

5. The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.

Comment:

The surrounding sites towards the East, South and West are all zoned R2 - Low Density Residential with R3 - Medium Density residential located to the North under the Parramatta LEP 2023. Under this plan there has been no change to the height development standard being 9m. In this regard, Council does not consider the zoning of the site to inhibit the objectives of the development standard.

Is the exception well founded?

It is considered that the application fails to address key issues related to height. Therefore, it should be noted a reduction in places would alleviate key issues with the development which would culminate in a reduction in building height.

Furthermore, the additional increase to density and scale brought by the non-compliant building height would serve to only weaken the low density setting of the development.

With regard to the above, it is therefore recommended the Clause 4.6 variation to building height is not supported despite the applicant not submitting a formal submission against Clause 4.6.

7.7.1 Child Care Planning Guidelines 2021

The Guideline identifies issues that must be taken into consideration when assessing the proposal for a Childcare Centre. It also refers to the application of the National Regulations for Childcare Centres. The table below responds to each consideration raised in the Guideline. The assessment against the National Regulations is addressed in a separate table.

| Part 3 – Matters for Consideration | |
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| 3.1 – Site Selection and Location | |
| <p>C1 For proposed developments in or adjacent to a residential zone, consider:</p> <ul style="list-style-type: none"> • the acoustic and privacy impacts of the proposed development on the residential properties • the setbacks and siting of buildings within the residential context • visual amenity impacts (e.g. additional building bulk and overshadowing, local character) • traffic and parking impacts of the proposal on residential amenity and road safety | <p>Visual and Acoustic Privacy (No) – Concern is raised as to the management solutions of the acoustic plan to ensure an adequate acoustic treatment of the development in its current form.</p> <p>Setbacks – Acceptable The subject site is zoned R2 Low Density Residential. The front and side setbacks are acceptable. However, a noncompliant rear setback on the first floor is proposed.</p> <p>Visual Amenity – No The proposal complies with the prescribed FSR however, the built form proposes a height of 9.5m exceeding the prescribed height of 9m. The proposed bulk of the building particularly the roof form and integration into the western façade creates unnecessary bulk and overshadowing.</p> <p>Traffic and Parking – No The number of parking spaces provided does not comply with the numerical requirements.</p> <p>However, the basement parking’s significant size results in unsatisfactory excavation. This results in a poor design outcome for the users of the child care centre.</p> <p>DOES NOT COMPLY</p> |
| <p>C2 When selecting a site, ensure that:</p> <ul style="list-style-type: none"> • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards • there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are suitable for the scale and type of development proposed having regard to: <ul style="list-style-type: none"> ○ size of street frontage, lot configuration, dimensions and overall size | <p>No – The proposed childcare centre fails to demonstrate a built form that is compatible with the predominant building typology within the locality, comprising of residential dwellings and older style medium density housing to the north of the site.</p> <p>Yes – The site is not subject to these risks and hazards.</p> <p>Contamination – No The proposal has been lodged with a detailed site investigation providing insufficient information to adequately satisfy the requirements of Council’s controls and cannot be supported.</p> |

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| <ul style="list-style-type: none"> ○ number of shared boundaries with residential properties • the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas • where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use. Where the proposal relates to any heritage item, the development should retain its historic character and conserve significant fabric, setting or layout of the item. • there are suitable drop off and pick up areas, and off and on street parking • the characteristics of the fronting road or roads (for example its operating speed, road classification, traffic volume, heavy vehicle volumes, presence of parking lanes) is appropriate and safe for the proposed use • the site avoids direct access to roads with high traffic volumes, high operating speeds, or with high heavy vehicle volumes, especially where there are limited pedestrian crossing facilities • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises. | <p>Site Characteristics – Acceptable</p> <p>The proposed childcare centre is considered to have a built form that does not mimic that of residential dwelling. The scale of the proposal would be considered unsuitable for the site. With three (3) residential properties sharing a boundary with the subject site, the impacts created by the proposal are greater, with consideration to the insufficient acoustic assessment. Acoustic impact is considered detrimental to adjoining properties.</p> <p>Drop off areas – NOT acceptable</p> <p>The site provides 24 parking spaces within the car park when 29 spaces are required. Currently only 5 drop off spaces are provided. Insufficient car parking is provided on site.</p> <p>Restricted Premises</p> <p>The site is not located in proximity to any restricted premises or places of incompatible social behaviour.</p> <p>DOES NOT COMPLY</p> |
| <p>C3</p> <p><i>A child care facility should be located:</i></p> <ul style="list-style-type: none"> • <i>near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship</i> • <i>near or within employment areas, town centres, business centres, shops</i> • <i>with access to public transport including rail, buses, ferries</i> • <i>in areas with pedestrian connectivity to the local community, businesses, shops, services and the like.</i> | <p>The childcare centre is located within a predominantly residential area. The site is located within close proximity to The Hills School, an existing child care at 182 Windsor Road, Northmead, a child care under construction at 32 Mary Street, Northmead and two (2) proposed child care centres at 11 Margaret Street, Northmead and 14 Windemere Avenue, Northmead.</p> <p>The closest public transport to the subject site, a bus stop, is approximately 260m away on Windsor Road.</p> <p>The subject site is not located near compatible social uses or employment areas.</p> <p>COMPLIES</p> |
| <p>C4</p> <p><i>A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:</i></p> <ul style="list-style-type: none"> • <i>proximity to:</i> <ul style="list-style-type: none"> ○ <i>heavy or hazardous industry, waste transfer depots or landfill sites</i> ○ <i>Liquefied Petroleum Gas (LPG) tanks or service stations</i> ○ <i>water cooling and water warming systems</i> ○ <i>odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses</i> ○ <i>extractive industries, intensive agriculture, agricultural spraying activities</i> ○ <i>any other identified environmental hazard or risk relevant to the site and/ or existing buildings within the site.</i> | <p>Yes</p> <p>The site is not located near industrial, waste transfer depots, landfill sites, service stations, water cooling or warming systems, air pollutant generating uses or any other land use that use that would create environmental hazards.</p> |
| <p>3.2 – Local Character, Streetscape and the Public Domain Interface</p> | |
| <p>C5</p> <p><i>The proposed development should:</i></p> <ul style="list-style-type: none"> • <i>contribute to the local area by being designed in such a way to respond to the character of the locality and existing streetscape</i> • <i>build on the valued characteristics of the neighbourhood and draw from the physical surrounds, history and culture of place</i> • <i>reflect the predominant form of surrounding land uses, particularly in low density residential areas</i> • <i>recognise and respond to predominant streetscape qualities, such as building form, scale, materials and colours</i> • <i>include design and architectural treatments that respond to and integrate with the existing streetscape and local character</i> • <i>use landscaping to positively contribute to the streetscape and neighbouring and neighbourhood amenity</i> • <i>integrate car parking into the building and site landscaping design in residential areas</i> • <i>in R2 Low Density Residential zones, limit outdoor play space to the ground level to reduce impacts on amenity from acoustic</i> | <p>Design (No)</p> <p>The site is located within a predominately low-density residential area. Whilst the development has been designed as a two-storey built form, parts of the design are inconsistent with the residential presentation found within the street and locality. The proposed childcare centre has a built form that is not compatible with the desired future character of the area. The proposal should be amended to include similar articulation, bulk, form and materiality of the surrounding buildings within the locality.</p> |

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| <p>fences/barriers onto adjoining residence, except when good design solutions can be achieved.</p> | |
| <p>C6 Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community • integrating existing and proposed landscaping with fencing. | <p>Yes</p> <p>The proposed fence ranges from 1.8m with significant height along the side and rear boundaries. The rear boundary area is cut to the rear of the site ranges from 2.1m – 2.3m with significant height along the side and rear boundaries.</p> <p>Windows from the development face Mary Street and, provides passive surveillance to the street.</p> <p>The childcare centre has clear delineations between the public and private domain with a single entry to the centre.</p> |
| <p>C7 On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.</p> | <p>Yes</p> <p>The development provides two pedestrian entries and a vehicular entry the building site. The proposed driveway and pedestrian entry are differentiated incorporating landscaping between these areas.</p> |
| <p>C8 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:</p> <ul style="list-style-type: none"> • 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. | <p>N/A – The development does not adjoin a public park, open space or bushland.</p> |
| <p>C9 Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.</p> | <p>N/A – The development does not propose a front fence.</p> |
| <p>C10 High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary.</p> | <p>N/A – The subject site does not adjoin a classified road.</p> |
| <p>3.3 – Building Orientation, Envelope and Design</p> | |
| <p>C11 Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> ○ facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties ○ placing play equipment away from common boundaries with residential properties ○ locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties • minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions. | <p>No</p> <p>Solar Access – Acceptable The indoor and outdoor spaces will receive solar access throughout the day due to the orientation of the site and comply.</p> <p>Visual Privacy – Acceptable The proposal does not incorporate windows along the front portion of the eastern boundary and facilitates windows to rooms that will not maintain patronage for extended periods of time to the western boundary. The proposed windows allow for morning solar access into the indoor play areas whilst protecting the privacy of adjoining neighbours.</p> <p>Overshadowing – Not Acceptable Due to the orientation of the site, the majority of the overshadowing occurs onto the adjoining properties at 3A Mary Street, Northmead and 7 Mary Street, Northmead limiting solar access.</p> <p>Earthworks – Not acceptable The development proposes cut to the rear of the site to facilitate a level outdoor play area with retaining walls. Due to the proposed basement and cut to the rear of the site a maximum depth of 4.5m below natural ground level. The proposed</p> |

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| | <p>basement car parking provides side setbacks of 0.567m (western) and 1500mm to (eastern) and facilitate a height of 2.7m to the basement carpark. Excavation does not minimise or take appropriate measures to minimise impacts to adjoining lots and is not supported.</p> <p>DOES NOT COMPLY</p> |
| <p>C12 <i>The following matters may be considered to minimise the impacts of the proposal on local character:</i></p> <ul style="list-style-type: none"> • <i>building height should be consistent with other buildings in the locality</i> • <i>building height should respond to the scale and character of the street</i> • <i>setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility</i> • <i>setbacks should provide adequate access for building maintenance</i> • <i>setbacks to the street should be consistent with the existing character</i> • <i>Where a Local Environmental Plan or Development Control Plan do not specify a floor space ratio for the R2 Low Density Residential zone, a floor space ratio of 0.5:1 is to apply to a child care facility in the R2 zone.</i> | <p>No The proposed scale, building mass and height are not compliant. The scale and building mass will no align with future context and detract from the local character.</p> <p>The site is located in an R2 Low density residential. Maximum FSR = 0.5:1 or 661m² Proposed FSR = 0.47:1 or 625m²</p> <p>DOES NOT COMPLY</p> |
| <p>C13 <i>Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</i></p> | <p>N/A – The site does not front a classified road.</p> |
| <p>C14 <i>On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house</i></p> | <p>Yes The proposal does satisfy the prevailing front and required setbacks for the R2 zoned area.</p> |
| <p>C15 <i>The built form of the development should contribute to the character of the local area, including how it:</i></p> <ul style="list-style-type: none"> • <i>respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage</i> • <i>contributes to the identity of the place</i> • <i>retains and reinforces existing built form and vegetation where significant</i> • <i>considers heritage within the local neighbourhood including identified heritage items and conservation areas</i> • <i>responds to its natural environment including local landscape setting and climate</i> • <i>contributes to the identity of place</i> | <p>No Contextually, existing developments in the surrounding area are detached residential dwellings. The proposal appears excessive in comparison to the existing developments. The additional height and insufficient landscaping exacerbate the built form and dominant roof form to the streetscape.</p> |
| <p>C16 <i>Entry to the facility should be limited to one secure point which is:</i></p> <ul style="list-style-type: none"> • <i>located to allow ease of access, particularly for pedestrians</i> • <i>directly accessible from the street where possible</i> • <i>directly visible from the street frontage</i> • <i>easily monitored through natural or camera surveillance</i> • <i>not accessed through an outdoor play area.</i> • <i>in a mixed-use development, clearly defined and separate from entrances to other uses in the building.</i> | <p>Yes Entry to the subject site is accommodated by a pedestrian entry from Mary Street to a reception area and is considered acceptable.</p> |
| <p>C17 <i>Accessible design can be achieved by:</i></p> <ul style="list-style-type: none"> • <i>providing accessibility to and within the building in accordance with all relevant legislation</i> • <i>linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry</i> • <i>providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible</i> • <i>minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath.</i> | <p>No Council’s Universal Access and Design Officer has reviewed the proposal and upon review, does not support the development in its current form. Accordingly, the proposal cannot be supported.</p> |
| <p>3.4 - Landscaping</p> | |
| <p>C18</p> | <p>No</p> |

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| <p>Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space.</p> <p>Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. | <p>The proposal does not contribute to the landscape character of the area. The proposed landscaping plans do not provide soil depth and soil volume within the planters/over the basement/on podium structure and are inadequate.</p> <p>The Section plans through the landscaping and above basement (through planting) has not been provided.</p> <p>The design has not incorporated some of the continuous screening to the rear of the site (western boundary) and is not a minimum 1m wide.</p> |
| <p>C19</p> <p>Incorporate car parking into the landscape design of the site by:</p> <ul style="list-style-type: none"> • planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings • taking into account streetscape, local character and context when siting car parking areas within the front setback • using low level landscaping to soften and screen parking areas. | <p>The proposed carparking is in the basement.</p> |
| <p>3.5 – Visual and Acoustic Privacy</p> | |
| <p>C20</p> <p>Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.</p> | <p>N/A – the proposal is not for a mixed use development.</p> |
| <p>C21</p> <p>Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:</p> <ul style="list-style-type: none"> • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design. | <p>Yes</p> <p>The proposal's site and layout do not allow direct overlooking of indoor rooms and outdoor play spaces from public areas. The permanent screening provided results in issues of bulk to adjoining lots and can be alleviated by landscaping.</p> |
| <p>C22</p> <p>Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:</p> <ul style="list-style-type: none"> • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening. | <p>Yes</p> <p>The proposal does not overlook into adjoining properties. Window Placement and the incorporation of a 1.8m boundary fence with a 1.39m high balustrade to the first floor level (outdoor play area) is proposed to further minimise potential for overlooking.</p> |
| <p>C23</p> <p>A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should:</p> <ul style="list-style-type: none"> • 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. | <p>Yes</p> <p>The proposal utilises a 1.8m high solid barrier along boundaries, the site will utilise retaining walls internally (cut) to the site facilitating a 2.1m-2.3m high acoustic barrier and no issues were raised by council officers regarding the fence.</p> <p>The acoustic report was submitted with the proposal is considered insufficient due to lack of information.</p> |
| <p>C24</p> <p>A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> • identify an appropriate noise level for a child care facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met. | <p>No</p> <p>Council's Environmental Health Acoustic Officer has reviewed the proposal and does not support the proposal. For additional information, refer to the comments in section 5.1 'Acoustic' of this report.</p> |
| <p>3.6 – Noise and Air Pollution</p> | |
| <p>C25</p> <p>Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> • creating physical separation between buildings and the noise source • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources. | <p>Yes</p> <p>The proposal utilises a 1.8m high solid barrier along boundaries, which will extend to a maximum height of 2.3m in combination with a retaining wall, which is internally located in the rear outdoor play area on-site.</p> <p>The Acoustic Report has provided insufficient information regarding the proposal to undertake an assessment and provides incorrect assessment criteria.</p> |

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| <p>C26 An acoustic report should identify appropriate noise levels for sleeping areas and other non play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"> • on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 - 2000 • along a railway or mass transit corridor, as defined by State Environmental Planning Policy (Infrastructure) 2007 • on a major or busy road • other land that is impacted by substantial external noise. | <p>Yes The centre is not located nearby a noise source that requires attenuation of external noise sources.</p> |
| <p>C27 Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.</p> | <p>Yes The subject site is not located in close proximity to external sources of air pollution.</p> |
| <p>C28 A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines.</p> <p>The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution • using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway • incorporating ventilation design into the design of the facility | <p>N/A – An air quality assessment report is not required.</p> |
| <p>3.7 – Hours of Operation</p> | |
| <p>C29 Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.</p> | <p>Yes The proposed hours of operation complies. Monday to Friday: 7AM to 6PM.</p> |
| <p>C30 Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.</p> | <p>N/A – the locality is not of a commercial nature.</p> |
| <p>3.8 – Traffic, Parking and Pedestrian Access</p> | |
| <p>C31 Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.</p> | <p>No The proposal does not comply with the required number of parking spaces required for a 90 place childcare. The application was referred to Council's Traffic Engineer who did not support the proposal.</p> <p>As this development application was lodged before the Parramatta DCP 2023 was in effect, the proposal is required to meet the provisions of the Hills DCP 2012. Accordingly, the development is required to provide 1 space per staff and 1 space per 6 children. As there are 14 staff and 90 children, the development is required to provide 15 visitor spaces and 14 staff spaces.</p> <p>Although 14 staff spaces are proposed, the development only provides 10 visitor spaces resulting in a shortfall of 5 parking spaces. Accordingly, the applicant must demonstrate that the proposed parking will be sufficient for the site. This could be by way of a parking survey of a similar sized childcare centre.</p> |
| <p>C32 In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles</p> | <p>N/A – the locality is not of a commercial or industrial nature.</p> |
| <p>C33</p> | <p>Yes</p> |

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| <p>A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:</p> <ul style="list-style-type: none"> the amenity of the surrounding area will not be affected there will be no impacts on the safe operation of the surrounding road network. | <p>Council's Traffic and Transport team considers the estimated increase in traffic is acceptable and will not cause negative impact on Marry Street, and the surrounding road network.</p> <p>Refer to Section 5.1 of this assessment report for detailed discussion.</p> | |
| <p>C34 Alternate vehicular access should be provided where child care facilities are on sites fronting:</p> <ul style="list-style-type: none"> a classified road roads which carry freight traffic or transport dangerous goods or hazardous materials. <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> the prevailing traffic conditions pedestrian and vehicle safety including bicycle movements the likely impact of the development on traffic. | <p>N/A – No vehicular access to a classified road is proposed.</p> | |
| <p>C35 Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p> | <p>N/A – The subject site is not located within a cul-de-sac.</p> | |
| <p>C36 The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> 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 delivery, loading and vehicle turnaround areas located away from the main pedestrian access to the building and in clearly designated, separate facilities minimise the number of locations where pedestrians and vehicles cross each other in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas vehicles can enter and leave the site in a forward direction clear sightlines are maintained for drivers to child pedestrians, particularly at crossing locations. | <p>Yes The proposed car park will have a separate pedestrian access and allows for cars entering and exiting the site in a forward direction.</p> <p>For the safety of the pedestrians, a separation between the accesses is required.</p> | |
| <p>C37 Mixed use developments should include:</p> <ul style="list-style-type: none"> driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or manoeuvring areas used by vehicles accessing other parts of the site. parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility. | <p>N/A – The proposal is not for a mixed-use development.</p> | |
| <p>C38 Car parking design should:</p> <ul style="list-style-type: none"> include a child safe fence to separate car parking areas from the building entrance and play areas provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards include wheelchair and pram accessible parking. | <p>Yes The proposed car park will have a separate pedestrian access and allows for cars entering and exiting the site in a forward direction.</p> <p>The pedestrian access adjoins a Reception, Lobby and Director's Office and therefore does not include a child safe fence however this could be conditioned if the proposal were to be supported. The proposal provides wheelchair and pram accessible parking.</p> | |
| <p>Part 4 – Applying the National Regulations to Development Proposals (Checklist)</p> | | |
| <p>Controls</p> | <p>Proposed</p> | <p>Compliance</p> |
| <p>4.1 Indoor space requirements</p> | | |
| <p>Regulation 107</p> | <p>Required – 292.5m² Provided – 308.74m²</p> | <p>Insufficient information</p> |

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| Every child being educated and cared for within a facility must have a minimum of 3.25m ² of unencumbered indoor space. | Note – no details regarding the provision of any storage lockers for use by children, the unencumbered indoor play area is considered non-compliant. | |
| Verandas' as indoor space For a veranda to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. | The application does not rely on verandahs as indoor space. | N/A |
| Storage Storage areas including joinery units are not to be included in the calculation of indoor space. It is recommended that a child care facility provide: • a minimum of 0.3m ³ per child of external storage space • a minimum of 0.2m ³ per child of internal storage space. | Required: External storage space – 27m ³ Internal storage space – 18m ³ Proposed: External storage space – 27m ³ Internal storage space – 13.48m ³ Note - the proposal requires alterations to the unencumbered outdoor play area to facilitate landscaping provisions that will reduce the outdoor play area. Therefore, the outdoor play area does not comply. | NO |
| 4.2 Laundry and hygiene facilities | | |
| Regulation 106 There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen | A laundry room is provided on the Upper Ground Floor Plan. This room is contained so as not to pose a risk to children. However, the plans only identify a room as laundry with no indication of laundry machines or dryers. | Insufficient information |
| 4.3 Toilet and hygiene facilities | | |
| Regulation 109 A service must ensure that adequate, developmentally and age appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children. | Windows into bathrooms for supervision have been implemented. Insufficient information has been provided to indicate junior toilet pans, low level sinks and hand drying facilities. Rooms have been labelled as <i>Kids WC</i> with no further detail to determine if the facilities enable safe use and convenient access by the children. | Insufficient information |
| 4.4 Ventilation and natural light | | |
| Regulation 110 Education and Care Services National Regulations Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children. | Each room to be utilised by the children has access to an external opening to provide the required ventilation and natural light. | Yes |
| 4.5 Administrative space | | |
| Regulation 111 A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations. | The proposal is provided with a reception area, and entry but a lobby with a Director's Office that can be used as a waiting area, private meeting room and document area. | Yes |
| 4.6 Nappy change facilities | | |
| Regulation 112 Childcare facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children. | As the proposal will accommodate children that wear nappies, nappy change facilities are provided in children's bathrooms on the ground floor. | Yes |

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| | The first-floor bathroom that adjoins the 3-6 years old play area does not provide a nappy change area. | |
| 4.7 Premises designed to facilitate supervision | | |
| <p>Regulation 115</p> <p>A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.</p> | <p>Windows into bathrooms, toilet and nappy change rooms for supervision have been implemented.</p> <p>Insufficient information has been provided to indicate junior toilet pans, low level sinks and hand drying facilities. Rooms have been labelled as <i>Kids WC</i> with no further detail to determine if the facilities enable safe use and convenient access by the children.</p> <p>The Architectural Plans have not included further details in relation to the dimensions of windows and detailing size and location.</p> | Insufficient information |
| 4.8 Emergency and evacuation procedures | | |
| <p>Regulations 97 and 168</p> <p>Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation.</p> <p>Regulation 97 sets out the detail for what those procedures must cover including:</p> <ul style="list-style-type: none"> instructions for what must be done in the event of an emergency an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit a risk assessment to identify potential emergencies that are relevant to the service. | <p>An emergency evacuation plan has been provided. The emergency evacuation plan does not identify an emergency meeting point off site. However, if the application were to be supported, this could be conditioned prior to OC.</p> | Could be conditioned. Insufficient information. |
| 4.9 Outdoor space requirements | | |
| <p>Regulation 108</p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7m² of unencumbered outdoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> | <p>Required Outdoor – 630m²</p> <p>Proposed Outdoor – 638.27m²</p> | <p>Insufficient information</p> <p>The application does not seek approval for a departure to Regulation 108 (outdoor unencumbered space requirements) of the Childcare Planning Guidelines.</p> <p>However, Council requires the outdoor play area to incorporate further landscaping which would inevitably mean the proposal would not satisfy the requirements of Regulation 108. Council had not yet issued a request for further information; however, this would have been requested.</p> |
| 4.10 Natural environment | | |
| <p>Regulation 113</p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p> <p>Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space.</p> | <p>The proposal lacks sufficient natural features that would make outdoor spaces assets for learning. The proposal is considered unsuitable and should integrate trees and vegetation into the First Floor Plan (outdoor play area) and Upper Ground Floor (outdoor play are). This proposal currently results in no outdoor play spaces having natural landscaping.</p> | No |
| 4.11 Shade | | |

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| <p>Regulation 114 The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p> | <p>Required – 396.6sqm or 30% Provided shade area – 294sqm or 22.2%</p> <p>The shaded areas are not evenly distributed throughout the CCC.</p> | <p>No</p> |
| <p>4.12 Fencing</p> | | |
| <p>Regulation 104 Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</p> <p>Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code.</p> | <p>The proposal utilises a 1.8m high solid barrier along boundaries. The proposed acoustic fencing which ranges from a total of 2.1m – 2.3m however the design is stepped into the lot using retaining walls to the rear of the site.</p> | <p>Yes</p> |
| <p>4.13 Soil Assessment</p> | | |
| <p>Regulation 25 Education and Care Services National Regulations Subclause (d) of regulation 2 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required:</p> <ul style="list-style-type: none"> • A soil assessment for the site of the proposed education and care services premises; • If a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken; and • A statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children. | <p>The applicant has submitted a preliminary investigations report which lack sufficient information to determine if the site is contaminated.</p> <p>Council's records do not indicate the site would be contaminated.</p> | <p>No</p> |

7. PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2023

The site is zoned R2 Low Density under Parramatta Local Environmental Plan and childcare centres are permitted with consent.

The relevant matters considered under the PLEP 2023 for the proposed development are outlined below:

Clause 1.2 Aims of Plan

- 1) *This Plan aims to make local environmental planning provisions for land in the City of Parramatta in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*
- 2) *The particular aims of this Plan are as follows—*
 - (a) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
 - (a) *to protect and enhance the identity, diversity and viability of Parramatta City Centre and recognise its role in the Central River City of the Six Cities Region,*
 - (b) *to create an integrated, balanced and sustainable environment that contributes to environmental, economic, social and physical wellbeing,*
 - (c) *to identify, conserve and promote the City of Parramatta's natural and cultural heritage,*
 - (d) *to protect and enhance the natural environment, including urban tree canopy cover and areas of remnant bushland,*
 - (e) *to ensure development occurs in a way that protects, conserves and enhances natural resources, including waterways, riparian land, surface and groundwater quality and flows and dependent ecosystems,*

- (f) to encourage ecologically sustainable development,
- (g) to minimise risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by restricting development in sensitive areas,
- (h) to improve public access along waterways if the access does not adversely impact the natural value of the waterways,
- (i) to improve public access to, and within, the City of Parramatta and facilitate the use of public transport, walking and cycling,
- (j) to encourage a range of development to meet the needs of existing and future residents, workers and visitors,
- (k) to enhance the amenity and characteristics of established residential areas,
- (l) to retain the predominant role of industrial areas,
- (m) to ensure development does not detract from the economic viability of commercial centres,
- (n) to ensure development does not detract from the operation of local or regional road systems.

For reasons stated throughout this report, it is considered that the development does not satisfactorily meet the aims of the plan. In particular, the proposal does not encourage a range of development that accommodates the needs of the existing and future residents, workers, and visitors of Parramatta. Additionally, the proposal does not foster environmental, economic, social and physical wellbeing so that Parramatta develops as an integrated, balanced and sustainable city. As such, the proposal is recommended for refusal.

Clause 2.3 Zone objectives and Land Use Table

The aims and objectives for the R2 Zone in Zone Objectives are as follows:

- 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.
- To maintain the low density residential character of the area.
- To ensure non-residential land uses are carried out in a way that minimises impacts on the amenity of a low density residential environment.
- To provide a range of community facilities that serve the needs of people who live in, work in and visit the area.
- To protect and enhance tree canopy, existing vegetation and other natural features.

Comment:

The proposed land use has not taken into consideration the context and setting of the subject site in order to minimise the impact on the amenity of a low-density residential environment.

The development proposal in its current form, demonstrates undesirable planning outcomes as a result of the non-compliance to the relevant planning instruments, regulations and development control plan which are discussed within the report.

Therefore, Council does not consider the proposed development achieves the objectives of the R2 zone and refusal of the application is recommended.

The controls under Parramatta Local Environmental Plan 2023 are provided below:

| Standards and Provisions | Compliance |
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| Part 1 Preliminary | |
| Cl. 1.2 Aims of Plan | <p>Non-compliant</p> <p>Clause 1.2(2)(b)(j) and (k) states: <i>'to create an integrated, balanced and sustainable environment that contributes to environmental, economic, social and physical wellbeing'</i> <i>'to encourage a range of development to meet the needs of existing and future residents, workers and visitors'</i> <i>'to enhance the amenity and characteristics of established residential areas'</i></p> <p>The development in its current form is inconsistent with the abovementioned aim of PLEP 2023.</p> |
| Part 4 Principal development standards | |

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| Cl. 4.3 Height of buildings Allowable: 9m | Non-compliant Proposed: 9.5m maximum |
| Cl. 4.4 Floor space ratio | The subject site is not identified on the LEP floor space ratio map. However, Clause 3.25 of the SEPP (Transport and Infrastructure) 2021 imposed a FSR of 0.5:1 as the site is located in an R2 Low Density Residential zone. Maximum FSR = 0.5:1 or 661m ² Proposed FSR = 0.47:1 or 625m ² |
| Cl. 4.6 Exceptions to Development Standards | A variation to a development standard is not proposed. |
| Part 5 Miscellaneous provisions | |
| Cl. 5.1 Relevant acquisition authority | Not identified for acquisition. |
| Cl. 5.1A Development on land intended to be acquired for public purposes | Not identified for acquisition. |
| Cl. 5.2 Classification and reclassification of public land | Does Not Apply |
| Cl. 5.3 Development near zone boundaries | Does Not Apply |
| Cl. 5.4 Controls relating to miscellaneous permissible uses | Does Not Apply |
| Cl. 5.5 Controls relating to secondary dwellings on land in a rural zone | Does Not Apply |
| Cl. 5.6 Architectural roof features | An architectural roof feature is not proposed. |
| Cl. 5.7 Development below mean high water mark | The proposal is not for the development of land that is covered by tidal waters. |
| Cl. 5.8 Conversion of fire alarms | Does Not Apply |
| Cl. 5.9 Dwelling house or secondary dwelling affected by natural disaster | Does Not Apply |
| Cl. 5.10 Heritage conservation | The site is not considered to be a heritage item nor is it located within a heritage conservation area. Notwithstanding, the subject site is located approximately 50m to the east of 5 Mary Street, Northmead and 100m to the west of 20 Mary Street, Northmead. The development is not within proximity to these sites and will not detract from the existing buildings or streetscape. |
| Cl. 5.11 Bush fire hazard reduction | The site is not identified as Bush fire Prone. |
| Cl. 5.12 Infrastructure development and use of existing buildings of the Crown | Does Not Apply |
| Cl. 5.13 Eco-tourist facilities | Does Not Apply |
| Cl. 5.14 Siding Spring Observatory—maintaining dark sky | Does Not Apply |
| Cl. 5.15 Defence communications facility | Does Not Apply |
| Cl. 5.16 Subdivision of, or dwellings on, land in certain rural, residential or conservation zones | Does Not Apply |
| Cl. 5.17 Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations | Does Not Apply |
| Cl. 5.18 Intensive livestock agriculture | Does Not Apply |
| Cl. 5.19 Pond-based, tank-based and oyster aquaculture | Does Not Apply |
| Cl. 5.20 Standards that cannot be used to refuse consent—playing and performing music | Does Not Apply |
| Cl. 5.21 Flood Planning | The site is not identified as flood Prone. |
| Cl. 5.22 Special flood considerations | Does Not Apply |
| Cl. 5.23 Public bushland | Does Not Apply |
| Cl. 5.24 Farm stay accommodation | Does Not Apply |

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| Cl. 5.25 Farm gate premises | Does Not Apply |
| Part 6 Additional local provisions | |
| Cl. 6. 2 Earthworks | The development proposes cut to the rear of the site to facilitate a level outdoor play area with retaining walls. Due to the proposed basement and cut to the rear of the site a maximum depth of 4.5m below natural ground level. The proposed basement car parking provides side setbacks of 0.567m (western) and 1500mm to (eastern) and facilitate a height of 2.7m to the basement carpark. Excavation does not minimise or take appropriate measures to minimise impacts to adjoining lots and is not supported. |

9. The Parramatta (former The Hills) Development Control Plan 2012

| PART B SECTION 6 BUSINESS | | |
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| CONTROL | PROPOSED | COMPLIANCE |
| 2.34 Centre Based Child Care Facilities – Additional Controls | | |
| (a) Other relevant Sections of the DCP (i.e. Part B Section 2 – Residential) should be consulted with regards to setbacks, depending on the nature and location of the development. | The proposal does not satisfactorily address all matter pertaining to Part B – Section 2 – Residential. These matters are assessed further in the report. | No |
| (d) Consideration is to be given to the Building Code of Australia with regards to the fire resistance of walls of the child care centre (and the openings on the walls) facing side and rear boundaries. | Conditions would have been imposed to ensure that the development is compliant with NCC requirements. | Noted. |
| (e) Setbacks for childcare centre car parking areas: Residential zones Minimum 5 metre setback from the front property boundary. | Parking is located within the basement. | N/A |
| (f) The front setback areas are to include landscaping with a minimum width of two metres to screen vehicles from view from the street and surrounding properties. | Parking is proposed in the basement and therefore would not require screening from view of the street and surrounding properties. | N/A |
| (g) Side boundary setbacks to car parking areas are to be in accordance with Part C Section 1- Parking and the relevant Sections of the Development Control Plan as outlined in (a) above. | Parking is proposed in the basement. | N/A |
| (h) The location of external child play areas in the front setback area is not permitted. | The proposal does not seek a play space forward of the building. | Yes |
| (j) Landscaping along the primary and secondary frontages is to include a combination of ground covers, large trees, shrubs, and grass planting and is to provide high-quality landscaping for the development. Landscaping shall be established prior to the occupation of the building. | The proposal does adequately address landscaping requirements in the primary setback. | Yes |
| (k) Trees and shrubs shall be provided alongside and rear boundaries to screen outdoor play areas | The proposal does not adequately address all landscaping requirements. See landscape comments. | No |
| (l) Food preparation areas in a child care centre must comply with: <ul style="list-style-type: none"> • Food Act 2003; • Children’s Services Regulation 2004; • Food Safety Standards; and • Australian Standard 4674-2004 – Design, Construction and Fit-out of Food Premises. • Premises are required to register with: NSW Food Authority and The Hills Shire Council. | Council’s Environmental Health Officer (food premises) has no objection to the proposal. | Yes |
| PART C SECTION 1 PARKING | | |
| CONTROL | PROPOSED | COMPLIANCE |
| 2.1.1. General | | |
| (a) Number of required parking spaces and associated conditions must be provided in accordance with Table 1. Any part spaces must be rounded up to the nearest whole number. Child Care Centres: 1 space per employee plus 1 space per 6 children enrolled for visitors and/or parent parking | A minimum 29 car parking spaces is required, however, only 24 carparking spaces are provided. | No |

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| (b) All car parking spaces must be provided onsite. | The proposal provides a shortfall of 5 car spaces on-site, however all proposed 24 car parking spaces will be located in the basement. | Yes |
| (e) Car parking for childcare centres must be situated in a convenient location, allowing for safe movement of children to and from the centre. | Council's Traffic Engineers support the location of the proposed car parking and safe movement of children from the centre. | Yes |
| 2.2 Parking for Disables Parsons and Parents with Prams | | |
| (a) A proportion of the total parking spaces required shall be provided for disabled persons in accordance with Table 2. Retail/Commercial: 2% of total car parking | 2% of 29 = 1 (rounded up to nearest whole number) 1 space provided within the basement. | Yes |
| (b) A continuous, accessible path of travel in accordance with AS 1428.1 shall be provided between each parking space and an accessible entrance to the building or to a wheelchair accessible lift. | Noted. | Noted |
| 2.6. Set Down Areas | | |
| (c) The following forms of development should provide set down areas for cars: <ul style="list-style-type: none"> • Educational establishments. • Shopping centres. • Community centres. • Libraries. • Entertainment facilities. • Child Care Centres. • Recreational facilities. • Transport terminals and interchanges. | The proposal is not in close proximity to a busy centre and thus does not require a set down area. | Yes |
| 2.7. Car Park Design and Layout | | |
| 2.7.1 General | | |
| (a) The layout of the car park should facilitate ease of access and egress of vehicles through the parking area at all times without congestion. | The proposal would facilitate ease of access and egress of vehicles through the parking area. | Yes |
| (b) For all development other than single dwelling houses and dual occupancies, vehicles must enter and exit the site in a forward direction. | The proposed double driveway would ensure vehicles exit the site in a forward direction. | Yes |
| (e) Provisions within this section are in accordance with AS 2590.1 –1993 Parking Facilities – Part 1 Off Street Car Parking. For further design requirements for car park design and layout please refer to the Australian Standard. | Noted. | Noted |
| 2.7.2 Parking Dimensions | | |
| (a) The minimum car parking dimensions required for right angle parking shall be provided in accordance with Table 4. Tenant , employee and commuter parking, universities (generally parking all day): 2.4m x 5.4m Short-term town centre parking, shopping centres, supermarkets, hospitals & medical centres (generally short-term parking and where children & goods can be expected to be loaded into the vehicles): 2.6m x 5.4m | The proposal achieves the minimum car parking dimensions required for right angle parking. | Yes |
| (d) All parking spaces shall be designed to ensure they can be accessed by a maximum 3-point combined manoeuvre, i.e. 1 movement to enter the space and 2 movements to leave, or 2 movements to enter and 1 to leave. | Council's Traffic Engineers support with the required number of car parking spaces. | Yes |
| (f) At blind aisles the end spaces should be made one metre wider than the adjacent spaces. (See Figure 3). Otherwise, provision should be made for cars to turn round at the end of aisles and allow vehicles to exit in a forward direction | The proposed basement layout ensure vehicles would leave in a forward direction. | Yes |
| (g) Spaces adjacent to obstructions must be 300mm wider on the side of the obstruction. | No spaces are proposed adjacent to obstructions. | Yes |
| (i) Basement parking areas should be setback the same distance as the building above. | The proposed basement is setback the same distance as the building above. | Yes |
| 2.8 Landscaping | | |

| (a) Outdoor parking areas are to be provided with two-metre-wide landscaping strips: <ul style="list-style-type: none"> Between rows served by different aisles. Between spaces at a rate of one in every ten car parking spaces. | The proposal does not seek outdoor parking areas. | N/A |
|---|--|------------|
| (b) Outdoor parking areas are to be screened by a minimum of two metre wide landscaping strips. Such landscaping is to be of a mature and dense nature and be designed according to Part C Section 3 – Landscaping of this DCP. | The proposal does not seek outdoor parking areas. | N/A |
| (c) Driveways are to be screened by a minimum of two-metre-wide landscaping strip on either side. | The proposed driveway incorporates landscaping to the east 5m width and west 0.8m width on the driveway. Although the design does not incorporate a 2m wide landscaping buffer to the western side of the driveway, the proposal is sufficient facilitating pedestrian access. | Yes |
| PART B SECTION 2 RESIDENTIAL | | |
| STANDARD | PROPOSED | COMPLIANCE |
| 2.3 Restricted Development Areas | No RDAs are located on site. | N/A |
| 2.4 Site Analysis Development should be designed to respect the streetscape and site constraints such as topography, drainage, soil, landscapes, flora, fauna, drainage and bushfire hazard. Development on land adjoining bushland reserves should prevent any impact on the reserves. | The proposed development would not be of a scale consistent to the streetscape. Upon review of the site analysis, it is noted that the proposed development does not respond to the natural features of the site and surround natural environment due to a disregard to the topography, as seen with the basement design and the impact on streetscape and adjoining properties to Mary Street. | No |
| 2.5 Streetscape & Character The proposed development must: Contribute to an attractive residential environment with clear character and identity. Address the street and boundaries to the site. Retain, complement and sensitively harmonise with any heritage item or conservation area in the vicinity that are identified in Council's Local Environmental Plan; and Provide building setbacks that progressively increase as wall heights increase to reduce bulk and overshadowing. | The proposal is unlikely to contribute to an attractive residential environment for the following reasons: The proposed development is not considered to be compatible when viewed from the streetscape and adjoining properties. The proposal appears excessive in comparison to the existing developments. Council's calculation indicates the proposal exceeds the height limit and setbacks do not progressively increase and bulk is considered to be excessive. | No |
| 2.9 Erosion and Sediment Control An Erosion and Sediment Control Plan (ESCP) is required to be submitted in accordance with "Managing Urban Stormwater – Soils and Construction", produced by the NSW Department of Housing. | An ESCP was prepared and submitted for assessment. | Yes |
| 2.10 Heritage | The site is not considered to be a heritage item nor is it located within a heritage conservation area. Notwithstanding, the subject site is located approximately 50m to the east of 5 Mary Street, Northmead and 100m to the west of 20 Mary Street, Northmead. The development is not within proximity to these sites and will not detract from the existing buildings or streetscape. | Yes |
| 2.12 Stormwater Management Concentrated stormwater flow must be connected to Council's drainage system. | Council's Engineering Officer cannot support the application in its current form. Refer to engineering comments above in Section 5.1 of this report. | No |

| <p>Check 88B Instrument whether OSD is required, and whether the subject lot has legal rights to connect to drainage easements.</p> <p>On Rural land, discharge points from tank overflows etc should not cause erosion or impact on adjoining properties.</p> | | | | | | | | | | | |
|---|--|-----------------------------------|-----------------------------------|----------------|---------------------------------|-------|---|------------|--------|--|------------|
| <p>2.14.1 Dwellings – Building Setbacks Site specific controls apply to land adjoining Heritage Park facing Old Castle Hill Road. Hunterford Estate in Oatlands and Gilroy College Target Site (Refer to Appendix C – Precinct Plan Maps and Site-Specific Controls). Classified Road: 10m Other Road: 10m or as depicted on DCP Maps 1-4 Where the predominant setback pattern of the street exceeds the above requirements, the setbacks of three (3) adjoining dwellings either side of the proposed dwelling will apply.</p> | <p>Control = 10m Proposed = 10m</p> | <p>Yes</p> | | | | | | | | | |
| <p>Corner Setbacks Minimum 6 metres for the primary frontage and 4 metres to a secondary road frontage.</p> | <p>The subject site is not a corner allotment.</p> | <p>N/A</p> | | | | | | | | | |
| <p>Side Setback</p> <table border="1" data-bbox="119 846 703 1077"> <thead> <tr> <th>Height of building</th> <th>Distance of wall to boundary line</th> <th>Distance to eave to boundary line</th> </tr> </thead> <tbody> <tr> <td>1 or 2 storeys</td> <td>900mm</td> <td>675mm</td> </tr> <tr> <td>3 storeys</td> <td>1500mm</td> <td>1175mm</td> </tr> </tbody> </table> | Height of building | Distance of wall to boundary line | Distance to eave to boundary line | 1 or 2 storeys | 900mm | 675mm | 3 storeys | 1500mm | 1175mm | <p>Eastern Side setback = 1m Western side setback = 1.5m</p> | <p>Yes</p> |
| Height of building | Distance of wall to boundary line | Distance to eave to boundary line | | | | | | | | | |
| 1 or 2 storeys | 900mm | 675mm | | | | | | | | | |
| 3 storeys | 1500mm | 1175mm | | | | | | | | | |
| <p>Rear Setback</p> <table border="1" data-bbox="119 1223 703 1424"> <thead> <tr> <th>Height of building</th> <th>Setback</th> </tr> </thead> <tbody> <tr> <td>1 storey element of dwelling</td> <td>4m</td> </tr> <tr> <td>2-3 storey elements of dwelling</td> <td>6m</td> </tr> </tbody> </table> | Height of building | Setback | 1 storey element of dwelling | 4m | 2-3 storey elements of dwelling | 6m | <p>Upper Ground Floor Rear setback = 14m First Floor Rear setback = 25m</p> <p>The proposal is of a bulk and scale that is compatible with the character of the neighbourhood.</p> | <p>Yes</p> | | | |
| Height of building | Setback | | | | | | | | | | |
| 1 storey element of dwelling | 4m | | | | | | | | | | |
| 2-3 storey elements of dwelling | 6m | | | | | | | | | | |
| <p>2.14.2 Site Coverage The maximum site coverage permitted is 60% (567m²) with the exception of land zoned E4 and land identified in the Map Sheets by pink shading, where the maximum site coverage is 30%.</p> <p>Dwelling building footprint is to be no more than 45% (255.15m²) of the site coverage, with the exception of land shaded pink on Map Sheets 1-42.</p> | <p>Site coverage = 793.2m² or 60% Proposed = 795.216m² or 60.15%</p> <p>Dwelling footprint = 594.9m² or 45% of the site coverage Proposed = 458.34m² or 34.6%</p> <p>The proposal is of a bulk and scale that is not compatible with the character of the neighbourhood.</p> | <p>No</p> | | | | | | | | | |
| <p>2.14.3 Building Height LEP 2012 4.3 Height of buildings (1) The objectives of this clause are as follows: (a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape. (b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.</p> | <p>Required = 9m Proposed = 9.5m</p> | <p>No</p> | | | | | | | | | |

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| <p>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p> | | |
| <p>2.14.5 Landscaping All setback and car parking areas are to be landscaped and maintained in accordance with the provisions of Part C Section 3 – Landscaping.</p> <p>A Minimum 40% (378m²) landscaped area is required with the exception of land zoned E4, where the minimum is 70%.</p> <p>Note: Landscaped area does not include any paved or built upon area such as driveways, tennis courts, patios/decks, outbuildings or pools.</p> | <p>Landscaping = 314.5m² or 33.41%</p> <p>Without the minimum required 40% landscaping, the proposal would not be compatible with the character of the neighbourhood.</p> | <p>No</p> |
| <p>2.14.7 Cut and Fill Maximum 600mm of filling without a concealed dropped edge beam.</p> <p>Maximum of 1.5 metres with a concealed dropped edge beam.</p> <p>Excavation in excess of 1 metre may be permitted, subject to there being no adverse effect on the adjoining owners and the submission of structural engineer's details of retaining walls with the Development Application, or alternatively, a separate Development Application is to be submitted.</p> | <p>The development proposes 1.5m increasing to a maximum of 5m of cut in the rear north-western corner of the site. The rear north-eastern corner of the site proposes cut of 4m. The design incorporates a western boundary retaining wall of approximately 4.9m and eastern boundary retaining wall of 2.46m. The proposed cut is excessive and does not minimise or take appropriate measures to minimise to adjoining lots and is not supported.</p> | <p>No</p> |
| <p>2.14.8 Building Materials Materials to be compatible with surrounding developments. A schedule of external materials and colours is required.</p> | <p>A schedule of external materials and colours has not been submitted with the proposal.</p> | <p>No</p> |
| <p>2.14.9 Visual and Acoustic Privacy Buildings are to be designed to ensure maximum protection of privacy. Where appropriate consideration should be given to:</p> <p>using windows that are narrow, translucent or obscured or, in the case of bathrooms, have windowsills a minimum of 1.5 metres above the upper storey floor level; and</p> <p>ensuring that windows that face directly to the windows, balconies or yards of adjoining dwellings are appropriately screened.</p> <p>First floor balconies will not be permitted where they overlook living areas of adjacent dwellings.</p> <p>Windows should be placed to minimise direct viewing between dwellings.</p> <p>Dwellings are to be designed to limit the potential for noise transmission to the living and sleeping areas of adjacent existing and future developments.</p> <p>Careful consideration should be given to the location of air-conditioning systems, swimming pools and the like to minimise the impact on the amenity of adjoining properties.</p> | <p>Visual Privacy The proposal does not overlook into adjoining properties. Window Placement and 1.4m high balustrade is proposed to further minimise potential for overlooking.</p> <p>Acoustic privacy The proposal utilises a 1.8m high solid barrier along boundaries and proposes to cut the rear outdoor play area to a lower level. No issues were raised by council officers regarding the fence.</p> | <p>Yes</p> |

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| <p>Private open space areas and driveways are to be designed to minimise noise impacts.</p> <p>Dwellings that adjoin classified roads are to be designed to ensure acceptable internal noise levels, based on Environmental Protection Authority – Environmental Criteria for Road Traffic Noise and Australian Standard 3671 – Road Traffic Noise Intrusion – Building Siting and Construction.</p> | | |
| <p>2.14.10 Solar Access</p> <p>At least 50% of the required private open space within the subject property and that on adjoining properties, is to receive direct sunlight for a minimum of 4 hours between 9am and 3pm on 21 June.</p> | <p>The indoor and outdoor spaces will receive solar access throughout the day due to the orientation of the site and comply. However, the bulk and scale to the proposal is considered to be detrimental to the overshadowing of adjoining properties and is considered unnecessary.</p> | <p>No</p> |
| <p>2.14.11 Ventilation</p> <p>Maximise ventilation and consider fans, louvered windows and seals.</p> | <p>The proposed design addresses the ventilation requirements for the childcare centre.</p> | <p>Yes</p> |
| <p>2.14.12 Lighting</p> <p>Lighting to comply with BCA and maximise natural lighting</p> | <p>Noted.</p> | <p>Noted</p> |
| <p>2.14.14 Car Parking and Vehicular Access</p> <p>Car parking is to be provided in accordance with Part C Section 1 – Parking.</p> <p>Driveways and parking areas should enable the opportunity for landscape screening and be convenient and safe.</p> <p>At least one car parking space must be provided behind the front building line.</p> <p>Single garages: Minimum 5.5m x 3.0m.</p> <p>Double garages: Minimum 5.5m x 5.0m.</p> | <p>The proposal is not support regarding car parking and vehicular access for the following reasons:</p> <ul style="list-style-type: none"> - As per The Hills DCP 2012, a minimum 29 car parking spaces is required, however, only 24 carparking spaces are provided. - A splay extending 2m from the driveway edge along the front boundary and 2.5m from the boundary along the driveway was not provided. - A marked 1m wide separate pedestrian pathway from car parking spaces to the lift and stairs to provide a safe pedestrian environment has been provided. | <p>No</p> |
| <p>2.14.15 Access and Surveillance</p> <p>(a) Site planning and dwelling design is to allow general observation of the street, the site and the approaches to the dwelling entry from the inside of each dwelling.</p> <p>(b) Access to dwellings is to be direct and without unnecessary barriers. For example, use ramps instead of stairs/steps, consider the height and length of handrails and eliminate changes in level between ground surfaces.</p> <p>(c) Stairs and ramps are to have reasonable gradients and non slip even surfaces. Refer to Australian Standard 1428.1 - 2001 Design for Access and Mobility and supplementary AS 1428.2 - 1992.</p> | <p>The proposed front setback is considered to have been suitably treated to allow for passive surveillance to main entryways into the site.</p> | <p>Yes</p> |
| <p>2.15 Fencing</p> <p>Site specific fencing controls apply to land adjoining Heritage Park and at the corner of Old Windsor Road and Seven Hills Road, Baulkham Hills (Refer to Appendix C– Precinct Plan Maps and Site Specific Controls).</p> <p>Any boundary fencing shall be subject to the requirements of the Dividing Fences Act 1991.</p> <p>Front fencing is to be consistent with the height, scale, and style of existing fencing in the street. Where there</p> | <p>The proposed side fencing on site is acceptable. The proposal does not include front fencing.</p> | <p>Yes</p> |

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| <p>are no existing front fences, front fences are not supported.</p> <p>Where front fencing over 1.2 metres in height is proposed, this shall be of open style.</p> <p>Any fencing in the front setback over 1.2m in height shall be setback from the front boundary a minimum of 500mm to allow opportunities for landscaping to soften the impact of the fence.</p> <p>Consideration will be given to fencing on secondary road frontage setbacks, subject to there being no adverse effect on the immediate area and on traffic visibility and be of a design to incorporate features such as landscaping bays or a variation/combination of materials.</p> <p>Side and rear boundary fencing should be a maximum of 1.8 metres in height.</p> | | |
| <p>2.16 Waste Management</p> <p>Adequate storage for waste materials must be provided on site.</p> <p>All waste storage areas must be screened from view from any adjoining property or public place.</p> <p>Bin storage space is to be:</p> <p>incorporated into the landscape design of each dwelling; and</p> <p>adequate for one 240 litre garbage bin and one 240 litre recycling bin per dwelling.</p> <p>Location of the bin storage space must allow the bins to be wheeled to the street kerb over flat or ramped surfaces with a maximum grade of 7% and not over steps, landscape edging or gutters or through the dwelling.</p> | <p>The applicant has submitted a brief waste management plan which indicates that a total of 8 x 240L is required (3 x 240L Recycling, 6 x 240L General Waste and 2 x 240L Sanitary Bins) however the proposed plans only provide provision for 6 x 240L bins indicated.</p> <p>A waste storage room is to be provided on the premises and is to constructed with all relevant provisions of TH DCP 2012.</p> | <p>Insufficient Information</p> |
| <p>2.17 Services</p> <p>Ensure sufficient water supply and disposal of sewage measures are available.</p> <p>All water, gas, power and communication services are to be located underground.</p> | <p>Yes</p> | <p>Yes</p> |
| PART C SECTION 3 LANDSCAPING | | |
| CONTROL | PROPOSED | COMPLIANCE |
| 3.1. General Planning and Design Controls | | |
| <p>(a) The landscaping of any site should have regard to the natural environment of the location and be consistent with landscaping character of the area.</p> <p>(b) Landscaped areas shall have a minimum width of two metres</p> <p>(h) For all planting on slab and planter boxes allow the following minimum soil depths:</p> <ul style="list-style-type: none"> • 1.2m for large trees, 1m for medium trees and 800mm for small trees. • 500-600mm for shrubs • 200-450mm for groundcovers; and • 200mm for turf. | <p>Council's Landscape Officer has reviewed the application and notes that the submitted design does not sufficiently address all landscape matters. See landscape comments.</p> | <p>No</p> |

10. Development Contributions

A condition of consent relating to the payment of the contribution would have been imposed if the application was recommended for approval. A standard condition of consent has been imposed requiring the contribution to be paid prior to the issue of a Construction Certificate.

12. Bonds

A standard condition of consent has been imposed requiring the Security Bond to be paid prior to the issue of a Construction Certificate. A condition of consent relating to the payment of the Security Bond would have been imposed, if the application was recommended for approval.

13. 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 conditions of consent.

14. The likely impacts of the development

The assessment demonstrates that the proposal will have a significant adverse impact upon the adjoining properties with applicable planning instruments and controls.

All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report, including natural impacts such as impacts on mature trees, excessive fill, and built environment impacts such as build form. In the context of the site and the assessments provided by Council's experts, the development is not considered satisfactory in terms of environmental impacts.

15. Suitability of the Site

The subject site cannot accommodate the development of a 90-place childcare centre of this scale as the site requires services and facilities to enable efficient and safe operation of the use without causing further impacts on the amenity of surrounding properties.

With the proposal of 90 children, the site is not able to provide the required area for unencumbered outdoor play area and the required number of carparking spaces.

Suitable investigations and documentation have not been provided to demonstrate that the site can be made suitable for the proposed development, however, the development is consistent with the land use planning framework for the locality.

No natural hazards or site constraints exist that are likely to have an unacceptably adverse impact on the proposed development.

Subject to the conditions provided within the recommendation to this report, the site is considered to not be suitable for the proposed development.

16. Public Consultation

In accordance with the City of Parramatta Notification Requirements, the Development Application was notified.

The notification period started on 6 September 2023 and ended on 27 September 2023. Twenty-five (25) submissions were received objecting to the proposal. One petition was received including forty-seven (47) signatures was provided.

Key concerns raised in the submissions are addressed below.

Issue

Response

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| Congestion near established school and childcare centre | Council's Traffic and Transport team considers the estimated increase in traffic is acceptable and will not cause negative impacts on Mary Street and the surrounding road network. |
| Construction workers will increase the traffic brought to the local area | Should the application have been recommended for approval, a construction traffic management plan would have been required. |
| The development does not provide sufficient parking which will cause more demand for on-street parking. | The shortfall of parking has been raised as a reason for refusal. |
| Increased risks of accident due to heavy traffic flow. | Council's Traffic and Transport team considers the estimated increase in traffic is acceptable and will not cause negative impact on Mary Street and the surrounding road network. |
| Frequent collisions in the area and lack of child safety | The applicant has conducted SIDRA modelling of nearby critical intersections to demonstrate that generally, the intersections performance will not be adversely impacted by the proposal. It is noted that the intersection of Mary Street onto Windsor Road does currently perform at an unsatisfactory level of service, however, it is considered that this is an existing condition, and the proposed childcare centre will not significantly add to this based on the modelled results. |
| Inadequate parking spaces have been provided for the childcare | Accordingly, the development is required to provide 1 space per staff and 1 space per 6 children. As there are 14 staff and 90 children, the development is required to provide 15 visitor spaces and 14 staff spaces. Although 14 staff spaces are proposed, the development only provides 10 visitor spaces resulting in a shortfall of 5 parking spaces. The shortfall of parking has been raised as a reason for refusal. |
| Saturation of Childcare Centres | The site is within a 1km radius of other childcare centres and a primary school. The <i>State Environmental Planning Policy (Transport and Infrastructure) 2021- Chapter 3 Educational Establishment And Childcare Facilities</i> allows the development to be located at any distance from an existing or proposed early education and care facility. |
| Built Form / Scale | The built form has been raised as a reason for refusal and it is considered to be out of character of the locality. |
| Character | The building presents a large bulky presence to the streetscape which is not in keeping with the character of Mary Street. This has been raised as a reason for refusal. |
| Heritage | The site is located approximately 50m to the local heritage item at 4 Mary Street, Northmead and approximately 100m from the local heritage item at 20 Mary Street, Northmead. The proposal is not adjoining these sites and located at a significant distance. Therefore, it will not affect sightlines to these sites. |
| Materials | The application has not included a schedule of building materials and insufficient information has been provided. |
| Overshadowing | The proposed overshadowing resulting from the childcare is due to the excessive height and has been raised as part of this refusal. |
| Excavation | The excavation required for the development forms part of the reasons for refusal. A dilapidation report would have been sought if the proposal was to progress. |
| Construction Noise | If the proposal were to be approved hours of construction would have been conditioned. |

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| Construction vehicles will cause traffic delay | If the proposal were to be approved hours of construction would have been conditioned. The existing road network has capacity to facilitate vehicles for construction. |
| Loss of views and leafy outlook throughout locality | Council's assessment has identified bulk and scale as a reason for refusal. |
| Privacy and amenity concerns | The proposed development does not create opportunities for overlooking and privacy impacts. The proposal maintains a first floor play area behind the building however it is positioned away from the boundaries and orientated north. The windows to the western boundary maintain high sills reducing visual impacts. The child care will be screened by fencing and an acoustic wall to the eastern and western boundary providing additional privacy to both the subject site and neighbouring property. |
| Accessibility | Council's Universal Access Officer has reviewed the proposal and supports the proposal subject to conditions and minor amendments to the plans. |
| Impact on Infrastructure | The site maintains connections to existing infrastructure and can be connected to all infrastructure. At the time of writing this report, Sydney Water has not provided comment for consideration. |
| Noise Disturbance | Council's Environmental Health – Acoustic Officer has reviewed the proposal and does not support the proposal. For additional information, refer to the comments in section 5.1 'Acoustic' of this report. |

CONCILIATION CONFERENCE

On 11 December 2017, Council resolved that:

"If more than 7 unique submissions are received over the whole LGA in the form of an objection relating to a development application during a formal notification period, Council will host a conciliation conference at Council offices."

Conciliation Conference – Required and Not Held

The application received 30 unique submissions during the formal notification period and as a result, a Conciliation Conference was required to be held.

- In this instance, the applicant has lodged an appeal with the Land and Environment Court under section 8.7 of the Environmental Planning and Assessment Act 1979 and as a result, a Conciliation Conference was not held. [TRIM: F2023/02636]*

17. Public interest

The proposal is not in the public interest as the built form would have a detrimental impact on the local character and the substantial impacts on Mary Street and the surrounding locality.

18. 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.

For these reasons, it is considered that the proposal is not satisfactory having regard to the matters of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is recommended for refusal.

21. Recommendation

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

- A. **That the Parramatta Local Planning Panel**, exercising the functions of Council under section 4.16 of the Environmental Planning and Assessment Act 1979, REFUSE development consent for DA/517/2023 for the Demolition of all structures, tree removal and construction of a 90 place two-storey childcare centre over basement parking on land at 5 Mary Street, Northmead for the following reasons:
1. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the requirements to the following clauses of the *State Environmental Planning Policy (Resilience and Hazards) 2021- Chapter 4*.
 2. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the requirements to the following clauses of the *State Environmental Planning Policy (Transport and Infrastructure) 2021 Chapter 3 - Educational Establishments and Child Care Facilities*:
 - a. Childcare Planning Guidelines Part 2 – Design Quality Principles
 - b. Childcare Planning Guidelines Part 3.1 Site selection and location
 - c. Childcare Planning Guidelines Part 3.2 Local character, streetscape and the public domain interface
 - d. Childcare Planning Guidelines Part 3.3 Building orientation, envelope and design
 - e. Childcare Planning Guidelines Part 3.4 Landscaping
 - f. Childcare Planning Guidelines Part 3.8 Traffic, Parking and Pedestrian Circulation
 - g. Education and Care Services National Regulations Part 4.1 Indoor space requirements
 - h. Education and Care Services National Regulations Part 4.2 Laundry and hygiene facilities
 - i. Education and Care Services National Regulations Part 4.3 Toilet and hygiene facilities
 - j. Education and Care Services National Regulations Part 4.7 Premises designed to facilitate supervision
 - k. Education and Care Services National Regulations Part 4.8 Emergency and Evacuation Procedures
 - l. Education and Care Services National Regulations Part 4.9 Outdoor space requirements
 - m. Education and Care Services National Regulations Part 4.10 Natural environment
 - n. Education and Care Services National Regulations Part 4.11 Shade
 - o. Education and Care Services National Regulations – 25 Education and Care Services National Regulations – Part 4.13 Soil Assessment
 3. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the requirements to the following clauses of the *Parramatta Local Environmental Plan 2023*:
 - a. Clause 1.2 Aims of Plan
 - b. The proposed development exceeds the prescribed maximum height of building of 9 metres. No clause 4.6 objection has been lodged.
 - c. Clause 6.2 Earthworks: The development proposes excessive excavation on site that impacts on the amenity of neighbouring properties.
 4. In accordance with Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not comply the following parts of The Hills Development Control Plan 2012:
 - a. Part B, Section 2.4 Site analysis,
 - b. Part B, Section 2.5 Streetscape & character,
 - c. Part B, Section 2.12 Stormwater Management,
 - d. Part B, Section 2.14.2 Site coverage,
 - e. Part B, Section 2.14.3 Building Height
 - f. Part B, Section 2.14.5 Landscaping,
 - g. Part B, Section 2.14.7 Cut and Fill,
 - h. Part B, Section 2.14.8 Building Materials,
 - i. Part B, Section 2.14.10 Solar Access
 - j. Part B, Section 2.14.14 Car Parking and Vehicular access,
 - k. Part B, Section 2.16 Waste Management
 - l. Part B Section 2.34 Centre Based Child Care Facilities – Additional Controls
 - m. Part C, Section 2.1.1 General (Parking),
 - n. Part C, Section 3.1 Landscaping
 5. In accordance with Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposal is not suitable for the site.

6. In accordance with Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest.
7. *Pursuant to Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act 1979, an Operational Plan of Management has been submitted however lacks detail and a sufficient detailed evacuation management plan has not been submitted and therefore the potential impacts of the development proposal onto the surrounding properties cannot be adequately assessed.*

B. **That** Council advise those who made a submission of the determination.