



Land and Environment Court New South Wales

Case Name: **Acorp Developments Pty Ltd v Council of the City of Ryde**

Medium Neutral Citation: [2022] NSWLEC 1106

Hearing Date(s): 28 and 29 June 2021

Date of Orders: 25 February 2022

Date of Decision: 25 February 2022

Jurisdiction: Class 1

Before: Bindon AC

Decision: The Court orders:

- 1) The Appeal is upheld.
- 2) Consent is granted to Development Application No LDA2020/0035, as amended, for alterations to the basement, lower ground floor and ground floor levels of a commercial premises within a mixed use development to accommodate a 51 place child care centre, with provision for 13 car spaces, at 8 Monash Road Gladesville, subject to the conditions set out in Annexure A.
- 3) The Respondent is ordered to register the Development Consent on the NSW Planning Portal in accordance with s. 4.20(1) of the Environmental Planning and Assessment Act 1979 within 14 days of the date of these orders.
- 4) The Respondent is to publish a notice of the development consent granted in relation to DA2020/0349 on its website in accordance with cl 124 of the Environmental Planning and Assessment Regulation 2000 within 14 days from the date of this order
- 5) The exhibits are returned, except for A, B, G, K, L, and 3.

Catchwords: DEVELOPMENT APPLICATION – alterations to commercial premises to permit child care centre – simulated outdoor play space – concurrence of NSW

Department of Education – whether substantial redevelopment or substantial refurbishment of existing mixed use building and application of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

Legislation Cited: Environmental Planning and Assessment Act 1979, s 4.20
Environmental Planning and Assessment Regulation 2000, cl 124

Cases Cited: Acorp Developments Pty Ltd v Council of the City of Ryde [2022] NSWLEC 1028

Category: Principal judgment

Parties: Acorp Developments Pty Ltd (Applicant)
Council of the City of Ryde (Respondent)

Representation: Counsel:
A Pickles SC (Applicant)
F Berglund (Respondent)

Solicitors:
HWL Ebsworth Lawyers (Applicant)
Council of the City of Ryde (Respondent)

File Number(s): 2020/342039

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** On 7 February 2022, I handed down my reasons in the Class 1 appeal *Acorp Developments Pty Ltd v Council of the City of Ryde* [2022] NSWLEC 1028 (Principal Judgment) and indicated that upon satisfaction of certain directions, I foreshadowed granting consent, subject to conditions.
- 2 The Principal Judgment included at par [153] the following directions:
 - (1) “The Council of the City of Ryde is to lodge a revised set of Draft Conditions of Consent, in Word format, amended in accordance with the findings of this judgment within 10 working days of the date of these directions, and including amending the Table to Condition 2 in Part 2 of Council’s Draft Conditions as set out in Direction (2) below.
 - (2) The Court, exercising under s 39(2) of the *Land and Environment Court Act 1979* the function of the Council of the City of Ryde as the relevant consent authority under cl 55(1) of the Environmental Planning and Assessment Regulation 2000, agrees to the Applicant amending the development application No. LDA2020/0035 filed with the Court on 2 December 2020 by the addition of the following documents:

Document Description	Date	Plan No/Reference
Compliance Table	25.05.2021	Baini Design, Drawing No. 00, Project No. 20027, Rev D
Site Plan	25.05.2021	Baini Design, Drawing No. 01, Project No. 20027, Rev D
Basement Plan	25.05.2021	Baini Design, Drawing No. 02, Project No. 20027, Rev D
Lower Ground Floor Plan	29.06.21	Baini Design, Drawing No. 03, Project No. 20027, Rev E
Ground Floor Plan	29.06.21	Baini Design, Drawing No. 04, Project No. 20027, Rev E
Evacuation Path Plan	29.06.21	Baini Design, Project No. 20027, Rev E

Elevations	25.05.2021	Baini Design, Drawing No. 05, Project No. 20027, Rev D
Elevations	25.05.2021	Baini Design, Drawing No. 06, Project No. 20027, Rev D
Sections	25.05.2021	Baini Design, Drawing No. 07, Project No. 20027, Rev D
Sections	25.05.2021	Baini Design, Drawing No. 08, Project No. 20027, Rev D
Callout Elevations	25.05.2021	Baini Design, Drawing No. 09, Project No. 20027, Rev D
Nappy Change Detail	25.05.2021	Baini Design, Drawing No. 10, Project No. 20027, Rev D
Bottle + Craft Bench Detail	25.05.2021	Baini Design, Drawing No. 11, Project No. 20027, Rev D
Kitchen + Laundry Details	25.05.2021	Baini Design, Drawing No. 12, Project No. 20027, Rev D
Calculation Plan	25.05.2021	Baini Design, Drawing No. 13, Project No. 20027, Rev D
Indoor Play Area Diagrams	25.05.2021	Baini Design, Drawing No. 14, Project No. 20027, Rev D
0-2 Outdoor Play Area	25.05.2021	Baini Design, Drawing No. 15, Project No. 20027, Rev D
South Western Outdoor Play Area	25.05.2021	Baini Design, Drawing No. 16, Project No. 20027, Rev D
Natural Ventilation Diagrams	25.05.2021	Baini Design, Drawing No. 17, Project No. 20027, Rev D
Outdoor Area Calculations	25.05.2021	Baini Design, Drawing No. 18, Project No. 20027, Rev D
Ground Floor C.O.S Calculation	25.05.2021	Baini Design, Drawing No. 20, Project No. 20027, Rev D
Lower Ground Childcare Centre + Common Outdoor Area Landscape Concept	25.05.2021	Outside in Design Group, Drawing Number: L-01, Issue H

Ground Floor Childcare Centre + Common Outdoor Area Landscape Concept	25.05.2021	Outside in Design Group, Drawing Number: L-02, Issue H
Sections + Elevations	25.05.2021	Outside in Design Group, Drawing Number: L-03, Issue H
Sections + Elevations	25.05.2021	Outside in Design Group, Drawing Number: L-04, Issue H
Balcony Planters Landscape Plan	25.05.2021	Outside In Design Group, Drawing Number L-05 Issue H
Balcony Planters Section FF	25.05.2021	Outside In Design Group, Drawing Number L-06 Issue H
Access 2019 Indicative Compliance Assessment Report	03.06.2020	Building Innovations Australia, Report No. PRO-04511-D1W4, Issue v1.1
Fire Engineering Advice	02.07.2021	BCA Innovations
Waste Management Plan	06.01.2020	Baini Design
Pre-Construction (Detailed Design) Road Safety Audit	28.05.2020	TTPP Transport Planning, Ref No. 17367, V01
Plan of Management	09.07.2021	Early Education Solutions, Version 6
Acoustic Report	21.06.2021	The Acoustic Group

- (3) The respondent, the Council of the City of Ryde, is to lodge the amendment of the development application on the NSW planning portal within 7 days of the date of this direction and notify the Applicant after it has been lodged.
- (4) The Applicant is to file a copy of the amended development application within 7 days after the respondent has notified the Applicant that the amendment has been lodged on the NSW planning portal.
- (5) In the event the respondent is unable to lodge the amended application on the NSW planning portal as directed in (3) above, the respondent is to notify the Court via Online Court as soon as possible but no later than 14 days after the date of the direction and request for the matter to be relisted for further directions."

3 On 10 February 2022 the Council provided to the Court a copy of a revised set of draft conditions in accordance with Directions 1) and 2) of the Principal Judgement. I have reviewed those conditions and find they are consistent with my findings in the Principal Judgement.

4 On 16 February 2022, the Council advised the Court that it was having difficulties in uploading the amended application to the NSW planning portal and, pursuant to Direction 5) sought further directions. On 21 February 2022 the matter was relisted before me for a mention. Following discussions regarding the amended application documentation and the process for uploading the amended application, I made further directions, as follows:

“1. The Applicant, by close of business today (21/02/22) is to:

a) Upload to the NSW Planning Portal the amended DA documentation referred to in para 153(2) of my judgment handed down 7 February 2022; and

b) File an electronic copy of that amended DA documentation with the court; and

c) Provide an electronic copy of that amended DA documentation to the Respondent.

2. The Council, by close of business tomorrow (22/02/22), is to advise the Applicant if it requires hard copies of any of the amended DA documentation.

3. The Applicant, by close of business on Wednesday 23/02/22, is to provide the Council with the hard copies requested in accordance with Direction 2.”

5 Later on 21 February 2022, the Applicant advised the Court that the documents comprising the amended application were uploaded to the NSW planning portal that day, and provided screenshots evidencing the upload of the documentation to the portal and correspondence to the Respondent providing the screenshots and documentation. A hard copy of the amended application was filed with the court on 22 February 2022, as agreed with the Court, following the Applicant's advice that the documents were too large to file electronically via the Court's Online Registry.

6 On 23 February 2022 the Applicant advised the Court that Council had not advised the Applicant that it required a hard copy of any of the amended application documents.

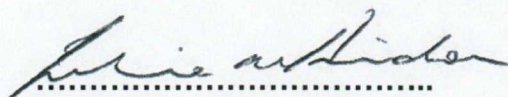
- 7 I am therefore satisfied that my directions in the Principal Judgement and as amended by my subsequent directions on 21 February 2022 have been complied with, and I now make the following orders and thereby dispose of the matter.

Orders

- 8 The Court makes the following orders:

- (1) The Appeal is upheld.
- (2) Consent is granted to Development Application No LDA2020/0035, as amended, for alterations to the basement, lower ground floor and ground floor levels of a commercial premises within a mixed use development to accommodate a 51 place child care centre, with provision for 13 car spaces at 8 Monash Road Gladesville, subject to the conditions set out in Annexure A.
- (3) The Respondent is ordered to register the Development Consent on the NSW Planning Portal in accordance with s. 4.20(1) of the *Environmental Planning and Assessment Act 1979* within 14 days of the date of these orders.
- (4) The Respondent is to publish a notice of the development consent granted in relation to DA2020/0349 on its website in accordance with cl 124 of the Environmental Planning and Assessment Regulation 2000 within 14 days from the date of this order
- (5) The exhibits are returned, except for A, B, G, K, L, and 3.

I certify that this and the preceding 5 pages are a true copy of my reasons for judgment.



J Bindon

Acting Commissioner of the Court

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: LDA2020/0035

Development:

Alterations to the basement, lower ground floor and ground floor levels of a commercial premises within a recently constructed mixed use development to accommodate a 51 place child care centre, with provision for 13 car spaces in the basement car park

Site: Lot 100 in DP 1244953, 8 Monash Road, Gladesville

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 25 February 2022.

Date from which consent takes effect: Date the consent is registered on the NSW Planning Portal.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the "applicant" means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the "site", means the land known as Lot 100 in DP 1244953, 8 Monash Road, Gladesville .

The conditions of consent are as follows:

DEFERRED COMMENCEMENT CONDITIONS

PART 1 - The following are the Deferred Commencement condition(s) imposed pursuant to Section 4.16(3) of the Environmental Planning & Assessment Act 1979.

(A) Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent is granted to LDA2020/0035 subject to the following conditions of consent:

1. **Plan amendments.** The submission of amended plans for Council's approval which provide the following plan amendments:

- a) Unit 14 to be provided with a privacy screen affixed to the southern eastern edge of the balcony to achieve an effective height of 1.6m from the finished floor of the balcony. The screen is to adopt an angled screen set at 33 degrees to enable the entry of natural light and the louvres are to be spaces to prevent cross-viewing down into the child care centre indoor and outdoor play areas. The details of the screens are to be shown on the plans accompanying the Construction Certificate and the screens are to adopt the same finish, colour, and material as the existing louvre screens on the existing building.
- b) The kitchen windows to Units 1 and 2 on the south-western façade of the lower ground floor are to be provided with external horizontal louvre privacy screens that:
 - a) allow for the opening of the windows by at least 100mm,
 - b) are operable by the residents of those units, and
 - c) are constructed in a translucent material that obscures visibility.
- c) The Quatro Design GRC trough planter boxes on the balconies are to adopt a colour that matches the existing white balustrades and this is to be demonstrating on the Construction Certificate drawings as well as relevant engineering and structural details for the support and installation of the planter boxes.
- d) The rear communal open space area is to be amended to:
 - i. Provide an access ramp from the decked area to the lower communal area so it is accessible for persons with a disability and the 4 south-western veggie gardens are to be removed and replaced with turf adjacent to the decked area, noting the 4 veggie gardens and the seating area to the north-east are to be maintained.

- ii. Delete the stair access at the north-western corner of the OSD tank to limit access to this area and replace this with additional landscape screen planting.
 - iii. Provide a fence and gate to the south-western end of the elevated OSD tank area, aligned with the north-eastern end of the adjacent portion of the deck, to limit access to this area, except for residents of Unit 2 and Unit 3.
 - iv. Provide a gate between each of the Unit 2 and Unit 3 balconies, and the adjoining elevated OSD tank area.
 - v. Provide a 1.6m high privacy screen- designed to match the colour, design, and detailing of the privacy screen to the bbq area- along the north-western edge of the raised OSD tanks to prevent cross-viewing from the common open space to the units. The privacy screen is to adopt a 1.6m height relative to the ground level of the communal open space.
- e) The ground floor outdoor play space is to adopt a Top of Fence Height of RL54.2 (being 1.6m above the FFL of the outdoor play area) on the north-eastern edge (blue line on landscape plan) and a Top of Fence Height of 53.8 to the western and north-western edge (orange line on landscape plan). The design and configuration of the fence is to be otherwise consistent with the details on L-02 Rev H Dated 28/6/21 by Outside In Design Group.
- f) Elevations and section plans are required to depict the structure which is to enclose the "BCA compliant platform lift" to the rear building. The plans and supporting information shall detail that the scale of the structure is minimised as much as is appropriate, and that glazing is used throughout so as to minimise any further reduction in natural light on surrounding areas. Obscure glazing required as necessary to address privacy issues to the child care centre any to residential units. Evidence of compliance with BCA fire separation requirements are also to be provided.
- g) The following measures are to be shown on the Construction Certificate Plans:
- The access doors to the child care centre are to be provided with swipe access (or suitable other means) to limit access to authorised persons.
 - The entry doors to the building are also to be provided with swipe access (or suitable other means) to limit access to residents and users of the child care centre.

- The north-western access door at the ground floor lobby is to be provided with swipe access (or other suitable means) to limit access to this area by residents only.
- The lift access is to be managed with a swipe access (or similar other means) and be coded such that child care visitors and staff can only access the ground floor, lower-ground floor, and basement 1 parking areas.
- Lift access to residents to the lower ground floor child care centre is to be restricted via suitable coding of the swipe card access.

In this condition, all reference to unit numbers is a reference to the unit numbers given by the plans approved within MOD2018/0157.

(B) Written evidence that the matter identified in deferred commencement condition (A) (1) above has been satisfied, must be submitted to Council within twelve (12) months from the date of this development consent, failing which, this development consent **will lapse** pursuant to Section 4.53(6) of the Environmental Planning and Assessment Act 1979.

(C) This Development Consent will not operate until such time that the Council notifies the Applicant in writing that that deferred commencement consent condition (A) (1) above has been satisfied; and

Upon Council giving written notification to the Applicant that deferred commencement consent condition (A) (1) above has been satisfied, the development consent will become operative from the date of that written notification, subject to the following conditions of consent:

PART 2 - The conditions in the following sections of this consent shall apply upon satisfactory compliance with the above requirements and receipt of appropriate written confirmation from Council.

GENERAL

The following conditions of consent included in this Part identify the requirements, terms and limitations imposed on this development.

2. **Approved Plans/Documents.** Except where otherwise provided in this consent, the development is to be carried out strictly in accordance with the following plans (stamped approved by Council) and support documents:

Document Description	Date	Plan No/Reference
Compliance Table	25.05.2021	Baini Design, Drawing No. 00, Project No. 20027, Rev D
Site Plan	25.05.2021	Baini Design, Drawing No. 01, Project No. 20027, Rev D
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Ground Floor Childcare Centre + Common Outdoor Area Landscape Concept	25.05.2021	Outside in Design Group, Drawing Number: L-02, Issue H
Sections + Elevations	25.05.2021	Outside in Design Group, Drawing Number: L-03, Issue H
Sections + Elevations	25.05.2021	Outside in Design Group, Drawing Number: L-04, Issue H
Access 2019 Indicative Compliance Assessment Report	03.06.2020	Building Innovations Australia, Report No. PRO-04511-D1W4, Issue v1.1
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Pre-Construction (Detailed Design) Road Safety Audit	28.05.2020	TTPP Transport Planning, Ref No. 17367, V01

Plan of Management	09.07.2021	Early Education Solutions, Version 6
Acoustic Report	21.06.2021	The Acoustic Group
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Balcony Planters Section FF	25.05.2021	Outside in Design Group, Drawing Number: L-06, Issue H

3. **Inconsistency between documents.** In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail.

Reason: To ensure that the development is in accordance with the determination.

4. **Fire Safety Matters/Changes in building use.**

- (a) A building in respect of which there is a change of building use must comply with the Category 1 fire safety provisions applicable to the proposed new use.

NOTE: The obligation under this clause to comply with Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in the relevant development consent.

- (b) This clause does not apply to the extent to which an exemption is in force under clause 187 and 188 in the Environmental Planning and Assessment Regulations 2000.

- (c) In this case clause, "Category 1 fire safety provision" has the same meaning as it has in Clause 3 in the Environmental Planning and Assessment Regulations 2000 subject to any terms of any condition or requirement referred to in Clause 187(6) or 188(4).

Reason: Statutory requirement.

5. **Signage – not approved unless shown on plans.** This consent does not authorise the erection of any signs or advertising structures not indicated on

the approved plans. Separate approval must be obtained from Council for any additional signs, unless such signage is "exempt development".

Reason: To ensure signage is approved in accordance with the approved plans.

6. **Security Grilles.** This consent does not authorise the erection of any security grilles or barriers on the shopfront. Separate approval must be obtained for any such works.

Reason: To ensure security grilles or barriers are not authorised unless approved.

7. **Building Code of Australia.** All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.

Reason: Statutory requirement.

8. **Support for neighbouring buildings.** If the development involves excavation that extends below the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) Protect and support the adjoining premises from possible damage from the excavation, and
- (b) Where necessary, underpin the adjoining premises to prevent any such damage, in accordance with relevant Australian Standards.

Reason: To ensure the structural protection of adjoining properties

9. **Hours of work.** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.

Reason: To ensure reasonable standards of amenity for occupants of neighbouring properties

10. Hoardings.

(a) A hoarding or fence must be erected between the work site and any adjoining public place.

(b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.

Reason: To ensure the safety of the public and hoarding/fencing is removed at the completion of the development.

11. Illumination of public place. Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Reason: To ensure the safety of the public.

12. Development to be within site boundaries. The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Any doors/ gates on the boundary must be installed so they do not open onto any footpath.

Reason: To ensure the development is located within the site boundaries.

13. Public space. The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.

Reason: To ensure public spaces are unobstructed during construction.

14. Public Utilities. Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra,

RMS, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.

Reason: To ensure access to public utilities.

15. Roads Act. Any works performed in, on or over a public road pursuant to this consent must be carried out in accordance with this consent and with the Road Opening Permit issued by Council as required under section 138 of the Roads Act 1993.

Reason: Statutory requirement.

16. Traffic Management. Traffic management procedures and systems must be in place and practised during the construction period to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 and City of Ryde, Development Control Plan 2014: - Part 8.1; Construction Activities.

Reason: To minimise traffic impacts.

17. Connection by gravity flow - All sanitary fixtures must be connected to the sewerage system by gravity flow.

Reason: Sewer must discharge via gravity.

Road and Rail Noise:

18. Road traffic noise criteria for sensitive developments - The building(s) must be designed and constructed so that the road traffic noise levels inside the building(s) comply with the noise criteria specified in *Development Near Rail Corridors and Busy Roads – Interim Guideline* (Department of Planning, 2008).

19. **Mechanical ventilation of rooms** - If the airborne noise level with windows and doors open exceeds the above noise criteria by more than 10dBA, an approved system of mechanical ventilation must be provided so that the building occupants can leave the windows and doors closed.

Food premises

20. **Construction and fit-out of food premises** – All proposed food premises (other than retail meat premises) must be constructed and fitted-out in accordance with the requirements of:

- (a) Food Safety Standard 3.2.3: *Food Premises and Equipment*; and
- (b) Australian Standard AS 4674-2004: *Design, construction and fit-out of food premises*.

Reason: To ensure compliance with relevant Australian Standards.

21. **Construction of walls** - The walls of all proposed food premises must be constructed of brick, concrete blocks, preformed panels filled with suitable material or other solid materials.

Reason: To ensure compliance with BCA and relevant Australian Standards.

22. **Provision for installation of kitchen exhaust systems** - Adequate provision must be made for the installation of kitchen exhaust systems to the proposed food premises.

Reason: To ensure the required exhaust is provided.

Mechanical Ventilation

23. **Fresh air intake vents** - All fresh air intake vents must be located in a position that is free from contamination and at least 6 metres from any exhaust air discharge vent or cooling tower discharge.

Reason: To ensure fresh air is provided to vented areas.

- 24. Exhaust air discharge vents** - All exhaust air discharge vents must be designed and located so that no nuisance or danger to health will be created.

Reason: To ensure compliance with relevant Australian Standards.

- 25. Kitchen exhaust vent** - The kitchen exhaust vent must be located above roof level:

- (a) at least 6 metres from any fresh air intake vent or natural ventilation opening;
- (b) at least 6 metres or, where the dimensions of the allotment make this impossible, the greatest possible distance from any neighbouring property boundary; and
- (c) at least 8 metres from any cooling tower.

Reason: To ensure compliance with relevant Australian Standards.

Waste Storage and Handling Facilities

- 26. Storage of garbage and recyclable materials** - A separate room or area must be provided in a convenient location on the premises for the storage of garbage and recyclable materials.

Reason: To ensure a separate waste room is provided.

- 27. Storage of commercial wastes** - A separate garbage room must be provided in a convenient location on the premises for the storage of commercial wastes.

Reason: To ensure a separate waste room is provided.

Plumbing and Drainage

- 28. Plumbing and drainage work** - All plumbing and drainage work must be carried out in accordance with the requirements of Sydney Water Corporation and the NSW Department of Fair Trading.

Reason: Statutory requirement.

- 29. Installation of grease trap** - A grease trap must be installed if required by Sydney Water Corporation. The grease trap must be located outside the building or in a dedicated grease trap room and be readily accessible for servicing. Access through areas where exposed food is handled or stored or food contact equipment or packaging materials are handled or stored is not permitted.

Reason To ensure compliance with relevant Australian Standards.

PRIOR TO CONSTRUCTION CERTIFICATE

A Construction Certificate must be obtained from a Principal Certifying Authority to carry out the relevant building works approved under this consent. All conditions in this Section of the consent must be complied with before a Construction Certificate can be issued.

Council Officers can provide these services and further information can be obtained from Council's Customer Service Centre on 9952 8222.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with the conditions in this Section of the consent.

Details of compliance with the conditions, including plans, supporting documents or other written evidence must be submitted to the Principal Certifying Authority.

30. **Section 7.12.** A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council as follows:

A – Contribution Type	B – Contribution Amount
Section 7.12 Contribution	\$5,669.86

These are contributions under the provisions of Section 7.12 of the *Environmental Planning and Assessment Act, 1979* as specified in City of Ryde Fixed Rate (Section 7.12) Development Contributions Plan 2020, effective from 1 July 2020.

The above amount is current at the date of this consent, and is subject to quarterly adjustment for inflation on the basis of the contribution rates that are applicable at time of payment. Such adjustment for inflation is by reference to the Consumer Price Index published by the Australian Bureau of Statistics (Catalogue No 5206.0) – and may result in contribution amount that differs from that shown above.

The contribution must be paid **prior to the issue of any Construction Certificate**. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the **City of Ryde**. Personal or company cheques will not be accepted.

A copy of the City of Ryde Fixed Rate (Section 7.12) Development Contributions 2020 Plan may be inspected at the Ryde Customer Service Centre, 1 Pope Street Ryde (corner Pope and Devlin Streets, within Top Ryde City Shopping Centre) or on Council's website <http://www.ryde.nsw.gov.au>.

Reason: Statutory requirement.

31. **Energy Efficiency.** The fittings, fixtures and materials installed in association with the development (including but not limited to hot water systems, ceiling/roof insulation, shower heads, toilet cisterns and the like) shall comply with the requirements of Council's DCP. Details are to be noted on the plans submitted with the **Construction Certificate**.

Reason: To ensure that the development is carried out in accordance with Ryde's Development Control Plan 2014: Part 7.1 – Energy Smart, Water Wise.

32. **Compliance with Australian Standards.** The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the **Construction Certificate**.

Reason: To ensure compliance with the Australian Standards.

33. **Vehicle Access & Parking.** All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Offstreet Parking standards).

With respect to this, the following revision(s) / documentation must be provided with the plans submitted with the application for a Construction Certificate;

- a) To facilitate sight distance between pedestrian traffic in the footpath area and a vehicle emerging from the basement garage, a convex mirror is to be positioned on the southern wall of the vehicle entry and angled to ensure pedestrians to the north of the vehicle entry and an emerging driver have a line of sight between one another.
- b) The operation is to provide a total of 5 staff parking spaces. In lieu of the additional second staff space being proposed on the western side of the garage, this space is to be retained as a resident visitor space (as required by the previous development approvals).

These amendment(s) must be clearly marked on the plans submitted to the Accredited Certifier prior to the issue of a Construction Certificate.

34. **Structural Certification.** The applicant must engage a qualified practising structural engineer to provide structural certification in accordance with relevant BCA requirements prior to the release of the **Construction Certificate**.

Reason: To ensure the structural integrity of the approved development.

35. **Security deposit.** The Council must be provided with security for the purposes of section 4.17(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (category: other buildings with delivery of bricks or concrete or machine excavation)

Reason: Statutory requirement.

36. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:

- (a) Infrastructure Restoration and Administration Fee
- (b) Enforcement Levy

Reason: Statutory requirement.

37. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.

Reason: Statutory requirement.

38. **Sydney Water – Building Plan Approval.** The plans approved as part of the Construction Certificate must also be approved by Sydney Water prior to excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Please go to www.sydneywater.com.au/tapin to apply.

Reason: Statutory requirement.

39. **Reflectivity of materials.** Roofing and other external materials must be of low glare and reflectivity. Details of finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority prior to the release of the **Construction Certificate**.

Reason: To ensure the use of appropriate roofing material to minimise reflectivity and impacts upon amenity.

40. **Lighting of common areas (driveways etc).** Details of lighting for internal driveways, visitor parking areas and the street frontage shall be submitted for approval prior to issue of the **Construction Certificate**. The details to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.

Reason: To ensure appropriate lighting is provided for residential safety and maintains the amenity of adjoining properties.

Connection to Sewer

- 41. Evidence of connection by gravity flow** - Documentary evidence from a professional hydraulic engineer or other suitably qualified person demonstrating that all sanitary fixtures will be connected to the sewerage system by gravity flow must be submitted with the application for the Construction Certificate.

Reason: Sewer must discharge via gravity.

Plumbing and Drainage Work

- 42. Grease trap room details** - Details of any proposed grease trap room must be submitted for approval with the application for the Construction Certificate.

Reason: To ensure compliance with relevant Australian Standards.

- 43. Irrigation.** An automatic watering system is to be supplied to all landscape areas including outdoor play spaces to ensure adequate water is available to vegetation. Irrigation systems shall be fully automated, capable of seasonal adjustments and include weather and/or water sensors to meet the 'smart watering system' requirements as defined by Sydney Water. Where possible irrigation shall be connected to rainwater tanks or similar. Details of compliance are to be submitted with the plans for Construction Certificate.

Reason: To ensure the health and longevity of approved landscaping.

- 44. Play Equipment Design.** The design of all playground areas and equipment must adhere to and fully comply with 'AS4685:2017 Playground Equipment and Surfacing', 'AS4422:2016 Playground Surfacing – Specifications, requirements and test method' and 'AS1428:2016 Design for Access and Mobility'. Details of compliance, including any manufactures product specifications are to be submitted with the plans for Construction Certificate.

Reason: To ensure compliance with relevant Australian Standards.

- 45. Indoor Play Spaces – Species Substitution.** The following proposed planting selections, where located internally, are to be substituted as detailed below:

1. Liriope muscari 'Monroe White' (Monroe White Liriope) is to be substituted for Chlorophytum comosum (Spider Plant)
2. Gazania rigens 'New Day Mixed' (Gazania) is to be substituted for Schlumbergera asp. (Zygocactus)
3. Gardenia radicans (Dwarf Gardenia) is to be substituted for Nephrolepis exaltata (Sword Fern)
4. Gardenia augusta 'Florida' (Gardenia) is to be substituted for Chamaedorea elegans (Parlour Palm)

Details of species substitution are to be shown on the plans for Construction Certificate.

Reason: To ensure suitable non-toxic planting species are provided and capable of adequately performing within an internal environment setting.

46. **Compliance with Acoustic Report.** Details of compliance with the recommendations made in the Acoustic Report prepared by The Acoustic Group dated 21 June 2021 must be submitted with the application for any Construction Certificate.

Reason: To ensure required noise amelioration measures are incorporated into the development.

47. **Compliance with Fire Engineering Statement.** Details of compliance with the recommendations made in the Fire Engineering Statement prepared by BCA Innovations dated 2 July 2021 must be submitted with the application for any Construction Certificate.

Reason: To ensure compliance with the necessary building regulations.

PRIOR TO COMMENCEMENT OF CONSTRUCTION

Prior to the commencement of any demolition, excavation, or building work the following conditions in this Part of the Consent must be satisfied, and all relevant requirements complied with at all times during the operation of this consent.

48. Site Sign

- (a) A sign must be erected in a prominent position on site, prior to the commencement of construction:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work,
 - (ii) showing the name of the principal contractor (if any) or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- (b) Any such sign must be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

Reason: Statutory requirement.

49. Excavation adjacent to adjoining land

- (a) If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must, at their own expense, protect and support the adjoining premises from possible damage from the excavation, and where necessary, underpin the adjoining premises to prevent any such damage.
- (b) The applicant must give at least seven (7) days notice to the adjoining owner(s) prior to excavating.
- (c) An owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

Reason: To ensure notice to given adjoining owners prior to excavation works.

50. **Pre-commencement dilapidation report.** The submission of a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties namely 140 Monash Road, and public infrastructure (including roads, gutters, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of the affected adjoining private properties, prior to the commencement of construction.

Reason: To identify existing condition of adjoining property.

51. **Safety fencing.** The site must be fenced prior to the commencement of construction, and throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

Reason: To ensure the site is safely secured.

52. **Work Zones and Permits.** Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane.

Reason: To ensure a work zone is approved to minimise impact on traffic.

DURING CONSTRUCTION

Unless otherwise specified, the following conditions in this Part of the consent must be complied with at all times during the construction period. Where applicable, the requirements under previous Parts of the consent must be implemented and maintained at all times during the construction period.

- 53. Critical stage inspections.** The person having the benefit of this consent is required to notify the Principal Certifying Authority during construction to ensure that the critical stage inspections are undertaken, as required under clause 162A(4) of the *Environmental Planning and Assessment Regulation 2000*.

Reason: Statutory requirement.

- 54. Construction noise.** The L10 noise level measured for a period of not less than 15 minutes while demolition and construction work is in progress must not exceed the background noise level by more than 20 dB(A) at the nearest affected residential premises.

Reason: To reduce impacts on amenity of surrounding sites

- 55. Survey of footings/walls.** All footings and walls within 1 metre of a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report must be prepared indicating the position of external walls in relation to the boundaries of the allotment.

Reason: To ensure all works are located on the subject site.

- 56. Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.

Reason: To protect the environment and the amenity of surrounding properties.

- 57. Use of fill/excavated material.** Excavated material must not be reused on the property except as follows:

- (a) Fill is allowed under this consent;
- (b) The material constitutes Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*;
- (c) the material is reused only to the extent that fill is allowed by the consent.

Reason: To protect the environment.

58. Construction materials. All materials associated with construction must be retained within the site.

Reason: To ensure safety and amenity of the area.

59. Site Facilities

The following facilities must be provided on the site:

- (a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
- (b) a garbage receptacle for food scraps and papers, with a tight fitting lid.

Reason: Statutory requirement.

60. Site maintenance

The applicant must ensure that:

- (a) approved sediment and erosion control measures are installed and maintained during the construction period;
- (b) building materials and equipment are stored wholly within the work site unless an approval to store them elsewhere is held;
- (c) the site is clear of waste and debris at the completion of the works.

Reason: To ensure the site is appropriately maintained.

61. Work within public road. At all times work is being undertaken within a public road, adequate precautions shall be taken to warn, instruct and guide

road users safely around the work site. Traffic control devices shall satisfy the minimum standards outlined in Australian Standard No. AS1742.3-1996 "Traffic Control Devices for Work on Roads".

Reason: To ensure works do not disrupt pedestrians and vehicular traffic.

62. **Tree protection – no unauthorised removal.** This consent does not authorise the removal of trees unless specifically permitted by a condition of this consent or identified as approved for removal on the stamped plans.

Reason: Statutory requirement.

Noise Pollution

63. **Noise control measures** - All noise and vibration control measures nominated in the acoustical consultant's report and any related project documentation must be implemented.

Reason: To ensure required noise amelioration measures are incorporated into the development.

PRIOR TO OCCUPATION CERTIFICATE

An Occupation Certificate must be obtained from a Principal Certifying Authority prior to commencement of occupation of any part of the development, or prior to the commencement of a change of use of a building.

Prior to issue, the Principal Certifying Authority must ensure that all works are completed in compliance with the approved construction certificate plans and all conditions of this Development Consent.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with conditions in this Part of the consent. Details to demonstrate compliance with all conditions, including plans, documentation, or other written evidence must be submitted to the Principal Certifying Authority.

64. Landscaping. All landscaping works approved by condition 1 are to be completed prior to the issue of any **Occupation Certificate**.

Reason: To ensure completion of landscaping works in accordance with the approved plans.

65. Fire safety matters. At the completion of all works, a Fire Safety Certificate must be prepared, which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Each year the Owners must send to the Council and the Fire and Rescue NSW an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirements.

66. **Post-construction dilapidation report.** The submission of a post-construction dilapidation report which clearly details the final condition of all property, infrastructure, natural and man-made features that were recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of the affected adjoining and private properties, prior to the issue of any **Occupation Certificate**.

Reason: To ensure there is a record of properties that may be affected by the construction works once completed.

67. **Letterboxes and street/house numbering.** All letterboxes and house numbering are to be designed and constructed to be accessible from the public way. Council must be contacted in relation to any specific requirements for street numbering.

Reason: To ensure consistency with Council's requirements for street numbering.

Food Premises

68. **Certification of fit-out work** - Where Council is not the Principal Certifying Authority, the PCA must inspect the completed fit-out and issue a compliance certificate certifying that the fit-out complies with Food Safety Standard 3.2.3: *Food Premises and Equipment* and Australian Standard AS 4674-2004: *Design, construction and fit-out of food premises*, and a copy of the compliance certificate must be submitted to Council, before the issue of an Occupation Certificate.

Reason: To ensure compliance with relevant Australian Standards.

69. **Parking Management Plan.** A Parking Management Plan (PMP) must be implemented in the operation of the development so as to ensure safe and efficient operation of the development. The PMP must be prepared by a practising and suitably qualified Traffic Engineer and must address the following matters;

- a) Designate a safe turning area or waiting bay for parents collecting children and being unable to park due to all spaces being occupied.
- b) Ensure that the efficient and full utilisation of staff parking spaces, particular with respect to the management of the tandem parking spaces.
- c) Ensure that the service deliveries are undertaken outside peak collection periods and are accommodated within the allocated parking areas in the site.

The prepared PMP must be adopted in the ongoing operation of the development.

Reason: To ensure the safe and efficient utilisation of the parking area provided on the site for the development.

Noise Pollution

70. **Compliance report** - A report from a qualified acoustical consultant demonstrating compliance with the approved acoustic assessment report is to be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.

Reason: To ensure required noise amelioration measures are incorporated into the development.

OPERATIONAL CONDITIONS

The conditions in this Part of the consent relate to the on-going operation of the development and shall be complied with at all times.

71. Hours of operation child care. The hours of operation are to be restricted to:

- 7:00am to 6:00pm (Monday-Friday).

This condition does not apply to activities (e.g. cleaning) which take place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling, then such internal activities must not occur outside the hours of use specified above.

Reason: To ensure conformity with proposal.

72. Number of children. The maximum number of children shall be limited to the following:

- 0-2 years: eight (8)
- 2-3 years: fifteen (15)
- 3-5 years: twenty-eight (28)

Reason: To ensure conformity with proposal.

73. Number of staff – child care. The number of staff onsite shall be as follows:

- At least eight (8) staff are to be provided for children accommodated by the child care centre, **except** where stipulated by the regulations, and
- At least one (1) member of staff for administration/support purposes.

Reason: To ensure sufficient staffing in accordance with the Regulations

74. The balcony planter boxes are to be maintained in perpetuity and any plantings are also to be maintained with any plant loss to be replaced within 3 months. Plants located within the balcony planter boxes are to be maintained to a height of between 1.5m and 1.6m, span the entire width of the planter boxes, and be of a sufficient density to prevent overlooking into the internal and external areas of the child care centre. The building managers shall conduct inspections every 3 months to ensure this requirement is complied with. If the requirements are not complied with, the building managers are to, within two weeks, remedy any non-compliance with this condition.

The above requirements shall be reflected in any residential tenancy agreement and, if the property is strata titled, the by-laws shall reflect such these requirement.

75. **No signage above awning.** No advertising or business identification signage shall be displayed or erected on any part of the façade of the building on any elevation above the shop awning.

Reason: To maintain the established character and significance of the heritage conservation area.

76. **Signage – English language.** All advertising signs are to be displayed in the English language but may include a translation into another language using letters or characters that are no larger than the English language letters or characters.

Any translated message must be accurate and complete.

No amendment to the size of a sign will be permitted to allow for both the English and translated language to be displayed.

Reason: To ensure all signage is in the English language and can be translated into another language.

Waste Storage and Handling Facilities

77. **Storage and disposal of wastes** - All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.

Reason: To ensure appropriate waste management procedures are carried out.

78. Waste containers - An adequate number of suitable waste containers must be kept on the premises for the storage of garbage and trade waste.

Reason: To ensure appropriate waste management procedures are carried out.

79. Recyclable wastes - Wastes for recycling must be stored in separate bins or containers and be transported to a facility where the wastes will be recycled or re-used.

Reason: To ensure appropriate waste management procedures are carried out.

80. Maintenance of waste storage areas - All waste storage areas must be maintained in a clean and tidy condition at all times.

Reason: To ensure waste storage areas are maintained appropriately.

Noise Pollution:

81. Offensive noise - The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.

Reason: To control noise impacts within the locality.

82. Noise and vibration from plant or equipment - Unless otherwise provided in this Consent, the operation of any plant or equipment installed on the premises must not cause:

- (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at, or computed for, the most affected point, on or within the boundary of the most affected receiver. Modifying factor corrections must be applied for tonal, impulsive, low

frequency or intermittent noise in accordance with the New South Wales Industrial Noise Policy (EPA, 2000).

- (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 Acoustics – Recommended design sound levels and reverberation times for building interiors.
- (c) The transmission of vibration to any place of different occupancy.

Reason: To control noise and vibration impacts within the locality.

83. Delivery times. All deliveries to and from the child care centre are to occur between the hours of 9:30am and 3pm on any day.

Reason: To minimise disturbance of surrounding areas and conflict with peak pick up and drop off times.

84. Parking Allocation – non-residential uses. Both the owner and occupier of the development must provide and maintain the minimum parking allocation as follows;

- 11 childcare spaces, comprising of;
 - 5 staff spaces
 - 7 drop-off spaces, including 1 disabled space

Reason: To ensure that the provision of parking is in accordance with the determination.

85. Storage and disposal of wastes - All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.

Reason: To ensure effective waste management.

86. Waste containers - An adequate number of suitable waste containers must be kept on the premises for the storage of garbage and trade waste.

Reason: To ensure effective waste management.

87. Recyclable wastes - Wastes for recycling must be stored in separate bins or containers and be transported to a facility where the wastes will be recycled or re-used.

Reason: To ensure effective waste management.

88. Transfer of waste containers to emptying point - Staff or contractors must be employed to take the waste containers from the garbage room or waste storage area to the container emptying point for servicing and to return the containers to the garbage room or waste storage area after servicing.

Reason: To ensure effective waste management.

89. Disposal of liquid wastes - All liquid wastes generated on the premises must be treated and discharged to the sewerage system in accordance with the requirements of Sydney Water Corporation or be transported to a liquid waste facility for recycling or disposal.

Reason: To ensure effective waste management.

90. Trade waste permit - The applicant must contact Sydney Water Corporation to determine whether a Trade Waste Permit is required before discharging any trade wastewater to the sewerage system.

Reason: To ensure effective waste management.

91. Maintenance of waste storage areas - All waste storage areas must be maintained in a clean and tidy condition at all times.

Reason: To ensure effective waste management.

92. Operational Management Plan. An operational management plan must be developed and adopted and implemented by Management at the Child Care

Centre and cover issues such as hours of use, child use of outdoor play areas, noise management plans, complaints handling and security. The operational management plan must be consistent with and reflect the plan of management referred to in Condition 1 and reflect conditions of consent. A copy must be kept onsite in the main office.

Reason: To ensure the operation of the facility minimises impact on neighbouring residents.

ADVISORY NOTES

Health Inspection Services:

1. **Inspections and fees** - Council officers may carry out periodic inspections of the premises to ensure compliance with relevant environmental health standards and Council may charge an approved fee for this service in accordance with Section 608 of the *Local Government Act 1993*.

The approved fees are contained in Council's Management Plan and may be viewed or downloaded at www.ryde.nsw.gov.au.

NSW Department of Education Service Approval.

2. A person may not operate an education and care service, as defined by the National Law or the *Children (Education and Care Services) Supplementary Provisions Act 2011* unless they hold a service approval.
3. The operator of the service will need to submit a service approval application to the NSW Department of Education upon completion of the works. In this case the service approval application, should refer to the Department's letter dated 24 August 2020 and be accompanied by the appropriate application referred to therein for an "exemption" to the outdoor space minimum area provision, on the basis of the Department's "preferred alternative solution ... [of] indoor space ... designed as a simulated outdoor environment." (Refer to page 34 of the CCP Guideline).