

<b>JRPP Ref No</b>	2010SYE028
<b>Subject</b>	Development Application: 10.2010.102.1 17 Henry Street ASHFIELD
<b>File No</b>	2010.102.1
<b>Prepared by</b>	Mr S Mushtaq – Specialist Planner
<b>Reasons</b>	Matter requires Joint Regional Planning Panel (JRPP) determination
<b>Objective</b>	For the JRPP to determine the application
<b>Strategic Plan Link</b>	Not applicable
<b>Management Plan Activity</b>	2.11 Development & Building Control, Strategic Planning

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## **Overview of Report**

### **1.0     Description of Proposal**

Pursuant to Clause 78A(1) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks Council's consent to the following:

- Demolition of Murray House and Kindergarten Buildings and removal of 19 trees;
- Refurbishment and restoration of Buildings known as The Gorton, Emily Trollope Nursing Ward and The Louise Taplin Ward;
- Construction of 6 new buildings to accommodate the learning and development centres which includes the integration of child and family support services;
- Construction of a basement car park containing 37 car spaces and at-grade parking for 9 vehicles; and
- Associated landscaping, including 28 replacement trees.
- The proposal would result in an increase in the number of child care placements on the site from 180 to 230.

Plans of the proposal are included at **Attachment 1**.

### **2.0     Summary Recommendation**

The assessment reveals that the proposal does not comply with the aims and objectives of Ashfield Local Environmental Plan 1985, Clause 32 of ALEP 1985 which relates to heritage considerations. The proposal also does not comply with the stormwater design requirements of Ashfield DCP 2007 and accordingly the development is recommended for refusal.

## **Background**

### **3.0 Application Details**

Applicant	:	Ms A Kumar
Owner	:	The Infants' Home
Value of work	:	7.19 million
Lot/DP	:	LOT: 10 DP: 129727
Date lodged	:	17/05/2010
Date of last amendment	:	
Building classification	:	9B
Application Type	:	Local
Construction Certificate	:	No
Section 94A Levy	:	Yes

A series of meetings were held with the applicant and their consultants during the last 12-18 months. Specifically, two separate pre-lodgement meetings were held on the 30 November 2009 and 3 February 2010. Council's Heritage Adviser, Ms Helen Wilson, was concerned about the impact of the development on the heritage significance of the site through the removal of Murray House, proposed replacement buildings, the removal of existing landscaping, and the proposed landscaping for the development. Following these meetings correspondence was forwarded to the applicant with key comments being:

Murray House and significant landscape plantings should be retained and the proposed development re-sited to ensure their retention; and  
Any submission should address permissibility and demonstrate that the proposed development is permissible in the zone.

Prior to lodgement of the development application, the proposal was also reviewed by Council's other Heritage Adviser, Mr Robert Moore, who concurred with the comments provided by Ms Wilson. He was also concerned with the impact of the underground car park. Mr Moore also suggested to "*secure a further independent advice on the matter – a "peer review" as it were – in order to make a more widely informed decision*". Refer to **Attachment 2** for detailed comments.

Upon receipt of the formal development application, Ms Wilson reviewed the proposal and remained concerned about the impact of the development on the heritage significance of the site and its items through the removal of Murray House, proposed replacement buildings, the removal of existing landscaping and the proposed landscaping for the development. Ms Wilson was of the view that Murray House should be retained and the proposed new buildings re-sited.

As suggested by Council, The Infants' Home agreed to the engagement of a mutually agreed Independent Heritage Consultant. The consultant was required to undertake an assessment in two stages. Stage 1 being a preliminary opinion on the matter of whether the removal of the Murray House building was considered to be of significant impact to the heritage significance of the site and its association with the Ashfield Infants' Home. Subject to a favourable recommendation on the demolition of Murray House, the second stage of the project was to include a recommendations relating to the balance of the proposal, i.e. new buildings, car parking, landscaping and all other remaining works. The review was to be based on the documentation submitted with the application which included the comments provided by Council's Heritage Adviser.

On 9 July 2010 Council received the initial opinion letter from the consultant. This letter was provided to the Infants' Home. In summary, the advice concludes, in part:

*“the demolition of Murray House would have a minor to moderate adverse impact on the historic interest of the AIH site which forms part of its overall significance. We are of the opinion, however, that this negative effect could be mitigated. Mitigation could include new development in its place which makes a positive response to its sensitive setting by respecting existing visual setting and other relationships that contribute to the significance of the place. The necessary level of mitigation required is not provided by the current DA proposal.”*

A more detailed analysis and recommendations in relation to other aspects of the proposal were to be provided as part of the stage 2 assessment, however, the Infants' Home chose not to proceed with the second stage.

#### 4.0 Site and Surrounding Development

The site is approximately 1.7ha in area. It is located on the corner of Frederick and Henry Streets. Vehicular access to the site is currently available from 3 separate locations along Henry Street and one from Frederick Street. The main entrance driveway is located at the southern end of the site via Henry Street. The site is generally flat with a gradual slope down from Henry Street in the south west to the Bunning's Warehouse site in north east.

The site is currently occupied by twelve buildings within a garden setting. The Infants' Home currently provides long day care for 180 children per day. Existing support services and office administration facilities are also scattered across the site.

The surrounding development is residential with low scale detached and semi-detached buildings along Henry Street and Ilford Avenue (south west and south east). There is a mix of residential buildings including single detached dwellings and 2 and 3 storey residential flat buildings along Frederick Street to the north west. To the north east of the site is the Ashfield Bunning's Warehouse building fronting Parramatta Road.

Refer to **Attachment 3** for a locality map.

#### 5.0 Development History

Previous building and development applications submitted to Council for the subject site include:

NO.	DATE	PROPOSAL	DECISION
10.2002.191	12 /07/2002	Internal alterations to an existing commercial kitchen	Approved
6.1987.57	27/04/1987	Alterations and addition- Day care/ administration building	Approved
6.1986.406	26/11/1986	Additions to the family day care building	Approved
6.1986.120	10/06/1986	Additions to the family day care building	Approved
6.1984.256	23/07/1984	Storeroom addition to Infants' Home	Approved
6.1979.324	04/10/1979	Additions to Ashfield Infants' Home	Approved
6.1977.117	19/04/1977	Additions and alterations to Ashfield Infants' Home	Approved
6.1974.9379	25/06/1974	Additions and alterations to kindergarten - day care	Approved
6.1974.9326	30/04/1974	Additions and alterations to kindergarten - day care	Approved
6.1972.8492	20/06/1972	Additions and alterations to Ashfield Infants' Home	Approved

6.1968.6847	01/08/1968	Additions and alterations to Ashfield Infants' Home	Approved
6.1963.4710	15/10/1963	Renovation to existing laundry	Approved
6.1958.2507	8/08/1958	Additions and alterations to existing building	Approved
6.1954.1448	25/08/1954	Temporary building	Approved

Previous consents were noted in the assessment of the application. These approvals indicate that the site has long been used as a kindergarten and long day care for children.

The application states that the initial funding for the proposed development has been obtained through a specific Commonwealth Government funding program. This program was initially set up to establish 260 Early Learning and Care Centre projects throughout Australia that also seek to assist in providing integrated services in areas of unmet demand. Sydney's Inner West was identified as being one of those areas where this demand is currently not being met. Consequently, the Infants' Home development project was identified as one of 33 projects to receive funding in the first phase. The subsequent phases have now been scrapped by the Federal Government.

## **Assessment**

### **6.0 Zoning/Permissibility/Heritage**

The site is zoned 5(a) Special Uses-Infants' Home under the provisions of Ashfield LEP 1985. Clause 10 of ALEP 1985 lists the following uses which are permissible with development consent in the zone:

*The particular purpose indicated by red lettering on the map; drainage, open space; roads, utility installations (other than gas holders or generating works).*

The specific purpose on the Map is "Infants Home". The term Infants' Home is not defined in ALEP 1985 or the Environmental Planning and Assessment Model Provisions 1980. The Infants' Home, Ashfield, Act 1924 is the legislation which is relevant to the site. The objects of the Act also include providing childcare and advice in respect of childcare, home management and health on the site. The proposed development will be a continuation and intensification of the ongoing use of the land for childcare and advice in respect of childcare, home management and health. The proposed use is therefore permissible with development consent.

The Infants' Home Ashfield site is listed as an item of heritage significance under Ashfield LEP 1985. It is also located within the vicinity of proposed Ilford Avenue Conservation Area.

### **7.0 Section 79C Assessment**

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 79C of the EP&A Act.

#### **7.1 The provisions of any Environmental Planning Instrument**

#### **Infants' Home, Ashfield, Act 1924**

The Infants' Home was incorporated under an Act of Parliament in 1924. Its role is to incorporate the members of a society which conducts the Infants' Home, Ashfield; to promote the objects of the said society; and for purposes connected therewith. The Infants' Home, Ashfield, Act 1924 sets out the bylaws for its operation and Section 5 of the Act sets out the following objects and powers for the 'body corporate':

*"(a) to uphold and promote:*

*(i) the dignity of children, and*

*(ii) childrens' rights to growth, care and opportunity, and*

*(iii) childrens' rights to health, happiness and self confidence,*

- (b) *to assist parents, and especially sole parents, by providing child care, temporary accommodation and advice in respect of child care, home management and health,*
- (c) *to provide services to protect children from circumstances that may endanger them.*
- (2) *The body corporate may for the purpose of carrying out its objects establish, conduct, and carry on homes for the reception of children, and in particular may carry on, conduct, and control the home conducted by the society.*
- (3) *The body corporate shall give first consideration to the case of an unmarried mother with her first infant who, except in cases of emergency, shall be admitted to the home together with the infant and provided with a temporary home therein.*
- (4) *The body corporate may where it thinks fit receive a married or unmarried mother into the home with her infant."*

The proposed development is aimed to provide childcare, advice in respect of childcare, home management and health of the children and is therefore consistent with the objects of the Act.

#### 7.1.1 Local Environmental Plans

##### **Ashfield Local Environmental Plan 1985 (as amended)**

The Infants' Home site is listed as an item of heritage significance under Schedule 7 of ALEP 1985. Column 3 of this schedule provides the following information about the heritage item:

*"Infants Home Ashfield – the original building, the Emily Trollope Nursing Ward Building, the grounds and lesser buildings, the laundry and Louise Taplin Ward Building."*

The proposal involves the demolition of the Murray House building and the Kindergarten building. Whilst these buildings are not exclusively mentioned as one of the main buildings in the above listing, they are included as the 'lesser buildings' in the above description.

The provisions of Part 4 apply to the site. Consent is required under Clause 32 of ALEP 1985 as the proposal involves demolition and alterations to buildings and places which are within a heritage item. In accordance with this Clause when determining a development application, *'the Council must assess the heritage significance of the heritage item or heritage conservation area, and must take into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area.'*

The application includes a Conservation Management Strategy, Statement of Heritage Impact, Heritage Assessment – Murray House and Landscape Heritage Impact Statement. The Statement of Environmental Effects provides the following summary of the findings of the heritage reports:

- *the Kindergarten building (Building 6) proposed to be removed is not considered to be significant or contributory to the significance of the site's heritage;*
- *the demolition of Murray House (Building 7) which is determined as having moderate heritage significance, cannot be further adaptively reused and its removal will not detrimentally impact upon the site's significance;*
- *all items of high heritage significance, including landscape elements, will be retained and the three major buildings will be substantially restored and improved;*
- *the site's continued use for the provision of child care and welfare services is compatible with the site's heritage and association uses;*

- *the development will enable the site's association with the Infants' Home to be sustained for the longer term;*
- *new development is contemporary in design and materials and finishes, and is of reduced scale to the adjoining heritage items to ensure it does not compete with or dominate the visual appearance of the heritage buildings within the site;*
- *the bulk and scale of development is appropriate in that it does not dominate the scale or form of the existing heritage buildings within the site;*
- *new development respects and provide sufficient curtilage to the existing heritage buildings and landscape;*
- *new development will be sufficiently setback from heritage items in the vicinity of the site so as to not impact upon these items or their significance;*
- *the new landscaping provides an appropriate garden setting within which to appreciate the heritage buildings and provides clues to the previous uses of the site, including the former driveway from Parramatta Road;*
- *all trees identified to be of high heritage significance will be retained and integrated with the proposed landscaping for the site (see Section 4.5);*
- *significant vistas through the site will not been obstructed, but rather improved, particularly with respect to views of Buildings 1, 2 and 3;*
- *views of the Buildings 1 and 2 from the public domain will be afforded through the removal of some of the fencing along Henry Street; and*
- *the main view through the site from the Henry Street entry will be unobstructed by development.*

*For these reasons the proposed development is compatible, complementary and sympathetic to the existing heritage within and adjacent to the site. Further, proposed alterations and further adaptive reuse of Buildings 1, 2 and 3 will not detract from the heritage significance of these buildings, but rather enhance and restore these buildings.*

*In ensuring that the development is carried out appropriately and to protect all trees to be retained, including the Camphor Laurel tree (T3), Growing My Way Tree Services recommends a range of tree protection and management measures during and post construction."*

Council's Heritage Advisers has raised several issues with the proposal. A summary of the issues is provided below:-

### ***Demolition of Nurses Quarters' Quarters (also known as Murray House, Family Day Care Centre)***

The heritage listing under Ashfield Council LEP applies to the whole site. Murray House (the former Nurses' Quarters and later the 'Day Care Centre'), is one of the buildings listed in Ashfield Heritage Study inventory sheet: *Ashfield Infants' Home: the grounds and other buildings and statement of significance reads: A large and unusual landscaped space providing an idyllic setting for one of Ashfield most historic institutions, and the important buildings which make up its fabric.*

Murray House is significant as evidence of the need for purpose built nurses' accommodation on the site. It is also significant as part of the layering of development on the site and expansion of the home in the early part of the 20<sup>th</sup> century up to the start of WW1. The building appears sound and is able to be restored and re-used, now or in the future. In my opinion Murray House should not be demolished.

## **Work to significant buildings**

Impact of the proposed works to significant buildings 'Gorton', Emily Trollope' and Louise Taplin' cannot be assessed due to inadequate documentation submitted with the application. Any works to these buildings, should be the subject of a separate development application including detailed plans including sections and details. A Conservation Management Strategy (CMS) should also be prepared for the affected buildings and areas to guide the proposed works, and the CMS should be submitted to Council at an early stage in the process.

## **Curtilage**

The curtilage identified is far too small and unacceptable. The curtilage should encompass landscape settings of trees identified as being of high significance such as T3 and include landscape settings of heritage items necessary for their appreciation.

## **Landscape**

The proposed development involves a number of moderately significant plantings, as well as areas of landscape significance such as the area of the original drive to Parramatta Road. The proposal will have an unacceptable impact on highly significant plantings.

## **Archaeological evidence**

As one of the earliest sites of early European development in Ashfield, there is potential for archaeological evidence on the site. It is recommended that a s140 Permit under the Heritage Act be required.

## **Impact on Ilford Avenue Conservation Area**

*The car park development has the potential to adversely impact not only on the adjacent properties, but also on the visual character and intactness of the proposed Ilford Avenue Conservation Area.*

## **Opportunities for development elsewhere on site**

The scheme should be redesigned to allow Murray House to be retained to allow T18-22 and the former drive to Parramatta Road to be retained and interpreted on site, to increase the visual cartilage around the highly significant tree T3 and to reduce the impact on the proposed Ilford Ave Conservation Area.

## **Proposed development**

*In the event the decision is made to allow the demolition of heritage listed items and removal of significant vegetation, the following comments are provided on the proposed development:*

Development is proposed in areas where there are highly significant plantings. T3, the large Camphor Laurel assessed as a rare specimen, is built around below the tree and closely surrounded by buildings. Although the surrounding decking is suspended, the decking will adversely impact on the visual settings of the tree and the enclosure of the tree by buildings will also impact on the visual settings and visual impact of T3 on the site. T3 should be in a landscape setting and be the focus of a great court, with views not circumscribed by suspended decking and buildings.

The proposed buildings employ canted roofs with wide eaves. The buildings of high significance, 'Gorton', Emily Trollope' and 'Louise Taplin' buildings have high hipped and gabled roofs. The language, form and massing of the proposed buildings is at odds and unsympathetic with that of the historic buildings.

## Summary and Conclusion

*“The demolition of Murray House, the removal of landscape items and the reduction in the curtilage for the heritage items and landscape for the development, and the form and siting of the proposal in my opinion is not acceptable in heritage terms.*

*I would recommend that Council obtains a further independent opinion on both the heritage and heritage landscape impacts of the proposed development. This may require separate heritage architect and heritage landscape consultant.”*

Please refer to **Attachment 4** for the complete report.

As part of the agreement between Council and The Infants' Home, Ms Lisa Newell of AHMS was engaged to provide independent advice on the proposal. The initial opinion letter on stage 1 of the brief was received on 9 July 2010. Whilst the stage 1 brief was to provide advice as to whether the removal of the Murray House building was considered to be of significant impact to the heritage significance of the site and its association with Ashfield Infants' Home, the letter also made preliminary comments/an overview opinion of the proposed new development highlighting major heritage principals and issues of concern. This 'additional' advice was provided because, in Ms Newell's opinion, *‘the determination of the acceptability of the proposed demolition of Murray House and the appropriateness of the proposed development, which will replace the building in part are inextricably linked’*.

A summary of the findings are as follows:

- *“The proposed demolition of Murray House would have a minor to moderate adverse impact on the historic interest of the AIH site which forms part of its overall significance. We are of the opinion, however, that this negative effect could be mitigated. Mitigation could include new development in its place which makes a positive response to its sensitive setting by respecting existing visual setting and other relationships that contribute to the significance of the place. The necessary level of mitigation required is not provided by the current DA proposals;*
- *The heritage curtilage as set in the DA heritage assessments appears to have been narrowly defined and may benefit from a reconsideration which includes wider views, landscape values and spatial relationships between key heritage elements and between heritage elements and their landscape setting;*
- *The proposed new development (for location and design reasons which stem in the main from a reduced heritage curtilage), appears to compound, rather than mitigate, the potential adverse heritage impacts of the proposed demolition of Murray House on the heritage values of the site as a whole;*
- *It is understood that there is no suitable location alternative for the proposal. If this is accepted, it brings to focus the need to ensure its design detail is revisited to ensure that it is sensitive and sufficiently compatible with the heritage values of the site to mitigate the impacts of the potential loss of Murray House and the impact of the development in location, setting, landscape and proximity terms;*
- *The re-visit should include retention of key landscape elements such as the curved row of Brush box trees (Trees Nos 18-22 in the Heritage Landscape Assessment) which are considered to be an important remnant of the former driveway to the original estate from the Parramatta Road;*
- *Any heritage impact assessment that may be submitted with a revised design should be expanded to include an assessment of the proposal against the principles and standards in ‘Design in Context-Guidelines for Infill Development in the Historic Environment’ (NSW Heritage Office and the Royal Australian Institute of Architects, 2005).”*



A copy of the complete report is included at **Attachment 5**.

The stage 1 opinion letter was forwarded to The Infant's Home on 9 July 2010. Based on the concerns raised with the overall proposal with respect to site planning, curtilage, design of the proposed buildings and landscaping, it was suggested that the current design be reconsidered. It was also suggested that given the potential scale of a redesign that it might be appropriate to withdraw the application to facilitate resolution of these issues.

Following a meeting with the independent heritage consultants held on 22 July 2010, Council received a correspondence from The Infants' Home advising that they do not wish to proceed with Stage 2 of the brief.

On 9 August 2010 the applicant forwarded a copy of advice from Mr Stephen Davies. Mr Davies was engaged by The Infants' Home to review the documentation submitted with the application and the assessment prepared by AHMS. Mr Davies supports the demolition of Murray House. He also supports the siting, location, form and bulk of the proposed new buildings from a heritage perspective. Mr Davies also supports the landscaping of the site, however, he recommends the planting of a further large tree within the outdoor area of Licence 1. The Infants' Home has indicated that they accept this recommendation. The Infants' Home advised Council that an amended landscape plan will not be submitted at this stage and in the event that the development application is approved, this amendment could be dealt with by way of a condition of consent.

A copy of the complete report of Mr Davies is included at **Attachment 6**. It should be noted that Mr Davies did not review Council's Heritage Adviser's comments in preparing his advice.

As mentioned previously, Council's Heritage Adviser is of the opinion that the demolition of Murray House, the removal of landscape items and the reduction in the curtilage for the heritage items and landscape for the development, and the form and siting of the proposal is not acceptable in heritage terms.

The independent heritage consultant considers the demolition of Murray House to have a minor to moderate adverse impact on the historic interest of the site. This impact could be mitigated, however, the current development application does not provide the necessary mitigation.

Whilst there is be a difference in opinion between Council's Heritage Adviser and the independent heritage consultant on the demolition of Murray House building, both have similar views on the negative impacts of the proposed development on the significance of the heritage item.

**Clause 34** of ALEP 1985 requires that *"before granting development consent to the demolishing, defacing or damaging of a heritage item, the Council must notify the Heritage Council of its intention to do so and take into consideration any comments received from the Heritage Council within 28 days after the notice is sent."*

The application was referred to the NSW Heritage Council on 21 May 2010. On 2 July 2010, a response was received which supports demolition of Murray House and the development in general. However, further information was requested regarding the demolition of the Kindergarten Building to enable a proper assessment of this aspect of the proposed development. In addition, the Heritage Branch also noted that the buildings and areas of moderate significance identified as being for preservation, adaption, reuse or removal had been assessed without detailed reference and justification in the Conservation Management Strategy (this was particularly in regard to Emily's Place and the caretaker's cottage). The Heritage Branch's letter is included at **Attachment 7**.

On 9 August 2010, the applicant provided additional information in respect to the demolition of Kindergarten Building. This information was forwarded to the Heritage Branch on 10 August 2010.

On 16 August 2010 the Heritage Branch provided further comments which are summarised as follows:

### ***“Demolition of the Kindergarten Building***

*The lower significance of the Kindergarten building is acknowledged and it is considered that the demolition of this building will not impact on the significance of the site. However, the site should be included in a comprehensive interpretation strategy. This is also the case for the demolition of Murray House.*

### ***Interpretation Strategy***

*Council should require the preparation of an Interpretation Strategy prior to the commencement of works. The Heritage Council has prepared a guideline for the preparation of Interpretation Strategies. The Heritage Council is also available to provide advice and in some cases grant funding can be secured for the preparation of such strategies.*

*The interpretation strategy should include details on the former use of Murray House as a nurses' ward and the role of these nurses in the activities of the Infants Home*

### ***Archaeological Assessment***

*The CMP states that an Archaeological Assessment has not been undertaken. The CMP states that ‘There is some archaeological potential where former buildings and structures are known to have existed, including the masonry water tank and stables associated with Gorton (page 26). There are also historical maps showing the location of a remnant driveway which runs from the eastern corner of the site with a turning circle at Gorton House. This is a significant element within the landscape and the former setting of the property.*

*If archaeology of State or local significance is discovered, exposed, moved, damaged or destroyed through excavation works, it may trigger the need for an excavation permit, or an exception endorsement, from the Heritage Council pursuant to S139 and S140 of the Heritage Act 1977.*

*Council should ensure through conditions of consent that an archaeological assessment is prepared which clearly identifies areas of potential archaeological relics and whether these areas will be impacted as a consequence of the proposed development. This assessment should be prepared by a suitably qualified archaeologist. The necessary excavation permits should be obtained from the Heritage Council, if required, prior to the commencement of works.*

### ***Curtilage to Significant Heritage Elements***

*It is considered that the curtilage to the more significant heritage buildings (Gorton, Trollop Wong and Taplin Wing) and landscape elements in the south western part of the site is not sufficient and does not provide an adequate setting to this area.*

*The archaeological assessment will confirm the extent of the former driveway and turning circle which would form a more appropriate setting to Gorton building. The findings of the archaeological assessment should inform a review of the curtilage to the significant south western part of the site.*

The Heritage Branch's letter dated 16 August 2010 is included at **Attachment 8**.

Should the application be approved, the above requirements on an interpretation strategy, archaeological assessment and review of assessment of the curtilage will be included as conditions of consent.

It is also to be noted that the outcome of an archaeological assessment may result in a need to review the curtilage around the existing buildings and places. This could also require modification to the current scheme.

#### 7.1.2 Regional Environmental Plans

##### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have any adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

#### 7.1.3 State Environmental Planning Policies

##### **State Environmental Planning Policy Major Developments 2005**

The provisions of SEPP 2005 apply to the proposed development as it is a community facility with a capital investment value in excess of \$5 million. In accordance with the requirements of Clause 13B (1)(a), the submitted application is classified as 'regional development' with the determining authority for the application being the Joint Regional Planning Panel (Sydney East Region). The submitted application is referred to the Joint Regional Planning Panel for determination in accordance with the applicable provisions of SEPP (Major Development).

##### **State Environmental Planning Policy No. 1 – Development Standards**

Not applicable.

##### **State Environmental Planning Policy No. 6 – Number of Storeys in a Building**

Noted. The proposed development is defined as part single storey and part two storey building under this policy.

##### **State Environmental Planning Policy No. 55 – Remediation of land**

Given the past history of the site for Infants' Home, it is not considered that remediation would be required in the event that the proposal was supported.

##### **State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development**

Not applicable.

##### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

Not applicable.

#### 7.2 The provisions of any Draft Environmental Planning Instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Not applicable.

#### 7.3 The provisions of any Development Control Plan.

The proposal has been considered against the provisions of the Ashfield Development Control Plan (DCP) 2007:

C1	ACCESS AND MOBILITY	Section 4.1 of the Access and Mobility DCP outlines that access for people with disabilities must be provided to and within the facilities provided. With the provision of a lift between the basement level car parking area and the above ground level, as well as accessible toilets and ramps, the proposal generally complies with the Access and Mobility DCP.
C2	ADVERTISEMENTS AND ADVERTISING STRUCTURES	No signage is proposed as part of the application. The installation of signs for the site would likely require the submission of future development applications.
C3	ASHFIELD TOWN CENTRE	Not applicable.
C10	HERITAGE CONSERVATION	See comments provided in Section 7.1.1
C11	PARKING	See comments below.
C12	PUBLIC NOTIFICATION IN THE PLANNING PROCESS AND ALL ASPECTS OF LAND MANAGEMENT	The proposal was notified in accordance the Public Notification DCP. See Section 7.7 of this report.
C19	CHILD CARE CENTRES	See comments below.

## Part C11 - PARKING

Parking DCP outline parking controls for childcare development. Compliance with the Ashfield LEP's parking controls is detailed in Section 7.1.1 of this report.

Based on the proposed use and the number of children to be accommodated, the Parking DCP would require 58 parking spaces to be provided onsite. The proposal provides a total of 46 car parking spaces including 27 within the basement area and 9 at grade which do not comply with the DCP.

The existing establishment provides care for 180 childcare places with no on-site car parking. On street car parking is being used for both pick up and drop off and for general car parking by the parents and staff of the centre.

The existing driveway via Henry Street at the southern end of site will be upgraded to provide access to a new basement car parking area comprising 37 spaces. This area will be used for staff, visitor parking and designated drop off areas for parents.

The driveway will also be widened to provide 4 at grade car parking spaces adjacent to Emily Trollope Nursing Ward. An addition emergency parking bay will be provided adjacent to the new building A. An additional 4 parking spaces will be provided adjacent to Louise Taplin Ward.

The proposal, although deficient in the required number of parking spaces, will significantly improve traffic and car parking situation in the area by reducing reliance on street parking. Notwithstanding the non-compliance with the numerical control, the car parking is considered acceptable.

Council's traffic Engineer has raised no objection to the car parking provision. Some changes have been suggested by the Traffic Engineer to the driveway, basement layout and at grade parking spaces which can be included as conditions of consent should the application be approved.

An assessment of the proposal against the requirement of Ashfield Development Control 2007 Part C19 - Childcare is provided below:

<b>2.1</b>	<b>Location Criteria for New Child Care Centres</b>	The proposal is for the extension of an existing day care centre. It is located in close proximity to residential and business areas. The site enjoys appropriate access to transport and employment opportunities.
<b>2.2</b>	<b>Site Planning</b>	The application includes a site analysis plan. The proposal incorporates the principles contained in this section.
<b>2.3</b>	<b>Built Form and Appearance</b>	<p>The Infants' Home is a listed Heritage item under ALEP 1985. The proposed form and site layout is likely to have an adverse impact on the heritage significance of the site. The proposal does not comply with the built form and appearance controls.</p> <p>The proposed buildings with the exception of Building A are single storey. Building A is two storeys. The two storey height is acceptable as the new building replaces an existing two storey building.</p> <p>There is no Floor Space Ratio (FSR) control for childcare centre in land zoned 5(a) Special Uses. The existing floor area is 1880m<sup>2</sup> which equates to an FSR of 0.1:1. The proposed new buildings will add a further floor area of 2200m<sup>2</sup>. The total floor area of all the buildings will be 4080m<sup>2</sup> for an FSR of 0.2:1. The proposed FSR is acceptable.</p> <p>The proposal provides adequate landscape area in relation to the adjacent residential properties, however, the removal of trees is considered to impact adversely on the heritage significance of the site.</p>
<b>2.4</b>	<b>Sustainability, Energy Efficiency &amp; Solar Access</b>	The proposed design is acceptable in relation to sustainable development principles.
<b>2.5</b>	<b>Room Sizes, Indoor Recreation Areas and facilities / Outdoor recreational areas and facilities</b>	Compliance with the Children's Services Regulation 2004 will be required as a condition of consent should the proposal be supported.
<b>2.6</b>	<b>Acoustic Impacts</b>	The application accompanies an assessment of the acoustic impacts. This report concludes that the proposal will have a minimal impact on the adjoining residential properties.
<b>2.7</b>	<b>Accessibility</b>	Compliance with the minimum access requirements contained in Part C1 of Ashfield DCP, the Building Code of Australia and Disability Discrimination Act 1992 will be required as a condition of

		consent should the application be supported.
2.8	<b>Landscaping</b>	Council's Tree Management Officer has raised no objection to the proposal. However, the proposed landscaping and the removal of substantial trees have the potential to impact adversely on the heritage buildings located within the site.
2.9	<b>Traffic, parking and access</b>	A traffic report has been submitted with the application. Traffic impacts on the locality are not considered to be significant. The proposal will significantly increase the on-site car parking which will reduce the reliance on street parking in the area.
2.10	<b>Centre Plan of Management</b>	A centre Plan of Management has been submitted with the application.
2.11	<b>Waste</b>	A Waste Management Plan has been submitted with the application. This plan covers waste management during construction phase and during operation of the facility.
2.12	<b>Fire Safety</b>	A BCA Report accompanies the application. The proposal is required to comply with the relevant fire safety standards of the BCA.

**7.4 Any matters prescribed by the regulations that apply to the land to which the development application relates.**

These matters have been considered in the assessment of this application. Clause 7 of the Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. Conditions of consent can be imposed in this regard, if the application was to be approved.

Clause 92 of the Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider relevant Australian Standards relating to the demolition of structures. Appropriate conditions can be imposed in the event the application was to be approved.

**7.5 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality.**

These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will have no adverse social or economic impacts upon the locality. However, it is considered that the proposed development will have adverse impacts upon the heritage significance of the site.

Whilst the demolition of Murray House and Kindergarten buildings may be acceptable, the proposed development that replaces the demolished buildings is considered unacceptable in heritage terms due to the removal of landscape items and the reduction in the curtilage for the heritage items and landscape for the development. The form and siting of the proposed new buildings is also not acceptable in heritage terms.

**7.6 The suitability of the site for the development**

These matters have been considered as part of the assessment of the development application. The site is considered suitable for the intended use.

## 7.7 Any submissions made in accordance with this Act or the regulations

The proposal was notified to all adjoining and nearby affected property owners and occupants, and Councillors from the Haberfield Association and Councillors from 19 May 2010 until 17 June 2010.

### 7.7.1 Summary of submissions

Four (4) submissions were received during the notification of the development application. A further four (4) submissions were received after the notification period. Please refer to **Attachment 9** for a copy of the submissions.

Submissions
Helen Stevenson 8 Ilford Ave, Ashfield NSW 2131
Catherine Grigoriadis (representing Giogoriadis family 4 Richmond Ave Ashfield NSW 2130
Joy Disney (owner of Units 1 and 5- 187 Frederick Street, Ashfield) P O Box 55 Glenfield NSW 2167
Sean Marshall 28 Prospect Road Summer Hill NSW 2130
Jacqui Bouf 17 Anthony Street Croydon NSW 2132
Lin Johnston Via email

The matters raised in these submissions are detailed below in italics, followed by a response from the assessing officer:

*Impact on the historic and aesthetic appearance of the site will be affected by the proposed development.*

Officer's comment: This matter has been addressed in the body of the report.

*Children attending the child care facilities will be exposed to hazards such as lead and asbestos during the demolition and construction phases of the development.*

Officer's comment: Should the application be approved, appropriate conditions will be included to ensure measures are implemented to protect children during demolition and construction. A construction management plan will also be required prior to the release of a construction certificate.

*The Infants' Home indicated that Murray House would be demolished and that the DA was approved.*

Officer's comment: Council is not aware of such correspondence. This is a matter for The Infants' Home. Works on the proposal cannot commence until such time the development application is approved.

*Supports the proposal, however, is concerned that the heritage values of the site will be compromised by the proposed development.*

Officer's comment: This matter has been addressed in the body of the report.

*The proposed tree removal will result in a loss of biodiversity.*

Officer's comment: The proposal involves the removal 18 trees of both native and non-native species. Council's Tree Management Officer has indicated that none of these trees are known to provide habitat for birds in the area. The proposal is to provide 28 replacement trees to compensate for the loss of existing trees. It is also to be noted that Council has raised concerns with the removal of some trees on heritage grounds.

*The proposed tree removal will result in a loss of shade for the children attending the new facilities.*

Officer's comment: The proposal includes planting of replacement trees. The proposed landscaping also includes the erection of sail structures for outdoor play areas.

*The proposed tree removal will destroy the 'charm' of Ilford Avenue.*

Officer's comment: It is acknowledge that the proposed removal of trees will have some impact on the appearance of the site when viewed from Ilford Ave, however, the replacement trees will compensate for this loss to a degree. Should the application be approved, Council will require the trees on the Ilford Street boundary be planted with semi advanced species.

*The trees and bushes proposed will not, when mature, grow to the heights indicated in the landscape plan.*

Officer's comment: Council's Tree Management Officer has reviewed the landscape plan submitted with the application and advised that the landscape plan supplied is only indicative of the average heights trees may obtain under favourable conditions.

*Additional traffic generated by the development will reduce safety for parents dropping off and picking up children along Henry Street.*

Officer's comment: It is proposed to provide additional car parking on site for staff, parents and visitors to The Infants' Home. Designated Pick-up and Drop off areas are also provided within the basement which will reduce reliance on street parking.

*A drop off zone along Henry Street be provided.*

Officer's comment: The drop off zone is provided within the site and an additional area on the Henry Street for this purpose is not considered necessary. Council's Traffic Engineer has advised that the proposed on-site parking and drop off areas are satisfactory.

*Consideration should be given to provide access through the Bunning's site or via Illford Avenue to the Infants' Home site.*

Officer's comment: The subject site does not have any direct frontage to Ilford Ave and there is no public road access between the subject land and Bunning's site. Since the aforementioned properties are privately owned, Council cannot impose requirements to gain access from these sites.

*Consideration should be given to widen the entry from Henry Street.*

Officer's comment: Council's Traffic Engineer has recommended that the width of gateway at the entrance should increase to 6.0m and be splayed to the Kerb line, particularly to the north-west side of the driveway for improved entry off the road. Should the application be approved, this will be included as a condition of any consent.

*Consideration should be given to the construction of a roundabout adjacent to the entry to the Infants' Home site and on Henry Street.*



Officer's comment: Council's Traffic Engineer is of the view that there is no need for a round-a-bout in front of the subject entry driveway as the likely increase in traffic volume is acceptable for the environmental capacity of the street (accordance to the RTA's guidelines).

*Who is taking care of proposal in Council and which other state authorities are involved.*

Officer's comment: Council's development assessment officer has carried out the assessment of the proposal for determination by the Sydney East Joint Regional Planning Panel.

*Concerned that almost all the buildings on the site as well as most of the trees will be removed.*

Officer's comment: The proposal is to demolish only two buildings i.e. Murray House and Kindergarten Building with all other buildings on site to be retained. It is propose to remove existing 18 trees.

*The old trees serve to protect from the effects of noise and air quality emitted from Parramatta Road.*

Officer's comment: Council has raised concerns with the removal of some trees on heritage grounds. It is, however, noted that the proposal includes replacement trees to compensate for the loss of existing vegetation cover on the site. This will assist in mitigating the effects of noise and air quality emitted from Parramatta Road.

*Increase in traffic and no proposal to address pick-up and drop off area.*

Officer's comment: This issue has been addressed earlier in this report.

*The infants' Home did not inform parents of the extent of development proposed.*

Officer's comment: No comments provided as this is a matter for the Infants' Home.

*Concerned with the level of consultation for such a huge project and signs outside the site were not there for very long.*

Officer's comment: The application was notified to adjoining and nearby property owners in accordance with the requirements of Council's notification policy. Signs were placed on Frederick Street and Henry Street frontages of the site in accordance with the policy and Council is not aware that these signs were removed before the completion of the notification period. Council, due to the nature of the proposal, carried out extensive notification well beyond what is normally required under the policy. It is considered that the level of consultation is satisfactory.

*Would like to know Council's arborist view on removal of tree.*

Officer's comment: Council's arborist raised no objections to the removal of trees subject to replacement trees being planted.

*A dilapidation report has not been submitted.*

A dilapidation report is not considered necessary as new building work in the north western part of the site is setback in excess 30m from properties fronting Frederick Street.

## 7.8 The public interest

Matters of the public interest have been taken into consideration in the assessment of the application. It is not in the interest of the public to recommend approval of the application for reasons outlined in the report.

## 8.0 Referrals

### 8.1 Internal

#### Heritage Adviser

Council's Heritage Advisers raised several issues with the proposal. Comments from Advisers are included at **Attachments 2** and **5**.

#### Building

The Construction Assessment Team Leader has raised no objection to the proposal subject to conditions.

#### Works and Infrastructure (Traffic Engineer)

Council's Traffic Engineer has advised that:

- Although deficient in required DCP parking spaces off-street, the proposal is acceptable over that of existing circumstances (where no off-street parking is available), and on-street parking demand will be significantly reduced.
- Although there will be an increase of generated traffic relevant to existing volumes, the proposed increased volume through the street is acceptable given the environmental capacity of the street.
- The car-park and driveway layouts are to be designed in accordance with AS2890.1:2004 and measures incorporated for the proper and safe movement/circulation of traffic through the street and site.

Council's Traffic Engineer has also provided a number of conditions which will be included on the consent, should the application be approved.

#### Works and Infrastructure (Design and Development Engineer)

The Design and Development Engineer has advised that the submitted stormwater plan does not meet Council's design standards. The applicant was advised of the inadequacies of the proposed storm water design and the on 9 August 2010 the following response was received:

"To reiterate the proposed stormwater drainage system for the development is considered to be appropriate for the site and its development as outlined by Sparks & Partners --- on the basis that:

- The three 225mm existing outgoing stormwater drainage lines along the Infants' Home north eastern boundary as shown in the Site Survey at Appendix D of the SEE provide adequate connection points and drainage for the site; and
- The on-site detention system has been designed to these existing connections points as shown in the Stormwater Management Plans at Appendix I of the SEE, so as to adequately drain the entire site.

Further to this, the Infants' Home is committed to ensuring that the drainage pipe to which the site currently drains to (476 Parramatta Road – being the Bunning's site) will be adequate for the proposed development. In this regard and given the considerable cost in undertaking the drainage pipe analysis ----- the Infants' Home request that this pipe investigation be undertaken in accordance with a condition of consent if the development is approved. Moreover, this investigation work appears superfluous at this point in time, particularly when there is still uncertainty with respect to a likely development approval."

The above comments were further reviewed by Council's Engineer who provided the following comments:

"As outlined in Council's Stormwater Management Code, approval will not be granted to any development whose activities cause an adverse impact to adjoining properties. There is a defendant risk of flooding to the neighbouring property (476 Parramatta Road – being the Bunning's site) if the site were allowed to discharge stormwater from the site at the proposed rate suggested by Sparks and Partners.

Therefore, prior to any consent being granted or condition of consent being put in place, a drainage system analysis of the Bunning's site must be submitted to Council, which demonstrates that no flooding of either site will occur."

Based on the above, the submitted stormwater plan does not meet Council's design standards. The proposal is therefore not supported in its current form.

### Environmental Health

The Environmental Health Team Leader has raised no objection to the proposal subject to conditions.

### Community Services

Council's Community Services Department reviewed the application and requested the following additional information/clarifications in respect to the use and operations of the site:

- a) Details of any lighting/signage/pedestrian crossing/staff that will help children and their families safely walk from their car from the basement to the lobby area.
- b) Details as to how the emergency vehicles gain access to the play area between License 2 & 3 in case of accident or fire.
- c) Council has identified the need for open, green space and play areas for children and families in Ashfield LGA. With this in mind it would be desirable if:
  - 1) Some of the indoor/outdoor spaces could be hired out by local community groups (e.g. weekend playgroups/mothers groups)
  - 2) One or more of the play areas could be open & accessed by local families on weekends
  - 3) One of the green open space areas be used as a community garden, including by members of the surrounding community.

The applicant provided the following response to the above issues:

*"The following provides a response to requests made by the Council's Community Services Department in order of matters raised in your letter:*

- *The accessibility arrangements between the car parking spaces in the basement car parking area and the lobby is of a short distance and the entry to the lobby will be very apparent. Lighting and signage will be provided in accordance with the relevant BCA and Department of Community Services' standards. In this regard no further detail is required to be submitted to Council. Ashfield Infants' Home - 17 Henry Street, Ashfield.*
- *A dedicated emergency vehicle parking bay is provided adjacent to the lobby at Ground Level (see Drawing 09086-DA030-A). The provision of this space and the ability to gain direct access across the adjacent lawn will be adequate for the purposes of emergency vehicle access in the event of an accident or fire. There is no known specific requirement that there be direct access to the play area between License 2 and 3.*

*It is acknowledged that the Ashfield LGA does lack readily available play areas for children and their families. However, there is no intent at this stage for the Infants' Home to make their open space and play spaces readily available for public use by other local groups, or that it be made available on weekends (when the Infants' Home is closed) or that the gardens be made available for use as a community garden by the surrounding community.*

*The Infants' Home site is privately owned space and is not available to the public. To make the site available for public use raises issues of public liability (which could add considerable additional cost to the Homes' existing insurances) and for indoor areas that may be hired out to then comply with BCA and access requirements for a Place of Public Entertainment (POPE). The Infant's Home would like to work with Council further on this matter; however, there is no immediate intent for these requests to be considered or implemented as part of the proposed development."*

The additional information was forwarded to the Community Services Department and no further comments were made.

### Tree Management Officer

The Tree Management Officer has raised no objection to the removal of trees or the submitted landscaping plan. In regard to replacement trees along Ilford Ave boundary, it is recommended to provide semi-advance plant species. Should the application be approved, this will be required as a condition of consent.

## 8.2 External

### **NSW Police**

The NSW Police has carried out an assessment of the proposal in accordance with the requirements of Crime Prevention Through Environmental Design Principles and identified the development as Low Risk Crime. No significant issues were raised. Conditions are recommended in respect to lighting, landscaping designs, graffiti control, access control and surveillance system.

### **NSW Heritage Office**

The application involves the demolition of buildings within a site which is an item of heritage significance under ALEP 1985. The Heritage Branch raised no objection to the demolition of Murray House and Kindergarten buildings. Some additional matters have been raised in their comments which are discussed in Part 7.7 of this report.

## 9.0 Other Relevant Matters

### **Section 94A Contribution Plan**

Section 94A Contributions would be payable in accordance with the Council's Section 94A Plan in the event the application was to be approved. In accordance with Schedule 2 of Section 1 of this Plan, a levy of 1% applies to the proposed development with an estimated value-of-work in excess of \$200,000.00.

### **Stormwater Management Code**

Refer to comments provided in Part 8.0 of this report.

### **Other Staff Comments**

See Section 8.1 of this report.

## **Public Consultation**

See Section 7.7 of this report.

## **Conclusion**

The application has been assessed in accordance with the provisions of the EP&A Act with all matters specified under Section 79C (1) Clauses (a) to (e) having been taken into consideration. It is considered that the development will have an adverse impact on the significance of the heritage item.

The proposal is therefore considered to be unacceptable and recommended for refusal.

## **Attachments**

Attachment 1 – Plans of the Proposal  
Attachment 2 – Heritage Adviser Comments (Mr Robert Moore)  
Attachment 3 – Locality Map  
Attachment 4 – Heritage Adviser Comments (Ms Helen Wilson)  
Attachment 5 – Independent Heritage Adviser Comments (Ms Lisa Newell of AHMS)  
Attachment 6 – Applicant's Heritage Adviser Comments (Mr Stephen Davies)  
Attachment 7 – Heritage Branch Comments dated 1 July 2010  
Attachment 8 – Heritage Branch Comments dated 16 August 2010  
Attachment 9 – Submissions

## **Recommendation**

- A That Joint Regional Planning Panel as the consent authority pursuant to Clause 80(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) refuse Development Application No.10.2010.102 for the demolition of Murray House and Kindergarten Buildings and removal of 19 trees; refurbishment and restoration of Buildings known as The Gorton, Emily Trollope Nursing Ward and The Louise Taplin Ward; construction of 6 new buildings comprising an additional floor area of 2200m<sup>2</sup> to accommodate the learning and development centres which includes the integration of child and family support services; construction of a basement car park containing 37 car spaces and at-grade parking for 9 vehicles; and associated landscaping, including 28 replacement trees on Lot 10 in DP 129727, known as 17 Henry Street and 185A Frederick Street, Ashfield be refused for the following reasons:**
- (1) The proposal does not comply with the aims and objectives of the Ashfield Local Environmental Plan 1985;**
  - (2) The proposal does not comply with the aims for Heritage Conservation as set out in Clause 30 of the Ashfield Local Environmental Plan 1985;**
  - (3) The proposal does not comply with Clause 32 of the Ashfield Local Environmental Plan 1985 in respect to conservation of the existing heritage item;**
  - (4) The proposal fails to provide adequate landscape setting for the heritage item.**
  - (5) The proposal does not comply with the objectives and requirements of Ashfield Development Control Plan 2007 Part C19 Childcare Centre;**
  - (6) The proposal fails to provide adequate stormwater drainage for the site;**
  - (7) The proposal is not in the public interest.**