



Hawkesbury Local Planning Panel Meeting

Date of meeting: 17 March 2022
Location: By audio-visual
Time: 10:00am.

BUSINESS PAPER

HAWKESBURY LOCAL PLANNING PANEL MEETING

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Reports for determination

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SECTION 1 - Reports for Determination

Item: 1 **SS - Pecuniary Interest Returns - (95496, 96333, 95498)**

Directorate: Support Services

EXECUTIVE SUMMARY:

Hawkesbury Local Planning Panel (HLPP) Members are required by the Code of Conduct for Local Planning Panel Members (the Code) to complete a Pecuniary Interests and Other Matters Return form identifying any pecuniary and other types of interests that they hold as at their date of commencement as a HLPP Member.

The Return forms for all HLPP Members have recently been lodged with Council on behalf of the HLPP Chair, and the Returns are now tabled at the HLPP Meeting as required by Section 4.21 of the Code.

RECOMMENDATION:

That:

1. That the Section 4.17(b) Pecuniary Interest Returns be received and noted.
 2. That the Section 4.17(b) Pecuniary Interest Returns be made available on Council's website.
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BACKGROUND

HLPP Members are required by Section 4.17 of the Code of Conduct for Local Planning Panel Members (the Code) to complete a Pecuniary Interests and Other Matters Return form identifying any pecuniary and other types of interests within one month or prior to their first consideration of a Panel matter, whichever occurs earlier after:

- Becoming a member, or
- 30 June each year.

This is because HLPP Members hold a position involving the exercise of functions that, in their exercise, could give rise to a conflict between the person's duty as delegate of Council and the person's private interest.

According to Sections 4.17 and 4.21 of the Code, these Return forms must be lodged with the Panel Chair, and must be tabled at the first HLPP Meeting after appointment or after 30 June of each year.

Section 4.20 of the Code states that the HLPP Chair will provide the lodged Returns to Council's General Manager, who will keep the register of Returns and will cause the Returns to be published on Council's website, with the exception of the addresses of the Panel members' principal places of residence.

The Return forms for all HLPP Members have recently been lodged with Council on behalf of the HLPP Chair, and notwithstanding that some of the returns were lodged more than 1 month after appointment as a member of the Panel, the Returns are now tabled at the first HLPP Meeting after lodgement.

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ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

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Item: 2 CP - S82A0001/21 - Lot 17 DP 255010, 6 Keda Circuit, North Richmond - (141707, 95498)

Directorate: City Planning

DEVELOPMENT INFORMATION

File Number: S82A0001/21
Legal Description: Lot 17 DP 255010
Property Address: 6 Keda Circuit NORTH RICHMOND NSW 2754
Applicant: Baini Design
Owner: Keda Property Investments Pty Limited
Proposal Details: S82A Review - Centre Based Child Care Facility - Demolition of Existing Structures, Construction of a 58 Place Centre-Based Child Care Facility, Outdoor Play Areas, Basement Car Parking and Landscaping
Estimated Cost: \$1,986,967.00
Area: 1005.00 Square Metres
Zone: R3 Medium Density Residential under *Hawkesbury Local Environmental Plan 2012*
Date Received: 13/08/2021
Advertising: 13/09/2021 - 27/09/2021
Submissions: 21

Key Issues:

- ◆ Amenity impact and relationship with adjacent development
- ◆ Acoustic impacts
- ◆ Traffic

RECOMMENDATION:

Approval.

EXECUTIVE SUMMARY:

Reason for Consideration by Local Planning Panel

- Contentious Development - The application has received 21 unique submissions by way of objection.

Proposal

Centre Based Child Care Facility - Demolition of Existing Structures, Construction of a 58 Place Centre-Based Child Care Facility, Outdoor Play Areas, Basement Car Parking and Landscaping.

Permissibility

Hawkesbury Local Environmental Plan 2012 (LEP 2012) permits centre-based child care facilities with development consent in the Zone R3 Medium Density Residential.

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Consultation

The application was notified to adjoining and adjacent properties between 13/09/2021 - 27/09/2021 in accordance with the requirements of Hawkesbury Development Control Plan 2002.

Key Issues

The key issues of the development application are:

- Amenity impact and relationship with adjacent development
- Acoustic impacts
- Traffic

Recommendation

It is recommended that S82A0001/21 be approved subject to conditions.

REPORT:

Pursuant to Section 8.2(1)(a) of the *Environmental Planning and Assessment (EP&A) Act 1979* (as amended) this application seeks a review of the determination of Development Application No. DA0233/20 for a 58 Place Centre-Based Child Care facility at 6 Keda Circuit North Richmond.

Development Application No. DA0233/20 was refused by the Hawkesbury Local Planning Panel on 15/04/2021 based on the following reasons included under attachment 1 to this report. These reasons included matters such as:

- insufficient useable outdoor space,
- consistency with the of R3 Medium Density Residential zone objectives,
- bulk of the development,
- inconsistent with NSW Child Care Planning Guidelines,
- unacceptable amenity impact in relation to noise, management of the site, acoustic walls, overshadowing,
- inadequate Plan of Management,
- unacceptable impact on street tree,
- impact on immediate locality in terms of noise, traffic and visual amenity,
- inconsistent with the established character of the locality, and
- lack of pedestrian paths, and
- public Interest.

This submitted Section 8.2 Review Application seeks to address the issues raised in relation to the reasons for refusal with amended plans and documents.

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The proposal is for demolition of all existing buildings on the site and the erection of a two-storey, custom-designed 58-place child care centre with 19 car parking spaces in a basement car park. The 58 places are proposed to be allocated to the following age groups and serviced by the following numbers of staff:

Age group	Number of children	Number of educators
0 to 2 years	8	2
2 to 3 years	20	4
3 to 5 years	30	3
Total	58	9

The indoor play areas would consist of the following:

Area	Age of Children	Size of area (sqm)
Playroom 1	0 to 2 years	26
Playroom 2	2 to 3 years	65
Playroom 3	3 to 5 years	98
TOTALS		189 sqm

The outdoor areas would consist of the following:

Area	Age of Children	Size of area (sqm)
Outdoor Area 1	0 to 2 years	56
Outdoor Area 2	2 to 3 years	140
Outdoor Area 3	3 to 5 years	210
TOTALS		406 sqm

Hours of operation are proposed between 7am and 6pm Monday to Friday.

A plan of management has been submitted in support of the application and explains the operation of the facility, including:

- Waste management via contractor,
- Staff and children numbers,
- Scheduled use of indoor and outdoor areas,
- Traffic management,
- Acoustic management,
- Compliance with the child care regulations, state and national, and
- Complaints handling procedures.

The centre comprises of the following elements:

- Basement level consisting of bin room, 19 parking spaces, storage area and turning bay,
- Ground floor level consisting of office/reception, foyer, kids toilets, change room, storage, three indoor playrooms, three outdoor areas, bathrooms, foyer, office, accessible toilet and cot,
- First floor level consisting of meeting rooms, staff room, kitchen, accessible toilet and laundry,
- Lift access to all levels,
- 2.4m high acoustic wall, surrounding the child play areas and setback 1m from property boundaries, and
- Protection and retention of street trees.

The following figures show the development.

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Figure 1: Front elevation

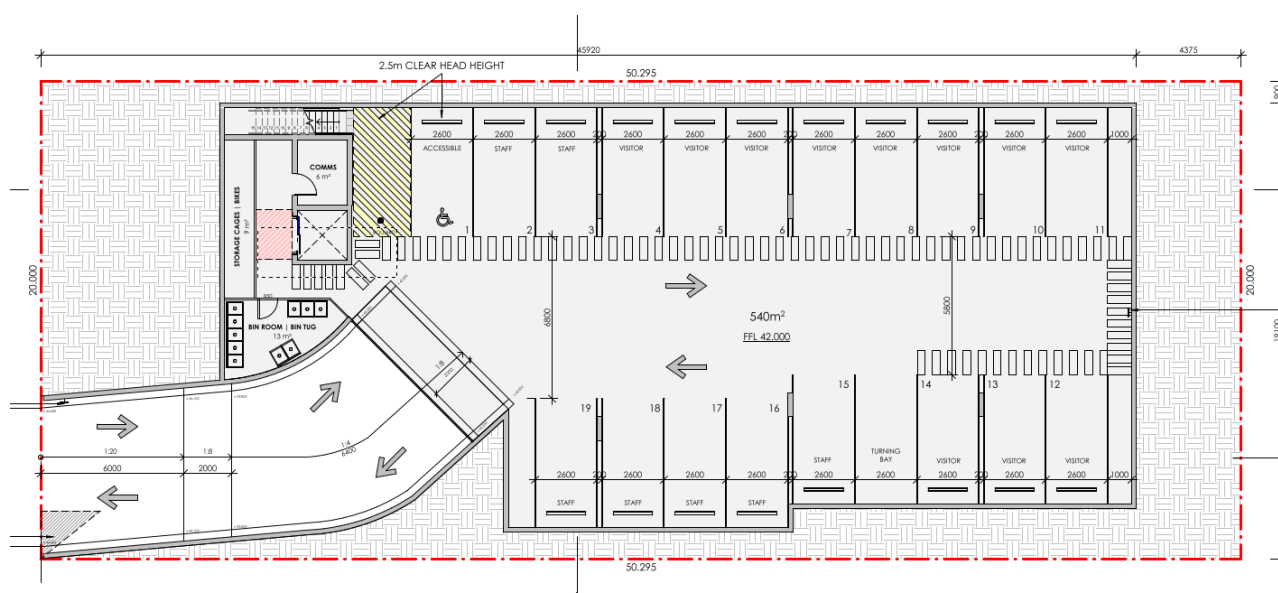


Figure 2: Basement plan

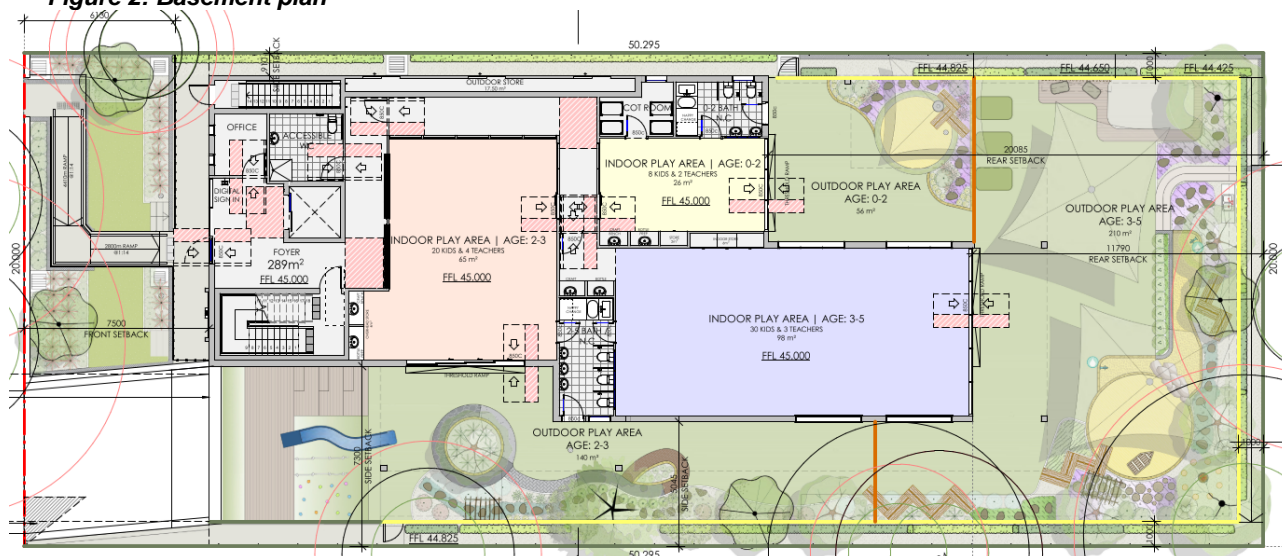


Figure 3: Ground floor plan

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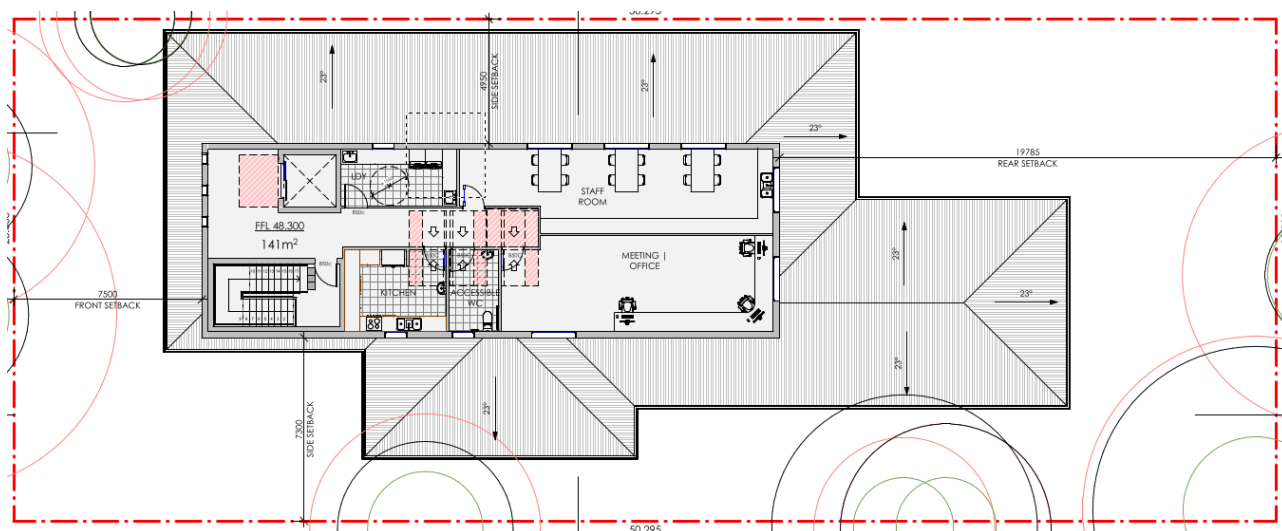


Figure 3: First floor plan

The application is supported by the following documents.

Document Name	Reference	Prepared by	Date
Plan of Management	6 Keda Circuit Richmond	Applicant	27/07/2021
Landscape Concept	L-01	Outside in design group	17/01/2022
Front Fence Detail	L-02	Outside in design group	17/01/2022
Landscape Structural Works	L-04	Outside in design group	17/01/2022
Traffic & Parking Statement and addendum letters to traffic and parking assessments	Report Addendum letter Addendum letter	Heamanote consultants	10/12/2020 20/07/2021 14/12/2021
Stormwater Concept Design Plans	Reference 20200110, revision H	SGC Consulting	22/12/21
Statement of Environmental Effects	6 Keda Circuit Richmond	Think planners	27/07/2021
Acoustic report	2001554R1 revision 4	Rodney Stevens Acoustics	27/07/2021
Access report	20146	Vista access architects	30/06/2021
Geotechnical report	G20551-1	Geotechnical consultants Australia	14/12/2020
Arboricultural impact assessment and tree management plan	6 Keda Circuit North Richmond	Horticultural management services	06/10/2021 Amended 21/1/2022

Site Description

The subject property is rectangular in shape, totals 1005sqm in area and is occupied by an existing single storey dwelling approved in 1981.

Council has previously approved multi dwelling housing on the land on 2 December 2019. The approved development consists of four dwelling, car parking, manoeuvring, landscaped area and four lot strata subdivision as part of consent No. DA0579/18.

The site is surrounded by residential development consisting of single and double storey buildings. An aerial photo of the site and locality is included below.



Figure 4: Aerial photography of site and locality.

Background and History

13/08/2021	Application submitted.
5/11/2021	<p>Additional information sent to the applicant requesting following the following matters to be addressed:</p> <ul style="list-style-type: none">- Protection of street trees,- Building setback to be increased to a minimum of 7.5 metres,- Compliance with the building height plane requirements for residential development,- Provision of a footpath along the frontage of the development.- Reduction in basement height- Identification of outdoor storage areas.- Plans confirming acoustic walls,- Details in relation to overshadowing,- Deletion of the inaccessible roof area,- Provision of signage.- Consideration of privacy, and- Response to issues raised in the submissions.
21/01/2022	<p>Applicant submitted updated arborist report, revised plans addressed in relation to protection of street trees, access, basement height, privacy impacts and deletion of inaccessible roof area. Applicant requested that signage be subject to a separate application.</p>

Submissions

21 submissions have been received in response to the application and the issues identified have been listed and considered in the assessment report below.

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Consultation

Internal Consultation	
Building Surveyors	Council's building surveyor raised no objections to the proposed development, subject to conditions.
Development Engineers	Council's development engineers raised no objections to the proposed development, subject to conditions.
Arborist	<p>Council's arborist raised concerns in relation to impact on street trees and the location of the new driveway and stormwater detention basin.</p> <p>The applicant submitted updated plans and an arboricultural impact assessment and tree management plan in response to the protection of the street trees. The report recommends the supervision of works by an arborist and trenching to be dug by hand in order to avoid impacts on surface roots.</p>
Environmental Health	<p>The updated acoustic reports, architectural plans and plan of management seek to address the issues raised in the determination of DA0233/20.</p> <p>Standard environmental health conditions are recommended in relation to acoustic management, food safety, waste management and operational requirements.</p>

Council Policies, Procedures and Codes to which the matter relates

- State Environmental Planning Policy No 55—Remediation of Land (SEPP No. 55)
- State Environmental Planning Policy (Coastal Management) 2018
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) (SREP No. 20)
- Hawkesbury Local Environmental Plan 2012 (LEP 2012)
- Hawkesbury Development Control Plan 2002 (HDCP 2002)
- Child Care Planning Guideline August 2017.

Matters for Consideration Under Part 6 of the Biodiversity Conservation Act 2016 No 63

The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the Biodiversity Offset Scheme (BOS) will be triggered. The threshold has two elements:

- whether the amount of native vegetation being cleared exceeds an area threshold,
- whether the impacts occur on an area mapped on the Biodiversity Values Map published by the Environment Agency Head.

The proposal does not trigger the BOS requirement. In this regard the application does not exceed the area threshold and the land is not identified on the Biodiversity Values map.

Matters for Consideration under Divisions 8.2 of the Environmental Planning and Assessment Act 1979

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An assessment of the proposal against the relevant provisions of Division 8.2 of the EP&A Act 1979 follows:

Section 8.2 – Determinations and Decisions Subject to Review

- 1) *The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:*
- (a) *the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as a delegate of the Minister) other than the Independent Planning commission or the Planning Secretary)*
 - (b) *the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),*
 - (c) *the decision of a council to reject and not determine an application for development consent.*

Comment: The original application was determined by the Local Planning Panel. In accordance with Section 8.3(5) the review of a determination or decision made by a Local Planning Panel is to be conducted by the panel.

- (2) *However, a determination or decision in connection with an application relating to the following is not subject to review under this Division:*
- (a) *a complying development certificate,*
 - (b) *designated development,*
 - (c) *Crown development (referred to in Division 4.6).*

Comment: The original application is not designated development, Crown development or a Complying Development Certificate.

Section 8.3 – Application for and Conduct of Review

- (1) *An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*

Comment: This review has been undertaken in accordance with the Division 8.2 provisions of the EP&A Act 1979.

- (2) *A determination or decision cannot be reviewed under this Division:*
- (a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
 - (b) *after the Court has disposed of an appeal against the determination or decision.*

Comment: This Section 8.2 Review Application must be determined within 12 months of the date of determination of the original development application. The original application was determined by the Local Planning Panel 15/04/2021 and the refusal notice issued on 26/04/2021.

It is noted that the NSW Government extended the appeals period from 6 months to 12 months as part of the *Postponement of EP&A Regulation 2000 Repeal* changes made in response to the COVID-19 pandemic, therefore the review of this application must be conducted no later than 26/04/2022.

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- (3) *In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*

Comment: The proposal submitted with the Section 8.2 Review Application remains substantially the same, with minor changes proposed to the design of the building and supporting documentation accompanying the application in an attempt to resolve the issues raised as part of the determination of the original application.

- (4) *The review of a determination or decision made by a delegate of a council is to be conducted:*
- (a) *by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or*
 - (b) *by another delegate of the council who is not subordinate to the delegate who made the determination or decision.*
- (5) *The review of a determination or decision made by a local planning panel is also to be conducted by the panel.*
- (6) *The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.*
- (7) *The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.*
- (8) *The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.*

Comment: The subject Section 8.2 Review Application has been assessed by a Senior Town Planner, who was not involved in the original assessment and the application is being reported back to the Local Planning Panel for consideration as the original determination was conducted by the Local Planning Panel.

Section 8.5 – Miscellaneous Provisions Relating to Review

- (1) *The regulations may make provision for or with respect to reviews under this Division, including:*
- (a) *specifying the person or body with whom applications for reviews are to be lodged and by whom applications for reviews and the results of reviews are to be notified, and*
 - (b) *setting the period within which reviews must be finalised, and*
 - (c) *declaring that a failure to finalise a review within that time is taken to be a confirmation of the determination or decision subject to review.*

Comment: The applicant remains unchanged from the original application, the proposal has been notified to persons who made submission in relation to the original application and in accordance with Section 3.2.1 of Part A Chapter 3 of the Hawkesbury DCP 2002.

The application has been reviewed in accordance with the Division 8.2 provisions of the EP&A Act 1979. Adequate information has been provided to allow for the assessment and determination of the Section 8.2 Review. An assessment of the proposal against Section 4.15 EP&A Act 1979 has been made below.

Matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979

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In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

a) The provisions (where applicable) of any:

i. Environmental Planning Instrument:

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7(1) of the SEPP No. 55 outlines the consent authority “must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The land has been historically used for residential purposes and not any purpose that would have contaminated the land to such a degree so as to prevent the proposal. A preliminary Site investigation Report prepared by Geotechnical Consultants Australia accompanied the original application and concludes:

GCA considers that the potential for significant contamination of soil and groundwater within the site to be low. Therefore, based on this assessment, GCA finds that the site is suitable for the proposed development and land use, providing the recommendations within Section 12 below are implemented during the Construction Certificate (CC) stage.

On this basis the property is considered suitable for the proposed land use having regard to this policy.

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

The development falls within the definition of a “centre-based child care facility” under this policy and Clause 23 requires the consent authority to assess the proposal having regard to the *Child Care Planning Guideline* issued by the Department of Planning in August 2017.

This guideline has been prepared in order to ensure that any development assessment for a centre-based child care facility considers key requirements specified under the *Education and Care Services National Regulations* and the *Children (Education and Care Services) Supplementary Provisions Regulation 2012*.

The application is supported by a compliance table, prepared by Think Planners, which addresses the detail of the proposal, based on Parts 3 and 4 of the *Child Care Planning Guideline*.

An assessment of the proposed additions has been undertaken and the development is considered to be generally consistent with the requirements of the SEPP. An assessment against compliance with the guidelines is included in attachment 2 of this report. Importantly, the proposal complies with both the indoor and outdoor requirements of Part 4 of the Guideline, subject to a limit of 58 children with the requirements for unencumbered indoor and outdoor areas shown in the table below.

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Area	Minimum area for 58 children	Provides	Complies
Indoor requirement of 3.25sqm per child	188.5sqm	189sqm	Yes
Outdoor requirement of 7sqm per child	406sqm	406sqm	Yes

Notes: Both the Indoor and outdoor areas is a limiting factor and any increase to these numbers would be unlikely.

Conditions are recommended requiring that all fittings for internal and external elements of the development shown at construction certificate stage do not encroach into minimum unencumbered space requirements for 58 children. These standards are also called up in the *Education and Care Service National Regulations*.

Any loss of unencumbered space will be required to be assessed and considered as part of a modification application prior to the issue of any construction certificate for the development.

Accordingly, the proposal has been assessed having regard to clauses 23, 25 and 26 of the SEPP and the associated Regulations.

Based on the overall assessment against the standards and all matters raised in the SEPP, the Regulation and the Guideline, the proposal complies.

State Environmental Planning Policy (Coastal Management) 2018

The site is within an urban area well removed from any waterway. The proposed use does not raise any issues in respect of the aims and considerations of this policy.

Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

The proposal is consistent having regard to the aims and objectives of SREP No. 20. The proposed development will not significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context and the development is consistent with the general and specific aims, planning considerations, planning policies and recommended strategies which are to protect the quality of the water way.

Hawkesbury Local Environmental Plan 2012

The proposal is consistent having regard to the requirements of LEP 2012. As assessment of the proposed development against the relevant provisions of the Plan follows:

Clause 2.2 Zoning of land to which Plan applies

The subject site is located within the zone R3 Medium Density Residential on the Land Zoning Map.

Clause 2.3 Zone objectives and Land Use Table

The proposal is permitted with consent in the zone being defined as Centre-based child care facilities.

The development is consistent with the overall objectives of the zone in that it will provide child care services to meet the day to day needs of residents.

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Clause 4.3 Height of Buildings

The building height map specifies a 10m maximum building height and the proposal complies with this requirement.

The proposal also complies with the objectives of this clause as the development has been designed to be generally consistent with the building height plan requirements specified for residential development under the DCP in order to ensure that the proposal provides a bulk and scale that relates well to the desired local context.

Clause 6.1 – Acid Sulfate Soils

The land affected by the development falls within Class 5 as identified on the Acid Sulfate Soils Planning Map. The works proposed are unlikely to lower the water table and no further investigations in respect to acid sulfate soils are required under subclause (6). The proposal is consistent with the requirements of this clause.

Clause 6.3 – Flood Planning

The land is located above the 1 in 100 ARI (average recurrent interval) flood event of 17.5m above the Australian Height Datum (AHD) and therefore no concerns regarding flooding under this clause.

Clause 6.6 – Development in areas subject to aircraft noise

The front of the property is mapped as being in the Australian Noise Exposure Forecast (ANEF) contour of 20-25, however the proposed additions are outside of the area mapped within an ANEF contour. Consequently the proposal is acceptable having regard to the requirements of this clause.

Clause 6.7 – Essential Services

The land has suitable access to water, electricity and sewer and the proposal would not require any significant extension or modifications to existing services. The required utility clearances will need to be obtained prior to works commencing on the site.

ii. Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:

Draft State Environmental Planning Policy (Remediation of Land)

The Explanation of Intended Effect for the above draft SEPP was placed on exhibition from 31 January 2018 to 13 April 2018. The proposed new SEPP intends to update the current SEPP No. 55 requirements and add new classes of remediation works that require development consent.

The proposed development has been assessed against SEPP No. 55 and no concerns are raised in respect to contamination under this policy. Accordingly the proposal is acceptable having regard to the Draft SEPP.

Draft State Environmental Planning Policy (Environment)

The Explanation of Intended Effect for the Environment SEPP was placed on exhibition between 31 October 2017 and 31 January 2018. The intent of the SEPP is to both

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simplify the planning rules and definitions for environmental areas and consolidate seven existing planning policies including SREP No. 20 into one new SEPP.

The Explanation of Intended Effect for the Draft SEPP does not propose to change matters required to be considered or permitted under the SREP No. 20 which will be repealed and replaced with the new Environment SEPP. The proposed development has been assessed against the provisions of the existing SREP 20 and considered acceptable.

iii. **Development Control Plan applying to the land:**

Hawkesbury Development Control Plan 2002

The proposal is consistent having regard to the requirements of the DCP 2002. An assessment of the proposal against the relevant provisions of this plan follows:

Part A Chapter 3 – Notification

The application was notified between 13/09/2021 - 27/09/2021 in accordance with Chapter Three of the Hawkesbury Development Control Plan 2002 (HDCP).

The issues raised in the submissions have been reviewed and considered under the public consultation section of this report below.

Part C Chapter 1 – Landscaping

A detailed landscaping plan has been submitted for the entire site. The landscaping plan shows that substantial landscaping will be provided at the front of the site and at the rear of the site in order to fit in with the context of the locality and meet the outdoor unencumbered space requirements for child care centres.

The landscaping plan also details the proposed acoustic walls and shows that they will be screened with vegetation and setback 1m from the existing boundary fences.

Whilst the original proposal was to remove one tree the applicant was requested to reconsider the design of the driveway in order to protect the street trees as they add to the overall appearance of the locality.

The applicant submitted updated plans and an arboricultural impact assessment seeking to retain both street trees. The report recommends that all works be carried out under the supervision of an arborist and that any trenching to be dug by hand to avoid impacts on surface roots.

The applicants planning consultant has also noted that a driveway has been approved in the same location as part of development consent No. DA0579/18 and this proposal has been designed to protect the tree.

Implementation of the landscape plan will help to ensure that the development suits and enhances the character of the area.

Part C Chapter 2 – Car parking and Access

Council's DCP does not specify car parking requirements for a child care facility. However, the proposal complies with the RMS Traffic Generating Development guideline and *Child Care Planning Guideline* requirements of one space per four children which requires a minimum of 14.5 parking spaces for 58 children.

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The proposed 19 parking spaces exceed the minimum requirements and the basement design has been slightly modified to address concerns raised in relation to manoeuvring, safety and traffic flow which were raised as part of the assessment of the original proposal.

Part C Chapter 3 – Signs

No signage is proposed as part of the application.

Part C Chapter 4 – Soil and sediment erosion

Suitable conditions in respect to earthworks have been recommended in this regard.

Part D Chapter 1 – Residential Chapter

Whilst the application is not for residential development, the proposed facility is located within an established residential area. The proposed building is of a modern design and the overall scale and bulk of the development has been designed to be generally consistent with the residential requirements specified in relation to building heights, solar access, landscape areas and setbacks. The building is mainly single storey with an upper storey containing office space and staff room facilities.

The applicant has made minor changes to the setbacks and designs of the upper floor following the lodgement of the 8.2 review in order to address matters such as casual overlooking, building design, appearance of acoustic walls and location of windows.

The application demonstrates that the proposal generally complies with Council's DCP standards and aims for its residential areas:

It is also noted that the DCP does not provide for any FSR or site coverage controls relevant to a child care centre.

iv. Planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:

Not applicable.

vi. Matters prescribed by the Regulations:

The Regulations require Council to publicly notify the application in accordance with the requirements of Council's DCP. This has been done, and all public submissions have been carefully considered in the assessment of the application.

The Regulations also require that the development is to Comply with the National Construction Code. Suitable conditions have been recommended in this regard.

b) The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:

The following impacts have been identified and assessed:

Traffic generation

The proposed child care centre provides sufficient on-site parking for a 58 children child care centre. During the course of the assessment concerns had been raised by the public that the proposal will impact existing traffic conditions along Grose Vale Road.

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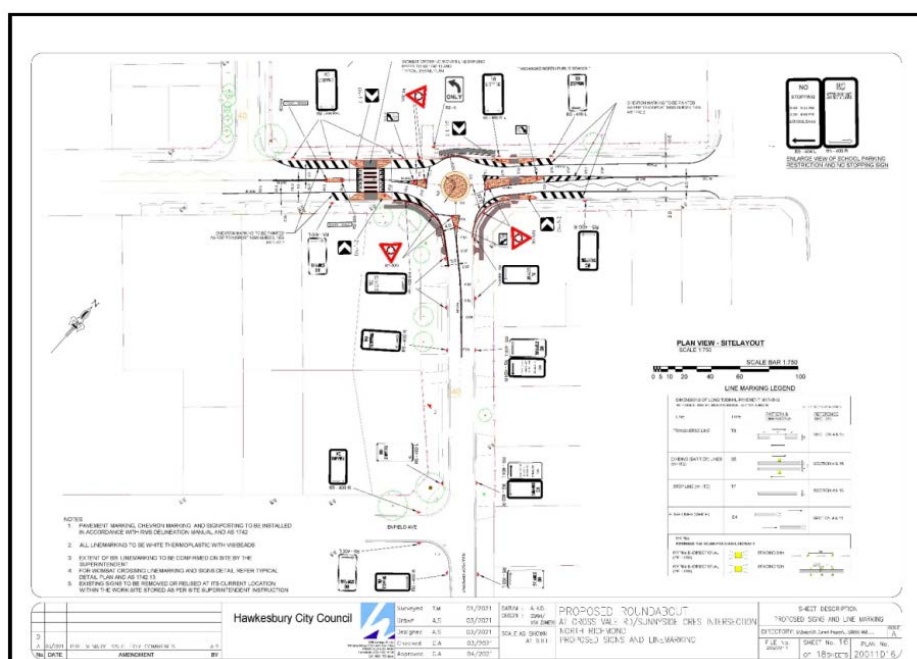
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Whilst the Traffic Management Plan confirms that the proposed development will not alter the current Level of Service of the intersection for both left turn and right movements onto Grose Vale Road from Sunnyside Crescent, the local traffic committee considered a roundabout on the corner of Sunnyside and Grose Vale Road on 10 May 2021 to address community concerns in relation to the operation of this intersection.

It was resolved:

That the installation of a roundabout, which includes the provision of traffic calming, relocation of the existing Wombat Crossing, a pedestrian Refuge, linemarking, signage and lighting, at the intersection of Grose Vale Road and Sunnyside Crescent, North Richmond be undertaken in accordance with the details outlined in Attachment 1 (Plan No. 20011D16).



This resolution was reported to the Council at its ordinary meeting of 25 May 2021 and minutes accepted. This roundabout is expected to begin construction in 2022. Based on the above it is considered that the development will not significantly result in negative traffic impacts on the Grose Vale Road/Sunnyside Crescent intersection.

Furthermore Council's development engineer has raised no issues in relation to the use of existing local roads to service the site based on expected traffic volumes.

Noise and vibration impacts

The Acoustic Report by Rodney Stevens Acoustics considers noise levels on adjoining properties, all potential noise sources including indoor and outdoor play areas, mechanical plant and equipment, and noise intrusion into the building. This report is based on the relevant criteria required by Council, the Association of Australian Acoustical Consultants Guideline for Child Care Centre Acoustical Assessment, and NSW EPA Industrial Noise Policy.

Based on the assessments, the following recommendations were made:

- The windows of the indoor cot area are to be closed due traffic noise intrusion into the building,
- Mechanical plant ventilation is to be installed to reduce noise entering/leaving the premises,

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- Outdoor play time is to be managed so as to have no more than 50% of the children playing outside at one time,
- Acoustic walls are required to be constructed to screen the outdoor areas,
- A qualified acoustic consultant is required to certify that mechanical plant complies with relevant noise criteria once it has been designed at construction certificate stage.

Should the application be approved, the above recommendations should form a part of the conditions.

Context and Setting

The proposal will not have any adverse impacts on the appearance of the locality. The area is a mix of one and two storey developments, in a variety of styles and ages.

The proposal is considered to be acceptable in terms of its visual bulk and design, and with quality finishes and landscaping, the childcare centre is considered to be consistent with the desired character for development in a medium density housing area having regard to the requirements specified under the DCP.

The design of the development will provide all parking areas in a basement level and will take the form of a two storey development when viewed from the street.

Public Domain

The development will make a satisfactory contribution to the public domain by providing a modern style building with basement parking, substantial landscaping and the protection of street trees.

Waste

Sewer services are available to the proposed development site.

Commercial waste removal services are proposed to support the proposal.

Natural Hazards

There are no natural hazards with potential to impact on the subject development site.

Technological Hazards

There are no technological hazards with potential to impact on the subject development site.

Safety, Security and Crime Prevention

The development will be fully fenced and therefore children remain secure on the premises.

Economic Impact in the Locality

The child care facility will add to the social infrastructure in the area, providing a new service to families and providing employment. It will therefore have a positive social and economic impact.

Construction

The application was reviewed by Council's internal building surveyor and development engineer who have raised no issues subject to standard conditions to ensure BCA compliance and environmental controls during the process of construction.

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Cumulative Impacts

There are no cumulative impacts associated with the proposed development.

Compliance with the Disability Discrimination Act

DDA compliance is necessary. Disability access has been considered with the application and there is lift access provided from the basement to both levels of the centre. There is also an accessible parking space and toilets within the building. Additional measures in the detailed design of facilities within the centre will be required and this will be covered in the conditions.

c) Suitability of the site for the development:

The land is of sufficient area and dimensions, and is relatively free of environmental constraints that could hinder the use of land.

The site provides suitable room to be able to support the development and conditions addressing site building and engineering matters have been recommended under Section 2 of this report.


d) Any submissions made in accordance with the Act or the Regulations:

Concern	Comment
Car Parking and Traffic	
Traffic impact on the intersection of Sunnyside Crescent and Grose Vale Road.	Impacts on traffic accessing Grose Vale Road has been discussed in the report above. It is considered that traffic issues presently experienced will not be adversely impacted due to the current level of service, however current traffic impacts should be improved with proposed new public works.
Evacuation from the locality or site in the event of a flood, medical emergency or bushfire.	The property is not subject to the impacts of bushfire or flooding and the development is unlikely to adversely impact the evacuation of the locality. Emergency evacuation procedures are proposed and it is expected that local matters such as flooding will have advanced warning for the centre to avoid people being isolated in a flood event.
Limited on street parking.	Applying a higher parking rate to the proposal than what is specified under the RMS and Department of Planning guidelines would be considered to be excessive and onerous.
Traffic modelling and number of trips calculated given the reliance of private car usage in the locality.	Modelling provided has been reviewed and considered acceptable.
Suitability of existing road widths and opportunity for two vehicle to pass each other on route to Grose Vale Road.	Existing roads provide sufficient width to support the proposal.
Driveway Access to adjoining properties.	Traffic safety has been considered as part of the assessment of the proposal and the traffic certification report submitted with the application has been reviewed by Councils subdivision and development officer whom has raised no objections based on safety subject to the development complying with standard development conditions for parking.

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Amenity	
<p>Impact on the amenity, views and privacy of adjacent dwellings.</p>	<p>The proposed child care centre building will not result in adverse overshadowing impacts on the private open space of adjacent developments and is acceptable having regard to the requirements of the DCP.</p> <p>The proposed two storey child care building will not be orientated towards adjacent residential development and the bulk of the building has been controlled by designing the building so that it largely fits in the building height plane for residential development.</p> <p>It is considered that the first floor will not have any adverse impact on adjoining properties outlook as suitable setbacks are proposed with the first floor being approximately 7.3 and 5 metres from property boundaries with windows being limited to small highlight windows 1.5m off the first floor.</p> <p>This can be seen in the elevations below.</p> 
<p>Impacts on neighbouring development and structured during construction.</p>	<p>Standard development construction conditions are recommended to control matters such as noise, impact of adjacent buildings, waste, demolition, water and erosion.</p>
<p>Compatibility with surrounding development.</p>	<p>The site provides adequate parking, landscaping, and is considered acceptable having regard to the requirements of the DCP and the <i>Child Care Planning Guideline</i> issued by the Department of Planning.</p>
<p>Impact on street trees.</p>	<p>The applicant has proposed the retention of existing trees with an updated tree management plan being provided.</p>

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Concern	Comment
Acoustics	
Acoustic impacts should be based on: <ul style="list-style-type: none">- worst case scenario with all children playing outside at the same time,- period of continuous noise impacts associated with the use of the outdoor play areas, and- acoustic impact of mechanical plant.	<p>Acoustic impacts are considered in the acoustic report submitted with the application. Management measures to control noise have been included in the plan of management accompanying the application and seek to minimise noise impacts in accordance with the recommendations of the acoustic assessment report.</p> <p>Mechanical ventilation is proposed in order to limit noise intrusion and impacts of children using internal play areas during active times.</p> <p>Mechanical plant is proposed to be designed at construction certificate stage under the advice of an acoustic consultant.</p> <p>Suitable acoustic measures have been shown on the plans including acoustic walls and standard acoustic conditions are recommended to ensure the proposal does not result in offensive noise impacts on adjacent development.</p>

Public Submissions

21 submissions were received following the notification of the proposal raising objections to the proposed development. The main points of objections have been listed and considered below.

Since the notification of the application the proposal has been amended to retain the street tree, increase the front setback, reduce overlooking from the first-floor rooms and screen acoustic fencing with soft landscaping. These matters do not change the nature of the development and remains substantially the same as submitted.

e) The Public Interest:

The proposed child care centre will provide a facility in demand for young working families in the area and is considered an acceptable use of the site, which is in the public interest. The matters raised in public submissions have been assessed in detail but are not considered to be sufficient to justify refusal of the application.

Development Contributions

Councils Section 7.12 Fixed development consent levies (Hawkesbury Section 94A Contributions Plan 2015) does not apply to child care centres.

Conclusion

The application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act 1979 and the proposal considered acceptable having regard to the relevant planning controls applicable to the development including the *Child Care Centre Guidelines* produced by the Department of Planning.

Accordingly, it is recommended that the proposal be supported subject to conditions recommended in this report.

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RECOMMENDATION:

That development application S82A0001/21 at Lot 17 DP 255010, 6 Keda Circuit NORTH RICHMOND NSW 2754 for S82A Review - Centre Based Child Care Facility - Demolition of Existing Structures, Construction of a 58 Place Centre-Based Child Care Facility, Outdoor Play Areas, Basement Car Parking and Landscaping be approved subject to the recommended conditions as listed below:

Local Planning Panel Recommended Conditions

Application Number: S82A0001/21
Proposal Details: S82A Review - Centre Based Child Care Facility - Demolition of Existing Structures, Construction of a 58 Place Centre-Based Child Care Facility, Outdoor Play Areas, Basement Car Parking and Landscaping
Legal Description: Lot 17 DP 255010
Property Address: 6 Keda Circuit NORTH RICHMOND NSW 2754
Applicant: Bani Design
Owner: Keda Property Investments Pty Limited

General Conditions

1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the approved plans and supporting documentation listed below, except where amended in red on the plans and/or amended by other conditions of this consent:

a) Plans Reference:

Drawing Name	Prepared by	Drawing Number	Date
Compliance table	Bani design	01	30/11/2021
Demolition Plan	Bani design	02	30/11/2021
Site Plan	Bani design	03	30/11/2021
Basement Plan	Bani design	05	30/11/2021
Ground Floor Plan	Bani design	06	30/11/2021
First Floor Plan	Bani design	07	30/11/2021
Elevations	Bani design	08	30/11/2021
Sections	Bani design	09	30/11/2021
Schedule of Finishes	Bani design	11	30/11/2021

b) Document Reference:

Document Name	Reference	Prepared by	Date
Plan of Management	6 Keda Circuit Richmond	Applicant	27/07/2021
Landscape Concept	L-01	Outside in design group	17/01/2022
Front Fence Detail	L-02	Outside in design group	17/01/2022
Landscape Structural Works	L-04	Outside in design group	17/01/2022

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Document Name	Reference	Prepared by	Date
Traffic & Parking Statement and addendum letters to traffic and parking assessments	Report Addendum letter Addendum letter	Heamanote consultants	10/12/2020 20/07/2021 14/12/2021
Stormwater Concept Design Plans	Reference 20200110, revision H	SGC Consulting	22/12/2021
Statement of Environmental Effects	6 Keda Circuit Richmond	Think planners	27/07/2021
Acoustic report	2001554R1 revision 4	Rodney Stevens Acoustics	27/07/2021
Access report	20146	Vista access architects	30/06/2021
Geotechnical report	G20551-1	Geotechnical consultants Australia	14/12/2020
Arboricultural impact assessment and tree management plan	6 Keda Circuit North Richmond	Horticultural management services	06/10/2021 Amended 21/1/2022

No works, other than those approved (including raising or lowering of ground levels on the site, or construction of retaining walls on any property boundary) are permitted by this consent.

Note: Details of the development shown in the approved plans and documents referenced are altered in the manner indicated by:

- (i) any amendments made by Council on the approved plans or documents;
- (ii) any notes, markings, or stamps on approved plans or documents; and
- (iii) any conditions contained in this consent.

2. Construction Certificate Required Prior to Commencement of Works

Construction or preparatory work (including earthworks or tree and/or vegetation removal) must not commence until:

- a) a Construction Certificate as relevant from either Council or a registered certifier has been obtained (a fee is payable for this service);
- b) a Principal Certifier has been appointed; and
- c) a Notice of Commencement has been lodged with Council.

Note: If a Construction Certificate is issued by a registered certifier (and not Council), it will be necessary to lodge the Construction Certificate and other approved documents with Council within two days of such approval (a registration fee is payable upon lodgement).

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3. Appointment of a Principal Certifier

No work shall commence until:

- a) A Principal Certifier is appointed for the building/engineering works and the following details relating to the carrying out of the works have been provided:
 - (i) name and licence number of the builder/contractor undertaking the construction works; or
 - (ii) name and permit number of the owner-builder (if relevant);
- b) The Principal Certifier has:
 - (i) provided a copy of the notice of its determination to the consent authority, and to Council (within two days after the date of the determination);
 - (ii) notified the person having benefit of the consent of any critical stage inspections and other inspections that it requires to be carried out in relation to the approved work;
 - (iii) notified Council of its appointment (not less than two days before commencement of building work);
- c) The person having benefit of the consent (if not carrying out work as an owner-builder) has:
 - (i) appointed a principal contractor who must hold a 'contractor licence' if any residential building work is involved;
 - (ii) notified the Principal Certifier of the appointment of the principal contractor;
 - (iii) notified the principal contractor of any critical stage inspections or any other inspections that are required to be carried out in relation to the approved work; and
- d) At least two days' notice are to be provided to Council of the date on which it is proposed to commence work associated with this development consent.

4. Section 6.16(1) Certificates Required

Any registered certifier shall provide copies of all Section 6.16(1) certificates issued under the *Environmental Planning and Assessment Act 1979* relevant to this development to Council within seven days of issuing the certificate.

Note: A registration fee applies

5. Signage

No signage is approved as part of this consent. A separate development consent must be obtained to authorise the display of signage on the site.

6. Prescribed Conditions - Compliance with National Construction Code

All building works must be carried out in accordance with the requirements of the National Construction Code (Building Code of Australia).

7. Civil Works Specification Compliance

All civil construction works required by this consent shall be undertaken in accordance with *Hawkesbury Development Control Plan Appendix E Civil Works Specification*. Inspections shall be carried out and compliance certificates issued by Council or a Certifier.

8. Works on Public Land - Not Permitted Without Approval

No work can be undertaken within adjoining public lands (i.e. Parks, Reserves, Roads etc.) without the prior written consent of Council or other relevant authority. In this regard the person having benefit of the consent is to contact Council prior to the commencement of any design works or preparation of a Construction and Traffic Control Plan.

The developer must bear the cost of all works associated with the development that occurs on public land, including the restoration of damaged areas.

9. Civil Works

Council requires the following works to be carried out as part of the development:

- a) earthworks;
- b) access and car parking works;
- c) stormwater drainage work;
- d) on-site-detention system;

All civil construction works required by this consent must be undertaken in accordance with Hawkesbury Development Control Plan Appendix E Civil Works Specification.

A Construction Certificate is required to be in force prior to work commencing. It may be necessary to obtain appropriate Compliance Certificates for certain aspects of the development prior to the issue of a Construction Certificate.

Inspections must be carried out either by Council or a Certifier. Should Council be engaged to issue compliance certificates or carry out inspections, fees can be provided on request.

10. Occupation Certificate Required Prior to The Use Of The Building

The building must not be occupied or used prior to the issuing of an Occupation Certificate by the Principal Certifier. Where a partial Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.

A copy of any Occupation Certificate must be submitted to Council within two days of its issue.

11. Asbestos Removal

If asbestos is encountered during construction or demolition work, measures must be in place in accordance with SafeWork NSW guidelines and the *Occupational Health & Safety Regulation 2001*. Work shall not commence or continue until all the necessary safeguards required by SafeWork NSW are fully in place.

Only contractors who are appropriately licensed for asbestos disposal by SafeWork NSW may carry out the removal and disposal of asbestos from demolition and construction sites.

Prior to commencing demolition of buildings containing asbestos, a commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring 400mm x 300mm shall be erected in a prominent visible position on the site in accordance with Australian Standard AS 1319 - 'Safety Signs for the Occupational Environment'.

The person entitled to act on this consent shall notify adjoining residents in writing five working days prior to the demolition.

Asbestos waste must only be disposed of at a landfill site authorised to receive such waste. All receipts and supporting documentation must be retained in order to verify lawful disposal and are to be made available to Council on request.

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12. Excavation - Archaeology

If any Aboriginal or European object (including evidence of habitation or remains) is uncovered during the course of the work:

- a) all work must stop immediately in that area; and
- b) the NSW Office of Environment and Heritage and Council must be advised of the discovery.

Note: Depending on the significance of the object uncovered, an archaeological assessment and excavation permit under the *Heritage Act 1997* may be required before further work can continue.

If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.

13. Vegetation Removal

Waste resulting from the approved clearing of the site shall be salvaged for re-use, either in log form, or as a woodchip mulch for erosion control and/or site rehabilitation. Non-salvageable material such as roots, stumps or declared weed species shall be disposed of in an approved manner.

No vegetative material is to be disposed of by burning on-site.

Separate approval is required for the removal of any vegetation in the road reserve. Native vegetation in the road reserve is required to be protected during construction under the supervision of an appropriately qualified arborist (AQF Level 5).

Prior to the Issue of a Construction Certificate

14. Sydney Water - Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained. The application must be made through an authorised Water Servicing Coordinator. For details refer to Sydney Water's website.

Following application, a 'Notice of Requirements' will be forwarded detailing water and/or sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The 'Notice of Requirements' or Section 73 Certificate must be submitted to the certifier prior to the issue of any Construction Certificate.

15. Erosion and Sediment Control Plan (ESCP)

Prior to the issue of the Construction Certificate, an updated Erosion and Sediment Control Plan (ESCP) must be submitted to the certifier. The ESCP must show the location of site boundaries, adjoining roads, approximate grades, vegetation, site access, impervious areas, existing and proposed site drainage and a north point.

The ESCP must take into account the requirements of Landcom's publication *Managing Urban Stormwater - Soils and Construction (2004)*. The plan should show the following:

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- a) timing of works
- b) nature and extent of earthworks, including the amount of any cut and fill
- c) where applicable the diversion of runoff from upslope lands around the disturbed areas
- d) location of all soil and other material stockpiles including topsoil storage
- e) location and type of proposed erosion and sediment control measures
- f) site rehabilitation proposals
- g) frequency and nature of maintenance program

16. Engineer Designed Pavement Commercial

The carpark pavement must be designed by a qualified civil/geotechnical engineer and certified to be satisfactory for the expected traffic loadings. AUSTROADS Guide to Pavement Technology can be used as the design guideline for the pavement design.

The above details must be incorporated on appropriate submitted plans prior to the issue of the Construction Certificate to the satisfaction of the Certifier.

17. Basement Parking Turning Bay

The basement car parking area must incorporate/replace a parking space with a dedicated turning bay to allow vehicles to enter and exit in a forward direction in the case that all spaces are occupied. A turning bay and swept paths to show practical entry and exit must be incorporated on plans prior to the issue of a Construction Certificate by the Certifier.

18. Car Parking and Allocation of Spaces

Car parking spaces shall be provided in accordance with the approved plans, National Construction Code (Building Code of Australia) & AS 2890.6 - 'Parking facilities: Off-street parking for people with disabilities'. The minimum number of spaces provided shall be as follows:

- 18 - Staff/Visitor
- 1 - Accessible Car Spaces
- 1 - Turning Bay

All car parking spaces are to be identified by line-marking and appropriate signposting.

Details demonstrating compliance with the above requirements must be submitted to the Certifier prior to issue of the Construction Certificate.

19. Driveway Construction - Commercial in Council Road Reserve

An 'Agreement Form for Driveways' must be submitted to Council prior to the issue of a Construction Certificate. Evidence of lodgement and payment for this application must be provided to the Certifier.

The vehicular crossing must:

- a) have a minimum width of six metres within the road reserve;
- b) not impact the quality and health of the street trees;
- b) not interfere with existing public infrastructure;
- c) have a sealed finish;

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- d) be constructed in accordance with Hawkesbury Council's 'Driveway Specification' and Hawkesbury Development Control Plan 2002 - Appendix E - Civil Works Specification.

Note: The Agreement Form for Driveways and the Driveway Specification are available from Council's website.

20. Vehicle Entry and Exit from Commercial/Industrial Property

The vehicular usage of the site must be constructed to comply with the following requirements:

- a) all vehicles must be loaded and unloaded entirely within the property in a safe and practical manner;
- b) all vehicles shall be driven in a forward direction at all times when entering and leaving the premises; and
- c) vehicles entering and exiting the site must not create queuing which adversely affects vehicles travelling on the public road network.

Loading and unloading areas are to be clearly designated and the swept paths of the longest vehicle entering and exiting the subject site must be in accordance with:

- a) Australian Standard AS 2890.1 - 'Parking facilities - Off-street car parking'; and
- b) Australian Standard AS 2890.2 - 'Parking facilities - Off-street commercial vehicle facilities'.

Details demonstrating compliance with the above requirements must be submitted to the Certifier prior to issue of the Construction Certificate.

21. Public Safety - Clear Pedestrian Sight Lines

Clear pedestrian sight lines are to be provided at the driveway entry in accordance with Figure 3.3 of Australian Standard AS 2890.1 - 'Parking facilities - Off-street car parking'. This requires that there be no boundary/retaining wall, fence or landscaping higher than 900 millimetres within a 2.5 metres by 2 metres sight triangle at each side of the entryway to the site. Any walls/fences/landscaping are to be adjusted in order to comply with this requirement.

Details demonstrating compliance with these requirements are to be submitted to the Certifier prior to the issue of the Construction Certificate.

22. Redundant Vehicular Layback

All redundant vehicular layback crossing(s) must be removed and replaced with kerb and gutter to match adjacent road construction and infrastructure. This work must be carried out at the developer's expense, including all alterations of public infrastructure where necessary.

Details demonstrating compliance with these requirements are to be submitted to the Certifier prior to the issue of the Construction Certificate.

23. Redundant Driveway from Kerb to Property Boundary

Any redundant vehicular concrete driveway must be removed and the area appropriately turfed and/or paved in a manner that conforms to the adjoining road reserve. The area forward of the front boundary must be kept smooth, even and free from any trip hazards. This work must be carried out at the developer's expense, including all alterations of public infrastructure where necessary.

Details demonstrating compliance with these requirements are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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24. Detailed Drainage Design Commercial/Industrial

A detailed drainage design of the site must be submitted to and approved by Certifier prior to the release of the Construction Certificate. The detailed plan must:

- a) be generally in accordance with Stormwater Concept Design Plans prepared by SGC Consulting Engineers with Reference 20200110 revision H dated 22/12/21;
- b) be designed such that stormwater overflow from the detention basin must not discharge from any of the upstream inlet pits;
- c) drain to the street;
- d) indicate the method of disposal of all stormwater and must include existing ground levels, finished surface levels on all paved areas, estimated flow rates, invert levels and sizes of all pipelines;
- e) be to the satisfaction of the Principal Certifier;
- f) be designed to cater for a 1 in 20 year Average Recurrence Interval storm event;
- g) show details of any overflow drainage paths and that they be designed to cater for 1 in 100 year Average Recurrence Interval storm event; and
- h) comply with Council's Hawkesbury Development Control Plan 2002 - Appendix E and Australian Standard AS 3500 - 'Plumbing and Drainage' unless a variation is specifically noted and approved by the Development Application concept drainage plan.

25. Structural Engineers Design - Concrete and Structural Steel

A qualified Structural Engineer's design for all reinforced concrete and structural steel must be provided to the Accredited Certifier prior to issue of Construction Certificate.

26. Structural Engineers Design - Deep Pits

All pits deeper than three metres must be designed by a certified structural engineer and be in accordance with Australian Standard AS 3600 – 'Concrete Structures'. Pits deeper than 1.2 metres must have step irons and pits deeper than 1.8 metres are to be reinforced concrete.

Details to this effect must be incorporated on the detailed drainage design that is submitted to the Certifier prior to issue of the Construction Certificate.

27. Pit Grates

All pits must have flush fitting grates. All pits larger than 600mm x 600mm are to be grated galvanised steel grid hinged and be heavy duty type where traffic loading is expected details to this effect are to be included on plans submitted to the Certifier prior to issue of the Construction Certificate.

28. Overland Flow

The development shall not create adverse impacts to neighbouring properties in relation to overland flow and must meet the following requirements:

- a) water flowing from the property must not be redirected or concentrated to adjoining properties;
- b) water flowing into the property from adjoining lots shall not be impeded or diverted; and
- c) water flow shall follow the natural flow directions without increasing velocity.

Details demonstrating compliance with the above must be provided to the Certifier prior to the issue of a Construction Certificate.

29. On Site Stormwater Detention Design Compliance

On-Site Detention (OSD) for stormwater is required to be provided for this development. Details including calculations are to be shown on plans submitted for the Construction Certificate to the Satisfaction of the Certifier. OSD must comply with the following:

- a) OSD shall be provided to maintain all stormwater discharges for storms up to the 1 in 100 Average Recurrence Interval storm event at pre-development levels; and
- b) the OSD system is to be designed in accordance with the Hawkesbury Development Control Plan - Appendix E, Civil Works Specification (Part 1 - Design Specifications and Part 2 - Construction Specifications).

Details demonstrating compliance with the above requirements must be submitted to the Certifier prior to issue of the Construction Certificate.

30. Structural Engineers Design - Adequacy of Adjoining Properties (Excavation Works)

A report must be prepared by an appropriately qualified and practising structural engineer certifying the structural adequacy of structures on neighbouring lots 8 Keda Circuit & 4 Keda Circuit to withstand the proposed excavation required for the development.

This report is also to detail any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works.

Details demonstrating compliance with the above requirements must be submitted to the Certifier prior to issue of the Construction Certificate.

31. Dilapidation Survey - Private Property (Neighbouring Buildings)

A dilapidation report of adjoining properties (4 Keda Circuit and 8 Keda Circuit) detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items. The survey and report is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of Certifier that all reasonable steps have been taken to obtain access and the affected property owner has been advised of the reason for the survey and that these steps have failed. Written concurrence must be obtained from the consent authority in such circumstances.

Details demonstrating compliance with the above requirements must be submitted to the Certifier prior to issue of the Construction Certificate.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

32. Fitout Details

Plans are required to show all internal fittings required for the facility, including laundry facilities, internal bin/waste storage areas, food preparation facilities, mechanical plant, acoustic measures and storage.

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Plans are to demonstrate that the internal fittings will not encroach into the minimum 189sqm unencumbered space requirement for 58 children.

Details in accordance with the above must be submitted to the Principal Certifying Authority prior to issue of a Construction Certificate.

Any loss of unencumbered space will be required to be assessed and considered as part of a modification application prior to the issue of any construction certificate for the development.

33. Landscape Plan

A detailed landscape plan, prepared by a qualified landscape architect, must be provided consistent with the plans approved as part of this consent.

The landscape plan must demonstrate that acoustic walls, retaining walls, garden beds and landscaped areas within the outdoor play areas do not encroach into the minimum 406 square metre unencumbered space requirement for 58 children.

Details in accordance with the above must be submitted to the Principal Certifying Authority prior to issue of a Construction Certificate.

Any loss of unencumbered space will be required to be assessed and considered as part of a modification application prior to the issue of any construction certificate for the development.

34. Retaining Wall Detail

Retaining wall construction details along property boundaries must be shown on the plans. All components of retaining walls, including setbacks, drainage and materials are to be designed so that they do not encroach into the outdoor unencumbered space of the Centre-Based Child Care Facility.

Details in accordance with the above must be submitted to the certifier prior to issue of a Construction Certificate.

Any loss of unencumbered space will be required to be assessed and considered as part of a modification application prior to the issue of any construction certificate for this development.

35. Long Service Levy Payment

The payment of a long service levy as required under Part 5 of the *Building and Construction Industry Long Service Payments Act 1986* is required. Evidence that the levy has been paid, is to be submitted to the certifier prior to the issue of any Construction Certificate.

Note: All building works in excess of \$25,000 are subject to the payment of a Long Service Levy at the rate of 0.35%. Payments can be made at Long Service Payments Corporation offices or most councils.

36. Access for Persons with a Disability

Details demonstrating compliance with Australian Standard AS 1428.1 - 'Design for Access and Mobility and Disability (Access to Premises - Buildings) Standards 2010' in relation to the development are to be submitted to the certifier prior to issue of a Construction Certificate.

37. Noise Generating Premises - Acoustic Certification

The recommendations contained in the Acoustic Impact Assessment report prepared by Rodney Stevens, dated 27/07/2021 must be incorporated into the design and construction of the development.

A suitably qualified acoustic consultant shall be engaged to assist with the preparation of the final building plans and specifications to ensure compliance with any acoustic conditions. Details demonstrating compliance with this requirement must be submitted to the certifier prior to issue of the Construction Certificate.

38. Vermin and Pest Management

The design of the waste storage areas shall incorporate measures to eliminate or minimise the potential for birds, rodents, flies and other pests to congregate in those areas.

39. Food Premises - Design

To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas, all building work in connection with the occupation or use of the premises for the preparation and storage of food shall be designed and carried out in accordance with the requirements of:

- a) *Food Act 2003*;
- b) *Food Regulation*;
- c) Australian Standard AS 4674 - 'Design, construction and fit-out of food premises';
- d) Sydney Water Corporation;
- e) Protection of the *Environment Operations Act* and associated Regulations; and
- f) National Construction Code (Building Code of Australia).

Plans and specifications which comply with this condition must be submitted to the certifier for approval prior to the issue of any Construction Certificate. The Construction Certificate plans and documentation must incorporate details of the following:

- a) construction, materials and finishes;
- b) installation of fixtures, fittings and equipment;
- c) washing facilities, other facilities and special requirements;
- d) mechanical ventilation and exhaust discharges; and
- e) temperature control

40. Infrastructure Upgrades

The following works are required to be undertaken to upgrade infrastructure in the road reserve fronting the development. This work must be carried out at the developer's expense, including all alterations of public infrastructure where necessary:

- a) Construction of a 1.2 metre wide paved pedestrian footpath along the frontage of the development in order to accommodate the increased foot traffic associated with the proposed land use,

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- b) All redundant vehicular layback crossing(s) must be removed and replaced with kerb and gutter to match adjacent road construction and infrastructure.
- c) Removal of poor quality soil to a depth of 100mm within the road reserve and replacement with rich topsoil and turf for the entire lot frontage.
- d) Replacement of dilapidated service lids; and

Details are to be provided to the certifier prior to the issue of the Construction Certificate.

Prior to the Commencement of Works

41. Principal Certifying Authority - Details

The applicant shall advise Council of the name, address and contact number of the Principal Certifier, in accordance with Section 81A 2(b) of the *Environmental Planning and Assessment Act 1979*.

42. Toilet Facilities

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet must:

- a) be a standard flushing toilet connected to a public sewer, an approved on-site effluent disposal system or temporary chemical closet that is regularly maintained; and
- b) provide appropriate facilities for the disposal of sanitary items within the toilet.

43. Support and Protection for Neighbouring Buildings

If an excavation associated with the approved development extends below the level of the base of the footings of a building on an adjoining property the person having the benefit of this consent must, at that person's own expense:

- a) protect and support the adjoining premises from possible damage from the excavation;
- b) where necessary, underpin the adjoining premises to prevent any such damage; and
- c) provide a minimum seven days written notice to the owners/occupiers of adjoining properties giving details of the excavation and the proposed method of support of the excavated area.

The proponent is liable for any part of the cost of work carried out for the purposes of this condition whether carried out on the development site or on any adjoining land.

44. Survey Certificate - Building to be Verified by a Registered Surveyor

In order to ensure compliance with approved plans, a Survey Certificate, prepared by a Registered Surveyor, including locating any easements affecting the subject land, is to be undertaken. A set-out survey must be provided prior to any excavation, placement of footing and pouring of concrete showing its relationship of works to property boundaries.

Progress certificates shall be submitted to the Principal Certifier at the time of carrying out relevant progress inspections. Under no circumstances is work allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved plans and the works as constructed.

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45. Notice of Commencement

No work shall commence until a notice of commencement has been provided to Council. This notice is to be provided not less than two days from the date on which it is proposed to commence work associated with this Development Consent. The notice must also contain:

- a) details of the appointment of a Principal Certifier providing name, address and telephone number; and
- b) details of the name, address and licence details of the Builder.

46. Principal Certifier Site Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a) showing the name, address and telephone number of the Principal Certifier for the work;
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

47. Safety Fencing

The site is to be secured by a fence, in accordance with SafeWork NSW requirements, to prevent unauthorised access during the period of all works.

Entry and exit points shall be secured at all times to prevent the unauthorised entry of vehicles, and to ensure that the site manager can control and prevent dumping of waste and potentially contaminated material whilst fill material is being imported or managed on site.

48. Demolition - General

All demolition works must be carried out in accordance with the following:

- a) all demolition work shall be carried out strictly in accordance with Australian Standard AS 2601 - 'The Demolition of Structures';
- b) demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current SafeWork 'Demolition License' and SafeWork 'Class 2' (Restricted) Asbestos License and comply with SafeWork's 'Guide to Working with Asbestos';
- c) site safety/security fencing shall be provided prior to commencement of any work on-site and shall be removed only when all hazards, including site waste, have been removed. The site safety/security fencing shall comply with the following Australian Standards:
 - (i) Demolition Sites - Australian Standard AS 2601 - 'Demolition of structures';
 - (ii) Construction Sites - Australian Standard AS 4687 - 'Temporary fencing and hoardings';
 - (iii) Ongoing Site Safety/Security - Australian Standard AS 1725 - 'Chain-link fabric security fencing and gates';

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- d) demolition work shall be carried out only between the hours of 7am to 6pm Mondays to Fridays and 8am to 4pm Saturdays. No work is to be carried out on Sundays or public holidays;
- e) no trees shall be removed from the site unless they are shown for removal on the approved plans, or separately approved by Council;
- f) erosion and sediment control measures shall be installed prior to any demolition works commencing and maintained in accordance with the requirements contained in the Hawkesbury Development Control Plan 2002;
- g) all waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water;
- h) public footways and roadways adjacent to the site must be fully maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council;
- i) any materials stored on site must be stored away from any drainage path or easement, natural watercourse;
- j) demolition activity shall not cause damage to or adversely affect the structural integrity of adjoining buildings;
- k) waste must be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation;
- l) no material is to be burnt on site;
- m) details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal and recycling; and
- n) the site shall be grassed or otherwise rendered erosion resistant immediately upon completion of demolition.

The demolition work plans and a statement of compliance with the above requirements shall be submitted to the satisfaction of the Principal Certifier prior to the commencement of works.

49. Demolition - Work Plans

The demolition work must comply with the provisions of Australian Standard AS 2601 - 'The Demolition of Structures'. The work plans required by Australian Standard AS 2601 - 'The Demolition of Structures' must be accompanied by a written statement from a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard.

The work plans and the statement of compliance must be submitted and be to the satisfaction of the Principal Certifier prior to the commencement of works.

50. Demolition - Notice

- a) Notice is to be given to Council of the date on which it is proposed to commence demolition. This notice shall:
 - (i) be given not less than two days before the date on which it is proposed to commence demolition work;

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- (ii) provide details of the name, contact details of the demolisher/contractor undertaking the work;
 - (iii) provide the relevant SafeWork license details of the demolisher/contractor; and
 - (iv) details of the demolisher/contractor's current Public Liability/Risk Insurance Policy providing for a minimum cover of \$10 million.
- b) Notice is to be given to adjoining property owners of the date on which it is proposed to commence demolition. This notice shall:
 - (i) be given not less than two days before the date on which it is proposed to commence demolition work;
 - (ii) provide details of the name, contact details of the demolisher/contractor undertaking the work; and
 - (iii) provide the telephone number of SafeWork NSW Asbestos/Demolition Hotline - 1800 672 718.

51. Site to be Maintained Clean and Tidy During Construction

The site shall be kept clean and tidy during the construction period and all unused building materials and rubbish shall be removed from the site upon completion of the project. The following restrictions apply during construction:

- a) Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site.
- b) Building operations such as brick cutting, washing tools, concreting and bricklaying shall be undertaken only within the site.
- c) Builders waste must not be burnt or buried on site. All waste must be contained and removed to a Waste Disposal Depot.

52. Construction Management Plan

A Construction Management Plan must be submitted to and reviewed by Council prior to the commencement of works.

The Construction Management Plan must include the following:

a) Summary

A concise (maximum three page) summary of key points from all documentation.

b) Background

Provide details of the proposed works including the extent, staging and proposed timing of the works.

c) Consultation

The manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process and the establishment of a protocol for complaints handling and management.

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d) Noise

Details in relation to how works will be undertaken in accordance with the Interim Construction Noise Guideline published by the NSW Environment Protection Authority.

e) Dust

Details in accordance with the Dust Management Measures condition requirements.

f) Vibration

A Vibration Compliance Letter in accordance with the relevant vibration condition requirements.

g) Traffic

A Detailed Traffic Management Plan in accordance with the Traffic Management Plan condition requirements.

h) Soil and Water Management

Detailed Soil and Water Management Plan in accordance with the Soil and Water Management Plan condition requirements.

i) Water Quality Assessment and Monitoring

A report clearly detailing planned water quality monitoring proposed for the development.

j) Any site specific Heritage and Archaeological Management.

k) Any site specific Ecological Impact Mitigation Measures.

During Construction

53. Critical Stage Inspections

Prior to the commencement of building work and at nominated stages during the construction of the building, a minimum of 48 hours' notice is required to be provided to allow the Principal Certifier to ensure that the critical stage inspections are undertaken.

Note: Critical stage inspections are required to be carried out in accordance with Clause 162A of the *Environmental Planning & Assessment Regulation 2000*.

54. Termite Treatment

The development must be treated for termites in accordance with the National Construction Code and Australian Standard AS 3660.1 - 2014 - 'Termite Management - New Building Work' by a suitably qualified, licenced person.

A Certificate of Compliance is to be provided to the Principal Certifier and a Notice of Treatment is to be provided to the metre box.

55. Inspections by Principal Certifier

Inspections shall be carried out and compliance certificates issued by Council or an registered certifier for the components of construction detailed in Hawkesbury Development Control Plan 2002 - Appendix E Civil Works Specifications, Part II, Table 1.1.

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56. Sydney Water - Endorsement of Approved Plans

The approved plans must be submitted to and endorsed by Sydney Water via the 'Sydney Water Tap-in' website to determine whether the development will affect Sydney Water's water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to Sydney Water's website.

Evidence of the building plan approval must be forwarded to the Principal Certifier prior to the commencement of works.

57. Construction Hours

Clearing of land, running of machinery, excavation, and/or earthworks, building works and the delivery of building materials shall be carried out between the following hours:

- a) between 7am and 6pm, Mondays to Fridays inclusive;
- b) between 8am and 4pm, Saturdays;
- c) no work on Sundays and public holidays;
- d) works may be undertaken outside these hours where:
 - (i) the delivery of vehicles, plant or materials is required outside these hours by the Police or other authorities;
 - (ii) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; and
 - (iii) a variation is approved in advance in writing by Council.

58. Site Management During Construction

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Copies of receipts stating the following must be given to the Principal Certifier :
 - (i) the place to which waste materials were transported;
 - (ii) the name of the contractor transporting the materials; and
 - (iii) the quantity of materials transported off-site and recycled or disposed of.
- d) Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.
- e) During construction:
 - (i) all vehicles entering or leaving the site must have their loads covered;

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- (ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads; and
 - (iii) any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to the public.
- f) At the completion of the works, the work site must be left clear of waste and debris.

Note: In the event it is not possible to keep the footpath or road reserve clear during construction works written approval from Council shall be obtained prior to any closing of the road reserve or footpath area. The closure shall take place in accordance with Council's written approval. The area shall be signposted and such signposting be maintained in a way that ensures public safety at all times.

59. Loading and Unloading During Construction

The following requirements apply.

- a) All loading and unloading associated with construction activity must be accommodated on site.
- b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval must be obtained from Council.

60. Erosion and Sediment Control Plan – Implementation

Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with the approved Erosion and Sediment Control Plan.

61. Overland Stormwater Flow Management

The works associated with the development shall ensure that:

- a) all natural water flow from adjoining properties is not impeded or diverted; and
- b) surface and subsurface water flows are not redirected or concentrated onto adjoining properties.

62. Earthworks - General Requirements

All earthworks on site must comply with the following:

- a) topsoil shall be stripped only from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping;
- b) once the topsoil has been removed the natural batter should be suitably stepped, scarified or roughened to prevent slipping and the fill is to be keyed in to hold the toe of the fill batter in place;

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- c) filling shall comprise either uncontaminated Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM). Contamination certificates for all source material shall be provided to the Principal Certifier prior to placing any fill on site;
- d) a ticketing system is to accompany any material being brought to the site. A register is to be kept on site to cross reference against the source records. An independent site auditor is to be engaged to undertake appropriate certification regarding the monitoring and validation of the fill material imported to the site as being sound, suitable for the proposed use and free of contamination;
- e) where batters exceed a ratio of three horizontal to one vertical, retaining walls, stoneflagging or terracing shall be constructed;
- f) all fill within the site shall be placed in layers not exceeding 300mm thickness and compacted to achieve a minimum dry density ratio of 98% when tested in accordance with Australian Standard AS 1289 - 'Methods of testing soils for engineering purposes unless otherwise specified'; and
- g) all disturbed areas are to be stabilised/revegetated, using a minimum 300mm surface layer of topsoil, as soon as practicable after the completion of filling works.

Note: ENM is defined by the Excavated Natural Material Exemption - NSW Environment Protection Authority.

63. Earthworks - Removal, Management and Transportation of Fill

All excavated fill material that is to be removed from the site shall only be sent to:

- a) a NSW Office of Environment and Heritage licensed waste disposal facility. A copy of the receipts from the waste disposal facility shall be kept and shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, whichever occurs first, or authorised officer of Council upon request; or
- b) a site which has a current development consent for the importation of fill material. A copy of the current development consent for the site to which the material is proposed to be distributed must be provided to the Principal Certifier prior to the issue of an Occupation Certificate, whichever occurs first, or authorised officer upon request.

All removed excavated material shall be transported and disposed of in accordance with the NSW Office of Environment and Heritage guidelines applicable at the time of removal.

64. Construction Management Plan – Implementation

All aspects of the Construction Management Plan must be implemented and maintained until the completion of works.

65. Dust Management Measures

All reasonable measures to minimise dust generated during construction are to be implemented. This includes but is not limited to:

- a) clearly defined stop work thresholds whereby work on site will be ceased with the exception of water trucks; thresholds must be provided that relate to velocity and direction of wind and relative humidity;
- b) dust screen installation and maintenance around the perimeter of the site for the duration of works;

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- c) the use of water trucks to regularly wet down areas;
- d) stabilisation of stockpiles;
- e) definition of the maximum allowable height of stockpiles; and
- f) dust Management Measures are to be incorporated into the Construction Management Plan.

66. Food Premises - Fit-out Requirements

The fit-out of the Centre-Based Child Care Facility shall comply with the Food Act 2003, Food Safety Standards, Council's Food Premises Fit Out Code and Australian Standard AS 4674 - 'Construction and fit out of food premises'.

67. Implementation of Erosion and Sediment Control Plan (ESCP)

The measures required in the approved Erosion and Sediment Control Plan (ESCP) must be implemented during construction.

Prior to Issue of Occupation Certificate

68. Works as Executed Drawings Required

Works-As-Executed drawings are to be submitted to Council detailing the following information:

- a) invert levels of tanks, pits and pipes;
- b) surface levels of pits and surrounding ground levels;
- c) levels of surrounding kerb;
- d) floor levels of buildings & car parking areas;
- e) top of kerb levels at the front of the lot;
- f) Onsite detention tank compliance with approved plans

69. On-site Stormwater Detention - Compliance Certification

Upon completion of the on-site stormwater detention system, certification from a consulting engineer and a works as executed drawing are to be provided to Council stating that the works are in accordance with or satisfy the design intent of the approved system.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

70. On-site Stormwater Detention and pump out - Plan of Management

A Plan of Management for the on-site stormwater detention and pump out facilities must be prepared setting out all design and operational parameters for the detention and pump out facilities including design levels, hydrology and hydraulics, inspection, maintenance requirements and time intervals for such inspection and maintenance.

The Plan of Management is to be submitted to and approved by Council prior to the issue of the final Occupation Certificate.

71. On-site Stormwater Detention - Positive Covenant Required

A positive covenant must be created on the title of the land providing the following:

- a) the registered proprietors will at all times maintain, repair and keep the on-site

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stormwater detention and pump out facilities in a good and safe condition and state of repair, in accordance with the approved design to the reasonable satisfaction, at all times, of Council, having due regard to the Plan of Management for the operation and maintenance of the on-site stormwater detention and pump out facilities;

- b) the liability under the Covenant will jointly and severally bind the registered proprietors of the proposed dwellings; and
- c) Council only will be entitled to release or modify the Covenant.

The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

72. Plan of management

The approved plan of management for the centre-based child care facility listed in Condition 1 must be updated to include the following:

- (a) The Emergency Evacuation plan is required to be updated to refer to the floor plans endorsed as part of this consent.
- (b) a contact phone number of the centre's director should be made available to the parents and neighbors,
- (c) parents and guardians should be informed of the importance of noise minimisation when entering the site and dropping off or picking up children, and
- (d) staff parking spaces must be limited to being used by staff and clearly marked.

The approved plan of management updated in accordance with this condition is to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate. The development is to be carried out in accordance with the Plan of Management updated pursuant to this condition.

73. Survey Certificate at Completion

A Survey Certificate, prepared by a Registered Surveyor is to certify the location of the buildings in relation to the boundaries of the allotment.

The certificate is to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

74. Suitability of Glazing - Windows and Doors

Glazing materials installed in the building shall be in accordance with Australian Standards AS 1288 - 'Glass in Buildings - Selection and Installation' and AS 2047 - 'Windows and external glazed doors in buildings', e.g. windows, doors, footlights, balustrades and shower screens.

A Certificate of Compliance is required to be provided to the Principal Certifier prior to the issue of an Occupation Certificate.

Note: The certificate is required to be signed by the manufacturer and the installer.

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75. Suitability of External Use of Timber

Evidence of the type of timber installed, indicating both species and durability as required by Australian Standard AS 1684 - 'Residential Timber-Framed Construction', is required to be provided to the Principal Certifier prior to the issue of an Occupation Certificate.

Note: This is required for bushfire construction purposes as well as use of timber in decks and balustrades in particular.

76. Suitability of Glazing - Balustrades

Glass balustrades must be designed and installed in accordance with Australian/New Zealand Standard AS/NZS 1170.1 - 'Structural design actions- Permanent, imposed and other actions'.

Engineering certification must be provided to the Principal Certifier for glass balustrading used in the development prior to the issue of an Occupation Certificate.

77. Infrastructure Repair and Completion of Works

Prior to the issue of any Occupation Certificate:

- a) all works in the road reserve must be fully completed
- b) any public infrastructure damaged as a result of the development must be repaired to the satisfaction of Council.

78. Occupation Certificate Required Prior to The Use Of The Building

The building/structure shall not be occupied or used prior to the issuing of an Occupation Certificate by the Principal Certifier. Only that part of the building to which the Certificate applies may be occupied or used.

A copy of the Occupation Certificate shall be submitted to Council within two days of its issue.

79. Vehicle Access Signage

Vehicle entrances and exits shall be clearly signposted, including street number, and visible from both the street and site prior to the issue of an Occupation Certificate.

80. Termite Protection - Certificate of Treatment

The type and method of termite treatment (complying with Australian Standard AS 3660.1 - 'Termite management - New building work') provided to walls and floors, pipe penetrations, jointing of new work to existing and slab perimeters.

A copy of the termite treatment and materials used must also be securely fixed inside the meter box for future reference.

81. Roads Act 1993 Approval - Completion of Works

The submission of documentary evidence to the Principal Certifier that all work required to be constructed under the Roads Act 1993 approval issued by Council have been satisfied prior to the issue of any Occupation Certificate.

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82. Food Premises - Registration

Occupation of the premises shall not occur until:

- a) a registration form has been submitted to Council for the Centre-Based Child Care Facility; and
- b) notification to the NSW Food Authority under Food Safety Standard 3.2.2 Division 2 Section 4 Notification. This requirement is to be met by notifying through the Department of Primary Industries Food Authority website.

Evidence of compliance with the above shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate and the commencement of trading.

83. Inspection of Food Premises

An inspection of the food preparation areas is to be organised with and conducted by Council's Environmental Health Officer prior to the release of an Interim or Final Occupation Certificate.

84. Telecommunications Provider Certificate

Documentary evidence from a telecommunications carrier confirming that services are available for the development shall be provided to the Principal Certifier prior to issue of the Occupation Certificate.

85. Sydney Water Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be provided to the Principal Certifier prior to issue of the Occupation Certificate. For details refer to Sydney Water's website.

86. Energy Provider Certificate

Documentary evidence from an Energy Provider confirming that satisfactory arrangements have been made to serve the proposed development shall be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

87. Completion of Landscaping

Suitable documentation must be provided to the Principal Certifier prior to the issue of an Occupation Certificate demonstrating that landscaping has been completed in accordance of the approved landscape plan.

88. Acoustic Certification

Prior to the issue of the Occupation Certificate, an acoustic consultant shall certify that the works have been completed in accordance with the recommendations contained in the approved acoustic report and that the development is capable of operating in accordance with the design criteria.

Operational Conditions

89. Child Care Centre

Approval is given for use as a Child Care Centre with a maximum capacity of 58 children.

The development must be maintained to provide a minimum of 189sqm of indoor unencumbered space and 406sqm of outdoor unencumbered space.

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Any loss in internal or external areas will be required to be assessed and considered as part of a modification application.

A separate approval/license is required to be obtained from the NSW Department of Community Services before the commencement of the use of the Child Care Centre.

90. Hours of Operation – Child Care centre

The child care centre shall operate or trade only between the following hours:

7am to 6pm, Monday-Friday.

Operations such as staff accessing the site, cleaning, preparing for operation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs.

91. On-Site Car Parking

The development is to provide for the following parking spaces in accordance with the approved plans reference in Condition 1:

- (i) 19 car parking spaces, including:
 - a. 12 spaces specifically allocated for the use of parents (including 1 accessible space);
 - b. 7 spaces specifically allocated for the use of staff.
- (ii) 1 turning bay.

92. Compliance with Recommended Conditions of the Acoustic Report

The management controls contained in the acoustic assessment report referred to in condition 1 must be followed.

93. Plan of Management

The development must operate in accordance with the conditions specified in the approved plan of management updated in accordance with Condition 72.

94. Maintenance of Food Preparation Areas

The food preparation areas within the premises, including feed bottle preparation facilities, shall be maintained in accordance with the requirements of:

- (a) *Food Act 2003*, associated Regulation and food safety standards adopted thereunder; and
- (b) Australian Standard AS4674:2004 'Design, construction and fit-out of food premises'.

95. Waste Management - *Protection of the Environment Operations Act 1997*

All waste generated on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. The development shall maintain facilities sufficient for containment of all wastes arising from the use of the site.

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Waste collection must be by a private contractor and occur between the hours of operation of the business.

Waste removal service contracts/agreements shall be maintained for the business at all times.

96. Maintenance of Landscaping

All trees, including street trees, and plants forming part of the approved landscape design must be maintained on an ongoing basis. Maintenance includes watering, weeding, fertilizing, pest and disease control and any other activity required to maintain healthy trees, plants and turfed areas.

97. Signage

No advertising signs or structures shall be erected, displayed or affixed on the approved premises, site, footpaths, pedestrian paths, roadways or on any other land without prior approval.

98. Loading Within Site

All loading and unloading operations must be carried out wholly within the confines of the site at all times and must not obstruct other properties or adjacent roadways.

99. Noise Generating Activities - Daytime and evening hours

During the hours of 7am to 10pm, the development shall be managed so that the LAeq noise levels, measured at any point in accordance with the NSW Industrial Noise Policy, do not exceed 5dB(A) (LAeq) above background levels (LA90) with respect to noise amenity of residential properties and associated outdoor areas.

100. Noise Generating Activities - Night hours

Between the hours of 10pm to 7am, the development shall be managed so that the noise level does not create offensive noise when assessed against the NSW EPA Noise Guide for Local Government (2013).

101. Annual Fire Safety Statement

The owner of the building is responsible for the lodgement with Council of an Annual Fire Safety Statement prepared by a suitably qualified person so as to confirm the essential fire safety measures required to be provided in the building exist and are being maintained. The Annual Fire Safety Statement shall be issued within 12 months of the issue of the Final Fire Safety Certificate, and then on an annual basis thereafter.

A copy of the Fire Safety Statement obtained and Fire Safety Schedule shall also be:

- a) forwarded to the Commissioner of Fire and Rescue New South Wales by email to afss@fire.nsw.gov.au; and
- b) prominently displayed in the building.

Advisory Notes

(i) Approval within the Road Reserve

Registered Certifiers do not have any authority to issue Engineering Approvals or carry out inspections for works on Public Roads under the Roads Act 1993.

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(ii) **Equitable Access**

The applicant shall make themselves aware of the *Discrimination Against People with Disabilities Act (DDA)* and assess their responsibilities and liabilities with regards to the provision of access for all people.

(iii) **Acid Sulfate Soils - Monitoring of Excavation During Works**

All excavations are to be monitored to ensure that acid Sulfate soils are not encountered during works. Signs that may indicate the presence of acid sulphur soils include:

- a) change in colour of the soil into grey and green tones;
- b) effervescence;
- c) the release of sulphur smelling gases such as sulphur dioxide or hydrogen sulphide; and
- d) lowering of the soil Ph by at least one unit.

Should any of the above indicators be present excavation work on the site is to stop and Council is to be notified to determine what action is required to be taken before work may commence.

(iv) **Site Contamination Discovered During Demolition or Construction**

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about contamination, then the applicant must be immediately notified and works must cease. Works must not recommence on site until the consultation is made with Council.

(v) **Dial Before You Dig**

Prior to commencement of work, the free national community service 'Dial Before You Dig' shall be contacted on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death. Enquiries should provide the property details and the nearest cross street/road.

(vi) **Requirements of 88B Instrument**

The applicant shall make themselves aware of any User Restriction, Easements and Covenants to this property and shall comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.

(vii) **Works on Public Land - Public Liability Insurance**

Any person or contractor undertaking works on public land must take out a Public Risk Insurance policy with a minimum cover of \$10 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent.

The policy is to note, and provide protection/full indemnification for Council, as an interested party. A copy of the policy must be submitted to Council prior to commencement of any works. The policy must be valid for the entire period that the works are being undertaken.

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(viii) **Utilities and Services**

Utilities, services and other infrastructure potentially affected by construction and operation shall be identified prior to construction to determine requirements for access to, diversion, protection, and/or support. Consultation with the relevant owner and/or provider of services that are likely to be affected by the proposed development shall be undertaken to make suitable arrangements for access to, diversion, protection, and/or support of the affected infrastructure as required. The cost of any such arrangements shall be borne by the developer.

(ix) **Disability Discrimination Act - Indemnity**

This approval does not provide any indemnity to the owner or applicant under the *Disability Discrimination Act 1992* with respect to the provision of access and facilities for people with disabilities.

Reasons for Decision

The Hawkesbury Local Planning Panel has determined that the application be approved on the following grounds:

1. The proposal is acceptable having regard to the statutory requirements that apply to the development.
2. The proposal is permitted in the zone and will provide employment and child care services which is needed in the community.
3. The application has been able to demonstrate that the design of the proposal will be able to meet with the necessary requirements for child care centers.
4. The issues raised in the submissions such as traffic, acoustic impacts, amenity and impact with adjacent development have been considered and it is determined that:
 - Suitable onsite parking will be provided,
 - acoustic impacts would be controlled and managed throughout the design of the building and as part of the operation of the facility, and
 - the proposal has been designed to be generally consistent with the residential building controls of Council.

Issues raised objecting to the proposal do not warrant refusal of the proposal.

5. The proposed development will not result in any adverse impacts on the locality subject to the development being carried out in accordance with the information submitted with the application and the conditions recommended in this report.

ATTACHMENTS:

- AT - 1** Reasons for refusal of Development Application No. DA0233/20.
- AT - 2** Child Care Planning Guideline Assessment Table.

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AT - 1 Reasons for refusal of Development Application No. DA0233/20

1. Insufficient useable outdoor space

The development application should be refused as it has not demonstrated that the proposed development complies with outdoor space requirements of the Child Care Planning Guideline.

Particulars:

- a) *The outdoor play areas are not provided in accordance with Part 3, Clause 4.9 – Outdoor Space Requirements of the Childcare Planning Guideline 2017 and Regulation 108 of the Education and Care Services National Regulations as the proposal provides approximately 6.25m² of useable outdoor play space per child for 0-2 years old group, approximately 6.33m² of useable outdoor play space per child for 2-3 years old group, and approximately 5.95m² of useable outdoor play space per child for 3-5 years old group respectively. The proposal is required to provide at least 7m² of useable outdoor play space per child.*
- b) *The required concurrence under Clause 22 of the SEPP (Educational Establishments and Childcare Facilities) 2017 from the NSW Department of Education has not been received.*

2. Does not comply with Hawkesbury Local Environmental Plan 2012

The development application should be refused as it has not demonstrated that the proposed development complies with the requirements of Hawkesbury Local Environmental Plan 2012.

Particulars:

- a) *The proposed development is inconsistent with the zone objectives of R3 Medium Density Residential, as the land is not considered suitable to enable other land uses (child care centre) that provides facilities to meet the day to day needs of residents.*
- b) *The proposed development is unsatisfactory because the proposal is inconsistent with the aims of Hawkesbury Local Environmental Plan 2012, in particular clause 4.3(1)(b) as the bulk of the development is excessive, not consistent with the anticipated future character of the locality and does not relate well to the local context.*

3. Inconsistent with NSW Child Care Planning Guidelines

The development application should be refused as it has not demonstrated that the proposed development complies with the requirements the NSW Child Care Planning Guidelines (2017).

Particulars:

- a) *The proposal is inconsistent with Section 3.8 'Traffic, Parking and Pedestrian Circulation' as the proposal fails to minimise the potential for pedestrian/vehicle and vehicle/vehicle conflict.*
- b) *The proposal is inconsistent with Section 3.8 'Traffic, Parking and Pedestrian Circulation' as the proposal will have potential for on-street queuing. There is no standing area or dedicated turning bay provided for vehicles entering the basement car parking area. Vehicle accessing the driveway will conflict with vehicles entering or exiting parking spaces, resulting in vehicles queuing on the driveway and the local street.*

4. Unacceptable amenity impact

The development application should be refused as the proposed development is likely to cause unacceptable amenity impact to the residents of the immediate locality.

Particulars:

- a) *The proposed development will result in unacceptable noise impact on adjoining residential properties.*
- b) *The proposal relies on restricting the number of children during outdoor play in addition to installation of the acoustic fence to manage noise emissions. The proposed methods are not appropriate for the management of noise emissions and compromises the amenity and usability of the centre by the children.*
- c) *The acoustic walls proposed to manage the noise impacts of the development will result in an unacceptable visual impact to the adjoining properties.*
- d) *External windows and doors are required to be closed when children are involved in indoor play. Due to the restrictions on the number of children to be playing in the outdoor area at any one time, for the majority of the day the glazing will be closed. This will have an adverse amenity impact on the children due to lack of natural ventilation.*
- e) *The indoor playroom and outdoor play area for 2-3 years old children are located to the south western part of the site and will be under shadow for most of the daytime during winter.*

5. Inadequate Plan of Management

The development application should be refused as the proposed development did not provide an adequate Plan of Management.

Particulars:

- a) *The proposal has not provided an adequate Plan of Management (PoM) which fully details how the child care centre will operate in accordance with the recommendations of Acoustic Report.*
- b) *No details have been provided how the number of children of certain age groups will be managed to play outdoors at any one time.*
- c) *No details have been provided how the service vehicles will be managed to provide food and other necessary deliveries for the centre.*
- d) *No details have been provided how the car parking in the basement will be managed during peak periods when all the car spaces are occupied to avoid potential queuing on the local street.*
- e) *No details have been provided how the additional car parking will be managed during special event days usually organised by the child care centre.*

6. Unacceptable impact on landscape

The development application should be refused as the proposed development is likely to cause unacceptable impact on landscape.

Particulars:

- a) *The proposed removal of a Council street tree with high retention value will result in adverse impact to the landscape and streetscape character.*
- b) *The proposed OSD at the front setback combined with driveway and pathway precludes establishment of any meaning landscaping which is capable of softening the built form in consistent with the existing streetscape.*
- c) *The proposed perimeter walling associated with the OSD basin will result in a major and unsustainable impact on the two neighbouring trees.*
- d) *The proposed 2.2m acoustic fence with 450 angle above finished ground level will impede the natural form and structure of the proposed trees to reach full dimensions and a form typical for the species.*
- e) *The pathway to the perimeter of the outdoor play area does not provide suitable access to facilitate regular maintenance of the proposed screen planting. The pathway is impeded by storage areas, retaining walls and existing trees.*

7. Unsuitability of the site

The development application should be refused as it has failed to demonstrate that the subject site is suitable for the proposed development.

Particulars:

- a) *The proposed development would have an adverse impact on the amenity of residents in the immediate locality in terms of noise, traffic and visual amenity.*
- b) *The proposed development is inconsistent with the established character of the locality.*
- c) *The site is not accessible via a network of pedestrian paths.*

8. Public Interest

In the circumstances, approval of the development may create an undesirable precedent for similar inappropriate development which would not be in the public interest.

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Part 2 Design Quality Principles	Assessment	Achieved
1. Context	The site is considered ideally suited for the purpose of a child care centre, being within 800m to the North Richmond Public school and close to the North Richmond commercial area. In addition, the new child care centre responds to the demographics of the area which primarily consists of young families moving into the Redbank Estate of North Richmond.	Yes
2. Built Form	The proposed childcare centre is well below the maximum building height development standard prescribed under the LEP and has been designed to have a residential appearance when viewed from the street. This is able to be achieved by providing all parking on the basement level. The development provides an interesting visual form with articulated facades, varying roof pitches and a quality mix of colours and finishes.	Yes
3. Adaptive Learning Spaces	A mix of learning spaces are provided to cater for all children, with the internal activity rooms connected directly to the outdoor play space. Several different play areas are proposed to allow for varying outdoor learning experiences consisting of various shaped sandpits, and different themed zones (storey and exploration) offering diversity in play experiences for the children.	Yes
4. Sustainability	The childcare centre has been designed sustainably, taking advantage of ventilation, heating and cooling of indoor and outdoor spaces.	Yes
5. Landscape	The proposed landscape treatment will offer a variety of surfaces, textures and planting within the outdoor play space to provide amenity, shading and areas for children to learn, explore and play.	Yes
6. Amenity	The proposed development benefits from being designed to have the appearance of a two storey residential building by providing basement parking. Minimal overshadowing and privacy impacts are envisaged on adjacent development and the majority of the impacts associated with the operation will be mitigated by having staff and parents access the building internally and acoustic walls set back from property boundaries.	Yes
7. Safety	The development enables a clear distinction between public and private areas. Adjoining pathways leading to the entry point of the building provide variation in pavement materials and patterns to delineate between private and public pathways. Windows provide opportunities for casual surveillance of public domain areas, but also minimising the ability to view into these windows from the street. The outdoor play area is also located at the rear to protect this space from unwanted visitors.	Yes

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Part 3 Matters for Consideration	Assessment	Achieved
C1 Site Selection and Location Ensure that appropriate zone considerations are assessed when selecting a site.	<p>The development will be located adjacent to residential development and have frontage to a local road.</p> <p>The application has been supported by a traffic impact assessment and acoustic report, which demonstrates that the centre will not have a detrimental impact to the operation of the existing road network or noise impacts within the locality.</p> <p>The site is free from environmental constraint and other external factors, including road noise, which may impact upon the health, safety and wellbeing of children, staff and visitors to the centre.</p>	Yes
C2 Site Selection and Location Ensure that the site selected for a proposed child care facility is suitable for the use.	<p>The site is free from environmental constraints and is not located nearby to incompatible uses such as restricted premises, hotels and clubs.</p> <p>Assessment of the application reveals that the development will not have a significant impact to the operation of the local road network and will satisfy noise criteria requirements. The development satisfies car parking requirements to allow parents and carers to park and drop off children for care.</p>	Yes
C3 Site Selection and Location Ensure that sites for child care facilities are appropriately located.	<p>The proposed centre is located within a medium density residential area within close proximity to public schools and new development areas such as Redbank.</p> <p>The site currently has approval for four dwelling which is consistent with the development envisaged for the area under Councils development controls. Whilst the four dwellings may not be constructed if the child care centre is approved the surrounding properties may be subject to similar infill development which would need to be supported by facilities such as child care.</p>	Yes
C4 Site Selection and Location Ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.	<p>The child care centre is not located adjacent or nearby to premises that pose a risk to children.</p>	Yes
C5 Local Character, Streetscape and the Public Domain Interface Ensure that the child care facility is compatible with the local character and surrounding streetscape.	<p>The built form of the medium density area is changing and multi dwelling sites have been approved in the zone, including the subject site. It is considered that the proposal is acceptable having regard to the desired character of the medium density housing zone.</p> <p>The childcare centre has been designed to be a modern two storey building, which will complement the built form of other adjoining buildings, by utilizing similar architecture and materials and finishes. It is considered that the building will integrate well within the streetscape and be a suitable built form.</p>	Yes

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Part 3 Matters for Consideration	Assessment	Achieved
C6, C7 and C8 Local Character, Streetscape and the Public Domain Interface Ensure clear delineation between the child care facility and public spaces.	C6 – The development clearly differentiates between public and private space and provides ground floor windows orientated towards the street for passive surveillance. The location of the outdoor play area also provides security for the children from the street. C7 – The building entry and shape is residential in appearance, providing an identifiable building entry and variation in building material. C8 – The development does not adjoin public park or bushland.	Yes Yes N/A
C9 and C10 Local Character, Streetscape and the Public Domain Interface Ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.	C9 – Fencing will be of high quality material with various treatments and interest. C10 – The child care centre is not located upon a classified road.	Yes Yes
C11 Building Orientation, Envelope and Design Respond to the streetscape and site, while optimising solar access and opportunities for shade.	The development has a northern orientation, which enables good opportunity to shade play areas. The building will have a residential appearance with modern and traditional design elements. The double storey design also retains suitable solar access in the rear so that the site is not overly shadowed.	Yes
C12 Building Orientation, Envelope and Design Ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised.	The proposed development is below the maximum building height and proposes generous setbacks for the first floor to adjoining property boundaries. As such, it is considered that the development has an appropriate height, bulk and scale. High sill windows are proposed along the first floor preventing casual overlooking.	Yes

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Part 3 Matters for Consideration	Assessment	Achieved
<p>C13 and C14 Building Orientation, Envelope and Design</p> <p>Ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context.</p>	<p>C13 – The proposal provides a minimum 7.5m building setback consistent with the DCP and provides a suitable setback.</p> <p>C14 – Side setbacks are considered to be acceptable having regard to the design of the proposal and adjacent development. The proposal will not result in unacceptable overshadowing or privacy concerns on immediate properties.</p>	<p>Yes</p> <p>Yes</p>
<p>C15 Building Orientation, Envelope and Design</p> <p>Ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character.</p>	<p>The proposed child care centre is well below the maximum building height development standard prescribed under the LPE and acceptable having regard to the desired setback, built form and scale controls of the DCP.</p> <p>The development provides an interesting visual form with articulated facades, varying roof pitches and a quality mix of colours and finishes. In addition, pathways leading to the entry provide variation in pavement materials and patterns to delineate between private and public pathways.</p>	<p>Yes</p>
<p>C16 Building Orientation, Envelope and Design</p> <p>Ensure that buildings are designed to create safe environments for all users.</p>	<p>An active and accessible entry point is provided to the development, in addition to the basement ramp which will be used by parents and staff. ramp and lifts have been integrated into the design and are considered acceptable.</p>	<p>Yes</p>
<p>C17 Building Orientation, Envelope and Design</p> <p>Ensure that child care facilities are designed to be accessible by all potential users.</p>	<p>Accessible pathways are provided from the carpark and from the front entrance. An access report accompanies the application.</p>	<p>Yes</p>
<p>C18 and C19 Landscaping</p> <p>Provide landscape design that contributes to the streetscape and amenity.</p>	<p>C18 – The landscape species chosen are suitable for the proposed development and consistent with what is expected in a residential environment. The proposal would provide more landscaped areas than what would be expected for residential development of the site.</p> <p>C19 – Suitable plant species have been proposed to soften the visual impact of the building, as well as providing shading opportunities. Street trees will be protected and retained as part of the development.</p>	<p>Yes</p> <p>Yes</p>
<p>C20 and 21 Visual and Acoustic Privacy</p> <p>Protect the privacy and security of children attending the facility.</p>	<p>C20 – Not a mixed use development.</p> <p>C21 – Proposal does not overlook public spaces.</p>	<p>N/A</p> <p>N/A</p>

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Part 3 Matters for Consideration	Assessment	Achieved
C22 Visual and Acoustic Privacy Minimise impacts on privacy of adjoining properties.	<p>The site will not overlook main living areas and private open space of adjoining development.</p> <p>The child care centre proposes all active areas to be on the ground floor level with high sill windows on the first floor and minimal overlooking is expected.</p> <p>Acoustic measures proposed for the indoor and outdoor play area and the acoustic walls are detailed on the landscape plans.</p>	Yes
C23 and 24 Visual and Acoustic Privacy Minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments.	<p>C23 – Acoustic walls are proposed for the indoor and outdoor play area and detailed on the landscape plans.</p> <p>C24 – An acoustic report has been submitted and demonstrates that the development is satisfactory in respect to noise impact.</p>	<p>Yes</p> <p>Yes</p>
C25 and 26 Noise and Air Pollution Ensure that outside noise levels on the facility are minimised to acceptable levels.	<p>C25 / C26 – Due to the childcare centres location and significant distance from potential noise sources, the centre is not subject to acoustic noise and doesn't require acoustic attenuation.</p> <p>The acoustic report does however recommend closing the cot room window and providing mechanical ventilation due to background traffic noise.</p> <p>The site is not located on or adjoining industrial zoned land or burdened with ANEF contours between 20 and 25 or higher.</p>	Yes
C27 and 28 Noise and Air Pollution Ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development.	<p>C27 – The development is not located on a classified road or sources of noise or air pollution as identified within consideration C27.</p> <p>C28 – The development is not located close to a classified road or industrial developments to warrant an air quality assessment.</p>	<p>N/A</p> <p>N/A</p>
C29 and C30 Hours of Operation Minimise the impact of the child care facility on the amenity of neighbouring residential developments.	<p>C29 - 7am – 6pm Monday to Friday proposed. The centre will not open on public holidays.</p> <p>C30 – The proposed hours of operation are consistent with the hours expected for child care centres. The facility will have minimal impacts during evening and night time hours.</p>	<p>Yes</p> <p>Yes</p>

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Part 3 Matters for Consideration	Assessment	Achieved
C31, C32 and C33 Traffic, Parking and Pedestrian Circulation Provide parking that satisfies the needs of users and demand generated by the centre.	C31 – The child care centre requires 14.5 car spaces, with one space designated for people with a disability in accordance with the DCP requirements. The development provides for 19 spaces, including one disabled car parking space. C32 – The development is not adjacent or within a commercial area. C33 – The applicant has submitted a traffic impact assessment which considered vehicle trips generated by the development and the increased volumes to nearby intersections. The assessment revealed that the proposal will have no detrimental impacts on the operation of the existing road network.	Yes N/A Yes
C34 and C35 Traffic, Parking and Pedestrian Circulation Provide vehicle access from the street in a safe environment that does not disrupt traffic flows.	C34 – The site is not located upon a classified road or adjoins a road which carries significant freight traffic or the transportation of dangerous goods or hazardous materials. C35 – The carriageway width of the road and access to the carpark will enable safe movements.	N/A Yes
C36, C37 and C38 Traffic, Parking and Pedestrian Circulation Provide a safe and connected environment for pedestrians both on and around the site.	C36 – A designated pedestrian pathway is proposed to be conditioned to provide a safe and direct access point to the child care centre. C37 – The proposed child care centre carpark is not subject to conflicting movements from mixed uses. C38 – A designated pedestrian pathway is provided along the carpark to provide a safe and direct access point to the building entry of the childcare centre. In addition, designated accessible parking spaces for people with a disability are provided at lift entry point.	Yes N/A Yes

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Part 4 National Regulations	Assessment	Achieved
4.1 Indoor Space Requirements.	3.28m ² of indoor space per child is provided exceeding minimum requirements.	Yes
4.2 Laundry and Hygiene Facilities.	The development proposes to process laundry onsite.	Yes
4.3 Toilet and Hygiene Facilities.	Junior height pans and sinks are provided, with internal glazing provided at low sill heights for carer supervision.	Yes
4.4 Ventilation and Natural Light.	All windows are operable to enable cross ventilation to occur. Glazing is provided to both facades of each activity room to meet natural light requirements.	Yes
4.5 Administrative Space.	The centre provides a manager's office, office room, staff room and reception to conduct the administering functions, as well as providing areas to consult with parents and carers privately.	Yes
4.6 Nappy Change Facilities.	Change tables are provided within designated rooms between indoor play rooms.	Yes
4.7 Premises Designed to Facilitate Supervision.	Internal toilets have been designed to enable carer supervision.	Yes
4.8 Emergency and Evacuation Procedures.	To be developed by the operator prior to operation of the centre. Detailed in the plan of management.	Yes.
Part 4 National Regulations	Assessment	Achieved
4.9 Outdoor Space Requirements.	7m ² of outdoor space per child is provided.	Yes
4.10 Natural Environment.	Varying experiences are provided within the outdoor play area.	Yes
4.11 Shade.	The development proposes a covered awnings and shade structures over the outdoor play area for shading.	Yes
4.12 Fencing.	The outdoor play space will be secured with fencing. Fencing of the outdoor play area will be landscaped.	Yes
4.13 Soil Assessment.	Land has been historically used for residential use. No concerns rose in relation to soil contamination.	Yes

oooO END OF REPORT Oooo

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Item: 3 CP - DA0196/20 - Lot 3 DP 270515, 88B Bulgamatta Road, Berambing - (83531, 14283, 95498)

Directorate: City Planning

DEVELOPMENT INFORMATION

File Number: DA0196/20
Legal Description: Lot 3 DP 270515
Property Address: 88B Bulgamatta Road BERAMBING NSW 2758
Applicant: David Jones Building & Landscape Design
Owner: Berambing Sustainable Developments Pty Limited
Proposal Details: Tourist Facility – Use of two buildings as tourist facilities
Estimated Cost: \$288,000.00
Area: 20.4800Ha
Zone: RU2 Rural Landscape
Date Received: 22 June 2020
Advertising: 29 July to 12 August 2020
Submissions: Nil

Key Issues:

- ◆ Categorisation and Permissibility – Existing Use Rights
- ◆ Development History
- ◆ Bushfire

RECOMMENDATION:

Refusal.

EXECUTIVE SUMMARY:

Reason for Consideration by Local Planning Panel

Conflict of Interest – The subject property is owned by a relative of a Councillor.

Proposal

The proposal involves the use of two buildings at 88B Bulgamatta Road, Berambing, as cabins that are part of a tourist facility. The two cabins have been constructed and are identified as the 'Enchanted Cave' and the 'Treehouse'.

Development Consent No. MA1308/01 was originally issued for the construction and operation of a tourist facility on the subject land. This original consent approved six cabins within five buildings (one building was approved as an attached double cabin). The tourist facility has not been developed in accordance with the approved plans. The supplied documentation indicates that two of the six approved cabins have been constructed at this stage, although these have altered locations and designs in comparison to the approved plans. The modification of these two cabins, identified as the 'Dream Cabin' and 'Love Studio', is currently under assessment with Development Application No. S960048/20.

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The submitted application seeks to formalise the use of two additional cabins identified as the Enchanted Cave and Treehouse. The approval of the proposed development would permit a total of eight cabins on the property.

Permissibility

The site is zoned RU2 Rural Landscape under the provisions of Hawkesbury Local Environmental Plan (LEP) 2012. The proposed development may be categorised as 'tourist and visitor accommodation' or potentially as an 'eco-tourist facility'. Each of these uses are prohibited within the RU2 Rural Landscape under the Hawkesbury LEP 2012. With respect to eco-tourist facilities, it should be noted that such a use was prohibited within this zone at the time of the lodgement of this application. The Hawkesbury LEP 2012 has subsequently been amended to permit eco-tourist facilities within the RU2 Rural Landscape but, in the absence of a savings provision, such a use remains prohibited.

Instead, the subject development application has been submitted as a 'tourist facility' and is reliant on 'existing use' rights for permissibility. Development Consent No. MA1308/01 was issued for a tourist facility on 21 February 2003. This consent was issued under Hawkesbury LEP 1989, which included the following definition for tourist facilities:

***Tourist facilities** means a building or place that is used to provide refreshment, accommodation, recreation or amusement facilities for the travelling or holidaying public.*

Legal advice submitted by the Applicant in support of the application suggests that Development Consent No. MA1308/01 has been secured, the use has not been abandoned and that the land benefits from an existing use right as a tourist facility. However, the supplied legal opinion does not consider Section 4.69 of the Environmental Planning and Assessment (EP&A) Act 1979 which prevents a use which has been unlawfully commenced from being treated as lawful for the purposes of an existing use right.

The relevant provisions outline that a use which has commenced in contravention of a development consent is unable to be categorised as an existing use right. In this regard the legal advice and documentation provided in support of the application outline that the use of the land as a tourist facility commenced in 2006. This indicates that the use operated in contravention of Development Consent No. MA1308/01 as the Construction Certificate and Notice of Intention to Commence Work were not issued until 2007, and no Occupation Certificate has ever been issued. Therefore, the use relied upon has been carried out unlawfully and the development is unable to be considered under the existing use right provisions of the EP&A Act 1979.

Consultation

The application was notified between 23 July and 12 August 2020 in accordance with Part A Chapter 3 of the Hawkesbury Development Control Plan (DCP) 2002. No submissions were received in response to the notification of the application.

The development is categorised as a 'special fire protection purpose' and was referred to the Rural Fire Service (RFS) as 'integrated development'. Upon review of a series of Bushfire Assessment Reports the RFS have issued their General Terms of Approval for the development.

Key Issues

The key issues of the development application are:

- Categorisation and Permissibility – Existing Use Rights
- Development History
- Bushfire

Recommendation

Council has advised the Applicant and owner to withdraw the subject application and instead prepare an application for an eco-tourist facility, which is now a permissible use under the Hawkesbury LEP 2012. This request to withdraw the application has been declined by the owner.

For the reasons detailed in this report, the proposal is unable to be considered under the existing use right provisions of the EP&A Act 1979. It is therefore recommended that Development Application No. DA0196/20 be refused.

REPORT:

Detailed Description of Proposal

Pursuant to Section 4.12(1) of the EP&A Act 1979 (as amended) this application seeks approval for the use of two buildings at 88B Bulgamatta Road, Berambing, as cabins that form part of a tourist facility. Plans of the proposal are included as Attachment 1 to this report.

Tourist accommodation known as the 'Love Cabins' is located on and operates from the subject property. The submitted application involves the use of two existing cabins that are identified as the Enchanted Cave and the Treehouse.

Development Consent No. MA1308/01 was originally issued for the construction and operation of a tourist facility on the subject land. This consent approved six cabins within five buildings, although only two cabins identified as the Dream Cabin and Love Studio have been constructed at this stage.

The subject application has been prepared on the basis that the consent has been secured and that the land benefits from an existing use right as tourist facility. A legal opinion obtained by the Applicant is included as Attachment 2 to this report.

The Enchanted Cave cabin is located approximately 158m off the property's northern boundary, whilst the Treehouse cabin is located approximately 72m off the northern boundary. The Enchanted Cave cabin has been constructed of concrete on the side of a rockface and has a Gross Floor Area (GFA) of approximately 50.8m². The Treehouse cabin has been primarily constructed of timber and is raised off the ground on timber poles. This building has a GFA of approximately 40.7m².



Figure 1: The Enchanted Cave Cabin



Figure 2: The Treehouse Cabin

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The facility is currently being used to provide short-term holiday accommodation. Bookings may be made through the Love Cabins' website, accommodation websites or via phone. The Operational Plan of Management indicates that each cabin may be occupied by a maximum of two guests and there is no fixed limit on the length of stay.

Cooking facilities and potable water is provided to each cabin. No meals are provided by the operator and guests are instead advised to bring their own provisions.

The Building Code of Australia (BCA) Report prepared in support of the application indicates that upgrading works will be required for both buildings. The cabins are serviced by all-weather parking bays.

The land is identified as bushfire prone land and forms of tourist accommodation are defined as a special fire protection purpose under the integrated development provisions of the EP&A Act 1979 and Rural Fires Act 1997. A referral of the development to the RFS has been undertaken.

An Emergency Management Plan has been prepared for the development and identifies the Dream Cabin as the 'refuge shelter' for the development. An Asset Protection Zone (APZ) consisting of Inner and Outer Protection Zones has been established for the tourist facility. The Supplementary Bushfire Report outlines that the APZ will need to be maintained for a distance of 136m to the north, 120m to the east, 127m to the south and 100m to the west of the centralised Dream Cabin. The Enchanted Cave and Treehouse cabins are located within this APZ.

The Emergency Management Plan indicates that bookings will be cancelled during periods of extreme fire danger.

The application is being reported to the Hawkesbury Local Planning Panel for determination as the owner is a relative of a Councillor.

Site and Locality Description

The suburb of Berambing is located approximately 100km northwest of Sydney's CBD and approximately 40km northwest of Windsor.

The subject property forms part of a community title scheme and is legally identified as Lot 3 in DP 270515. Located north of Bulgamatta Road and Bells Line of Road, the land has a site area of approximately 20.4800Ha and is accessible via a sealed road within the community lot (Lot 1).

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The property contains significant vegetation and is located within the vicinity of the Wollemi National Park. Surrounding development generally consists of rural properties, rural-residential properties and national park reserves. Bowens Creek is located approximately 190m north of the property.

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Background and History

A review of Council's records identified the following applications of relevance to the subject matter:

Application	Date	Description	Determination
SA0007/94	19/12/1994	Subdivision – Community title subdivision to create to six rural lots and one community lot	Approval
MA1308/01	11/02/2003	Tourist Facility – Construction and operation of a tourist facility consisting of six cabins	Approval
DA0252/08	10/06/2008	Construction of two sheds	Approval

The land subject to this application was created with the registration of Development Consent No. SA007/94.

Development Consent No. MA1308/01 authorises development described as a tourist facility. This original consent approved six cabins within five buildings, with one building approved as an attached double cabin.

The documentation supplied in support of the application indicates that two of the six approved cabins have been constructed at this stage, although these buildings have altered locations and designs in comparison to the approved plans. The modification of these two cabins, identified as the Dream Cabin and Love Studio, is currently under assessment with Development Application No. S960048/20.

Development Consent No. MA1308/01 included the following conditions relating to the obtainment of an Occupation Certificate:

36. *An occupation certificate is to be obtained on completion of all works and prior to commencement of the approved use. The occupation certificate will not be issued if any condition(s) of this consent are outstanding.*
39. *Completion of all road and drainage works required by subdivision consent SA0007/94.*

An Engineering Works Inspection was recorded on 18 July 2006 and appears to confirm that all works required under Condition 39 of the consent have been completed. However, no Occupation Certificate has ever been issued as required under Condition 36.

No applications have been submitted and no approvals have been issued for the existing Love Teepee cabin. A total of nine cabins would occupy the land with the inclusion of the Love Teepee, the completion of the approved development and the approval of the subject application.

It would appear the owner is reliant on Development Consent No. DA0252/08 for the approval the Rustic Shed and the Storage Shed. Both of these structures have altered designs and appearances, whilst the Rustic Shed is not located as shown in the approved plans.

Submissions

The application was notified between 23 July and 12 August 2020 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002. No submissions were received in response to the notification of the application.

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Consultation

Internal Consultation	
Building	Council's Building Co-ordinator has inspected the building and reviewed the supplied BCA Report. The Building Co-ordinator is generally supportive of the development subject to the imposition of conditions. In this regard the upgrading of the buildings will be required in accordance with the recommendations of the BCA Report.
Engineering	The Development Engineer has raised no objection to the existing internal access arrangements and parking
Sewer	<p>The Sewer Management Facility (SMF) Co-ordinator has advised that the existing onsite effluent systems have previously been inspected by Council. Should the application be approved the SMF Co-ordinator recommends the imposition of a condition requiring an updated 'Approval to Operate' Licence and inspections.</p> <p>The submitted Wastewater Report outlines that relatively minor upgrading works are required.</p>

External Consultation	
Rural Fire Service	The RFS have undertaken a review of the Bushfire Assessment Report and Supplementary Bushfire Report prepared in support of the development. Upon review of this documentation the RFS have issued General Terms of Approval for the development.

Legislation, Council Policies, Procedures and Codes to which the Matter Relates

- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No. 55)
- State Environmental Planning Policy (Koala Habitat Protection) 2019 (Koala Habitat Protection SEPP)
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (SREP No. 20)
- Hawkesbury LEP 2012
- Hawkesbury DCP 2002.

Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

a) The provisions (where applicable) of any:

i. Environmental Planning Instruments:

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7(1) of SEPP No. 55 outlines a consent authority “*must not consent to the carrying out of any development on land unless:*

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

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- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose*".

The suitability of the land to operate and function as a tourist facility was accepted with the approval of Development Consent No. MA1308/01. It is considered unlikely that the subsequent development and use of the land for tourist accommodation would have contaminated the land. No evidence or obvious signs of contamination have been observed by Council staff during site inspections.

Based on its development history the property is considered suitable having regard to the provisions of SEPP No. 55.

State Environmental Planning Policy (Koala Habitat Protection) 2019

The Koala Habitat Protection SEPP aims to "*encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline*". This Policy was amended by State Environmental Planning Policy (Koala Habitat Protection) Amendment (Miscellaneous) 2020 and largely reinstated the provisions of State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP No. 44).

The site contains *Eucalyptus punctata* (Grey Gum) which is a known Koala (*Phascolarctos cinereus*) feed tree listed under Schedule 2 of the Koala Habitat Protection SEPP and SEPP No. 44. Koalas have been previously recorded within 5km of the subject site according to the NSW Bionet database.

An Ecological Assessment Report has been prepared to address flora and fauna impacts however the report is considered inadequate as it does not specifically address the matters for consideration under Part 2 of SEPP No. 44.

Sydney Regional Environmental Planning Policy No. 20 – Hawkesbury-Nepean River

The subject site falls within the boundary of SREP No. 20. This Policy aims "*to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context*". SREP No. 20 requires Council to assess development applications with regard to the general and specific considerations, policies and strategies set out in the Policy.

Clause 11(17) of SREP No. 20 further outlines that Council must consider whether "*the proposed development will be capable of connection to a Sydney Water Corporation Limited or council sewerage system either now or in the future*".

The tourist accommodation facility is serviced by a series of onsite effluent disposal systems and has previously been subject to an Approval to Operate Licence and was inspected by Council. Council's SMF Officer has advised that the existing systems should be adequate for the development and has recommended the imposition of a condition requiring an updated Approval to Operate Licence.

Hawkesbury Local Environmental Plan 2012

The site is zoned RU2 Rural Landscape under the provisions of Hawkesbury Local Environmental Plan 2012. The Dictionary of the Hawkesbury LEP 2012 provides the following definition for tourist and visitor accommodation and eco-tourist facilities:

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tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
 - (b) bed and breakfast accommodation,
 - (c) farm stay accommodation,
 - (d) hotel or motel accommodation,
 - (e) serviced apartments,
- but does not include:
- (f) camping grounds, or
 - (g) caravan parks, or
 - (h) eco-tourist facilities.

eco-tourist facility means a building or place that—

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and
- (b) is located in or adjacent to an area with special ecological or cultural features, and
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

The subject development may be categorised as tourist and visitor accommodation but such a use is prohibited within the RU2 Rural Landscape zone under the Hawkesbury LEP 2012. Alternatively, the proposed use could potentially be defined as an eco-tourist facility, however this use was also prohibited at the time of lodgement. The Hawkesbury LEP 2012 has subsequently been amended to permit eco-tourist facilities within the RU2 Rural Landscape zone but, in the absence of a savings provision, the use remains prohibited.

The submitted application has instead been lodged as a tourist facility and is reliant on the existing use rights provisions of the EP&A Act 1979 for permissibility.

Development Consent No. MA1308/01 was issued for a tourist facility under the Hawkesbury LEP 1989 on 21 February 2003. The Hawkesbury LEP 1989 provided the following definition for tourist facilities:

Tourist facilities means a building or place that is used to provide refreshment, accommodation, recreation or amusement facilities for the travelling or holidaying public.

The legal opinion supplied by the Applicant suggests that Development Consent No. MA1308/01 has not lapsed and is capable of being lawfully modified under the existing use right provisions of Section 4.66 of the EP&A Act 1979. Based on the Engineering Works Inspection record issued by Council and dated 18 July 2006 it is accepted that the completed road and drainage works was sufficient to prevent the lapsing of the consent on 21 February 2008. However, it should be noted that this condition although imposed on MA1308/01 it related to the Subdivision approval SA0007/94.

However, the supplied legal opinion does not consider Section 4.69 of the EP&A Act 1979 which prevents a use which has been unlawfully commenced from being treated as lawful for the purposes of an existing use right.

Section 4.69 of the EP&A Act 1979 specifically outlines that a use which has commenced in contravention of a development consent is unable to be categorised as an existing use right. With respect to the subject application, the legal opinion and

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documentation provided detail that the use of the land as a tourist facility commenced in 2006. This indicates that the use operated in contravention of Development Consent No. MA1308/01 as the Construction Certificate and Notice of Intention to Commence Work were not issued until 2007, and no Occupation Certificate has ever been issued.

The use has therefore been carried out unlawfully and the development is unable to be considered under the existing use right provisions of the EP&A Act 1979. As a result, the subject proposal constitutes prohibited development and the approval of the application is unable to be considered.

Confidential Legal advice obtained by Council is attached as Attachment 3 to this report.

ii. Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:

Not applicable.

iii. Development Control Plan applying to the land:

Hawkesbury Development Control Plan 2002

The development has been considered against the provisions of the Hawkesbury DCP 2002:

Part A Chapter 3: Notification

The application was notified between 23 July and 12 August 2020 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002. No submissions were received in response to the notification of the application.

Part C Chapter 2: Car Parking and Access

The Enchanted Cave and the Treehouse cabins are each serviced by all-weather parking bays within their immediate vicinity. A communal parking area is also provided adjacent to the Rustic Shed.

Section 2.5.5 of Part C Chapter 2 of the Hawkesbury DCP 2002 does not establish parking rates for forms of tourist and visitor accommodation. The Operational Plan of Management outlines that each cabin will accommodate a maximum of two guests and accordingly the provision of a single parking space per cabin is considered adequate.

Council's Development Engineer has raised no objection to the proposal on parking or access grounds.

Part C Chapter 7: Effluent Disposal

As detailed previously in this report, the cabins are serviced by onsite effluent disposal systems. The Effluent Disposal Report prepared in support of the application indicates that minor upgrading of the systems may be required and Council's SMF Officer has recommended the imposition of a condition requiring the obtainment of an updated Approval to Operate Licence to oversee such works.

iv. Planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:

Not applicable.

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v. (Repealed)

Not applicable.

vi. Matters prescribed by the Regulations:

Should the application be approved, Council's Building Coordinator has advised that the upgrading of the buildings will be required in accordance with the recommendations of the BCA Report.

It should also be noted that whilst the Enchanted Cave and Treehouse buildings do not satisfy the accessibility requirements of the Disability (Access to Premises – Buildings) Standards 2010, it is intended that the Dream Cabin will serve as the accessible building.

b) The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:

These matters have been considered in the assessment of this application.

Council's vegetation mapping indicates that the vegetation onsite comprises Sydney Sandstone Gully Forest and Sydney Sandstone Ridgetop Woodland – Open Forest vegetation communities. The submitted Ecological Assessment Report identifies the vegetation as Sandstone Ridgetop Woodland and Gully Rainforest.

The vegetation onsite is not identified on the Biodiversity Values Map maintained by the Office of Environment.

Vegetation has previously been cleared for the establishment of an APZ around the Dream Cabin. The APZ is subject to ongoing maintenance to satisfy the requirements for Inner and Outer Protection Areas.

The submitted Ecological Assessment Report concludes that the development will have no significant impact on threatened species, communities, populations or their habitats. However, the Ecological Assessment Report is dated 18 March 2019 and has been prepared having regard to the provisions of the Threatened Species Conservation Act 1995. The transitional requirements of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 ended on 24 November 2019 and, at the time of the subject application's lodgement, the provisions of the Biodiversity Conservation Act 2016 should have been applied instead.

c) Suitability of the site for the development:

These matters have been considered as part of the assessment of the development application.

The site is identified as bushfire prone land and the tourist accommodation is defined as a special fire protection purpose under Section 100B of the Rural Fires Act 1997. In this respect the application was referred to the RFS as integrated development.

An APZ has been established and is to be maintained for the tourist facility. The centralised Dream Cabin is nominated as the refuge shelter for the development.

The RFS have undertaken a review of the Bushfire Assessment Report, Supplementary Bushfire Report and Emergency Management Plan prepared in support of the development. Upon review of this documentation the RFS have issued General Terms of Approval.

The Hydro Line Spatial Data Map maintained by the Department of Finance, Services and Innovation indicates that the land is also burdened by a number of identified watercourses. However, both the Enchanted Cave and Treehouse structures appear to be in excess of 40m

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from these watercourses. Furthermore, the Natural Resources Access Regulator (NRAR) is unable to issue retrospective approvals for works that have already been completed. Consequently, a referral to NRAR under the Water Management Act 2000 is not required in this instance.

An inspection of the property did not indicate that the construction of the buildings had significantly disturbed the land or that erosion was an ongoing issue of concern.

d) Any submissions made in accordance with the Act or the Regulations:

The application was notified between 23 July and 12 August 2020 in accordance with Part A Chapter 3 of the Hawkesbury DCP 2002. No submissions were received in response to the notification of the application.

e) The Public Interest:

It is considered that the approval of the application would not be in the public interest given the issues identified within this report

Development Contributions

Based on the supplied value-of-works of \$288,000.00, the payment of a Section 7.12 (formerly known as 94A) Contribution of \$2,880.00 would be payable should the application be approved.

Conclusion

The application has been assessed in accordance with the provisions of the EP&A Act 1979 with all matters specified under Section 4.15(1) having been taken into consideration. The permissibility of the development has not been demonstrated and the refusal of the application is therefore recommended.

Reasons for Decision

The Hawkesbury Local Planning Panel has determined that the application be refused on 17 March 2022 on the following grounds:

1. The development application fails to demonstrate the permissibility of the development.
2. The development fails to address the provisions of the Biodiversity Conservation Act 2016.
3. The approval of the development would be contrary to the public interest.

RECOMMENDATION:

That the Hawkesbury Local Planning Panel as the consent authority pursuant to Clause 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) refuse Development Application No. DA0196/20 for the use of two buildings identified as the Enchanted Cave and Treehouse as tourist facilities on Lot 3 in DP 270515, known as 88B Bulgamatta Road, Berambing, for the following reasons:

Reasons for Refusal

Prohibition of Development

1. The expansion of the tourist facility use is unable to be considered under the 'existing use' right provisions of the Environmental Planning and Assessment Act 1979 and is therefore prohibited under the Hawkesbury Local Environmental Plan 2012.

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Particulars:

- (a) Tourist facilities, tourist and visitor accommodation and eco-tourist facilities are prohibited within the RU2 Rural Landscape zone under the Hawkesbury Local Environmental Plan 2012.
- (b) The tourist facility use has commenced in contravention of Development Consent No. MA1308/01 and the expansion of the development as an existing use right is unable to be considered under Section 4.69 of the Environmental Planning and Assessment Act 1979.

Insufficient Information

- 2. The Ecological Assessment Report fails to address the provisions of the Biodiversity Conservation Act 2016.

Particular:

- (a) The Ecological Assessment Report has been prepared having regard to the provisions of the Threatened Species Conservation Act 1995. The transitional requirements of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 ended on 24 November 2019 and provisions of the Biodiversity Conservation Act 2016 should be considered at the time of lodgement.

ATTACHMENTS:

AT - 1 Plans of the Proposal.

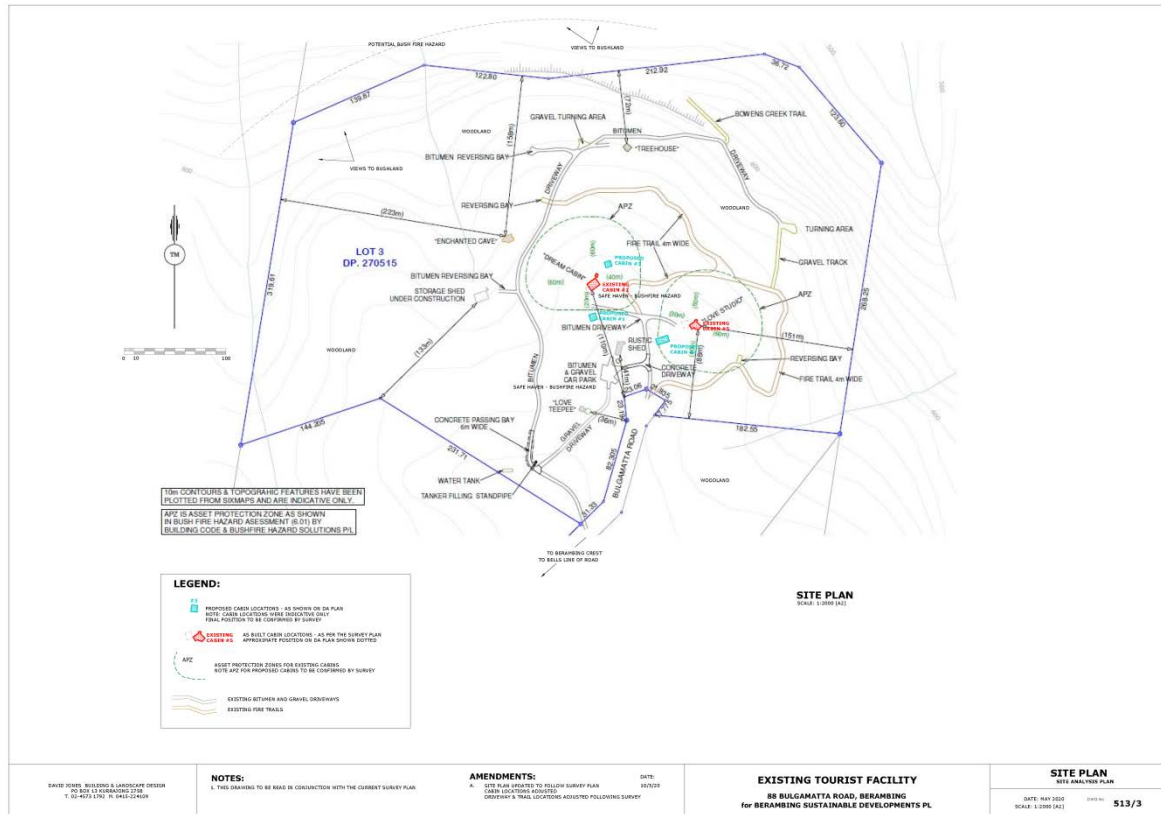
AT - 2 Applicant's Legal Opinion.

AT - 3 Council's Confidential Legal Advice - (*Distributed under separate cover to Hawkesbury Local Planning Panel Members only*).

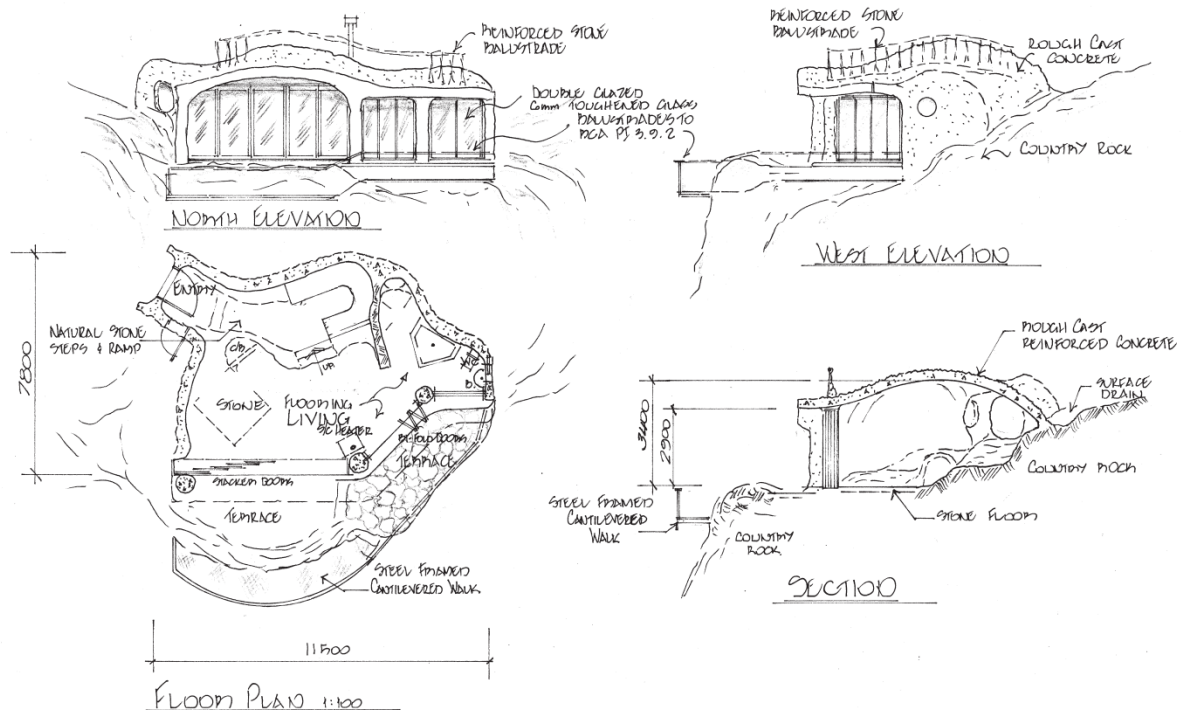
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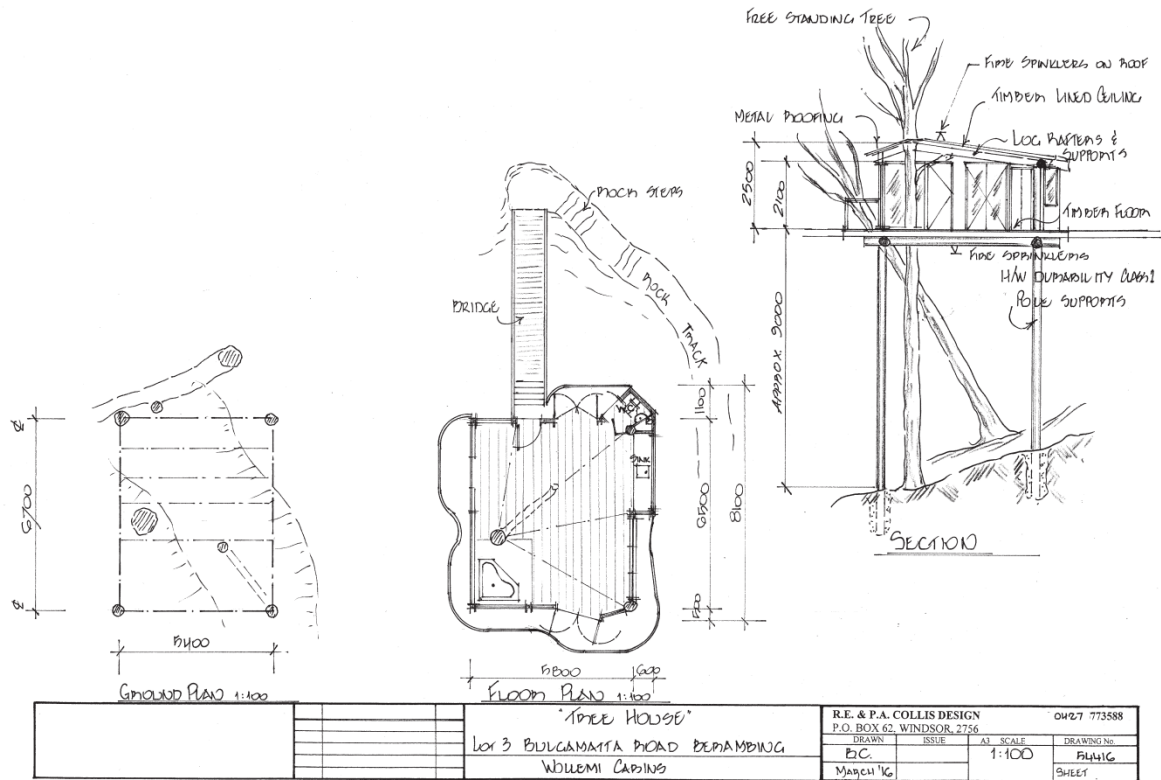
"THE ENCHANTED CAVE"				R.E. & P.A. COLLIS DESIGN		04/27 773588	
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WOLLEMI CABINS				DATE	ISSUE	AS SCALE	PULLING
				MARCH '16		1:100	SHEET

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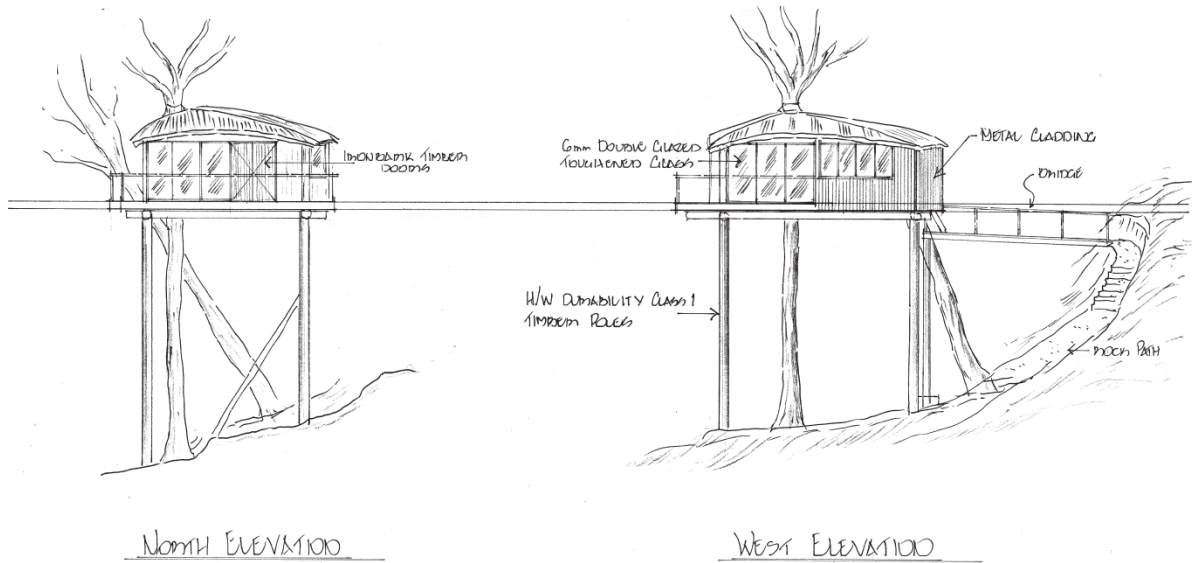


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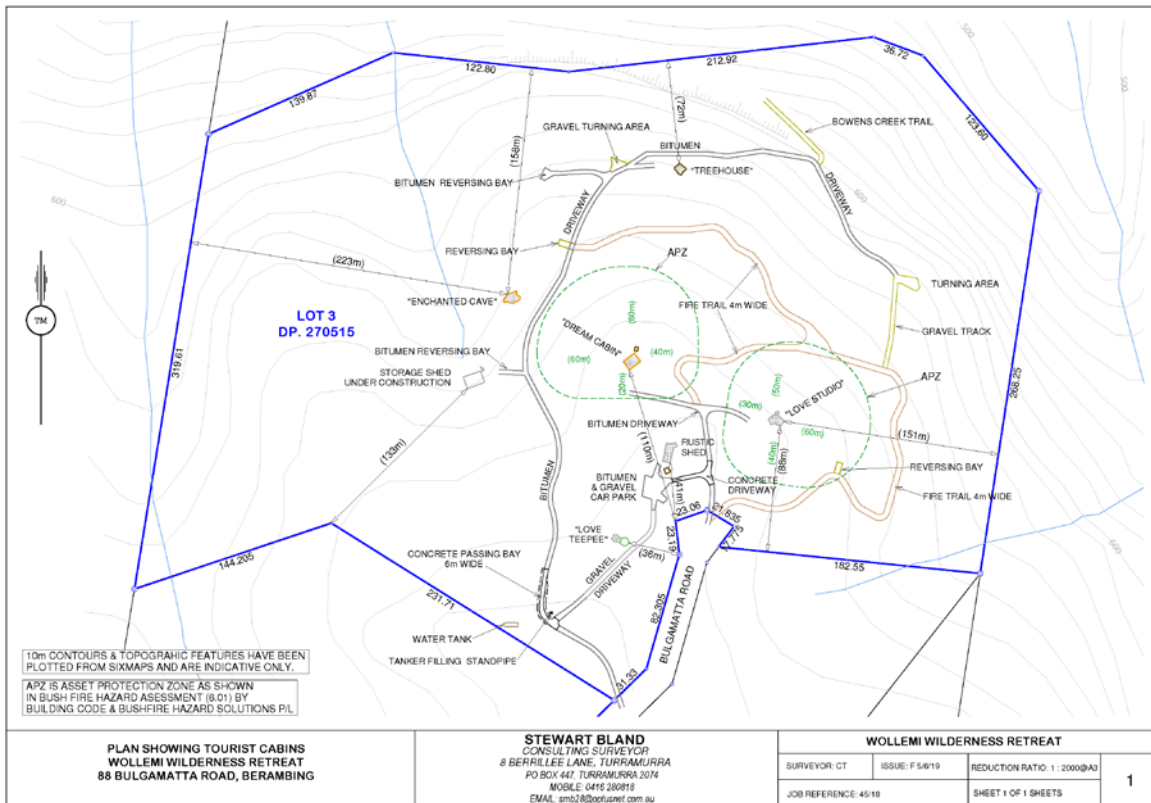
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<p>Tree House</p> <p>LOT 3 BULGAMATTA ROAD, BERAMING</p> <p>WOLLEMI CABINS</p>				<p>R.E. & P.A. COLLIS DESIGN</p> <p>P.O. BOX 62, WINDSOR, 2756</p>		0427 773588
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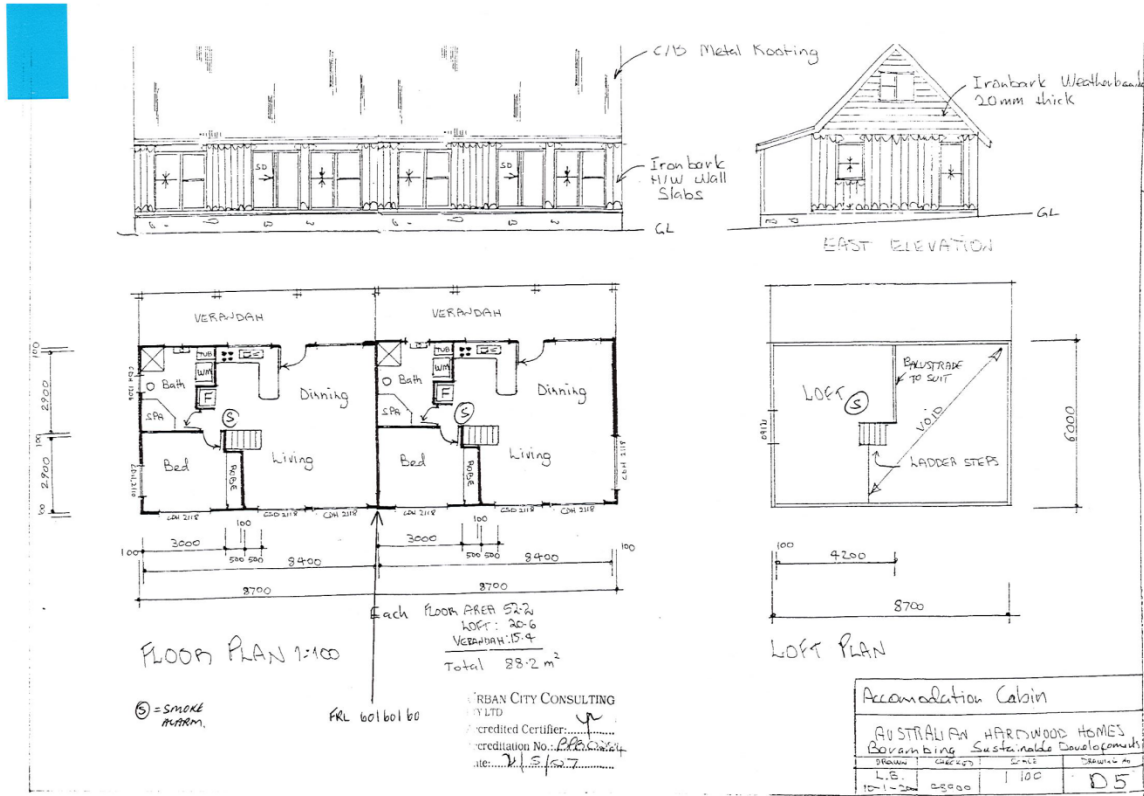


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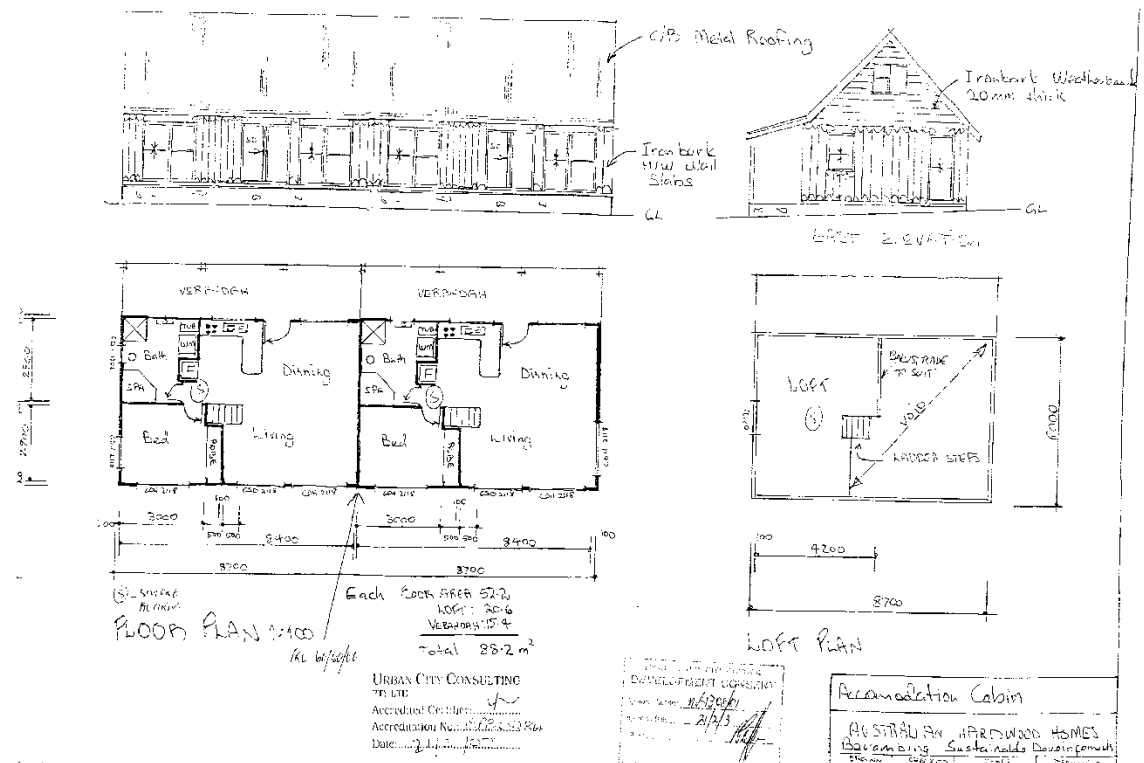
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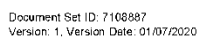
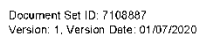


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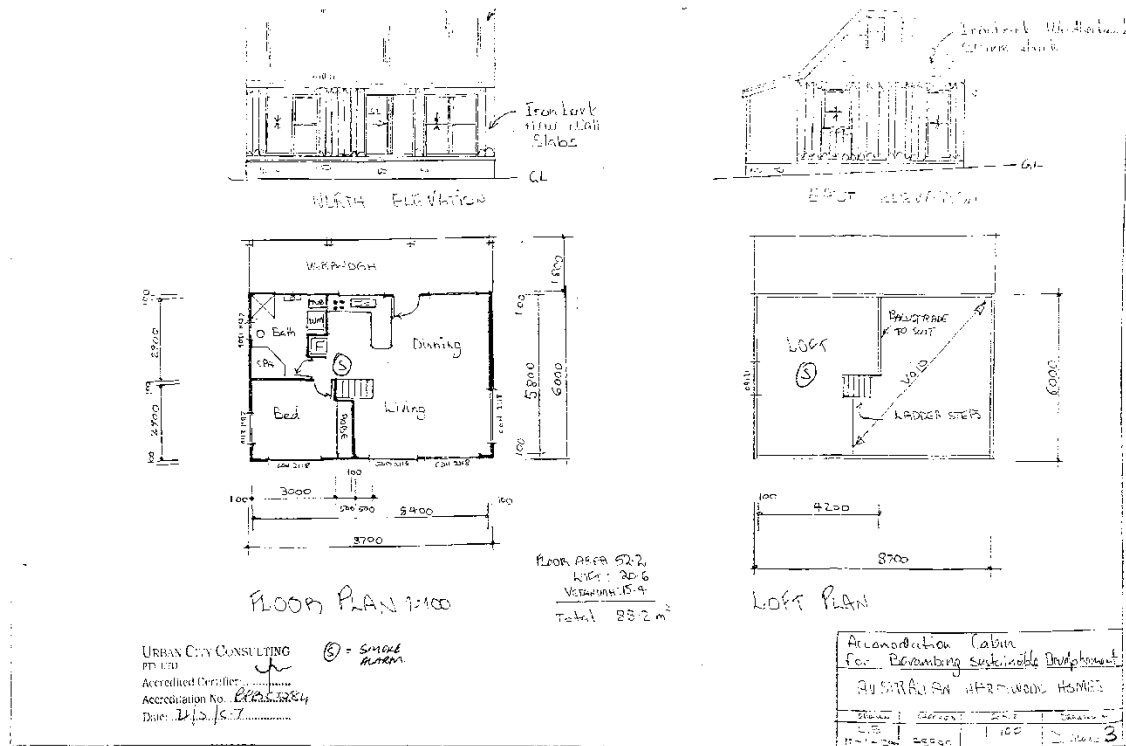
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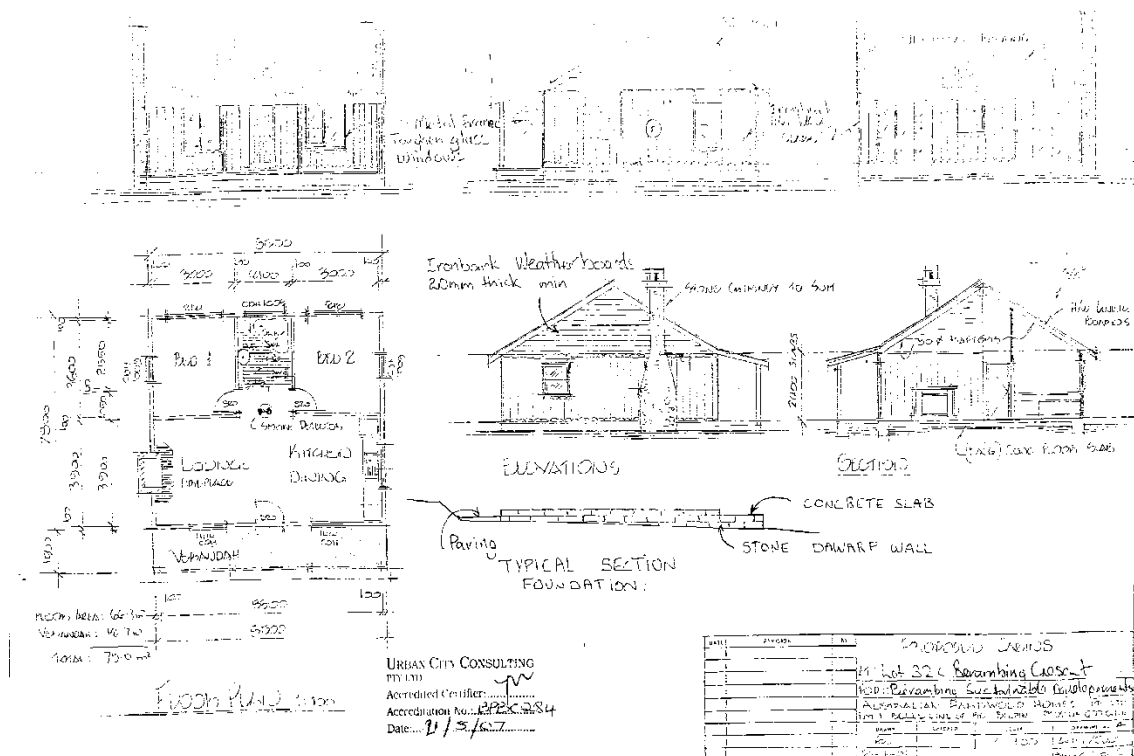
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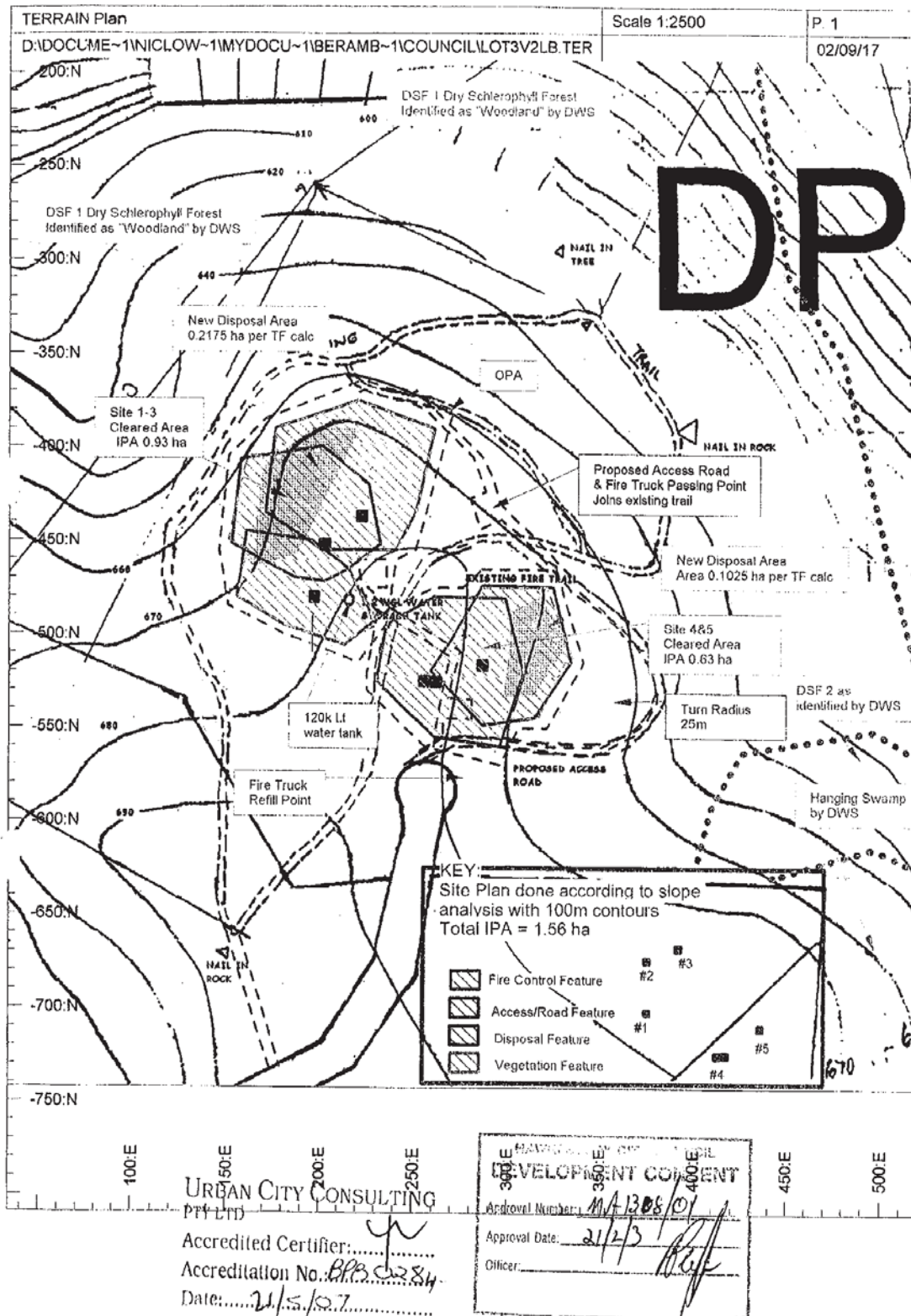


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AT - 2 Applicant's Legal Opinion

MEMORANDUM OF ADVICE

1. In this matter I am instructed by Williams & Co Solicitors in support of the interests of Berambing Sustainable Development Pty Ltd ACN 093419295 which is the registered proprietor of the land known as 88B Bulgamatta Road, Berambing, NSW being Lot 3 DP 270515 ("the site").
2. I have been asked to advise:

Has the consent given to Berambing Sustainable Development Pty Ltd ("BSD") for Development Application MA1308/01 of Hawkesbury City Council dated 21 February 2003 ("the Development Consent") been secured and can the Development Consent be lawfully acted upon particularly given that tourist and visitor accommodation is not permitted under the *Hawkesbury Local Environment Plan* 2012 and the Development Consent would need to rely upon the existing use right provisions. I have also been asked to identify that there was lawful commencement of the consent and to show the sequence of events that occurred inclusive of dates. This legal opinion is required to substantiate the lawful commencement.
3. I have been provided with:
 - Documents regarding DA MA 1308/01 namely
 - i. Notice of Determination in respect of MA1308/01 and conditions dated 21 February 2003;
 - ii. Plans; and
 - iii. Construction Certificate application dated 21 May 2003.
 - Documents regarding revised plans dated 2002 namely
 - i. Letter from Council dated 17 September 2002 with enclosures including
 - Revised site plan with cabin locations;
 - Letter regarding disposal areas;
 - Bushfire Hazard Assessment Report; and
 - Cabin Plans.

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- ii. Section 100B Authority from NSW Rural Fire Service dated 29 November 2002.
- Documents from Certifier
 - i. Construction Certificate No. 1229 dated 21 May 2007;
 - ii. Notice of Intention to Commence construction dated 21 May 2007; and
 - iii. Building Inspection Request/Result confirming Piers have been taken down to rock - dated 4 July 2007.

ADVICE

4. I begin by providing a brief review of the legislative framework which applies and a history of the planning controls affecting the site.

Relevant Legislation

5. The existing use provisions are found in Pt 4 Div 10 of the *Environmental Planning and Assessment Act 1979* ("the EPA Act").

"Existing use" is relevantly defined as follows:

106 Definition of "existing use"

In this Division, **existing use** means:

- (a) The use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and
 - (b) The use of a building, work or land:
 - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
 - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.
6. To benefit from an existing use under s106(b) the consent must be granted "before the commencement of a provision of an environmental

planning instrument having the effect of prohibiting the use.” Applying the definitions contained in s4 of the EPA Act, an environmental planning instrument must be one that is ‘in force’. The relevant instrument is therefore the HLEP 2012 which has the effect of prohibition use for tourist facilities.

7. Once ‘a building work or land’ has been identified as benefiting from an existing use as defined in s 106, the operative provisions setting out the protections, privileges and advantages attaching to such existing use are contained in ss 107-109 EPA Act. Sections 107 and 108 are as follows:

107 Continuance of and limitations on existing use

- (1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.
- (2) Nothing in subsection (1) authorises:
 - (a) any alteration or extension to or rebuilding of a building or work, or
 - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or
 - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or
 - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b), or
 - (e) the continuance of the use therein mentioned where that use is abandoned.
- (3) Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

8. **108 Regulations respecting existing use**

- (1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:

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- (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and
 - (b) the change of an existing use to another use, and
 - (c) the enlargement or expansion or intensification of an existing use.
 - (d) (Repealed)
 - (2) The provisions ... of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.
 - (3) An environmental planning instrument may in accordance with this Act contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.
9. The protection afforded by s107(1) and the limitations upon that protection, including the restriction of the protection to the area “actually physically used” are relevant to the present case, because BSD seeks to continue an existing use. Sections 107 and 108 are relevant to preserve the lawfulness of the present use.
10. The provisions referred to in s108 of the EPA Act are contained in Part 5 of the *Environmental Planning and Assessment Regulation 2000* (EPA Regulations) which allow reliance on an existing use for certain development in specified circumstances.
11. Sections 109 and 109 B of the EPA Act are also relevant for the purpose of determining whether the use of the land has been lawfully pursued.
- 12. 109 Continuance of and limitations on other lawful uses**
- (1) Nothing in an environmental planning instrument operates so as to require consent to be obtained under this Act for the continuance of a use of a building, work or land for a lawful purpose for which it was being used immediately before the coming into force of the instrument

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or so as to prevent the continuance of that use except with consent under this Act being obtained.

(2) Nothing in subsection (1) authorises:

(3) Without limiting the generality of subsection (2)(e), a use is presumed, unless the contrary is established, to be abandoned if it ceases to be actually used for a continuous period of 12 months.

13. **109B Saving of effect of existing consents**

(1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.

(2) This section:

(a) applies to consents lawfully granted before or after the commencement of this Act, and

(b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and

(c) has effect despite anything to the contrary in section 107 or 109.

(3) This section is taken to have commenced on the commencement of this Act.

History of Planning Controls

14. The presence or absence of existing use rights on the site will depend not only upon the use applied to the site, but also upon the history of planning controls affecting the site.

15. From 22 December 1989 with the gazettal of the *Hawkesbury Local Environmental Plan 1989* ("HLEP 1989") the 32C Berambing Land was zoned 7 (d) (Environmental Protection (Scenic)). The zoning table of that LEP shows in Clause 9 that "*Development for the purpose of*" "*Tourist facilities*" was permissible with consent in the zone.

16. Clause 5 of HLEP 1989 gives the following definition: "tourist facilities" means a building or place that is used to provide refreshment, accommodation, recreation or amusement facilities for the travelling or holidaying public.

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17. In 2002 the *Hawkesbury Development Control Plan 2002 (HDCP)* commenced. The use of the subject land as a tourist facility is consistent with the aims and objectives of HDCP which supports the local tourism economy and extended community networks.
18. On 21 September 2012 the *Hawkesbury Local Environmental Plan 2012* ("HLEP 2012") rezoned the subject land RU2 – Rural Landscape. Under that zoning a specific list of uses are permissible with consent (Item 3). The uses permitted in this zone with consent do not include "tourist facilities". The following uses are permitted without consent: *bed and breakfast accommodation; Environmental protection works; extensive agriculture; home occupations* (Item 2). Prohibited in this zone is any development not specified in item 2 or 3.
19. Thus the continued operation of a tourist facility on the site would be prohibited unless the Development Consent can rely upon the existing use falling within the definition of s106 (b).
Background to DA consent
20. On 11 February 2003 Hawkesbury City Council ("the Council") made a determination that the Development Application no. MA 1308/01 for a Tourist facility on land described as Lot 167 DP 1010953, 32C Berambing Crest, Bilpin NSW 2758 ("the 32C Berambing Land") be consented to on certain conditions which included approval for the construction of several tourist cabins, associated car parks and bushfire hazard reduction works ("the Development Consent"). The consent date as per the Notice of Determination was given as 21 February 2003.
21. Reference to HLEP 1989 shows that "a tourist facility" was a use permissible with consent the time.
22. Subsequent to the issuing of the DA consent in respect of the 32C Berambing Land, being old system title, the 32C Berambing Land was converted to Torrens title and subdivided in accordance with development consent SA 0007/94 ("Subdivision Consent") which was approved in 1994. The subdivision was completed apparently following satisfactory evidence being submitted to Council in accordance with a deferred development

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condition of that Subdivision Consent to the effect that suitable works would be undertaken to mitigate the impacts of a bushfire.

23. Following the subdivision of the 32C Berambing Land, Lot 3 DP 270515 also known as 88B Bulgamatta Road, Berambing, NSW ("the site") was created. Notwithstanding the subdivision, the site retained the benefit of the Development Consent.

Commencement

24. The EPA Act determines the law as to commencement of a Development Consent. The provisions of the *EPA Act* relevant to the present Development Consent are set out below:

95 Lapsing of consent

(1) A development consent lapses 5 years after the date from which it operates.

...

(4) Development consent for:

- (a) the erection of a building, or
- (b) the subdivision of land, or
- (c) the carrying out of a work,

does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section.

(5) Development consent for development other than that referred to in subsection (4) does not lapse if the use of any land, building or work the subject of that consent is actually commenced before the date on which the consent would otherwise lapse.

25. The DA was consented to on 21 February 2003. On 21 May 2007 the appointed Accredited Certifier, Troy Myers of Urban City Consulting Pty Ltd ("the Certifier") issued a Construction Certificate for the Development Consent in accordance with the approved plans and specifications.

26. The Certifier subsequently issued a Building Inspection Report confirming that building work including engineering work had physically commenced upon the 32 C Berambing Land prior to 4 July 2007. The former included provision of "all weather access site building sites" and "sedimentation controls", the latter included that "piers have been taken down to rock".

27. I am instructed that there are additional documents which support and corroborate that commencement of work on the site occurred within the

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5 year time frame. These works supported by documentation dated pre February 2008 (being within 5 years of the date of consent) include:

- i) Road and drainage works were undertaken on the Lot 32C Berambing Land after the Development Consent issued and before the CC issued as required by Condition 39 of the Development Consent;
- ii) A section of the fire trail around the buildings was tar sealed;
- iii) Power and phone connections were installed to the site at the same time as the power to the subdivision SA 0007/94 was installed;
- iv) Road contractor completed driveway to the location of the buildings;
- v) Roller was hired and used for fire trails and pipes were laid for a section of the fire trails.

28. In *Hunter Development Brokerage Pty Ltd v Cessnock City Council*; *Tovedale Pty Ltd v. Shoalhaven City Council* [2005] NSWCA 169; (2005) 63 NSWLR 124; (2005) 140 LGERA 201 the Court said there were three relevant questions in deciding whether work had commenced, namely:

- (a) was the work relied on building, engineering or construction work; if so,
- (b) did it relate to the approved development; if so,
- (c) was it physically commenced on the land to which the consent applied prior to the relevant lapsing date? Also see *Fagin v Australian Leisure and Hospitality Group Pty Limited* [2018] NSWCA 273; *K and M Prodanovski Pty Ltd v Wollongong City Council* [2013] NSWCA 202; (2013) 195 LGERA 23.

29. As to the first question the work relied on was both building or construction work and engineering work.

30. It was work that directly related to the approved development. For example the construction of piers was a necessary part of the construction for one of the buildings for which approval had been granted.

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31. Third, the work was physically commenced on the site to which the consent applied prior to the lapsing date.
32. On the basis of the above I am of the opinion that commencement had occurred within the five year time frame.
- Use of site as a tourist facility
33. I am instructed that in accordance with the Development Consent the use of the site as a tourist facility commenced in 2006 and a tourism business as permitted by HLEP 1989 has operated continuously on the site without incident of any kind providing overnight and short stay tourist accommodation. There has been no abandonment of this use and it continues to this day. It is my understanding that Council and the Rural Fire Service have been aware of this continuing use of the site as a tourist facility and have been aware that several of the buildings which have been constructed on the site pursuant to the Development Consent provide tourist accommodation as permitted by the HLEP 1989. I am further instructed that the relevant buildings have current fire safety certificates, compliant procedures for dealing with fire and other emergencies, BCA reports, structural engineering certificates and waste water management certificates.
34. It may be inferred that this use was continuing when HLEP 2012 rezoned the subject land Rural RU2 Zone – Rural Landscape in 2012. Under this zoning “tourist facilities” were prohibited.
35. However the continued operation of the land as a tourist facility enjoys an “existing use” falling within the definition at s106(b) EPA Act. This is supported by the decision of the Court of Appeal in *Jojeni Investments Pty Ltd v Mosman Municipal Council* (2015) 89 NSWLR 760; [2015] NSWCA 147.
36. In my opinion existing use rights apply having regard to the fact that a development consent authorising the use of the 32C Berambing Land (which includes the site) for a tourist facility was granted on 21 February 2003. The site was therefore being lawfully used for a purpose that was prohibited by HLEP 2012 when that plan came into force in 2012.

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37. The use has not been abandoned and should be regarded as ongoing. The following considerations support this conclusion: There has not been an interruption or break in the use of such a kind as to bring about a termination or abandonment of use (*Woollahra Municipal Council v Banool Developments Pty Ltd* [1973] HCA 65; (1973) 129 CLR 138 at 144.) Further, the fact that BDS temporarily ceased using the premises as a tourist facility at the request of council in late December 2018 following the service on BDS of a Notice of Intention is not an abandonment of the use (*Woollahra Municipal Council v Banool* case).

Conclusion

38. Accordingly, for the reasons set out above I am of the opinion that the Development Consent was physically commenced within time and that the site benefits from existing use rights arising from the grant of consent in February 2003 but the existing use is defined by the terms of approval and the accompanying plans as modified.

I so advise.

DATED 15 AUGUST 2019

Fiona A Sinclair

.....

Fiona Sinclair

Barrister

Queen's Square Chambers

Liability limited by a scheme approved under the Professional Standards Legislation

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Item: 4 CP - DA0303/21 - Lot D DP 334004, 15 King Road, Wilberforce - (95498, 35163, 15949. 154044)

Directorate: City Planning

DEVELOPMENT INFORMATION

File Number: DA0303/21
Legal Description: Lot D DP 334004
Property Address: 15 King Road WILBERFORCE NSW 2756
Applicant: Barry Munro
Owner: Hawkesbury City Council
Proposal Details: Commercial Premises - Shop Alterations & Additions
Estimated Cost: \$106,000.00
Area: 1.05 Hectares
Zone: B1 Neighbourhood Centre under *Hawkesbury Local Environmental Plan 2012*.
Date Received: 15/10/2021
Advertising: 2/11/2021 - 16/11/2021
Submissions: Nil

Key Issues: ♦ Flooding

RECOMMENDATION:

Approval.

EXECUTIVE SUMMARY:

Reason for Consideration by Local Planning Panel

- Conflict of interest – the owner of the property is Hawkesbury City Council.

Proposal

This application seeks consent for the alterations and additions to an existing shop at 15 King Road, Wilberforce. The proposal involves the construction of a 9.4 metre x 4.5 metre addition to an existing butcher's shop for the purposes of extending the butchers work area.

Permissibility

The proposal seeks alterations and additions to an existing shop, which is a type of '*Commercial Premises*' and is a permissible use in the B2 Local Centre Zone under the Hawkesbury Local Environmental Plan 2012.

Consultation

The development application was notified from 02 November 2021 to 16 November 2021 and no submissions were received.

Key Issues

The key issues of the development application are:

- Flooding

Recommendation

It is recommended that DA0303/21 be approved subject to conditions.

REPORT:

Detailed Description of Proposal

Pursuant to Section 4.12(1) of the Environmental Planning and Assessment (EP&A) Act 1979 this application seeks consent for the alterations and additions to an existing 'commercial premises' – Shop 1-2 at the Wilberforce Shopping Centre located at 15 King Road, Wilberforce. The proposed development specially seeks to construct a 9.4 metre x 4.5 metre addition to the existing Butchers Shop, for the purposes of extending the work room area. The addition would include a new stainless-steel sink and bench in association with the existing use.

Site Description

The subject site is approximately 1 ha in size, rectangular in lot shape and slopes down in a southerly direction. The site is known as the Wilberforce Shopping Centre and comprises of a commercial building with multiple shops that includes a Pharmacy, Post Office, Child Care Centre, Grocer, the subject Butchers Shop and more. The Shopping Centre is serviced by a shared car park situated at the centre of the site with direct vehicular access to George Road to the north and King Road to the south. The surrounding locality comprises of mostly single storey detached dwellings and a Primary School. The subject Shop 1-2 was approved for use as a butchery under DA0125/13 and is situated at the southern end of the Shopping Centre.



Figure 1: (Council mapping) Aerial Imagery of the subject lot with the location of shop 1-2 identified.



Figure 2: Site photograph of the rear of the subject butchers shop (west elevation), showing the location of the proposed shop addition.

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Background and History

31 May 2013 Consent granted for the use of shop 1-2 as a butcher's premise and internal alteration under Development Consent No. DA0125/13.

Submissions

The application was notified between 02 November 2021 to 16 November 2021 in accordance with Chapter Three, Part A of the Hawkesbury Development Control Plan 2002 (HDCP), Notification of Development Applications. No submissions were received.

Council Policies, Procedures and Codes to which the matter relates

- Sydney Regional Environmental Plan No 20 - Hawkesbury-Nepean River (No 2-1997) (SREP No. 20)
- Hawkesbury Local Environmental Plan 2012 (LEP 2012)
- Hawkesbury Development Control Plan 2002 (HDCP 2002)
- Hawkesbury Flood Policy and Associated Schedule of Flood Related Development Controls 2020.

Matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

a) The provisions (where applicable) of any:

i. Environmental Planning Instrument:

Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River

The proposal is consistent with the aims and objectives of SREP No. 20. The proposed development would not significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context and the development is not inconsistent with the general and specific aims, planning considerations, planning policies and recommended strategies.

Hawkesbury Local Environmental Plan 2012

The development is consistent with the zone objectives and the following relevant clauses of the HLEP 2012:

- **Zoning – *Complies***

The property is zoned B2 Local Centre. The proposed alterations and additions to the existing shop are permissible as '*Commercial Premises*' in the B2 Local Centre Zone.

The proposal is consistent with the objectives of the zone in that it will promote business activities and employment opportunities in the zone.

- **Clause 4.3 - Height of Buildings – *Complies***

The proposed development has a maximum ridge height of 3.2 metres and subsequently complies with the maximum allowed height of 10m for the subject land under clause 4.3 of the HLEP 2012.

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- **Clause 5.21 – Flooding – *Complies***

The subject land is situated below the 1 in 100-year flood planning level of 17.3 metres AHD with the ground level of the building envelope being approximately 1.4 metres below the flood planning level. The proposed development is associated with an existing shop use and would result in minimal footprint increase to assist the existing butchers work room area.

The development is situated on land within a flood storage area that comprises of low velocities (0.5m/s) as determined by Council's Engineer, who also noted the proposed building footprint increase would not significantly reduce the flood storage. In this regard, the proposed development will not adversely impact flood function and behaviour of the land in accordance with the objectives and controls of clause 5.21.

The development application is supported by an Evacuation Capability Assessment and Flood Emergency Response Plan demonstrating safe evacuation of the shop to higher ground at George Road which is above the 1 in 100-year flood planning level. The plan notes adequate warning will be available for the non-residential use from SES warnings, as the shop is above the 1 in 50-year flood planning level and affected by low velocity. The site will not increase residential occupancy or the number of shops in the mall. The development results in minimal increase to the shops operation, with no further seating or sales areas proposed. As such, the proposed development will have minimal flood risk to life or property and will continue to provide safe flood evacuation for people in accordance with the objectives and controls of clause 5.21.

Hawkesbury Schedule of Flood Related Development Controls 2020

The proposed development is located on an area of the land situated at approximately 15.9 metres AHD, resulting in a flood depth of 1.4m below the 1 in 100-year flood planning level of the site. As such, the proposed development is considered under Flood Hazard Category H4 under the Hawkesbury Schedule of Flood Related Development Controls 2020.

The existing shop is a land use under 'Commercial Use 2' of the Schedule and is an existing lawful compatible use in the H4 hazard category. In this regard, the proposed development is considered against the following relevant controls of Section 4.1 of the of Schedule of Flood Related development controls 2020:

Development Control	Compliance	Comment
H4.2 – Floodway Area or Flow Path?	Complies	Council's Engineer has reviewed the proposal and advised that the land is situated in a Flood Storage Area and not within any Floodway or Flow Path.
H4.4 & H4.5 – Land Level: A new building and floor areas of 'Commercial Use 2' must not be situated on land lying at level lower than 2.0 metres below the Flood Planning Level	Complies	The proposed development is situated on land lying at a level of 1.4 metres below the Flood Planning Level and therefore complies.

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Development Control	Compliance	Comment
H4.11 & H4.12 – Cut & Fill: Importation of landfill to the site for the proposed development type is not permitted. Balance of cut and fill must be used on site and is not to exceed a depth of 1m cut or fill.	Complies	The location of the proposed shop addition is level, and no landfilling is required or shown on plans. A condition of consent will be applied in this regard. A balance of cut and fill will not exceed 1m depth.
H4.13 – Flood Compatible: All buildings and structures must be constructed using flood compatible building materials	Complies	Council's Engineer has recommended a condition of consent be applied requiring the development to have flood compatible structural components and written details provided prior to the issuing of a Construction Certificate
H4.14 – Structural Engineer: An engineering report, prepared by a Structural Engineer, must be provided to demonstrate that the new building is able to withstand forces from floodwaters, debris and buoyancy forces	Conditioned	A Structural Engineers Report does not accompany the development application. Due to the site's location in a flood storage area and the limited risk to life and building size of the shop addition, a condition of consent is considered appropriate. The condition will require a Structural Engineers Certificate to be provided prior to the issue of a Construction Certificate.
H4.15 & H4.16 – Emergency Management: An Evacuation Capability Assessment and Flood Emergency Response Plan must be provided when element of the development are below the Flood Planning Level	Complies	The development application is supported by an Evacuation Capability Assessment and Flood Emergency Response Plan. The plan demonstrates flood free access from George Road to the Putty Road and travel in a northerly direction. Council's Engineer agrees with the plans conclusion that the floodwaters are a low velocity and within a flood storage area. The shop is above the 1 in 50 year Flood Planning Level which allows for adequate time for evacuation of the shop given SES Warning. The plan provides recommended response measures for the shop and manager which will be conditioned.

- *Clause 6.1 - Acid Sulfate soil controls – **Complies***

The proposal is located on Class 5 - Low Impact Soil and will not lower the water table or expose acid sulphate soils.

- *Clause 6.2 – Earthworks – **Complies***

The proposed development is situated on a level area and earthworks associated with the building envelope are minimal. As such, the proposal will not result in detrimental effects to drainage patterns or soil stability and will not adversely impact the amenity of adjoining shops. Relevant standard conditions are recommended to

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be included within the consent to ensure appropriate erosion and sediment control management is in place during and after construction.

- *Clause 6.4 – Biodiversity Controls – **Complies***

The subject land is not identified on the *Hawkesbury Local Environmental Plan 2012 Terrestrial Biodiversity Map* as being affected by biodiversity and no vegetation is proposed for removal.

- *Clause 6.7 – Essential Services – **Complies***

The site is serviced by Sydney Water in reticulated sewer and water supply. Road access to the site is provided from both King Road and George Road. The shop addition includes a sink and a condition requiring Sydney Water tap in application prior to works will be applied. It is therefore considered that the existing services to the site are adequate for the development.

- ii. **Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:**

There are no draft planning instruments that apply to the subject development.

- iii. **Development Control Plan applying to the land:**

Hawkesbury Development Control Plan 2002

The proposal is consistent with the aims and objectives of the Hawkesbury DCP 2002 and is considered against the following relevant chapters:

Part A Chapter 3 – Notification

The application was notified from 02 November 2021 to 16 November 2021 in accordance with Part A Chapter 3 of the HDCP 2002 and no submissions were received.

*Part C: Chapter 2 – Car Parking and Access – **Complies***

The subject site is supported by a common car park that services the Wilberforce Shopping Centre and the 88B does not allocate parking spaces to individual shops. The existing shopping centre has a floor area of 880sqm which requires a parking rate of one space per 30sqm and the existing Child Care Centre is 600sqm (60 Children) which requires a parking rate of one space per 4 children (RMS rate). As such the existing uses on the site require a total of 44 parking spaces, while the existing car park provides 80 parking spaces. As such, there is sufficient parking spaces in accordance with the Car Park and Access Chapter of the HDCP 2002 to service the proposed 44 sqm shop addition.

The existing car park has adequate turning areas so vehicles can enter and leave in a forward direction, while direct access is also provided to George Road and King Road. In this regard, there is sufficient parking, access and manoeuvring on the site to support the proposal.

- iv. **Planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:**

None applicable.

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vi. Matters prescribed by the Regulations:

In accordance with the Environmental Planning and Assessment (EP&A) Regulation 2000 the development would be required to comply with the following:

- The National Construction Code – Building Code of Australia (BCA).
 - The following development contributions apply to this development: \$530.
- Accordingly, a condition of consent is required to be imposed in this regard.

b) The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:

It is considered that the proposed development would not have any adverse environmental, visual, economic or social impacts on the locality.

The proposed development is compatible with the flood hazard of the land and consistent with the surrounding commercial premises. The proposal provides a functional design layout for the site and premise. The shop addition is for the purposes of changing the work area of the butchers which will have minimal acoustic impacts and is significantly setback from nearby residential uses in the locality. As such, the proposal would result in an acceptable social and economic impact in the locality. The development will not adversely impact the built and natural environment of the locality.

c) Suitability of the site for the development:

The site is not affected by environmental constraints that would prevent the development from being undertaken. The proposal is in close proximity to existing compatible commercial uses and is well setback from low density residences resulting in minimal land use conflicts. The subject land is not bushfire prone and does not have biodiversity values. The development would not impact upon critical habitats and threatened species, populations, ecological communities and habitats.

Referrals

Environmental Health Officer

Councils Environmental Health Officer has reviewed the proposal and raised no objections subject to recommended conditions relating to the standard of fit out.

Engineers

Council's Engineer has reviewed the proposal and provided a flood assessment that concludes the development would not have an adverse impact on flood behaviour. As such, no objections were raised subject to conditions for required flood compatible construction, Engineers Certification, Evacuation Awareness and a Basic Drainage Plan to be provide prior to the issue of a Construction Certificate.

Building Surveying

Councils Building Surveyor has reviewed the application and raised no objections to the proposal subject to recommended conditions for building requirements and a Fire Safety Certificate prior to the issue of the Occupation Certificate.

The deposited plan is clear of easements or restrictions that would prohibit the proposed development. The site is serviced by Sydney Water in water supply and reticulated sewerage service. Conditions for services will be applied in this regard.

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The proposal has adequately considered the site constraints and it is considered that proposed use is suitable to the site.

d) Any submissions made in accordance with the Act or the Regulations:

No submissions were received for the application.

e) The Public Interest:

It is considered that the proposal is consistent with the overall objectives of the zone and adequately addresses the relevant legislation. The proposal would support the commercial uses of the site and is consistent with the public interest.

Conclusion

The proposal has been assessed against Section 4.15 of the EP&A Act and is consistent having regard to the relevant environmental planning instruments and regulations which apply to the development. The proposal is seen to be acceptable within the context of the locality and is recommended for approval.

RECOMMENDATION:

Application Approved - That development application DA0303/21 at Lot D DP 334004, 15 King Road WILBERFORCE NSW 2756 for Commercial Premises - Shop Alterations & Additions be approved subject to the following conditions.

General Conditions

1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where amended in red on the plans and/or amended by other conditions of consent:

a) Plans Reference:

Drawing Reference No.	Drawing Description	Prepared by	Issue No.	Date
1	Site and Floor Plan	Apted Plan Services	A	July 2021
2	Section and Elevation Plan	Apted Plan Services	A	July 2021

b) Document Reference:

Document Title	Reference	Prepared By	Date
Evacuation Capability Assessment & Site Flood Emergency Response Plan	Ref No. 210060	Urban City Planning	08 October 2021
Colour & Material Schedule	Shop 1-2 Wilberforce Shopping Centre	Urban City Planning	30 September 2021
Waste Management Plan	Shop 1-2 Wilberforce Shopping Centre	Urban City Planning	08 October 2021

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No works, other than those approved (including raising or lowering of ground levels on the site, or construction of retaining walls on any property boundary) are permitted by this consent.

Note: Details of the development shown in the approved plans and documents referenced are altered in the manner indicated by:

- (i) any amendments made by Council on the approved plans or documents;
- (ii) any notes, markings, or stamps on approved plans or documents; and
- (iii) any conditions contained in this consent.

2. Works Must Not Commence Until a Construction Certificate is Issued

Construction or preparatory work (including earthworks or tree and/or vegetation removal) must not commence until:

- a) a Construction Certificate is obtained from either Council or an Accredited Certifier;
- b) a Principal Certifier is appointed; and
- c) a Notice of Commencement is lodged with Council.

Note: If the Construction Certificate is issued by an Accredited Certifier that is not Council it will be necessary to lodge the Construction Certificate and other approved documents with Council within two days of such approval (a registration fee is payable upon lodgement).

3. Appointment of a Principal Certifier

No work shall commence until:

- a) A Principal Certifier is appointed for the building/engineering works and the following details relating to the carrying out of the works have been provided:
 - (i) name and licence number of the builder/contractor undertaking the construction works; or
 - (ii) name and permit number of the owner-builder (if relevant);
- b) The Principal Certifier has:
 - (i) provided a copy of the notice of its determination to the consent authority, and to Council (within two days after the date of the determination);
 - (ii) notified the person having benefit of the consent of any critical stage inspections and other inspections that it requires to be carried out in relation to the approved work;
 - (iii) notified Council of its appointment (not less than two days before commencement of building work);
- c) The person having benefit of the consent (if not carrying out work as an owner-builder) has:
 - (i) appointed a principal contractor who must hold a 'contractor licence' if any residential building work is involved;
 - (ii) notified the Principal Certifier of the appointment of the principal contractor;
 - (iii) notified the principal contractor of any critical stage inspections or any other inspections that are required to be carried out in relation to the approved work; and
- d) At least two days' notice are to be provided to Council of the date on which it is proposed to commence work associated with this development consent.

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4. Part 6 Certificates Required

The accredited certifier must provide copies of all Part 6 Certificates issued under the *Environmental Planning and Assessment Act 1979* relevant to this development to Council within seven days of issuing the certificate.

Note: A registration fee applies.

5. Occupation Certificate Required Prior to The Use Of The Building

The building must not be occupied or used prior to the issuing of an Occupation Certificate by the Principal Certifier. Where a partial Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.

A copy of any Occupation Certificate must be submitted to Council within two days of its issue.

6. Prescribed Conditions - Compliance with National Construction Code

All building works must be carried out in accordance with the requirements of the National Construction Code (Building Code of Australia).

7. Archaeology - Discovered During Excavation

As required by the *Heritage Act 1977*, in the event that items, relics, historical cultural fabric and/or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and the NSW Government's Heritage Council must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the *Heritage Act 1977* to obtain the necessary approvals/permits from the Heritage Council.

Note: The *Heritage Act 1977* imposes substantial penalty infringements and / or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

8. Excavation - Aboriginal Relics

If any Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- a) all excavation or disturbance of the area must stop immediately in that area; and
- b) Heritage NSW must be advised of the discovery.

All necessary approvals from the Heritage NSW must be obtained and a copy provided to Council prior to works recommencing.

Note: If an Aboriginal object is discovered, an Aboriginal Heritage Impact Permit may be required under the *National Parks and Wildlife Act 1974*.

Prior to the Issue of Construction Certificate

9. Long Service Levy Payment

The payment of a long service levy as required under Part 5 of the *Building and Construction Industry Long Service Payments Act 1986* is required. Evidence that the levy has been paid, is

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to be submitted to the Principal Certifier prior to the issue of any Construction Certificate.

Note: All building and construction work costing \$25,000 and above are subject to the payment of a Long Service Levy at the rate of 0.35%. Payments can be made at Long Service Payments Corporation offices or most councils.

10. Section 7.12 (Monetary) Contributions

A contribution under Section 7.12 of the *Environmental Planning and Assessment Act 1979* must be paid in accordance with the following:

a) Contribution Required

In accordance with Council's Section 7.12 (previously S94A) Contributions Plan 2015, a monetary contribution (indexed at the time of payment) must be paid to Council for the amount specified below.

b) Amount of Contribution

The amount of the contribution is \$530.

This fee is based on the supplied value-of-works of \$106,000.

The contribution amount detailed in (b) will be indexed at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics (Table 6401.0).

Contributions must be receipted by Council and evidence of payment submitted to the Accredited Certifier prior to the issue of any Construction Certificate.

Note: In the event that the estimated value of works increases in association with the Construction Certificate the Section 7.12 contribution payable is to be based on the revised value of works.

Please present a copy of this condition when paying the contribution at Council's Customer Service Centre in order to assist in recalculation of the contribution amount.

11. Compliance with the Building Code of Australia - Fire Services and Equipment

Detailed plans showing the existing and proposed fire services and equipment suitable for the intended class of building and proposed use, is to be supplied.

The design and installation of these services and equipment are to be compliant with the Building Code of Australia and relevant Australian Standards.

Details are to be provided to the Accredited Certifier prior to issue of the Construction Certificate.

12. Flood Prone Land - Flood Compatible Construction

All buildings must have flood compatible structural components up to and including the 100 year Average Recurrence Interval (ARI) flood level of RL 17.3 metres AHD. The materials used in the construction must be consistent with any structural engineering certificate regarding the ability of the building/structure to withstand the forces of floodwater.

A written specification of the proposed materials to be used must be provided to the Accredited Certifier prior to the issue of a Construction Certificate.

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Note: Advice on suitability of materials for use on flood liable land can be found in the publication 'Reducing Vulnerability of Buildings to Flood Damage' (Chapter 4.3 - Construction Materials).

13. Flood Prone Land - Engineers Certification

The 100 year Average Recurrence Interval (ARI) flood level for this site is RL 17.3 metres AHD (Australian Height Datum).

An engineer's certificate must be provided deeming compliance with the following requirements during a 100 year ARI flood event:

- b) Debris: Damage to the proposed structure/s sustained in a flood will not generate debris capable of causing damage to downstream buildings or property. This includes securing of utilities and equipment including tanks, A/C units and similar;
- c) Structural Soundness: Any part of the structure will be able to withstand the force of floodwaters (including lateral forces, buoyancy forces, unbalanced hydrostatic forces) and the impact of debris; and
- d) Foundations: The footing system must be structurally stable during flooding and must consider the soil properties when wet, possible erosion and scouring or liquefaction, subsidence or collapse due to saturation.

The Engineers Certificate must be submitted to the Certifier prior to issue of the Construction Certificate.

14. Food Premises - Design

To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas, all building work in connection with the occupation or use of the premises for the preparation and storage of food must be designed and carried out in accordance with the requirements of:

- a) *Food Act 2003*;
- b) *Food Regulation 2015*;
- c) Australian Standard AS 4674 - 'Design, construction and fit-out of food premises';

The Construction Certificate plans and documentation must incorporate details of the following:

- a) construction, materials and finishes;
- b) installation of fixtures, fittings and equipment;
- c) washing facilities, other facilities and special requirements;
- d) mechanical ventilation and exhaust discharges; and
- e) temperature control.

Plans and specifications which comply with this condition must be submitted to the Accredited Certifier for approval prior to the issue of any Construction Certificate.

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15. Food Premises - Waste Traps

Any bucket traps, grease traps and associated sewer connections must be installed in accordance with the requirements of the relevant water authority.

Details must be provided to the Accredited Certifier prior to the issue of the Construction Certificate.

16. Food Premises - Construction and Fitout General Requirement

Detailed plans of the kitchen, bar and food preparation and storage areas must be prepared by a suitably qualified person and certified in accordance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the Food Act 2003 and AS 4674 - Design, Construction and Fitout of Food Premises and must be submitted to and approved by Council prior to a Construction Certificate being issued.

- a) The construction, fitout and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the *Food Act 2003* and Australian Standard AS 4674 - 'Design, construction and fitout of food premises'.
- e) The floor of the food premises must be finished in an approved non absorbent material, evenly laid, or graded and drained to a trapped floor waste.
- f) The floor must be coved at the intersection with the walls.
- g) The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other rigid, smooth-faced impervious material.
- h) Ceilings within the food preparation and storage areas must be free of gaps and open joints and must be finished with an impervious sealed material. Drop in panels are not permitted in food preparation areas, food storage areas or areas where open food is displayed or served.
- i) Hand wash basin/s, with hot and cold running water mixed through a common spout, hand wash soap and hand drying facilities must be provided in all food preparation bar areas, and toilets used by food handlers and must be no further than 5m travel distance from a place where a food handler is handling food. All taps to hand wash basins must be hands free. (For example: sensor taps, knee operated taps or foot pedal taps). Liquid soap and paper towel dispensers or other hand drying facilities must be located next to and in close proximity the hand wash basin.
- t) All service pipes, electrical conduits, refrigeration condensate pipes and the like must be chased into walls and floors or at least 25mm off the wall.
- u) All openings in walls, floors and ceilings, through which service pipes pass, must be vermin proof.
- v) Where fittings are butt joined together they must be sealed to eliminate any cavities or crevices. Alternatively, a clear space of at least 75mm is to be provided between fittings.

Note: Copies of AS 4674 - 'Design, construction and fit-out of food premises' may be obtained from the Standards Australia Customer Service on telephone 1300 65 46 46 or by visiting the website www.standards.com.au <<http://www.standards.com.au>>.

Copies of the Food Standards Code (Australia) may be obtained by contacting the Food Standards Australia and New Zealand Authority on telephone (02) 6271 2222, email info@foodstandards.gov.au or by visiting the website www.foodstandards.gov.au.

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Details satisfying the above are required to be submitted to the Accredited Certifier prior to the issue of the Construction Certificate.

17. Structural Engineers Design - Concrete and Structural Steel

A qualified Structural Engineer's design for all reinforced concrete and structural steel must be provided to the Accredited Certifier prior to issue of Construction Certificate.

18. Basic Drainage Plan

A basic drainage plan of the site must be submitted and approved prior to the issue of the Construction Certificate. The plan must:

- a) drain to the existing roofwater drains;
- b) be to the satisfaction of the Certifier; and
- c) comply with the Hawkesbury Development Control Plan 2002 - Appendix E and Australian Standard AS 3500 - 'Plumbing and Drainage' unless a variation is specifically noted and approved by the Development Application concept drainage plan.

Prior to Any Works Commencing on Site

19. Principal Certifier - Details

The applicant must advise Council of the name, address and contact number of the Principal Certifier, in accordance with Section 6.6(2) of the *Environmental Planning and Assessment Act 1979*.

20. Toilet Facilities

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet must:

- a) be a standard flushing toilet connected to a public sewer;
- b) be attached to an approved on-site effluent disposal system;
- c) be a temporary chemical closet that is regularly maintained; and
- d) appropriate facilities for the disposal of sanitary items are to be provided within the toilet.

21. Survey Certificate - Building to be Verified by a Registered Surveyor

In order to ensure compliance with approved plans, a Survey Certificate, prepared by a Registered Surveyor, including locating any easements affecting the subject land, is to be undertaken:

- a) a set-out survey prior to the placement of any footings showing the proposed building and its relationship to the boundaries;

Progress surveys must be submitted to the Principal Certifier at the time of carrying out relevant progress inspections. Under no circumstances is work allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved plans and the works as constructed.

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22. Notice of Commencement

No work shall commence until a notice of commencement has been provided to Council. This notice is to be provided not less than two days from the date on which it is proposed to commence work associated with this Development Consent. The notice must also contain:

- a) details of the appointment of a Principal Certifier (PCA) providing name, address and telephone number; and
- b) details of the name, address and licence details of the Builder.

23. Prescribed Conditions - Shoring and Adequacy of Adjoining Property

Development that involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- a) protect and support the building, structure or work from possible damage from the excavation; and
- b) where necessary, underpin the building, structure or work to prevent any such damage.

Note: This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

24. Principal Certifier Site Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a) showing the name, address and telephone number of the Principal Certifier for the work;
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

25. Safety Fencing

The site is to be secured by a fence, in accordance with Safework NSW requirements, to prevent unauthorised access during the period of all works.

26. Erosion and Sediment Control for Minor Development

Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with Hawkesbury Council's publication *Guidelines for Erosion and Sediment control on a building site (2017)*.

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27. Sydney Water - Endorsement of Approved Plans

The approved plans must be submitted to and endorsed by Sydney Water via the 'Sydney Water Tap-in' website to determine whether the development will affect Sydney Water's water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to Sydney Water's website.

Evidence of the building plan approval must be forwarded to the Principal Certifier prior to the commencement of works.

During Construction

28. Construction Hours

Clearing of land, running of machinery, excavation, and/or earthworks, building works and the delivery of building materials must be carried out between the following hours:

- a) between 7am and 6pm, Mondays to Fridays inclusive;
- b) between 8am and 4pm, Saturdays;
- c) no work on Sundays and public holidays; and
- d) works may be undertaken outside these hours where:
 - (i) the delivery of vehicles, plant or materials is required outside these hours by the Police or other authorities;
 - (ii) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; and
 - (iii) a variation is approved in advance in writing by Council.

29. Site Management During Construction

The following requirements relating to site management apply during and immediately following construction:

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Copies of receipts stating the following must be given to the Principal Certifier:
 - (i) the place to which waste materials were transported;
 - (ii) the name of the contractor transporting the materials; and
 - (iii) the quantity of materials transported off-site and recycled or disposed of.
- d) Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.

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- e) During construction:
 - (i) all vehicles entering or leaving the site must have their loads covered;
 - (ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads; and
 - (iii) any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to the public.
- f) At the completion of the works, the work site must be left clear of waste and debris.

Note: In the event it is not possible to keep the footpath or road reserve clear during construction works written approval from Council must be obtained prior to any closing of the road reserve or footpath area. The closure must take place in accordance with Council's written approval. The area must be signposted and such signposting be maintained in a way that ensures public safety at all times.

30. Loading and Unloading During Construction

The following requirements relating to loading and unloading apply during construction:

- a) All loading and unloading associated with construction activity must be accommodated on site.
- b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval must be obtained from Council.

31. Critical Stage Inspections

Prior to the commencement of building work and at nominated stages during the construction of the building, a minimum of 48 hours' notice is required to be provided to allow the Principal Certifier to ensure that the critical stage inspections are undertaken.

Note: Critical stage inspections are required to be carried out in accordance with Clause 162A of the *Environmental Planning & Assessment Regulation 2000*.

32. Overland Stormwater Flow Management

The works associated with the development must ensure that:

- a) all natural water flow from adjoining properties is not impeded or diverted; and
- b) surface and subsurface water flows are not redirected or concentrated onto adjoining properties.

33. Stormwater Drainage Management

Roof water (including overflow from water storage vessels) must be drained to the existing roofwater drains.

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Prior to Issue of Occupation Certificate

34. Flood Prone Land - Awareness and Evacuation

The following requirements are to be prepared and installed prior to the issue of any Occupation Certificate:

- a) The Business Manager and Shop Staff are to be made aware of the approved Site Flood Emergency Response Plan prepared by Urban City Planning (dated 08/10/21) and advise occupants of the flood evacuation procedures and emergency telephone numbers. The evacuation procedures must be permanently fixed to the building in a prominent location and maintained at all times; and
- b) A flood warning sign is to be provided advising occupants that the site may be subject to inundation during times of flood. The sign must be constructed of durable material and installed in a prominent location within the site.

35. Food Premises - Certification of Fit-out

Prior to the issue of any Occupation Certificate the food premises must be inspected by an appropriately qualified person who must certify that the premises, including the construction and installation of all equipment, fixtures, fittings and finishes therein, complies with the *Food Act 2003*, *Food Regulation 2010* and Australian Standard AS 4674 - 'Design, construction and fit-out of food premises'.

36. Fire Safety Certificate

A Final Fire Safety Certificate for all new (or altered) fire safety measures is required to be provided to Council prior to the issue of an Occupation Certificate.

Advisory Notes

(i) Equitable Access

The applicant must make themselves aware of the *Discrimination Against People with Disabilities Act (DDA)* and assess their responsibilities and liabilities with regards to the provision of access for all people.

(ii) Acid Sulfate Soils - Monitoring of Excavation During Works

All excavations are to be monitored to ensure that acid sulphate soils are not encountered during works. Signs that may indicate the presence of acid sulphate soils include:

- a) change in colour of the soil into grey and green tones;
- b) effervescence;
- c) the release of sulphur smelling gases such as sulphur dioxide or hydrogen sulphide; and
- d) lowering of the soil Ph by at least one unit.

Should any of the above indicators be present excavation work on the site is to stop and Council is to be notified to determine what action is required to be taken before work may commence.

(iii) Site Contamination Discovered During Demolition or Construction

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about contamination, Council must be immediately notified and works must cease. Works must not recommence on site until an agreed management strategy is developed in consultation with Council.

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(iv) Dial Before You Dig

Prior to commencement of work, you are required to contact the free national community service 'Dial Before You Dig' on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death. Enquiries should provide the property details and the nearest cross street/road.

(v) Requirements of 88B Instrument

The applicant must make themselves aware of any User Restriction, Easements and Covenants to this property and must comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.

(vi) Works on Public Land - Public Liability Insurance

Any person or contractor undertaking works on public land must take out a Public Risk Insurance policy with a minimum cover of \$10 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent.

The policy is to note, and provide protection/full indemnification for Council, as an interested party. A copy of the policy must be submitted to Council prior to commencement of any works. The policy must be valid for the entire period that the works are being undertaken.

ATTACHMENTS:

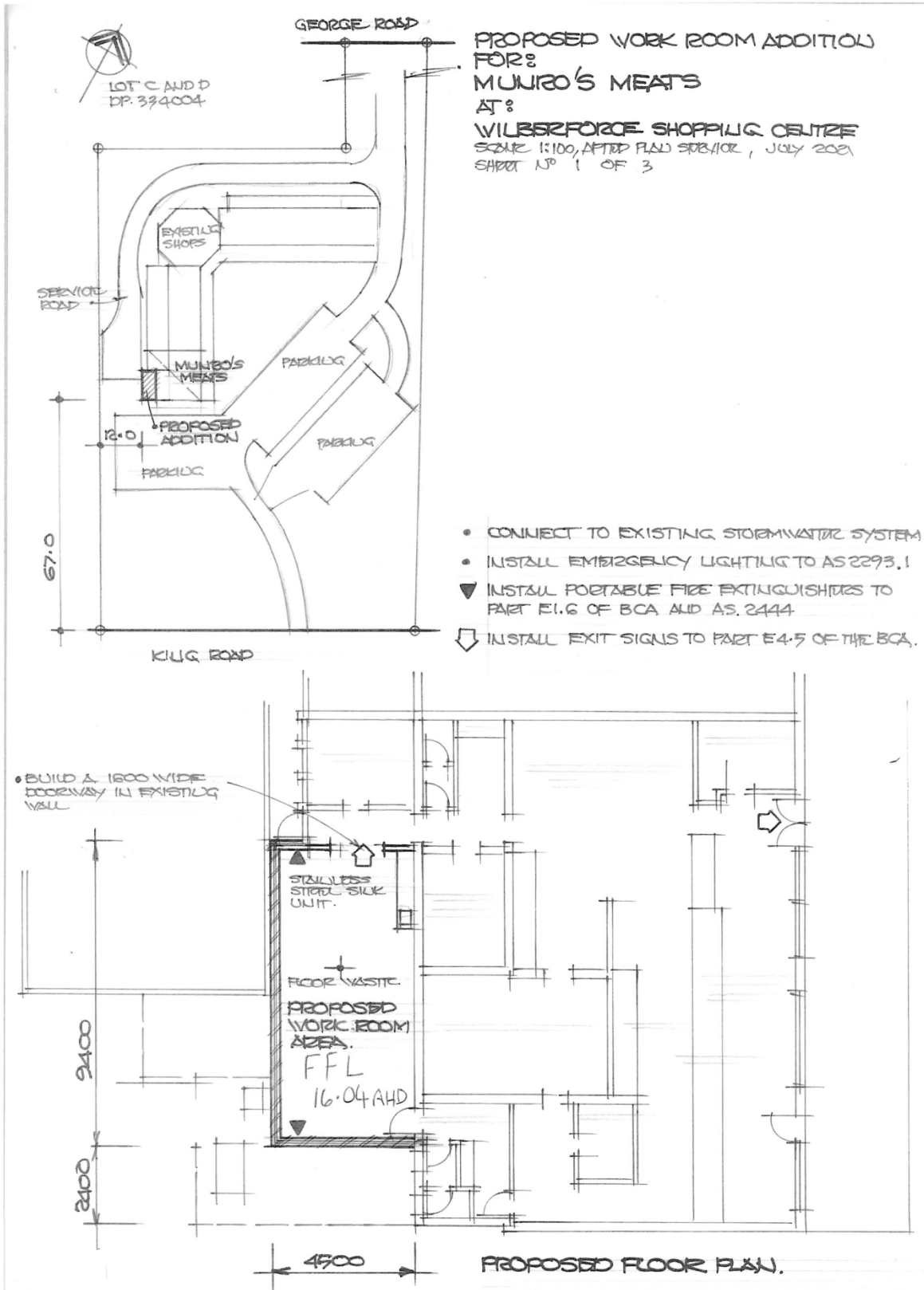
AT - 1 Architectural Plans of the Proposal.

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AT - 1 Architectural Plans of the Proposal

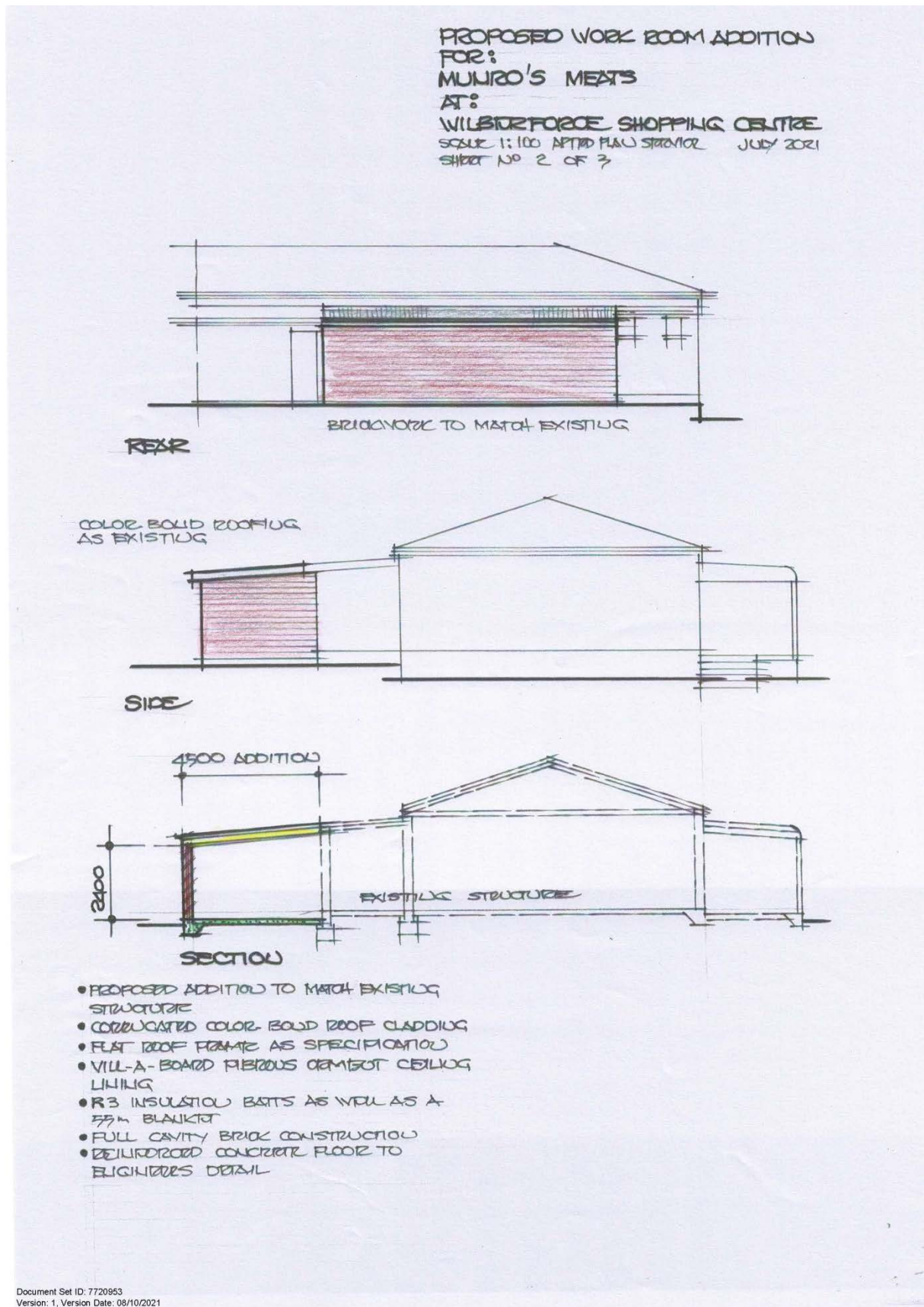


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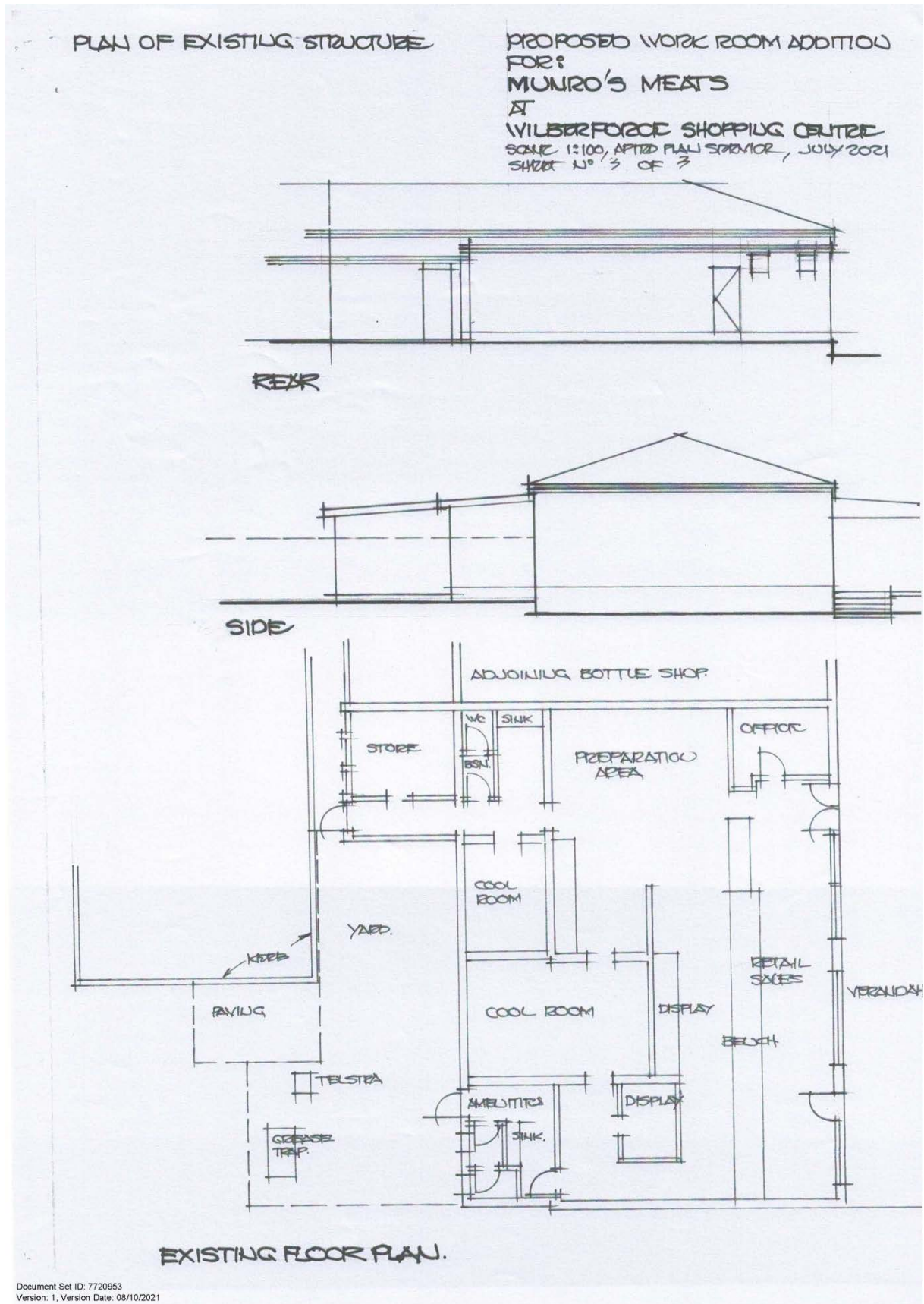
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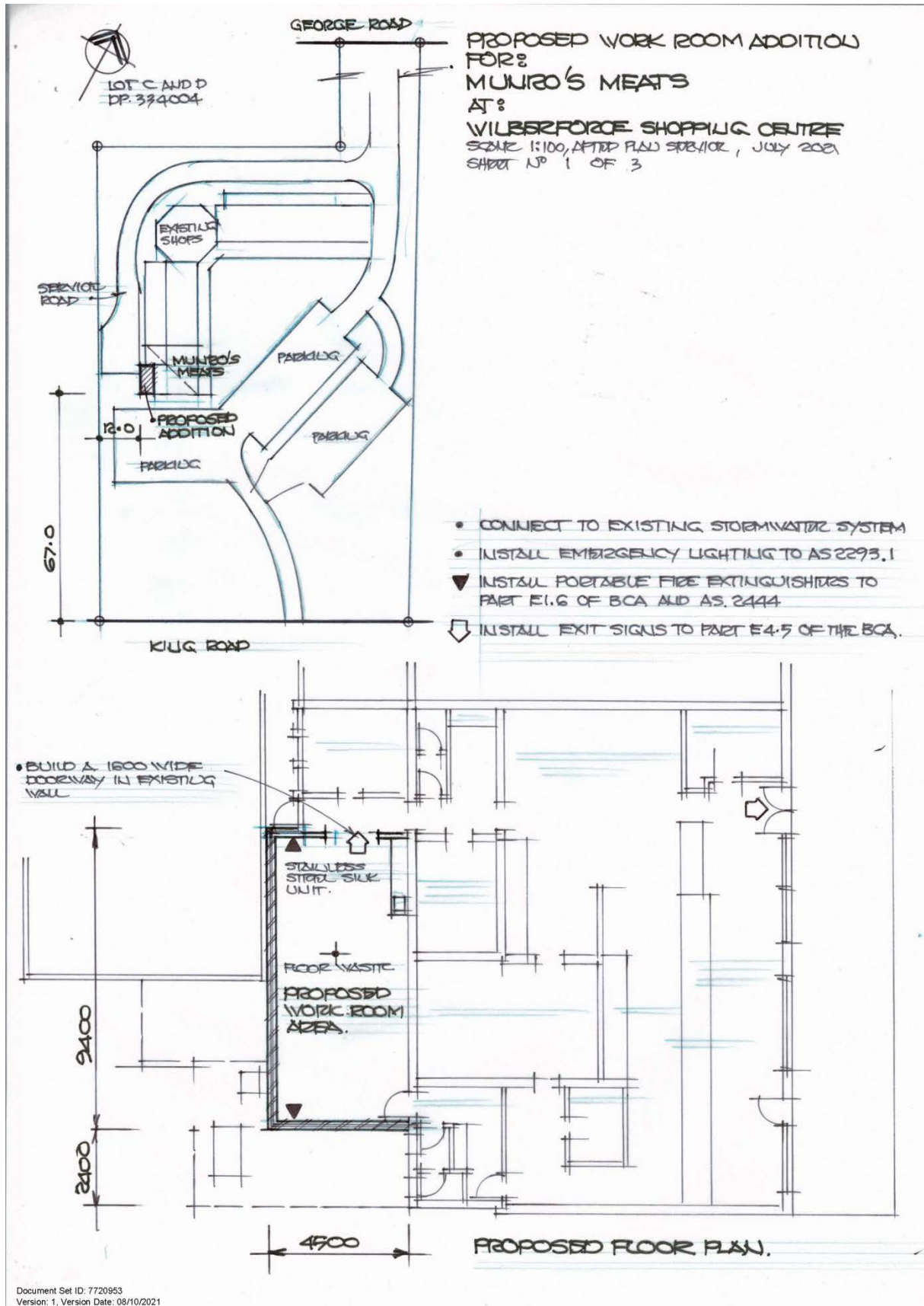
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Hawkesbury Local Planning Panel Meeting

End of Business Paper

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