



[crose@wilshirewebb.com.au](mailto:crose@wilshirewebb.com.au)

Wilshire Webb Staunton Beattie Lawyers

Our Ref: CR: 221172

28 July 2021

The City Manager  
Fairfield City Council  
PO Box 21,  
Fairfield NSW 1860

Dear Sir,

**RONNY ELZAHR v FAIRFIELD CITY COUNCIL**  
**157 – 161 WALWORTH ROAD, HORSLEY PARK**  
**LAND AND ENVIRONMENT COURT PROCEEDINGS: 2021/ 213371**

We **enclose** the following documents by way of service in two separate express post satchels.

1. Class 1 Application; and
2. Notice of Motion and Affidavit in Support.

Please note that the Notice of Motion is returnable before the Land and Environment Court on **6 August 2021**, and the Class 1 Application is returnable before the Court on **24 August 2021**.

Yours faithfully  
**WILSHIRE WEBB STAUNTON BEATTIE**

**CECILIA ROSE**  
**Partner**

Encl.

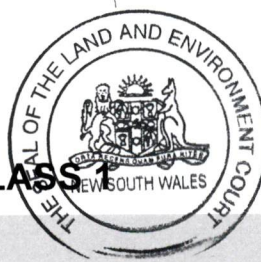
FAIRFIELD CITY COUNCIL

TO:
FILE:

**30 JUL 2021**

DOC ID:
CRM:
SCAN DATE:

1



## APPLICATION CLASS 1

### COURT DETAILS

Court Land and Environment Court of New South Wales  
Class 1  
Case number 2021 / 213371

### TITLE OF PROCEEDINGS

Applicant **RONNY ELZAHR**  
Respondent **FAIRFIELD CITY COUNCIL**

### FILING DETAILS

Filed for Ronny Elzahr, **Applicant**  
Legal representative Cecilia Rose,  
Wilshire Webb Staunton Beattie  
Legal representative reference Ref: CR: 221172  
Contact name and telephone Cecilia Rose  
(02) 9299 3311  
Contact email [crose@wilshirewebb.com.au](mailto:crose@wilshirewebb.com.au)

### HEARING DETAILS

This application is listed at 9am 24/8/2021

### TYPE OF CLAIM

Planning law – Appeal against deemed refusal of a development application pursuant to section 8.7 of the *Environmental Planning and Assessment Act 1979*.

A copy of this document  
must be served

by 2.8.21

## DETAILS OF APPLICATION

Subject address	157 - 161 Walworth Road, Horsley Park NSW 2175
Date or other identification of the decision, or other matter appealed against, objected to, complained of or referred or remitted to the court	Deemed refusal of Development Application No.396.1/2020 regarding the proposed construction of a 2-storey child care centre accommodating a maximum of 111 children including earthworks, landscaping, stormwater and 29 car parking spaces on the subject property at Lot 52 in DP 1095736, known as 157 – 161 Walworth Road, Horsley Park NSW 2175.
	Supporting documents are indexed in the <b>attached</b> Schedule.
Act or instrument under which the proceedings are brought	Section 8.7 of the <i>Environmental Planning and Assessment Act</i> , 1979

## ORDERS SOUGHT

1. The appeal be upheld.
2. Development consent be granted to Development Application No.396.1/2020 regarding the proposed construction of a 2-storey child care centre accommodating a maximum of 111 children including earthworks, landscaping, stormwater and 29 car parking spaces on the subject property known as 157 – 161 Walworth Road, Horsley Park NSW 2175.

## SIGNATURE

Signature of legal representative



Capacity

Solicitor for the Applicant

Date of signature

21 July 2021



## NOTICE TO RESPONDENT

If your solicitor, barrister, authorised agent or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the application and for the applicant's costs of bringing these proceedings.

You must enter an appearance before you can appear before the court.

## HOW TO RESPOND

**Please read this application very carefully. If you have any trouble understanding it or require assistance on how to respond to the application you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the application from:

- The court registry.
- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).

Court forms are available on the LEC website at [www.lawlink.nsw.gov.au/lec](http://www.lawlink.nsw.gov.au/lec).

## REGISTRY ADDRESS

Street address	Level 4, 225 Macquarie Street, Windeyer Chambers, SYDNEY NSW 2000
Postal address	GPO Box 3565, SYDNEY NSW 2001
Telephone	(02) 9113 8200

**FURTHER DETAILS ABOUT APPLICANT****Applicant**

Name	Ronny Elzahr
Address	157 Walworth Road Horsley Park NSW 2175

**Legal representative for applicant**

Name	Cecilia Rose
Practising certificate number	40667
Firm	Wilshire Webb Staunton Beattie
Contact solicitor	Cecilia Rose Level 9, 60 York Street Sydney NSW 2000
DX address	DX 777 SYDNEY NSW
Telephone	9299 3311
Fax	9290 2114
Email	<a href="mailto:crose@wilshirewebb.com.au">crose@wilshirewebb.com.au</a>

**DETAILS ABOUT RESPONDENT****Respondent**

Name	Fairfield City Council
Address	PO Box 21 Fairfield NSW 1860

**Ronny Elzahr v Fairfield City Council | Class 1 Application – Schedule of Documents**

157 – 161 Walworth Road, Horsley Park

<b>Tab</b>	<b>Document</b>	<b>Date</b>
1.	Development Application 396.1/2020 and Owners Consent	30 September 2020
2.	Architectural Plans – Issue C	11 August 2020
3.	Statement of Environmental Effects	18 September 2020
4.	Survey Plans	1 March 2019
5.	Assessment Report by Council	Undated
6.	Notice of Determination of Development Application No. 396.1/2020	22 December 2020



# APPLICATION FOR APPROVAL

(Environmental Planning & Assessment Act 1979)  
Part 4 Development

LAND AND ENVIRONMENT  
COURT OF NSW  
FILED ON  
26 JUL 2021

This application form is in 2 parts. **Part A** contains information that is regarded as non personal and will be displayed on Council's website and made available to the public. **Part B** contains personal information and it is not intended that this information be displayed on Council's website. To ensure that **Part B** is not displayed on Council's website, you are required to provide separate electronic copies of **Parts A and B**.

## Part A

### Please select type of application

<input checked="" type="checkbox"/> Development Application (S4.12)	Application Number (office use only): 396.1 / 2020
<input type="checkbox"/> Concept Development Application (S4.22)	Application Number (office use only): /
<input type="checkbox"/> Building Construction Certificate	Application Number (office use only): /
<input type="checkbox"/> Subdivision Works Certificate	Application Number (office use only): /
<input type="checkbox"/> Activity Application (S.68 LGA 1993)	Application Number (office use only): /

### Principal Certifier

Do you wish to appoint Fairfield City Council as the certifier? Yes ☐ No ☐

### Property description

House / unit no. 157	Lot: 52	Section:	DP / SP: 1095736
Street: WALWORTH RD			
Suburb: HORSLEY PARK			
Parcel number/s (office use only): 78476 #			

### Proposed development and estimated cost/value of works

#### 1. Identify development type

<input checked="" type="checkbox"/> Single storey dwelling	<input type="checkbox"/> Inground swimming pool	<input type="checkbox"/> Multi unit housing	<input type="checkbox"/> Use of land/building
<input type="checkbox"/> Two storey dwelling	<input type="checkbox"/> Front fence	<input type="checkbox"/> Home business	<input type="checkbox"/> Subdivision of land/building
<input type="checkbox"/> Dwelling addition/alteration	<input type="checkbox"/> Demolition	<input type="checkbox"/> Commercial/industrial	<input type="checkbox"/> Road/drainage works
<input type="checkbox"/> Garage	<input type="checkbox"/> Secondary dwelling	<input type="checkbox"/> Change of use	<input type="checkbox"/> Local Activity
<input type="checkbox"/> Carport/Pergola/Awning	<input type="checkbox"/> Dual occupancy/attached dwelling	<input type="checkbox"/> Signage	<input type="checkbox"/> Heritage item - State / Local
<input type="checkbox"/> Approval Under Section 138 of the Roads Act 1993		<input type="checkbox"/> Other (specify below)	

#### 2. Please provide a detailed description of the proposed works

CHILD CARE DEVELOPMENT OF CHILD CARE

#### 3. Cost/value of works

Please indicate cost/value of works (to the nearest \$1,000.00) \$ 800 000

#### Note:

- The estimated cost of the building works is based on the total cost of labour and materials at current Sydney prices.
- A Cost Report is required where the cost of development is over \$100,000.00.
- A Quantity Surveyor, who is a member of the Australian Institute of Quantity Surveyors, must prepare an elemental cost estimate if the development cost is over \$1 million.



Materials to be used			
Walls - <u>BRICK</u>	Roof - <u>INTERLOCKING TILE</u>	Floor - <u>TILE</u>	Frame - <u>TIMBER</u>

Floor area	No. of proposed dwellings/units	No. of dwellings/structures to be demolished
<u>500</u>	<u>1</u>	<u>0</u>

**Home Building Act**

If a licensed builder has been nominated, has the appropriate building insurance been paid in accordance with Part 6 of the Home Building Act, 1989? ☒ No ☐ Yes

**Approvals under Section 68, Local Government Act 1993**

Does this application seek approval for one (1) or more of the activity approvals listed in Section 68, Local Government Act 1993? eg: use of Community Land ☒ No ☐ Yes

If yes, please list approval/s sought : \_\_\_\_\_

**Operating details (if applicable)**

1. Number of staff / employees

17

2. Operating hours

Monday to Friday :	<u>700</u> am	<u>500</u> pm
Saturday :	_____ am	_____ pm
Sunday :	_____ am	_____ pm

**Type of consent**

<input checked="" type="checkbox"/> Full consent	<input type="checkbox"/> Deferred Commencement
<input type="checkbox"/> Staged Development	Date of Development Consent (if already granted)

**Environmental Impact**

<input type="checkbox"/> The proposed development is to have negligible effect.	<input checked="" type="checkbox"/> A Statement of Environmental Effects is attached.	<input type="checkbox"/> An Environmental Impact Statement (EIS) is attached.
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**Political donations / gifts**

Has a person with a financial interest in this application made or will be making a reportable political donation or gift to any local Councillor or employee of this Council within the previous two (2) years of making this application or its determination?

☒ No (no further action required)

☐ Yes - The 'Political and Gifts Disclosure Statement' must be completed pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979, which is available from Council's Customer Service Team or can be downloaded from Council's website.

If you intend to make a reportable political donation or gift in the period from the lodgement of the application up until determination of the application, a 'Political Donations and Gifts Disclosure Statement' is required to be provided to Council within seven (7) days after the donation or gift is made.

For definitions of the term "gift", "reportable political donation", "local councillor", "financial interest" and "person are associated with each other" refer to the glossary of terms on the 'Political Donations and Gifts Disclosure Statement' available from Council's Customer Service Team or can be downloaded from Council's website.



## Integrated Development

Integrated development is development that requires licences or approvals from other Government Departments.

Is this application Integrated Development? ☒ Yes ☐ No

To understand if your application is Integrated Development, Planning Certificates, which are available from Council, provide information that will help you in selecting from the appropriate boxes below.

- ☐ **State Heritage Item - Heritage Act 1977** - Development involving a State Heritage Listed Item (including archaeological sites) or place under an Interim or Permanent Conservation Order or Interim Heritage Order.
- ☐ **Aboriginal heritage - National Parks and Wildlife Act 1974** - Development with any work that requires an Aboriginal Heritage Impact Permit involving an Aboriginal place declared under the National Parks and Wildlife Act be it over the land, or involving any Aboriginal relics on the land.
- ☒ **Development impacting main roads - Roads Act 1993**
  - Development impacting upon a crown road, highway, main road, a freeway or a toll way, connect a road (whether public or private) to a classified road.
  - Erecting a structure, carry out works etc on a public road under the Roads Act.
- ☒ **Works affecting waterways - Water Management Act 2000 & Fisheries Management Act 1994**
  - Works for irrigation, water supply or drainage, changing or preventing a change in the course of a river, preventing the land from flooding.
  - Dredging or reclamation of waters.
  - Impact on marine vegetation such as removal of seagrasses, mangroves, sea lettuce or blackfish.
  - Aquaculture.
- ☐ **EPA Licensed Activity - Protection of the Environmental Operations Act 1997** - An EPA licensed activity includes activities such as storing, processing, transporting and disposing of waste, and recovering resources from the waste stream. Licences are required for certain activities under the POEO Act, for Environmentally Hazardous Chemicals, transport of Dangerous Goods, use of Pesticides and use of Radiation apparatus. The responsibility is on you to find out from the NSW EPA if you need a licence. Fines and penalties apply to operating without a licence, or not complying with licence conditions imposed to prevent activities from causing harm.
- ☐ **Bush Fire Prone Areas - Rural Fires Act 1997** - Any development or work on a site located within a bush fire prone area requires a bush fire safety authority, including the subdivision of land that could lawfully be used for residential or rural residential purposes, or development of land for special fire protection purposes.
- ☐ **Mine Subsidence Compensation Act 1961** - Alterations or improvements within a mine subsidence district or subdivision of land within.
- ☐ **Mining Act 1992** - Grant of mining lease.
- ☐ **Petroleum (Onshore Act) 1991** - Grant of a production lease.

If you have selected any of the boxes above, your proposal is Integrated Development. Additional fees apply for the review of your application by relevant Government departments or agencies.

## Applicant

Title: ☒ Mr ☐ Mrs ☐ Ms ☐ Miss ☐ Other .....

Name: RONNY ELZATHR

Company name & ABN  
(if applicable):

ABN

Address:

157-161 WALWORTH RD  
HORSELEY PARK

Postcode: 2175.

**Note:** If this application is submitted on behalf of a company, please provide a list of all partners/directors names. If insufficient space on this form, please provide this information as a separate attachment.

Names of  
Partners/Directors:



# Application for Approval - Part B

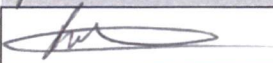
This section must be submitted as a separate PDF file.

## Owner's details and declaration

☐ As the owner/s of this property, I/we consent to this application.

**Note:**

Where a company owns the property, the company seal should be provided on this form and names of partners/directors need to be provided as an attachment to this application. The authorised officer must consent to the lodgement of this application by completing the following.

Title:	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Other .....	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Other .....
Given Name/s:	Rory	
Surname:	ELZAMR	
Company name & ABN (if applicable):	ABN:	ABN:
Address:	157-161 WALWORTH RD HORSLEY PARK	Postcode: 2175
Contact details:	Home / Work: Mobile: 0415555525	Home / Work: Mobile:
E-mail:	precisesurveying@gmail.com	
Signature:		
Company Seal	# 598105	Company Seal

(if the space provided above is insufficient to note all owners details, please attach a separate sheet to this form with all information)

## Conflict of Interest

To ensure transparency in Council's decision making process and to avoid conflicts of interest, you are required to make the following declaration.

In accordance with the EP&A Act 1979, a conflict of interest may arise if the :

Development for which the applicant or land owner is :

- (a) The council,
- (b) A councillor,
- (c) A member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979,
- (d) A member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) A relative (within the meaning of the Local Government Act 1993) of a person referred to in (b) to (d).

I have read the above and declare that as the land owner (mark applicable box) :

- ☐ No - I do not have a conflict of interest      or  
☐ Yes - I do have a conflict of interest.

If you have stated Yes, the relationship must be disclosed below :

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### Access to subject site

- i. Is access readily available? (i.e. locked gates, vacant locked premises) ☒ Yes ☐ No
- ii. Is there a dog on the premises? ☐ Yes ☒ No

### Requirements for electronic copies of documentation

Any document submitted with this application must be submitted in electronic PDF format on a USB. One (1) file for each document is required.

Council's website provides guidance notes on the file name protocols that should be used.

An example of acceptable file names appear below:



Development Application Form Part A



Development Application Form Part B

### Builder / owner builder details

Title:	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Other .....	
Name:		
Company name:		
Licence No.:		
Address:		
	Postcode:	
Contact details:	Work:	Mobile:
E-mail:		
Signature:	Date:	

### Privacy and Personal Information Protection Notice

The personal information requested in this form is required by or under the Environmental Planning and Assessment Act, 1979 and will only be used by Fairfield City Council in connection with requirements under the Act and any other relevant applicable legislation relating to the subject matter of the application. The information is being collected for the purposes, namely, to enable use to (1) process and determine your application; (2) contact you in relation to your application should that be necessary; and (3) keep the public informed by making the application publicly accessible.

Your application will be available to Councillors and Council Officers. Members of the public have certain rights of access to information held by Council under the Government Information (Public Access) Act, 2009 (GIPA), and under the Privacy Information Protection Act, 1998 (NSW) to the extent permitted by those Acts.

Fairfield City Council is to be regarded as an agency that holds the information, which will be stored in Council's records management system including archives and may be displayed on Council's website (except with regards to the personal particulars contained in Part B). You have a right to access information within the meaning of the Privacy Information Protection Act, 1998 (NSW) on application to Council, and to have the information updated or corrected as necessary. Please contact Fairfield City Council if the information you have provided is incorrect or changed or if access is otherwise sought to the information. In addition, a person may request that any information that is available (or is to be made available) for public inspection by or under the Local Government Act, 1993 be prepared or amended so as to omit or remove any matter that would disclose or discloses the person's place of living if the person considers that the disclosure would place the personal safety of the person or of members of the person's family, at risk. Any such request must be made to Council's City Manager – refer to Section 739 of the Local Government Act, 1993 and Council's Privacy Management Plan.



## Applicant's details and declaration

### Declaration

- ☒ I declare that all information in this application is, to the best of my knowledge, true and correct and therefore seek approval to carry out development works as described in this application.
- ☒ I understand that pursuant to S4.16 & 4.28 of the Environmental Planning and Assessment Act that if the information is incomplete the application may be delayed, rejected or refused without notice.
- ☒ I acknowledge that if the information is misleading, any approval granted 'may be void'.
- ☒ I agree to the use of the plans provided in support of this application for advertising and notification purposes.
- ☒ I declare that the information submitted on USB is identical to the details submitted on hard copy plans and documentation.
- ☒ I accept that Council cannot be held responsible for any discrepancies of information provided on the electronic and hard copy plans and documents.

**Please note:** This application must be accompanied by a completed submission checklist.

Title:	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Other .....
Name:	LONNY ELZAHAR
Company name & ABN (if applicable):	ABN:
Address:	157 -161 WALNORTH RD HORSELEY PARK
	Postcode: 2175
Contact details:	Home / Work:
	Mobile: 0415 55 55 25
E-mail:	precise surveying@gmail.com
Signature:	Date: 30/09/2020

### Conflict of Interest

To ensure transparency in Council's decision making process and to avoid conflicts of interest, you are required to make the following declaration.

In accordance with the EP&A Act 1979, a conflict of interest may arise if the :

*Development for which the applicant or land owner is :*

- (a) The council,
- (b) A councillor,
- (c) A member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979,
- (d) A member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) A relative (within the meaning of the Local Government Act 1993) of a person referred to in (b) to (d).

**I have read the above and declare that as the applicant (mark applicable box) :**

- ☐ No - I do not have a conflict of interest      or  
☐ Yes - I do have a conflict of interest.

If you have stated Yes, the relationship must be disclosed below :

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Fairfield City Council Use Only

Application accepted by :

Duty Officer

Lemen Ven

Date : 30 / 07 / 2020

Customer Service Officer

Ivanka

Date : 30 / 9 / 2020

Collection of approved application :

**Note:** Only the applicant is to sign and collect application/s. Otherwise, written consent signed by the applicant is required.

Items collected :

- ☐ Development Consent and Construction Certificate
- ☐ Development Consent
- ☐ Construction Certificate
- ☐ Local Activity Approval

Collected by :

- ☐ Applicant
- ☐ Other than applicant (with applicants written consent provided)

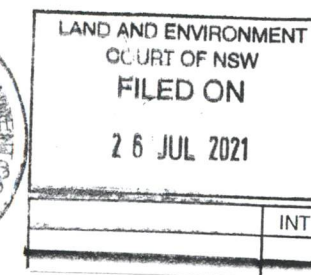
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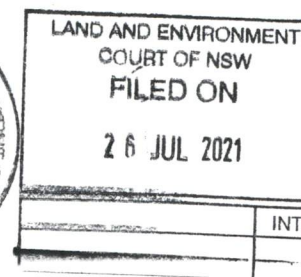
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B	00047010	AS	BUS. F. FOR CONG. STAFF COORDINATOR
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E	00007000	AS	BUS. F. FOR COUNCIL

COVER PAGE





**20-23 POP MITZ**  
Issue C **DESIGN**







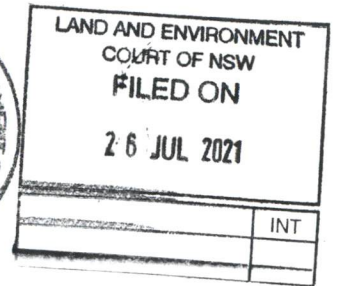












A	30/04/2019	AS	REFUSE FOR CONSENT COORDINATION
B	30/04/2019	AS	REFUSE FOR CONSENT COORDINATION
A	30/04/2019	AS	REFUSE FOR CONSENT COORDINATION
B	30/04/2019	AS	REFUSE FOR CONSENT COORDINATION
C	11/06/2020	AS	REFUSE FOR COUNCIL
E	30/09/2020	AS	REFUSE FOR COUNCIL

COORDINATION

# 10 ROOF PLAN





SECTION  
1:100



SECTION  
1:100

**157 Walworth Road**  
Ronny Elzahr  
**157 Walworth Road Horslev Park NSW 2175**

**20-23 POP MITZ**  
**Issue C DESIGN**

## 11 SECTIONS

[illegible]

A	09/04/2019	AS	ISSUE FOR CONSULTANT COORDINATE
B	09/04/2019	AS	ISSUE FOR CONSULTANT COORDINATE
A	09/04/2019	AS	ISSUE FOR CONSULTANT COORDINATE
B	09/04/2019	AS	ISSUE FOR CONSULTANT COORDINATE
C	11/06/2020	AS	ISSUE FOR COUNCIL
E	30/09/2020	AS	ISSUE FOR COUNCIL

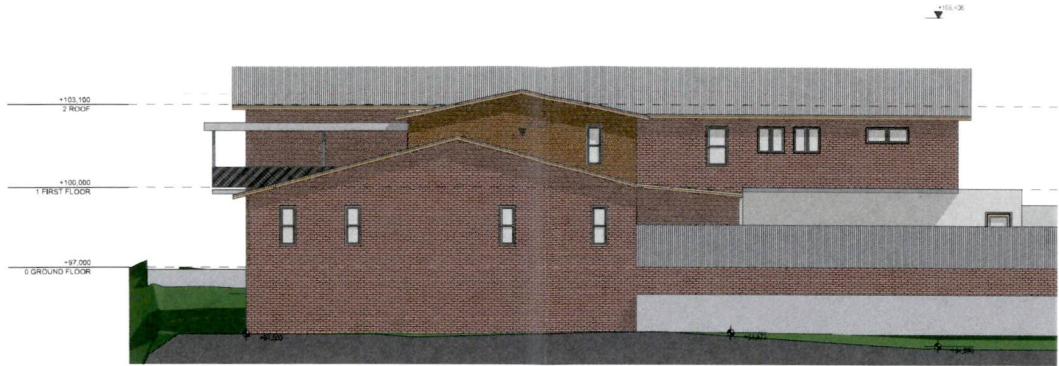
**20-23 POP MITZ**  
**Issue C DESIGN**

## 12 ELEVATIONS

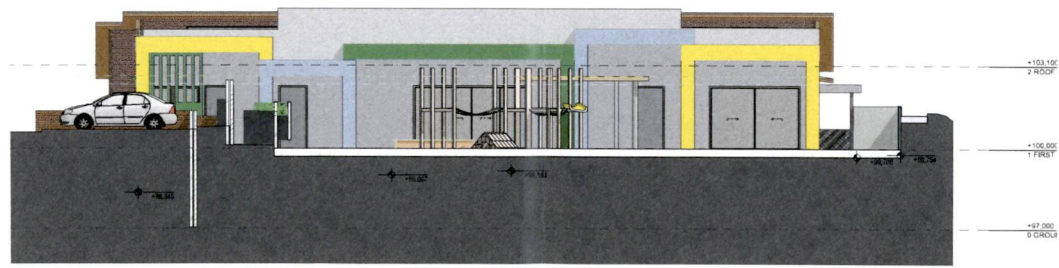


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  - PLZ POLYESTER CONCRETE
- WET AREAS**
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  - WVC WATER VAPOR
  - WVD WATER VAPOR
  - WVF WATER VAPOR
  - WVG WATER VAPOR
  - WVH WATER VAPOR
  - WVI WATER VAPOR
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**157 Walworth Road**  
**Ronny Elzahr**  
**157 Walworth Road Horsley Park NSW 2175**



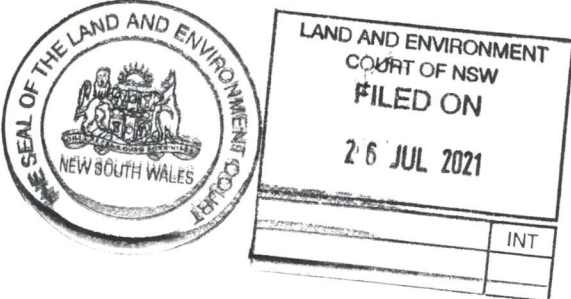
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E-04 WEST ELEVATION 1:100

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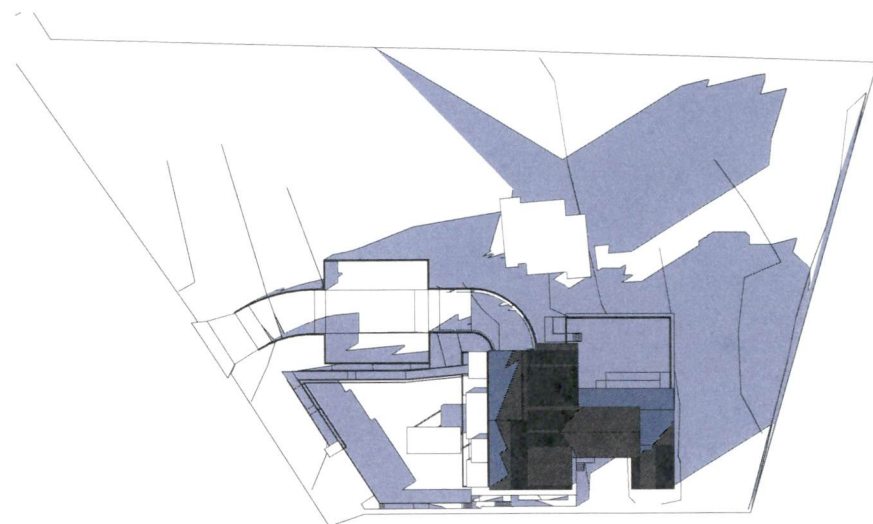
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**Issue C DESIGN**



**ELEVATIONS**  
**13**

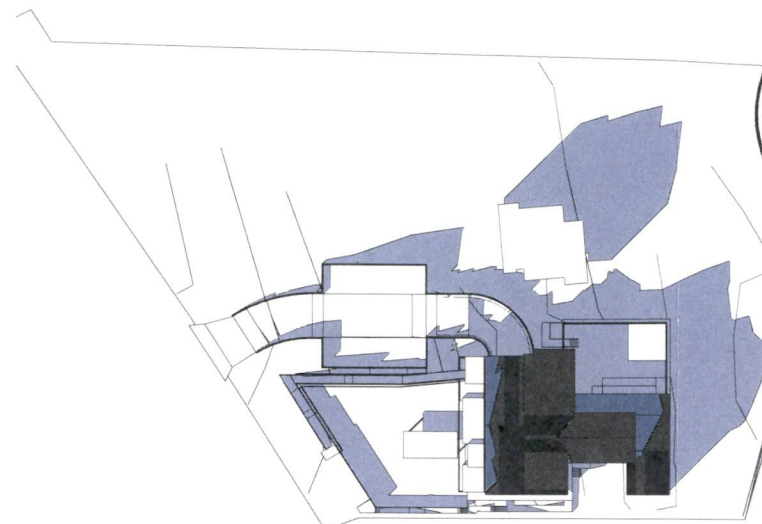






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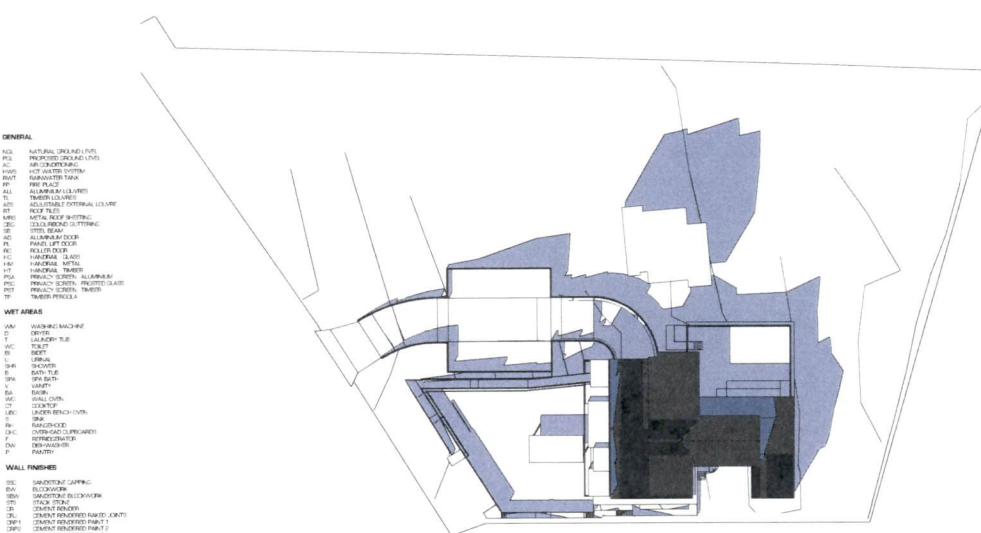


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JUN 21 10am  
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LAND AND ENVIRONMENT  
COURT OF NSW  
FILED ON  
26 JUL 2021

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3
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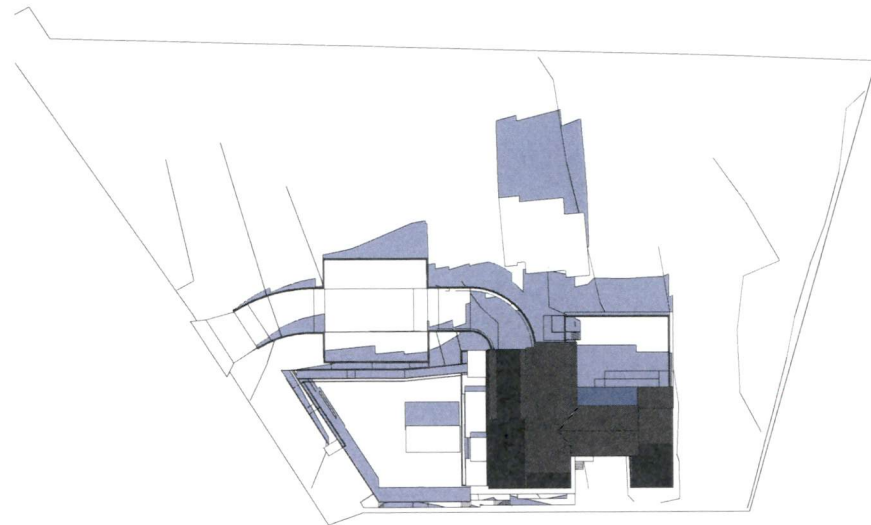
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## 14 WINTER SOLSTICE

**157 Walworth Road**  
Ronny Elzahr  
157 Walworth Road Horslev Park NSW 2175

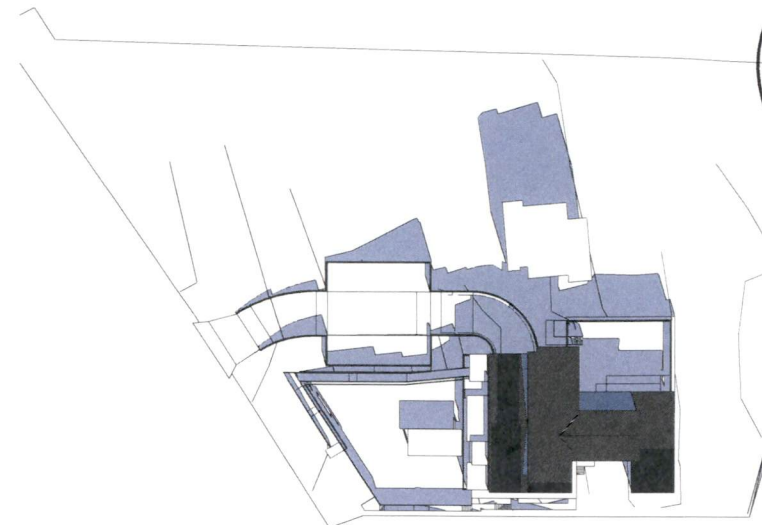
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**20-23 POP MITZ**  
**Issue C DESIGN**



5

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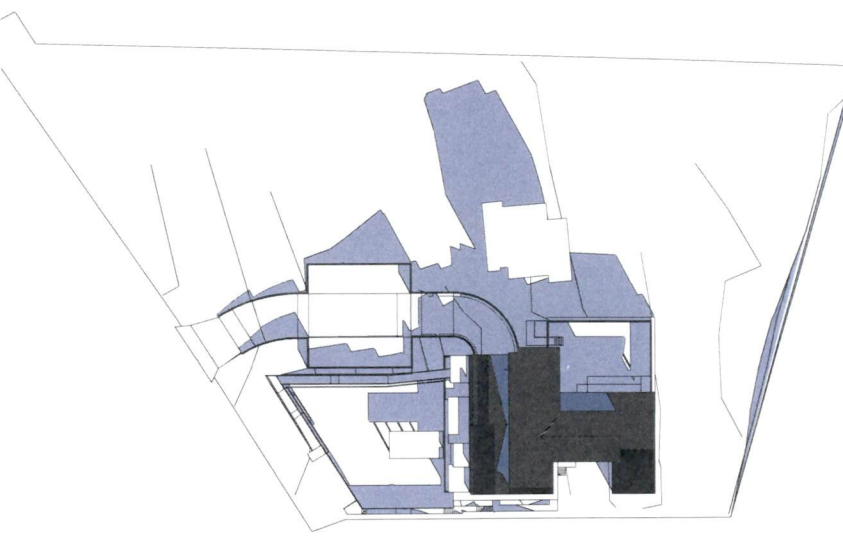
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JUN 21 2pm  
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LAND AND ENVIRONMENT  
COURT OF NSW  
FILED ON  
26 JUL 2021  
INT

- GENERAL**
- AC - ALUMINUM CLADDING
  - AD - ALUMINUM DOOR
  - AE - ALUMINUM EXTERIOR
  - AF - ALUMINUM FINISH
  - AG - ALUMINUM GLASS
  - AH - ALUMINUM HANDRAIL
  - AI - ALUMINUM INSULATION
  - AJ - ALUMINUM JOINT
  - AK - ALUMINUM KITCHEN
  - AL - ALUMINUM LAMINATE
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  - AZ - ALUMINUM ZONE
- WET AREAS**
- BA - BATH
  - BB - BATH BENCH
  - BC - BATH CABIN
  - BD - BATH DRAIN
  - BE - BATH EXHAUST
  - BF - BATH FLOOR
  - BG - BATH GLASS
  - BH - BATH HANDRAIL
  - BI - BATH INSULATION
  - BJ - BATH JOINT
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  - BL - BATH LAMINATE
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- WALL FINISHES**
- CA - CONCRETE
  - CB - CONCRETE BLOCK
  - CC - CONCRETE CURB
  - CD - CONCRETE DECK
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  - CY - CONCRETE YARD
  - CZ - CONCRETE ZONE



7


JUN 21 3pm  
1:500


**157 Walworth Road**  
Ronny Elzahr  
157 Walworth Road Horsley Park NSW 2175


20-23 POP MITZ  
Issue C DESIGN

WINTER SOLSTICE  
15




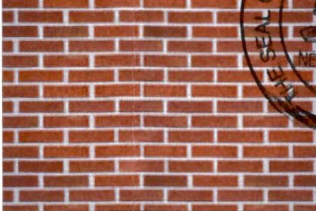
ROOF
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GUTTER
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FASCIA
"WINDSPRAY"


WINDOWS
CLEAR GLASS BLACK FRAME


BALUSTRADING


WALL


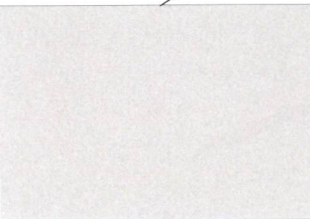


LAND AND ENVIRONMENT COURT OF NSW
FILED ON
26 JUL 2021
INT

-  DULUX YELLOW
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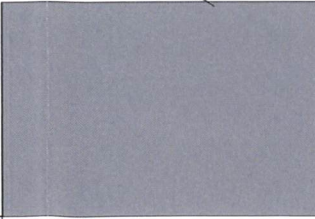


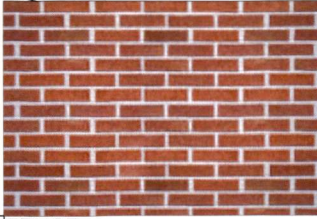
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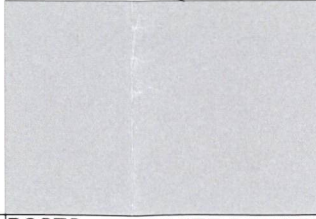
WALLS
COLOUR BOND "SURFMIST"


FRONT DOOR


GARAGE DOORS


PAVING


FENCE


POSTS
WHITE RENDER


**57 Walworth Road**  
nnv Flzahr

**20-23 POP MITZ**  
Issue ##### DESIGN





# **Statement Of Environmental Effect**

**CLIENTS:** MR RONNIE ELCHAZAR

**RE PROPERTY:** 157 WALWORTH ROAD, HORSELEY PARK

**PROPOSAL:** NEW CHILD CARE CENTRE



18TH SEPTEMBER 2020

Dear Sir/ Madam,

## **Proposed Development**

The proposed development is that of two level childcare centre. It comprises a reception, kitchen, staff room, office, toilet, laundry facilities, and three child minding rooms on the main level. On the lower level it comprises 2 separate rooms to accommodate for kids from 0 into 2 years of age. A laundry has also been incorporated at this level that services the entire complex. The centre has been designed to accommodate 111 children.

The building is also serviced by a lift which has access to all levels and can be used by disabled persons.

The building will be constructed with full brick walls and a metal frame for the supporting overhead beams, used as the main structure for the colourbond clip lock roof.

The style chosen is modern with medium to light colours as the exterior finish.

The car spaces will be located at ground/ basement level, with the access via a driveway from Walworth ave, and a provision for disabled parking has also been provided closest to the lift within the building.

## **Site Suitability and Previous Use**

The gradient of the site shows a fall from the north east to the south west. The site has been used as a residential dwelling for the past 50 years. Its use has not changed and remains residential today. A large percentage of the area has older style farmers cottages and a significant rise in large dwellings being built over the last 20 years.



Across the site, from north east to south west, the gradient of the land shows a fall of approximately 9.5 meters. The proposed site has an area of 9664.50 sqm and a frontage of 106.00m to Walworth Rd.

### **Compatibility With Adjoining Dwellings**

The adjoining properties are similar in contours to the proposed site. The area around the site is currently occupied by residential dwellings constructed post 1980, showing signs of a need to facelift the facades of many of the dwellings, with a vast percentage of new dwellings evident on today's designs and styles. The site is located at Horsley park, in a high location, with good access to wallgrove road. Once fully developed, this area should present as an exciting new modern development of the latest designs in childcare centres.

The two adjoining sites are existing dwellings dating back to 1980's for the dwelling to the south east and 2010 for the dwelling on the north west boundary. This is currently been used as a residential dwelling.

### **Operation And Management**

The type of business to operate will be a childcare centre. It will also allow for the parking of vehicles on site, negating any burden on the existing street. The expected number of staff will be between 7 and 9 people.

Parents will be able to park in the basement with easy access to the centre via a lift or the stairs. It will be frequented 2 to 3 times a week by a courier delivering food and or stationary supplies to the centre.

The hours of operation are Monday to Friday from 7:00 am to 6:00pm and Saturday to Sunday no trading.

The loading and unloading will take place outside operating hours. The frequency of vehicles will range between two to three vans per week. Large semi trailers have not been accommodated at this site.

No hazardous materials or processes will take place from these premises.

### **Sewer And Storm Water**

The sewer will be directed to the rear of the site and into a transporation bed. The storm water will be directed to an above ground rainwater tank and then into the on site detention tank, before discharge into the ground via a transporation/ absorption trench. No sewer line is located at these premises.

The below ground rain water tank and on site detention facility, will be located within the rear landscape area.

### **Streetscape, Location And Character**

The streetscape is a mixture of styles dating from the early 1940's to present day. The streetscape reflects a wide variety of architecture, with no particular style dominating the scene. Most of these structures are purpose built with a mixture of smaller homes, that are inevitably being demolished and replaced with larger homes. A larger percentage of new buildings are present surrounding the proposal.

## **Design And External Appearance**

The external finish of the dwelling will be face brick part render with aluca bond metal panels extending forward of the glass as an eave to the windows.

A modern style building with simple clean lines that has a contemporary feel, will not over power the site. It will blend in harmoniously with the surrounding developments.

A metal awning will provide protection from the weather at the front verandah, separating the front play ground from the centre.

The finish of the centre will remain face brick, with a large presence of glass and decorative metal cladding over the windows. Polished concrete structures will highlight the entrance to the centre.

Clear anodized aluminum windows with a slight tint, will complete the centre facade.

A v-joint pattern will also be introduced into the concrete render, to provide visual relief to the centre, from large expanses of monotone finishes.

The height of the dwelling is in compliance with the code. The use of medium colours for the development will assist in reducing the presence of the building.

## **Development Standards**

**Site Area :** 9664.55 sqm

**Density :** Within 1: .50

**Maximum Height To Upper Most Ceiling :** 7.95 meters

**Landscape Area :** 4365.40 sqm

**Setbacks :** Side 5.0m  
Front : varies >10m

## **Proximity To Transport Services And Schools**

The locality is serviced by all transport means. A private bus service is approximately 100 meters. The nearest major shopping centre is also a 10-minute drive being the center of Wetherill Park, Stocklands.

## **Amenity And Overshadowing**

The proposed site faces north east, with the shadow cast over the south west corner in the morning. The midday shadow is cast over the south east neighbour, being a warehouse. The afternoon shadow is over the front portion of the proposal and the south east complex, which is separated from our site via a driveway. Minimal impact is expected to adjoining buildings.



## **Building Construction**

External building materials to be used are face bricks with a clip lock roof. The centre will have predominantly glass and a small percentage of aluca bond. This being a metal finish that is vastly being used in this type of development. The windows will be clear anodized aluminum. Concrete internal slab will complete the centres floor extending to the carpark area.

## **Impact Of Noise Levels**

Noise transmission is of a minimal nature. The location produces a low noise level that would remain similar post construction. Minimal increase to any level would be expected to emanate from the proposal.

The facility will be used for the purpose of child minding. Noise impact on neighbours will remain relatively unchanged.

## **Visual Privacy And Overlooking**

No large expanses of glass have been positioned in areas that will adversely affect the adjoining neighbours; therefore minimal loss of privacy is experienced.

## **Amenity Of The Dwellings**

The building will receive direct sunlight through out the day, with little to no obstruction. The driveway leading to the car park area will be in constant sunlight. The positioning of the centre will benefit from the ample light that will be available due to the site orientation.

## **Landscaping**

A large percentage of the site will remain pervious area. Increased landscaping will be forward of the site facing Walworth Road and the raised planter boxes parallel to Walworth Road. Plants and shrubs have been used to provide a small canopy and foliage that will only marginally obscure the childcare upon maturity.

The landscaped area meets council requirements. The surface of the driveway will be concrete.

## **Heritage And Archaeological Aspects**

The proposed site is not located in a heritage area, nor is a heritage-listed property in close proximity.

No harm or destruction to the environment will eventuate. An improvement in the scenic quality and professionally landscaped gardens will replace the existing site conditions (that of a residential dwelling).

## **Flora And Fauna**

No effect on any wilderness area will occur; due to the locality of the property, (being that of a rural residential area), no adverse effects on any flora and fauna will occur.

The social and economic effect is not altered.

The size of the block of land is fairly uniform with the adjoining properties, with the area to be occupied by the building being in compliance with the code.

### **Flooding, Drainage Etc, Etc....**

The site is of a stable nature, and is not affected by any landslides, flooding, tidal inundation, bushfire or any other risks.

The development is similar in size and shape to existing childcare in this area. The use is to remain residential.

### **Access, Parking And Traffic**

The entrance and exit of vehicles will remain off Walworth Rd. A total of 30 car spaces have been provided for the development. All car spaces are in accordance with the requirements. Part are under cover and two disabled space provided.

A minimal gradient will be encountered at the entrance to the site. The location of the driveway entrance will allow only cars, small trucks/vans to enter the premises. All cars and vehicle movements will exit the site in a forward motion.

No conflict between vehicles, pedestrians and cyclists will exist.

The increase in traffic will be of a minimal nature. Minimal impact is expected.

Transport services will remain unaffected.

### **General Accessibility**

All areas that are accessible to the public are on the ground level only. A disabled toilet and parking space has been provided. The site is relatively level with gradients well under the maximum permissible for disabled access.

A double door at the entry will provide easy access for people with disabilities as well as a lift that has been located within the complex.

### **Utility Services**

All utility services are provided for. Landscaping will be increased and no rare species of trees or vegetation are affected. No tree removal is proposed. No soil erosion will occur.

No interest has been sought by any public authorities.

### **Waste Disposal**

The occupants will provide a Bin on site, and will arrange with a contractor for a weekly pick up. The location will be adjacent the entrance/ exit of the basement to Walworth Rd. This will allow access for pick up by private contractors, without disturbing the daily routine of the premises. This area will be an enclosed room for the storage of refuse with easy access to Walworth rd.



## **Conclusion**

Adequate amenities exist in the neighbourhood to cater for large growth. No submissions have been made under Sec 87.

The proposed development has been designed to meet all of the objectives and requirements of the planning instrument, codes and guidelines. This we believe has been achieved both in spirit and intent. The development as proposed will assist toward fulfilling all perceived requirements with in the site.

It is believed the proposed development is in keeping with stated objectives:

- For the orderly, economic and optimum utilization of urban land, whilst preserving and enhancing the amenity and environmental character in the municipality
- Widen the range of its use in the area
- To promote the more efficient use of existing services.

Utilizing the site, and the larger site area of 9664.55 sqm to provide a new childcare centre. To cause minimum impact upon the streetscape and neighbouring properties, we feel that this proposal will have no adverse effects to the character of the area in the immediate vicinity, and seek council to consider this application.

With regards

***Michael Popovski***  
***(MITZ DESIGN)***

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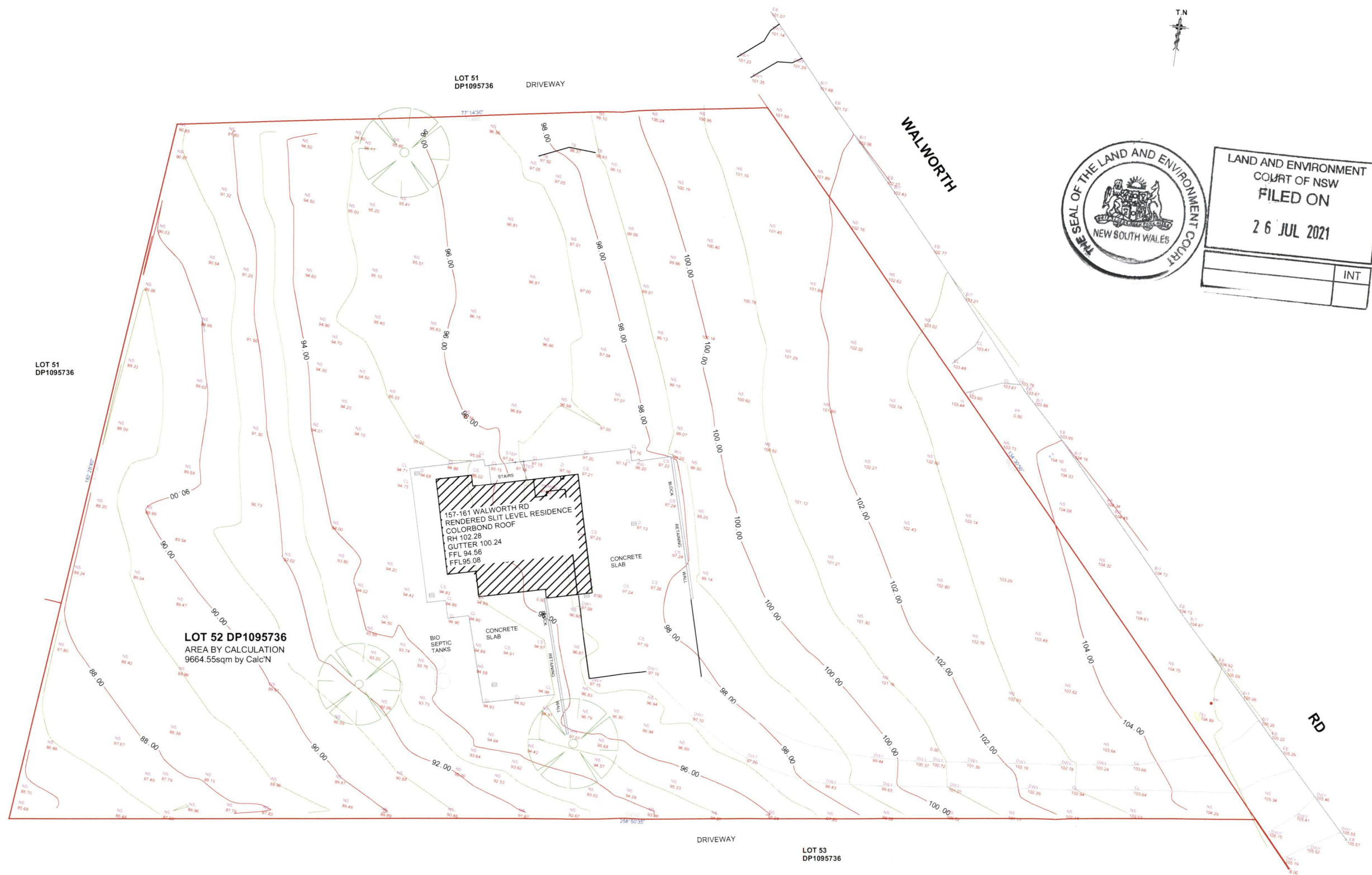
## **Mitz Design**

77 The River Road, REVESBY NSW 2212

Mobile Phone No. 0412 341 007

Business No. 02 9773 8881(02)





LAND AND ENVIRONMENT  
COURT OF NSW  
FILED ON  
26 JUL 2021  
INT

AMENDMENTS	
DATE:	DESCRIPTION:

NOTES  
IF ANY CONSTRUCTION WORK IS PLANNED THE CONCERNED SHOULD UNDERTAKE A FURTHER SURVEY TO DEFINE ANY BOUNDARIES AS NO BOUNDARIES HAVE BEEN DEFINED. DIMENSIONS AND BEARINGS ARE FROM DP1095736. ANY POINT CRITICAL TO THE PREPARATION OF PLANS AND/OR CONSTRUCTION SHOULD BE CHECKED BY THE BUILDER BEFORE ANY WORK COMMENCING. ALL SERVICES ARE INDICATIVE ONLY. OTHER SERVICES MAY EXIST. ALL TREES ARE APPROXIMATE LOCATION AND SIZE ONLY. DIAL BEFORE YOU DIG SHOULD BE UNDERTAKEN PRIOR TO ANY EXCAVATION WORK ON 1100. PRIOR TO THE COMPLETION OF ANY PLANS AND/OR CONSTRUCTION FURTHER FIELD WORK SHOULD BE UNDERTAKEN.

**PRECISE SURVEYING**  
PTY LTD  
MOB: 0415 55 55 25  
MAIL: PO BOX 145 HORSLEY PARK 2175  
EMAIL: preciseurveying@gmail.com

CLIENT:		JOB No:
CLIENT ADDRESS:	JOB ADDRESS:	HSE/2019
	157-161 WALWORTH RD HORSLEY PARK 2175	DATE:
SCALE: 1 : 250 on A3	LEVELS: AHD	01.03.2019





**SUBJECT:** Proposed construction of a 2-storey child care centre accommodating a maximum of 111 children including earthworks, landscaping, stormwater and 29 car parking spaces

**PREMISES:** Lot 52 DP1095736, No's. 157-161 Walworth Road, Horsley Park

**APPLICANT:** Mr R Elzahr

**OWNER:** Mr R Elzahr

**ZONING:** RU4 Primary Production Small Lots pursuant to the Fairfield Local Environment Plan 2013



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**FILE NUMBER:** DA 396.1/2020

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**REPORT BY:** Venetin Kasho, Senior Development Planner

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### **RECOMMENDATION:**

That Development Application No. 396.1/2020, proposing construction of a 2-storey child care centre accommodating a maximum of 111 children including earthworks, landscaping, stormwater and 29 car parking spaces be **refused** in accordance with the reasons for refusal contained in this report.

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### **SUMMARY**

Council is in receipt of Development Application No. 396.1/2020, which seeks Development Consent for the retention of the existing dwelling and the proposed construction of a 2-storey child care centre accommodating a maximum of 111 children including earthworks, landscaping, stormwater and 29 car parking spaces, at No. 157-161 Walworth Road, Horsley Park.

The subject site is zoned RU4 Primary Production Small Lots and it is noted that whilst child care centres are permitted in the zone, the Fairfield CityWide Development Control Plan (DCP) 2013 in Chapter 4A Rural Development discourages child care centres within these zones due to conflicts with agricultural uses.

It is considered that the applicant has not adequately demonstrated how the development would be permissible in the zone given the extent of development that is proposed at the site within two applications currently lodged with Council, including this and a separate application (DA No. 368/2020) which incorporates another dwelling and a secondary dwelling at the site but is yet to be determined by Council. It is also considered that the application has not demonstrated how the site is suitable for the proposed use as a child care centre given the controls of the DCP as well as similar controls in the Child Care Planning Guidelines 2017.

A preliminary assessment of the application identified a significant amount of issues of concern with the proposal which were conveyed to the applicant in a letter dated 13 November 2020 (see attached). The applicant was provided with 14 days to respond to the issues. A follow up letter was issued by Council on 2 December 2020 providing a further 7 days for the applicant to respond. A response has not been received to date, hence it is recommended that the application be refused.

The key issues of concern with the proposal include, but are not limited to:

- Scope of proposed works at the site are unclear
- Unclear information about capacity of children in care and maximum number of staff
- Relevant planning controls not addressed
- Numerous non-compliances with planning controls not addressed
- Inadequate indoor and outdoor play areas does not meet the national regulatory requirements
- Height of building not demonstrated
- Site not demonstrated to be suitable for a child care centre given conflict with existing agricultural uses and location in an RU4 zone
- Two-storey child care being inappropriate
- Poor streetscape presentation
- Poor orientation and poor solar access
- Poor built form and other design issues
- Site access to essential services not demonstrated
- Excessive cut/fill
- Poor landscaping and inconsistent with relevant planning controls
- Stormwater drainage issues
- Effluent management area inadequately addressed
- Impact on existing trees not addressed
- Air quality report not submitted
- Potential land contamination not addressed
- Noise Assessment Report does not address the relevant provisions of SEPP WSA 2020 regarding aircraft noise
- Inadequate car parking provided
- Traffic generation impacts on locality inadequately addressed
- Traffic management measures not provided
- Largest vehicle to service the site not addressed
- Documentation not submitted such as longitudinal and cross sections of ramps, details of food preparation area, conflict of interest forms, accurate cost of development, geotechnical report, accurate architectural plans, demolition plan, fence plans, cut/fill plans, Plan of Management, Traffic Management Plan, etc.

The application has been assessed and found to be unacceptable with respect to provisions of the Fairfield Local Environmental Plan (LEP) 2013, SEPP No. 55 Remediation of Land, SREP Hawkesbury-Nepean River, SEPP (Vegetation in Non-Rural Areas) 2017, SEPP WSA 2020, SEPP (Educational Establishments and Child Care Facilities) (EECCF) 2017, the Child Care Planning Guideline 2017 and the Fairfield CityWide Development Control Plan (DCP) 2013 including but not limited to Chapter 4A Development in Rural Zones, Chapter 12 Car Parking, Vehicle and Access Management and Chapter 13 Child Care Centres.

The application has not only failed to address the relevant planning controls and the national child care regulations, a preliminary assessment has found that the application incorporates unacceptable and unreasonable breaches of a significant number of planning controls. Notwithstanding the lack of a written response to the non-compliances, it is considered that the inconsistencies with planning controls are far too significant and cannot be addressed through anything other than a major revision and improvement of the overall scheme for the site. Additionally, the application has not demonstrated that the development would not adversely impact the locality nor the environment, nor has the application demonstrated that the site is suitable for the development.



Comments were sought from Council's internal departments including the Building Control Branch (BCB), Community Health Section (CHS), Development Engineer, Environmental Management Section (EMS), Traffic Engineer and Tree Preservation Officer (TPO). Only the BCB and TPO raised no further concerns with the proposal in its current amended form. All other technical officers raised issues of concern which were conveyed to the applicant in Council's letter dated 13 November 2020.

Comments were not required to be sought from any external agencies at this stage.

The application was publicly notified in accordance with Council's notification policy and two submissions were received raising issues of concern with the proposal which have not been addressed by the applicant.

An assessment of the application pursuant to Section 4.15 of the Environmental Planning & Assessment (EP&A) Act 1979 finds the proposal is unsuitable for the site, is likely to result in adverse impacts on the environment and on the locality and is not in the public interest.

Accordingly, the application is recommended for **refusal** for the reasons as stated within this report.

## **SITE DESCRIPTION AND LOCALITY**

The subject site comprises one (1) lot and is known as Lot 52 DP1095736, No's. 157-161 Walworth Road, Horsley Park.

The site has a land area of 9,664.55m<sup>2</sup>. There are no easements according to the Survey Plan; and the site is over 300m from Reedy Creek and is not impacted by flooding or overland flow.

The proposal seeks to retain the existing house on the site however it appears that separate development applications have been submitted to Council which seek to demolish and construct residential development over the rest of the site. Information associated with such proposal is not currently indicated on the plans and it is unclear as to what relationship the proposed development will have with one another.

According to the Survey Plan, the site has three existing trees. The impact on existing trees is unclear other than that one tree is proposed to be retained and incorporated into the development.

The site and surroundings are within the RU4 zone. Immediately adjoining properties appear to be residential dwellings however the site is surrounded by agricultural land and potential spraying activities which have the potential to impact the child care centre and vice versa.

The site is subject to restrictions to protect the airspace in the vicinity of the Western Sydney Airport (WSA).

The Biodiversity Conservations Value Map shows a minor encroachment of biodiversity values vegetation encroaching the side of the site in the vicinity of the existing dwelling that is proposed to be retained. The proposed works do not appear to impact the mapped part of the site.





Aerial view of the subject development site marked by black outline and a star.

## **DEVELOPMENT AND SITE HISTORY**

The subject application was lodged in 30 September 2020. Council's initial assessment of the application identified issues of concern which lead to Council issuing a letter dated 13 November 2020 (see attached). The applicant was provided with 14 days to respond to the issues.

A follow up letter was issued by Council on 2 December 2020 providing a further 7 days for the applicant to respond. A response has not been received to date, hence it is recommended that the application be refused.

Furthermore, the applicant has been made aware verbally that the application will be recommended for refusal in the even that information is unable to be submitted to Council within the timeframe, and also that there are alternative avenues to review Council's decision such as through a Review application.

A review of Council's records found that a separate Development Application No. 368/2020 has been submitted for the same site proposing the construction of a two storey dwelling and attached secondary dwelling. It is unclear how development proposed under the separate application relates to the development proposed under the subject application, including unclear as to the staging of construction at the site, and whether the developments would be permissible in their entirety.

## PROPOSAL

The application as submitted by the applicant proposes the following:

- Proposed construction of a 2-storey child care centre accommodating a maximum of 111 children including earthworks, landscaping, stormwater and 29 car parking spaces
- The centre is to accommodate 111 children as follows, however the various reports provide conflicting information about the mix of children and the corresponding play areas appears to be non-compliant. The Acoustic report indicates 115 children.
- Operating hours for the child care facility are Monday to Friday 7am to 6pm according to the SEE however the DA form states 7am to 5pm.
- 7 to 9 staff will be employed at any one time according to the SEE however the DA form states 17 staff will be employed. Based on the number of children proposed, the number of staff proposed appears to be non-compliant with national regulations.
- 29 car parking spaces are to be provided.
- Acoustic fencing is recommended by the acoustic report but is not shown on the plans.
- Ancillary works including landscaping of the site and stormwater management systems.
- Waste collection will be undertaken by a private contractor.

A range of technical reports have been submitted in support of the application including but not limited to a Statement of Environmental Effects, BCA Design Compliance Report, Noise Impact Assessment, On-Site Effluent Management Report, Traffic and Parking Impact Assessment.

## PLANNING PROVISIONS

The application has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning & Assessment (EP&A) Act, 1979. The key issues are addressed below.

### 1. Fairfield Local Environmental Plan (LEP) 2013

The following sections of the Fairfield Local Environmental Plan (LEP) 2013 are relevant to the proposal:

**Table 1.** Fairfield LEP 2013

Clause	Development Standard	Proposal	Compliance
Land Use Table	RU4 Primary Production Small Lots	<p>The proposal is characterised as:</p> <ul style="list-style-type: none"><li>• <i>centre-based child care facility</i></li><li>• <i>retention of existing dwelling house</i></li><li>• <i>other development proposed under separate application to occur at the site includes another dwelling house and secondary dwelling</i></li></ul> <p>Centre-based child care facilities are permissible in the RU4 zone subject to consent however inadequate information has been submitted by the applicant to demonstrate how all the proposed work at the site including as proposed within the subject application</p>	Not addressed



		<p>and separation applications would constitute permissible development.</p> <p>The applicant has not demonstrated that the redevelopment of the site is consistent with the zone objectives which are:</p> <ul style="list-style-type: none"> <li>• <i>To enable sustainable primary industry and other compatible land uses.</i></li> <li>• <i>To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.</i></li> <li>• <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i></li> <li>• <i>To ensure that development is sympathetic to the rural environment and minimises risks from natural and man-made hazards.</i></li> </ul>	
4.1 Minimum Subdivision Lot Size	10,000m <sup>2</sup> minimum	Subdivision is not proposed by this application. However, if the child care centre were to be subdivided in the future the applicant has not addressed that it would not be possible to comply with this provision as the site is under 1 hectare.	Not addressed
4.1A Minimum lot size for dual occupancies	20,000m <sup>2</sup>	The applicant has not demonstrated how the retention of the existing dwelling and the construction of a separate dwelling plus a secondary dwelling proposed under the separate development application would meet the provisions of this clause.	Not addressed
4.3 Height of Buildings	9m maximum	The height of the building from the existing natural ground level has not been clearly demonstrated.	Not addressed
4.4 Floor Space Ratio (FSR)	No FSR prescribed	Not relevant as no FSR is prescribed by the LEP.	N/A
6.9 Essential Services	<p>This Clause prescribes that: <i>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</i></p> <ul style="list-style-type: none"> <li><i>(a) the supply of water,</i></li> <li><i>(b) the supply of electricity,</i></li> <li><i>(c) the disposal and management of sewage,</i></li> <li><i>(d) stormwater drainage or on-site conservation,</i></li> <li><i>(e) suitable vehicular access.</i></li> </ul>	The applicant has not addressed this clause.	Not addressed

## 2. SEPP (Western Sydney Aerotropolis) 2020 (version 30 September 2020)

The subject site is characterised as land that surrounds land shown on the Land Application Map and is the subject of provisions in Part 3 Development Controls – Airport Safeguards and Clause 29 of SEPP WSA which came into effect on 1 October 2020, a day after the subject application was lodged.

The subject development application benefits from Section 53 Savings and transitional provisions which prescribes:

*(1) A development application for development on land to which this Policy applies that was lodged and not finally determined before the commencement of this Policy is to be determined as if this Policy had not commenced.*

Comment:

The subject application was lodged prior to the commencement of this SEPP and since the application is yet to be determined, the application can be determined as if the SEPP had not commenced.

However, given that the recommendation of this report is to refuse the application, the relevant provisions in Part 3 of the SEPP have been addressed below, to ensure that there is an understanding of the implications of the SEPP provisions, on any future new application or review of Council's decision that the applicant may wish to submit, relating to a child care centre proposal at this site.

Part 3 of the SEPP provides development controls to address aircraft noise (Clause 19) and a range of other matters however only Clause 19 is relevant to the current proposal. Furthermore, Clause 29 relates to transport corridors and is not relevant.

In this regard, the applicable Clause 19 Aircraft Noise prescribes:

*(1) The objectives of this clause are—*

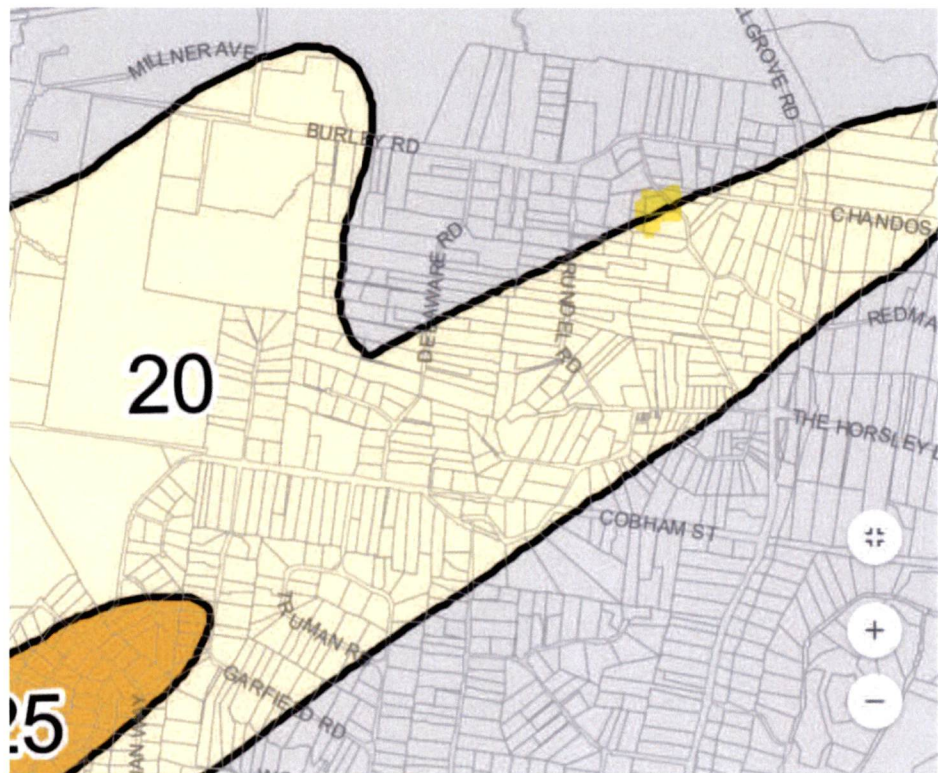
- (a) to prevent certain noise sensitive development on land near the Airport, and*
- (b) to minimise the impact of aircraft noise for other noise sensitive development, and*
- (c) to ensure that land use and development near the Airport do not hinder or have other adverse impacts on the ongoing, safe and efficient 24 hours a day operation of the Airport.*

*(2) Development consent must not be granted to noise sensitive development if the development is to be located on land that is in an ANEF or ANEC contour of 20 or greater.*

Comment:

According to Subclause (2), the proposed child care facility is a 'noise sensitive development'; and the Noise Exposure Contour Map shows that the site is partly affected by the ANEC 20 contour. The contour line transects the southern part of the site, further south of the existing dwelling.





Subject site highlighted in yellow.

- (3) Subclause (2) applies despite the following—
- (a) Part 2, Divisions 7 and 8 of [State Environmental Planning Policy \(Affordable Rental Housing\) 2009](#),
  - (b) Chapter 3 of [State Environmental Planning Policy \(Housing for Seniors or People with Disability\) 2004](#),
  - (c) [State Environmental Planning Policy \(Educational Establishments and Child Care Facilities\) 2017](#).

...

- (5) Development consent must not be granted to noise sensitive development on the following land unless the consent authority is satisfied the development will meet the indoor design sound levels—
- (a) land shown on the [Land Application Map](#) that is not in an ANEF or ANEC contour of 20 or greater,
  - (b) land shown on the [Obstacle Limitation Surface Map](#).

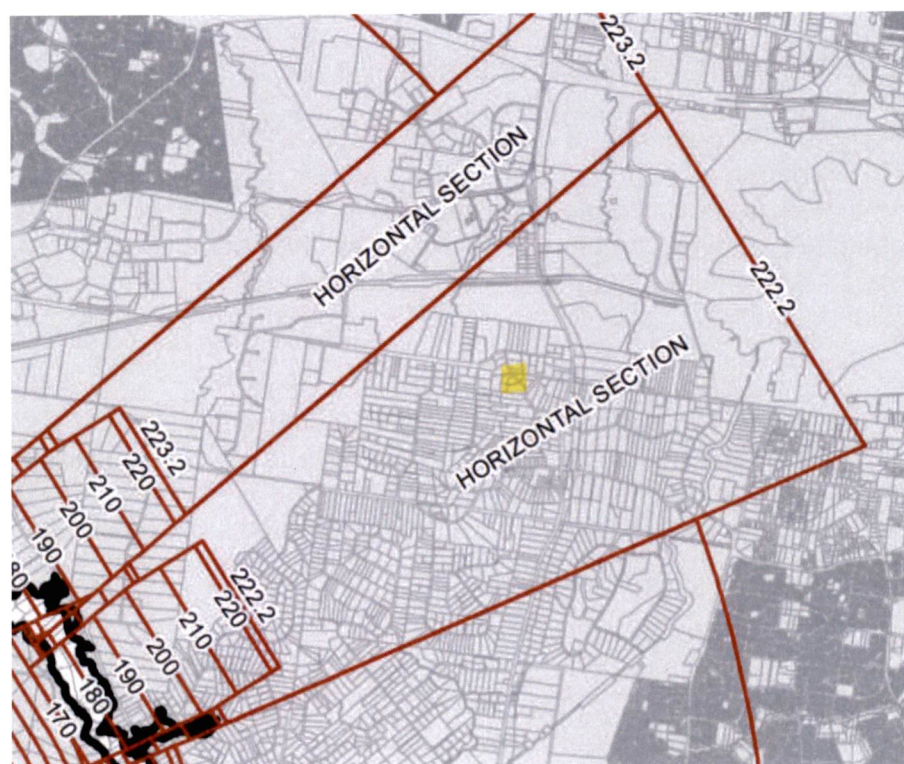
...

Comment:

According to Subclause (5), the proposed child care facility is a 'noise sensitive development'; and the Obstacle Limitation Surface Map shows that the whole of the site is located in the RL 222.2 contour.

As the whole of the site is situated within the Obstacle Limitation Surface Map area, the Council cannot consent to a child care facility at this location unless Council is satisfied that the development will meet the indoor design sound levels which means the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2015, Acoustics—Aircraft noise intrusion—Building siting and construction. However, the Clause does not commence until 26 April 2021 pursuant to Section 2(2) Commencement of the SEPP.





6) In this clause—

**ANEC contour** means a contour on the [Noise Exposure Contour Map](#).

**ANEF contour** means a noise exposure contour shown as an ANEF contour on the Noise Exposure Forecast Contour Map for the Airport endorsed by Airservices Australia.

**indoor design sound levels** means the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2015, Acoustics—Aircraft noise intrusion—Building siting and construction.

**noise sensitive development** means development for the following purposes—

(a) centre-based child care facilities,

...

(i) residential accommodation,

...

Having regard to the current version of SEPP WSA 2020 and the above provisions, it is considered that refusal of the subject application would not be unreasonable.

### 3. Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)

Further information is required to be submitted by the applicant before it can be ascertained as to whether or not the proposal conflicts with any of the relevant provisions of SREP Hawkesbury-Nepean River.

### 4. SEPP (Vegetation in Non-Rural Areas) 2017

Further information is required to be submitted by the applicant in relation to any potential impacts on existing vegetation before it can be ascertained as to whether or not the proposal conflicts with provisions of SEPP (Vegetation in Non-Rural Areas) 2017.

## **5. SEPP No 55 - Remediation of Land**

SEPP No. 55 Remediation of Land is applicable to the site and the proposal. Clause 7 of the SEPP requires Council to consider a number of matters including whether the land is contaminated; and if contaminated whether Council is satisfied that the land is suitable in its contaminated state or can be made suitable for the purpose of the proposed development. Clause 7 also requires Council to consider and be satisfied that where the land requires remediation that the land will be remediated before the land is used for the proposed development.

The applicant has not submitted any information to address the provisions of SEPP No. 55. Council has identified that the land is potentially contaminated and a land contamination assessment is required in accordance with Section 7 of the SEPP. The requirement for a Detailed Site Investigation (DSI) to be undertaken including soil sampling at this site was conveyed to the applicant in Council's letter dated 13 November 2020.

## **6. SEPP (Infrastructure) 2007**

The following Clauses of SEPP (Infrastructure) are relevant to the site and the proposal and have been taken into consideration:

**Table 2. SEPP (Infrastructure) 2007**

<b>Clause</b>	<b>Provision</b>	<b>Comment</b>	<b>Satisfied</b>
45 Determination of development applications – other development	This Clause requires Council to consult with the electricity supply authority where development is carried out within or immediately adjacent to an easement for electricity purposes.	There are no known electrical infrastructure in the vicinity of the proposed works and as such consultation with Endeavour Energy was not considered necessary.	N/A

## **7. State Environmental Planning Policy (SEPP) (Educational Establishments and Child Care Facilities) (EECCF) 2017**

The application has failed to address the provisions of SEPP EECCF and a preliminary assessment by Council finds that the proposal is inconsistent with the SEPP. For example, the application has not demonstrated compliance with the indoor and outdoor play area requirements of the Education and Care Services National Regulation which are essential matters that must be complied with.

## **8. Child Care Planning Guideline 2017**

As noted above, the application has also failed to address the provisions of the Child Care Planning Guidelines 2017 and a preliminary assessment by Council finds that the proposal is inconsistent with the guidelines and is unacceptable when assessed against most of the considerations including but not limited to considerations relating to: site selection and location; location character, streetscape and the public domain interface; building orientation, envelope and design; landscaping; visual and acoustic privacy; noise and air pollution; traffic, and parking and pedestrian circulation. The application is also unacceptable with respect to indoor space requirements, outdoor space requirements, ventilation and natural light, natural environment, shade and solar access, fencing, and soil assessment.



## **9. Fairfield CityWide Development Control Plan (DCP) 2013**

The application has failed to address the relevant controls of the Fairfield CityWide DCP 2013 and a preliminary assessment by Council finds that the proposal is inconsistent with Chapter 4A Development in Rural Zones, Chapter 12 Car Parking and Vehicle Access Management and Chapter 13 Child Care Centres.

### **INTERNAL REFERRALS**

During the assessment process, comments were sought from a number of sections within Council, as detailed below:

#### **Building Control Branch**

The Building Control Branch assessed the application and raised no concerns with the proposal.

#### **Community Health Section (CHS)**

The CHS assessed the application and raised issues of concern with the proposal which were conveyed to the applicant to address.

#### **Development Engineer**

The Development Engineer assessed the application and raised issues of concern with respect to stormwater management which were conveyed to the applicant to address.

#### **Environmental Management Section (EMS)**

The EMS assessed the application and raised issues of concern such as with respect to air quality, noise impacts, land contamination, lighting etc. which were conveyed to the applicant to address.

#### **Traffic Engineer**

The Traffic Engineer assessed the application and raised issues of concern which were conveyed to the applicant to address.

#### **Tree Preservation Officer (TPO)**

The TPO assessed the application and raised no concerns with the proposal.

### **EXTERNAL REFERRALS**

The application was not required to be referred to any external agencies at this stage.

### **PUBLIC CONSULTATION**

The development application was publicly notified for a period of 14 days in accordance with Council's notification policy. Notification was via written letters to surrounding properties and via an advertisement in the local newspaper.

Two (2) submissions were received by Council from local residents raising concerns including the following, which have not been addressed by the applicant:

- Proposal will disrupt tranquil lifestyle
- Noise pollution
- Invasion of privacy



- Overlooking into neighbouring properties from elevated heights
- Loss of amenity
- Inconsistent with the intent of the RU4 zoning
- Inconsistent with Council's DCP
- Devalue surrounding properties
- Congestion as a result of traffic generation
- Traffic generation from 111 children will create traffic hazards for local residents
- Walworth Road is not in good condition, has curves and blind spots
- Walworth Road is used by trucks and the conflict with the child care centre may lead to accidents
- Lack of sewerage system in the area
- Method of wastewater dispersal and whether it is capable of dispersing large amounts of waste from the septic tank system
- Adequacy for proposed wastewater system for the number of children to be accommodated
- Possibility of wastewater passing through neighbouring blocks due to elevation difference
- Potential for wastewater to enter pond shared between two neighbours and potential impact on biodiversity and wildlife
- This development in conjunction with additional development under Development Application No. 368.1/2020 is inconsistent with Fairfield LEP 2013 with respect to the number of dwellings permitted on rural sites
- Size and scale of building is excessive
- Proposal is out of context with the rural character of the area
- Footprint of all of the proposed buildings to occupy the site is excessive
- Excessive hardstand and the potential impacts for runoff and drainage
- Potential erosion of neighbouring driveway from runoff generated by the subject site
- OSD would not cope with the large downpours
- Pollution from vehicles such as grime and oil will potentially be discharged into an existing pond
- Current plans do not show the large Pecan nut tree which is of historical significance and the development appears to impact the tree. The tree was planted by the first settlers of Horsley Park and has a significant cultural and environmental heritage and needs to be preserved.
- Slope of site on the western side is quite steep and would require a substantial amount of fill to provide the necessary amenities.

## **SECTION 4.15 EVALUATION**

The proposed development has been assessed and considered having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment (EP & A) Act 1979 and the key issues are identified below.

### *(1) Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

(a) *the provisions of:*

(i) *any environmental planning instrument, and*

The proposal is inconsistent with most of the relevant planning instruments and should not be supported.

(ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

There are no proposed instruments relevant to the site or proposal.

(iii) *any development control plan, and*

The proposal is considered to be unacceptable in terms of the Fairfield CityWide DCP, 2013 and does not comply with key controls such as car parking nor with controls relevant to the rural areas nor specific controls relating to child care centres.

(iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

There are no planning agreements relevant to the site or proposal.

(iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

Any relevant matters prescribed in the regulations have been considered.

(v) *(Repealed)*

*that apply to the land to which the development application relates,*

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

It is considered that there are likely to be adverse impacts arising from the development and it is recommended that this application be refused.

(c) *the suitability of the site for the development,*

The applicant has not demonstrated that the site is suitable for the development.

(d) *any submissions made in accordance with this Act or the regulations,*

The two (2) submissions received from local residents raise a number of concerns with the proposal which have not been addressed by the applicant.



- (e) *the public interest.*

The proposal is not considered to be in the public interest due to the issues identified in this report as well as the issues of concern conveyed to the applicant in Council's letter dated 13 November 2020.

## **FAIRFIELD LOCAL PLANNING PANEL CRITERIA FOR DETERMINATION**

The proposed development is not required to be determined by the Fairfield Local Planning Panel as the development is not listed in Schedule 2 of the Local Planning Panels Direction and can be determined under Delegated Authority.

## **STATEMENT OF REASONS**

In conclusion, the proposal is considered unacceptable and is recommended for refusal for the following reasons:

### **1. Inconsistent with SEPP/SREP**

Pursuant to the provisions of Section 4.16(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that inadequate information has been submitted to demonstrate that the development is consistent with *State Environmental Planning Policy No. 55 – Remediation of Land*; *Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)*; and with *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

### **2. Inconsistent with SEPP/Guidelines**

Pursuant to the provisions of Section 4.16(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that inadequate information has been submitted to demonstrate that the development is consistent with *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*; and with the associated *Child Care Planning Guideline 2017*.

### **3. Inconsistent with Fairfield LEP**

Pursuant to the provisions of Section 4.16(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with Fairfield Local Environmental Plan 2013 as the applicant has not demonstrated how the development together with development proposed under a separate Development Application No. 368/2020 would constitute permissible development in the subject RU4 Primary Production Small Lots zone. The development has also failed to demonstrate consistency with relevant development standards and provisions of the Fairfield LEP.

### **4. Inconsistent with objectives of Fairfield LEP**

Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with the objectives of the RU4 Primary Production Small Lots zone under Fairfield Local Environmental Plan 2013.

5. **Inconsistent with Fairfield City Council CityWide DCP**

Pursuant to the provisions of Section 4.16(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with Fairfield CityWide Development Control Plan with respect to the controls and objectives of Chapter 4A Development in Rural Zones, Chapter 12 Car Parking and Vehicle Access Management and Chapter 13 Child Care Centres.

6. **Development Fails to Demonstrate Adequate Play Areas**

Pursuant to the provisions of Section 4.16(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development fails to demonstrate adequate indoor and outdoor play areas for the number of children proposed.

7. **Failure to Demonstrate Acceptable Stormwater Disposal**

Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development fails to demonstrate the acceptable disposal of stormwater from the subject property.

8. **Excessive Height, Bulk and Scale**

Pursuant to the provisions of Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is excessive in height, bulk and scale and would adversely impact upon the amenity of the locality.

9. **Impact Upon Existing and Future Desired Streetscape**

Pursuant to the provisions of Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not achieve a high quality design and would adversely impact upon the existing and future desired streetscape.

10. **Adverse Environmental Impact**

Pursuant to the provisions of Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the development would have an adverse impact upon the environment and on the amenity of the locality.

11. **Site not Suitable for Development**

- a. Pursuant to the provisions of Section 4.16(1)(c) of the Environmental Planning and Assessment Act 1979, it is considered that the site is not suitable for the proposed development due to the potential for conflict with existing surrounding agricultural land uses.
- b. It is considered that the proposed development is unsuitable for the subject site as the use is unable to be satisfactorily accommodated at the subject site. (Environmental Planning & Assessment Act, 1979, Section 4.16(i)(c)).



**12. Public Submissions Upheld**

Pursuant to the provisions of Section 4.16(1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development is unsuitable for the site and is likely to adversely impact the environment and the local residents.

**13. Insufficient Information**

- a. Insufficient information has been submitted to allow Council to carry out a full assessment of the application. In this regard, no response has been received to Council's letters dated 13 November 2020 and 2 December 2020, requesting additional information/amended plans. (Environmental Planning & Assessment Act, 1979, Section 4.16(b)).
- b. Insufficient information has been submitted to Council to enable a thorough assessment of the potential impact of the proposed development on the amenity of the surrounding locality. (Environmental Planning & Assessment Act, 1979, Section 4.16(b)).

**14. Public Interest**

Pursuant to the provisions of Section 4.16(1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

**15. Inadequate Information**

Given that inadequate information has been submitted, approval of the application is not considered to be in the public interest (Environmental Planning & Assessment Act, 1979, Section 4.15(i)(e)).

Venetin Kasho

**SENIOR DEVELOPMENT PLANNER**

**DATE:**

Liam Hawke

**COORDINATOR, DEVELOPMENT PLANNING**

**DATE:**

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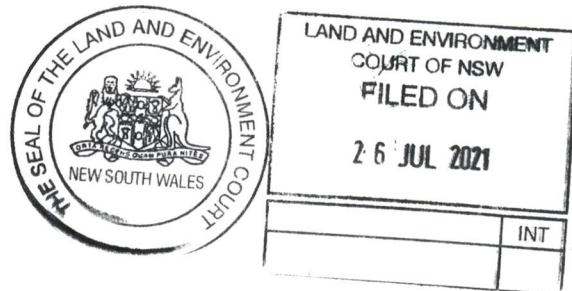


22 December 2020

ENQUIRIES: Mrs V Kasho on 9725 0178

Mr R Elzahr  
157-161 Walworth Road  
HORSLEY PARK NSW 2175

Dear Sir,



## NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO. 396.1/2020

### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

You are advised that the subject development application has been **REFUSED** pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979.

**Property Description:** Lot 52 DP 1095736, No. 157-161 Walworth Road, Horsley Park

**Description of Development:** Proposed construction of a 2-storey child care centre accommodating a maximum of 111 children including earthworks, landscaping, stormwater and 29 car parking spaces.

**Date of Determination:** 22 December 2020

Pursuant to Division 8.2 of the Environmental Planning and Assessment Act, 1979 an applicant who is dissatisfied with the determination with respect to the matters relating to the EP&A Act, may within six (6) months from the date of determination, request Council, in writing, to review the determination.

Pursuant to Section 8.10 of the Environmental Planning and Assessment Act, 1979 an applicant may seek a Right of Appeal to the Land and Environment Court within six (6) months from the date of determination if they are dissatisfied with the determination by the consent authority.

## REASONS FOR REFUSAL

In conclusion, the proposal is considered unacceptable and is recommended for refusal for the following reasons:

**1. Inconsistent with SEPP/SREP**

Pursuant to the provisions of Section 4.16(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that inadequate information has been submitted to demonstrate that the development is consistent with *State Environmental Planning Policy No. 55 – Remediation of Land*; *Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)*; and with *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

**2. Inconsistent with SEPP/Guidelines**

Pursuant to the provisions of Section 4.16(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that inadequate information has been submitted to demonstrate that the development is consistent with *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*; and with the associated *Child Care Planning Guideline 2017*.

**3. Inconsistent with Fairfield LEP**

Pursuant to the provisions of Section 4.16(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with Fairfield Local Environmental Plan 2013 as the applicant has not demonstrated how the development together with development proposed under a separate Development Application No. 368/2020 would constitute permissible development in the subject RU4 Primary Production Small Lots zone. The development has also failed to demonstrate consistency with relevant development standards and provisions of the Fairfield LEP.

**4. Inconsistent with objectives of Fairfield LEP**

Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with the objectives of the RU4 Primary Production Small Lots zone under Fairfield Local Environmental Plan 2013.

**5. Inconsistent with Fairfield City Council CityWide DCP**

Pursuant to the provisions of Section 4.16(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with Fairfield CityWide Development Control Plan with respect to the controls and objectives of Chapter 4A Development in Rural Zones, Chapter 12 Car Parking and Vehicle Access Management and Chapter 13 Child Care Centres.



**6. Development Fails to Demonstrate Adequate Play Areas**

Pursuant to the provisions of Section 4.16(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development fails to demonstrate adequate indoor and outdoor play areas for the number of children proposed.

**7. Failure to Demonstrate Acceptable Stormwater Disposal**

Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development fails to demonstrate the acceptable disposal of stormwater from the subject property.

**8. Excessive Height, Bulk and Scale**

Pursuant to the provisions of Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is excessive in height, bulk and scale and would adversely impact upon the amenity of the locality.

**9. Impact Upon Existing and Future Desired Streetscape**

Pursuant to the provisions of Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not achieve a high quality design and would adversely impact upon the existing and future desired streetscape.

**10. Adverse Environmental Impact**

Pursuant to the provisions of Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the development would have an adverse impact upon the environment and on the amenity of the locality.

**11. Site not Suitable for Development**

- a. Pursuant to the provisions of Section 4.16(1)(c) of the Environmental Planning and Assessment Act 1979, it is considered that the site is not suitable for the proposed development due to the potential for conflict with existing surrounding agricultural land uses.
- b. It is considered that the proposed development is unsuitable for the subject site as the use is unable to be satisfactorily accommodated at the subject site. (Environmental Planning & Assessment Act, 1979, Section 4.16(i)(c)).

**12. Public Submissions Upheld**

Pursuant to the provisions of Section 4.16(1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development is unsuitable for the site and is likely to adversely impact the environment and the local residents.



**13. Insufficient Information**

- a. Insufficient information has been submitted to allow Council to carry out a full assessment of the application. In this regard, no response has been received to Council's letters dated 13 November 2020 and 2 December 2020, requesting additional information/amended plans. (Environmental Planning & Assessment Act, 1979, Section 4.16(b)).
- b. Insufficient information has been submitted to Council to enable a thorough assessment of the potential impact of the proposed development on the amenity of the surrounding locality. (Environmental Planning & Assessment Act, 1979, Section 4.16(b)).

**14. Public Interest**

Pursuant to the provisions of Section 4.16(1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

**15. Inadequate Information**

Given that inadequate information has been submitted, approval of the application is not considered to be in the public interest (Environmental Planning & Assessment Act, 1979, Section 4.15(i)(e)).

LIAM HAWKE

**CO-ORDINATOR DEVELOPMENT PLANNING**