

**Attachment 1:**

**Council Report and Resolution (23 October 2017)**

**Item:** ENV001-17 Planning Proposal PP2017/0001 - 84D Roberts Avenue, Mortdale

**Author:** Coordinator Strategic Planning and Strategic Planner

**Directorate:** Environment and Planning

**Matter Type:** Committee Reports

## Recommendation

- (a) That Council endorse the Planning Proposal to amend Hurstville Local Environmental Plan 2012 by way of a Schedule 1 amendment to permit the uses of retail premises, bulky goods premises and centre-based child care facility, in relation to 84D Roberts Avenue (legally known as Lot 21 DP 542051).
- (b) That Council endorse the Planning Proposal to be forwarded to the delegate of the Greater Sydney Commission for a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979.

## Executive Summary

1. The Independent Hearing and Assessment Panel (IHAP) at its meeting on 21 September 2017 considered a report on the Planning Proposal for 84D Roberts Avenue, Mortdale as identified in Figure 1 below.

**Figure 1 – Aerial of 84D Roberts Avenue, Mortdale**



2. The Georges River IHAP recommends the following to Council:
  - That the Planning Proposal to amend Hurstville Local Environmental Plan 2012 by way of a Schedule 1 amendment to permit the uses of retail premises, bulky goods premises and centre-based child care facilities, in relation to 84D Roberts Avenue (Lot 21 DP 542051), be forwarded to the delegate of the Greater Sydney Commission for a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979.
3. Refer to **Attachment 1** for a copy of the report to the IHAP and the associated annexures. The IHAP report is comprehensive in its assessment and should be read in conjunction with this report.
4. This report recommends that Council supports the IHAP recommendation and endorse the Planning Proposal.

## 1 INTRODUCTION

1. Urbis submitted a Planning Proposal request (PP2017/0001) on behalf of Romanous Construction on 12 April 2017 seeking the amendment of the Hurstville Local Environmental Plan 2012 (“HLEP 2012”) in relation to the street address at 84D Roberts Avenue, Mortdale.
2. The applicant has stated that the objective of the Planning Proposal is to enable the current use on the site for retail premises, and additional uses of centre-based child care facilities and bulky goods premises to be permissible with consent under the HLEP 2012.
3. This Planning Proposal seeks to permit the uses of retail premises, bulky goods premises and centre-based child care facilities on the site by way of a Schedule 1 Additional permitted uses amendment to the HLEP 2012.
4. The Planning Proposal intends to allow for the continuation of existing uses on the site pursuant the 2009 development consent, so that the existing employment within the shopping centre is protected and the centre remains economically viable. Refer to **Section 4.1** for the history of the development approval and permissible uses on the site.
5. The proposed Schedule 1 amendment will prescribe specific land uses to enable retail and bulky goods premises. This will replace the current provision of existing use rights on the site and restrict the permitted land use to the Standard Instrument land use terms of retail premises and bulky goods premises.
6. Additionally, a centre-based child care facility is intended to be located within the existing structure on the site to provide a community service that is increasing in demand.

## 2 SITE DESCRIPTION

### 2.1 Overview of the Site

7. The site is known as 84D Roberts Avenue, Mortdale and is legally described as Lot 21 DP 542051. The site is in an irregular battle-axe configuration with the access way on Roberts Avenue (refer **Figure 2** below).

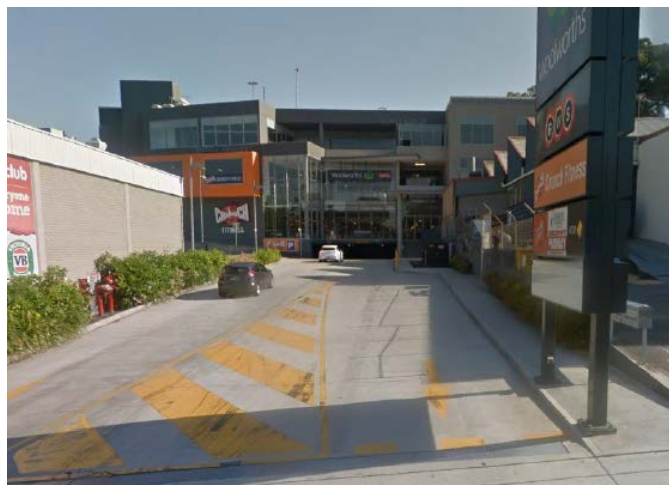
**Figure 2 – Site Cadastre**

(Source: Urbis Report)



8. The site is irregular in shape with an area of approximately 1.121 hectares and has the following boundaries:
- Roberts Avenue frontage of approx. 15.25m
  - Shared side boundary with No. 84 of approx. 45.71m
  - Shared boundary with rear of No. 84 of approx. 16.47m
  - Eastern side boundary of approx. 92.8m
  - Rear boundary of approx. 131.06m
  - Western side boundary of approx. 58.61m
  - Shared boundary with rear of No. 86 of approx. 99.83m
  - Shared side boundary with No. 86 of approx. 37.93m
9. The site contains one existing development at the eastern boundary, a shopping centre known as Mortdale Plaza, shown in **Figure 3** below. The shopping centre currently contains the following tenancies as listed in **Table 1** below.



**Figure 3 – The site as viewed from Roberts Avenue** (Source: Urbis Report)**Table 1 – Current Tenancies and Land Use Type**

Shop Name	Shop Type	Standard Instrument Definition	HLEP 2012 Land Use
Woolworths	Supermarket	Shop (a type of retail premise)	Prohibited
Diana Sadig	Pharmacy	Shop (a type of retail premise)	Prohibited
The Brasserie Club	Café	Food and drink premise (a type of retail premise)	Prohibited
BSW Liquor	Liquor Shop	Shop (a type of retail premise)	Prohibited
Crunch	Fitness Club / Gymnasium	Recreation facility (indoor)	Permitted with consent

10. Within the western section of the site is an unbuilt upon area that surrounds a watercourse which cuts through this area, shown in **Figure 4** below.

**Figure 4 – Aerial view of site** (Source: Nearmap)

11. The ground surface of the site generally slopes down from the eastern side towards the western side with an average difference of approx. 2m in height. There is a localised portion of change in topography at the watercourse in the western portion of the site as the existing watercourse is approx. 5m lower than the rest of the site.
12. Roberts Avenue is a two way road with one lane of traffic for each direction. It also features street parking on both sides. It is used by both local residents and workers at the Peakhurst Industrial Precinct.

## 2.2 Surrounding Land

13. The site is located at the interface of light industrial, residential and recreational land uses. Land immediately surrounding the site to the north, east, and west is characterised by light industrial uses, known as the Peakhurst Industrial Precinct. Further to the east, south, and west of the site are single dwelling houses.
14. The primary interfaces of the site are described below in **Table 2**. The surrounding context is shown below in **Figures 5 to 8**.

**Table 2 – Surrounding Land Uses**

Aspect	Land Uses
North	Light industrial warehouses are located to the north of the site.
East	Light industrial warehouses are located immediately to the east of the site. A series of single dwelling houses begin approximately 200m east of the site.
South	Immediately to the south-west of the site is St George Masonic Club (86 Roberts Avenue). The site is bound to the south by Roberts Avenue. Beyond Roberts Avenue is a series of single dwelling houses and Hurstville Golf Club.
West	Land immediately to the west of the site is landscaped. Beyond this are light industrial warehouses.

**Figure 5 – St George Masonic Club as viewed from Roberts Avenue**

(Source: Urbis Report)



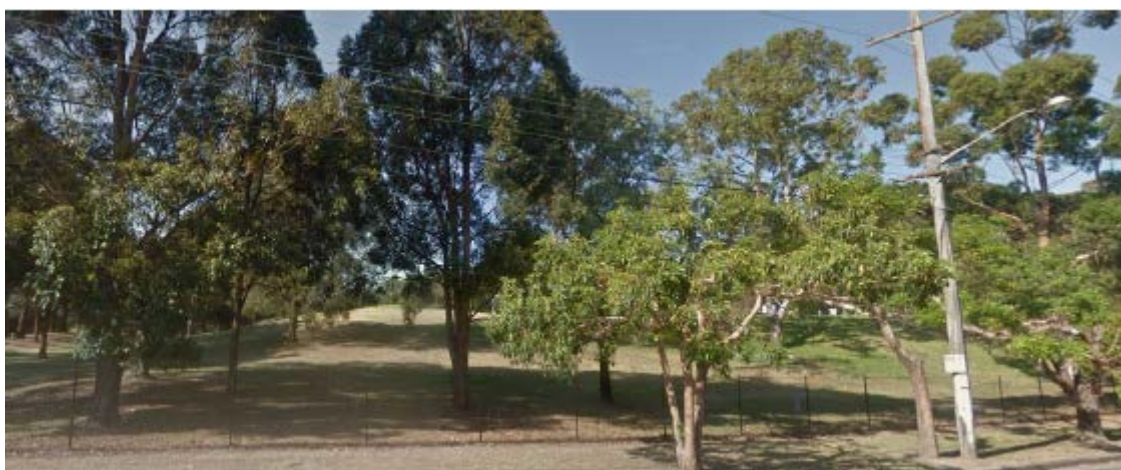


**Figure 6 – Light industrial land uses as viewed from Roberts Avenue**

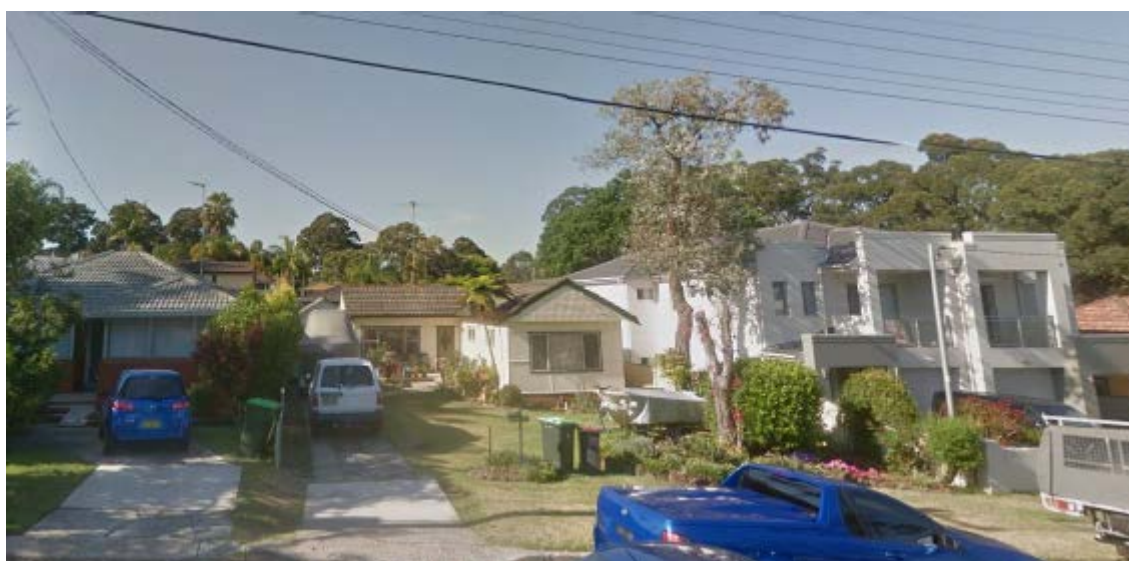
(Source: Urbis Report)

**Figure 7 – Hurstville Golf Club as viewed from Roberts Avenue**

(Source: Urbis Report)

**Figure 8 – Low density residential dwellings as viewed from Roberts Avenue**

(Source: Urbis Report)

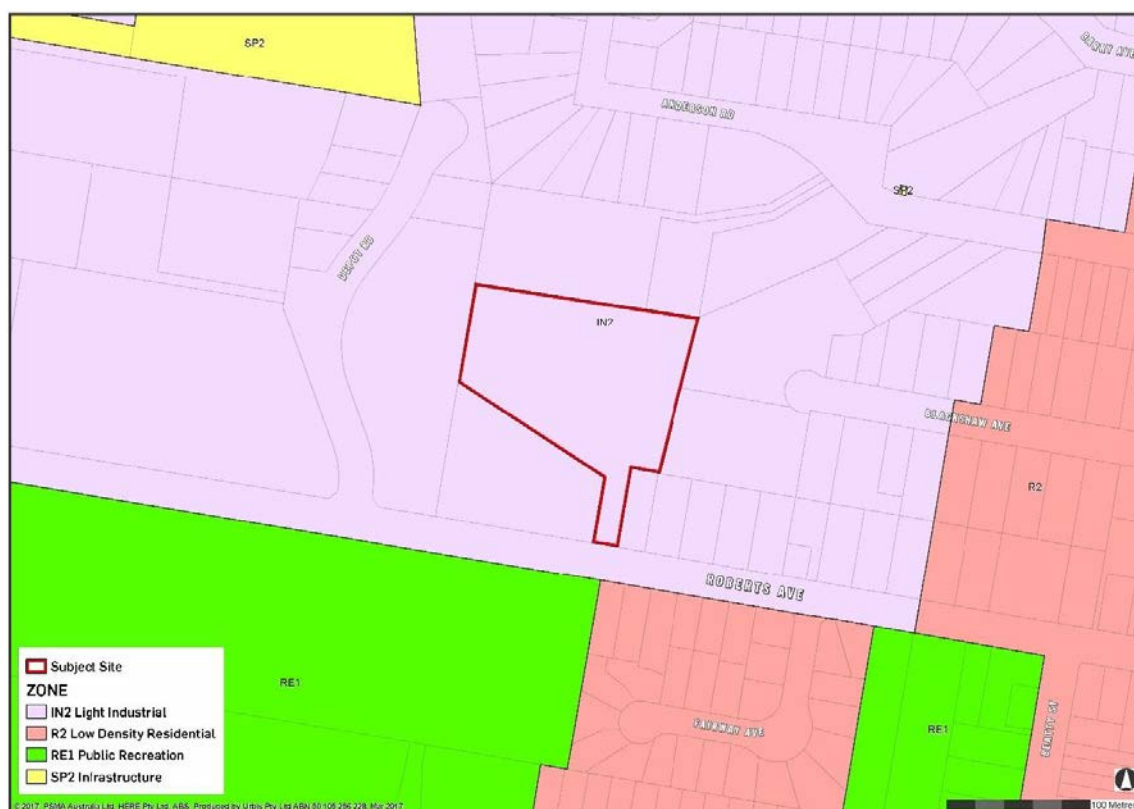


### 3 PLANNING STRATEGIES, POLICIES AND CONTROLS

### 3.1 Existing Planning Controls

15. The site is currently zoned IN2 Light Industrial under the HLEP 2012 (refer to **Figure 9** below). The allotments immediately adjoining the site are zoned IN2 Light Industrial. Surrounding lots are zoned IN2 Light Industrial, R2 Low Density Residential, and RE1 Public Recreation. Refer to **Table 3** below for the HLEP 2012 Land Use Table for Zone IN2 Light Industrial.

**Figure 9 – Land Zoning Map** (Source: Urbis Report)



**Table 3 – Zone IN2 Land Use Controls (HLEP 2012)**

## Zone IN2 Light Industrial

**1 Objectives of zone**

- To provide a wide range of light industrial, warehouse and related land uses.
- To encourage employment opportunities and to support the viability of centres.
- To minimise any adverse effect of industry on other land uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To support and protect industrial land for industrial uses.
- To enable industrial development which does not pollute or adversely affect adjoining land, air or water.
- To ensure industrial development creates areas that are pleasant to work in, safe and efficient in terms of transportation, land utilisation and service distribution.



<p><b>2 Permitted without consent</b> Home occupations</p>
<p><b>3 Permitted with consent</b> Depots; Garden centres; Hardware and building supplies; Industrial training facilities; Kiosks; Landscaping material supplies; Light industries; Neighbourhood shops; Places of public worship; Plant nurseries; Roads; Take away food and drink premises; Timber yards; Vehicle sales or hire premises; Warehouse or distribution centres; Water recycling facilities; Any other development not specified in item 2 or 4</p>
<p><b>4 Prohibited</b> Agriculture; Air transport facilities; Airstrips; Amusement centres; Biosolids treatment facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Centre-based child care facilities; Charter and tourism boating facilities; Commercial premises; Community facilities; Correctional centres; Crematoria; Eco-tourist facilities; Educational establishments; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Function centres; Health services facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Information and education facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Public administration buildings; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Residential accommodation; Respite day care centres; Rural industries; Sewage treatment plants; Tourist and visitor accommodation; Water recreation structures; Water supply systems; Wholesale supplies</p>

## 4 APPLICANT'S PLANNING PROPOSAL REQUEST

### 4.1 Background

16. In 2009 under Development Application 08/DA-411, the former Hurstville City Council approved the development of the site for a "three storey mixed use development comprising supermarket, bulky goods retail, gymnasium and office with basement parking".
17. The Development Application sought to replace the existing structures on the eastern portion of the site, which generally had comprised of a depot and service yard for motor mechanics and a temporary office building.
18. At the time of the development approval, the site was located within Zone No 4 (Light Industrial Zone) under the Hurstville Local Environmental Plan 1994 ("HLEP 1994").
19. The Land Use Table of Zone No 4 specified that any land use which was not listed as a prohibited use would be permitted with development consent. As such, the proposed uses of bulky goods retail and gymnasium were considered to be permissible developments as they were not listed as prohibited uses in the zone.
20. A number of land uses were listed as "Prohibited" in the Light Industrial Zone, for example, boarding houses, caravan parks, dwellings, residential flat buildings, etc.

21. Office premises and shops were also included within the list of prohibited land uses. However, HLEP 1994 specifies that office premises and shops may be permitted if Council deems the uses to be appropriate to the industrial zone:

***Prohibited** ... office premises and shops (other than those ordinarily incidental or subsidiary to industry, or which are primarily intended to serve persons occupied or employed in uses otherwise permitted in this zone, or which by virtue of their nature, the services provided, or the products produced, distributed or sold are, in the opinion of the council, appropriately located in an industrial zone);*

22. Council's assessment of the suitability of shops and commercial premises in the Light Industrial Zone was subject to Clause 16(1) of the HLEP 1994. The clause (as below) identifies a number of considerations Council must be satisfied of prior to granting consent for developments containing commercial purposes or shops (other than bulky goods salesrooms or showrooms which were already permitted with consent in the zone).

### **16 Development in industrial zones**

*(1) The council may grant consent to the carrying out of development on and within Zone No 4 for the purpose of shops (other than bulky goods salesrooms or showrooms) or for commercial purposes only where it is satisfied that:*

*(a) where the proposed development may otherwise have been carried out within a business centre in the locality, suitable land for the development is not available in that business centre, and*

*(b) the proposed development is of a type appropriate to an industrial zone, or to the general character of existing structures or uses within the industrial zone.*

23. Supermarkets were identified as a form of "shop" and were therefore not permitted in the Light Industrial Zone under the HLEP 1994. However, the application was assessed using the Clause 16(1) mechanism of the HLEP 1994 and the proposed supermarket development was considered to be appropriately located in the industrial zone as it will service the needs of the local workforce.
24. Furthermore, the proposed "office premise" land use was also deemed to be permissible as it is ancillary in function to the other permitted uses in the Light Industrial Zone, in line with the Land Use Table as noted above.
25. Subsequently, the proposed development comprising of a supermarket, bulky goods retail, gymnasium and office with basement parking was approved in 2009 using the Clause 16(1) mechanism of the HLEP 1994.
26. In the preparation of the HLEP 2012 by the former Hurstville City Council, a series of 'discussion papers' relating to specific land use zones across the former Hurstville local government area were prepared.
27. The Commercial and Industrial Land Discussion Paper proposed the direct conversion of the planning controls for Zone No 4 (Light Industrial Zone) to IN2 Light Industrial under the new Standard Instrument LEP.

28. The flexibility of Clause 16(1) of the HLEP 1994 in enabling retail uses in Light Industrial zones was acknowledged in the discussion paper. The adopted HLEP 2012 has translated the intent of this clause into the 'neighbourhood shops' land use, which is permitted with consent in the IN2 Light Industrial land use table.
29. As a supermarket is considered to be a large format retail use, the more appropriate land use term in the Standard Instrument LEP is 'retail premise', which is currently prohibited in the IN2 Light Industrial zone under the HLEP 2012.
30. In light of the 2009 development consent, the existing development benefits from existing use rights as per Division 10 Existing uses of Part 4 Development assessment of the Environmental Planning and Assessment Act 1979.
31. However, the approved supermarket and bulky goods retail uses are not identified as Standard Instrument land use terms. This means that they cannot be distinctively identified in the HLEP 2012 and need to be substituted by similar terms, which creates a level of ambiguity in the permissible land uses on the site based on existing use rights.
32. By translating the existing land uses of supermarket and bulky goods retail to 'retail premises' and 'bulky goods premises' respectively through the Planning Proposal request, permissible land uses will become defined and restricted under HLEP 2012. The permissible land uses on the subject site will no longer be open to interpretations as it would otherwise remain under the application of existing use rights.

#### 4.2 Summary of Planning Proposal Request

33. Urbis submitted a Planning Proposal request (PP2017/0001) on behalf of Romanous Construction on 12 April 2017 seeking the amendment of the Hurstville Local Environmental Plan 2012 ("HLEP 2012") in relation to the street address at 84D Roberts Avenue, Mortdale (refer to **Figure 1** above).
34. The Planning Proposal seeks to:
  - Amend Schedule 1 Additional Permitted Uses of the HLEP 2012 to insert a clause with specific reference to the subject site as follows:

##### ***Use of certain land at 84D Roberts Avenue, Mortdale***

*(1) This clause applies to land at 84D Roberts Avenue, Mortdale being Lot 21, DP 542051.*

*(2) The uses of retail premises, bulky goods premises, and centre-based child care facilities are permitted with development consent.*

35. In summary, the proposal seeks to permit the uses of retail premises, bulky goods premises and child care centres on the site by way of a Schedule 1 amendment to the HLEP 2012.
36. The proposed amendment to the HLEP 2012 does not propose any changes to built form provisions and is concerning land use only.



## 5 ASSESSMENT OF THE PLANNING PROPOSAL

### 5.1 Strategic Planning Context

37. Consideration of the Planning Proposal request in relation to the current regional or sub-regional plans and strategies A Plan for Growing Sydney (Metropolitan Strategy) and the draft South District Plan is provided below.

#### A Plan for Growing Sydney (Metropolitan Strategy)

38. A Plan for Growing Sydney was adopted in December 2014. The plan positively encourages well designed, higher density development within walking distance of public transport infrastructure with a key focus on urban renewal in appropriate areas. The applicant has provided their assessment of the Planning Proposal against the relevant Actions of the plan as below:

39. **Goal 1:** *A competitive economy with world-class services and transport*

**Direction 1.11:** Deliver infrastructure

**Action 1.11.3:** Undertake long-term planning for social infrastructure to support growing communities

The proposal will enable the provision of a centre-based child care facility in a prominent location near residents. With the expected increase in demand for child care facilities across Sydney, the proposal provides an approach to incorporate this important facility into an existing accessible building.

40. **Goal 3:** *A great place to live with communities that are strong, healthy and well connected*

**Direction 3.1:** Revitalise existing suburbs

**Action 3.1.1:** Support urban renewal by directing local infrastructure to centres where there is growth

The NSW Government has identified that the provision of social infrastructure such as child care centres will make a significant contribution to making vibrant local centres. Permitting the use of a centre-based child care facility on the site will contribute to further vibrancy to this local shopping centre.

Furthermore, the Planning Proposal will legitimise existing uses including the supermarket and bulky goods premises, which will assist in the revitalisation of the precinct as the local community is granted access to a greater variety of retail premises closer to home.

41. The Georges River local government area is located within the South Subregion. The applicant has provided their assessment of the Planning Proposal against the relevant Priorities of the South Subregion as below:

42. **Priority:** Accelerate housing supply, choice and affordability and build great places to live.

The proposal will enhance the liveability of the Mortdale area by protecting and enhancing access to essential services. The proposed provisions will give confidence to the landowner and operator of surrounding properties and businesses to continue to invest and improve the operations into the future as the precinct remains anchored by a

major supermarket. This investment will contribute towards making Mortdale a great place to live by providing additional bulky goods premises, and the important local service of a centre-based child care facility.

43. **Priority:** Retain a commercial core in Hurstville, as required, for long-term employment growth; and provide capacity for additional mixed-use development in Hurstville including offices, retail, services and housing.

Whilst the site is not in the Hurstville core, it is in the wider locality and will contribute to employment in the area. The objectives associated with mixed-use commercial development are achieved with this proposal as it ensures that local services, employment and housing are near one another.

### Draft South District Plan

44. The draft South District Plan proposes a 20-year vision by setting out aspirations and proposals for the South District. The applicant has provided their assessment of the Planning Proposal against the following relevant Priorities of the district plan as below:

45. **Vision:** *A Productive City*

**Productivity Priority 1:** Manage growth and change in strategic and district centres and, as relevant, local centres

The proposal protects the existing economic activity produced by the shopping centre. This will have positive effects on and will support both the local centre and the wider strategic centre of Hurstville.

46. **Vision:** *A Productive City*

**3.8** Accessing a greater number of jobs and services within 30 minutes

The proposal seeks to allow for the continuation of the retail premises on the site and allow for the additional use of a centre-based child care facility and bulky goods premises. This in turn supports the '30 minute' city concept, as it provides local employment and important local services close to residents.

47. **Vision:** *A Liveable City*

**4.8** Respond to people's need for services

The proposal seeks to allow for the use of a centre-based child care facility on the site. With the expected increase in demand for child care facilities within the South District, the proposal provides an approach to incorporate this important facility into an existing accessible building.

The proposal also seeks to incorporate a bulky goods premise into the existing shopping centre. This will enhance the attractiveness of Mortdale Plaza as a centre that provides a wide range of services that meets the needs of its surrounding residents and workers.

## **5.2 Council's Local Strategic Plans**

48. Consideration of the Planning Proposal request in relation to the current Hurstville Community Strategic Plan 2025 and the draft Georges River Employment Lands Study is provided below.

### Hurstville Community Strategic Plan 2025

49. The former Hurstville City Council has endorsed the Hurstville Community Strategic Plan 2025 as the overarching strategy for Council's objectives and operations. The applicant has provided their assessment of the Planning Proposal against the following relevant issues of the City Plan as below:

50. *Building and maintaining community facilities and services.*

The proposal will allow for the provision of a centre-based child care facility within the existing plaza. This is essential to meet the community's growing needs for child care centres and in doing so will assist in satisfying the objective of this strategic plan in permitting the provision of more community facilities.

51. *Supporting and attracting local businesses and encouraging local employment.*

The proposal will protect existing local employment opportunities within the shopping plaza, whilst expanding the variety of these opportunities.

### Draft Georges River Employment Lands Study

52. The draft Georges River Employment Lands Study ("ELS") was recently publicly exhibited until 31 May 2017. The ELS provides Council with a strategic direction for employment lands across the Georges River local government area to ensure that sufficient land is zoned to accommodate future employment growth.

53. The site (known as Mortdale Plaza) is located within the Peakhurst Industrial Precinct. The provision of a large supermarket on the site is identified by the ELS as one of the strengths of the precinct through the amenity it provides to the area.

54. The applicant justifies that the proposal is consistent with the desired character of the precinct (refer below):

In the Peakhurst Industrial Precinct, the Mortdale Plaza is noted as providing a range of retail uses and a supermarket. The ELS supports the retention of Mortdale Plaza and its uses, and does not indicate that the site should cater to another use, including industrial.

The site, despite currently being zoned IN2 Light Industrial, plays a vital role in the precinct with its existing land uses. This document clearly indicates that the Mortdale Plaza and its current uses should be retained as they strengthen the precinct and support the surrounding industrial uses. This Planning Proposal will protect the existing uses, which in turn will protect the amenity of this industrial precinct.

## **5.3 State and Regional Statutory Framework**

55. The consistency of the Planning Proposal with the relevant State Environmental Planning Policies (SEPPs) is addressed below:

### State Environmental Planning Policy No. 55 – Remediation of Land

56. SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing risk and harm to human health or any other aspects of the environment.



57. The existing development has received approval in 2009 under the development consent 08/DA-411, indicating that the site is unlikely to be subject to further contamination.
58. This Planning Proposal is for the purpose of permitting land uses only and is consistent with this SEPP.

#### 5.4 S117 Ministerial Directions

59. Ministerial Directions under Section 117 of the Environmental Planning and Assessment Act 1979 set out a range of matters to be considered when prepared an amendment to a Local Environmental Plan.
60. The Planning Proposal is consistent with all relevant ministerial directions as assessed by the applicant in **Table 4** below:

**Table 4 – Compliance of the Planning Proposal with relevant S117 Directions**

S117 Direction	Assessment
1.1 Business and Industrial Zones	<p>This proposal protects the employment that stems from the existing shopping centre, as well as expanding the variety of employment opportunities by permitting the use of a centre-based child care facility and bulky goods premise.</p> <p>This proposal will result in the site continuing to be used for purposes that are not industrial, but will not result in the reduction of available industrial land. The existing uses were considered appropriate in the approval of the DA in 2009 (08/DA-411) and will not adversely affect local employment opportunities.</p>
3.5 Development Near Licensed Aerodromes	This proposal does not include a change to the existing built form. It is to permit uses only.
6.1 Approval and Referral Requirements	This proposal does not include provisions for referrals or concurrences of future development applications.
6.2 Reserving Land for Public Purposes	This proposal does not affect land for public purposes.
7.1 Implementation of A Plan for Growing Sydney	The proposal is consistent with the objectives of A Plan For Growing Sydney, as assessed in <b>Section 5.1</b> above.

#### 5.5 Existing Use Rights

61. Under Division 10 Existing uses of Part 4 Development assessment of the Environmental Planning and Assessment Act 1979, existing use is defined as the use of a building, work or land for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use.
62. In accordance with the above definition, the existing development on the site is deemed to possess existing use rights in that the uses of “supermarket, bulky goods retail,

gymnasium and office with basement parking” were approved in 2009 prior to the commencement of the HLEP 2012.

63. The Planning Proposal request to permit the prohibited land uses of retail and bulky goods premises will not establish a precedent for the expansion of retail and non-industrial uses in an industrial zone.
64. There will be no reduction to the availability of existing industrial land. The proposal seeks to enable the continued usage of existing non-industrial purposes, which is isolated to the subject site through existing use rights.
65. The existing retail uses are supported by the draft Georges River Employment Lands Study, which does not indicate that the site should cater to another use, including industrial, as the provision of a large supermarket offers amenity to the area. As such, existing employment will be protected.
66. The proposed Schedule 1 amendment to HLEP 2012 to enable retail premises and bulky goods premises will legitimise these current uses on the site and remove the ambiguity associated with the existing use rights of ‘supermarket’ and ‘bulky goods retail’ as these terms are not Standard Instrument terms defined in the HLEP 2012.
67. No additional retail purposes are proposed on the site.

## **5.6 Standard Instrument (Local Environmental Plans) Amendment Order**

68. Earlier this year, the NSW State Government released the draft Standard Instrument (Local Environmental Plans) Amendment Order (No 2) 2016 which proposes to amend all Local Environmental Plans to permit centre-based child care facilities in all R2 Low Density Residential and IN2 Light Industrial zones.
69. The intent of the draft Amendment Order was to allow child care centres in more locations closer to homes and workplaces.
70. On 30 August 2017, the Standard Instrument (Local Environmental Plans) Amendment (Child Care) Order 2017 was passed.
71. The Standard Instrument Amendment (Child Care) Order 2017 features the replacement of the term ‘child care centres’ with the amended term ‘centre-based child care facilities’. All references to the standard instrument term ‘child care centres’ in this report have been updated to ‘centre-based child care facilities’ to reflect the Amendment Order.
72. The Standard Instrument Amendment (Child Care) Order 2017 has carried out the intent of the draft by permitting centre-based child care facilities in all R2 Low Density Residential zones with development consent. However, the same amendment has not been made for all IN2 Light Industrial zones. As such, a Schedule 1 amendment is required to permit centre-based child care facilities on the subject site.
73. The Planning Proposal was assessed prior to the gazettal of the Standard Amendment (Child Care) Order 2017. At the time of assessment, the request to permit centre-based child care facilities on the subject site is aligned with the intent of the Standard Instrument Amendment Order (No 2) 2016 and is deemed to be appropriate for the site.

74. The site is located at the edge of the Peakhurst Industrial Precinct and it is immediately adjacent to residential land and natural reserves (refer to Aerial View above in **Figure 1**).
75. In light of its existing site context and present retail uses on the site, the proposed land use of centre-based child care facilities will present minimal additional conflicts with existing developments on surrounding IN2 Light Industrial land.
76. The applicant has advised that the proposed centre-based child care facility is intended to be located within the existing Mortdale Plaza shopping centre, which will not create any reduction to the availability of existing industrial land. Permitting the use of a centre-based child care facility on the site will contribute to the vibrancy to this local shopping centre by offering an essential service close to homes and workplaces.
77. Furthermore, the Kogarah Local Environmental Plan 2012 permits centre-based child care facilities in its IN2 Light Industrial zoned lands with the intention of supporting and encouraging a range of local services that provide for the needs of the local community.
78. In the process of harmonising the existing Kogarah and Hurstville Local Environmental Plans, it is considered that centre-based child care facilities may be appropriately located within IN2 Light Industrial zones to meet the growing demand for child care facilities across Sydney. The absence of heavy and obnoxious industries within the Light Industrial zones of the Georges River LGA allows long term planning that encourages local services like child care facilities which meet the needs of local communities without disrupting existing light industrial uses.
79. It should be noted that all future development applications for the purpose of a centre-based child care facility will be subject to a stringent assessment under the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, the Child Care Planning Guideline as well as an evaluation under section 79C of the Environmental Planning and Assessment Act 1979.

## **6 VOLUNTARY PLANNING AGREEMENT**

80. The Voluntary Planning Agreement (“VPA”) Policy was adopted on 1 August 2016 and sets out Council’s objectives in relation to the use of planning agreements. The Policy has been consistently applied to planning proposals and development applications alike since its adoption.
81. Clause 5.3 of the Policy states that where either a Planning Proposal is proposed, or development consent is sought, which will result in an exceedance of development standards, resulting in an inherent increase in value of the land or development, the concept of land value capture may be used to assess the appropriate contribution.
82. The proposal does not seek development uplift, and is only concerned with land use permissibility. As such, Council has not applied the VPA Policy to the Planning Proposal.

## **7 SUMMARY OF ASSESSMENT**

83. As identified in the draft Georges River ELS, the subject site provides amenity to the area through the availability of retail services. The requested Schedule 1 amendment to the HLEP 2012 allows for the continuation of existing retail premises on site.



84. The existing development, Mortdale Plaza, was approved by the former Hurstville Council in 2009 for the uses of a supermarket, bulky goods retail, gymnasium and offices. As such, retail premises and bulky goods premises are considered as existing uses under Division 10 Existing uses of Part 4 Development assessment of the Environmental Planning and Assessment Act 1979 as these were approved prior to the adoption of the HLEP 2012.
85. It is considered that a precedent is unlikely to be established as the proposed uses of retail premises and bulk goods premises are only supported due to existing use rights.
86. The Planning Proposal request to permit centre-based child care facilities on the subject site is aligned with the intent of the Standard Instrument Amendment Order (No 2) 2016 which was exhibited earlier this year by the NSW Government to permit centre-based child care facilities in all R2 Low Density Residential and IN2 Light Industrial zones.
87. In summary, the Planning Proposal request to permit the uses of retail premises, bulky goods premises and centre-based child care facilities by way of a Schedule 1 amendment to the HLEP 2012 is supported in relation to the site at 84D Roberts Avenue, Mortdale (legally described as Lot 21 DP 542051).

## 8 COMMUNITY CONSULTATION

88. Should the Planning Proposal be supported it will be forwarded to the NSW Department of Planning and Environment (“DPE”) requesting a Gateway Determination.
89. If a Gateway Determination (Approval) is issued, and subject to its conditions, it is anticipated that the Planning Proposal will be exhibited for a period of 28 days in accordance with the provisions of the *Environmental Planning and Assessment Act, 1979* and *Regulation, 2000* and any requirements of the Gateway Determination.
90. Exhibition material, including explanatory information, land to which the Planning Proposal applies, description of the objectives and intended outcomes, copy of the Planning Proposal and relevant maps will be available for viewing during the exhibition period on Council’s website and hard copies available at Council offices and libraries.
91. Notification of the public exhibition will be through:
  - Newspaper advertisement in The St George and Sutherland Shire Leader,
  - Exhibition notice on Council’s website,
  - Notices in Council offices and libraries,
  - Letters to State and Commonwealth Government agencies identified in the Gateway Determination (if required),
  - Letters to adjoining landowners (if required, in accordance with Council’s Notification Procedures).
92. The anticipated project timeline for completion of the Planning Proposal is shown below:

Task	Anticipated Timeframe
Lodgement of Planning Proposal request	12 April 2017
Report to Georges River IHAP on Planning Proposal	21 September 2017

Report to Council on Planning Proposal	October 2017
Anticipated commencement date (date of Gateway determination)	December 2017
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	January 2018
Commencement and completion dates for community consultation period	February/March 2018
Dates for public hearing (if required)	N/A
Timeframe for consideration of submissions	March 2018
Reporting to Georges River IHAP on community consultation	March 2018
Reporting to Council on community consultation and finalisation	April 2018
Submission to the Department to finalise the LEP	April 2018
Anticipated date for notification.	April 2018

93. It is noted that the project timeline will be assessed by the DPE and may be amended by the Gateway Determination.

## 9 NEXT STEPS

94. If the Planning Proposal is endorsed by Council it will be forwarded to the delegate of the Greater Sydney Commission for a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979.
95. If Council resolves not to support the Planning Proposal, the Applicant has the opportunity to request a pre-Gateway Review by the NSW Planning Panels under the delegation of the Greater Sydney Commission. The applicant has 40 days from the date of notification of Council's decision to request a review.

## 10 CONCLUSION

96. It is recommended that Council endorse forwarding of the Planning Proposal to the delegate of the Greater Sydney Commission for a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979.

## 11 FINANCIAL IMPLICATIONS

97. No budget impact for this report – Planning Proposal is fully funded by the applicant.

### File Reference

D17/168392

## ATTACHMENTS

Attachment 1 IHAP Report - 84D Roberts Avenue, Mortdale - 21 September 2017

## **Council Resolution (23 October 2017)**

### **CCL220-17      Report of the Environment and Planning Committee - Meeting held on 09 October 2017**

(Report by Head of Executive Services)

**Resolved:**          Councillor Katris and Councillor Hindi

That the Committee recommendations for all items, ENV001-17 – ENV003-17 (inclusive) detailed below, be adopted by Council in accordance with the delegations set out in the Terms of Reference for the Environment and Planning Committee.

#### **ENV001    Planning Proposal PP2017/001 – 84D Roberts Avenue, Mortdale**

- a) That Council endorse the Planning Proposal to amend Hurstville Local Environmental Plan 2012 by way of a Schedule 1 amendment to permit the uses of retail premises, bulky goods premises and centre-based child care facility, in relation to 84D Roberts Avenue (legally known as Lot 21 DP 542051).
- b) That Council endorse the Planning Proposal to be forwarded to the delegate of the Greater Sydney Commission for a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979.