

SNPP NO: PPSSNH-250
COUNCIL WILLOUGHBY CITY COUNCIL
ADDRESS: 2-14 NORTHCOTE STREET, NAREMBURN NSW 2065
DA NO: DA-2013/147/F
PROPOSAL: SNPP - MODIFY EXISTING CONSENT FOR STAGES
CONCEPT APPROVAL REGARDING CHANGE TO
APPROVED NOMINATED LAND USE REPLACING CHILD
CARE CENTRE WITH COMMERCIAL PREMISES AND SHOP
TOP HOUSING AND ALTERATIONS TO BUILDING
ENVELOPE REGARDING SETBACKS AND HEIGHT AND
RELATED ALTERATIONS.

DATE: 20 OCTOBER 2021

ADDENDUM TO COUNCIL REPORT DATED 7 OCTOBER 2021

1. Section 4.55(3) of the Environmental Planning and Assessment Act 1979 states:

*In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. **The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.***

2. In the initial DA 2013/147, Council's assessment report dated 9 October 2013 recommended DA conditions including Conditions 2, 3 and 4. These Conditions stated that no consent was given to the proposed commercial and child care uses in the mixed use development, but only the building envelope and general arrangement of uses.

3. The JRPP minutes dated 9 October 2013 stated:

2. The approval granted is a staged approval in accordance with the provisions of Section 83B of the Environmental Planning and Assessment Act 1979 (as amended).

*3. **In order to satisfy the terms of Point 2 above** the following amendments to the conditions proposed in Addendum1 to the planning assessment report.....*

(various amendments which had the effect of giving approval to the child care and commercial uses)

4. The **only** reason given for the amendments made by the JRPP was in order to satisfy Section 83B of the Environmental Planning and Assessment Act 1979. This appears to be an interpretation of that provision by the JRPP that requires that approval of a use (rather than just the physical building) must be included in the initial approval in a staged development. JRPP did not refer at all to the merits of the child care or commercial uses as such and this does not seem to have been the relevant consideration. There are therefore no reasons presented in the JRPP determination for retaining the child care use.
5. While the current application does not justify the change of use from child care to commercial/residential, the absence of a JRPP requirement for child care use (as

opposed to any use) means that such justification is not required by Section 4.55(3) in this case and the current application therefore satisfies Section 4.55(3).

6. It is also noted that, there was no requirement in the report or other documents related to the approved Concept DA that such approval was only granted on the basis of child care being included.