

SYDNEY CENTRAL CITY PLANNING PANEL

Panel Reference	2018SWC007
DA Number	DA 1018/2018/JP
LGA	The Hills Shire Council
Proposed Development	Child Care Centre
Street Address	Lot 4 DP 1231258, No. 35 Goodison Street, Kellyville
Applicant/Owner	Moran Australia (Rouse Hill) P/L
Date of DA lodgement	27 November 2017
Number of Submissions	None
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the EP&A Act)	Child Care Centre
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • SEPP (State and Regional Development) 2011 • SEPP (Sydney Region Growth Centres) 2006 • SEPP (Educational Establishments and Child Care Facilities) 2017 • SEPP No. 55 – Remediation of Land • SREP No. 20 – Hawkesbury Nepean River • North Kellyville DCP • The Hills DCP Part B Section 6 – Business • DCP Part C Section 1 – Parking • DCP Part C Section 3 - Landscaping
List all documents submitted with this report for the Panel's consideration	None
Report prepared by	Senior Town Planner Greg Samardzic
Report date	Electronic Determination

Summary of S.4.15 matters Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Yes
Conditions Have draft conditions been provided to the applicant for comment?	Yes

EXECUTIVE SUMMARY

The Development Application is for a 180 place child care centre to be co-located with an approved residential aged care facility. The proposal involves the excavation for basement car parking for 75 vehicles and construction of a two storey child care centre. The subject site is zoned R2 Low Density Residential and a child care centre is permissible in the zone pursuant to SEPP Educational Establishments and Child Care Facilities 2017.

The application is accompanied by a request to vary the building height standard under SEPP Sydney Growth Centres 2006. The proposal exceeds the 9m building height control by 650mm (7.2%). The variation is supported on the basis that the majority of the building complies with the 9m height requirement and that there is no unreasonable impact on surrounding properties. The proposal provides a better planning outcome for an from the development as strict compliance would require lowering the entire building which would result in a ground level that would not relate favourably to the adjoining residential care facility or the western adjoining land and/or use of a flat roof structure which would not achieve a better planning outcome in terms of the building's relationship to adjoining residential developments which are characterised by pitched roofs.

Variations are sought in relation to building setbacks, the location of the play areas, front fencing and hours of operation requirements.

The North Kellyville DCP requires a minimum 4.5m front building setback and a minimum 3m articulation setback. Further, under DCP Part B Section 6 – Business, external play areas are not permitted within the front building area. A minimum 1.6m setback to an awning structure and a 1.6m setback to the front play area to Goodison Street are proposed. The proposed setbacks and the location of the play area are suitable which have been designed to ensure their impacts are reduced. To ensure the safety of children within outdoor play areas, it is proposed to contain anti-ram reinforced concrete barriers along the Goodison Street frontage. To assist, it is recommended that the barriers achieve a minimum height of 1.2m.

The North Kellyville DCP permits 1m high front fencing. It is proposed to have a maximum 2.6m high front fence. The fencing is supported as it varies in height due to the slope of the land and it contains a mixture of materials to ensure its impacts are minimised. It is considered that the fencing will not be inconsistent with the current high security fencing at the subject site for the aged care facility and the adjoining school site.

The SEPP Educational Establishments and Child Care Facilities restricts hours of operation between 7am and 7pm, weekdays. The proposed hours are between 6am and 7pm Monday to Friday. To assist in minimising any potential adverse acoustic impacts onto surrounding properties, it is recommended that any outdoor play times be restricted between 7am – 6pm to ensure they are limited to day time periods in accordance with the NSW Environmental Protection Agency Noise Policy for Industry guidelines.

The above variations are considered satisfactory as the proposal is a purpose built facility with suitably designed outdoor play areas and fencing. The facility provides for sufficient landscaping on the site and will not adversely impact on surrounding properties.

The subject application has been notified and no submissions have been received.

The proposed centre which will provide a service to the community and the centre has been appropriately designed to minimise any potential adverse impacts onto the immediate locality.

The Development Application is recommended for approval subject to conditions.

DETAILS AND SUBMISSIONS

Owner:	Moran Australia (Rouse Hill) P/L.
Zoning:	R2 Low Density Residential.
Area:	1.64ha.
Existing Development:	Residential aged care facility under construction.
Section 7.11 Contribution	\$72,750.57.
Exhibition:	Not required.
Notice Adj Owners:	14 days.
Number Advised:	24.
Submissions Received:	Nil

BACKGROUND

On 22 October 2010, the Land and Environment Court granted consent for the construction of a 150 bed residential aged care facility (Moran Australia). The original consent has been modified to reduce the size of the facility to a 122 bed facility. In late 2016, a Planning Proposal was lodged with Council to amend the North Kellyville Precinct Plan to permit a child care centre on the subject site. On 23 May 2017, Council endorsed the Planning Proposal.

A SEPP Amendment to the SEPP Educational Establishments and Child Care Facilities 2017 occurred on 1 September 2017 which had the effect that 'centre-based child care facilities' are now permissible in a R2 Low Density Residential zone. On 27 November 2017 the subject Development Application was lodged. On 7 February 2018, a letter was sent to the applicant requesting additional tree management, health and environment information. On 2 March 2018, a further letter was sent to the applicant requesting additional engineering information and on 28 March 2018, the outstanding information was lodged.

PROPOSAL

The Development Application is for a 180 place child care centre to be co-located with an approved residential aged care facility to include excavation for basement car parking for 75 vehicles and construction of a two storey centre. The centre will be located at the north-eastern corner of the site. Vehicular access will be via the approved driveway for the aged care facility off Goodison Street. All pedestrian access will be via a footpath on the western side of the driveway leading to a entry lobby at the southern side of the building opposite the aged care facility entry to facilitate interactions between the two uses.

The ground floor will contain the entry lobby with lift access, administration areas, eight activity spaces and indoor/outdoor play areas. To ensure the safety of children within outdoor play areas, it is proposed to provide anti-ram reinforced concrete barriers along the Goodison Street frontage. The upper level will contain staff amenities, two activity spaces and a semi-covered play area. Excavation is required for the basement car park to a maximum depth of approximately 3.5m. There will be extensive landscaping works in particular along the Goodison Street frontage, along the driveway at the western side of the centre, at the eastern side of the building and to the play areas within the centre. This includes a variety of deep soil plantings, raised planters, lawn and artificial materials within the centre.

In addition to 75 car parking spaces provided, there will be two motorcycle and 10 bicycle spaces provided. The 75 car parking spaces will have 65 spaces allocated to the centre and 10 spaces for the aged care staff. Loading/unloading will be via small vehicles which will use the basement drop-off/pickup spaces available outside of the core drop-off/pick-up hours. Waste vehicles will be under the same contract as the aged care facility and will

be accommodated at the western driveway adjacent to a bin bay which will only be accessed outside of peak aged care and child care visitation hours.

A plan of management has been submitted with the Development Application which includes that the proposed hours of operation are to be between 6am – 7pm Monday to Friday with no child care on public holidays.

No signage is proposed as part of this Development Application.

SUBJECT SITE AND SURROUNDS

The subject site is located within the North Kellyville Precinct. The site is located on the northern side of Samantha Riley Drive and consists of an irregular shaped parcel with a 129.285m northern frontage to Goodison Street, a 157.44m eastern (side) boundary, a 97.52m southern frontage to Samantha Riley Drive and a 157.055m western boundary. The site has a total area of 1.64 hectares. A residential aged care facility is currently under construction and a single storey residence is located on the site.

Development in the surrounding locality comprises of a mixture of low, medium and high density residential and educational uses. To the north, opposite Goodison Street and to the south, opposite Samantha Riley Drive, there are detached dwellings. To the east, there is an 800 student school and to the west there is a residential flat building development approved under SEPP Affordable Rental Housing currently under construction.

ISSUES FOR CONSIDERATION

1. SEPP State and Regional Development 2011

Clause 20 and Schedule 7 of SEPP (State and Regional Development) 2011 provides the following referral requirements to the SCCPP:-

Private infrastructure and community facilities over \$5 million

Development that has a capital investment value of more than \$5 million for any of the following purposes:

- (a) air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,*
- (b) affordable housing, child care centres, community facilities, correctional centres, educational establishments, group homes, health services facilities or places of public worship.*

The proposed development is a child care centre with a Capital Investment Value of \$7,275,056.80 which requires referral to and determination by the SCCPP. The application has been referred to and listed with the SCCPP for determination.

2. Compliance with Requirements of SEPP (Sydney Region Growth Centres) 2006

(i) Permissibility

The site is zoned R2 Low Density Residential under SEPP Sydney Region Growth Centres 2006.

The proposal is defined as a centre-based child care facilities as follows:

Centre-based child care facility means:

- (a) a building or place used for the education and care of children that provides any one or more of the following:
- (i) long day care,
 - (ii) occasional child care,
 - (iii) out-of-school-hours care (including vacation care),
 - (iv) preschool care, or
- (b) an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)),
- Note. An approved family day care venue is a place, other than a residence, where an approved family day care service (within the meaning of the Children (Education and Care Services) National Law (NSW)) is provided.*

but does not include:

- (c) a building or place used for home-based child care or school-based child care, or
- (d) an office of a family day care service (within the meanings of the Children (Education and Care Services) National Law (NSW)), or
- (e) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
- (f) a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or
- (g) a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or
- (h) a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.

Under the Land Use Table in Appendix 2 North Kellyville Precinct Plan, a centre-based child care facility is permitted with consent within the R2 Low Density Residential zone.

(ii) Development Standards

The following addresses the relevant principal development standards of the SEPP:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.3 Height of buildings.	9m.	Max. 9.65m.	No – see comments below.
4.4 Floor space ratio	N/A	N/A	N/A
4.6 Exceptions to development standards.	Exceptions will be considered subject to appropriate assessment.	Variation proposed to height is addressed below.	Yes.

(iii) Variation to Height

Clause 4.6 Exceptions to Development Standards states as follows:

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

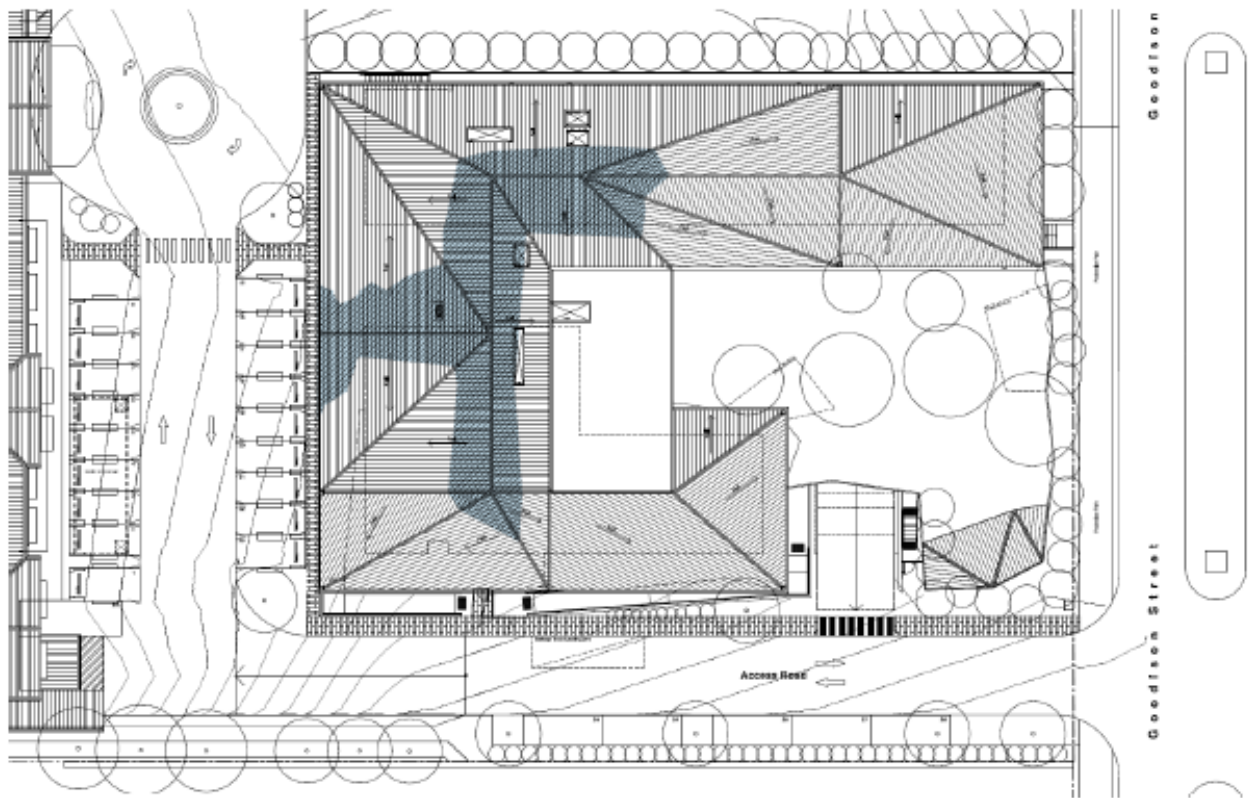
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

- (2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Consent must not be granted under this clause for a subdivision of land within Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated listed in the table to this clause,
 - (c) clauses 4.1A, 4.1B, 5.4, 6.2 and 6.4 of this Precinct Plan.

SEPP Sydney Region Growth Centres 2006 has a maximum 9m height limit and the maximum height of the development is 9.65m which is a variation of 7.2%. The height departure is related to the roof space.

The applicant has submitted a Clause 4.6 Variation (refer to Attachment 13) and is summarised as follows:

The proposed centre has a maximum height of 9.65m at the ridge over the two storey component. Elsewhere, the height is substantially below 9m and in most parts, single storey.



Height Plane Diagram

The sloping topography of the site, the desire to enclose the lift overrun, provision of a seamless roof form and ramp grades from the approved driveway are contributors to the height non-compliance. In addition, the provision of basement car parking instead of providing large surface car parking areas around the building is seen as a beneficial outcome of the proposed design. The proposed design provides for significant landscaping within and around the centre.

Justification for the Variation ('5-Part Test')

*The proposed variation to the height development standard has been considered in light of the objectives, potential environmental impacts and the '5-part test' established by the Land & Environment Court where Chief Justice Preston in *Wehbe v Pittwater Council* expressed the view that there are five different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be inconsistent with the aims of the policy. Strict compliance is considered to be unreasonable and unnecessary for reasons expressed below.*

Is the planning control a development standard?

What is the underlying object or purpose of the standard?

The proposal is consistent with the relevant objectives of the Height of Buildings development standard for the following reasons:

- *The proposed building is predominantly single storey and the solar access diagrams demonstrate that all surrounding residential properties, including the bedrooms within the adjacent aged care facility will receive adequate solar access.*
- *Notwithstanding the non-compliance with the maximum building height, the proposed building is considered to be of high quality urban form and will present to Goodison Street and most surrounding properties as a single storey building with a two storey component set well back from the street. In addition, the built form*

presenting to the street will not be dissimilar to the width and height of existing and future dwelling houses on the opposite side of Goodison Street.

- The proposed development is permissible in the zone and will provide for a compatible land use adjacent to an aged care facility, a school, a residential flat building development and low density residential development in the wider locality.*
- The height of the proposed building is comparable to the aged care facility and is generally consistent with the height that may be expected of developments in the surrounding area.*

The proposal is consistent with the R2 zoning objectives for the following reasons:

- The proposed centre does not provide for housing although it does provide a much needed facility for the local residential population and will provide child care services to cater for new families in the emerging redeveloped suburb of North Kellyville.*
- The proposed design uses narrow and single storey forms towards Goodison Street representative of dwelling house forms with a two storey component setback well back from the street and from side boundaries.*
- The proposal will support the well-being of the community and the accompanying acoustic and traffic reports demonstrate that the proposed development will not significantly detract from the amenity of the locality.*

Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in a s1.3(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?

The non-compliance with the development standard allows for an orderly use of the land which has the capacity to accommodate the proposed form of development with variations to the height control in some minor parts of the roof of the building whilst all other parts of the building are well within the height limit. This enables the proposal to provide for basement car parking instead of vast areas of surface car parking.

Alternative design would entail relocating car parking around the periphery of the building thereby reducing setbacks and landscaping opportunities or excavating further into the site resulting in significant exporting of soil, longer ramps and less efficient use of land. Alternatively, the lift core, which is centrally located could be moved to the west where the existing ground level is higher which would have the effect of requiring a lower pitched roof towards the centre of the building (i.e. the area of greatest non-compliance) and reducing the overall height.

However this would be an inferior outcome for future users of the facility as the lift core would be to the side of the carpark and the side of the ground and the first level floorplates which would be inappropriate in functional terms as well as transferring bulk to the edge of the building rather than permitting to gentle slope of the pitched roof forms down from the centre of the building to the outer edges of the building. The proposal provides a better planning outcome for and from the development as strict compliance would require lowering the entire building which would result in a ground level that would not relate favourably to the adjoining residential care facility or the western adjoining land and/or use of a flat roof structure which would not achieve a better planning outcome in terms of the buildings relationship to northern and future western adjoining residential developments and indeed the southern adjoining residential care facility which are and will continue to be characterised by pitched roofs.

In addition, the lift overrun would protrude from a flat roof and be an incongruous form in the context of this site. Requiring strict compliance would be inconsistent with the objectives of Clause 4.6. It is considered that the relevant Objects of the Act are satisfied the proposal will facilitate social and economic welfare by activating the site for a social

asset and employment generating land use in the locality. The proposal will promote the orderly and economic use and development of the site.

Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?

Strict compliance with the development standard is considered to be unnecessary and unreasonable in the circumstances of this particular case.

Is the objection well founded?

This variation request relies on the first 'way' expressed by Chief Justice Preston in Wehbe v Pittwater Council as follows:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.*

Notwithstanding the non-compliance the proposed development achieves the objectives of the development standard and is considered to have positive outcomes for the site and the surrounding locality and will not adversely impact on the natural or built environment and therefore, the objection is considered to be well founded.

The height objectives of the SEPP are:

- (a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale.*
- (b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form.*
- (c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas.*
- (d) to provide appropriate height controls for commercial development.*
- (e) to restrict the height of buildings within the curtilage of heritage items.*

The relevant zone objectives are:

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- To provide for a variety of housing types but primarily low density detached housing.*
- To support the well-being of the community, including educational, recreational, community, religious and other activities if there will be no adverse effect on the amenity of the proposed or existing nearby residential development.*

Comment:

The height of the development is satisfactory as it is appropriately separated from any adjoining development and the shadow impact does not adversely impact on the amenity of adjoining developments. This separation will reduce the potential for overlooking and any adverse privacy impacts. The height variation is due to the slope of the land which is primarily related to the roof form. This design provides for an improved planning outcome as opposed to providing a fully complying development in relation to building height where the provision of a basement car park will reduce the amount of hard stand on grade car parking areas. The proposal responds to the existing topography of the site and the proposal has been satisfactorily designed within its context.

The development incorporates a variety of finishes/colours to reduce the perceived bulk of the development and will result in providing for appropriate urban design outcomes. The

non-compliance does not result in any adverse amenity on streetscape impacts. Accordingly, the proposed height is considered to be satisfactory and can be supported in this instance. The proposal will be sympathetically collated with the residential aged care facility and will provide for a much needed facility for the North Kellyville precinct.

Specifically in relation to recent judgments of the Land and Environment Court, for the reasons identified above it is considered that:

- The applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the R2 Low Density Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome where lowering the entire building which would require greater excavation, longer ramps and less efficient use of the land. Alternatively, introducing a flat roof form would be inconsistent with the character of the street. Also, moving the lift core from the centre of the building to the south-west would be in a non-functional location and would add bulk to the side of the building. Although these are all available options, the proposed option is considered to be the better planning outcome.

Accordingly, the proposed height is considered to be satisfactory and can be supported in this instance. In accordance with the Departments Circular PS 18-003 the Director General's concurrence can be assumed in respect of any Environmental Planning Instrument that adopts Clause 4.6 Exceptions to Development Standards of the Standard Instrument.

3. Compliance with SEPP Educational Establishments and Child Care Facilities 2017

The new SEPP for child care centres came into force on 1 September 2017 and the subject Development Application was lodged on 27 November 2017. The Development Application has been assessed against the SEPP Educational Establishments and Child Care Facilities and the National Quality Framework Assessment Checklist and it complies with the exception of the following:

NATIONAL QUALITY FRAMEWORK ASSESSMENT CHECKLIST (PART 3 OF CHILD CARE CENTRE GUIDELINES)			
CLAUSE	REQUIRED	PROPOSED	COMPLIANCE
3.7 – Hours of Operation			
C29	Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.	6:00am to 7:00pm.	No – see report below.

a. Hours of Operation

Clause 3.7 C29 – Hours of Operation of the Child Care Centre Guidelines requires that the hours of operation of a child care centre be restricted between 7am and 7pm Monday to Friday where the predominant land use is residential. The proposed hours are between 6am and 7pm Monday to Friday.

The relevant objective is as follows:

To minimise the impact of the child care facility on the amenity of neighbouring residential developments.

The applicant has provided an acoustic report to demonstrate that the proposed hours are satisfactory. Council staff have raised no objection subject to the hours of use for the outdoor play areas be limited to the day time period of 7am – 6pm Monday – Friday. A noise management plan will be required as per the recommendation of the acoustic report. The plan will be required to be submitted prior to the issue of the occupation certificate.

The design of the child care development is considered to be satisfactory in relation to SEPP Educational Establishments and Child Care Facilities 2017.

4. Compliance with State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 (Contamination and remediation to be considered in determining development application) of SEPP 55 – Remediation of Land, states:

- (1) A consent authority must not consent to the carrying out of any development on land unless:*
- (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The approved aged care facility is nearing completion and that approval included an assessment under the SEPP where consent was granted to the dewatering of the former dam on the site, earthworks and use of the site for residential purposes. Notwithstanding this, a report has been prepared which confirms that soils comprise VENM materials and the site is suitable for the proposed child care use.

5. Compliance with the North Kellyville Development Control Plan

There are no applicable child care centre development standards under the North Kellyville DCP. As a guide, the controls have been used for assessment purposes in relation to built form requirements as stated under The Hills DCP Part B Section 6 – Business for child care centre developments. The development complies with the DCP with the exception of the following:

CLAUSE	DCP REQUIREMENTS	REQUIRED	PROPOSED	COMPLIANCE
4.0	Residential Development – DWELLINGS			
4.1	Site Responsive Design			
4.1.1	Cut and Fill	Maximum cut 500mm Maximum fill 500mm	Maximum cut: 3.5m Maximum fill 1.2m (contained by a drop edge beam)	No – see report below
4.2.3	Front Setbacks	Primary: 4.5m building façade 3.0m articulation zone	5.355m 2.360m roof element projection	No – see report below

			1.6m awning/play areas setback	
4.2.5	Dwelling Heights, Massing and Siting	Ground floor shall be no more than 1.0m above finished ground level	Max. 1.2m	No – see report below
4.2.10	Fencing	Front fencing shall be consistent in design and style with the dwelling Front Fence: Max 1.0m	Front fencing: max. 2.6m high	No – see report below

Cut and Fill

Part 4.1.1(4) of The North Kellyville DCP requires that no earthworks shall be undertaken whereby cut and fill exceeds 500mm from present levels without the approval of Council. The development includes maximum cut of 3.5m and a maximum fill of 1.2m.

The objectives of this section of the DCP are:

1. *To minimise the extent of cut and fill within residential allotments.*
2. *To protect and enhance the aesthetic quality of the area by controlling the form, bulk and scale of land forming operations.*
3. *To ensure that filling material is satisfactory and does not adversely affect the fertility or salinity of soil, or the quality of surface water or groundwater.*
4. *To ensure that the amenity of adjoining residents is not adversely affected by any land forming operation.*

The applicant in justifying the proposed variation to the Development Standards states that:-

The site will be excavated to a depth of approximately 3.5m for the construction of the basement car park. All earthworks have been detailed on the drawings prepared and all soils have been confirmed as VENM.

The amount of cut and fill will not adversely affect any adjoining premises structurally. The variations are in part due to the slope of the land and the construction of the basement car park area. It is considered that the proposal has been designed to minimise the impacts on surrounding properties and the variations are supported.

Front Setbacks

Part 4.2.3 – Table 14 of The North Kellyville DCP requires that the minimum front setback is 4.5m and a minimum 3m articulation zone. It is proposed to have a minimum 5.355m façade setback and a minimum 2.36m roof element projection. In addition, a minimum awning/play space area setback of 1.6m is proposed.

The objectives of this section of the DCP are:

- a. *To enable the integration of built and landscape elements to create an attractive, visually consistent streetscape.*
- b. *To encourage simple and articulated building forms.*
- c. *To ensure garages do not dominate the streetscape.*

Part 2.34(a) – Centre-Based Child Care Facilities – Additional Controls of The Hills DCP Part B Section 6 – Business requires that other relevant sections of the DCP be consulted with regards to setbacks, depending on the nature and location of the development.

Further, Part 2.34(h) requires that the location of external play areas in the front setback area is not permitted.

The relevant child care centre objectives are as follows:

1. *To ensure that adequate area is provided to permit high-quality landscape planting for the development.*
2. *To ensure that external play areas are located to provide a safe environment for children.*
3. *To ensure a high standard of environmental quality in child care centre developments and to maintain the overall visual amenity and character of the neighbourhood.*
4. *To provide a satisfactory relationship between buildings, landscaped areas and adjoining developments.*

The applicant has provided the following justification to the proposed variation to the above Development Standard.

The façade setback complies with the prevailing 4.5m setback requirement. The proposed incursions beyond the 3m articulation zone is considered to be acceptable as the overall frontage of the centre to Goodison Street is approximately 72m and the built form directly adjacent to Goodison Street represents only 15% of that frontage.

The proposed setbacks along Goodison Street range and are due to in part to the shape or design of the centre. The proposal will not have a negative impact upon the streetscape as it provides for appropriate architectural articulation. The proposed encroachments along Goodison Street are satisfactory as the proposal satisfies the objectives of the DCP as it will complement the streetscape and will not be inconsistent with existing approvals in the locality. To ensure the safety of children within the front play areas, it is proposed to contain anti-ram reinforced concrete barriers along the Goodison Street frontage.

The existing constraints of the site have been taken into account and in this instance, the centre have been designed to have a distinct development while remaining consistent with the residential development pattern in this locality.

Dwelling Height, Massing and Siting

Part 4.2.5(4) of The North Kellyville DCP requires that the ground floor level shall be no more than 1m above finished ground level. The maximum floor level is 1.2m above natural ground level.

The objectives of this section of the DCP are:

1. *To ensure development is of a scale appropriate to protect residential amenity.*
2. *To ensure building heights achieve built form outcomes that reinforce quality urban and building design.*

The applicant has provided the following justification to the proposed variations as follows:

The centre has been designed as a single storey built form towards Goodison Street transitioning to a two storey form towards the residential aged care facility. The development will not result in any adverse overshadowing or privacy impacts to surrounding properties. The 'U' shaped building plan means that the width of the built form presenting to the street is not dissimilar to the width and height of existing/future dwelling houses located on the opposite side of Goodison Street.

The proposed finished floor levels of the development will not adversely affect privacy and solar access levels to any surrounding premises. The proposal attempts to respond to the

existing landform of the site and the development is of a scale that is appropriate in particular for a child care centre development.

Fencing

Part 4.2.10(1) of the DCP requires that front fencing shall be in harmony with the street, consistent in design and style with the dwelling and a maximum of 1m high. A 2.6m high fence with a mixture of anti-ram reinforced concrete barrier, glazing and timber slats are proposed to be erected along the Goodison Street frontage.

The relevant objective is:

1. *To ensure boundary fencing is of a high quality and does not detract from the streetscape.*

The applicant has provided the following justification to the proposed variation to the above Development Standard.

Fencing has been designed to comply with the relevant acoustic and child care services regulations. The front fencing has been designed using visually permeable materials and treatments to allow for passive surveillance of the adjoining public domain.

The height of this fence varied considerably due to the slope of the land and the finished levels of the play area however full compliance with the above standard will result in a reduced acoustic treatment to the residents across Goodison Street. The fencing will not be inconsistent with the height of the security fencing currently located on the adjoining school site and the security fencing for the residential aged care facility on the subject site. To assist in achieving for an improved visual outcome, the fence is well located behind the boundary line to allow for dense screen planting which will soften the appearance of the fencing while still providing for useable play areas for the children.

6. Compliance with The Hills Development Control Plan Part B Section 6 – Business

The Development Application has been assessed against The Hills DCP Part B Section 6 – Business which has specific controls for child care centres. The development application complies with these controls with the exception of the following:

PART	DCP STANDARD	REQUIRED	PROPOSED	COMPLIANCE
2.34(a)	Setbacks	Other relevant Sections of the DCP (i.e. Part B Section 2 – Residential) should be consulted with regards to setbacks, depending on the nature and location of the development.	Part 4.2.3 – Table 14 of The North Kellyville DCP requires that the minimum front setback is 4.5m. It is proposed to have a minimum 5.355m façade setback and a minimum 2.36m roof element projection. In addition, a minimum awning setback of 1.6m is proposed.	The proposed setbacks along Goodison Street range and are due to in part to the shape or design of the centre – see section 5 of this report above.
2.34(h)	External Play Areas	The location of external child play areas in the front setback area is not permitted.	A 4.5m front setback area is required under the North Kellyville DCP. A minimum play space area setback of 1.6m is proposed.	The proposed location of the external play area will provide for a safe environment for children.

External Play Areas

Part 2.34(h) requires that the location of external play areas in the front setback area is not permitted.

The proposed outdoor play area is within the front building setback area and a minimum 1.6m from the front boundary.

The relevant Part 2.34 child care centre DCP objective is as follows:

To ensure that external play areas are located to provide a safe environment for children.

The applicant has provided the following justification for the proposed variation:

A play space is setback a minimum of 1.6m from the front boundary and is a minor incursion beyond the minimum 3m building setback permitted in the North Kellyville precinct.

Comment:

The design of the external play area is satisfactory as the majority of the area is located behind the proposed minimum 5.335m building façade setback and the minimum 4.5m building setback area permitted under the North Kellyville DCP. The proposed minor incursions into the area will be appropriately screened and adequately fenced. The proposed location of the external play area will provide a safe environment for the children and to ensure their safety, it is proposed to contain anti-ram reinforced concrete barriers along the Goodison Street frontage. To assist, it is recommended that the barriers achieve a minimum height of 1.2m. The proposal complies with the relevant objective and as such the variation is considered to be satisfactory.

Based on the assessment of the DCP, it is considered that the child care centre development is sympathetic to the amenity and privacy needs of surrounding developments. The development is well located to serve the needs of parents and their children.

7. Compliance with The Hills Development Control Plan Part C Section 1 – Parking

The Development Application has been assessed against The Hills DCP Part C Section 1 – Parking. The DCP contains the following parking rates for a child care centre as follows:

- 1 space per six children; and
- 1 space per employee.

Based on a maximum number of 180 children and 35 staff members required, a total of 65 car parking spaces are required. The development provides for a total of 75 spaces (28 visitor spaces, two accessible spaces and 45 staff spaces) which meets the requirements of the DCP. The additional 10 spaces proposed will be used by the adjacent aged care facility staff members and is considered to be reasonable.

ENGINEERING COMMENTS

No objections are raised to the proposal subject to conditions.

TREE MANAGEMENT COMMENTS

No objections are raised to the proposal subject to conditions.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objections are raised to the proposal subject to conditions.

WASTE MANAGEMENT COMMENTS

No objections are raised to the proposal subject to conditions.

CONCLUSION

The proposal has been assessed against Section 4.15 of the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy – Sydney Growth Region 2006, State Environmental Planning Policy – State and Regional Development 2011, State Environmental Planning Policy No. 55 – Remediation of Land, State Environmental Planning Policy Educational Establishments and Child Care Facilities 2017, Sydney Regional Environmental Plan – Hawkesbury Nepean River, the North Kellyville Development Control Plan and The Hills Development Control Plan and is considered to be satisfactory. The proposal will benefit the broader community and any adverse impacts onto surrounding properties can appropriately be managed.

The Clause 4.6 variation will result in a better planning outcome and is worthy of support. The variations to the SEPP/DCP controls relating to height, hours of operation, cut/fill, setbacks and fencing are considered to be satisfactory given the scale of the proposed works and will not unreasonably impact on surrounding properties.

No submissions have been received and accordingly the Development Application is recommended for approval subject to conditions.

IMPACTS:

Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

The Hills Future - Community Strategic Plan

The Hills Future Community Strategic Plan outlines the aspirations of community residents for The Hills Shire region. Desired community outcomes include balanced urban growth, vibrant communities and a protected environment. The social and environmental impacts have been addressed in the report and are consistent with the outcomes of The Hills Future Community Strategic Plan.

RECOMMENDATION

The Development Application be approved subject to the following conditions.

GENERAL MATTERS

1. Development in Accordance with Submitted Plans

The development being carried out in accordance with the following approved plans and details, stamped and returned with this consent except where amended by other conditions of consent.

REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	REVISION	DATE
-	Site/Location Plan	B	23/03/2018
A001	Site/Roof Plan	B	23/03/2018
A002	Lower Ground Floor Plan	B	23/03/2018
A003	Ground Floor Plan	B	23/03/2018
A004	Level 1 Floor Plan	B	23/03/2018
A010	North/East Elevations	B	23/03/2018
A011	South/West Elevations	B	23/03/2018
A020	Section 01/02/03	B	23/03/2018
A021	Section 04/05/06	B	23/03/2018
A500	Site Analysis Plan	B	23/03/2018
A800	Driveway/Ramp Section	A	23/03/2018
A801	Fences/Screen Detail	A	23/03/2018
A300	Finishes Schedule	-	23/03/2018
LDA00	Cover Page	D	-
LDA01	Landscape Plan – Ground Floor	D	26/03/2018
LDA02	Landscape Plan – Planting Plan	D	26/03/2018
LDA03	Landscape Plan – First Floor	D	26/03/2018
LDA04	Planting Palette & Schedule	D	26/03/2018
LDA05	Landscape Details & Specifications	D	26/03/2018

No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.

2. House Numbering

The responsibility for house/unit numbering is vested solely in Council in order to provide a consistent and accurate system of street numbering throughout the Shire.

Approved numbering for this development is:

Child Care Centre: 33 Goodison Street, KELLYVILLE NSW 2155

Aged Care Facility: 35 Goodison Street, KELLYVILLE NSW 2155

It is essential that all numbering signage throughout the complex is clear to assist emergency service providers locate a destination with ease and speed.

The street numbers as issued are to be displayed at the entrance to the property for mail delivery and service providers including emergency services.

3. Construction Certificate

Before any works are carried out a Construction Certificate must be obtained. The plans and accompanying information submitted with the Construction Certificate must comply with the conditions included with this consent.

4. Building Work to be in Accordance with BCA

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

5. Provision of Parking Spaces

The development is required to be provided with 75 off-street car parking spaces including two disabled spaces and 45 staff spaces.

6. Number of Children

The maximum number of children at the centre at any one time is to be limited to 180.

7. Signage

No signage is approved under this consent and any signage is to be subject to a separate Development Application.

8. External Finishes

External finishes and colours shall be in accordance with the details submitted with the Development Application and approved with this consent. All colours of any approved shade sails are to match the colours approved under this consent and is not to include any bright colours.

9. Adherence to Waste Management Plan

All requirements of the Waste Management Plan submitted as part of the Development Application must be implemented except where contrary to other conditions of consent. The information submitted can change provided that the same or a greater level of reuse and recycling is achieved as detailed in the plan. Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool www.wastelocate.epa.nsw.gov.au.

10. Management of Construction and/or Demolition Waste

Waste materials must be appropriately stored and secured within a designated waste area onsite at all times, prior to its reuse onsite or being sent offsite. This includes waste materials such as paper and containers which must not litter the site or leave the site onto neighbouring public or private property. A separate dedicated bin must be provided onsite by the builder for the disposal of waste materials such as paper, containers and food scraps generated by all workers. Building waste containers are not permitted to be placed on public property at any time unless a separate application is approved by Council to locate a building waste container in a public place.

Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. The separation and recycling of the following waste materials is required: metals, timber, masonry products and clean waste plasterboard. This can be achieved by source separation onsite, that is, a bin for metal waste, a bin for timber, a bin for bricks and so on. Alternatively, mixed waste may be stored in one or more bins and sent to a waste contractor or transfer/sorting station that will sort the waste on their premises for recycling. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool www.wastelocate.epa.nsw.gov.au.

11. Disposal of Surplus Excavated Material

The disposal of surplus excavated material, other than to a licenced waste facility, is not permitted without the previous written approval of Council prior to works commencing on

site. Any unauthorized disposal of waste, which includes excavated material, is a breach of the Protection of the Environment Operations Act 1997 and subject to substantial penalties. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

12. Construction of Bin Bay Area

All work involving construction of the bin bay must comply with the requirements of Council's 'Commercial/Industrial Waste Storage Area Specifications'. A copy of the specifications is available at www.thehills.nsw.gov.au

13. Waste and Recycling Collection Contract

There must be a contract with a licenced contractor for the removal of all waste generated on site. Written evidence of a valid and current collection contract must be held on site at all times and produced in a legible form to any authorised officer of the Council who asks to see it.

14. Recycled Water

The subject site must be connected to Sydney Water's Rouse Hill Recycled Water Scheme, unless written evidence from Sydney Water is submitted advising that this service is not available.

15. Process for Council Endorsement of Legal Documentation

Where an encumbrance on the title of the property is required to be released or amended and Council is listed as the benefiting authority, the relevant release or amendment documentation must be submitted along with payment of the applicable fee as per Council's Schedule of Fees and Charges. Sufficient time should be allowed for the preparation of a report and the execution of the documents by Council.

16. Road Opening Permit

Should the subdivision/ development necessitate the installation or upgrading of utility services or any other works on Council land beyond the immediate road frontage of the development site and these works are not covered by a Construction Certificate issued by Council under this consent then a separate road opening permit must be applied for and the works inspected by Council's Maintenance Services team.

The contractor is responsible for instructing sub-contractors or service authority providers of this requirement. Contact Council's Construction Engineer if it is unclear whether a separate road opening permit is required.

17. Protection of Public Infrastructure

Adequate protection must be provided prior to work commencing and maintained during building operations so that no damage is caused to public infrastructure as a result of the works. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site. The certifier is responsible for inspecting the public infrastructure for compliance with this condition before an Occupation Certificate is issued. Any damage must be made good in accordance with the requirements of Council and to the satisfaction of Council.

18. Structures Adjacent to Piped Drainage Easements

Buildings and structures, including footings and brick fences, adjacent to existing or proposed drainage easements must be located wholly outside the easement. A design must be provided by a structural engineer certifying that the structure will not impart a load on the pipe in the easement.

19. Vehicular Access and Parking

The formation, surfacing and drainage of all driveways, parking modules, circulation roadways and ramps are required, with their design and construction complying with:

- AS/ NZS 2890.1
- AS/ NZS 2890.6
- AS 2890.2
- DCP Part C Section 1 – Parking

- Council's Driveway Specifications

Where conflict exists the Australian Standard must be used.

The following must be provided:

- All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.
- All driveways and car parking areas must be concrete or bitumen. The design must consider the largest design service vehicle expected to enter the site. In rural areas, all driveways and car parking areas must provide for a formed all weather finish.
- All driveways and car parking areas must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

20. Planting Requirements

All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m².

For all planting on slab and planter boxes allow the following minimum soil depths:

- 1.2m for large trees or 800mm for small trees;
- 650mm for shrubs;
- 300-450mm for groundcover; and
- 200mm for turf.

Note: this is the soil depth alone and *not* the overall depth of the planter.

21. Grease Trap (Food Premises)

Sydney Water is to be contacted with regards to any grease trap requirements.

22. Acoustic Requirements

The recommendations of the acoustic assessment *Proposed Childcare Centre, Kellyville Noise Assessment for DA* prepared by Wilkinson Murray, report number 16277-A, Version A and dated November 2017 are to be implemented as part of this consent. In particular the following is to be complied with:

- 1.8m boundary fence to the north and east with minimum 1.2m high acoustic glazing to the inside face of the fences.
- All 'playscapes' are to have a 1.2m high acoustic fences to the outer edges.
- At ground level a minimum 1.2m high reinforced concrete hob upturn (or alternative material with similar strength and ability for ram protection) with acoustic glazing above.
- Section 4.5: Noise management plan
- Section 7.2: Carpark exhaust
- Section 7.3: Air conditioning

23. Minor Engineering Works

The design and construction of the engineering works listed below must be provided for in accordance with Council's Design Guidelines Subdivisions/ Developments and Works Specifications Subdivisions/ Developments.

Works on existing public roads or any other land under the care and control of Council must be approved and inspected by Council in accordance with the Roads Act 1993 or the Local Government Act 1993. A separate minor engineering works application and inspection fee is payable as per Council's Schedule of Fees and Charges.

a) Driveway Requirements

The design, finish, gradient and location of all driveway crossings must comply with the above documents and Council's Driveway Specifications.

The proposed driveways must be built to Council's heavy duty standard.

The driveway must be a minimum of 6m wide for the first 6m into the site, measured from the boundary.

On high level sites a grated drain must be provided on the driveway at the property boundary.

A separate vehicular crossing request fee is payable as per Council's Schedule of Fees and Charges.

b) Concrete Cycleway/ Shared Path

A 2.5m wide concrete cycleway/ shared path, including access ramps at all intersections, must be provided across the street frontage of the development site transitioning into the existing cycleway/ shared path adjacent in accordance with the above documents.

c) Footpath Verge Formation

The grading, trimming, topsoiling and turfing of the footpath verge fronting the development site is required to ensure a gradient between 2% and 4% falling from the boundary to the top of kerb is provided. This work must include the construction of any retaining walls necessary to ensure complying grades within the footpath verge area. All retaining walls and associated footings must be contained wholly within the subject site. Any necessary adjustment or relocation of services is also required, to the requirements of the relevant service authority. All service pits and lids must match the finished surface level.

d) Stormwater Drainage – Pipe Extension

Stormwater runoff collection and disposal from the western part of the site is to be directed to an existing drainage pit within the road swale in the middle of the road in accordance with the Civil Engineering Package Concept Stormwater Management Plan – Ground Floor drawing DAC03.01 Revision 3 dated 26/03/2018.

A new kerb inlet pit must be provided in Goodison Street fronting the site and the street drainage extended from the existing pit within the road swale

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

24. Section 94A Contribution

Pursuant to section 80A (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 94A Contributions Plan, a contribution of **\$72,750.57** shall be paid to Council. This amount is to be adjusted at the time of the actual payment in accordance with the provisions of the Hills Section 94A Contributions Plan.

The contribution is to be paid prior to the issue of the Construction Certificate.

You are advised that the maximum percentage of the levy for development under section 94A of the Act having a proposed construction cost is within the range specified in the table below;

Proposed cost of the development	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001 - \$200,000	0.5 %
More than \$200,000	1%

25. Special Infrastructure Contribution – Growth Centres

The applicant is to make special infrastructure contribution in accordance with any determination by the Minister administering the Environmental planning and Assessment Act 1979 under Section 94EE of the Act that is in force on the date of this consent, and must obtain a certificate to that effect from the Growths Centres Commission before a

Construction certificate or subdivision certificate is issued in relation to any part of the development to which this consent relates.

More information on the Special Infrastructure Contribution can be found at the Growth Centres Commission's website at www.gcc.nsw.gov

26. Water Sensitive Urban Design Elements (North Kellyville)

Water sensitive urban design elements consisting of rainwater reuse tank (13kL), Onsite Stormwater Detention (OSD 42Cum), eight (8) 690mm PSorb (MCC) filters and One Rocla CDS Nippeer are to be provided generally in accordance with the civil Engineering Package Development Application Concept Stormwater Management Plan drawing DAC03.01 Revision 3 and Details – Sheet 1 drawing DAC04.01 both revision 3 both dated 26/03/2018 and associated MUSIC model.

Detailed plans for the water sensitive urban design elements must be submitted for approval. The detailed plans must be suitable for construction, and include detailed and representative longitudinal and cross sections of the proposed infrastructure.

All calculations are to be provided.

These elements must be designed and constructed in accordance with best practice water sensitive urban design techniques and guidelines. Such guidelines include, but are not limited to:

Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tools-resources/index.html>

Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>

The rain gardens and rainwater reuse tanks are required to be constructed in accordance with Council's Typical Rain Garden Plan and Details (Standard Drawing 44) and Rain Garden Installation Guide and Specifications.

27. Stormwater Pump/ Basement Car Park Requirements

The stormwater pump-out system must be designed and constructed in accordance with AS/ NZS 3500.3:2015 - Plumbing and Drainage - Stormwater drainage. The system must be connected to the Onsite Stormwater Detention system before runoff is discharged to the street (or other point of legal discharge) along with the remaining site runoff, under gravity. All plans, calculations, hydraulic details and manufacturer specifications for the pump must be submitted with certification from the designer confirming compliance with the above requirements.

28. Security Bond Requirements

A security bond may be submitted in lieu of a cash bond. The security bond must:

- Be in favour of The Hills Shire Council;
- Be issued by a financial institution or other accredited underwriter approved by, and in a format acceptable to, Council (for example, a bank guarantee or unconditional insurance undertaking);
- Have no expiry date;
- Reference the development application, condition and matter to which it relates;
- Be equal to the amount required to be paid in accordance with the relevant condition;
- Be itemised, if a single security bond is used for multiple items.

Should Council need to uplift the security bond, notice in writing will be forwarded to the applicant 14 days prior.

29. Security Bond – Road Pavement and Public Asset Protection

In accordance with Section 80A(6)(a) of the Environmental Planning and Assessment Act 1979, a security bond of \$135,000.00 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated at the rate of \$85.00 per

square metre based on the road frontage of the subject site plus an additional 50m on either side (150m) multiplied by the pavement width of the road (10.6m).

The bond must be lodged with Council before a Construction Certificate is issued for the building works.

The bond is refundable upon written application to Council and is subject to all work being restored to Council's satisfaction. Should the cost of restoring any damage exceed the value of the bond, Council will undertake the works and issue an invoice for the recovery of these costs.

30. Security Bond – External Works

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond is required to be submitted to Council to guarantee the construction, completion and performance of all works external to the site. The bonded amount must be based on 150% of the tendered value of providing all such works. The minimum bond amount is \$10,000.00. The bond amount must be confirmed with Council prior to payment.

The bond must be lodged with Council before a Construction Certificate is issued for the building works.

The bond is refundable upon written application to Council and is subject to all work being completed to Council's satisfaction.

31. Erosion & Sediment Control Plan

Submission of an Erosion and Sediment Control Plan to the Principal Certifying Authority, including details of:

- a) Allotment boundaries
- b) Location of the adjoining roads
- c) Contours
- d) Existing vegetation
- e) Existing site drainage
- f) Critical natural areas
- g) Location of stockpiles
- h) Erosion control practices
- i) Sediment control practices
- j) Outline of a maintenance program for the erosion and sediment controls

(NOTE: For guidance on the preparation of the Plan refer to 'Managing Urban Stormwater Soils & Construction' produced by the NSW Department of Housing).

32. Construction and Fit-out of Food Premises (Kitchen and Bottle Preparation)

Prior to the issue of a Construction Certificate, a detailed floor plan and section and elevations of the kitchen and bottle preparation areas are to be submitted to Council's Manager – Environment and Health for review. The Construction Certificate must not be issued until written acceptance or direction is provided by Council's Manager – Environment and Health.

To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas, the plans are to demonstrate that the premises will comply with the requirements of *Australian Standard AS 4674-2004 – Design, construction and fit-out of food premises* and the provisions of the Food Standards Code (Australia). This includes, but is not limited to:

- The intersection of floors with walls and exposed plinths in food preparation, storage and service areas are to be coved.

- All walls are to be solid construction. Solid construction is defined as brick, concrete blocks, structural fibrous cement or preformed panels that are filled with suitable material.
- Pipes and conduits adjacent to walls are to be set a minimum of 25mm off wall face with brackets. Pipes and conduits entering floors, walls or ceilings are to be fitted with a flange and all gaps fully sealed.
- Hand wash basins (kitchen and bottle preparation areas):
 - Must be provided, not obstructed and accessible at bench height and no further than 5 metres from any place where open food is handled or prepared; and
 - Must be fitted with a tap that operates hands free with a permanent supply of warm running potable water delivered through a single outlet.

Note: Copies of *AS 4674-2004* may be obtained from www.saiglobal.com by visiting the website: www.saiglobal.com and copies of the Food Safety Standards Code (Australia) may be obtained from Food Standards Australia New Zealand by visiting the following website www.foodstandards.gov.au.

PRIOR TO WORK COMMENCING ON THE SITE

33. Approved Plans to be Submitted to Sydney Water

The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site www.sydneywater.com.au for:

- Quick Check agents details – See building and Developing then Quick Check and
- Guidelines for Building Over/Adjacent to /Sydney Water Assets – see Building and Developing then Building and Renovating. or telephone 13 20 92.

34. Principal Certifying Authority

A sign is to be erected in accordance with Clause 98A(2) of the Environmental Planning and Assessment Regulations 2000.

35. Builder and PCA Details Required

Notification in writing of the builder's name, address, telephone and fax numbers to be submitted to the Principal Certifying Authority prior to work commencing.

36. Approved Temporary Closet

An approved temporary closet connected to the sewers of Sydney Water, or alternatively an approved chemical closet is to be provided on the land, prior to building operations being commenced.

37. Erosion and Sedimentation Controls

Erosion and sedimentation controls shall be in place prior to the commencement of site works; and maintained throughout construction activities until the site is landscaped and/or suitably revegetated. The controls shall be in accordance with the details approved by Council and/or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (Blue Book).

38. Builder's Address

Notification in writing of the builder's name, address, telephone and fax numbers to be submitted to the Principal Certifying Authority prior to work commencing.

39. Stabilised Access Point

A stabilised all weather access point is to be provided prior to commencement of site works, and maintained throughout construction activities until the site is stabilised. The controls shall be in accordance with the requirements with the details approved by Council and/or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (Blue Book).

40. Traffic Control Plan

A Traffic Control Plan is required to be prepared and approved. The person preparing and approving the plan must have the relevant accreditation to do so. A copy of the approved plan must be submitted to Council before being implemented. Where amendments to the plan are made, they must be submitted to Council before being implemented.

A plan that includes full (detour) or partial (temporary traffic signals) width road closure requires separate specific approval from Council. Sufficient time should be allowed for this to occur.

41. Public Infrastructure Inventory Report

A public infrastructure inventory report must be prepared and submitted to Council recording the condition of all public assets in the direct vicinity of the development site. This includes, but is not limited to, the road fronting the site along with any access route used by heavy vehicles. If uncertainty exists with respect to the necessary scope of this report, it must be clarified with Council before works commence. The report must include:

- Planned construction access and delivery routes; and
- Dated photographic evidence of the condition of all public assets.

42. Erosion and Sedimentation Controls

Erosion and sedimentation controls shall be in place prior to the commencement of site works and maintained throughout construction activities, until the site is landscaped and/or suitably revegetated. These requirements shall be in accordance with *Managing Urban Stormwater – Soils and Construction (Blue Book)* produced by the NSW Department of Housing.

This will include, but not be limited to a stabilised access point and appropriately locating stockpiles of topsoil, sand, aggregate or other material capable of being moved by water being stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

43. Site Water Management Plan

A Site Water Management Plan is to be prepared. The plan shall be in accordance with *"Managing Urban Stormwater - Soils and Construction" (Blue Book)* produced by the NSW Department of Housing. The plan is to be kept on site at all times and made available upon request.

44. Erosion & Sediment Control Plan Kept on Site

A copy of the Erosion and Sediment Control Plan must be kept on site at all times during construction and available to Council on request.

DURING CONSTRUCTION

45. Hours of Work

Work on the project to be limited to the following hours: -

Monday to Saturday - 7.00am to 5.00pm;

No work to be carried out on Sunday or Public Holidays.

The builder/contractor shall be responsible to instruct and control sub-contractors regarding the hours of work.

46. Compliance with Critical Stage Inspections and Other Inspections Nominated by the Principal Certifying Authority

Section 109E(d) of the Act requires certain specific inspections (prescribed by Clause 162A of the Regulations) and known as "Critical Stage Inspections" to be carried out for building work. Prior to permitting commencement of the work, your Principal Certifying Authority is required to give notice of these inspections pursuant to Clause 103A of the Regulations.

N.B. An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspections or other inspections required by the Principal Certifying Authority are not carried out.

Where Council is nominated as Principal Certifying Authority, notification of all inspections required is provided with the Construction Certificate approval.

NOTE: You are advised that inspections may only be carried out by the PCA unless by prior agreement of the PCA and subject to that person being an accredited certifier.

47. Standard of Works

All work must be carried out in accordance with Council's Works Specification Subdivisions/ Developments and must include any necessary works required to make the construction effective. All works, including public utility relocation, must incur no cost to Council.

48. Working Hours

All work must be restricted to between the hours of 7:00am and 5:00pm, Monday to Saturday. No work can occur outside the hours specified above on Sundays or public holidays. The contractor must instruct sub-contractors regarding the hours of work.

Upon receipt of justified complaint/s in relation to local traffic impacts arising from roadworks being carried out on existing public roads those roadworks will be restricted to between the hours of 9:00am and 3:00pm, Monday to Friday or as otherwise directed by Council staff. Requests to carry out roadworks on existing public roads during the night in order to avoid local traffic impacts will also be considered based on the circumstances of the site and must be approved in writing by Council's Manager – Subdivision and Development Certification.

49. Rock Breaking Noise

Upon receipt of a justified complaint in relation to noise pollution emanating from rock breaking as part of the excavation and construction processes, rock breaking will be restricted to between the hours of 9am to 3pm, Monday to Friday.

Details of noise mitigation measures and likely duration of the activity will also be required to be submitted to Council's Manager – Environment and Health within seven (7) days of receiving notice from Council.

50. Construction Noise

The emission of noise from the construction of the development shall comply with the *Interim Construction Noise Guideline published by the Department of Environment and Climate Change (July 2009)*.

51. Contamination

Ground conditions are to be monitored and should evidence such as, but not limited to, imported fill and/or inappropriate waste disposal indicate the likely presence of contamination on site, works are to cease, Council's Manager- Environment and Health is to be notified and a site contamination investigation is to be carried out in accordance with *State Environmental Planning Policy 55 – Remediation of Land*.

The report is to be submitted to Council's Manager – Environment and Health for review prior to works recommencing on site.

52. Dust Control

The emission of dust must be controlled to minimise nuisance to the occupants of the surrounding premises. In the absence of any alternative measures, the following measures must be taken to control the emission of dust:

- Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the construction work;
- All dusty surfaces must be wet down and suppressed by means of a fine water spray. Water used for dust suppression must not cause water pollution; and
- All stockpiles of materials that are likely to generate dust must be kept damp or covered.

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

53. Confirmation of Pipe Locations

A letter from a registered surveyor must be provided with the works as executed plans certifying that all pipes and drainage structures are located within the proposed drainage easements.

54. Completion of Engineering Works

An Occupation Certificate must not be issued prior to the completion of all engineering works covered by this consent, in accordance with this consent.

55. Subdivision Works

Once the subdivision works are complete the following documentation (where relevant/required) must be prepared in accordance with Council's Design Guidelines Subdivisions/Developments and submitted to Council's Construction Engineer for written approval:

- Works as Executed Plans
- Stormwater Drainage CCTV Recording
- Pavement Certification
- Public Asset Creation Summary

The works as executed plans must be prepared by a suitably qualified engineer or registered surveyor.

All piped stormwater drainage systems and ancillary structures which will become public assets must be inspected by CCTV. A copy of the actual recording must be submitted electronically for checking.

A template public asset creation summary is available on Council's website and must be used.

56. Performance/ Maintenance Security Bond

A performance/ maintenance bond of 5% of the total cost of the subdivision works is required to be submitted to Council. The bond will be held for a minimum defect liability period of six months from the certified date of completion of the subdivision works. The minimum bond amount is \$5,000.00. The bond is refundable upon written application to Council and is subject to a final inspection.

57. Public Infrastructure Inventory Report - Post Construction

Before an Occupation Certificate is issued, an updated public infrastructure inventory report must be prepared and submitted to Council. The updated report must identify any damage to public assets and the means of rectification for the approval of Council.

58. Pump System Certification

Certification that the stormwater pump system has been constructed in accordance with the approved design and the conditions of this approval must be provided by a suitably qualified hydraulic engineer.

59. Water Sensitive Urban Design Certification

An Occupation Certificate must not be issued prior to the completion of the WSUD elements conditioned earlier in this consent. The following documentation must be submitted in order to obtain an Occupation Certificate:

- WAE drawings and any required engineering certifications;

- Records of inspections;
- An approved operations and maintenance plan; and
- A certificate of structural adequacy from a suitably qualified structural engineer verifying that any structural element of the WSUD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime.

Where Council is not the PCA a copy of the above documentation must be submitted to Council.

60. Creation of Restrictions / Positive Covenants

Before an Occupation Certificate is issued the following restrictions/ positive covenants must be registered on the title of the subject site via a request document, Section 88B instrument associated with a plan or the like. Council's standard recitals must be used for the terms:

a) Restriction/ Positive Covenant – Onsite Stormwater Detention

The subject site must be burdened with a restriction and a positive covenant using the "onsite stormwater detention systems" terms included in the standard recitals.

b) Restriction/ Positive Covenant – Water Sensitive Urban Design

The subject site must be burdened with a positive covenant that refers to the water sensitive urban design elements referred to earlier in this consent using the "water sensitive urban design elements" terms included in the standard recitals.

c) Positive Covenant – Stormwater Pump

The subject site must be burdened with a restriction and a positive using the "basement stormwater pump system" terms included in the standard recitals.

d) Positive Covenant – Onsite Waste Collection

The subject site must be burdened with a positive covenant relating to onsite waste collection using the "onsite waste collection" terms included in the standard recitals.

61. Landscaping Prior to Issue of any Occupation Certificate

Landscaping of the site shall be carried out prior to issue of any Occupation Certificate (within each stage if applicable). The Landscaping shall be either certified to be in accordance with the approved plan by an Accredited Landscape Architect or be to the satisfaction of Council's Manager Environment and Health. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

62. Food Shop Registration Requirements

Prior to the issue of any Occupation Certificate, the food business shall be registered with The Hills Shire Council. To register with Council please complete and submit the 'registration of food business' form which is available on Council's website.

63. Food Premises Final Inspection

Prior to the issue of any Occupation Certificate, the food premises (kitchen and bottle preparation areas) shall be inspected by an Authorised Officer of The Hills Shire Council under the Food Act 2003, to determine compliance with the Food Act 2003, Food Safety Standards and Australian Standard 4674:2004: Design Construction and Fit-out of Food Premises.

64. Acoustic – Noise Management Plan

A noise management plan is required to be prepared and submitted to Council's Manager – Environment and Health prior to the issue of any Occupation Certificate. The noise management plan shall address all activities likely to cause noise from the childcare centre (including the outdoor play areas) and proposed actions to be taken to alleviate any offensive noise.

The noise management plan is to be developed in conjunction with the recommendations of the *Proposed Childcare Centre, Kellyville Noise Assessment for DA* prepared by Wilkinson Murray, report number 16277-A, Version A and dated November 2017.

65. Acoustic - Compliance Report

An acoustic consultant shall progressively inspect the installation of the required noise suppressant components as recommended in the report *Proposed Childcare Centre, Kellyville Noise Assessment for DA* prepared by Wilkinson Murray, report number 16277-A, Version A and dated November 2017.

Written certification is to be provided to Council's Manager – Environment and Health which details that all noise suppressant components detailed in the acoustic report and the acoustic requirements condition of this consent have been installed correctly prior to any Occupation Certificate being issued.

66. Section 73 Compliance Certificate

A Section 73 Compliance Certificate issued under the Sydney Water Act 1994 must be obtained from Sydney Water confirming satisfactory arrangements have been made for the provision of water and sewer services. Application must be made through an authorised Water Servicing Coordinator. The certificate must refer to this development consent and all of the lots created.

Sydney Water's guidelines provide for assumed concurrence for the strata subdivision of a development approved by an earlier consent covered by a compliance certificate.

THE USE OF THE SITE

67. Hours of Operation

The hours of operation being restricted to the following: -

6.00am to 7.00pm Monday to Friday.

Any alteration to the above hours of operation will require the further approval of Council.

68. Waste and Recycling Management

To ensure the adequate storage and collection of waste from the use of the premises, all garbage and recyclable materials emanating from the premises must be stored in the designated waste storage area, which includes provision for the storage of all waste generated on the premises between collections. Arrangement must be in place in all areas of the development for the separation of recyclable materials from garbage. All waste storage areas must be screened from view from any adjoining residential property or public place. Under no circumstances should waste storage containers be stored in locations that restrict access to any of the car parking spaces provided onsite.

69. Servicing of Bins

Private garbage and recycling contract collection vehicles servicing the development are not permitted to reverse in or out of the site. Collection vehicles must be travelling in a forward direction at all times to service bins.

70. Waste and Recycling Collection

All waste generated onsite must be removed at regular intervals. The collection of waste and recycling must not cause nuisance or interfere with the amenity of the surrounding area. Garbage and recycling must not be placed on public property for collection without the previous written approval of Council. Waste collection vehicles servicing the development are not permitted to reverse in or out of the site.

71. Lighting

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact

on the amenity of the surrounding area by light overspill. All lighting shall comply with the *Australian Standard AS 4282:1997 Control of Obtrusive Effects of Outdoor Lighting*.

72. Offensive Noise - Acoustic Report

The use of the premises and/or machinery equipment installed must not create offensive noise so as to interfere with the amenity of the neighbouring properties.

Should an offensive noise complaint be received and verified by Council staff, an acoustic assessment is to be undertaken (by an appropriately qualified consultant) and an acoustic report is to be submitted to Council's Manager – Environment and Health for review. Any noise attenuation measures directed by Council's Manager - Environment and Health must be implemented.

73. Use of Outdoor Play Areas ('Playscapes')

All outdoor play areas ('playscapes') are permitted to be used Monday to Friday from 7am until 6pm.

74. Acoustic – Project Specific

The project specific criteria for the operation of the childcare centre (including noise from children, mechanical ventilation, carpark exhaust, measured cumulatively at the boundary of the subject property) is adopted from Table 2.2 of the NSW EPA's Noise Policy for Industry dated October 2017:

- Day time period (0700-1800) – 60dB(A) Leq 15min.
- Evening time period (1800 – 2200) – 50 dB(A) Leq 15min.
- Night time period (2200-0700) - 45 dB(A) Leq 15min.

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. Zoning Plan
4. Site Plan
5. Part Site Plan
6. Basement Car Park Plan
7. Ground Floor Plan
8. First Floor Plan
9. Elevations
10. Landscape Plans
11. Fencing Details
12. Perspectives
13. Clause 4.6 Statement

