

21st March 2025

STATEMENT OF ENVIRONMENTAL EFFECTS

SECTION 4.55(2) OTHER MODIFICATIONS MODIFICATION TO DEVELOPMENT APPLICATION DA-1319/2023 433-437 CANTERBURY ROAD, CAMPSIE

INTRODUCTION

The proposal before Canterbury-Bankstown Council seeks to modify the development consent granted under Development Application **DA-1319/2023**, under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979. The approved development is described as *“Centre-based Child Care Facility (100 Children) fit out and use to Level 02, associated alterations to accommodate visitor access and parking for the child care centre, alterations to the reconfiguration of the lower ground and ground floor levels and fit out of the consultant rooms for the Level 01 Medical Centre.”*

The proposed modification seeks minor services and layout modifications across all levels. This submission is accompanied by the following supporting documents:

- Amended Architectural Plans prepared by CD Architects (Job No. J21536D, dated 21.01.2025)

DEVELOPMENT HISTORY

DA-286/2022

- Development application DA-286/2022 was determined by way of approval on 15 December 2022;
- This approved development is described as *“demolition existing structures and the construction of a three-storey mixed-use building with three levels of basement car parking, associated landscaping and site works.”*

DA-1319/2023

- The development application to which the proposed modification relates was determined by way of approval on 12 December 2024;
- DA-1319/2023 aligned with the built form and development approved under DA-286/2022.
- The consent is due to lapse on 12 December 2029.

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SUBJECT SITE AND CONTEXT

The subject site is commonly known as 433-437 Canterbury Road, Campsie, and is legally referred to as Lot 10 in DP1289043. It is located on the northern side of Canterbury Road (Figure 1), bound to the east by Una Street and Stanley Street to the west. The site is generally rectilinear, with the following dimensions:

- The frontage to Canterbury Road and the rear boundary measure 35.56m;
- Both side boundaries measure 45.69m;
- The total site area is 1,624m².

Excavation and construction works are currently underway on the subject site. As such, no major buildings or structures are currently located on the site. Adjoining the site to the east at 419-431 Canterbury Road is an auto repair company, “*ESR Prestige Autobody*”. The subject site is otherwise bounded by residential development to the west at 439 Canterbury Road, to the south across Canterbury Road at 1 Messiter Street and 2 Robertson Street, and to the north at 18, 20, 22 and 24 Perry Street.

The zoning of the area along Canterbury Road is B6 Enterprise Corridor.

Refer to Figure 1, below, for the context of the site within its immediate locality.



Figure 1 – Site Location Map (Source: NearMaps)

PROPOSED MODIFICATIONS AND SCHEDULE OF CHANGES

DESCRIPTION

The proposed modifications to the approved development can be described as:

“Minor services and layout modifications across all levels.”

The description of the proposed modification does not modify the description of the approved development.

Basement Level 3 Floor Plan Modifications:

- Car park schedule has been amended;
- The width of the aisles has been reduced by approximately 100mm – 200mm to accommodate thicker shoring walls;
- Addition of a car parking space (No.114);
- Car parking space No.94 has been amended to a small car space; and
- The size of car spaces No. 76 and No.81 have been reduced by 100mm in width due to the new location of the columns.
- The layout of the staff bicycle spaces has been modified, with one (1) space relocated adjacent to lift core and one (1) space relocated adjacent to fire stair FS2;
- Alteration to approved storage room to accommodate ten (10) individual storage areas.

Basement Level 2 Floor Plan Modifications:

- Addition of one (1) visitor bicycle space;
- Car park schedule has been amended;
- The width of the aisles has been reduced by approximately 100mm – 200mm to accommodate thicker shoring walls;
- The size of car spaces No. 38 and No.43 have been reduced by 100mm in width due to the new location of the columns;
- Alteration to approved storage room to accommodate eleven (11) individual storage areas.

Basement Level 1 Floor Plan Modifications:

- Two (2) car park spaces have been deleted to accommodate the Sydney Water plinths;
- Car park schedule has been amended;
- The width of the aisles has been reduced by approximately 100mm – 200mm to accommodate thicker shoring walls;
- The layout of the visitor bicycle parking spaces has been modified, with one (1) bicycle parking space relocated to Basement Level 3;
- The plant room adjacent to car parking space No.13 has been deleted; and
- The location of the doors to the main switchboard room have been amended;

- Alteration to approved storage room to accommodate three (3) individual storage units.

Lower Ground Floor Plan Modifications:

- Direct pathway access from Canterbury Road to the Sydney Water chambers has been provided as per Sydney Water technical requirements and Sydney Water approval;
- Two access gates for Sydney Water chambers have been provided, as per Sydney Water technical requirements and Sydney Water approval;
- Car park schedule has been amended;
- The layout of fire stairs (FS3) has been amended;
- The waste collection loading dock has been amended; and
- Addition of access to the rear landscape area from the gym.

Ground Floor Plan Modifications:

- Direct pathway access from Canterbury Road to the Sydney Water chambers has been provided as per Sydney Water technical requirements and Sydney Water approval;
- The gradient and design of the driveway ramp has been updated;
- The layout of fire stairs (FS1, FS3 & FS4) has been amended;
- The layout of the childcare management area has been amended;
- The area of G01 (Medical Centre) has been reduced by 13m²; and
- Addition of a rainwater tank adjacent to fire stairs (FS3).

Level 1 Floor Plan Modifications:

- Columns have been added within the floor area of certain consultant rooms;
- The waste room adjacent to the lifts has been expanded;
- The layout of fire stairs (FS3) has been amended; and
- The area of the following consultant rooms have been amended:
 - Consultant room 101: Reduced by 5m².
 - Consultant room 102: Increased by 2m².
 - Consultant room 110: Increased by 3m².

Level 2 Floor Plan Modifications:

- Columns have been added within the childcare outdoor area; and
- Addition of services riser adjacent to fire stairs (FS3).
- The area of the outdoor playroom has been reduced due to the addition of columns and riser. Nevertheless, the minimum area (m²) for the outdoor playroom required under the Child Care Planning Guidelines has been retained.

Roof Plan Modifications:

- Access panel for maintenance has been added to the roof;
- The height of the acoustic fence has been increased by 300mm to achieve 1800mm barrier required for the childcare centre; and

- Addition of services riser adjacent to non-trafficable roof.

Elevation and Section Plans Modifications

- Elevation and section plans have been updated in response to the layout changes listed above.

CONDITIONS OF CONSENT

To accommodate the proposed modification, the following conditions of consent will need to be modified:

- Condition 1 – Details of approved plans and supporting documentation will need to be amended to reflect the plans submitted as part of the modification documentation.
- Condition 44 – Allocation of car parking spaces will need to be updated in response to the removal of two (2) car parking spaces.

SECTION 4.55 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

In order to have the ability to modify a development consent under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 ('EP&A Act'), the consent authority (i.e. Council) must be satisfied that the development as modified would be substantially the same as the development for which the development consent was originally granted:

Section 4.55

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

(3) 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.

In order to have the ability to modify a development consent under Section 4.55 of the Environmental Planning and Assessment Act 1979, Council must be satisfied that the development as modified would be substantially the same as the development for which the development consent was originally granted.

The planning merits of the modification are not relevant to the determination of the threshold question of whether the development to which the consent relates would be **substantially the same** as the development for which consent was originally granted. In this regard, Council must apply the “**substantially the same development test**” to any Section 4.55 Application lodged. Case law in **Vacik Pty Ltd v Penrith City Council** (Stein J, 10242 of 1991, 24 February 1992) stated this test in the following terms:

“... ‘substantially’ when used in the section means essentially or materially or having the same essence”.

In relation to determining whether the proposed modified development is “essentially or materially” the same as the approved development. Justice Bignold in **Moto Projects No. 2 Pty Ltd v North Sydney Council (1999)** 106 LGERA 298 (“**Moto Projects**”) at 309, states:

“The relevant satisfaction required by s 96(2) (a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

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 **Tipalea Watson Pty Limited v Ku-Ring-Gi Council [2003] NSWLEC 253** (“**Tipalea Watson**”), Bignold J further considered the substantially the same test. In the judgement, the following matters were weighed in the consideration of the application being substantially the same:

- (a) is there significant change to the nature or intensity of the use?*
- (b) Is there significant change to the relationship to adjoining properties?*

- (c) Are there any adverse amenity impacts on neighbours from the changes?
- (d) Is there significant change to the streetscape?
- (e) Do the modifications change the scale or character of the development, or the character of the locality?

In **Arrange v Inner West Council [2019] NSWLEC 95**, Preston J found that there was no legal obligation to consider the circumstances in which the development consent was granted when comparing the approved development and the modification proposal, or to consider the material or essential elements of the original development consent, as they are not contained within the statutory provisions of Section 4.55.

In the decision of **Canterbury-Bankstown Council v Realize Architecture Pty Ltd [2024] NSWLEC 31** ("**Realize Architecture**"), Preston CJ summarised at [7] three tasks to be undertaken by a consent authority in deciding whether or not the development as modified is substantially the same. These tasks are:

- (a) Finding the primary facts
- (b) Interpreting the law
- (c) Categorising the facts found

At [29]-[31], the tasks are elaborated to state:

*"The first task includes finding what are the differences, including **quantitative and qualitative differences**, between the developments. These might include that the modified development is higher or bulkier, has greater floor space or less open space, or has different uses, than the originally approved development. By themselves, those findings of fact are uninformative of whether the modified development is or is not substantially the same development as the originally approved development. That question can only be answered by undertaking the third task of categorising the facts found in the statutory description of the precondition in s 4.55(2)(a).*

*This third task of categorising the facts in the statutory description is an evaluative one. It involves **assigning relative significance or weight to the different facts and a balancing of the facts, as weighted**. This categorisation can be an instinctive synthesis and need not be articulated expressly.*

A decision-maker could, for example, give greater significance or weight to quantitative differences than to qualitative differences between the two developments, or the reverse, or give greater significance or weight to some quantitative differences than other quantitative difference or to some qualitative differences than other qualitative differences. This evaluation of the facts in undertaking the categorisation of the facts in the statutory description is an essential task in deciding whether or not the decision maker is satisfied of the precondition in s 4.55(2)(a)."

Further, it was stated by Preston CJ in *Realize Architecture* at [26] that "*The opinion of satisfaction that s 4.55(2)(a) requires is that the two developments being compared are substantially the same development, not that either the quantitative features or the qualitative features of the two developments are substantially the same.*"

THIS FIRST STEP of finding the primary facts simply serves to articulate the quantitative and qualitative differences between the development as approved and the development as modified. These differences have been identified and are discussed below within this statement. While there may be quantitative and qualitative differences between the approved and modified

development, this itself is not determinative of whether the development is ***substantially the same***.

THE SECOND STEP, being the exercise of interpreting the law has been undertaken above, with respect to understanding and extrapolating the key means of determining the ***substantially the same test***.

THE THIRD AND FINAL STEP involves assigning relative significance or weight to the different facts and a ***balancing*** of the facts. To assist in the structure of the balancing of the facts, the matters weighed in ***Tipalea Watson*** are referred to below.

SUBSTANTIALLY THE SAME DEVELOPMENT

In light of the above interpretation of the law, the Section 4.55 proposal is found to be “essentially or materially” the same as the development initially approved by the consent authority.

The following assessment aligns with the tests identified in ***Tipalea Watson***:

The nature and intensity of the use

The nature and intensity of use is the same as approved.

- **Nature:** The approved uses of the site as a medical centre, gymnasium, child care centre, business premises and food and drink premises remains unchanged. The approved number of storeys and basement levels remain unchanged.
- **Intensity:** The mixed-use nature of the building will provide for a range of employment uses within the enterprise corridor. There is no intensification with respect to the use of the premises. For example, the number of medical centre consultant rooms, capacity of the child care facility and number of uses remain unchanged from approval. Additionally, the gross floor area of the building remains generally as approved.

Further, the nature and intensity of the approved development are not modified with respect to the description of the development as approved, being: “*Centre-Based Child Care Facility (100 Children) fit out and use to Level 02, associated alterations to accommodate visitor access and parking for the child care centre, alterations to the reconfiguration to the lower ground and ground floor levels and fit-out of the consultant rooms for the Level 01 Medical Centre*”. This reinforces that the development is essentially and materially the same as approved.

Relationship with adjoining properties & amenity impacts

The approved building envelope remains relatively unchanged by the proposed modifications which generally relate to internal changes. The key points to note are as follows:

- The approved setbacks of the building remain unchanged.

- With exception to a 300mm increase to the height of the acoustic fence, the approved height of the building remains unchanged.
- The approved number of storeys and basement levels remain unchanged.
- The overall presentation and articulation of the built form to adjoining properties remain relatively unchanged by the modifications.

In consideration of the above, the following **amenity impacts** to adjoining properties have been identified:

Solar Access

- Updated shadow diagrams have been prepared by CD Architects and submitted as part of the revised architectural package. The shadow diagrams reveal the majority of the overshadowing generated by the proposal falls south towards Canterbury Road.
- There are minimal changes to the overshadowing cast by the approved building. The only additional overshadowing that occurs is as a result of the 300mm increase to the height of the acoustic fence. The overall increase to existing overshadowing is minimal with the greatest increase to overshadowing occurring at 9am during the winter solstice (refer to Figure 2 below).
- Overall, the approved solar access to adjoining properties will remain relatively unaltered by the proposed modifications.

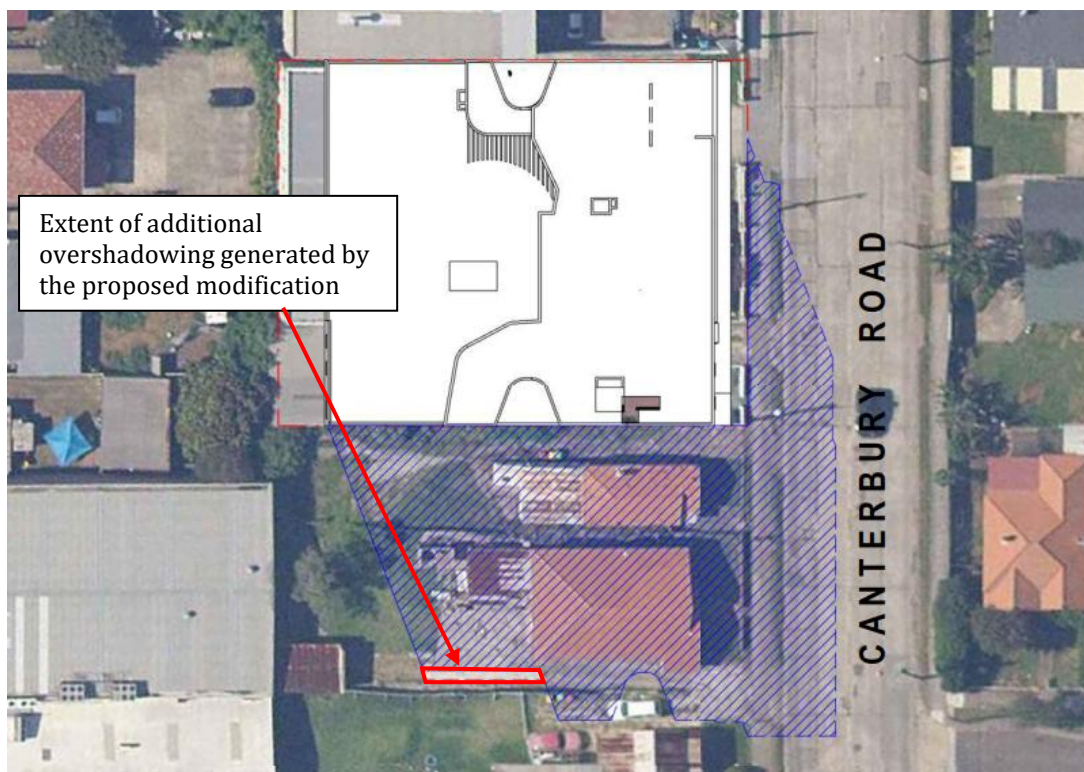


Figure 2 – Extract of 9am shadow diagram prepared by CD Architects illustrating the greatest increase to the approved overshadowing.

Privacy (Acoustic + Visual)

- The proposed modifications do not alter any glazing to the immediate side elevations that adjoin other properties.
- The proposed modifications do not introduce any new elements that will allow for overlooking towards neighbouring properties.
- The 300mm increase to the height of the acoustic fence will provide further acoustic privacy protection to neighbouring properties.

Views

- There are no views associated with the site.

It is therefore established that the proposed modifications result in substantially the same development, as there is no fundamental change or derogation to the amenity experienced by adjoining properties with respect to solar access, privacy or views.

Streetscape, scale and character

As previously noted, the proposed modifications generally relate to internal changes. As such, the proposed modifications have little to no bearing on the approved streetscape, scale and character of the building.

With exception to the addition of a hydrant booster and water meter, the overall presentation and articulation of the building to the streetscape will remain as per the approved development.

The following assessment aligns with the qualitative and quantitative tests identified in **Moto Projects**:

Qualitative Aspects of the Development

- The development continues to provide for a mixed use building comprising of a medical centre, child care centre, gymnasium, business premises and food and drink premises.
- The approved materials, colours and finishes of the building remain unchanged by the proposed modifications.
- The development is essentially the same with respect to the overall scale of the approved development. The proposed modifications are generally internal and do not alter the approved envelope of the building. The extent of increase to the height of the acoustic fence is minor and result in minimal to no change to the amenity of adjoining properties.
- On balance, all environmental outcomes remain the same as approved.

Quantitative Aspects of the Development

- There are minor quantitative differences between the approval and the proposed modifications. However, the overall building envelope remains relatively unaltered by the proposed modifications as:
 - No change to the existing setbacks of the building is proposed.
 - With exception to a 300mm increase to the height of the acoustic fence, the approved height of the building remains unchanged. The acoustic fence remains below the approved maximum height of the building.
 - The approved number of storeys and basement levels remain unchanged.
 - The number of medical centre consultant rooms, capacity of the child care facility and number of uses remain unchanged from approval.
- All environmental outcomes remain the same as approved and there are no numerical non-compliances with principal development standards.

In balancing the modified aspects of the development, the development remains consistent with what was originally approved. It is therefore concluded that the proposal is substantially the same development as approved by Council initially under DA-1319/2023, and as such satisfies the '*substantially the same development test*' under Section 4.55 of the EP&A Act. Thus the proposal is consistent with Clause 4.55(2) of the Environmental Planning & Assessment Act 1979.

An assessment of the proposal against the key provisions of the applicable legislation is below.

SECTION 4.15 EVALUATION OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

The proposed modifications do not introduce any new considerations for contamination that have not otherwise been covered by the current consent. Consequently, per Chapter 4 of the SEPP, Council can conclude that no further assessment of the contamination is necessary, and there are no amendments to the relevant conditions of consent.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

The provisions of Chapter 2 of the SEPP were considered as part of the original approval as the site provides a frontage to a classified road. No change to the approved entry and exit arrangements is proposed as part of the modifications.

Chapter 3 of the SEPP relates to early education and care facilities. The only changes proposed to the approved child care centre is the slight reduction of the outdoor play area as a result of the addition of structural columns and a services riser and the 300mm increase to the height of the acoustic fence.

The provision of parking and changes to the child care centre have been considered within this report in relation to the Canterbury-Bankstown DCP 2023 and the Child Care Planning Guidelines respectively.

CANTERBURY-BANKSTOWN LOCAL ENVIRONMENTAL PLAN 2023

There are no changes to the provisions relevant to the principal development standards:

Standard	Minimum/Maximum	Approved	Proposed	Comment
Land Zone	B6 Enterprise Corridor	Mixed use development comprising of medical centre, child care centre, gymnasium, business premises and food and drink premises.	Mixed use development comprising of medical centre, child care centre, gymnasium, business premises and food and drink premises.	Permissible with consent.
Building Height	12m	11.98m	No modification to the maximum building height from approved. The 300mm increase to the height of the acoustic fence does not exceed the existing maximum height of the building.	Complies.
Floor Space Ratio	N/A No FSR Standard applies to the site.	N/A	N/A	N/A.

Further, the proposed modifications continue to meet the objectives of the land zone, consistent with the approval. It is therefore considered that the proposal is consistent with Clause 4.55(2) of the Environmental Planning & Assessment Act, 1979.

CANTERBURY-BANKSTOWN DEVELOPMENT CONTROL PLAN 2023

The control relevant to the modified aspects of the development is discussed below.

Chapter 3.2 Parking

The approved development included a total of 115 off-street car parking spaces. The car parking spaces were allocated as follows:

- Twenty one (21) Gymnasium car spaces
- Three (3) Business premise car spaces
- Two (2) Café car spaces
- Twenty-two (22) Medical centre car spaces
- Forty-two (42) Medical centre consultation room car spaces
- Twenty five (25) Child Care Centre

As part of the proposed modifications, two (2) parking spaces (parking space Nos. 14 and 15) have been deleted to accommodate the Sydney Water plinths. Meanwhile, an additional parking space has been included within basement level 3. While this represents a one (1) car space shortfall to the minimum 115 spaces required under condition No.44, the proposed modifications notably comply with the parking requirements specified under the Canterbury Bankstown DCP 2023.

The Canterbury-Bankstown DCP specifies the following parking rate for the various uses on the site:

Land Use	DCP Parking Rate	Required number of spaces
Business Premises	<u>Other locations in the former Canterbury LGA</u> 1 space per 40m ² GFA (<120m ²)	Business premises GFA = 107m ² 2.67 spaces
Centre-based child care facilities	1 car space per 4 children	Child care capacity = 100 Children 25 spaces
Medical Centres	1 car space per 25m ²	Medical centre GFA = 1,567m ² 62.68 spaces
Gymnasiums	3 car spaces per 100m ²	Gymnasium GFA = 457m ² 13.71 spaces
Café	<u>Locations in the former Canterbury LGA</u> Less than 120m ² : 1 car space per 40m ² GFA	Café GFA = 53m ² 1.325 spaces
Total	-	105.38 spaces

In accordance with the Canterbury-Bankstown DCP 2023, the minimum number of off-street car parking spaces required to be provided is 105.38 spaces. Although the proposed modifications seek to reduce the approved number of car parking spaces by one (1), the modifications still provide a total of 114 off-street car parking spaces. Therefore, the modification complies with the minimum car parking rate specified under part 3.2 of the Canterbury-Bankstown DCP.

Condition No.44 will need to be amended accordingly.

CHILD CARE PLANNING GUIDELINES

An assessment against the Child Care Planning Guidelines was undertaken as part of the original approval. The only changes proposed to the approved child care centre is the addition on two (2) structural columns and a services riser within the outdoor play area and the 300mm increase to the height of the acoustic fence. The control relevant to the modified aspects of the development is discussed below.

Outdoor space requirements – Regulation 108

The Child Care Planning Guidelines state that an education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m² of unencumbered outdoor space. As the approved child care centre has a capacity of 100 children, a minimum unencumbered outdoor space of 700m² is required.

The approved child care centre provided 720.5m² of unencumbered outdoor space. As a result of the addition of the structural support columns and the services riser, the proposed modifications will reduce the unencumbered outdoor space to 712.6m². Therefore, while a reduction is proposed, the modified development remains compliant with regulation 108 of the Child Care Planning Guideline.

CONCLUSION (Environmental Impacts)

As the essence and materiality of the proposed modification is substantially the same as approved, it is thus found that the proposed modification will have no impact on the natural or built environment. The existing form and use of the building will remain relatively unaltered from the approved development. Further, the consent is subject to conditions of consent that ensure no impacts upon the surrounding environment, and there are no negative social or economic impacts.

Per the original approval, the land is appropriately zoned to permit development for the purpose of a medical centre, child care centre, gymnasium, business premises and food and drink premises, whilst meeting the long-term objectives of the zone.

The public interest will continue to be served by the approval of the proposed modification as the proposed modifications in no way undermine the attributes of the development that has been granted consent.

Pursuant to the provisions of Section 4.55 of the Environmental Planning Assessment Act, 1979, the consent authority can conclude that the modifications meet the requirements of being substantially the same, and that the development, as modified can therefore be supported.

Should you require any additional information please do not hesitate to contact me.

Kind regards



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