

COUNCIL ASSESSMENT REPORT

SYDNEY CENTRAL CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSCC-490 - DA 418/2024/JP
PROPOSAL	Demolition of Existing Structures and Construction of a Centre Based Child Care Facility for 123 Children with Non-illuminated Signage.
ADDRESS	2-4 Acres Road Kellyville
APPLICANT	Montessori Academy Group Developments Pty Ltd
OWNERS	Peninsula Group Projects Pty Ltd
DA LODGEMENT DATE	25 September 2023
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Part 2.4, Clause 2.19(1) and Clause 5, Schedule 6 of Planning Systems SEPP 2021 Private Infrastructure and Community Facilities Over \$5 Million
ESTIMATED DEVELOPMENT COST	\$ 5,627,381.00 (excluding GST)
CLAUSE 4.6 REQUESTS	The Hills LEP 2019 Clause 4.3 Height of Buildings R2 Low Density Residential
KEY SEPP/LEP	Transport and Infrastructure SEPP 2021 Resilience and Hazards SEPP 2021 Industry and Employment SEPP 2021 The Hills LEP 2019
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Seven Additional Traffic Generation and Ongoing Traffic Management, Noise Generation, Overlooking, Overshadowing, Lack of Parking, Bulk and Scale, Consistency with the Local Character, Property Devaluation and Proximity to Other Childcares.
DOCUMENTS SUBMITTED FOR CONSIDERATION	Acoustic Report – Renzo Tonin and Associates Arboricultural Impact Assessment – Tree Report Architectural Plans – Altis Architecture BCA and Access Report – Jensen Hughes Pty Ltd

	Childcare Design National Quality Framework Assessment Checklist – Altis Architecture Landscape Plans – Fiona Robbe Landscape Architects Plan of Management – Montessori Academy Preliminary and Detailed Site Investigation – Australian Ground Sciences Pty Ltd Quantity Surveyors Report – Construction Consultants Statement of Environmental Effects – SJB Planning Stormwater Management Plans – Capital Engineering Consultants Survey Plan – Vertex Surveyors Traffic and Parking Impact Assessment – McLaren Traffic Engineering and Road Safety Consultants
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	The proposal is not subject to the payment of a Special Infrastructure Contribution under Section 7.24 of the Environmental Planning and Assessment Act 1979.
RECOMMENDATION	Approval subject to conditions
DRAFT CONDITIONS TO APPLICANT	YES
SCHEDULED MEETING DATE	Electronic
PLAN VERSION	N/A
PREPARED BY	Madison Morris – Senior Town Planner
CONFLICT OF INTEREST DECLARATION	None Declared
DATE OF REPORT	25 June 2024

EXECUTIVE SUMMARY

The Development Application (418/2024/JP) seeks consent for demolition of existing buildings, lot consolidation and construction of a three storey centre based childcare centre for 123 children with associated business identification signage.

The subject site is known as Lots 2&3 DP 550411, Nos. 2-4 Acres Road Kellyville. The site is located on the corner of Windsor Road and Acres Road. The site is irregularly shaped with a total area of approximately 2264m². The site fronts Windsor Road which is a classified road and listed as a heritage item of local significance (I28) pursuant to Schedule 5 of The Hills LEP 2019.

This application is accompanied by a request to vary Clause 4.3 Building Height development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan 2019. Clause 4.3 of LEP 2019 limits the height to 10m. The proposed development will have a maximum building height of 10.65m. This represents a variation of 0.65m (6.5%) to the height standard. A Clause 4.6 written submission has been prepared and submitted with the application. It is considered

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strict compliance is unreasonable and unnecessary in this instance and the variation can be supported.

The proposal complies with the indoor and outdoor play space requirements and maximum floor space ratio of State Environmental Planning Policy (Transport and Infrastructure) 2021.

Whilst the application is not integrated development pursuant to Section 4.46(3) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'), a referral to Transport for New South Wales pursuant to Section 138 of the Roads Act 1993 was made. No objections were raised, subject to conditions.

The proposal was notified on three occasions in accordance with the DCP from 26 September 2023 until 18 October 2023, 12 February 2024 until 4 March 2024 and 19 April 2024 until 10 May 2024. A total of seven (7) unique submissions were received. The issues raised in the submissions relate to traffic generation, acoustic impacts, vehicular access and safety, insufficient car parking spaces, compatibility with the residential character being a commercial land use, overshadowing, built form outcomes, proximity to other childcare centres, property valuation and construction impacts.

The application is referred to the Sydney Central City Planning Panel ('the Panel') pursuant to Clause 2.19(1) of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is regionally significant development for *community facilities* with an estimated development cost over \$5 million.

The application is recommended for approval subject to conditions.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is known as Lots 2 & 3 DP 550411, Nos. 2-4 Acres Road Kellyville. The site is located on the corner of Windsor Road and Acres Road. The site is irregularly shaped with a total area of approximately 2264m². The site slopes from the north east corner to the south west corner by approximately 8m over a distance of 65m.

The subject site currently contains a group of small commercial premises including a car wash, car rental agency and physiotherapist and a residential dwelling.

The site fronts Windsor Road which is a classified road and listed as a heritage item of local significance (I28) pursuant to Schedule 5 of The Hills LEP 2019.

1.2 The Locality

The subject site is zoned R2 Low Density Residential under The Hills LEP 2019. Adjoining properties to the north, east and west of the site are zoned R2 Low Density Residential. To the south of the site, properties on the other side of Windsor Road are zoned R3 Medium Density Residential.

The surrounding development consists of primarily residential land uses including single and two storey dwellings, multi dwelling housing and educational establishments.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The Development Application is for lot consolidation, demolition of existing structures and construction of a three storey childcare centre with basement parking and associated works including landscaping and retaining walls. The proposal will accommodate a maximum of 123 children and 22 staff. Vehicular access is provided off Acres Road, with the basement car park accommodating 43 parking spaces including two accessible spaces. The facility will cater for the following breakdown of age groups:

- 0-2 years: 28 places (7 staff)
- 2-3 years: 45 places (9 staff)
- 3-5 years: 50 places (5 staff)

The basement level comprises car parking spaces for 21 visitors and 22 staff, a dedicated waste loading bay and bin storage area and plant/store area.

The ground floor comprises pedestrian access from Acres Road, reception lobby, meeting room, staff room kitchen and laundry. Outdoor play space is provided to the southern side and centre of the building. The remainder of the building comprises of four indoor play rooms with shared toilet facilities and cot rooms. The first floor contains two indoor play areas with shared amenities. A central outdoor play area with shade sails is proposed within the middle of the building.

The proposed hours of operation are Monday – Friday 7:00am to 6:00pm. The centre will be closed on Saturday, Sunday and Public Holidays.

Three non-illuminated business identification signs are proposed on the eastern elevation under the subject application. Details are as follows:

- Sign 1 (Façade Sign) 4.3m x 800mm attached to the building
- Sign 2 (Front Entry Sign) 1.5m x 800mm – freestanding sign with a height of 1.8m
- Sign 3 (Awning Sign) 2.9m x 500mm attached to the awning

Table 1: Development Data

Control	Proposal
Site area	2264m ²
GFA	886m ²
FSR	0.39:1
Clause 4.6 Requests	Clause 4.3 Height of Buildings
Max Height	10.65m
Unencumbered Indoor Play Space	434m ²
Unencumbered Outdoor Play Space	931m ²

Landscaped area	607m ²
Car Parking spaces	43
Setbacks	4m to carpark and 10m to building line on Windsor Road frontage 5m to Acres Road frontage 4m to eastern boundary and 2m to northern boundary.

2.2 Background

Development Application 31/2021/HA was refused on 23 March 2021 for alterations and additions to an existing car wash facility. The Development Application was refused as the proposal did not satisfy the provisions of Sections 4.65-4.70 of the Environmental Planning and Assessment Act, 1979 and Clauses 39- 46 of the Environmental Planning and Assessment Regulations, 2000 which relate to the requirements for the continuance of, and limitations pertaining to, sites operating under existing use rights. A Section 8.2 Review of Determination was refused on 24 August 2021.

A pre-lodgement meeting was held on 15 July 2022 for demolition of structures and construction of a car wash facility and centre based childcare facility for 104 children over basement parking. The application relied on existing use rights for the car wash noting commercial facilities are prohibited within the R2 Low Density Residential zoning of the site.

The subject Development Application was lodged on 25 September 2023. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
25 September 2023	DA lodged.
26 September 2023	Notification of the application.
19 October 2023	Request for Information from Council Staff to applicant regarding traffic, resource recovery, trees and landscaping matters.
2 November 2023	Panel briefing.
13 November 2023	TfNSW response received for the application.
29 November 2023	Request for Information from Council Staff to applicant regarding TfNSW, planning, environment and health, and engineering matters.
9 February 2024	Amended plans and documents lodged with Council Staff including amendments to vehicular access arrangements and associated driveway design.

12 February 2024	Notification of the application.
27 February 2024	TfNSW response received for the amended application.
19 March 2024	Request for Information from Council Staff to applicant regarding planning, engineering, traffic, resource recovery and landscaping matters.
5 April 2024	Correspondence with Applicant regarding landscaping matters.
18 April 2024	Amended plans and documentation lodged with Council Staff including submission of a Clause 4.6 request.
19 April 2024	Notification of the application.
19 April 2024	Correspondence with Applicant regarding basement layout.
24 April 2024	Additional information lodged.
9 May 2024	Request for Information from Council Staff to applicant regarding planning matters.
28 May 2024	Additional information lodged.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is not considered to be Integrated Development (s4.46).

3.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *Roads Act 1993*

- *State Environmental Planning Policy (Planning Systems) 2021;*
- *State Environmental Planning Policy (Resilience and Hazards) 2021;*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021;*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021;*
- *State Environmental Planning Policy (Industry and Employment) 2021;*
- *The Hills Local Environmental Plan 2019;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Policies (Preconditions in **bold**)

EPI	Matters for Consideration	Comply (Y/N)
Roads Act	<ul style="list-style-type: none"> • Section 138 (2) declares consent may not be given with respect to works within the classified road except with the concurrence of TfNSW. 	Y
Planning Systems SEPP	<ul style="list-style-type: none"> • Clause 2.19(1) declares the proposal as regionally significant development pursuant to Clause 3 of Schedule 6. 	Y
Resilience and Hazards SEPP	<ul style="list-style-type: none"> • Clause 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	Y
Biodiversity and Conservation SEPP	<ul style="list-style-type: none"> • Chapter 2 Vegetation in non-rural areas and Chapter 6 Water Catchments. 	Y
Transport and Infrastructure SEPP	<ul style="list-style-type: none"> • Clause 2.119(2) - Development with frontage to classified road • Clause 2.120(3) - Impact of road noise or vibration on non-road development • Chapter 3 – Educational establishments and child care facilities 	Y
Industry and Employment SEPP	<ul style="list-style-type: none"> • Chapter 3 – Advertising and Signage 	Y
The Hills LEP	<ul style="list-style-type: none"> • Clause 4.3 – Height of Buildings • Clause 7.2 – Earthworks • Clause 4.6 – Variation to Development Standard 	N Y Y

Roads Act 1993

Consent under Section 138 of the Roads Act 1993 is required for any works or activities in a public reserve, public road way or footpath (nature strip or verge). Windsor Road is identified as a classified road, and therefore consent to connect the stormwater discharge and reinstate disused laybacks on the road frontage cannot be given with except with the concurrence of Transport for New South Wales (TfNSW).

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TfNSW reviewed the proposal and provide concurrence for the proposed civil works on Windsor Road, subject to the relevant Planning Authority approval and conditions of consent (refer to attachment B and Condition 6).

State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 applies to the proposal as it identifies if development is regionally significant development. In this case, pursuant to Clause 2.19(1) of the SEPP, the proposal is a regionally significant development as it satisfies the criteria in Clause 5 of Schedule 6 of the SEPP as the proposal is development for Private infrastructure and community facilities over \$5 million with a CIV of more than \$5 million. Accordingly, the Sydney Central City Planning Panel is the determining authority for the application. Accordingly, the Sydney Central City Planning Panel is the determining authority for the application.

State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) have been considered in the assessment of the development application. Clause 4.6 of the SEPP requires consent authorities to consider whether the land is contaminated, and 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.

A Preliminary and Detailed Site Investigation report was prepared by Australian Ground Science (AGS) and submitted with the application. The report concluded that the site can be made suitable for the proposed development, subject to undertaking a Hazardous Building Materials Survey, investigation of data gaps in the areas not able to be assessed, an asbestos management plan (AMP) and waste classification of the soils. Council's Environment and Health Team have raised no objections to the recommendations of the report, subject to conditions of consent (see Conditions 9, 49, 50 and 85). Following satisfactory remediation, the site can be made suitable for its intended use and is consistent with the SEPP.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The aim of this plan is to protect the environment of the Hawkesbury-Nepean River Catchment by ensuring that the impacts of future land uses are considered in a regional context.

Through stormwater mitigation and erosion and sediment measures, the development is unlikely to have detrimental impacts on the health of the environment of the Hawkesbury and Nepean River Catchment.

State Environmental Planning Policy (Transport and Infrastructure) 2021

This policy aims to facilitate the effective delivery of infrastructure across the state. The subject site fronts Windsor Road which is a classified road. Accordingly, Clause 2.119 and Clause 2.120 apply to the site.

a) Clause 2.119 Development with frontage to a classified road

In accordance with Clause 2.119, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and the

safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development.

The subject site benefits from two street frontages, with vehicular access provided off Acres Road. Due to the proximity of the driveway to the signalised intersection with Windsor Road, all vehicular access will be limited to a left in/left out arrangement. This will ensure the development does not impact on the long term functioning of the intersection. In this regard, the safety, efficiency and ongoing operation of Windsor Road is not adversely affected by the development. Accordingly, the proposal is consistent with the requirements of Clause 2.120, subject to conditions of consent (see Conditions 8 and 54).

b) Clause 2.120 Impact of road noise or vibration on non road development

In accordance with Clause 2.120, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

In accordance with subclause (1) (d), the proposal is for a centre based child care facility adjacent to a roadway with an annual average daily traffic volume of more than 20,000 vehicles. The applicant has provided an Acoustic Report prepared by Renzo Tonin and Associates which has assessed the proposal against The Association of Australian Acoustical Consultants (AAAC) 'Guideline for Child Care Centre Acoustic Assessment V3.0 (September 2020). The report concluded the following:

"For the operational noise of outdoor play and traffic noise intrusion into the Childcare Centre, the assessment found compliance with the applicable noise criteria will require the physical noise mitigation measures recommended in Section 5.2 and Table 6-1 of this report"

Recommendations are included within the report in the form of acoustic barriers with gap free construction methods and acoustic absorption including additional window glazing have been implemented into the design of the development. The report has been reviewed by Council's Environment and Health Officer who has raised no concerns regarding the recommendations of the report. Accordingly, the proposal is consistent with the requirements of Clause 2.120, subject to conditions of consent (see Conditions 37, 63, 90,108, 111 and 118).

c) Chapter 3 Educational Establishments and Centre Based Childcare Centres

The chapter aims to facilitate the effective delivery of educational establishments and early education and child care facilities across the State. The SEPP determines that a consent authority must take into consideration the Child Care Planning Guidelines and National Quality Framework when assessing a development application for a centre-based child care facility.

The following addresses the principal development standards of SEPP (Transport and Infrastructure) 2021 relevant to the subject proposal:

Table 4: Consideration of the SEPP Controls

Requirement	Proposal	Comply
3.22 – Concurrence of the Regulatory Authority	A total number of 123 children are proposed. The proposal will need a minimum unencumbered	The proposal complies with the required

<p>This clause applies to development for the purpose of a centre-based child care facility if:</p> <p>(a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations, or</p> <p>(b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.</p>	<p>indoor and outdoor space as follows:</p> <p>Indoor: 399.75m² Outdoor: 861m²</p> <p>The proposal provides unencumbered indoor and outdoor space as follows:</p> <p>Indoor: 434m² Outdoor: 931m²</p>	<p>amount of indoor and outdoor play space and concurrence from the regulatory authority is not required.</p>
<p>3.23 – Matters for Consideration by Consent Authorities</p> <p>Before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.</p>	<p>The proposal has been assessed against the relevant provisions of the Child Care Planning Guidelines.</p>	<p>Yes – refer to below for discussion. .</p>
<p>3.24 – Additional Matters for Consideration by Consent Authorities</p> <p>The consent authority must consider the following matters before determining a development application for development for the purpose of a centre-based child care facility on land in Zone IN1 General Industrial or Zone IN2 Light Industrial—</p> <p>(a) whether the proposed development is compatible with neighbouring land uses, including its proximity to restricted premises, sex services premises or hazardous land uses,</p> <p>(b) whether the proposed development has the potential to restrict the operation of existing industrial land uses,</p> <p>(c) whether the location of the proposed development will pose a health or safety risk to children, visitors or staff.</p>	<p>Not Applicable</p>	<p>N/A</p>
<p>3.25 – Floor Space Ratio</p> <p>Development consent must not be granted for the purposes of a centre-based child care facility in Zone R2 Low Density Residential if the floor space ratio for the building on the site of the facility exceeds 0.5:1.</p> <p>This section does not apply if another environmental planning instrument or a development control plan sets a maximum</p>	<p>Control = 0.5:1 or 1132m² Proposed = 0.39:1 or 886m²</p>	<p>Yes</p>

floor space ratio for the centre-based child care facility.		
3.26 – Non-Discretionary Development Standards (a) Location (b) Indoor and Outdoor Space (c) Site Area and Site Dimensions Colour of Building Materials or Shade Structures	The non-discretionary development standards subject of this clause including location, indoor and outdoor space in excess of the regulations, site area and dimensions, and building materials and finishes have been considered satisfactory during the assessment of the application.	Yes.
3.27 – Development Control Plans A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) <u>does not apply</u> to development for the purpose of a centre-based child care facility: (a) operational or management plans or arrangements (including hours of operation), (b) demonstrated need or demand for child care services, (c) proximity of facility to other early education and care facilities, (d) any matter relating to development for the purpose of a centre-based child care facility contained in— (i) the design principles set out in Part 2 of the Child Care Planning Guideline, or (ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates).	The proposal generally complies with the provisions of The Hills DCP with the exception of the basement setback, stacked car parking spaces and site coverage and landscaping. The development is set within a landscape setting and meets the objectives of the future desired character of the precinct. The provisions contained in THDCP 2012 pertaining to this clause have not been applied when assessing the proposed development.	Yes, refer Section 3.3 for further discussion.

Section 3.23 Compliance with Child Care Planning Guidelines

The Child Care Planning Guideline establishes the assessment framework to deliver consistent planning outcomes and design quality for centre based child care facilities in the State. Consideration of the applicable provisions of the guideline is addressed below:

i) Part 2 Design Quality Principles

The Guideline includes seven design quality principles that relate to context, built form, adaptive learning spaces, sustainability, landscape, amenity and safety.

The proposed centre based child care facility is designed to complement the existing residential character of the northern side of Windsor Road. The bulk and height is appropriate to the existing and desired future character of the surrounding area, presenting as two storeys to the northern and eastern elevations which are adjacent to existing residential dwellings.

Although the development includes a technical variation to the DCP front setback control for the basement, the encroachment ensures that the building is designed and sited in a manner which reduces the acoustic and visual impact on adjoining residential properties. Ample landscaping is provided within the setbacks to maintain the streetscape character of Windsor Road.

The proposed development provides for sufficient indoor and outdoor play areas. The areas contribute positively to the amenity of the environment and the wellbeing of staff and children as well as provide comfortable, diverse and attractive spaces to learn, play and socialise. The building incorporates contemporary, high-quality finishes which are consistent with the architectural design of the existing development in the locality.

The proposed development is considered to provide sufficient safety and security. It has clearly defined public and private spaces with controlled access for parents and children. It will also employ adequate passive surveillance throughout the design. Outdoor play areas utilise equipment, vegetation and landscaping that has a low health and safety risk.

The built form respects the surrounding residential context with the building and fencing acting as a noise buffer for adjoining properties. Landscape screening has been implemented to the boundaries to enhance the visual appeal along the streetscapes.

The proposal results in a design that contributes positively to the visual amenity of the area and meets the design quality principles in the Guideline.

ii) Part 3 Matters for consideration

The Guideline includes matters for consideration which support the design principles including site selection and location, local character, streetscape and the public domain interface, building orientation, envelope and design, landscaping, visual and acoustic privacy, noise and air pollution, hours of operation, traffic parking and pedestrian circulation. The proposal has been assessed against these matters for consideration and achieves compliance with the relevant requirements.

3.1 Site Selection and Location

The location of the child care centre is considered to be satisfactory and is easily accessible given its location in proximity to the Kellyville Shopping Village, local schools and other educational establishments. There are no obvious environmental hazards on the site. It is considered that the development will be compatible with adjoining uses, and the centre will service a growing population which has increased the demand for child care facilities. Acoustic and privacy impacts are managed with acoustic fencing and building setbacks. Appropriate parking is provided for on the site.

3.2 Local Character, Streetscape and Public Domain Interface

The development respects and addresses both Windsor Road and Acres Road frontages, providing clear delineation between the child care centre and the public domain with fencing and landscaping. The building is an appropriate scale in relation to the size of the site. Front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.

3.3 Building Orientation, Envelope and Design

The proposed building is of a form and scale that complements the existing and future character of the Kellyville area. The part two part three storey building responds to the topography of the site and is compatible with the character of the area. The development optimises solar access and opportunities for shade whilst minimising impacts on adjoining buildings. The design demonstrates safety and accessibility has been considered for all users.

3.4 Landscaping

A detailed landscape plan demonstrates that the site will be well landscaped and will incorporate landscaping for play areas. The landscape design contributes to the streetscape and provides suitable amenity for both the childcare centre and to screen the development to adjoining properties.

3.5 Visual and Acoustic Privacy

Visual and acoustic privacy have been adequately considered in the design of the building which incorporates appropriate finished levels, window treatment, acoustic walls and landscaping to the satisfaction of Council's Health and Environment Staff.

3.6 Noise and Air Pollution

The building, being in a U shape, has been utilised as a buffer from noise and air pollution. The play areas have been located away from residential receivers and appropriately screened to reduce the impacts of being located adjacent to Windsor Road.

3.7 Hours of Operation

The proposed hours of operation (7am to 6pm Monday-Friday) are consistent with normal hours of childcare facilities.

3.8 Traffic, Parking and Pedestrian Circulation

Off-street parking on the site accommodates all parking needs generated by the proposed use of the site. A Traffic and Parking Report submitted with the application has been reviewed by Council's Traffic Engineer and it is considered that the sight distance and traffic movements associated with the development are acceptable subject to conditions of consent. Pedestrian safety is adequately accommodated within the parking area and public domain on Acres Road.

iii) Part 4 Applying the National Regulations to development proposals

The Guideline includes descriptions of specific regulations that apply to the internal and external physical environments, a best practice example and a National Quality Framework Assessment Checklist. The proposal has been assessed against Part 4 of the Guideline. The proposal includes an unencumbered indoor play area of 434m² and an unencumbered outdoor space of 931m² which meet the requirements of the National Regulations for 123 children. The proposal has been assessed against these matters for consideration and found to achieve compliance with the relevant requirements.

The proposal meets the provisions under the Child Care Planning Guideline with regard to Parts 2, 3 and 4 of the Guideline and therefore complies with Clause 23 of the SEPP.

State Environmental Planning Policy (Industry and Employment) 2021

The provisions of Chapter 3 Advertising and Signage of State Environmental Planning Policy (Industry and Employment) 2021 have been considered in the assessment of the development application.

The proposed signage is consistent with a centre based child care facility of this size and nature. Therefore, the signage is consistent with the aims of the SEPP as set out in Clause (3)(1)(a).

An assessment of the proposed signage was undertaken with respect to Schedule 5 of the SEPP. The proposed signage is considered to satisfy all assessment criteria in Schedule 5, including consideration of the character of the area, special areas, views and vistas, streetscape, setting and landscape, site and building, illumination and safety.

The Hills Local Environmental Plan 2019

a) Zoning and Permissibility

The subject site is zoned R2 Low Density Residential under LEP 2019. The proposed development is defined as a “centre-based child care facility” and “business identification signage” 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.*

business identification sign means a sign—

(a) that indicates—

- (i) the name of the person or business, and*
- (ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and*

(b) that may include the address of the premises or place and a logo or other symbol that identifies the business,

but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

A “centre-based child care facility” and “business identification signage” are a permissible form of development on land zoned R2 Low Density Residential under LEP 2019 subject to consent being granted. Accordingly, the proposal is considered satisfactory with regard to LEP 2019.

b) Objectives of the Zone

The objectives of the R2 Low Density Residential Zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain the existing low density residential character of the area.*

The proposal will meet the objectives of the zone as the development does not result in excessive bulk and scale, nor will it create any unreasonable impacts on the amenity of adjoining properties and will maintain a built form which is consistent with the low density residential character.

c) General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below. The proposal does not comply with the height of buildings development standard in Part 4 of the LEP 2019 and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum height of buildings.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	10 metres	10.65 metres	No – refer to CI 4.6 discussion below
Heritage (CI 5.10)	Consideration of the development on the heritage significance of adjacent items.	Satisfactory - proposed development will have no impact on the significance of the adjacent heritage item.	Yes

The proposal is considered to be generally consistent with the LEP.

a) Clause 4.6 Request

Clause 4.3 of LEP 2019 limits the height of the development site to 10 metres. The proposal seeks consent for a maximum building height of 10.65m, which represents a variation of 6.5% (0.65m). The applicant has provided a Clause 4.6 Variation which is provided at Attachment N. The variation to the height standard is identified in Figure 1 below:

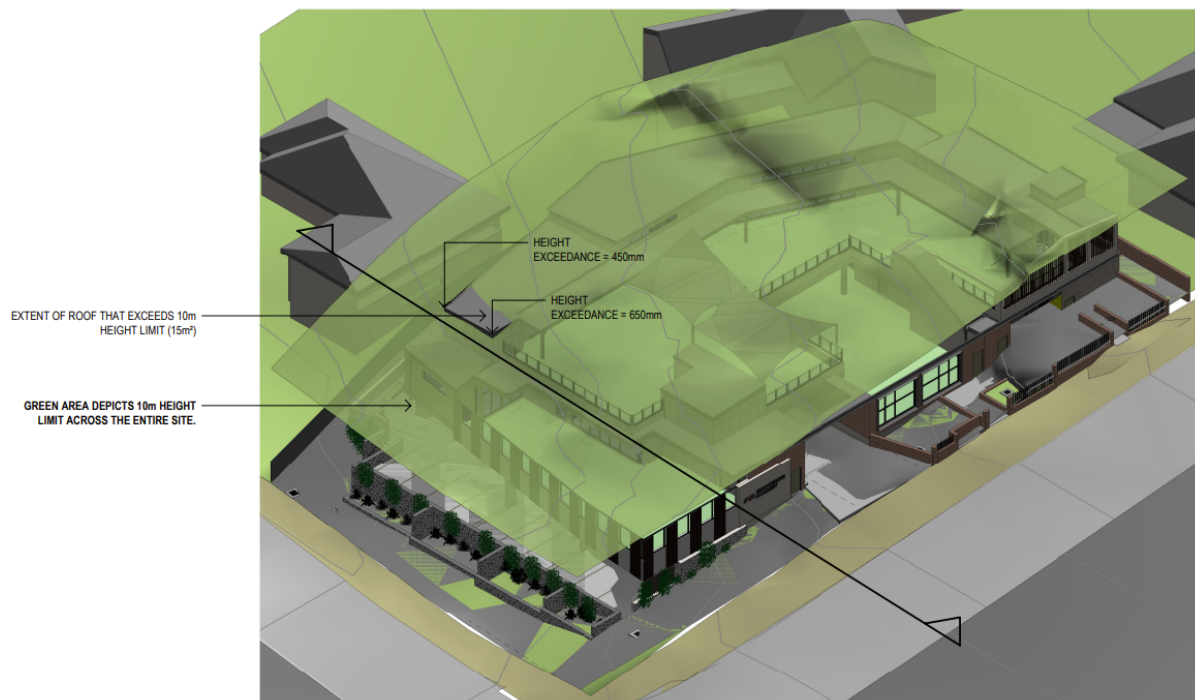


Figure 1: Applicant's Height Plane Diagram including Exceedance to Height Standard.

On 1 November 2023, reforms commenced to Clause 4.6 Exceptions to Development Standards. In accordance with Schedule 6 of the Environmental Planning and Assessment Regulations 2021, the reforms apply only to a Development Application made on or after 1 November 2023. The subject application was lodged on 25 September 2023 and has been determined as if changes had not commenced.

Clause 4.6 allows consent to be granted for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

In determining the appropriateness of the variation request, a number of factors identified by the Applicant have been taken into consideration to ascertain whether the variation is supportable in this instance. They include:

- *The development responds to the two storey scale of surrounding development (particularly along Windsor Road) and the topography of the site.*
- *The proposal has been designed to minimise potential overshadowing, visual privacy or view impacts.*
- *The height and scale are appropriate with the context of the site.*
- *The exceedance (in a small section of the roof) is a function of the sloping topography of the site impacting the ability to comply with the building height standard, due to the need to maintain level floor and roof parapet heights across a site that slopes.*
- *The non-compliance occurs as a function of relocating the waste collection area to the basement and consequently providing 2.8m clearance height for waste collection vehicles in the basement.*

The objective of Clause 4.3 Height of Buildings is to ensure that the height of buildings is compatible with that of adjoining development and streetscape. Additionally, the building height development standard aims to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas. As such, the development

standard for building height and the development controls for building design, solar access and overshadowing have been considered with respect to the merits of a variation pursuant to Clause 4.6.

The proposed departure to the building height development standard is limited to a small portion of the roof structure and will not cause adverse impacts on the amenity of adjoining properties with respect to overshadowing, privacy, view loss and perceived bulk and scale.

The built form is consistent with the existing and future character of the locality transitioning from an older housing stock to modern contemporary built form outcomes. The building has been stepped in response to the topography to ensure it maintains a part two part three storey appearance when viewed from the street frontages and adjoining properties. The height exceedance has negligible impacts on the streetscape presentation being centrally located. Adjoining properties achieve adequate solar access as result of the building setbacks from the property boundaries. The development has been designed to ensure all public domain areas are appropriately addressed. The building form and massing is considered appropriate in this regard.

The development has been designed to consider the low to medium density context of the surrounding locality and provides a built form outcome which responds to the transition from an older housing stock to new development. Notwithstanding the building height non-compliance, the height and built form of the proposed development is compatible with the scale and character of the area. Landscaping and the use of complementary colours and materials soften the built form. In this regard, there are sufficient environmental planning grounds to justify the contravention.

The applicant has adequately demonstrated that the proposed development is in the public interest and is consistent with the objectives of Clause 4.3 Height of Buildings and the R2 Low Density Residential zone. The variation to building height will not create buildings of excessive height, bulk or scale nor will it cause undue impacts upon the amenity of adjoining residential properties. A variation to the building height in this instance is considered to be satisfactory and can be supported.

Specifically, in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report and the Applicant's Clause 4.6 Variation Request, it is considered that the variation can be supported as:

- 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 Buildings and the R2 Low Density Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention; and
- The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the development within the relevant zone.

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development is well founded. In relation to the 'five part test' the objection to the building height is well founded on Part 1 of the test as the objectives of these standards are achieved notwithstanding non-compliance with the standards.

It is also noted that in accordance with the Departments Circular PS 18-003 that 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 or a similar clause.

b) Heritage Conservation

The subject site fronts Windsor Road which is identified as a Local Heritage Item (I28) under Schedule 5 of LEP 2019. Accordingly, the provisions of Clause 5.10 Heritage Conservation apply to the Development Application.

The significance of the road as a heritage item lies in its alignment, being an example of an early toll road. The proposed development will have no impact on the significance of the heritage item and is considered satisfactory.

3.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which have been the subject of public consultation under the EP&A Act 1979 that are relevant to the proposal.

3.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The proposal has been assessed against the provisions of The Hills Development Control Plan (THDCP) particularly:-

- Part B Section 2 – Residential,
- Part B Section 6 – Business,
- Part C Section 1 – Parking,
- Part C Section 2 – Signage, and
- Part C Section 3 – Landscaping.
- Part D Section 5 – Kellyville Rouse Hill Release Area

The DCP does not prescribe specific built form controls for childcare centres. Having consideration to the residential character of the area, the built form controls contained within Part B Section 2 - Residential and Part D Section 5 - Kellyville Rouse Hill Release Area have been applied to the development. A merit assessment has been undertaken against the development controls and the proposal achieves compliance with the relevant requirements of the above Development Controls with the exception of the following:

a) Setbacks

The DCP requires a 10m building setback to classified roads. The development results in a technical non-compliance to the front setback. The building line to the open side of the carparks southern elevation is 4m. The remainder of the habitable floor area above has been set back 10m.

The relevant objectives of the control are as follows:

- (i) To provide setbacks that complements the streetscape and protects the privacy and sunlight to adjacent dwellings in accordance with ESD Objective 7.*
- (ii) To ensure that new development is sensitive to the landscape setting, site constraints and established character of the street and locality.*

proposed variation to car parking for the development is considered satisfactory for the development.

c) Site Coverage/Landscaping

The DCP requires a maximum site coverage of 60% and minimum landscaped area of 40% for residential zoned land. The proposal provides a site coverage of 74% and landscaped area of 26%.

The relevant objectives of the controls are as follows:

Site Coverage

- (i) To maximise the provision of open space.*
- (ii) To avoid the creation of drainage and runoff problems, through minimising the amount of impervious area.*
- (iii) To minimise bulk and scale of residential development.*
- (iv) To facilitate spatial separation between buildings.*
- (v) To provide adequate space within residential lots for the establishment of landscaping/tree planting to enhance the quality of the residential environment.*
- (vi) To provide outdoor living space which is an extension of the dwelling for the enjoyment of its inhabitants*

Landscaping

- (i) To enhance the quality of the built environment by providing a high standard of landscaping.*
- (ii) To ensure that landscaping may be efficiently maintained.*
- (iii) To promote a pleasant and safe living environment.*
- (iv) To limit tree removal to maintain the character of the area.*
- (v) To design a high quality landscape setting for urban housing development.*
- (vi) To fully integrate the landscape design in communal, private and public areas as a necessary element in any well designed residential project.*
- (vii) To preserve and enhance existing landscape features.*
- (viii) To encourage existing vegetation to be included wherever possible into site landscaping.*
- (ix) To provide adequate open space areas for the enjoyment and use by residents.*
- (x) To enhance the quality of the built environment by providing opportunities for landscaping.*
- (xi) To provide an open space area within the development for the recreation of residents and children's play.*

Comment:

The variation is considered satisfactory in this instance as the built form is consistent with the desired character of the area. It is noted The Hills DCP does not provide specific built form controls for centre based child care facilities. As such a merit assessment was undertaken against the built form controls for residential development which apply to the site. The variation is not considered to result in a building which is an overdevelopment of the site. The development generally complies with the setback requirements, with the exception of the southern car parking setback. Landscape areas and planting is suitable to compliment the size and scale and appropriately screen of the development from adjoining properties. As such, the proposed variation to site coverage and landscaping is considered satisfactory for the development.

d) Signage

Part C Section 2 Clause 2.3 (a) and (b) require that signage in residential zones have a maximum area of any sign shall be 2.25m² with maximum dimensions of 1.5 metres x 1.5 metres, and the maximum height to the top of a sign shall be 2.5 metres from the natural ground level.

Three signs are proposed on the eastern elevation with the following dimensions:

- Sign 1 (Façade Sign) 4.3m x 800mm attached to the building
- Sign 2 (Front Entry Sign) 1.5m x 800mm – freestanding sign with a height of 1.8m
- Sign 3 (Awning Sign) 2.9m x 500mm attached to the awning

The relevant objectives of the control are as follows:

- (i) To permit an approved use to adequately identify their premises while maintaining the residential character of the area.*
- (ii) To ensure that business and building identification signs are appropriate to the size and scale of the activity conducted on the property.*
- (iii) To ensure that business and building identification signs do not detract from any residential area by requiring the size, shape, materials and location of the signage to complement the visual character of the surrounding area*

Comment:

The proposed façade and awning signage fronting Acres Road is considered satisfactory in this instance. The signage is located on the wall of the building and above the entrance door providing suitable identification and way finding on site. The signage is not a prominent feature of the development and is appropriate in size and scale for the proposed use. Furthermore, the proposed signage has been assessed against the provisions of Chapter 3 Advertising and Signage of SEPP (Industry and Employment) 2021 and considered satisfactory.

e) Development Contributions

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCP's they are required to be considered):

- *Contribution Plan - The Hills Section 7.12*

This Contributions Plan has been considered and included in the recommended draft consent of conditions (refer to condition 13).

3.4 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

3.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

Clause 61 of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. The development application includes minor demolition works (driveway crossings) and as such Australian Standard AS 2601—2001: The Demolition of Structures has been considered.

3.6 Section 4.15(1)(b) - Likely Impacts of Development

The proposed development is not considered likely to result in any adverse impacts. The development will provide a service which meets the day to day needs of surrounding residents while maintaining the character of the area. Conditions of consent have been recommended to address potential acoustic amenity impacts.

3.7 Section 4.15(1)(c) - Suitability of the site

The site is zoned R2 Low Density Residential under The Hills LEP 2019, with centre based child care facilities being a permitted land use within the zone. The location of the site is close to services and provides an essential service within close proximity to the town centre. The built form responds to the site characteristics and is considered to be a suitable development.

3.8 Section 4.15(1)(d) - Public Submissions

Submissions are considered in Section 4.3 of this report.

3.9 Section 4.15(1)(e) - Public interest

The proposed development will provide a service to meet the day to day needs of residents while protecting the amenity of surrounding properties. The built form is consistent with the residential character of the area and noise generation has been mitigated through use of the building as a buffer to neighbouring properties.

On these grounds, it is considered the proposed development is in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to TfNSW for concurrence as required by the EP&A Act and outlined below in Table 6.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for New South Wales	<i>Section 138 Road Act – Works and Structures</i>	The proposal involves civil works to connect stormwater to Windsor Road and remove disused laybacks. Concurrence has been granted. Conditions have been recommended.	Y
Referral/Consultation Agencies – NA			
Integrated Development (S 4.46 of the EP&A Act) – N/A			

4.2 Council Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 7**.

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	<p>Council's Subdivision Engineer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.</p> <p>Concern was raised the staff parking aisle on the southern side of the car park did not provide sufficient space for a vehicle to turn around should all parking space be occupied. AS 2890.1 requires a turning for blind aisles greater than 6 spaces available to the public. As such, a condition of consent has been imposed requiring car parking space 8 be revised into a turning bay (Condition 15 and 54). The total number of car parking spaces available is reduced from 43 to 42 which complies with the minimum car parking requirements of The Hills DCP 2012. The proposed vehicular access and parking arrangements are considered satisfactory subject to conditions.</p>	Yes (Conditions)
Traffic	<p>Council's Traffic Engineer reviewed the proposal and raised concerns in relation to impacts on the functioning of the signalised intersection at Acres Road and Windsor Road and sight lines from the driveway. Amended plans were provided during the assessment process which demonstrated vehicular entry and exit is restricted to a left in and left out only arrangement to reduce impacts on the existing road network and maintain safety of occupants entering and exiting the site.</p> <p>The revised driveway design was considered satisfactory and there were no objections subject to conditions.</p>	Yes (Conditions)
Trees and Landscaping	<p>Council's Tree and Landscaping Officer reviewed the proposal and considered that there were no objections subject to conditions.</p>	Yes (Conditions)
Environment and Health	<p>Council's Environment and Health Officer reviewed the proposal and considered that there were no objections subject to conditions.</p> <p>The Acoustic Report submitted demonstrates the development can achieve the site-specific noise</p>	Yes (Conditions)

	criteria subject to recommendations such as acoustic fencing being installed. Conditions of consent require the recommendations of the report be completed as part of the development.	
Resource Recovery	<p>Council's Resource Recovery Officer reviewed the proposal and raised concerns in relation to kerb side waste collection. Amended plans were provided during the assessment process which demonstrated onsite waste collection and an amended driveway gradient and clearance height suitable for the waste vehicle to enter the basement.</p> <p>The revised design was considered satisfactory and there were no objections subject to conditions.</p>	Yes (Conditions)

4.3 Community Consultation

The proposal was notified on three occasions in accordance with the DCP from 26 September 2023 until 18 October 2023, 12 February 2024 until 4 March 2024 and 19 April 2024 until 10 May 2024. The notification included the following:

- Notification letters sent to adjoining and adjacent properties;
- Notification on the Councils website.

The Council received a total of seven unique submissions objecting to the proposal. Three submissions were received during the first notification period, three submissions were received during the second notification period and one during the final notification period.

The issues raised in these submissions are considered in **Table 8**.

Table 7: Community Submissions

Issue	No of submissions	Council Comments
Traffic Generation Submissions raised concerns of additional vehicle movements on Acres Road and the intersection with Windsor Road.	5	The applicant submitted a traffic and parking assessment which was reviewed by Council's Traffic Engineer. The submitted SIDRA modelling indicates that the projected traffic generation and increase of queue lengths are within the acceptable limits of AustRoads and TfNSW guides. Given that vehicle entry and exit will be restricted to left-in and left-out movements only, no objection is raised with the proposed development in terms of traffic generation potential.
Vehicular Entry and Exit	4	The applicant provided amended plans during the assessment process which demonstrated vehicular entry and exit is restricted to a left in and left out only arrangement to reduce impacts on

Submissions raised concerns of the safety of vehicles entering and exiting the site.		<p>the existing road network and maintain safety of occupants entering and exiting the site.</p> <p>Council's Development Engineer and Traffic Engineer have reviewed the proposal and raised no objections to the proposed driveway crossover.</p>
Acoustic Impacts Submissions raised concerns of additional noise generation and acoustic attenuation measures being suitable for the number of children.	3	The applicant submitted a Noise Impact Assessment which was reviewed by Council's Environment and Health officer. The proposal complies with the noise criteria for the site. No objections were raised subject to conditions requiring the recommendations of the reports being implemented as part of the development.
Compatibility with the Residential Character Submissions raised concerns the development is commercial in nature and incompatible with the residential land uses in the area.	3	Centre based childcare facilities are a permitted land use in the R2 Low Density Residential zoning of the land under LEP 2019. The built form is sympathetic to the residential character of the land as assessed under the Design Quality Principles of the Child Care Planning Guidelines.
Overshadowing A submission raised concerns of overshadowing to adjacent properties.	1	Shadow diagrams submitted with the application demonstrate the proposal complies with the DCP requirement of at least 50% of the required private open space within the subject property and that on adjoining properties receiving direct sunlight for a minimum of 4 hours between 9am and 3pm on 21 June. The proposal is satisfactory in this regard.
Proximity to other Childcare Centres A submission raised concerns of the number of childcare centres located within close proximity to each other.	1	In accordance with the non-discretionary standards contained in Clause 3.26 of SEPP (Transport and Infrastructure) 2021, an application cannot be refused based its location to other child care centres.
Built Form A submission raised concerns the built form including the visual height and	1	The proposed built form is compatible with the residential future of the area. The building setbacks are consistent with the setbacks for a three storey dwelling permitted under Part B Section 2 – Residential of DCP 2012 with the exception of the basement setback. Refer to the

setbacks were visually imposing.		body of the report for further discussion on setbacks. The written request to vary the height of buildings development standard is considered satisfactory. Refer to the body of the report for further discussion on the building height.
Property Valuation A submission raised concerns of a devaluation in property value and loss of rental income as a result of the development.	1	Decreased property values are not a matter of consideration under Section 4.15 of the EP&A Act 1979.
Impacts During Construction A submission raised concerns of impacts during construction including dust, noise and potential for damage to adjoining structures.	1	Relevant conditions of consent have been imposed to limit impacts during construction including implementation of site management plans (Condition 14), noise and vibration management (Condition 29 and 87), hours of work (Condition 27), and preparation of dilapidation reports (Condition 79 and 98).
Insufficient Car Parking A submission raised concerns there was insufficient parking on site for the number of parents.	1	The proposal (as amended) provides a total of 42 spaces which complies with the minimum requirement of 21 staff spaces and 21 visitor spaces under THDCP 2012. More onerous parking rates above the DCP requirements cannot be enforced.

5. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

The applicant's Clause 4.6 written request to vary The Hills Local Environmental Plan 2019 development standard at Clause 4.3 can be supported as it adequately justifies the contravention of the development standards having regard to the requirements of Clause 4.6(3). It is considered that the variation can be supported as compliance with the standard is unreasonable or unnecessary in this instance and there are sufficient environmental planning grounds to justify the contravention. The development is consistent with the objectives of the standards and the objectives for development within the zone.

The Development Application has been assessed against the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, Roads Act
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1993, State Environmental Planning Policy (Planning Systems) 2021, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, State Environmental Planning Policy (Industry and Employment) 2021, The Hills Local Environmental Plan 2019, and The Hills Development Control Plan 2012 and is considered satisfactory.

Approval is recommended subject to conditions, refer to Attachment A.

6. RECOMMENDATION

That the Development Application 418/2024/JP at 2-4 Acres Road Kellyville be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

It is recommended that the applicant's Clause 4.6 written request to vary The Hills Local Environmental Plan 2019 development standard at Clause 4.3 be supported as it adequately justifies the contravention of the development standards having regard to the requirements of Clause 4.6(3). It is considered that the variation can be supported as compliance with the standard is unreasonable or unnecessary in this instance and there are sufficient environmental planning grounds to justify the contravention. The development is consistent with the objectives of the standards and the objectives for development within the zone.

The following attachments are provided:

- Attachment A: Draft Conditions of Consent
- Attachment B: Transport for NSW Comments
- Attachment C: Locality Plan
- Attachment D: Aerial Map
- Attachment E: LEP 2019 Zoning Map
- Attachment F: LEP 2019 Height of Buildings Map
- Attachment G: Site Plan
- Attachment H: Floor Plans
- Attachment I: Elevations
- Attachment J: Sections
- Attachment K: Shadow Diagrams
- Attachment L: Signage Plan
- Attachment M: Landscaping Plans
- Attachment N: Clause 4.6 Request – Height of Buildings

ATTACHMENT A – DRAFT CONDITIONS OF CONSENT

ALL DEVELOPMENT TYPES GENERAL CONDITIONS

1.	Approved Plans and Supporting Documentation				
	Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.				
	Approved plans				
	Plan number	Revision number	Plan title	Drawn by	Date of plan
	Survey Plan				
	21317_001	Revision C	Plan Showing Levels & Detail Over Lots 2 & 3 In DP 550411	Vertex Surveyors	19/12/2023
	Architectural Plans				
	DA0000	Issue 2	Cover Sheet	Altis Architects	06/02/2024
	DA0001	Issue 1	Site Location Plan	Altis Architects	15/09/2023
	DA0002	Issue 3	Site Analysis Plan	Altis Architects	06/02/2024
	DA0003	Issue 6	Site Plan/Roof Plan	Altis Architects	18/04/2024
	DA1001	Issue 3	Existing & Demolition Plan	Altis Architects	06/02/2024
	DA1101	Issue 6	Lower Ground Floor Plan	Altis Architects	18/04/2024
	DA1102	Issue 3	Upper Ground Floor Plan	Altis Architects	06/02/2024
	DA1103	Issue 3	Level 1 Plan	Altis Architects	06/02/2024
	DA2101	Issue 3	Proposed Elevations	Altis Architects	06/02/2024
	DA2102	Issue 3	Proposed Elevations	Altis Architects	06/02/2024
	DA2103	Issue 3	Proposed Elevations	Altis Architects	06/02/2024
	DA3001	Issue 4	Proposed Sections – Sheet 1	Altis Architects	06/02/2024
	DA3002	Issue 3	Proposed Sections – Sheet 2	Altis Architects	06/02/2024
	DA3003	Issue 3	Proposed Height Limit Plan & Section	Altis Architects	18/04/2024
	DA3004	Issue 2	Proposed Height Limit Plan	Altis Architects	18/04/2024
	DA9001	Issue 3	Signage Details	Altis Architects	06/02/2024

Landscape Plans				
LCD-10	Revision C	Cove Sheet – Drawing Schedule, Location Plan and Schedule of Existing Trees	Fiona Robbe Landscape Architects	17/04/2024
LCD-20	Revision C	Tree Location Plan	Fiona Robbe Landscape Architects	17/04/2024
LCD-30-01	Revision C	Surfaces, Materials Plan – Upper Ground Floor	Fiona Robbe Landscape Architects	17/04/2024
LCD-30-02	Revision C	Upper Ground Floor – Precedent Images	Fiona Robbe Landscape Architects	17/04/2024
LCD-40-01	Revision C	Surfaces, Materials – Level 1	Fiona Robbe Landscape Architects	17/04/2024
LCD-40-02	Revision C	Level 1 _ Precedent Images	Fiona Robbe Landscape Architects	17/04/2024
LCD-50-01	Revision C	Planting Schedule + Images	Fiona Robbe Landscape Architects	17/04/2024
LCD-50-02	Revision C	Planting Plan – Upper Ground Floor	Fiona Robbe Landscape Architects	17/04/2024
LCD-50-03	Revision C	Planting Plan – Level 1	Fiona Robbe Landscape Architects	17/04/2024
LCD-60-01	Revision C	Landscape Sections 1	Fiona Robbe Landscape Architects	17/04/2024
LCD-60-02	Revision C	Landscape Sections 2	Fiona Robbe Landscape Architects	17/04/2024
LCD-70-01	Revision C	Landscape Details Sheet 1	Fiona Robbe Landscape Architects	17/04/2024
LCD-80-01	Revision C	Landscape Maintenance Notes	Fiona Robbe Landscape Architects	17/04/2024

Approved documents			
Document title	Version number	Prepared by	Date of document
DA Acoustic Report	Revision 3	Renzo Tonin	16/01/2024
Operational Waste Management Plan	Revision F	Elephants Foot Consulting	30/01/2024
Plan of Management	Revision 3	Montessori Academy	4/09/2023

In the event of any inconsistency between the approved plans and documents, the approved plans prevail.

	<p>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> <p>Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</p>
2.	<p>Provision of Parking Spaces</p> <p>Before the issue of an occupation certificate, the development is required to be provided with 42 off-street car parking spaces (comprising 21 staff spaces and 21 visitor spaces) and shall be labelled which spaces are for visitors and staff prior to occupation of the premises. These car parking spaces shall be available for off street parking at all times.</p> <p>Condition reason: To ensure compliance with parking requirements.</p>
3.	<p>Construction Certificate</p> <p>Before building works commence for the approved development, it is necessary to obtain a construction certificate. A construction certificate may be issued by Council or a Registered Certifier. Plans submitted with the construction certificate are to be amended to incorporate the conditions of the development consent.</p> <p>Condition reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation, and to ensure compliance with the legislative requirements.</p>
4.	<p>Building Work to be in Accordance with BCA</p> <p>During building work, all building work must be carried out in accordance with the provisions of the Building Code of Australia as referenced by Section 69 of the Environmental Planning and Assessment Regulation 2021.</p> <p>Condition reason: To ensure compliance with the legislative requirements.</p>
5.	<p>Separate Application for Other Signs</p> <p>A separate application is required to be submitted to, and approved by Council prior to the erection of any advertisements or advertising structures other than the sign(s) approved in this consent.</p> <p>Condition reason: To ensure approval is provided for additional signs.</p>
6.	<p>Transport for New South Wales Requirements</p> <p>a) The redundant driveway on the Windsor Road boundary shall be removed and replaced with kerb and gutter to match existing. The design and construction of the kerb and gutter on Windsor Road shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to developerworks.sydney@transport.nsw.gov.au.</p> <p>Detailed design plans of the proposed kerb and gutter are to be submitted to TfNSW for approval prior to the issue of a construction certificate and commencement of any road works. Please send all documentation to development.sydney@transport.nsw.gov.au. A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.</p> <p>b) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au. A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.</p> <p>c) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.</p>

	<p>The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au.</p> <p>d) If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.</p> <p>e) The Applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the above work, and as required by the various public utility authorities and/or their agents.</p> <p>f) A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre (TMC) for any works that may impact on traffic flows on Windsor Road during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf.</p> <p>Condition reason: To ensure works on Windsor Road comply with the requirements of Transport for NSW.</p>
7.	<p>Education and Care Services National Regulations.</p> <p>The design and management of the childcare centre must conform to the requirements of the Education and Care Services National Regulations.</p> <p>Condition reason: To ensure compliance with the Regulations.</p>
8.	<p>No Right Turn/Left Turn Only Signage</p> <p>Prior to the issue of an Occupation Certificate, 'No Right Turn' and 'Left Turn Only' signs are to be installed and maintained at the driveway access to reinforce the left-in and left-out arrangement at the full expense of the developer/management of the childcare centre in perpetuity.</p> <p>Any signage or line marking to be installed on public land will require approval from the Local Traffic Committee and Council prior to installation. Details of the approval are to be submitted to the Certifier prior to the issue of an Occupation Certificate, and a copy submitted to Council.</p> <p>Condition reason: To maintain satisfactory traffic arrangements and ensure works on public land are accepted by Council.</p>
9.	<p>Comply with Contamination report</p> <p>The recommendations of the Preliminary and Detailed Site Investigation by Australian Ground Sciences (referenced as 23333ER dated 11 August 2023) and submitted as part of the Development Application, are to be implemented as part of this approval. In particular:</p> <p>a) Undertake a Hazardous Building Materials Survey (Hazmat) prior to demolition to identify any potentially hazardous building materials (ie asbestos, lead, PCBs). Any hazardous materials identified should be removed prior to demolition to avoid further contamination at the site.</p> <p>b) The data gaps in Section 9.2 are investigated.</p> <p>c) An asbestos management plan (AMP) is prepared prior to demolition and a waste classification is assigned to any excavated soils.</p> <p>d) A copy of the hazardous Building Materials Survey, AMP, results of the data gaps and the waste classification report are provided to AGS to review and amend the conclusions of the report accordingly.</p> <p>Condition reason: To ensure controls are in place for contamination management</p>
10.	<p>Tree Removal</p>

	<p>Approval is granted for the removal of forty-five (45) trees numbered 1-10, 12, 15-24, 27, 29-40 and 42-52 as detailed in the Arboricultural Impact Assessment prepared by treeREPORT Arboricultural Consulting.</p> <p>All other trees are to remain and are to be protected during all works. Suitable replacement trees are to be planted upon completion of construction.</p> <p>Condition reason: To provide details of trees approved for removal.</p>
11.	<p>Protection of Existing Trees and Native Vegetation</p> <p>Native vegetation (trees and understorey) not identified on the approved plan for removal is to be kept unless prior consent of Council is obtained.</p> <p>Condition reason: To ensure retained trees and native vegetation are adequately protected.</p>
12.	<p>House Numbering</p> <p>Approved numbering for this development is: 4 Acres Road, KELLYVILLE NSW 2155</p> <p><i>This addressing and by extension the development; may only be used in accordance with Council's Development Consent.</i></p> <p>At the time of the provision of occupation certificate, Council will advise statutory authorities of approved addresses.</p> <p>The street number as issued is to be displayed at the entrance to the property for mail delivery and service providers including emergency services.</p> <p>Condition reason: To ensure consistent addressing as per Australian Standard AS/NZS 4819 Rural and Urban Addressing, Council and Geographical Names Board guidelines. Final development can be located in the event of an emergency and for mail delivery.</p>

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

13.	<p>Section 7.12 Contribution</p> <p>Before the issuing of a Construction Certificate, a contribution of \$61,901.20 must be paid to Council. This amount may be adjusted at the time of payment.</p> <p>The contributions levy has been calculated in accordance with the table below:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Proposed cost of the development</th><th style="text-align: left;">Maximum percentage of the levy</th></tr> </thead> <tbody> <tr> <td>Up to \$100,000</td><td>Nil</td></tr> <tr> <td>\$100,001 - \$200,000</td><td>0.5 %</td></tr> <tr> <td>More than \$200,000</td><td>1%</td></tr> </tbody> </table> <p>Prior to payment, it is advised to phone or email Council to confirm the amount. Payments will be accepted via Debit or Credit Card. Cash payments will not be accepted. This condition has been imposed in accordance with Section 7.12 of the Environmental Planning and Assessment Act 1979 and The Hills Section 7.12 Contributions Plan.</p> <p>Condition reason: To contribute towards public infrastructure for the area.</p>	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%
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%								
14.	<p>Construction Site Management Plan</p> <p>Before the issue of a construction certificate, a construction site management plan must be prepared, and provided to the Certifier. The plan must include the following matters:</p> <ul style="list-style-type: none"> a) The location and materials for protective fencing and hoardings on the perimeter of the site; b) Provisions for public safety; c) Pedestrian and vehicular site access points and construction activity zones; 								

	<p>d) Details of construction traffic management including:</p> <ul style="list-style-type: none"> i. Proposed truck movements to and from the site; ii. Estimated frequency of truck movements; and iii. Measures to ensure pedestrian safety near the site; <p>e) Details of bulk earthworks to be carried out;</p> <p>f) The location of site storage areas and sheds;</p> <p>g) The equipment used to carry out works;</p> <p>h) The location of a garbage container with a tight-fitting lid;</p> <p>i) Dust, noise and vibration control measures;</p> <p>j) The location of temporary toilets;</p> <p>k) The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with:</p> <ul style="list-style-type: none"> i. AS 4970 – Protection of trees on development sites; ii. An applicable Development Control Plan; iii. An arborist's report approved as part of this consent. <p>A copy of the construction site management plan must be kept on-site at all times while work is being carried out.</p> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
15.	<p>Design Amendments</p> <p>Before the issue of a construction certificate, the certifier must ensure the construction certificate plans and specifications detail the following required amendments to the approved plans and documents:</p> <ul style="list-style-type: none"> - Staff Car Parking Space 8 to be converted to, and marked as, a turning bay. <p>Condition reason: To require minor amendments to the plans endorsed by the consent authority following assessment of the development.</p>

BEFORE WORK COMMENCES

16.	<p>Consultation with Service Authorities</p> <p>Before building work commences, applicants are advised to consult with Telstra, NBN Co and Australia Post regarding the installation of telephone conduits, broadband connections and letterboxes as required.</p> <p>Applicants are advised to consult with the relevant electricity authority with respect to electricity supply and connection points to the site, or any other electrical infrastructure located in close proximity to the proposed works. Unimpeded access must be available to the electricity supply authority, during and after building, to the electricity meters and metering equipment.</p> <p>In the interest of health and safety, applicants are to contact before you dig Australia www.byda.com.au in order to protect damage to third party assets. It is the individuals responsibility to anticipate and</p>
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	request the nominal location of plant or assets on the relevant property via contacting the dial before you dig service in advance of any construction or planning activities.
	Condition reason: To ensure compliance with relevant service provider's requirements.
17.	Builder and Principal Certifier Details Before building work commences, the builders name, address, telephone and email information must be submitted to the Principal Certifier. Where Council is not the Principal Certifier, Council must be notified of the Principal Certifier in writing two days before building works commence in accordance with the Regulations. Condition reason: To ensure compliance with the legislative requirements.
18.	Management of Building Sites Before building work commences, suitable fencing or other measures to restrict public access to the site and building works, materials or equipment when the building work is not in progress or the site is otherwise unoccupied is to be provided. The erection of a sign, in a prominent position, stating that unauthorised entry to the site is not permitted and giving an after hours contact name and telephone number. Condition reason: To protect workers, the public and the environment.
19.	Transport for NSW Design Approval The design and construction of the relevant works must be approved by Transport for NSW before any works commence on that road. A copy of the Transport for NSW stamped approved construction plans must be submitted to Council. Condition reason: To ensure works are carried out in accordance with Transport for NSW requirements.
20.	Engagement of a Project Arborist Before site works commence, a Project Arborist (minimum AQF Level 5) is to be appointed and the following details provided to The Hills Shire Council's Manager – Environment & Health: a) Name: b) Qualification/s: c) Telephone number/s: d) Email: If the Project Arborist is replaced, Council is to be notified in writing of the reason for the change and the details of the new Project Arborist provided within 7 days. Condition reason: To protect vegetation.
21.	Ground Protection within Tree Protection Zone Before site works commence, ground protection measures are required where any construction access or works are within the TPZ of any tree (s) identified for retention which include the following: a) Temporary access for machinery, vehicular and foot traffic within the TPZ of trees on the site and/or on adjoining Council site (s). A permeable membrane such as geo-textile fabric beneath a layer of mulch or crushed rock below rumble boards as per Clause 4.5.3 Ground protection AS4970-2009 Protection of trees on development sites Condition reason: To protect trees.
	Erosion and Sediment Controls in Place

22.	Before site work commences, the certifying authority must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time).
	Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.
23.	Waste Management Plan requirements
	Before site work commences, a waste management plan for the development must be prepared and provided to the principal certifying authority. The plan must be prepared
	a) in accordance with
	<ul style="list-style-type: none"> i. the Environment Protection Authority's Waste Classification Guidelines as in force from time to time, and ii. a development control plan that provides for waste management that applies to the land on which the work or the clearing of vegetation is carried out, and
	b) include the following information—
	<ul style="list-style-type: none"> i. the contact details of the person removing waste, ii. an estimate of the type and quantity of waste, iii. whether waste is expected to be reused, recycled or sent to landfill, iv. the address of the disposal location for waste.
	A copy of the waste management plan must be kept on-site at all times while work approved under the development consent is being carried out.
	Condition reason: To ensure resource recovery is promoted and local amenity protected during construction

DURING WORKS

24.	Dust Control
	During site works, dust suppression techniques must be used to minimise nuisance to surrounding properties. In the absence of any alternative measures, the following measures must be taken to control the emission of dust:
	<ul style="list-style-type: none"> a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the demolition and construction work; b) 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 c) All stockpiles of materials that are likely to generate dust must be kept damp or covered.
	Condition reason: To prevent the movement of dust outside the boundaries of the development.
25.	Stockpiles
	During site work, stockpiles of topsoil, sand, aggregate or other material capable of being moved by water must be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.
	Condition reason: To protect waterways
26.	Protection of Tree Canopy

	<p>While works are being carried out, care shall be taken when operating excavation machineries, cranes and similar equipment near trees to avoid damage to tree canopies (foliage and branches).</p> <p>Any damages to trees during the construction period must be inspected by a Project Arborist and remedial action is to be implemented and certified by the Project Arborist.</p> <p>Condition reason: To protect tree canopy.</p>
27.	<p>Hours of Work</p> <p>Site work must only be carried out between the following times – For all works from 7:00am to 5:00pm on Monday to Saturday. No work to be carried out on Sunday or Public Holidays. Site work is not to be carried out outside of these times except where there is an emergency, or for urgent work directed by a police officer or a public authority.</p> <p>Condition reason: To protect the amenity of the surrounding area.</p>
28.	<p>Surveys by a Registered Surveyor</p> <p>While building work is being carried out, the positions of the following must be measured and marked by a registered surveyor and provided to the principal certifier:</p> <ol style="list-style-type: none"> All footings / foundations in relation to the site boundaries and any registered and proposed easements; and At other stages of construction – any marks that are required by the principal certifier. <p>Condition reason: To ensure buildings are sited and positioned in the approved location.</p>
29.	<p>Noise and Vibration Requirements</p> <p>While site work is being carried out, noise generated from the site must not exceed an L_{Aeq} (15 min) of 5dB(A) above background noise, when measured at the boundary of the site.</p> <p>Condition reason: To protect the amenity of the neighbourhood during construction.</p>
30.	<p>Soil Management</p> <p>While site work is being carried out, the certifying authority must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:</p> <ol style="list-style-type: none"> All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the certifying authority All fill material imported to the site must be: <ol style="list-style-type: none"> Virgin Excavated Natural Material as defined in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i>, or a material identified as being subject to a resource recovery exemption by the NSW EPA, or a combination of Virgin Excavated Natural Material as defined in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i> and a material identified as being subject to a resource recovery exemption by the NSW EPA. <p>Condition reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is not contaminated and is safe for future occupants.</p>
31.	<p>Waste Management</p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> all waste management must be undertaken in accordance with the waste management plan, and upon disposal of waste, records of the disposal must be compiled and provided to the principal certifying authority, detailing the following: <ol style="list-style-type: none"> The contact details of the person(s) who removed the waste;

	<ul style="list-style-type: none"> ii. The waste carrier vehicle registration; iii. The date and time of waste collection; iv. A description of the waste (type of waste and estimated quantity) and whether the waste is to be reused, recycled or go to landfill; v. The address of the disposal location(s) where the waste was taken; vi. The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste. <p>c) If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, records in relation to that Order or Exemption must be maintained and provided to the principal certifier and council.</p>
	Condition reason: To require records to be provided, during site work, documenting the lawful disposal of waste.

ON COMPLETION OF WORKS

32.	Removal of waste upon completion
	<p>After completion of all site work:</p> <ul style="list-style-type: none"> a) all refuse, spoil and material unsuitable for use on-site must be removed from the site and disposed of in accordance with the approved waste management plan, and b) written evidence of the waste removal must be provided to the satisfaction of the principal certifying authority.
	Condition reason: To ensure waste material is appropriately disposed or satisfactorily stored.

BEFORE ISSUE OF OCCUPATION CERTIFICATE

33.	Irrigation
	<p>Before the issue of a construction certificate, an automatic watering system is to be installed as a minimum to all raised planters and planters using grow-wool. Details including backflow prevention device, location of irrigation lines and sprinklers, and control details are to be communicated to Council or Private Certifier.</p>
	Condition reason: To ensure irrigation is provided.

OCCUPATION AND ONGOING USE

34.	Maintenance of Landscaping Works
	<p>During occupation and ongoing use of the site, the landscaping works, associated plantings and the completed retaining walls are to be maintained in a satisfactory condition throughout the life of the development.</p>

	Condition reason: To ensure landscaping of the site is maintained on a regular basis.
35.	<p>Maximum Children and Staff Numbers</p> <p>The child care centre must operate with a maximum of 123 child placements and 21 staff members. The maximum number of children within each age category is limited to the following:</p> <ul style="list-style-type: none"> • 0 – 2 years – 28 children • 2 – 3 years – 45 children • 3 – 5 years – 50 children <p>Any variation to the above requires separate development consent.</p> <p>Condition reason: Provide a reason for the condition.</p>
36.	<p>Plan of Management</p> <p>The childcare facility is to be operated in accordance with the approved Plan of Management referred to in Condition No. 1.</p> <p>Any inconsistency between anything in the Plan of Management and any other condition in this consent is to be resolved by the condition of consent taking precedence over the Plan of Management.</p> <p>Condition reason: To ensure the development is carried out in accordance with the Plan of Management.</p>
37.	<p>Acoustics – Maintenance</p> <p>All approved acoustic attenuation measures installed as part of the development are to be always maintained, in a manner that is consistent with the accepted acoustic reports, the consent and so that the noise attenuation effectiveness is maintained for the life of the development. This includes but is not limited to:</p> <ul style="list-style-type: none"> a) Play area sound barriers and boundary fences are to remain solid and gap free; and b) Any mechanical plant acoustic barriers are to be maintained solid and gap free. <p>Condition reason: To ensure acoustic amenity is maintained to adjoining properties.</p>
38.	<p>Noise Management Plan</p> <p>Prior to the issue of an occupation certificate including an interim occupation certificate, a noise management plan shall be submitted to the Manager – Environment & Health at the Hills Shire Council. The noise management plan is to incorporate the following items;</p> <ul style="list-style-type: none"> a) A clear commitment by the operator to minimising noise from the childcare centre; b) Details of the review process to be implemented every 2 years; c) How parents should behave when dropping off and picking up, including outlining noise minimisation strategies to be employed by parents; d) How staff members should behave, including outlining noise minimisation strategies to be employed by staff; e) Limitations on numbers of children outside at any one time, including clear programming details how this will work and how it will be monitored; f) Guidelines for managing distressed children; g) Limitations on total time spent outdoors;

	<p>h) Provision of information for neighbours including the issuing of the noise management plan to any potentially impacted neighbour, a complaints register and contact details of the person responsible for investigating offensive noise complaints;</p> <p>i) Action to be taken in the event of excessive noise from people within the car park area or noise break out from within the childcare centre; and</p> <p>j) Any other item or action deemed relevant to minimising noise within the childcare centre.</p>
	Condition reason: To protect the residential amenity of neighbouring properties
39.	Hours of Collection of Waste
	<p>All collection of waste from the premises shall be restricted to the following times:</p> <p>Monday to Friday – 7.00am to 6.00pm</p>
	Condition reason: To protect the residential amenity of neighbouring properties.

DEMOLITION WORK GENERAL CONDITIONS

40.	Notice of Commencement for Demolition
	<p>At least one week before demolition work commences, written notice must be provided to Council and the occupiers of neighbouring premises of the work commencing. The notice must include:</p> <p>a) Name;</p> <p>b) Address;</p> <p>c) Contact telephone number;</p> <p>d) Licence type and license number of any demolition waste removal contractor and, if applicable, asbestos removal contractor;</p> <p>e) The contact telephone number of Council; and</p> <p>The contact telephone number of SafeWork NSW (4921 2900).</p>
	Condition reason: To advise neighbours about the commencement of demolition work and provide contact details for enquiries.

BEFORE WORK COMMENCES

41.	Notification of Asbestos Removal
	Before commencement of any demolition works involving asbestos containing materials, all adjoining neighbours, Council and WorkCover NSW must be given a minimum five days written notification of the works.
	Condition reason: To ensure compliance with legislation and ensure public and work safety.
42.	Disconnection of Services Before Demolition Work
	Before demolition work commences, all services, such as water, telecommunications, gas, electricity and sewerage, must be disconnected in accordance with the relevant authority's requirements.
	Condition reason: To protect life, infrastructure and services.
43.	Site Preparation
	Before demolition work commences the following requirements, as specified in the approved demolition management plan, must be in place until the demolition work and demolition waste removal are complete:

	<ul style="list-style-type: none"> a) Protective fencing and any hoardings to the perimeter on the site; b) Access to and from the site; c) Construction traffic management measures; d) Protective measures for on-site tree preservation and trees in adjoining public domain; e) Onsite temporary toilets; f) A garbage container with a tight-fitting lid.
	Condition reason: To protect workers, the public and the environment.
44.	Asbestos Removal Signage Before demolition work commences involving the removal of asbestos, a standard commercially manufactured sign containing the words 'DANGER: Asbestos removal in progress' (measuring not less than 400mm x 300mm) must be erected in a prominent position at the entry point/s of the site and maintained for the entire duration of the removal of the asbestos.
	Condition reason: To alert the public to any danger arising from the removal of asbestos.
45.	Hazardous material survey before demolition Before demolition work commences, a hazardous materials survey of the site must be prepared by a suitably qualified person and a report of the survey results must be provided to council at least one week before demolition commences. Hazardous materials include, but are not limited to, asbestos materials, synthetic mineral fibre, roof dust, PCB materials and lead based paint. The report must include at least the following information: <ul style="list-style-type: none"> a) the location of all hazardous material throughout the site b) a description of the hazardous material c) the form in which the hazardous material is found, e.g. AC sheeting, transformers, contaminated soil, roof dust d) an estimation of the quantity of each hazardous material by volume, number, surface area or weight e) a brief description of the method for removal, handling, on-site storage and transportation of the hazardous materials f) identification of the disposal sites to which the hazardous materials will be taken
	Condition reason: To require a plan for safely managing hazardous materials

DURING DEMOLITION WORKS

46.	Trenching within Tree Protection Zone Whilst site works are being carried out, any trenching for installation of retaining walls, drainage, sewerage, irrigation or any other services shall not occur within the Tree Protection Zone of trees identified for retention without prior notification to the Certifier or Council (where a certifier is not required) or under supervision of a project arborist. If supervision by a project arborist is selected, certification of supervision must be provided to (the Certifier or Council (where a certifier is not required) within 14 days of completion of trenching works.
	Condition reason: To protect trees during the carrying out of site work
47.	Site Maintenance While demolition work is being carried out, the following requirements, as specified in the approved demolition management plan, must be maintained until the demolition work and demolition waste removal are complete: <ul style="list-style-type: none"> a) Protective fencing and any hoardings to the perimeter on the site;

	b) Access to and from the site; c) Construction traffic management measures; d) Protective measures for on-site tree preservation and trees in adjoining public domain; e) Onsite temporary toilets; f) A garbage container with a tight-fitting lid.
	Condition reason: To protect workers, the public and the environment.
48.	Handling of Asbestos During Demolition While demolition work is being carried out, any work involving the removal of asbestos must comply with the following requirements: a) Only an asbestos removal contractor who holds the required class of Asbestos Licence issued by SafeWork NSW must carry out the removal, handling and disposal of any asbestos material; b) Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW Environment Protection Authority to accept asbestos waste; and c) Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m ² or more of asbestos sheeting must be registered with the EPA online reporting tool WasteLocate.
	Condition reason: To ensure that the removal of asbestos is undertaken safely and professionally.

REMEDIATION WORK DURING WORKS

49.	Contamination Assessment & Site Remediation While remediation work is occurring, the recommendations of the Preliminary and Detailed Site Investigation by Australian Ground Sciences (referenced as 23333ER dated 11 August 2023) are to be implemented.
	Condition reason: To protect health safety and environment

ON COMPLETION OF WORKS

50.	Validation report On completion of works, a validation report shall be submitted to Council's Manager – Environment and Health and the Certifying Authority (if not Council). The validation report must include the following: a) The degree of contamination originally present; b) The type of remediation that has been completed; and c) A statement which clearly confirms that the land is suitable for the proposed use
	Condition reason: To ensure controls are in place for contamination management

BUILDING WORK GENERAL CONDITIONS

51.	External Finishes
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	<p>During occupation and ongoing use of the development, the external finishes and colours shall be in accordance with the details submitted with the development application and approved with this consent.</p> <p>Condition reason: To ensure quality built form of development.</p>
52.	<p>Management of Surface Drainage</p> <p>Stormwater, surface water or seepage from the development shall be collected by a subsurface/surface drainage system which is to be connected to a suitable system of disposal. The development, either during construction or upon completion, must not impede or divert natural surface water and the system of drainage must not cause a nuisance to adjoining properties.</p> <p>Condition reason: To ensure the development adequately manages stormwater runoff.</p>
53.	<p>Protection of Public Infrastructure</p> <p>During works, Council must be notified of any damage to public infrastructure caused by the development. Adequate protection must be provided prior to work commencing and maintained during building operations. Any damage caused must be made good, to the satisfaction of Council, before an Occupation Certificate can be issued. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site.</p> <p>Condition reason: To document any damaged to public infrastructure during construction and subsequently any damage is to be made good prior to Occupation Certificate.</p>
54.	<p>Vehicular Access and Parking</p> <p>Before the issue of the relevant construction certificate, a suitably qualified engineer must review the plans which relate to parking facilities and provide written evidence, to the certifier's satisfaction that the formation, surfacing and drainage of all driveways, parking modules, circulation roadways, sight distance and ramps/circular ramps have been design and construction complying are in accordance with:</p> <ul style="list-style-type: none"> a) AS/ NZS 2890.1 b) AS/ NZS 2890.6 c) AS 2890.2 d) DCP Part C Section 1 – Parking e) Council's Driveway Specifications <p>Where conflict exists, the Australian Standard must be used.</p> <p>The following must be provided:</p> <ul style="list-style-type: none"> f) 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. g) All driveways and car parking areas must be separated from landscaped areas by a low-level concrete kerb or wall. h) 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. i) All driveways and car parking areas must be graded, collected, and drained by pits and pipes to a suitable point of legal discharge. j) As per redline mark up, car space 8 is to be a turning bay.

	<p>k) Convex mirrors to be installed in the southern parking aisle of the basement level.</p> <p>l) “Staff Access Only” signs to be overhead to drivers to ensure parents do not turn left into the southern aisle.</p> <p>m) The centre plan of management is to address southern aisle car park vehicles movements to reduce the potential of conflict associated with cars in this location.</p> <p>These requirements shall be reflected on the Construction Certificate plans and supporting documentation before the issue of a construction certificate.</p> <p>Condition reason: To ensure parking facilities are designed in accordance with the Australian Standard and Council’s DCP.</p>
55.	<p>Vehicle Crossing Application</p> <p>Before the issue of any construction certificate, the consent holder must lodge a vehicular crossing application with council. Each driveway requires the lodgement of a separate gutter and footpath crossing application, accompanied by the applicable fee as per Council’s Schedule of Fees and Charges.</p> <p>Driveways entry points must be located clear of all utility services. It is recommended that discussion be held with the relevant authorities before construction works commence. Council does not accept any responsibility towards these services. The applicant is to arrange with the appropriate service provider for any above ground service riser or access point to be constructed clear of any proposed or existing pedestrian footways, and if possible, located in recessed unobtrusive locations. Should any service provider require and/or insist the applicant/developer build a service riser that would create an obstruction and pose a potential safety hazard, then the applicant/developer should refer the request to Council for negotiation directly with the Service Network Authority.</p> <p>NOTE: The receipt shall be provided to the Certifier as evidence of lodgement.</p> <p>Condition reason: To ensure that the site has adequate access, and the vehicular crossing is not classing with other services.</p>
56.	<p>Section 138 Works</p> <p>A S138 Roads Act application, including the payment of application and inspection fees, has been lodged with, and approved by The Hills Shire Council (being the Roads Authority under the Roads Act).</p> <p>Engineering plans are to be prepared in accordance with the development consent, Council’s Design Guidelines Subdivisions/ Developments and Works Specifications Subdivisions/ Developments, Austroad Guidelines and best engineering practice.</p> <p>Before the issue of a construction certificate or a subdivision work certificate, whichever precedes first/earlier, the consent holder must provide a copy of the approved S138 Roads Act to the certifier.</p> <p>Note: Where The Hills Shire Council is the Certifying Authority for the development the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.</p> <p>Condition reason: To ensure that council will assess and approve public roads or any other land under the care and control of Council.</p>
57.	<p>Recycled Water</p> <p>Before the issue of a construction certificate or a subdivision works certificate, whichever precedes first/earlier, the consent holder must submit the written evidence from Sydney Water to the Registered Principal Certifier. These requirements shall be reflected on the Construction Certificate plans and supporting documentation.</p> <p>Condition reason: This condition mitigates the impact on the watercourse and the environment.</p>

58.	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.
	Condition reason: To protect the roads.

BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

59.	Onsite Stormwater Detention – Hawkesbury River Catchment Area
	Before the issue of a construction certificate or a subdivision work certificate, whichever precedes first/earlier, a suitably qualified civil engineer must prepare Onsite Stormwater Detention/Stormwater plan and provide written certification on the approved plans to satisfy the certifier that: Onsite Stormwater Detention (OSD) has been designed in accordance with Council's adopted policy for the Hawkesbury River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook, with amended parameters for the site storage requirement and permissible site discharge.
	<ol style="list-style-type: none"> 1. The Stormwater Management Plan prepared by Capital Engineering Consultants Project Number SW23034 Revision E dated 27/03/24 is for development application purposes only and is not to be used for construction. 2. The design and construction of the OSD system must be approved by either Council or an accredited certifier. A Design Compliance Certificate (DCC) certifying the detailed design of the OSD system can be issued by Council. The following must be included with the documentation approved as part of any Construction Certificate: <ol style="list-style-type: none"> a) Design/ construction plans prepared by an accredited OSD designer. b) A completed OSD Drainage Design Summary Sheet. c) Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes. d) A completed OSD Detailed Design Checklist. e) A maintenance schedule.
	Condition reason: To ensure runoff from the development do not impact local stormwater systems and waterways.
60.	Security Bond – Road Pavement and Public Asset Protection
	The applicant must provide a security bond of \$198,720 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 \$120.00 per square metre based on the road frontage of the subject site plus an additional 50m on either side 138m multiplied by the width of the road 12m.

	<p>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.</p> <p>This requirement shall be reflected on the Construction Certificate plans and supporting documentation. The bond must be lodged with Council before the issue of a construction certificate or a subdivision work certificate, whichever precedes first/earlier.</p> <p>Condition reason: To ensure any damage to public infrastructure is rectified</p>
61.	<p>Security Bond – External Works</p> <p>The consent holder must provide 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.</p> <p>The bond is refundable upon written application to Council and is subject to all work being completed to Council's satisfaction.</p> <p>This requirement shall be reflected on the Construction Certificate plans and supporting documentation. The bond must be lodged with Council before the issue of a construction certificate or a subdivision work certificate, whichever precedes first/earlier.</p> <p>Condition reason: To allow release of securities and authorise Council to use the security deposit to complete works to its satisfaction</p>
62.	<p>Engineering Works and Design</p> <p>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.</p> <p>Engineering works can be classified as either "subdivision works" or "building works".</p> <p>Works within an existing or proposed public road or works within an existing or proposed public reserve can only be approved, inspected and certified by Council.</p> <p>Depending on the development type and nature and location of the work the required certificate or approval type will differ. The application form covering these certificates or approvals is available on Council's website and the application fees payable are included in Council's Schedule of Fees and Charges.</p> <p>The concept engineering plan prepared by Capital Engineer Consultants Revision E is for development application purposes only and is not to be used for construction. The design and construction of the engineering works listed below must reflect the concept engineering plan and the conditions of consent. Before the issue of a construction certificate or a subdivision work certificate, whichever precedes first/earlier, a suitably qualified civil engineer must review the Engineering design associated with this development and provide written certification on the approved plans to satisfy the certifier that:</p> <p>a) Footpath Verge Formation</p> <p>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.</p> <p>b) Disused Layback/ Driveway Removal</p>

	<p>All disused laybacks and driveways must be removed and replaced with full kerb and gutter together with the restoration and turfing of the adjoining footpath verge area.</p> <p>c) Earthworks/ Site Regrading</p> <p>Earthworks and retaining walls are limited to those locations and heights shown on the concept engineering plan prepared by Capital Engineer Consultants Revision E. Where earthworks are not shown on the approved plan the topsoil within lots must not be disturbed. Retaining walls between lots must be located on the high side lot that is being retained, save the need for easements for support on the low side lot adjacent.</p> <p>d) Water Sensitive Urban Design Elements</p> <p>Water sensitive urban design elements are to be located generally in accordance with the plans and information submitted with the application.</p> <p>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. The design must be accompanied, informed and supported by detailed water quality and quantity modelling. The modelling must demonstrate a reduction in annual average pollution export loads from the development site in line with the following environmental targets:</p> <ul style="list-style-type: none"> • 90% reduction in the annual average load of gross pollutants • 85% reduction in the annual average load of total suspended solids • 65% reduction in the annual average load of total phosphorous • 45% reduction in the annual average load of total nitrogen <p>All model parameters and data outputs are to be provided.</p> <p>Condition reason: To ensure that the engineering design associated with this development have been designed and completed in accordance with Australian standards, Council's relevant DCP and Council's Design Guidelines Subdivisions/ Developments and Works Specifications Subdivisions/ Developments</p>
63.	<p>Acoustic Requirements</p> <p>Before the issue of a construction certificate, detailed plans and specifications are to be submitted to the certifier that demonstrate that the recommendations of the amended Acoustic Report prepared by Renzo Tonin & Associates, referenced as TN106-01F02 DA acoustic report (r3) and dated 16 January 2024 have been implemented. In particular:</p> <p>a) The proposed noise mitigation measures outlined in Section 5.2, Table 6.1 and the locations of acoustic barriers and window glazing as shown in Appendix D.</p> <p>Condition reason: To protect the acoustic amenity of the local area and of the development.</p>
64.	<p>Access and Loading for Waste Collection</p> <p>Before the issue of a construction certificate, construction plans satisfied by the Certifier must demonstrate waste vehicle access and loading facilities designed and provided on site in accordance with AS 2890 for the standard 6.4m long Small Rigid Vehicle (minimum 2.8m clear vertical clearance exception) at minimum. The following requirements must also be satisfied:</p> <p>a) All manoeuvring areas for waste collection vehicles must have a minimum clear vertical clearance of 2.8m. Any nearby areas where the clear headroom is less than 2.8m must have flexible striker bars and warning signs as per AS 2890.1.</p> <p>b) All manoeuvring and loading areas for waste collection vehicles must be clearly and permanently line marked, signposted, and maintained.</p> <p>c) Pedestrian paths around the designated waste collection areas must be clearly and permanently line marked, signposted, and maintained.</p>

	<p>d) The requirement for reversing on site must be limited to a single reverse entry into the designated waste service bay (typical three-point turn).</p> <p>e) The designated waste service bay must allow additional space servicing of bins.</p> <p>f) The loading area must have a sufficient level of lighting and have appropriate signage. such as “waste collection loading zone”, “keep clear at all times” and “no parking at any time”.</p> <p>Condition reason: To ensure safe and adequate loading facilities are provided for the waste vehicle to enter the site and service all waste collections.</p>
65.	<p>Construction of Waste Storage Area</p> <p>Before the issue of a construction certificate, construction plans are to be submitted to the certifier that demonstrate the waste storage areas are designed and constructed in accordance with the following requirements:</p> <p>a) The area must provide adequate storage facility for the minimum number of bins associated with the development.</p> <p>b) The layout of the waste storage area must ensure that each bin is easily accessible and manoeuvrable in and out of the areas. All internal walkways must be at least 1.5m wide.</p> <p>c) The walls of the waste storage area must be constructed of brickwork.</p> <p>d) The floor of the waste storage area must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer. The rooms must not contain ramps and must be roofed (if located external to the building).</p> <p>e) The waste storage area must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to allow the most direct access to the bins by collection contractors.</p> <p>f) All doors of the waste storage area, when fully opened, must be flush with the outside wall(s) and must not block or obstruct car park aisles or footways. All doors must be able to be fixed in position when fully opened.</p> <p>g) The waste storage area must be ventilated. Mechanically ventilated waste storage areas must not be connected to the same ventilation system supplying air to the internal areas of the childcare centre.</p> <p>h) The waste storage area must be provided with a hose tap (hot and cold mixer), connected to a water supply. If the tap is located inside the waste storage area(s), must not conflict with the space designated for the placement of bins.</p> <p>i) The waste storage area must be provided with internal lighting.</p> <p>j) The maximum grade acceptable for moving bins for collection purposes is 5%.</p> <p>k) The waste storage area must have appropriate signage mounted in a visible location on internal walls and are to be permanently maintained by Owners corporation.</p> <p>Condition reason: To ensure all developments provide adequate storage space for all bins allocated to the site and to promote efficient waste management with bins being out of site from public view or neighbour properties.</p>

66.	<p>Erosion and Sediment Control Plan</p> <p>Before the issue of a construction certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Certifier:</p> <p>a) Council’s relevant development control plan,</p> <p>b) the guidelines set out in the NSW Department of Housing manual ‘Managing Urban Stormwater: Soils and Construction Certificate’ (the Blue Book) (as amended from time to time), and</p> <p>c) the ‘Do it Right On-Site, Soil and Water Management for the Construction Industry’ (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).</p> <p>Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways.</p>
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67.	Preparation of Construction and Fit Out Plans for Food and Drink Premises
	<p>Before the issue of a construction certificate, detailed plans of all food and beverage preparation, serving and storage areas (including for perishable stock, waste, chemicals and personal belongings) must be prepared by a suitably qualified person.</p> <p>The detailed plans must be prepared in accordance with the following editions in force on the date of determination and provided to the certifying authority:</p> <ul style="list-style-type: none"> a) Food Standards Code (Australia) and Food Safety Standard 3.2.3 – Food Premises and Equipment b) Food Act 2003 and Food Regulation 2015 c) Australian Standard 4674:2004 :Design, Construction and Fit-out of Food Premises. In particular: walls are to be of solid construction, joinery and equipment is to be on solid plinths or legs minimum 150mm high, a commercial dishwasher is to be installed, handsfree hand basins to be provided within 5 metres of any food preparation area. d) Plumbing Code of Australia and Australian Standard/New Zealand Standard AS/NZS 3500 series on Plumbing and Drainage e) Sydney Water commercial trade wastewater requirements for food premises, and f) any relevant Water Services Association of Australia codes of practice, guidelines, policies and requirements.
	Condition reason: To ensure detailed construction and fit out plans are submitted which comply with the relevant standards.

BEFORE WORK COMMENCES

68.	Sydney Water Building Plan Approval
	<p>Before building work commences, a building plan approval must be obtained from Sydney Water Tap in™ to ensure that the approved development will not impact Sydney Water infrastructure.</p> <p>A copy of the building plan approval and receipt from Sydney Water Tap in™ (if not already provided) must be submitted to the Principal Certifier upon request prior to works commencing.</p> <p>Please refer to the website http://www.sydneywater.com.au/tapin/index.htm, Sydney Water Tap in™, or telephone 13 20 92.</p>
	Condition reason: To ensure compliance with Sydney Water requirements.
69.	Stabilised Access Point
	<p>Before building work commences, a stabilised all weather access point is to be provided 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).</p>
	Condition reason: To ensure construction sites are managed properly.
70.	Toilet Facilities

	<p>Before building work commences, toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.</p> <p>Each toilet provided:</p> <ul style="list-style-type: none"> a) must be a standard flushing toilet, and b) must be connected: <ul style="list-style-type: none"> i. to a public sewer, or ii. if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or iii. if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the council.
	<p>Condition reason: To ensure there are amenities provided to workers on site.</p>
71.	<p>Public Infrastructure Inventory Report</p> <p>Before works commencing on site the Principal Contractor must get a public infrastructure inventory report 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:</p> <ul style="list-style-type: none"> a) Planned construction access and delivery routes; and b) Dated photographic evidence of the condition of all public assets.
	<p>Condition reason: To document the condition of public infrastructure prior to works commencing.</p>
72.	<p>Traffic Control Plan</p> <p>Before the works commence on site a person with the relevant accreditation must complete and approve/sign a Traffic Control relevant to the site. A copy of the approved plan must be submitted to Council before being implemented.</p> <p>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.</p>
	<p>Condition reason: To Ensure safe movement of vehicles around/past the site</p>
73.	<p>Transport for New South Wales Traffic Control Plan and Works Approval</p> <p>Before the works commence on site a person with the relevant accreditation must complete and approve/sign a Traffic Control Plan relevant to the site. A copy of the approved plan must be submitted to Council before being implemented.</p> <p>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.</p>
	<p>Condition reason: To ensure internal works appropriately tie into levels/approvals for adjacent regionally significant works</p>
74.	<p>Erection of Signage – Supervision of Work</p> <p>Before works commencing on site the Certifier is to ensure a sign is erected in a prominent position displaying the following information:</p>

	<ul style="list-style-type: none"> • The name, address and telephone number of the Principal Certifying Authority; • The name and telephone number (including after hours) of the person responsible for carrying out the works; • That unauthorised entry to the work site is prohibited. <p>This signage must be maintained while the work is being carried out and must be removed upon completion.</p> <p>Condition reason: To address requirements Environmental Planning and Assessment Regulations 2021.</p>
75.	<p>Tree Protection Fencing</p> <p>Before any work begins on the site, tree protection fencing must be in place around trees or groups of trees nominated for retention. The location of fencing shall be as per the Tree Protection Plan within the Arboricultural Impact Assessment prepared by treeREPORT Arboricultural Consulting.</p> <p>Stockpiling of materials, placement of fill, parking of vehicles, compaction of soil, or washing of cement, other chemicals or fuel contaminants shall not occur within the designated root protection zone.</p> <p>The location of tree protection fencing can only be altered by the Project Arborist. The temporary relocation or removal of tree protection fencing to undertake works within the TPZs of trees to be retained is strictly to be undertaken under supervision of the Project Arborist.</p> <p>Condition reason: To protect trees during the carrying out of site work.</p>
76.	<p>Tree Protection Signage</p> <p>Before any work begins on the site, a Tree Protection Zone sign must be attached to the tree protection fencing stating “Tree Protection Zone No Access” (The lettering size on the sign shall comply with AS1319). Access to this area can only be authorised by the project arborist or site manager.</p> <p>Condition reason: To protect trees during the carrying out of site work.</p>
77.	<p>Mulching within Tree Protection Zone</p> <p>Before any work begins on the site, all areas within the Tree Protection Zone are to be mulched with composted leaf mulch to a depth of 100mm.</p> <p>Condition reason: To protect trees during the carrying out of site work.</p>
78.	<p>Discontinuation of Domestic Waste Services</p> <p>Before the commencement of works, an arrangement for the discontinuation of all current domestic waste services on the site must be organised with Council’s Customer Service Centre. This service must be cancelled before demolition works commence or where the site ceases to be occupied during works, whichever comes first. No bins provided as part of the domestic waste service are to remain on site for use by construction workers, unless previous written approval is obtained from Council.</p> <p>Condition reason: To ensure that any domestic waste service that is active onsite is cancelled and returned to Council prior to works commencing. Bins must be returned to prevent the misuse and presence of contamination.</p>
79.	<p>Dilapidation report</p> <p>Before any site work commences, a dilapidation report must be prepared by a suitably qualified engineer detailing the structural condition of adjoining buildings, structures or works and public land, to the satisfaction of the Principal Certifier.</p> <p>Where access has not been granted to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the satisfaction of the Principal Certifier, that all reasonable steps were taken to obtain access to the adjoining properties.</p>

	No less than seven days before any site work commences, adjoining building owner(s) must be provided with a copy of the dilapidation report for their property(ies) and a copy of the report(s) must be provided to council (where council is not the principal certifier) at the same time.
	Condition reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report

DURING BUILDING WORKS

80.	Landscaping Works
	During building works, any required landscaping works, associated plantings and the construction of any retaining walls are to be undertaken generally in accordance with the approved plans.
	Condition reason: To ensure compliance with the approved landscaping plans.
81.	Location of Works
	During building works, any of the approved works (inclusive of any services, equipment and/or utilities), footings, walls, roof barges and guttering are to be constructed and contained wholly within the property boundaries. A survey report from a registered land surveyor may be required for confirmation of its location.
	Condition reason: To ensure no encroachment occurs onto the adjoining property.
82.	Roof Water Drainage
	During building works, gutters and downpipes and/or rainwater tank overflows are to be provided and connected to an approved discharge point (ie. kerb, inter-allotment drainage easement or OSD) upon installation of roof coverings.
	Condition reason: To minimise stormwater impacts on adjoining properties.
83.	Deepened Edge Beam
	During building works, the builder shall ensure that during construction all fill is contained within the deepened edge beam as shown on the approved plans. The deepened edge beam is to extend to natural ground level. No fill is to be placed to the exterior of the building unless otherwise shown on the approved plans.
	Condition reason: To maintain natural topography outside the building envelope and minimise the impact of the development to adjoining properties.
84.	Imported 'Waste Derived' Fill Material
	During building works only virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); or any other waste-derived material the subject of a resource recovery exemption under clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014 is permitted to be used as fill material. Any waste-derived material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Certifier.
	Condition reason: To ensure that fill is not contaminated.
85.	Notification of New Contamination

	<p>During building work, ground conditions must be monitored and when new evidence including, but not limited to, imported fill, buried building materials, asbestos, odour and/or staining, works are to immediately cease and Council's Manager- Environment and Health is to be notified.</p> <p>A site contamination investigation is to be carried out in accordance with the <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> and submitted to Council's Manager – Environment and Health for review.</p> <p>Approval from Council's Manager – Environment and Health must be obtained in writing prior to works recommencing on site.</p> <p>Condition reason: To ensure controls are in place for contamination management</p>
86.	<p>Construction Noise</p> <p>During building work, the emission of noise from the construction of the development shall comply with the <i>Interim Construction Noise Guideline published by the Department of Environment and Climate Change (July 2009)</i>.</p> <p>Condition reason: To protect residential amenity</p>
87.	<p>Rock Breaking Noise</p> <p>During building work and upon receipt of a justified complaint in relation to noise pollution caused by rock breaking. Rock breaking will only occur between the hours of 9am to 3pm, Monday to Friday. No rock breaking is to occur Saturday – Sunday and on public holidays.</p> <p>Details of noise mitigation measures and likely duration of the activity must be submitted to Council's Manager – Environment and Health within seven (7) days of receiving notice from Council.</p> <p>Condition reason: To minimise noise impacts on neighbouring properties</p>
88.	<p>Construction and Fit-out of food premises</p> <p>During building work, the design, construction and fit-out of the food premises must comply with the <i>Australian Standard 4674-2004 – Design, construction and fit-out of food premises</i> and the Food Standards Code (Australia).</p> <p>Note: Copies of <i>Australian Standard 4674-2004</i> 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.</p> <p>In particular:</p> <ul style="list-style-type: none"> walls are to be of solid construction joinery and equipment is to be on solid plinths or legs minimum 150mm high a commercial dishwasher is to be installed handsfree hand basins to be provided within 5m of any food preparation <p>Condition reason: To ensure the food premises complies with relevant food safety legislation and standards</p>
89.	<p>Mechanical ventilation in Food Premises</p> <p>During building work, exhaust hoods must be of stainless steel construction with an internal 50mm x 50mm gutter and unscrewable drainage plug at one corner. They must have removable grease filters for cleaning.</p> <p>Documentation shall be submitted to the principle certifying authority that the ventilation system has been installed and is operating in accordance with:</p> <p>a) <i>AS1668.1:2015 – The use of ventilation and air conditioning in buildings – Fire and smoke control in buildings</i>; and</p> <p>b) <i>AS1668.2:2012 – The use of ventilation and air-conditioning in buildings PART 2: mechanical ventilation in buildings</i>.</p> <p>Condition reason: To protect the amenity of the local area</p>
90.	<p>Acoustic Requirements</p> <p>During the building works the recommendations of the amended Acoustic Report prepared by Renzo Tonin & Associates, referenced as TN106-01F02 DA acoustic report (r3) and dated 16 January 2024 and submitted as part of the development application are to be implemented as part of this approval. In particular: The proposed noise mitigation measures outlined in Section 5.2, Table 6.1 and the locations of acoustic barriers and window glazing as shown in Appendix D.</p>

	Condition reason: To protect the amenity of the local area.
91.	Further Contamination Assessment During works, data gaps identified in the Preliminary and Detailed Site Investigation by Australian Ground Sciences (referenced as 23333ER dated 11 August 2023) are to be assessed. A copy of the assessment report must be submitted to Council's Manager – Environment & Health for approval. Condition reason: To ensure controls are in place for contamination management
92.	Retention of Trees While works are being carried out, only trees specifically identified for removal on the approved plans may be removed. Any remedial work is to be carried out in accordance with the Arboricultural Impact Assessment prepared by treeREPORT Arboricultural Consulting. Condition reason: To ensure retained trees are adequately protected during works.
93.	Project Arborist During site works, the Project Arborist must be on site to supervise any works within 20 meters of or within the Tree Protection Zone (TPZ). Supervision of the works shall be certified by the Project Arborist and a copy of such certification shall be submitted to the Principle Certifying Authority within 14 days of completion of the works. Condition reason: To protect trees during carrying out of site work
94.	Contaminated Waste During works, in accordance with the waste management plan, the generation, storage, transport, treatment or disposal of hazardous, industrial or Group A liquid waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997 and the NSW Department of Environment and Climate Change and Water (DECCW) waste tracking requirements. Condition reason: To ensure contaminated waste is safely stored, transported, and lawfully disposed of while protecting the surrounding environment and local amenity.
95.	Disposal of Surplus Excavated Material During works, in accordance with the waste management plan, the disposal of surplus excavated material is to be transported to a licensed facility. Receipts of all waste/ recycling tipping must be always kept onsite and produced in a legible form to any authorised officer of the Council who asks to see them. Condition reason: To ensure disposal of surplus excavated material is completed safely and in accordance with the Protection of the Environment Operations Act 1997.
96.	Implementation of the Site Management Plans While site work is being carried out: a) the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times, and b) a copy of these plans must be kept on site at all times and made available to council officers upon request. Condition reason: To ensure site management measures are implemented during the carrying out of site work.
97.	Procedure for Critical Stage Inspections While building work is being carried out, the work must not continue after each critical stage inspection unless the principal certifier is satisfied the work may proceed in accordance with this consent and the relevant construction certificate. Condition reason: To require approval to proceed with building work following each critical stage inspection.

ON COMPLETION OF WORKS

98.	Post-Construction Dilapidation Report
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	<p>After completion of all site work a post- construction dilapidation report must be prepared by a suitably qualified engineer, to the satisfaction of the Principal Certifier, detailing whether:</p> <ol style="list-style-type: none"> after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and where there has been structural damage to any adjoining buildings, that it is a result of the work approved under this development consent, and a copy of the post-construction dilapidation report must be provided to council (where council is not the principal certifier or a principal certifier is not required) and to the relevant adjoining property owner(s).
	<p>Condition reason: To identify any damage to adjoining properties resulting from site work on the development site.</p>
99.	<p>Repair of Infrastructure</p> <p>After completion of all site work:</p> <ol style="list-style-type: none"> any public infrastructure damaged as a result of the carrying out of work approved under this consent (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) must be fully repaired to the written satisfaction of council, and at no cost to council, or if the works in (a) are not carried out to council's satisfaction, council may carry out the works required and the costs of any such works must be paid as directed by council and in the first instance will be paid using the security deposit required to be paid under this consent.
	<p>Condition reason: To ensure any damage to public infrastructure is rectified.</p>

BEFORE ISSUE OF OCCUPATION CERTIFICATE

100.	<p>Section 73 Certificate</p> <p>Before the issue of an occupation certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation and submitted to the Principal Certifier.</p> <p>Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Development and Plumbing section of the web site www.sydneywater.com.au and then refer to Water Servicing Co-ordinator under "Developing Your Land" or telephone 13 20 92 for assistance.</p>
	<p>Condition reason: To ensure the development will be satisfactorily serviced by Sydney Water and that the requirements of Sydney Water have been complied with.</p>
101.	<p>Consolidation of Allotments</p> <p>Before the release of an Occupation Certificate any allotment(s) proposed to be consolidated into a single allotment must be consolidated. A copy of the registered plan must be submitted to Council</p>
	<p>Condition reason: To ensure any required consolidation is completed prior to occupation of the dwelling</p>
102.	<p>Creation of Restrictions / Positive Covenants</p> <p>Before the issue of an Occupation Certificate 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.</p>

	<p>a) Restriction/ Positive Covenant – Onsite Stormwater Detention</p> <p>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.</p> <p>b) Restriction/ Positive Covenant – Water Sensitive Urban Design</p> <p>The subject site must be burdened with a positive covenant that refers to the WSUD elements referred to earlier in this consent using the “water sensitive urban design elements” terms included in the standard recitals.</p> <p>Condition reason: To ensure appropriate restrictions, positive covenants and easements are created and legally binding to address, where relevant, conditions of consent.</p>
103.	<p>Public Infrastructure Inventory Report - Post Construction</p> <p>Before the release of an Occupation Certificate an updated public infrastructure inventory report must be prepared and submitted to Council.</p> <p>The updated report must identify any damage to public assets and the means of rectification for the approval of Council.</p> <p>Condition reason: To ensure protection and where required suitable remediation of public assets</p>
104.	<p>OSD System Certification</p> <p>Before the release of an Occupation Certificate the Onsite Stormwater Detention (OSD) system must be completed to the satisfaction of the Principal Certifying Authority (PCA).</p> <p>The following documentation is required to be submitted upon completion of the OSD system and prior to a final inspection:</p> <ul style="list-style-type: none"> a) Works as executed plans prepared on a copy of the approved plans; b) A certificate of hydraulic compliance (Form B.11) from a suitably qualified engineer or surveyor verifying that the constructed OSD system will function hydraulically; c) A certificate of structural adequacy from a suitably qualified structural engineer verifying that the structures associated with the constructed OSD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime. <p>Where Council is not the PCA a copy of the above documentation must be submitted to Council.</p> <p>Condition reason: To ensure completion of the OSD system in accordance with the approved plans and that the system has been constructed and is operations.</p>
105.	<p>Water Sensitive Urban Design Certification</p> <p>Before the issue of an Occupation Certificate the WSUD elements conditioned earlier in this consent must be constructed and operational. The following documentation must be submitted in order to obtain an Occupation Certificate:</p> <ul style="list-style-type: none"> a) WAE drawings and any required engineering certifications; b) Records of inspections; c) An approved operations and maintenance plan; and

	<p>d) 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.</p> <p>Where Council is not the PCA a copy of the above documentation must be submitted to Council..</p> <p>Condition reason: To ensure structure(s) associated with the treatment of stormwater to ensure the quality of water discharge from site is suitable to enter the downstream watercourse</p>
106.	<p>Performance/ Maintenance Security Bond</p> <p>Before the release of a Occupation certification the applicant must submit 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 \$10,000.00. The bond is refundable upon written application to Council and is subject to a final inspection.</p> <p>Condition reason: To ensure performance pf Public assets in accordance with Section 4.17(6) of Environmental Planning and Assessment Act 1979</p>
107.	<p>Completion of Engineering Works</p> <p>An Occupation Certificate must not be issued before the completion of all engineering works covered by this consent, in accordance with this consent.</p> <p>Condition reason: To ensure all engineering works are completed before an occupation certificate is issued.</p>
108.	<p>Acoustic - Compliance Report</p> <p>Before the issue of a Certificate, the acoustic consultant shall inspect and certify that the required noise attenuation components as recommended the amended Acoustic Report prepared by Renzo Tonin & Associates, referenced as TN106-01F02 DA acoustic report (r3) and dated 16 January 2024 have been installed. Written certification (including photographs of all attenuation measures) is to be provided to the Principal Certifier for their review and a copy of the report provided to Council's Manager – Environment and Health.</p> <p>Condition reason: To protect the amenity of the locate area</p>
109.	<p>Planting Requirements</p> <p>Before the issue of an occupation certificate, the principal certifier must be satisfied that 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. Any species that need substituting requires confirmation from Council.</p> <p>Condition reason: To ensure the approved landscaping works have been completed in accordance with the approved landscaping plan(s).</p>
110.	<p>Preservation of Survey Marks</p> <p>Before the issue of an occupation certificate, documentation must be submitted by a registered surveyor to the Principal Certifier, which demonstrates that:</p> <p>a) no existing survey mark(s) have been removed, damaged, destroyed, obliterated or defaced, or</p> <p>b) any survey mark(s) that were damaged, destroyed, obliterated or defaced have been re-established in accordance with the Surveyor General's Direction No. 11 – Preservation of Survey Infrastructure.</p> <p>Condition reason: To protect the state's survey infrastructure.</p>
111.	<p>Certification of acoustic measures</p> <p>Before the issue of an occupation certificate, a suitably qualified person must provide details demonstrating compliance to the principal certifier that the acoustic measures have been installed in accordance with the acoustic report approved under this consent</p>

	Condition reason: To protect the amenity of the local area
112.	Notice of food business Before the issue of an occupation certificate, council and any other appropriate enforcement agency must be notified of the food business in accordance with the NSW Food Act 2003 and the Australia New Zealand Food Standards Code – 3.2.2 – Food Safety Practices and General Requirements. Condition reason: To enable council to ensure compliance with the consent when the business is operating
113.	Food Premises Final Inspection Before the issue of an occupation certificate, the food premises 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. Condition reason: To enable council to ensure compliance with the Food Act 2003 before the business commences
114.	Completion of Landscape and Tree Works Before the issue of an occupation certificate, the principal certifier must be satisfied all landscape and tree-works have been completed in accordance with approved plans and documents and any relevant conditions of this consent. Condition reason: To ensure the approved landscaping works have been completed in accordance with the approved landscaping plan(s).

OCCUPATION AND ONGOING USE

115.	Offensive Noise During occupation and ongoing use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to “offensive noise” as defined under the provisions of the <i>Protection of the Environment Operation Act 1997</i> . Condition reason: To protect the amenity of the local area
116.	Noise Management Measures During occupation and ongoing use of the premises, the following noise management measures must be implemented as part of the operation of the childcare centre: a) No music should be played in any outdoor areas at any time. b) Toys and the like are not to be attached to any of the acoustic barriers. c) No play equipment within the outdoor play area is to be more than 0.5 metres from the ground level of the outdoor play area. d) Noise management signage is to be installed and maintained in prominent locations within the premises and the carpark advising attendees to please consider neighbours and minimise noise when entering and exiting the premises. e) All approved and installed acoustic attenuation measures are to be maintained at all times, in a manner that is consistent with the accepted acoustic report/s, the consent and so that the noise attenuation effectiveness is maintained for the life of the development. This includes but is not limited to: Acoustic barriers are to remain solid and gap free. f) The accepted noise management plan is to be kept on site and made available to Council Officers when requested. Condition reason: To protect the amenity of the local area
117.	Operational Noise Level Limits During occupation and ongoing use of the premises, the operational noise level limits for the development are as follows:

	<table><tr><th>Location of noise level compliance</th><th>Day (7am – 6pm)</th></tr><tr><td>R1, R6, R7, R8</td><td>58 dB(A)LAeq (15min)</td></tr><tr><td>R2 and R3</td><td>48 dB(A)LAeq (15min)</td></tr><tr><td>R4 and R5</td><td>55 dB(A)LAeq (15min)</td></tr></table>	Location of noise level compliance	Day (7am – 6pm)	R1, R6, R7, R8	58 dB(A)LAeq (15min)	R2 and R3	48 dB(A)LAeq (15min)	R4 and R5	55 dB(A)LAeq (15min)
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R1, R6, R7, R8	58 dB(A)LAeq (15min)								
R2 and R3	48 dB(A)LAeq (15min)								
R4 and R5	55 dB(A)LAeq (15min)								
	These noise level limits are to be complied with at all times when the premises is in operation.								
	Condition reason: To protect the amenity of the local area.								
118.	Final Acoustic Report Within three months from the issue of an Occupation Certificate or when the childcare centre is at 90% capacity (whichever one comes first), an acoustical compliance assessment is to be carried out by an appropriately qualified person, in accordance with the NSW EPA's - Industrial Noise Policy and submitted to Council's Manager - Environment and Health for consideration. This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report submitted with the application are effective in attenuating noise to an acceptable noise level and that the activities does not give rise to "offensive noise" as defined under the <i>Protection of the Environment Operation Act 1997</i> and that the project specific criteria conditioned in this consent can be met.								
	Condition reason: To protect the amenity of the local area								
119.	Landscaping Within six months of the issue on an occupation certificate, landscaping of the site shall be completed. The landscaping shall be in accordance with the approved plan and shall be maintained at all times in accordance with THDCP 2012 Part C Section 3 – Landscaping and the approved landscape plan. Any planting that has failed is to be replaced with species as per the approved landscape plans.								
	Condition reason: To ensure the approved landscaping works have been completed in accordance with the approved landscaping plans.								
120.	Waste and Recycling Collection Contract During the occupation and use, a private waste contract is to be in place with a licensed contractor for the removal and lawful disposal of all waste generated on site. Written evidence of a valid and current collection and disposal contract must be held on site at all times and produced in a legible form to an authorised officer of Council who asks to see it.								
	Condition reason: To ensure a private waste contractor is engaged with by commercial premises to lawfully remove all waste generated onsite.								
121.	Waste and Recycling Management During the occupation and use, all garbage and recyclable materials must be separated into dedicated waste collection containers and stored in a designated waste storage area(s), which must include provision for the storage of all waste generated on the premises between collections. Arrangements 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 places. Waste storage areas(s) must be kept clean and tidy, bins must be washed regularly, and contaminants must be removed from bins prior to any collection.								
	Condition reason: To ensure responsibility is placed upon the site's occupier or resident to management all waste generated on the site without it affected local amenity of neighbouring properties.								
122.	Commercial Waste and Recycling Collection During the occupation and use of the site, the site owner is to ensure that: a) All waste and recycling generated on the site is removed at regular intervals; b) Collection must occur during off-peak time periods within the approved operation hours of the site; c) Bins must not be placed on public property without the prior written approval of Council;								

	<p>d) Waste collection must not cause a nuisance or interfere with the amenity of the surrounding area; and</p> <p>e) Waste collection vehicles servicing the development are not permitted to reverse in or out of the site.</p>																											
	Condition reason: To protect amenity of locality.																											
123.	<p>Operating Hours</p> <p>During ongoing use of the premises, the hours of operation of the child care centre are restricted to:</p> <table><tr><td></td><td>From</td><td>To</td></tr><tr><td>Monday</td><td>7am</td><td>6pm</td></tr><tr><td>Tuesday</td><td>7am</td><td>6pm</td></tr><tr><td>Wednesday</td><td>7am</td><td>6pm</td></tr><tr><td>Thursday</td><td>7am</td><td>6pm</td></tr><tr><td>Friday</td><td>7am</td><td>6pm</td></tr><tr><td>Saturday</td><td colspan="2">Closed</td></tr><tr><td>Sunday</td><td colspan="2">Closed</td></tr><tr><td>Public holidays</td><td colspan="2">Closed</td></tr></table>		From	To	Monday	7am	6pm	Tuesday	7am	6pm	Wednesday	7am	6pm	Thursday	7am	6pm	Friday	7am	6pm	Saturday	Closed		Sunday	Closed		Public holidays	Closed	
	From	To																										
Monday	7am	6pm																										
Tuesday	7am	6pm																										
Wednesday	7am	6pm																										
Thursday	7am	6pm																										
Friday	7am	6pm																										
Saturday	Closed																											
Sunday	Closed																											
Public holidays	Closed																											
	Condition reason: To protect the amenity of the local area.																											
124.	<p>Maintenance of Wastewater and Stormwater Treatment Device</p> <p>During occupation and ongoing use of the building, all wastewater and stormwater treatment devices (including drainage systems, sumps and traps, and on-site detention) must be regularly maintained to remain effective and in accordance with any positive covenant (if applicable).</p> <p>Condition reason: To protect sewerage and stormwater systems.</p>																											
125.	<p>Managing noise</p> <p>During ongoing use of the premises, the premises must be operated in accordance with the acoustic report approved under this consent.</p> <p>Condition reason: To protect the amenity of the local area</p>																											

ATTACHMENT B – TRANSPORT FOR NSW COMMENTS

Transport for NSW

27 February 2024

TfNSW Reference: SYD24/00305/01
Council's Reference: 418/2024/JP



Mr Michael Edgar
General Manager
The Hills Shire Council
PO Box 7064
BAULKHAM HILLS NSW 2153

Attention: Madison Morris

AMENDED PLANS: PROPOSED CHILD CARE CENTRE 2-4 ACRES ROAD, KELLYVILLE

Dear Mr Edgar,

Reference is made to Council's correspondence dated 12 February 2024 seeking Transport for NSW (**TfNSW**) concurrence under section 138 of the *Roads Act, 1993* and comment under clauses 2.119 and 2.122 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* on amended plans submitted regarding the abovementioned Development Application (**DA**).

TfNSW has reviewed the amended plans and would provide concurrence under section 138 of the *Roads Act, 1993* for the proposed civil works on Windsor Road, subject to the relevant Planning Authority approval and the following requirements included in any Development Consent issued:

1. The redundant driveway on the Windsor Road boundary shall be removed and replaced with kerb and gutter to match existing. The design and construction of the kerb and gutter on Windsor Road shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to developerworks.sydney@transport.nsw.gov.au.

Detailed design plans of the proposed kerb and gutter are to be submitted to TfNSW for approval prior to the issue of a construction certificate and commencement of any road works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

2. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.

3. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

4. The Applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the above work, and as required by the various public utility authorities and/or their agents.

Level 4, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
PO Box 973 Parramatta CBD NSW 2124

OFFICIAL

W transport.nsw.gov.au

5. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre (TMC) for any works that may impact on traffic flows on Windsor Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

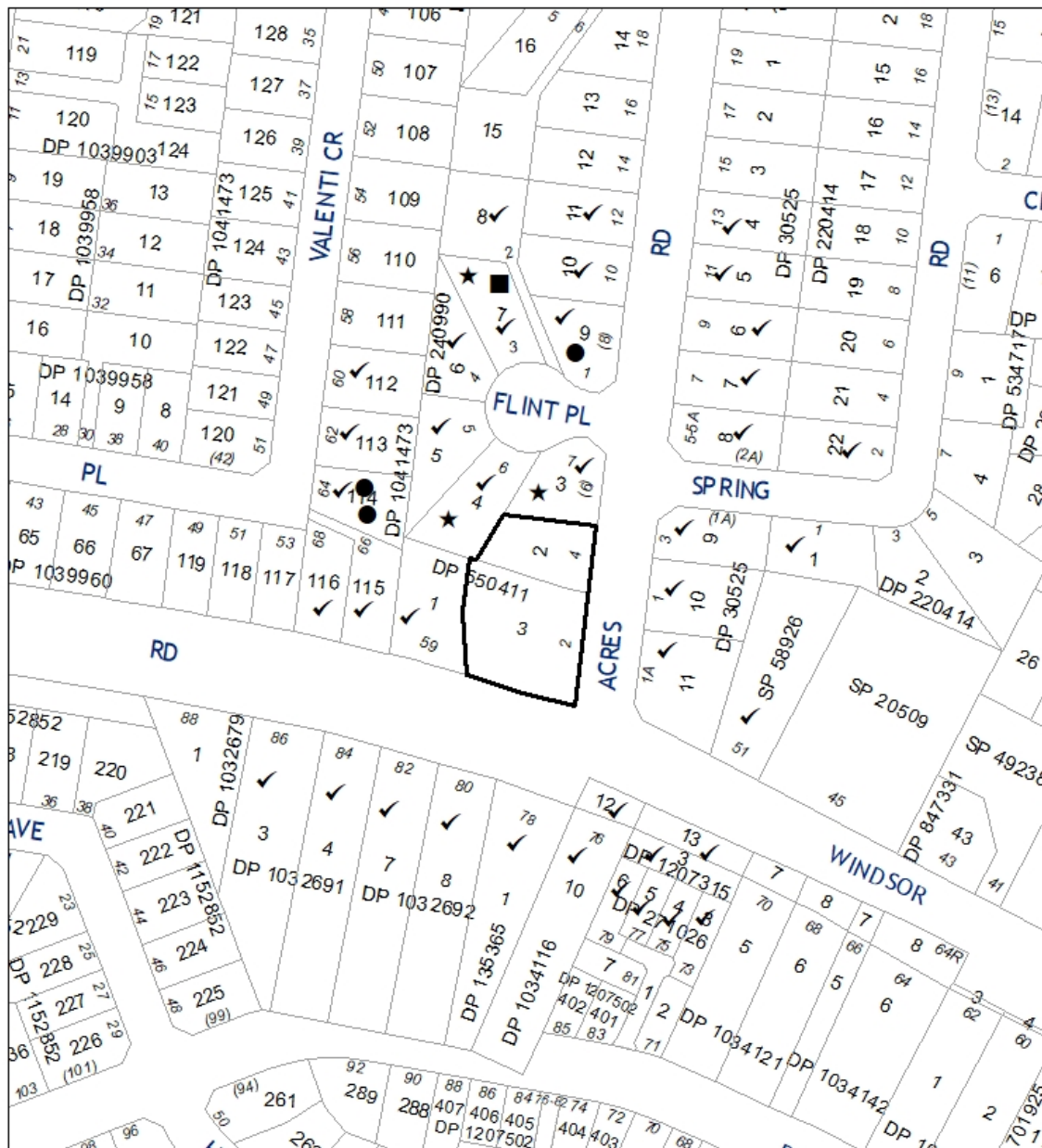
If you have any further inquiries in relation to this matter, Simon Turner, Land Use Planner, would be pleased to take your call on 8265 6363 or email: development.sydney@transport.nsw.gov.au.

Yours sincerely,



Brenden Pegg
Senior Manager Land Use Assessment Central and Western
Planning and Programs Greater Sydney Division

ATTACHMENT C – LOCALITY PLAN



- | | | | |
|--------------------------|---|---|--|
| <input type="checkbox"/> | SUBJECT SITE | ★ | SUBMISSIONS RECEIVED
SECOND NOTIFICATION PERIOD |
| ✓ | PROPERTIES NOTIFIED | ■ | SUBMISSION RECEIVED
THIRD NOTIFICATION PERIOD |
| ● | SUBMISSIONS RECEIVED
FIRST NOTIFICATION PERIOD | | |

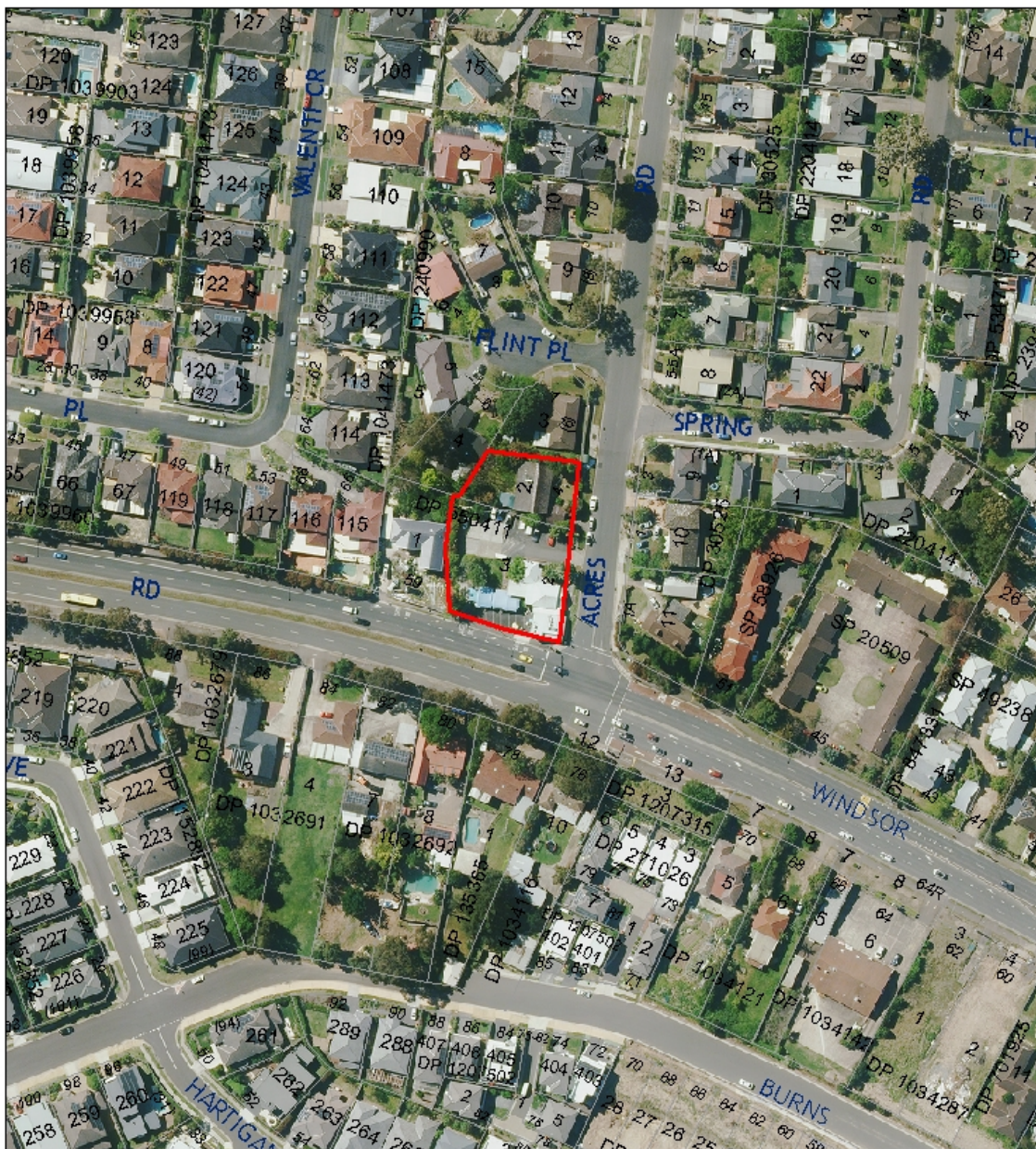
THE HILLS
Sydney's Garden Shire

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ATTACHMENT D – AERIAL MAP



SUBJECT SITE

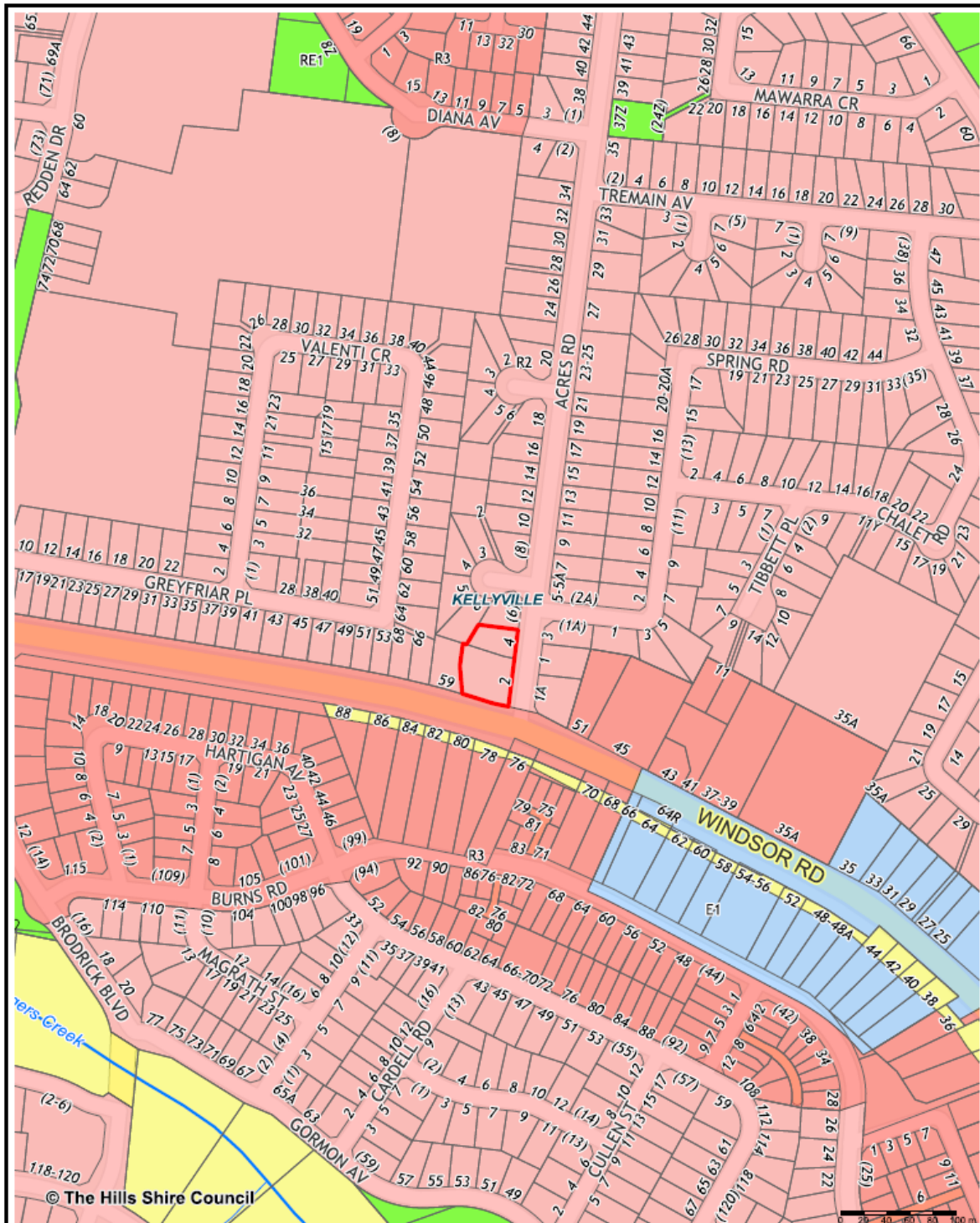
THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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ATTACHMENT E – LEP 2019 ZONING MAP



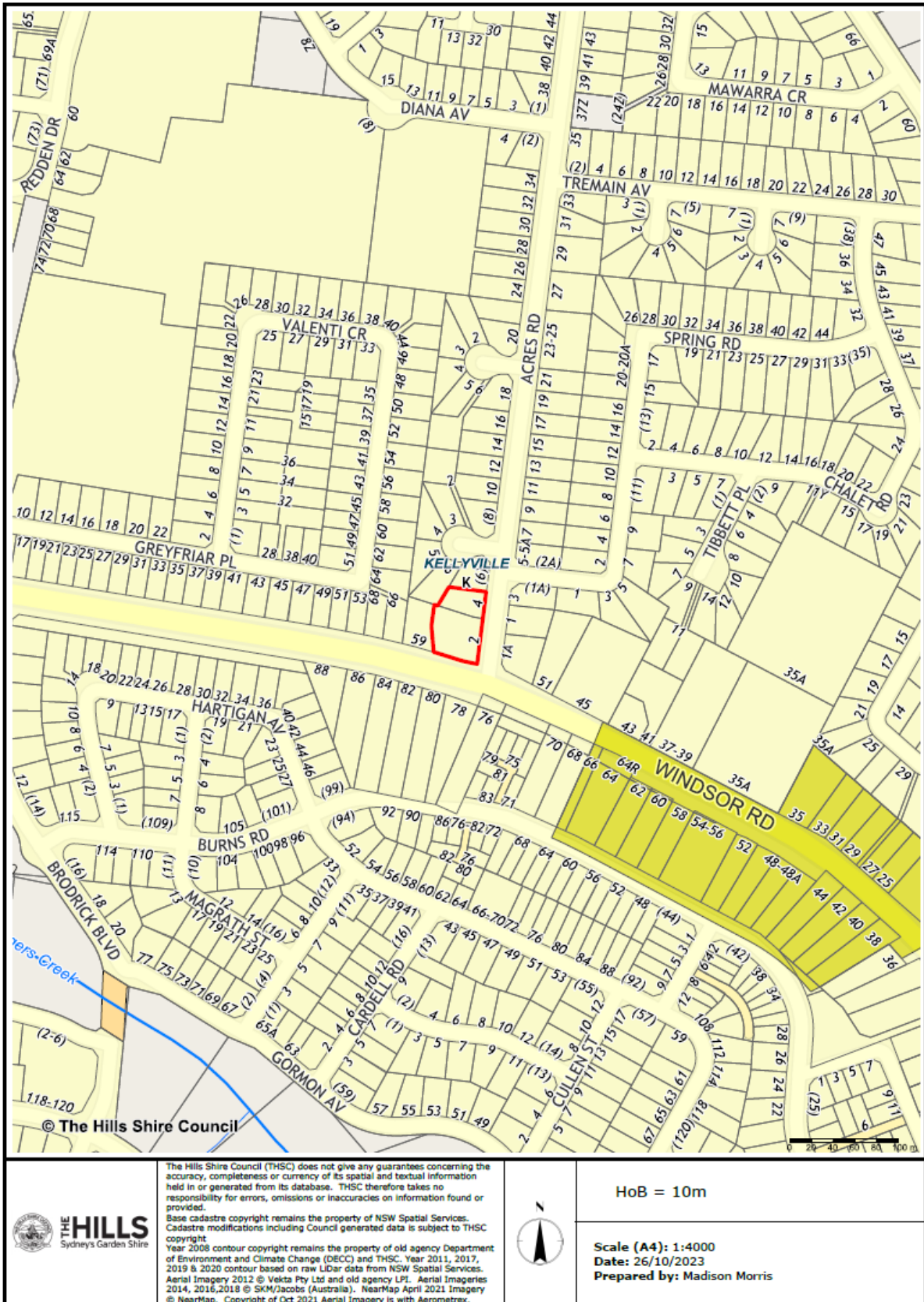
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Base cadastre copyright remains the property of old agency Department of Environment and Climate Change (DECC) and THSC. Year 2011, 2017, 2019 & 2020 contour based on raw LIDAR data from NSW Spatial Services. Aerial Imagery 2012 © Vektia Pty Ltd and old agency LPI. Aerial Imagery 2014, 2016, 2018 © SKM/Jacobs (Australia). NearMap April 2021 Imagery © NearMap. Copyrights of Oct 2021 Aerial Imagery is with Aerometrix.

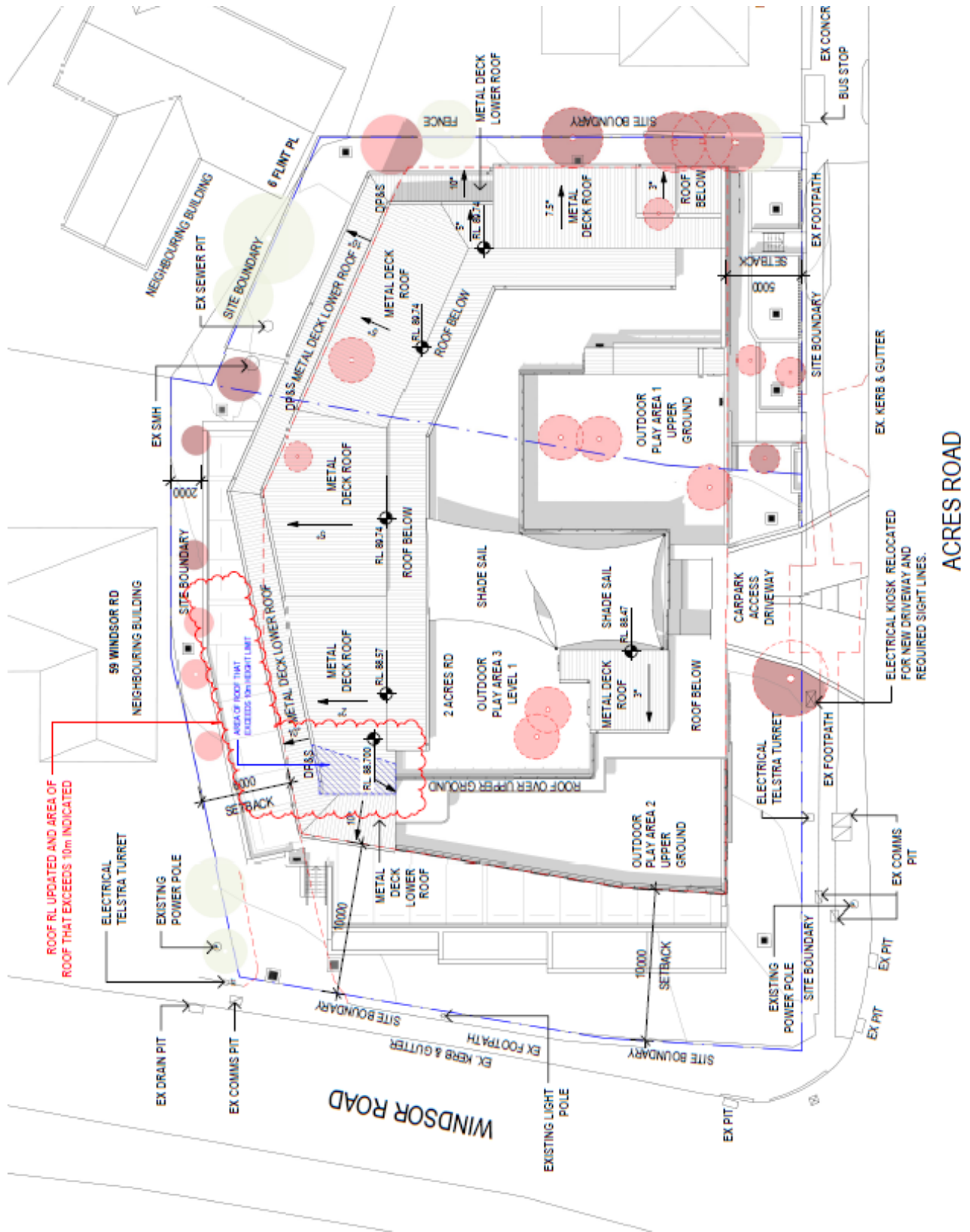


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Date: 26/10/2023
Prepared by: Madison Morris

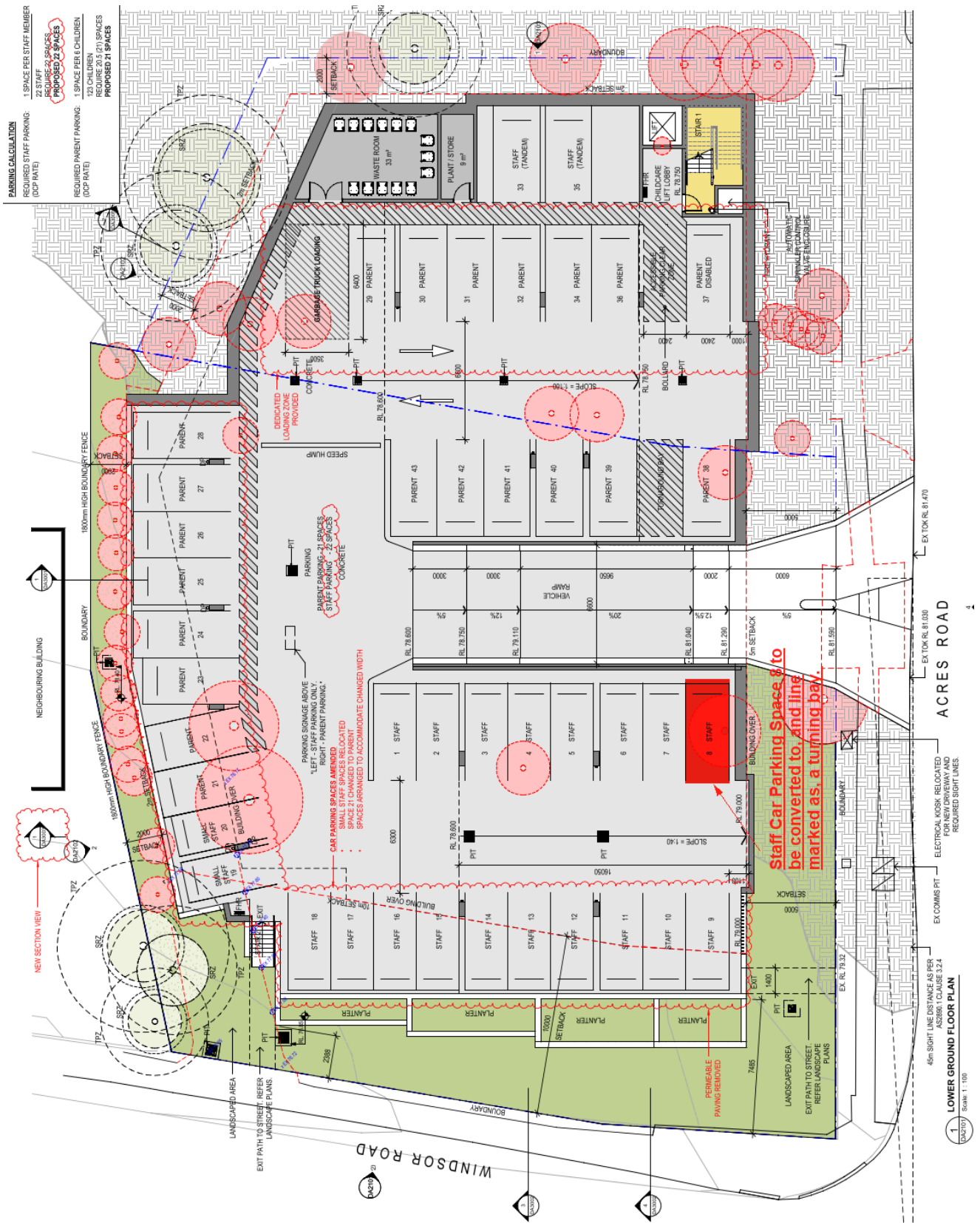
ATTACHMENT F – LEP 2019 HEIGHT OF BUILDINGS MAP



ATTACHMENT G – SITE PLAN



ATTACHMENT H – FLOOR PLANS

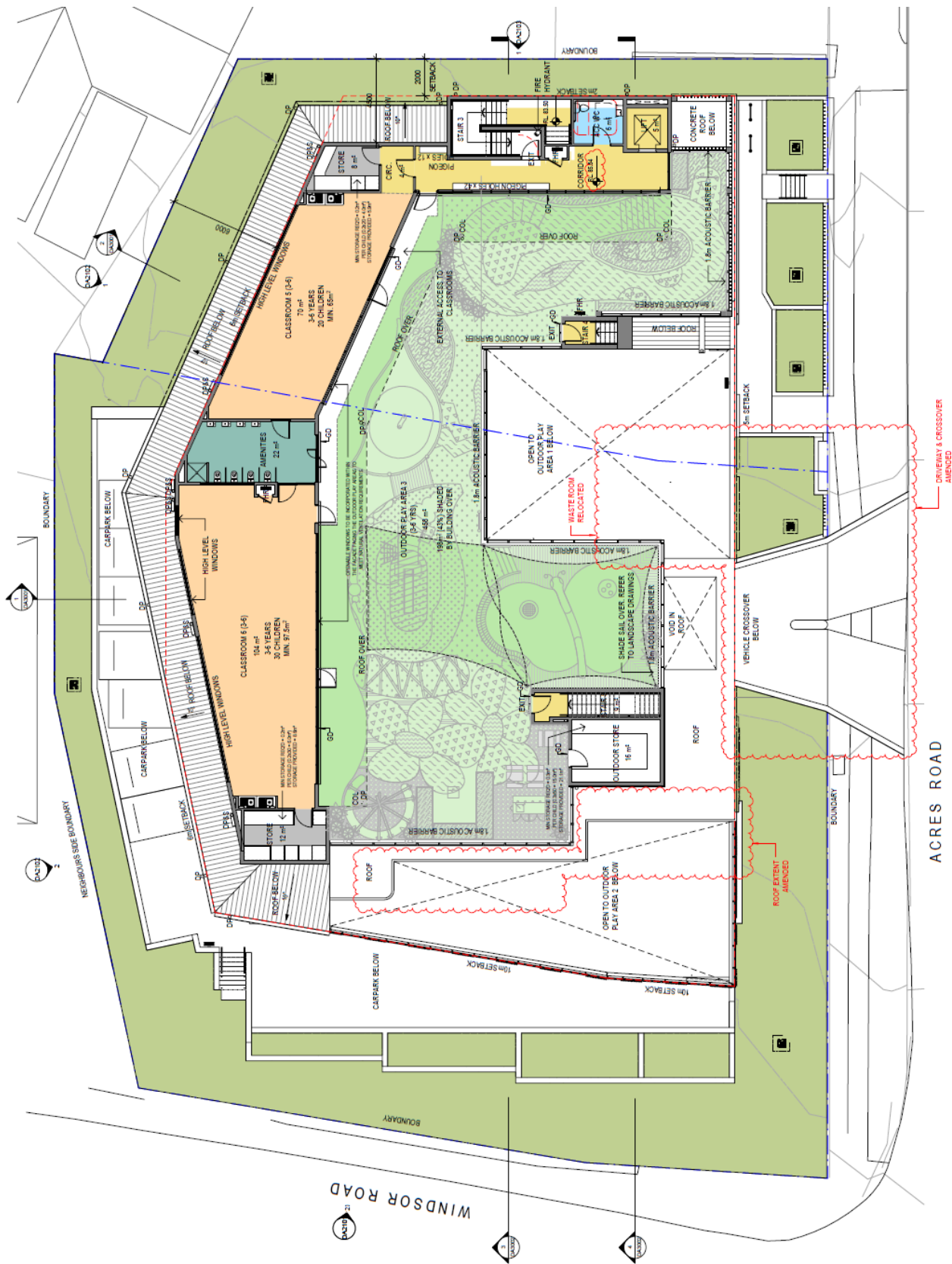


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DEVELOPMENT APPLICATION

CROSSOVERS
ACRES ROAD

1 UPPER LEVEL PLAN
Scale: 1 : 100

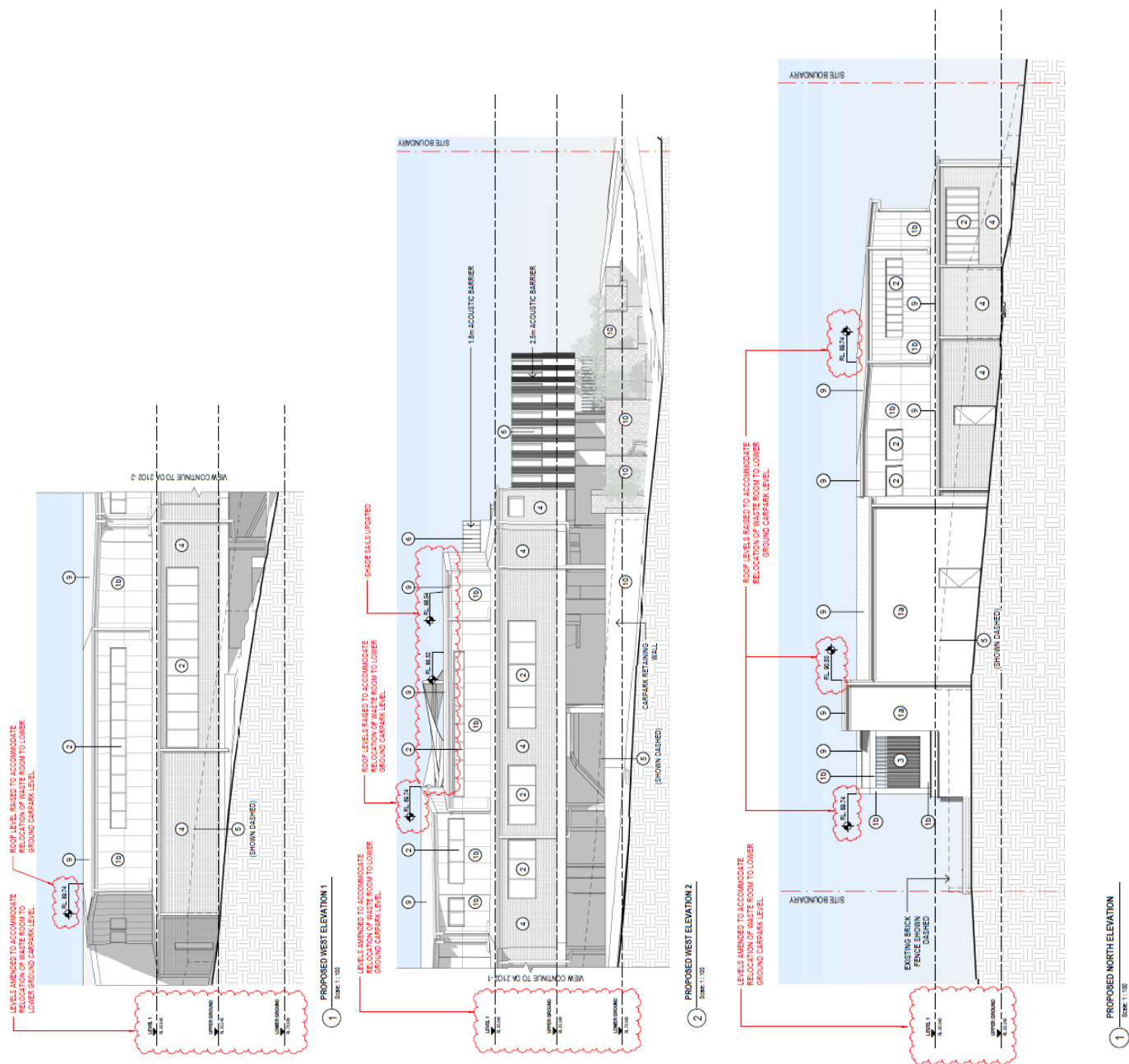


1 LEVEL 1 PLAN
04/10/20 Scale 1:100

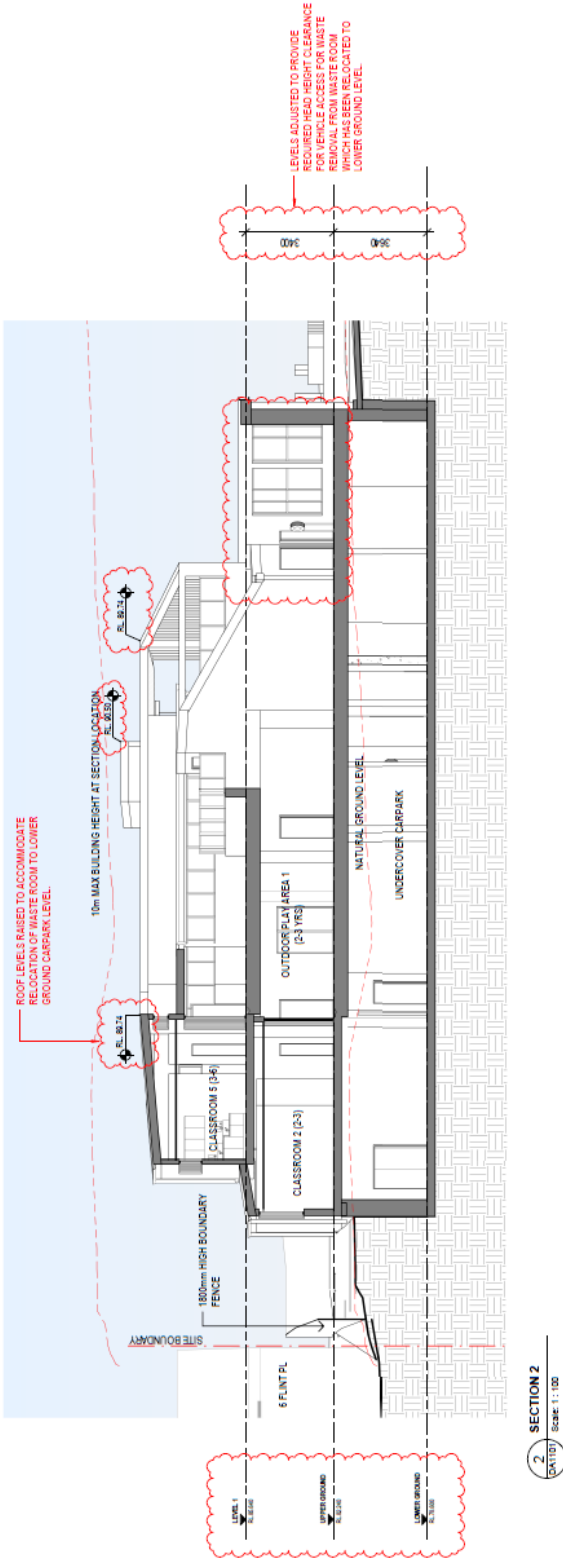
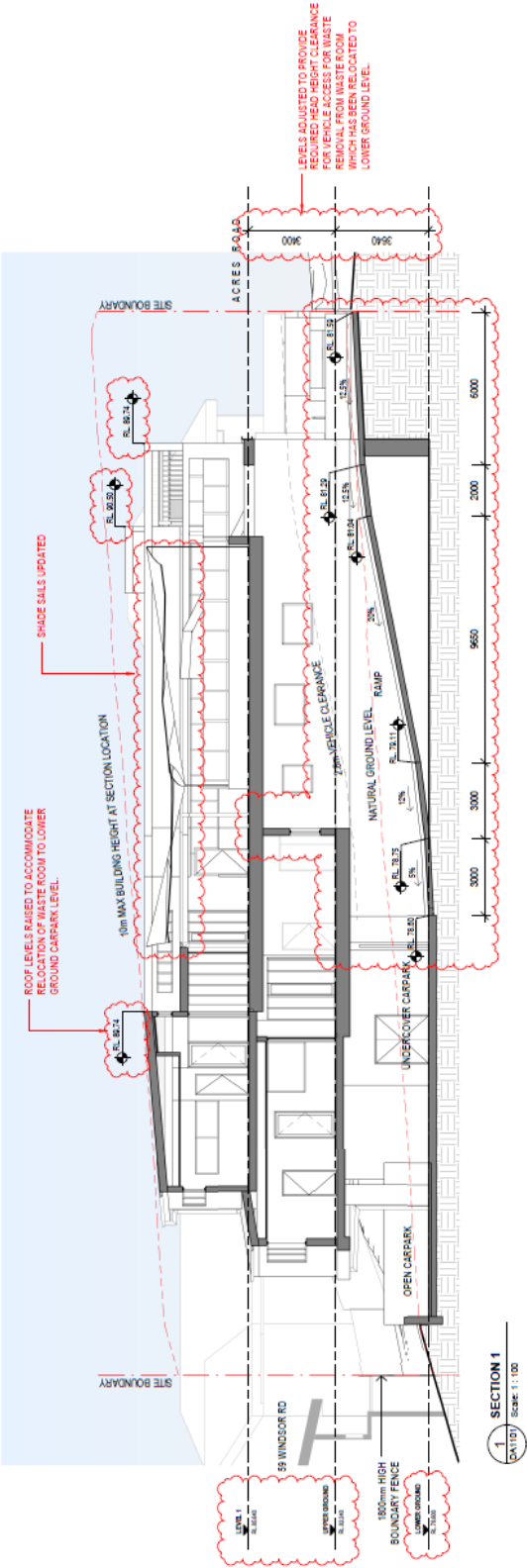
DEVELOPMENT APPLICATION

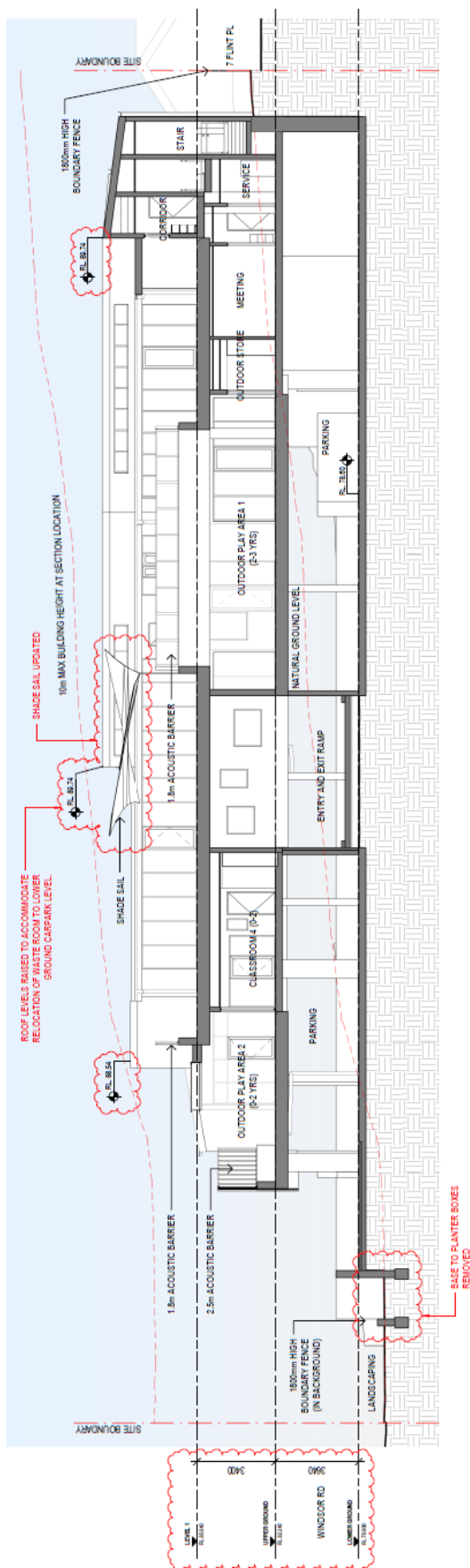
DEVELOPMENT APPLICATION



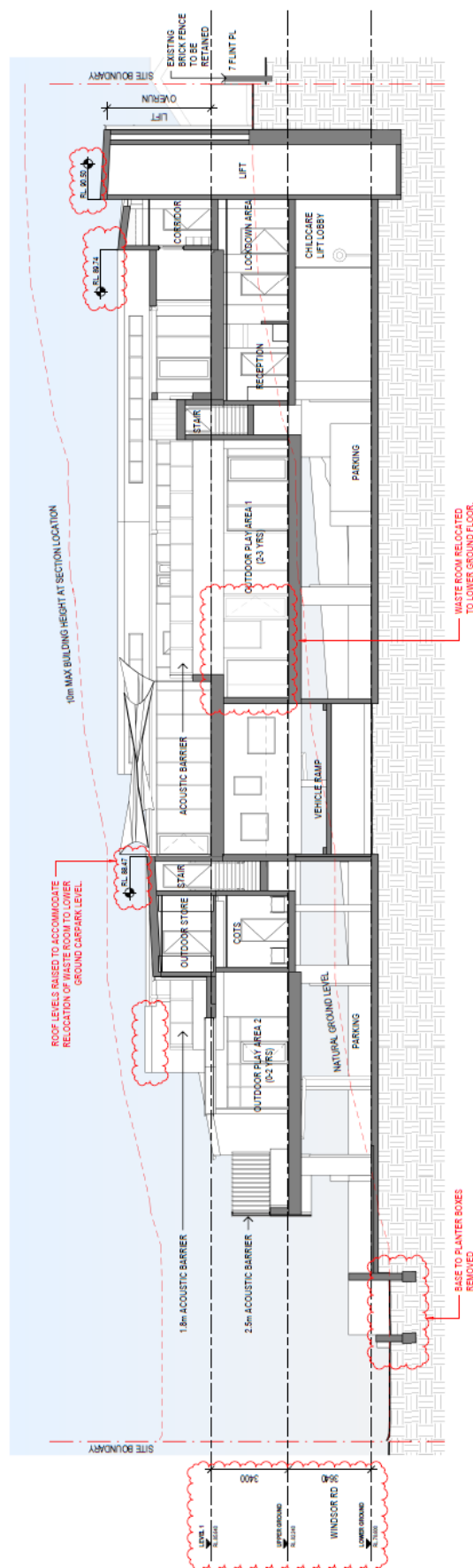


ATTACHMENT J –SECTIONS





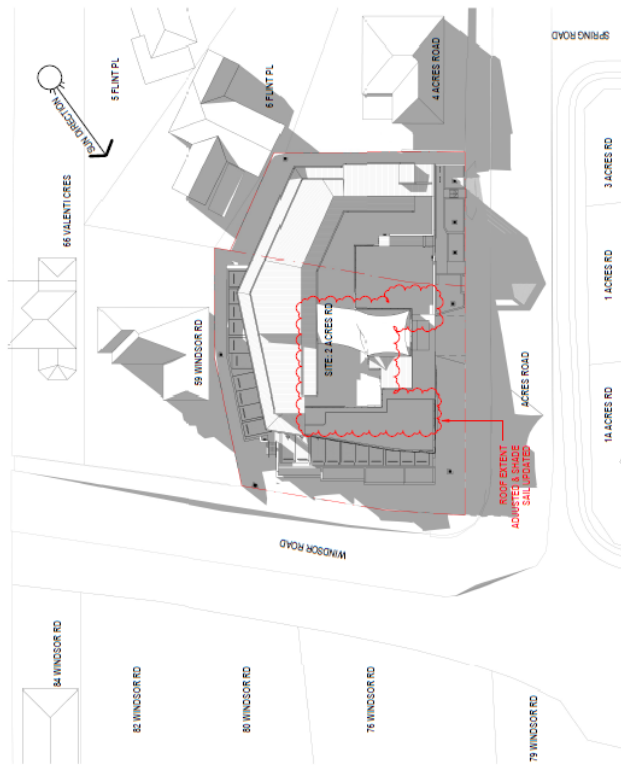
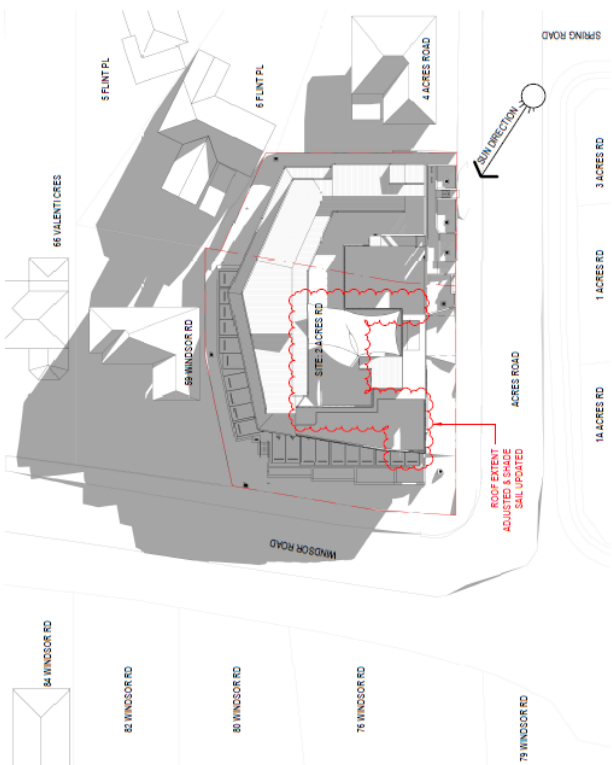
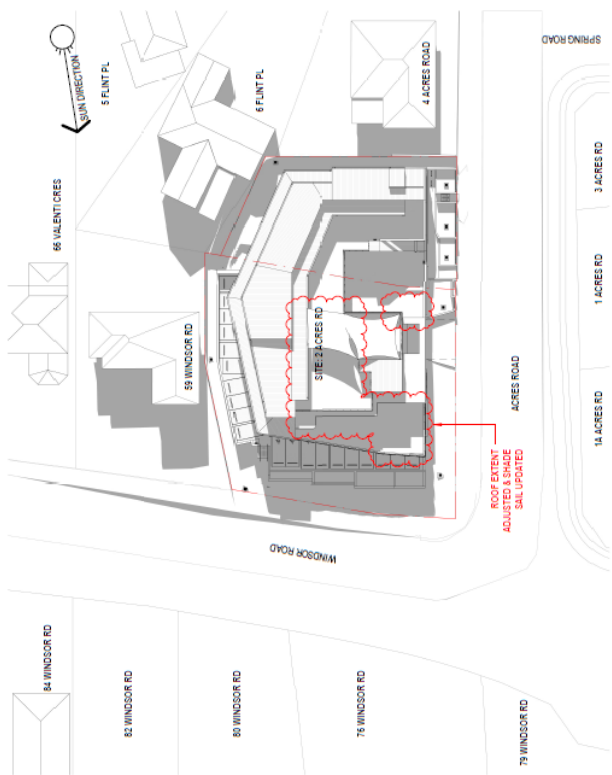
3 SECTION 3
QA1101 Scale: 1 : 100



4 SECTION 4
DA1101 Scale: 1 : 100

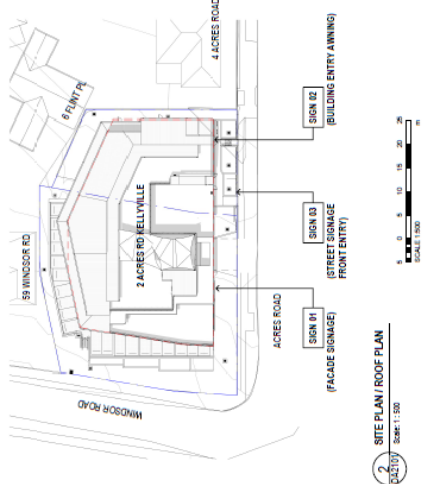
DEVELOPMENT APPLICATION



ATTACHMENT K – SHADOW DIAGRAMS



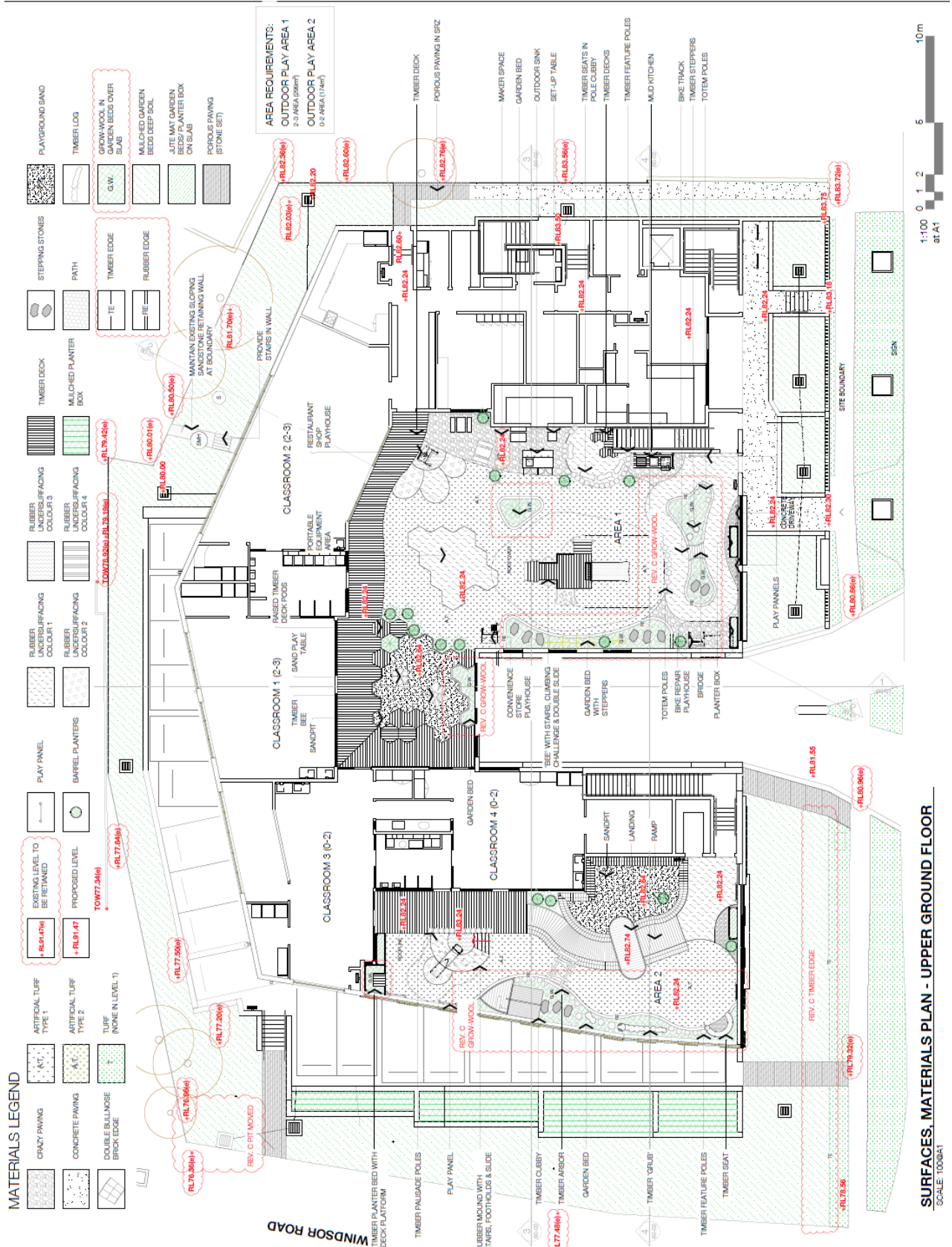
DEVELOPMENT APPLICATION

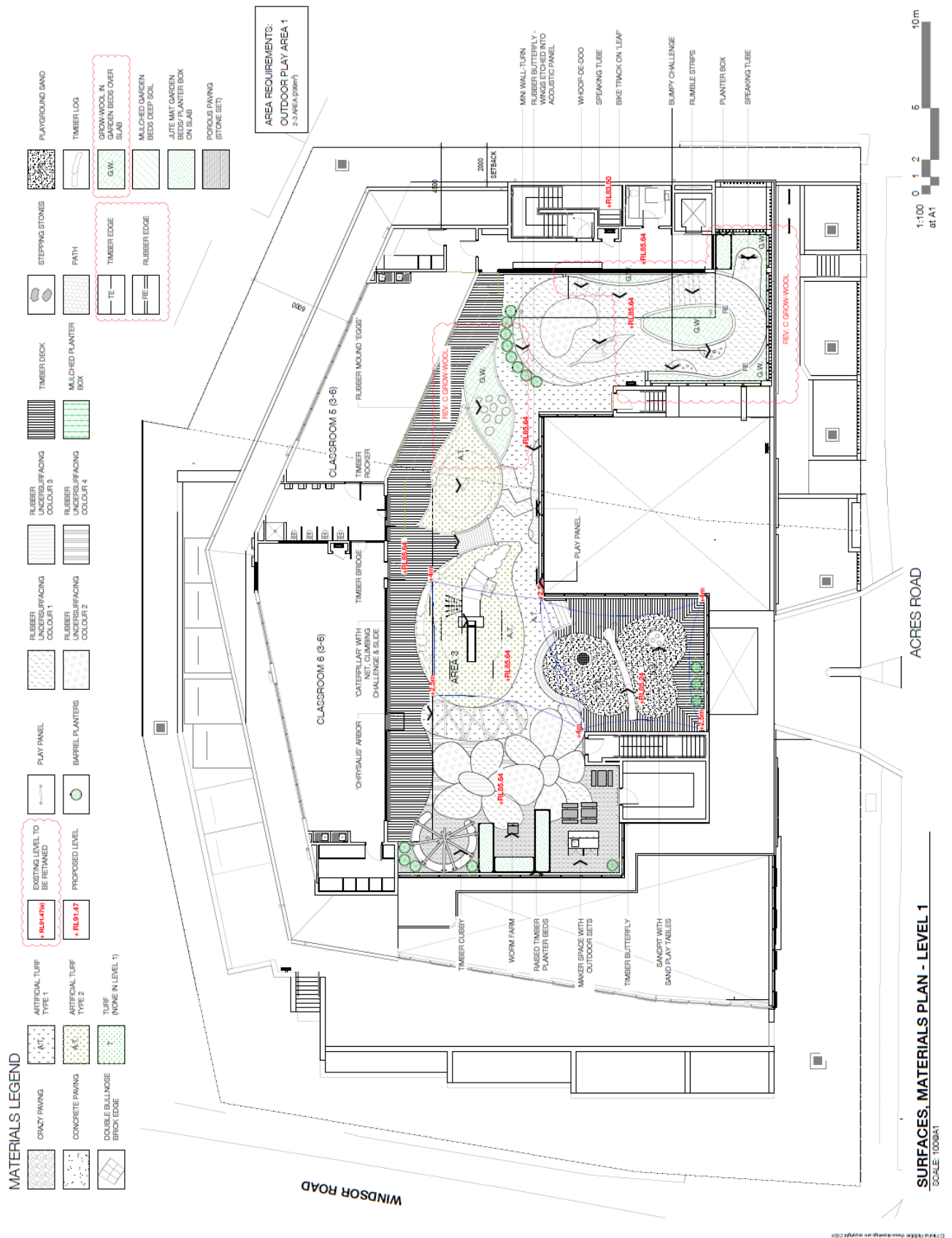
DEVELOPMENT APPLICATION

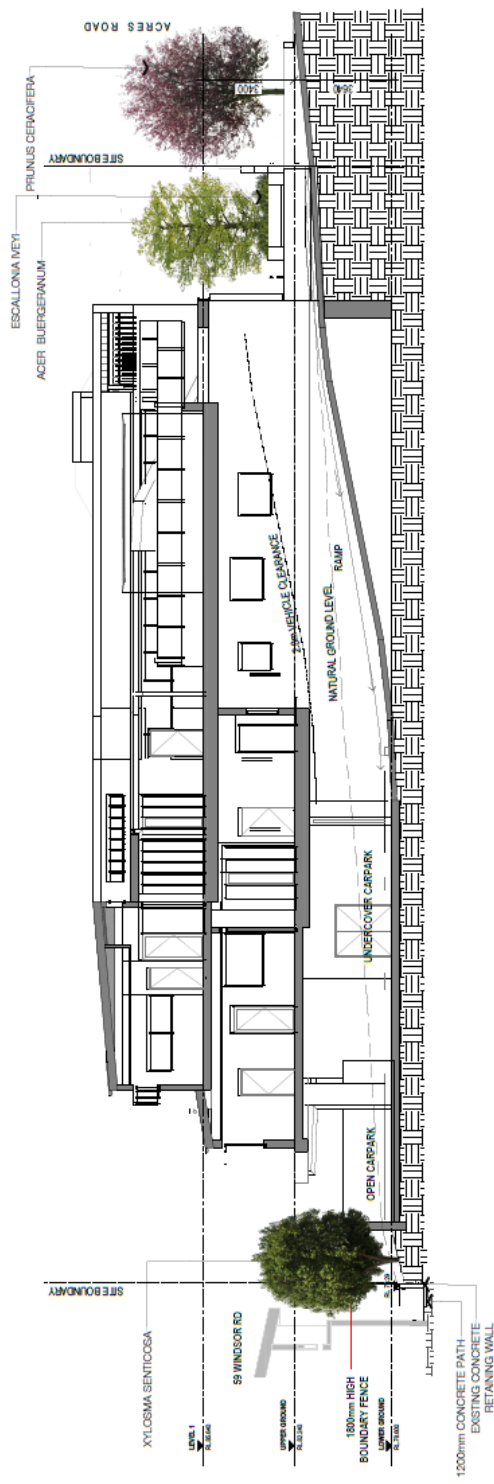


<p>SIGN 01 & 02</p> <p>3D LETTERING</p> <p>FONT: SOLID FILL (30mm GREY SIGN 01 150mm GREY SIGN 02 LOGO COLOURS AS PER MONTESSORI ACADEMY LOGO</p> <p>MATERIAL: ALUMINUM OR METAL 3D LETTERS AND FINISH</p>	<p>SIGNAGE DETAILS UPDATED</p>   <p>SIGN 03</p> <p>PRINTED LETTERING (GRAPHIC)</p> <p>FONT: SOLID FILL (30mm GREY) LOGO COLOURS AS PER MONTESSORI ACADEMY LOGO</p> <p>COMPANY LOGO • PHONE NUMBER • WEBSITE • PRESCRIPTION OR SIMILAR WORKING</p> <p>SIGN COLOR: WHITE</p> <p>MATERIAL: SOLID TIMBER OR ALUMINUM POST SIGN. 2.5mm MINIMUM THICKNESS OF SIGNAGE TO BE 2.25m x 1.5m MAX DIMENSIONS OF 1.5m x 1.5m SIGNAGE TO BE MOUNTED ABOVE NATIONAL GROUND LEVEL.</p>	<p>SIGNAGE INSTALL DESIGN AND DIMENSIONATION TO BE IN ACCORDANCE WITH THE NCC. REFER COUSINS, CDP</p> <ul style="list-style-type: none"> • FINAL SIGNAGE SPECIFICATIONS TO BE IN ACCORDANCE WITH COMPLETION REQUIREMENTS OF EXTERNAL CLADDING UNDER THE NCC.
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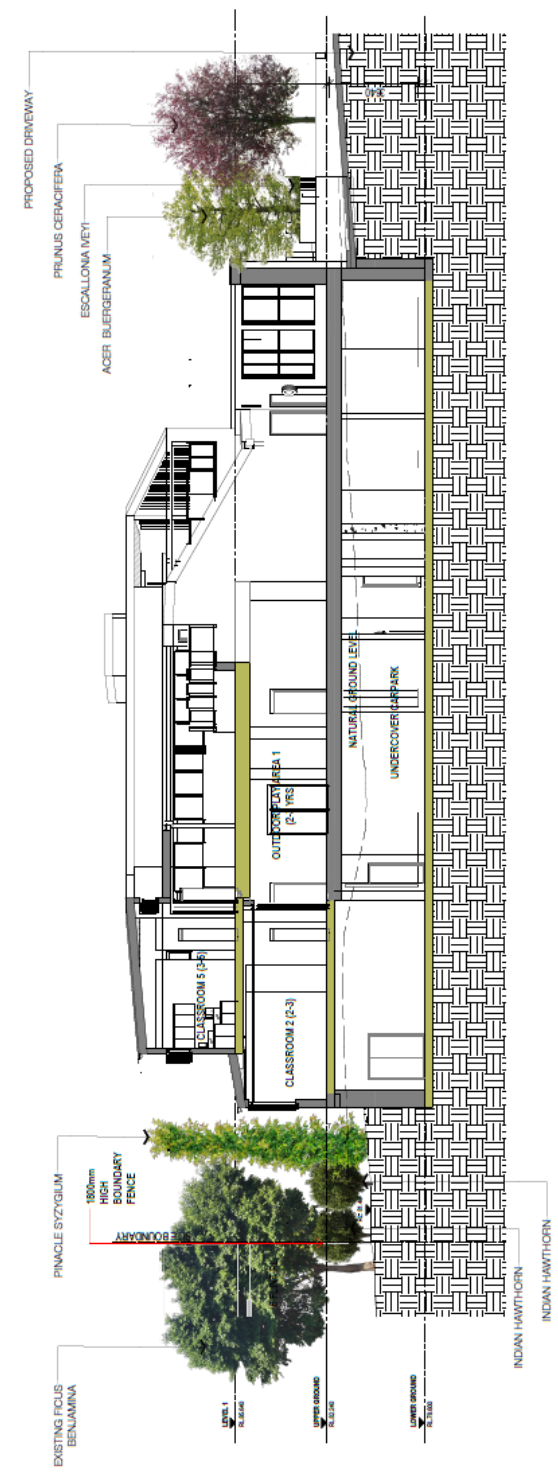
ATTACHMENT M –LANDSCAPE PLANS



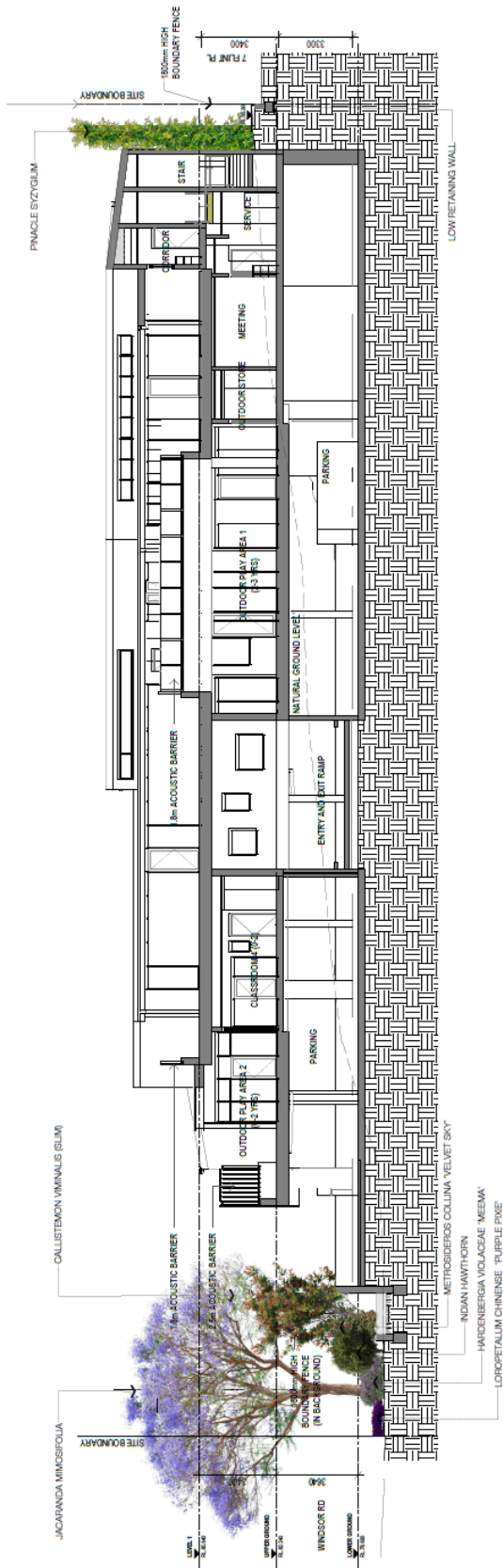




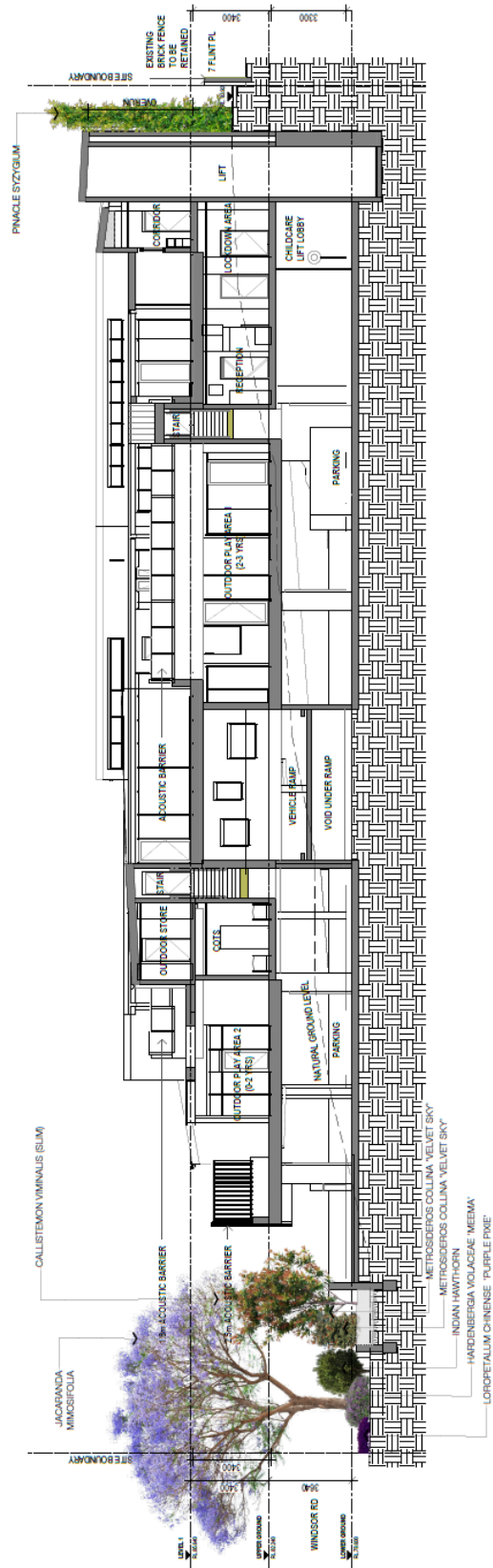
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SECTION 3
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SECTION 4
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ATTACHMENT N –CLAUSE 4.6 REQUEST – HEIGHT OF BUILDINGS

SJB Planning



Clause 4.6 – Exceptions to Development Standards

Request to Vary Clause 4.3 Height of Buildings in The Hills Local Environmental Plan 2019

Address: 2-4 Acres Road, Kellyville

Proposal: Demolition of all structures at the site including the existing commercial premises at the corner of Windsor Road and Acres Road; construction of a centre based childcare facility with basement and 'at grade' parking; and associated landscape works and signage.

Date: 28 May 2024

1. Introduction

This is a written request to seek an exception to a development standard pursuant to Clause 4.6 – Exceptions to Development Standards of *The Hills Local Environmental Plan (LHEP) 2019*. The development standard for which the variation is sought is Clause 4.3 – Height of Buildings under LHEP 2019.

2. Description of the planning instrument, development standard and proposed variation

2.1. What is the name of the environmental planning instrument that applies to the land?

The applicable instrument is *The Hills Local Environmental Plan 2019*.

2.2. What is the zoning of the land?

The land is zoned R2 – Low Density Residential.

2.3. What are the Objectives of the zone?

The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To maintain the existing low density residential character of the area.

2.4. What is the development standard being varied?

The development standard being varied is the Height of Buildings development standard.

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2.5. Is the development standard a performance based control?

Clause 4.3 is a numeric control.

2.6. Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 4.3 of THLEP 2019.

2.7. What are the objectives of the development standard?

The objectives of clause 4.3 of THLEP 2019 are as follows:

- (a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,
- (b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.

2.8. What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3 establishes a maximum building height of 10m as being applicable to the subject site, as shown in the extract of the Height of Buildings Map included at Figure 1.

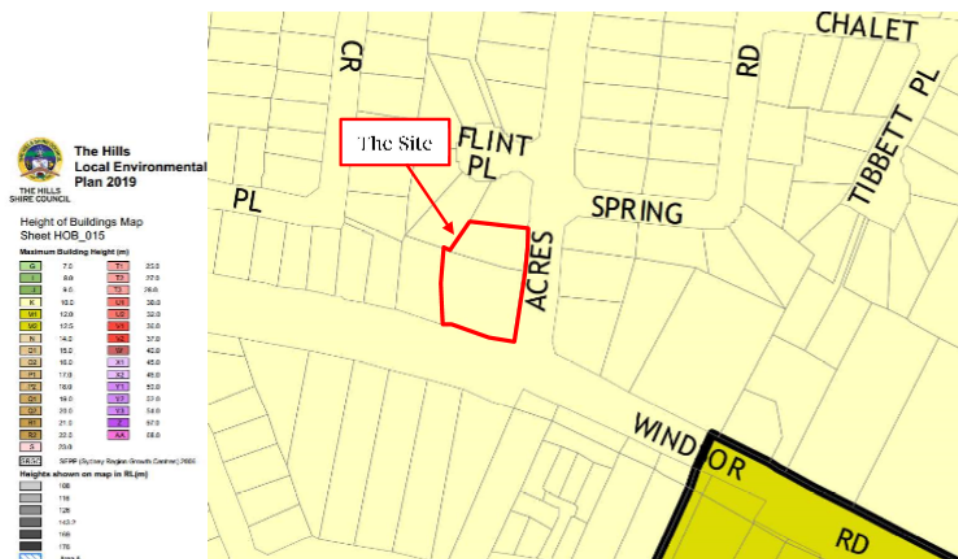


Figure 1: Extract of THLEP 2019 Height of Buildings Map

2.9. What is the proposed numeric value of the development standard in the development application?

The development, as originally proposed, complied with the maximum building height development standard and had a maximum height of 9.85m (RL89.64).

In order to respond to the requests of Council in their letter dated 19 October 2023, namely the requirement to provide on-site waste collection and allow for 2.8m headroom clearance within the basement, it was

necessary to increase the ceiling height of the basement level and thereby also increase the maximum building height.

The development now proposed has a maximum building height of 10.65m. The proposed exceedance relates to a small section of the Level 1 roof, which is 15m² in total area and equates to 1.1% of the total building footprint. The remainder of the building complies with the building height standard.

The minor nature of the exceedance is illustrated in the height plane diagram provided in Figure 2, while a Section Plan through the highest point of the site is provided at Figure 3.

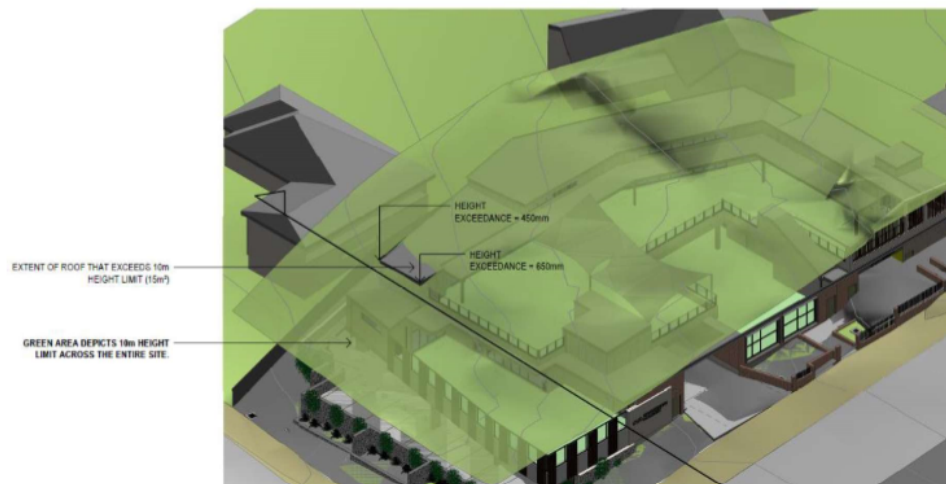


Figure 2: Height plane diagram illustrating non-compliance with the Maximum Building Height

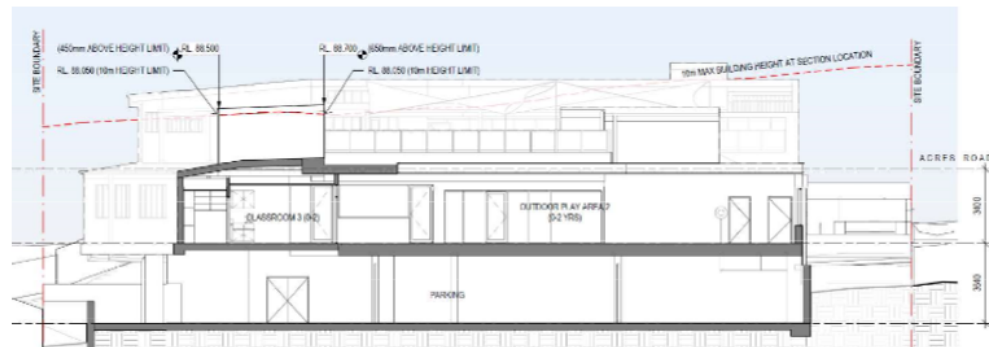


Figure 3: Height plane diagram illustrating non-compliance with the Maximum Building Height

2.10. What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposal exceeds the maximum building height development standard by 0.65m, which equates to a variation of approximately 6.5%.

3. Justification of the Proposed Variation

3.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 establishes the framework for varying development standards in an Environmental Planning Instrument.

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- (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.*

This written request has been prepared in accordance with the relevant guidelines and standards and has regard to the following judgements:

- *Winten Property v North Sydney Council (2001) NSW LEC 46;*
- *Wehbe v Pittwater Council (2007) NSW LEC 827;*
- *Four2Five Pty Ltd v Ashfield Council (2015) NSW LEC 90;*
- *Randwick City Council v Micaul Holdings Pty Ltd (2016) NSW LEC 7;*
- *Moskovich v Waverley Council (2016) NSW LEC 1015;*
- *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSW LEC 118;*
- *Bringham v Canterbury-Bankstown Council (2018) NSW LEC 1046;*
- *Initial Action Ltd v Woollahra Municipal Council (2019) NSW LEC 1097;*
- *RebelMH Neutral Bay Pty Limited v North Sydney Council (2019) NSWCA 130;*
- *SJD DB2 Pty Ltd v Woollahra Municipal Council (2020) NSW LEC 112; and*
- *Big Property Group Pty Ltd v Randwick City Council (2021) NSW LEC 1161.*

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

The five common ways to establish whether compliance with the development standard is unreasonable or unnecessary have been summarised in *Wehbe v Pittwater Council [2007] NSWLEC 827* and are outlined as follows:

Compliance with the development standard is unreasonable or unnecessary if the:

1. *objectives of the development standard are achieved notwithstanding the non-compliance*
2. *underlying objective or purpose is not relevant to the development*
3. *Underlying objective or purpose would be defeated or thwarted if compliance was required*
4. *development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
5. *zoning of the land on which the development is proposed was unreasonable or inappropriate.*

These are five common ways that clause 4.6(3)(a) can be addressed but are not the only ways and are not exhaustive.

This written request relies on the first test described in Wehbe, in that the objectives of the development standard achieved notwithstanding the non-compliance.

3.3. Are the objectives of the development standard achieved notwithstanding the non-compliance?

The proposal remains consistent with the objectives of the Height of Buildings standard outlined in Subclause 4.3(1) despite the non-compliance, as demonstrated below:

(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape

The proposed development provides a buffer between the busy classified Windsor Road and residential developments to the north of the site. The building responds to the two-storey scale of surrounding development (particularly along Windsor Road) and the topography of the site.

The proposal seeks to retain a number of existing trees along property boundaries with existing residential uses and provides additional planting in order to achieve a landscaped setting consistent with the predominately residential character.

The proposal has been designed to minimise any potential overshadowing, visual privacy, or view impacts.

It is considered that the height and scale of the proposal is appropriate within the context of the site and locality. Thereby, the proposed development, inclusive of the minor exceedance of the building height development standard, is acceptable and will not adversely impact adjacent residential properties or detract from the character of the streetscape.

(b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas

As illustrated in the submitted shadow diagrams, the proposal will not have any unacceptable overshadowing impacts to adjacent dwellings, inclusive of the proposed non-compliance.

Due to the orientation of the site, overshadowing is limited to overshadowing within the site, and on the street with only minor overshadowing to the front yard of the dwelling at 59 Windsor Road.

As such, a minimum of three (3) hours of direct sunlight will be provided to the living areas and private open spaces of the dwellings.

The non-compliant portion of the building will not result in any view impacts.

No significant adverse privacy impacts will occur as a result of the proposed development. The site is located on the intersection of Windsor Road and Acres Road and accordingly no privacy impacts are anticipated to these eastern and southern frontages.

The siting of window openings avoids direct overlooking of the private open space and inner living spaces of adjacent residential properties to the north and west.

3.4. Are the objectives of the zone achieved notwithstanding the non-compliance?

The proposed development is consistent with the objectives of the R2 Low Density Residential zone, as detailed in Table 1.

Objective	Comment
To provide for the housing needs of the community within a low density residential environment.	The site has historically been used for non-residential uses. The proposed use as a centre-based child care facility is permissible with consent and has been designed to be compatible with surrounding residential uses. The development will provide valuable child care facilities to support low density residential development.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	<p>The proposal will provide child care services for local residents a short distance from primary schools including Kellyville Primary School, Our Lady of the Rosary Primary School, and K-12 Tallowood School, enabling parents to drop children off in the same area.</p> <p>The proposed development therefore directly meets the day to day needs of residents through the provision of child care.</p>
To maintain the existing low density residential character of the area.	<p>The proposed new building is compatible with the form, scale, and character of surrounding development and existing natural landscape, providing a two-storey presentation to the north and north-western residential elevations, and a stepped, three-storey presentation to the south, fronting Windsor Road.</p> <p>A comprehensive landscape scheme forms part of the application and this is aimed at ensuring a landscaped setting for the development, consistent with landscaping within the surrounding low density residential zone.</p> <p>The proposed use as a centre-based child care facility is compatible with surrounding residential uses and will have no adverse impact upon the liveability or amenity of the low density residential locality.</p>

Table 1: R2 Low Density Residential Zone Objectives Assessment Table

3.5. Are there sufficient environmental planning grounds to justify contravening the development standard?

It is considered that there are sufficient environmental planning grounds to justify contravening the height of buildings development standard, being:

- The non-compliance occurs as function of relocating the waste collection area to the basement and consequently providing a 2.8m clearance height for waste collection vehicles at the basement level, at the request of Council in their letter dated 19 October 2023;
- The proposed exceedance of the control is extremely minor, representing a departure from the standard of 0.65m or a variation of 6.5%;
- The proposed exceedance relates to a small section of the Level 1 roof, which is 15m² in total and equates to only 1.1% of the total building footprint;

- The exceedance in a very small section of the roof is a function of the sloping topography of the site impacting the ability to comply with the building height standard, due to the need to maintain level floor and roof parapet heights across a site that slopes from north to south;
- The proposal satisfies the objectives of R2 Low Density Residential zone and the objectives of the Height of Buildings standard as highlighted above;
- The variation to the height control does not increase the density of the development, nor will it will give rise to significant adverse overshadowing, privacy impacts, or view loss; and
- The proposed development is generally compliant with the controls, or the intent of the controls, contained in SDCP 2012.

In light of the above, it is considered that a development that strictly complies with the Height of Buildings standard is unreasonable or unnecessary in the circumstances of the case.

3.6. Is there public benefit in maintaining the development standard?

Generally, there is public benefit in maintaining standards. However, there is also public benefit in maintaining a degree of flexibility in specific circumstances.

In this case, no public benefit would accrue in the circumstances of requiring strict numerical compliance with the Height of Buildings development standard when it has been demonstrated that, despite the numerical non-compliance, the proposed development will achieve consistency with the objectives of the development standard.

4. Conclusion

The proposed variation is based on the reasons contained within this formal request for an exception to the Height of Buildings standard.

This statement demonstrates that the proposal is consistent with the objectives of the R2 Low Density Residential zone and the Height of Buildings development standard.

The non-compliant portion of the building is minor in scale, is a result of a request from Council to accommodate additional clearance heights at the basement level and the sloping nature of the site. The minor non-compliance will not contribute to any additional overshadowing, visual privacy, or view impacts to adjoining properties.

A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding land uses. In the context of the locality, it would be unreasonable for strict compliance to be enforced.

The non-compliance is not considered to result in any precedents for future development within the locality or broader LGA, given the site circumstances, the nature of the proposed use as a child care facility with a frontage to a classified road and the surrounding pattern of development.

It is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.