

**SECTION 4.56 MODIFICATION REPORT**  
**Environmental Planning & Assessment Act 1979**

<b>DA No:</b>	DA/745/2018/A
<b>Subject Property:</b>	Lot 4 DP 8487, Lot A DP 371706, 21 - 23 Norfolk Road, EPPING NSW 2121
<b>Proposal:</b>	<p>Section 4.56 modification of DA/745/2018 for Site consolidation, partial demolition and alterations and additions to existing structures, tree removal and construction of a 53-place childcare centre with basement car parking containing 14 car parking spaces (including 6 visitor spaces and 8 staff spaces) and 1 motorcycle space, associated business identification signage and proposed hours of operation from 7:00am to 6:00pm, Monday to Friday.</p> <p>The modification seeks to amend the basement parking, pedestrian entry and other elements in order to increase childcare placements from 53 to 82 and additional carparking from 14 to 23.</p>
<b>Date of receipt:</b>	5 September 2022
<b>Applicant:</b>	Mr J Apostolou
<b>Owner:</b>	Mr N S Guo and Mrs X F Huang
<b>Property owned by a Council employee or Councillor:</b>	The site is not known to be owned by a Council employee or Councillor.
<b>Political donations/gifts disclosed:</b>	None disclosed on the application form.
<b>Submissions received:</b>	19
<b>Recommendation:</b>	Refusal
<b>Assessment Officer:</b>	Darren Wan

**Legislative Requirements**

<b>Relevant provisions considered under section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979</b>	<ul style="list-style-type: none"><li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li><li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li><li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li><li>• Hornsby Local Environmental Plan 2013 (HLEP 2013)</li><li>• Hornsby Development Control Plan 2011 (HDGP 2013)</li><li>• Draft Parramatta Local Environmental Plan 2020 (DLEP 2020).</li></ul>
<b>Zoning</b>	R2 - Low Density Residential
<b>Bushfire Prone Land</b>	No
<b>Heritage</b>	No – However, in vicinity of Heritage Item I385
<b>Heritage Conservation Area</b>	Yes – East Epping Conservation Area
<b>Integrated Development</b>	No
<b>Clause 4.6 variation</b>	No
<b>Delegation</b>	Parramatta Local Planning Panel (PLPP) due to >10 submissions

## 1. EXECUTIVE SUMMARY

Modification Application DA/745/2018/A was lodged on 5 September 2022 and seeks to intensify the court approved childcare centre by increasing the children numbers from 53 up to 82, with additional carparking from 14 to 23.

The application is made pursuant to s4.56 of the Environmental Planning and Assessment Act 1979.

In accordance with the Parramatta Consolidated Notification Procedures, the Modification Application was notified between 16 September 2022 and 10 October 2022. Overall, 19 submissions were received over the notification period.

Key concerns raised in the submissions are as follows:

- Traffic congestion/parking/safety.
- Noise impacts.
- Heritage/streetscape.
- Tree removal.
- Flooding/evacuation/basement earthworks.
- Modification not substantially the same development.
- Solar Access.
- Devaluation of property value.

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

### **Section 4.15 Assessment Summary**

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

In order to facilitate the proposed increase in children, various alterations and additions are required to the approved built form, including an increase in GFA of about 20m<sup>2</sup>, and increasing the quantum of unencumbered outdoor play space by utilising areas previously required to be dense landscaping.

During the assessment, a number of Council's internal staff requested additional information, including the following:

- Catchment Engineer – requested additional flood modelling.
- Landscape Officer – requested the additional shed at the north-west corner of the site be deleted or relocated outside of the TPZ of an adjoining tree. It was also requested to reinstate the dense landscaping required under the approval by the LEC.
- Heritage Advisor – requested that the design the new proposed ramp be less dominant to the streetscape.
- Acoustic/Planning – requested that applicant provide further detail regarding how the recommendations of the acoustic report will be implemented, and how access will be facilitated between the play areas within the 2.4m high acoustic fence and the play areas outside of the fence.

However, Council's Traffic and Transport Officer fundamentally objected to the modified proposal, advising that the increase in intensity would have cumulative adverse impacts on the surrounding traffic network. Observations and traffic studies undertaken by Council have already indicated unsafe driver behaviour as a result of the existing traffic conditions and the modified proposal will only exacerbate the issue.

A meeting was organised between the applicant's Traffic Consultant and Council's Traffic and Transport Officer, where no resolution was imminent. In that regard, the applicant was advised that they were not required to respond to the other additional information matters as the safety impacts on the surrounding traffic network were considered to be unresolvable.

Accordingly, having regard to the matters for consideration under Section 4.15, and Section 4.56 of the Environmental Planning and Assessment Act 1979, it is recommended that Modification Application No. DA/745/2018/A be refused.

**Note:** The new draft Parramatta LEP 2023 is anticipated to be gazetted prior to this application being presented to the Panel. Pursuant to a savings provision, the Panel is able to determine this application with consideration of Hornsby LEP 2013 instead of the new gazetted LEP.

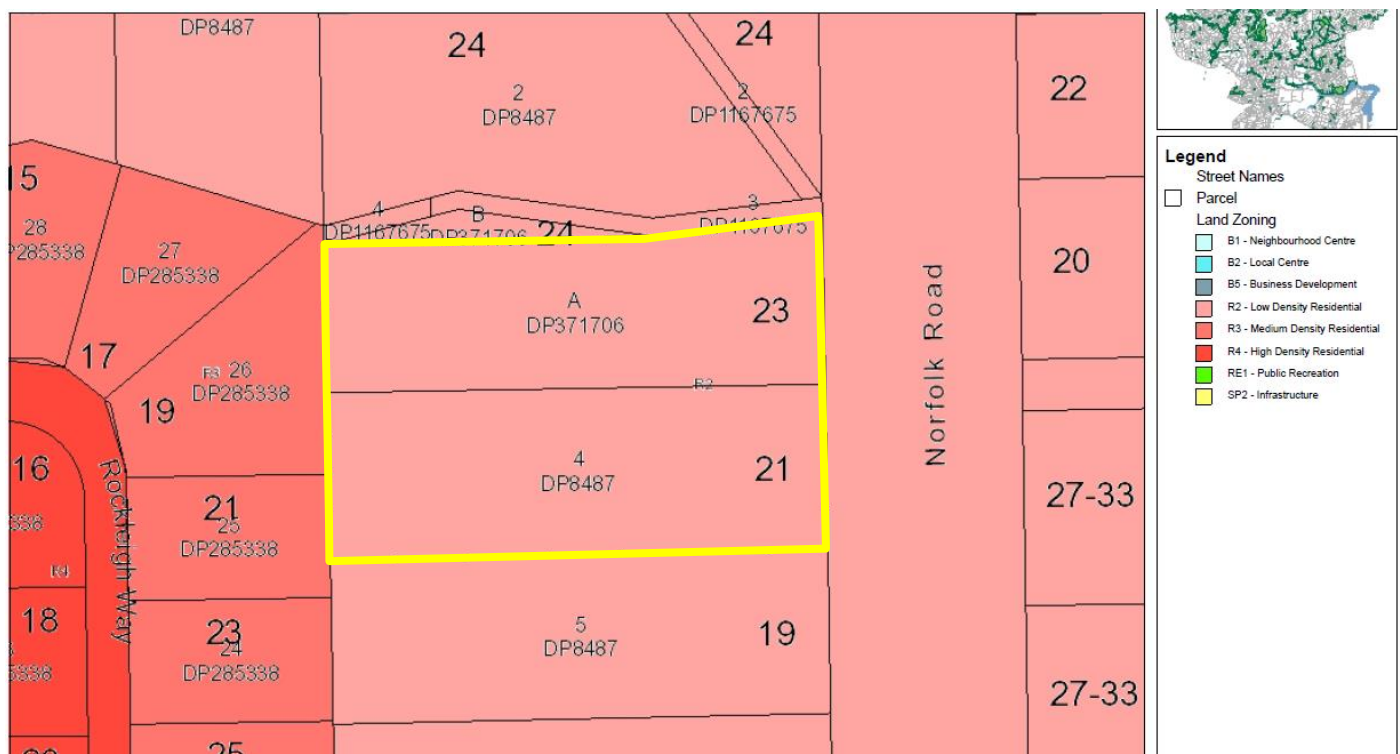
## 2. SITE DESCRIPTION AND CONDITIONS

The subject site comprises two allotments known as 21 Norfolk Road, Epping and 23 Norfolk Road, Epping. The property descriptions of the two allotments are Lot 4 DP 8487 & Lot A 371706. The combined lots are of an irregular shaped and has a cross fall from the south west (rear) to the north east (front) of approximately 4.3 metres. Henceforth in this report, 'subject site' will refer to both allotments as combined.

The subject site has the following area and dimensions:

- Area – 1626.8 square metres
- Frontage – 33.78 metres
- Rear – 32.005 metres
- North – 50.375 metres
- South – 50.29 metres

The site is zoned R2 Low Density Residential. The properties to the north, east and south are also zoned R2 Low Density Residential. The properties to the west are zoned R3 Medium Density Residential.



**Figure 1:** Zoning of the subject site and surrounds

The subject site is located in the East Epping Conservation Area and is in the vicinity of a heritage item – Epping Public School (I385).

The subject site currently accommodates two established post-war single storey brick and tile roof dwellings. The site is located within an established residential area characterised by single and double storey residential dwellings.

The site adjoins an open Council owned stormwater channel to the north that is subject to flooding. The northern part of the site is also subject to flood affectation. A Sydney Water main sewer line also traverses along the northern boundary of the site.

### 3. RELEVANT SITE HISTORY

Development Application	Description
DA/745/2018	<p>The original application sought consent for 'demolition of existing structures at No. 23 Norfolk Road, partial demolition of the existing dwelling at No. 21 Norfolk Road and construction of a centre based child care facility with basement parking for 15 vehicles. The centre is proposed to operate between 7am and 6pm, Monday to Friday' and was refused by Parramatta Local Planning Panel on 16 April 2019. Subsequently a Section 8.3 review was lodged and also refused by PLPP on 15 October 2019. The section 8.3 proposal had slight built form changes to accommodate the flooding contentions.</p> <p>It is of note that both the original application and the s8.3 review proposed a maximum of 60 children for the development.</p>
LEC Proceedings	<p>On 21 July 2020, consent was granted by the Land and Environment Court for 'site consolidation, demolition works, tree removal and construction of a 53 place child care centre with basement car parking containing 14 car parking spaces (including 6 visitor spaces and 8 staff spaces) and 1 motorcycle space, associated business identification signage and proposed hours of operation from 7:00am to 6:00pm, Monday to Friday.'</p>

### 4. THE PROPOSAL

The modified proposal seeks consent to increase the capacity of the approved Child Care Centre from 53 up to 82. To facilitate this increase, the following works are required:

#### Basement

- Expanding the footprint of the basement level.
- Increasing parking spaces from 14 to 23 - including 11 staff and 12 visitors.

#### Ground Level

- Various alterations and additions to the approved built form resulting in the following:
  - New ramp from street level up to reception.
  - Playroom 1 increased from 53.5m<sup>2</sup> (16 - 0-2 year old) up to 130m<sup>2</sup> (40 – 3-5 year old).
  - Playroom 2 decreased from 57.9m<sup>2</sup> (17 – 2-3 year old) down to 55m<sup>2</sup> (17 – 0.2 year old).
  - Playroom 3 increased from 68.2m<sup>2</sup> (20 – 3-5 year old) up to 84m<sup>2</sup> (25 – 2-3 year old).
  - Combined Outdoor Play Area increased from 372.8m<sup>2</sup> up to 598m<sup>2</sup> – by increasing the outdoor play area, it requires utilising areas that were previously excluded for amenity purposes, negotiated during the LEC process.
  - Increase the height of the acoustic barrier around the raised portion of the outdoor play area from 2.1m up to 2.4m.

#### Use

- The increased number of children requires an increase of staff from 10 up to 14.
- More stringent acoustic requirements to be implemented to accommodate the increase in children – requiring more co-ordination between staff to stagger the children and separate them into 'free-play' and 'passive-play' activities.

## 5. REFERRALS

Referral	Comment
Transport and Traffic Engineer	<p>Not supported for the following reasons:</p> <p><i>It is noted that a 53-place childcare centre has been approved by the LEC based on information that was provided and available at that time. Since then, Council has undertaken further reviews of the existing traffic situation in Norfolk Road, Epping which includes a video traffic and pedestrian count undertaken on 20 September 2022 at the existing pedestrian crossing and at the intersection of Norfolk Road and Pembroke Street. From this, Council has observed the following:</i></p> <ul style="list-style-type: none"> <li><i>Although the video traffic counts by Council and the Traffic Modelling by the applicant show similar values, it needs to be acknowledged that SIDRA modelling is limited and does not accurately reflect the complex traffic behaviour during school zone times where parents are often looking for parking or performing parking manoeuvres. Furthermore, the modelling is focused primarily on individual intersections and has not accurately reflected the cumulative impacts in the network of roads near the public school and childcare centre.</i></li> <li><i>Due to the combined effect of the kiss and ride facility, the existing midblock pedestrian crossing and the intersection of Norfolk Road and Pembroke Street, extensive traffic queues have been observed in video counts at both morning and afternoon school zone peak periods. It was further observed that there were extensive vehicle queues in Pembroke Street east of Essex Street which was also impacting traffic queues in Norfolk Road as shown in the figure below. As a result of the congestion, the video counts show that motorists are taking more risk-taking behaviours and selecting unsafe gaps in traffic as well as queuing across intersections.</i></li> <li><i>Even though the anticipated traffic generation by the childcare centre during these peak times is only 66 veh/h in the AM peak and 58 veh/h in the afternoon peak, this will still have a cumulative impact on traffic in the area which will make the existing situation worse.</i></li> </ul> <p><i>Based on the above points, this development is not supported on traffic grounds.</i></p>
Catchment Management Unit	Additional information requested.
Tree and Landscape	Additional information requested.
Heritage	Additional information requested.
Environmental Health (Acoustic)	Additional information requested.

**Note:** Whilst the additional information required by Council's Specialists were shared with the applicant, they were informed that they did not need to respond as the fundamental issue of the local traffic capacity was not deemed to be something resolvable by the applicant. Accordingly, it was decided to proceed with the refusal without requiring the additional information.

## 6. ASSESSMENT UNDER SECTION 4.56

SECTION 4.56	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent, as modified, would retain the approved development type as a Child Care Centre, however, would increase the overall intensity of the development and is not considered to be substantially the same. Please refer to the discussion below.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and	The modification was notified in accordance with the Council's Consolidated Notification Procedures.

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	The modification was notified in accordance with the Council's Consolidated Notification Procedures.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	All submissions received were considered as part of the assessment of this modification.
(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.	An assessment against the relevant matters contained within s4.15 are addressed further in this report.
(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.	Noted.
(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.	Noted.
(3) The regulations may make provision for or with respect to the following— (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent, (b) the effect of any such deemed determination on the power of a consent authority to determine any such application, (c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.	Noted.

#### **ASSESSMENT OF WHETHER THE PROPOSAL IS SUBSTANTIALLY THE SAME**

In considering whether the development is substantially the same, the applicant bears the onus of satisfying the consent authority that the modified development is substantially the same as the original development (*Vacik Pty Ltd v Penrith City Council*, unreported, 24 February 1992). In this judgement, Stein J states that it is not appropriate to simply say that the nature of the development, in this case the use of the site as a residential flat building, as amended would be the same use and therefore substantially the same development. Stein J goes on to say that it is necessary to consider whether the proposed modified development would be essentially or materially or having the same essence as that which had been originally approved. These comments are reiterated in **Trinvass Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 77**.

Bignold J in his decision in *Moto Projects No 2 Pty Limited v North Sydney Council* [1999] 106 LGERA 298, states that:

*"The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.*

*The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."*

As such, an assessment of the proposed modified development to determine if substantially the same as the original development requires an assessment of the quantitative and qualitative impacts of the modified proposal.

#### **Quantitative Assessment**

The proposed quantitative amendments include the following:

- Increase the overall development GFA from approximately 383.5m<sup>2</sup> up to 404.7m<sup>2</sup>.
- Increase the footprint of the basement level from approximately 636m<sup>2</sup> to 773m<sup>2</sup> and increase parking spaces from 14 to 23.

- Increase overall internal play areas from 179.6m<sup>2</sup> up to 269m<sup>2</sup> – this is facilitated by the overall increase in GFA as well as converting GFA previously used for administrative purposes.
- Increases the height of the internal acoustic attenuation fence from 2.1m up to 2.4m.
- Increase children capacity from 53 to 82 (17 X 0–2-year-olds, 25 X 2–3-year-olds, and 40 X 3–5-year-olds).

#### **Qualitative Assessment**

The proposed qualitative amendments include the following:

- Increase in intensity of the development will increase the impact on the surrounding traffic network.
- Increase in intensity of the development requires more stringent operational play-time measures to mitigate acoustic impacts on adjoining neighbours.
- Additional shed in the north-west corner of the site impacts upon a neighbouring tree.
- Amended ramp to the lobby changes the streetscape presentation of the street.

#### **Conclusion**

Based on the above assessment, the modified development is not considered to be substantially the same as the original approved development, as there are significant quantitative and qualitative amendments that will adversely impact upon the amenity of the surrounding locality and traffic network.

## **7. ENVIRONMENTAL PLANNING INSTRUMENTS**

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

The original application was assessed under the provisions of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, which has subsequently been repealed and replaced with State Environmental Planning Policy (Biodiversity and Conservation) 2021.

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.

Council's Landscape Officer requested the following:

- Deletion of the additional structures located in the tree protection area of *Tree 23 – Lophostemon confertus* located in the adjoining property.
- Re-instatement of the boundary screen planting to be consistent with Revision K of the landscaped documentation approved by the LEC.

As discussed above, the additional information request was shared with the applicant, but amended plans were not requested as the traffic issues were considered to be unresolvable.

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

The original application was assessed under the provisions of State Environmental Planning Policy 55 – Remediation of Land, which has subsequently been repealed and replaced with State Environmental Planning Policy (Resilience and Hazards) 2021.

Nevertheless, the suitability of the site for the purposes of a Child Care Facility was assessed under the original proposal and deemed satisfactory. There have not been any notable instances between the issue of the consent and the lodgement of the modified proposal that would indicate a need to revisit the suitability of the subject site for a Child Care Centre. Accordingly, there are no changes to the original assessment and no additional documentation is required.

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

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

CLAUSE	MODIFIED PROPOSAL	COMPLIANCE
<b>3.22 – Concurrence of the Regulatory Authority</b> This clause applies to development for the purpose of a centre-based child care facility if: (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 (b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.	A total number of 82 children are proposed. The proposal will need a minimum unencumbered indoor and outdoor space as follows:  <b>Indoor:</b> 266.5m <sup>2</sup> <b>Outdoor:</b> 574m <sup>2</sup>  The proposal provides unencumbered indoor and outdoor space as follows:  <b>Indoor:</b> 269m <sup>2</sup> <b>Outdoor:</b> 598m <sup>2</sup>	The modified proposal complies with the required amount of indoor and outdoor play space and concurrence from the regulatory authority is not required.  However, it is noted that the expansion of the outdoor play area now includes areas that were explicitly excluded as play area following the negotiations during the LEC appeal.
<b>3.23 – Matters for Consideration by Consent Authorities</b> 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.	The provisions of the Child Care Planning Guideline were considered in the assessment of the original application. The modified proposal will slightly change the traffic assessment of the development.	The modified proposal is considered to have adverse impacts to the surrounding traffic network and is not supported.  Please see discussion in the compliance table below.
<b>3.25 – Floor Space Ratio</b> 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. 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.	The modified proposal will have a GFA of approximately 404.7m <sup>2</sup> and equates to an FSR of 0.24:1 and complies.	Yes

#### CHILD CARE PLANNING GUIDELINE 2021

Provisions	Comment
<b>Part 2 – Design Quality Principles</b>	
Principle 3 – Adaptive Learning Spaces	<p>The modified proposal seeks to increase the quantum of unencumbered outdoor play space by utilising the area outside of the approved internal acoustic fencing, previously required to be dense landscape screening following discussions between experts during the LEC process.</p> <p>There is no indication of how access between the two areas will be facilitated, other than a gap in the acoustic fencing on the south-western corner shown on the architectural plans. However, this gap is not present in the landscape plans, nor is it referred to in the submitted acoustic report. In fact, the acoustic report provides the following statement:</p> <p><i>'It is to be noted that gaps between the panels and the posts or the ground will significantly reduce the effectiveness of the noise barrier and may lead to non-compliant noise levels at the adjoining premises. Therefore, all gaps should be minimised.'</i></p> <p>It is also of note that if the gap in the fencing is the only way to achieve access, it would create a narrow play space between the acoustic fence and the boundary fence which limits the supervision afforded to future childcare workers at the centre.</p> <p>Accordingly, the modified proposal is not consistent with Principle 3 as it fails to indicate how the additional outdoor play area will be accessed or utilised without additional impacts to the adjoining neighbours.</p>



<p>Principle 5 – Landscape</p>	<p>Principle 5 requires that the design of the landscaped areas to be functional and well designed for the amenity of the children.</p> <p>The modified proposal generally retains the same level of landscaping as previously approved within the aforementioned internal acoustic fencing area and is considered acceptable.</p> <p>The modified proposal also seeks to convert the dense landscaping area and utilise it as additional outdoor play space. This area was previously excluded from the play space calculations and was not required to comply with the landscape treatments outlined under Principle 5. The modified proposal has now designed this space to be more in line with the requirements of this principle.</p> <p>Accordingly, by virtue of converting an area previously unable to be used as play space to a functional play area with garden beds and play equipment, the modified proposal is considered to be consistent with Principle 5.</p>
<p>Principle 6 – Amenity</p>	<p>The modified proposal seeks to significantly increase the intensity of the approved childcare centre by utilising areas previously required to be dense landscape screening to protect the amenity of adjoining neighbours. It will also require more stringent acoustic measures that are difficult to enforce and impacts upon the amenity of the children and the neighbouring properties.</p> <p>Accordingly, the modified proposal is not consistent with Principle 6 as it fails to satisfactorily address how the additional children will be managed without impacting the amenity of the children or the adjoining neighbours.</p>
<p>Principle 7 – Safety</p>	<p>The developments impact on the surrounding traffic network was a determining factor behind the reduction in children numbers from 60 to 53 during the discussions in the LEC process.</p> <p>Council's Traffic and Transport Officer is of the opinion that the surrounding traffic network already exhibits unsafe traffic practices, with motorists engaging in risk-taking behaviours due to the existing congestion caused by the nearby school. Any increase in intensification of the subject site is not supported from a traffic safety perspective.</p> <p>Accordingly, the modified proposal is not consistent with Principle 7 as it is considered to increase the traffic safety risk of the centre and surrounding traffic network.</p>
<p><b>Part 3 – Matters for Consideration</b></p>	
<p><b>3.1 – Site Selection and Location</b></p>	
<p><b>C1</b></p> <p><i>For proposed developments in or adjacent to a residential zone, consider:</i></p> <ul style="list-style-type: none"> <li><i>The acoustic and privacy impacts of the proposed development on the residential properties</i></li> <li><i>Visual amenity impacts (e.g. additional building bulk and overshadowing, local character)</i></li> <li><i>Traffic and parking impacts of the proposal on residential amenity and road safety</i></li> </ul>	<p><b>Acoustic Privacy</b> – not acceptable</p> <p>As discussed above, in order to facilitate access between the approved outdoor play area and the area previously used for dense landscaping, the architectural plans show a gap in the acoustic fencing. No information has been provided to indicate how this proposed gap would impact on the level of acoustic attenuation provided by the fencing.</p> <p>In addition, the acoustic report provides two options to manage the noise created by the children. Both options require staggering the children and managing their activities (free-play vs passive-play). These measures are more stringent than previously approved by the LEC when the centre only had 53 children. The extra measures are considered to be excessive and difficult to enforce and indicates that the increased number of children may be more than the site can reasonably accommodate.</p> <p><b>Visual Amenity</b> – not acceptable</p> <p>The modified proposal seeks a new ramp to the front lobby which is not supported by Council's Heritage Advisor as it is not compatible with the surround heritage conservation area.</p> <p><b>Traffic and Parking</b> – not acceptable.</p> <p>As discussed above, Council's Traffic and Transport Officer has indicated that the modified proposal will have an adverse impact on the surrounding traffic network and is not supported.</p>

<p><b>C4</b>  <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"> <li>proximity to: <ul style="list-style-type: none"> <li>any other identified environmental hazard or risk relevant to the site and/ or existing buildings within the site.</li> </ul> </li> </ul>	<p><b>Flooding</b>  The site is affected by flooding. Council's Catchment Engineer requested additional flood modelling to determine the impacts on the modified proposal. The applicant has provided additional flood modelling, but the documentation was not able to be assessed prior to this DA being presented to PLPP.</p>
<p><b>3.8 – Traffic, Parking and Pedestrian Access</b></p>	
<p><b>C32</b>  <i>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:</i></p> <ul style="list-style-type: none"> <li>the amenity of the surrounding area will not be affected</li> <li>there will be no impacts on the safe operation of the surrounding road network.</li> </ul>	<p>As discussed above, the developments impact on the surrounding traffic network was a determining factor behind the reduction in children numbers from 60 to 53 during the discussions in the LEC process.</p> <p>Council's Traffic and Transport Officer is of the opinion that the surrounding traffic network already exhibits unsafe traffic practices, with motorists engaging in risk-taking behaviours due to the existing congestion caused by the nearby school. Any increase in intensification of the subject site is note supported from a traffic safety perspective.</p>

## 8. HORNSBY LOCAL ENVIRONMENTAL PLAN 2013

### PERMISSIBILITY

The site is zoned **R2 Low Density Residential** under Hornsby Local Environmental Plan 2013. The proposal retains the approved use of the site as a Centre-based childcare facility, which is a use permitted with consent within the R2 Low Density Residential zone.

### Zone Objectives

The modified proposal remains consistent with the relevant aims and objectives of the R2 Low Density Residential zoning applying to the land.

Development standard	Compliance
Heritage Conservation.	<p><b>No – Not acceptable.</b></p> <p>The proposal is not identified as a heritage item, however, is located within the East Epping Conservation Area. The subject site is also within the vicinity of heritage item I385 – Epping Public School.</p> <p>The modified proposal seeks a new ramp to the front lobby which is not supported by Council's Heritage Advisor as it is not compatible with the surround heritage conservation area.</p>

	In light of the above advice from Council's Heritage Advisor, the proposal would not satisfy the objectives of Clause 5.10 and would likely have an adverse impact upon the heritage significance of the area. Therefore, the modified proposal cannot be supported.
Flood planning	<b>No – Not acceptable.</b> The site is affected by flooding. Council's Catchment Engineer requested additional flood modelling to determine the impacts on the modified proposal. The applicant has provided additional flood modelling, but the documentation was not able to be assessed prior to this DA being presented to PLPP.

## 9. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

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

The draft LEP will amend key development standards applicable to the site, increasing the building height to 9m and prescribing an FSR control which was previously absent.

Control	HLEP 2013	Draft LEP 2023
<b>Zoning</b>	R2 Low Density Residential	R2 Low Density Residential
<b>Height</b>	8.5m	9m
<b>FSR</b>	N/A	0.5:1

The draft LEP must be considered when assessing this application under Clause 4.15(1)(a)(ii) of the Environmental Planning & Assessment Act 1979. Regardless, the amendments will have no impact on the compliance of the modified proposal.

It is anticipated that the draft LEP will be gazetted by the time this application is presented to Parramatta Local Planning Panel. On that note, pursuant to a savings provision, the Panel is able to determine this application with consideration of Hornsby LEP 2013 instead of the new gazetted LEP.

## 10. HORNSBY DEVELOPMENT CONTROL PLAN 2013

The relevant matters to be considered under Hornsby Development Control Plan 2013 for the proposed development are outlined below.

HDCP – Part 3.1 Dwelling Houses and Part 7.1 Community Uses			
Control	Approved Development	Modified Proposal	Complies
Site Coverage	max. 28% or 450m <sup>2</sup>	unchanged	Yes
Floor Area	383.5m <sup>2</sup>	404.7m <sup>2</sup>	Yes
<b>Setbacks</b>			
<i>Front</i>	7.482m	unchanged	Yes
Landscaped Area (45% of lot size)	Total: approx. 800m <sup>2</sup> Front yard: 200m <sup>2</sup>	unchanged	Yes
<b>Parking</b> (1 space per 4 children)	14 spaces	23 spaces	Yes

## 11. DEVELOPMENT CONTRIBUTIONS

As this original Development Application was assessed under the now repealed the *City of Parramatta Council Section 94A Development Contributions Plan (Formerly Hornsby LGA Land and Epping Town Centre)*, the same contributions plan would apply to this modified proposal. As such, a new development contribution would have been calculated and applied to this modification had the application been recommended for approval.

## 12. BONDS

In accordance with Council's Schedule of Fees and Charges, the developer will be obliged to pay Security Bonds to ensure the protection of civil infrastructure located in the public domain adjacent to the site. A condition of consent relating to the payment of a 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 apply if the proposal was recommended for approval.

## 14. THE LIKELY IMPACTS OF THE DEVELOPMENT

The assessment demonstrates that the modified proposal will have an adverse impact upon the surrounding traffic network. By allowing the development to increase its intensity, it will adversely impact the safety of the surrounding traffic network, as well as potentially increase the acoustic impacts the children will have on neighbouring properties.

It is for this reason that the modified proposal is not considered to satisfy Section 4.15(1)(b) and cannot be supported.

## 15. SUITABILITY OF THE SITE

The assessment demonstrates that the subject site cannot accommodate a childcare centre development of the proposed scale as the modified proposal creates unacceptable impacts to the surrounding traffic network and does not satisfactorily demonstrate that the site can support the increased play areas without exacerbating adverse amenity impacts to adjoining neighbours.

In addition, the site is identified as flood prone and it has not been demonstrated that the site is able to accommodate the increased intensity of children without compromising their safety.

It is for this reason that the modified proposal is not considered to satisfy Section 4.15(1)(c) and cannot be supported.

## 16. PUBLIC CONSULTATION

In accordance with the City of Parramatta Consolidated Notification Procedure, Development Application was advertised between 16 September 2022 and 10 October 2022. Overall, 19 submissions were received over the notification period.

Key concerns raised in the submissions are addressed below:

Issue	Response
<b>Traffic Impacts</b>	<p>The overwhelming majority of submissions raised the existing congestion of the existing surrounding traffic network as a reason not to support the modified proposal.</p> <p>As discussed in the body of this report, Council's Traffic and Transport Officer shared the concerns raised and objects to the modified proposal due to the cumulative impact of the development and other surrounding land uses.</p> <p>This has been included as a reason for refusal.</p>
<b>Noise</b>	<p>Concern was raised regarding the overall increase in children and the additional noise impacts that would result.</p> <p>As discussed in the body of this report, Council's Development Assessment Officer shares the concerns raised and requested additional information regarding how the children will be managed to achieve the required acoustic attenuation criteria. Due to the aforementioned traffic impacts, it was decided to proceed with the refusal without requiring the additional information.</p> <p>This has been included as a reason for refusal.</p>

<b>Heritage/Streetscape</b>	<p>Concern was raised regarding the new built form and ramp fronting Norfolk Road that impacts upon the heritage significance of the East Epping Conservation Area and nearby Heritage Item.</p> <p>As discussed in the body of this report, Council's Heritage Advisor shared the concerns raised and requested additional information to address the streetscape concerns. Due to the aforementioned traffic impacts, it was decided to proceed with the refusal without requiring the additional information.</p> <p>This has been included as a reason for refusal.</p>
<b>Tree Removal</b>	<p>Concern was raised regarding the additional tree removal required to facilitate the modified proposal.</p> <p>As discussed in the body of the report, Council's Landscape Officer shares the concerns raised and requested additional information to address retaining the approved dense landscaping, as well as relocating the proposed storage shed which impacts a neighbouring tree. Due to the aforementioned traffic impacts, it was decided to proceed with the refusal without requiring the additional information.</p> <p>This has been included as a reason for refusal.</p>
<b>Flooding/Evacuation/Basement Earthworks</b>	<p>Concern was raised regarding the additional children numbers on a flood prone site, as well as how the additional earthworks would impact the flooding.</p> <p>As discussed in the body of this report, Council's Catchment Engineer shared the concerns raised and requested additional information to include more flood modelling to determine the safety of the site. Due to the aforementioned traffic impacts, it was decided to proceed with the refusal without requiring the additional information.</p> <p>This has been included as a reason for refusal.</p>
<b>Modification not substantially the same</b>	<p>Concern was raised that the significant increase in intensity of the proposed Childcare Centre was not considered to be 'substantially the same' as required by s4.56 of the EP&amp;A Act 1979.</p> <p>As discussed in the body of this report, Council's Development Assessment Officer shares the concerns raised due to the quantitative and qualitative changes between the approval and the modified proposal.</p> <p>This has been included as a reason for refusal.</p>
<b>Solar Access</b>	<p>Concern was raised regarding the reduction of solar access to adjoining properties.</p> <p>Following an assessment of the modified proposal, it was deemed that the amended built form changes did not significantly alter the approved solar access to adjoining neighbours.</p>
<b>Devaluation of property value</b>	<p>Concern was raised regarding the reduction in surrounding property value as a result of the development.</p> <p>It is of note that surrounding property prices is not a matter for consideration under s4.15 of the EP&amp;A Act 1979</p>

## 17. PUBLIC INTEREST

As the intensification of the approved childcare centre will cause adverse impacts to the surrounding traffic network and does not satisfactorily demonstrate that there won't be increased adverse acoustic impacts to neighbours.

It is for this reason that the modified proposal is not considered to satisfy Section 4.15(1)(e) and cannot be supported.

## 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.

The modified proposal does not satisfy the requirements under section 4.56(1)(a) as the modified proposal is not substantially the same development as originally approved. It is also considered to have increased impacts on the traffic and safety of the surrounding locality. Having regard to the assessment of the proposal from a merit perspective, Council officers are not satisfied that the intensification of the Childcare Centre will result in a good outcome.

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

## 19. RECOMMENDATION

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

- A. **That** the Parramatta Local Planning Panel, exercising the function of the consent authority, **refuse** the requested modification to DA/745/2018/A to intensify the approved childcare centre by increasing children numbers from 53 to 82 and parking spaces from 14 to 23.
- B. **That** Council advise those who made a submission of the determination.

## REASONS FOR REFUSAL

1. **State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 3: Educational Establishments and Child Care Facilities**
  - a. The modified proposal is inconsistent with following Design Quality Principles prescribed under the Child Care Planning Guidelines 2021:
    - Principle 3 – Adaptive Learning Spaces;
    - Principle 6 – Amenity; and
    - Principle 7 – Safety.
  - b. The modified proposal is inconsistent with the following Matters for Consideration prescribed under the Child Care Planning Guidelines 2021:
    - Part 3.1 – Site Selection and Location
2. **Hornsby Local Environmental Plan 2013**
  - a. The modified proposal is inconsistent with the following clauses:
    - Clause 5.10 – Heritage Conservation; and
    - Clause 6.3 – Flood Planning.
3. **Environmental Planning and Assessment Act 1979**
  - a. The modified proposal is not considered to be substantially the same development as originally approved, and therefore does not satisfy the criteria prescribed under s4.56(1)(a).
  - b. The modified proposal also has non-compliances with *SEPP (Transport and Infrastructure) 2021* and *Hornsby Local Environmental Plan 2013*. Accordingly, the proposal fails to satisfy the matters of consideration prescribed under s4.15(1)(a)(i).
  - c. The modified proposal is therefore not considered to be in the public interest and also fails to satisfy s4.15(1)(b), (d), and (e) of the *EP&A Act 1979*.