



Minto Planning Services

Town Planning Consultants

3rd May 2024

The General Manager
Northern Beaches Council
725 Pittwater Road
DEE WHY 2099

Dear Sir/Madam

**SECTION 4.56 MODIFICATION - CENTRE BASED CHILDCARE CENTRE
723-727 WARRINGAH ROAD, FORESTVILLE
DA 2018/0697**

I refer to the subject application and on behalf of the applicant, NAPLA Forestville P/L, application is hereby made pursuant to Section 4.56 of the Environmental Planning & Assessment Act 1979, as amended, for the modification of the subject consent.

By way of background, it is advised that Land & Environment Court Appeal No. 2018/00282754 was approved on the 3rd May 2019 and granted consent to DA No. 2018/0697 which approved demolition works and construction of a centre-based childcare facility for a maximum of 146 children, subject to a number of conditions.

Modification Application No. 2020/0575 was approved on the 2nd February 2021 and granted consent to a modification related to the footpath and dedication of land within the adjoining road reserve.

A further Modification Application No. 2020/0575 was approved on the 8th March 2022 and granted consent to the further modification of the approved development.

That application provided for:

1. Engineering and geotechnical considerations.
2. Improved operational functions and layout for the facility.
3. Compliant circulation and servicing.
4. Better separation of front and back of house aspects of the development.
5. Improved and more sympathetic external appearance for the development.
6. Improved shading and thermal properties.
7. Improved access to natural light and outlook.

This application is to be read in conjunction with the following documentation:

- Revised Architectural Plans prepared by Liquid Design, Project No. 3318, Drawing No. A2000, Revision 6 dated 30/04/2024, A2001, Revision 6 dated 30/4/24 and A2002, Revision 7 and dated 30/4/24.

- Acoustic Assessment Covering Letter prepared by NG Child & Associates and dated 26/4/24.
- Acoustic Assessment Report prepared by NG Child & Associates and dated 26/4/24.
- Traffic & Parking Assessment Letter prepared by TEF Consulting and dated 2/5/24.
- Amended Plan of Management, Revision 01 and dated 23/4/24.

Modifications Proposed by this Application

This application seeks approval for the modification of the number of approved Centre-based child care facility places by 6 children resulting in an increase from 146 places to 152 places.

The proposed total of 152 places will require/result in the following indoor and outdoor play areas:

The proposed indoor play space requirement/capacity is as follows:

Indoor Play Spaces Capacity – 3.25sqm/child			
Age Group	Room No.	Area	Places
0-1 Years	ROOM 01	47.6m ²	14
0-2 Years	ROOM 02	71.0m ²	21
2-3 Years	ROOM 03	52.9m ²	16
2-3 Years	ROOM 04	52.8m ²	16
3-4 Years	ROOM 05	69.2m ²	21
4-5 Years	ROOM 06	106.0m ²	32
School Readiness	ROOM 07	104.1m ²	32
Total Places		503.8m²	152

The proposed outdoor play space requirement/capacity is as follows:

Outdoor Play Spaces Capacity – 7sqm per child			
Age Group	Space No.	Area	Places
0 – 2 Years	Outdoor 01	168m ²	23
2 – 5 years	Outdoor 02	649m ²	92
School Readiness	Outdoor 03	143m ²	20
2 – 5 Years	Outdoor 04	120m ²	17
Total Places		1,079m²	152

In both instances the centre has sufficient indoor and outdoor space to support 152 child care places.

It is advised that the additional capacity arose as a result of building efficiencies achieved as a result of the previous Section 4.56 modification.

There are no physical changes required or proposed to the approved built form as part of this application.

In addition to the above it is advised that the proposal is provided with sufficient car parking spaces to accommodate the additional 6 child care places. Reference is made to the Traffic & Parking Assessment Letter prepared by TEF Consulting and dated 1/5/24.

It is noted that the proposal seeks approval for the use of the previously approved service/waste collection bay standard visitor (drop-off/pick-up) space for the peak hours of parking demand, with the waste collection hours restricted to before and after the operating hours and between 11 a.m. and 2 p.m.

The proposal does not seek to modify any additional operational aspects of the development including the approved hours of operation.

There are no other changes proposed as part of this application.

Impacts of the Proposal

It is my opinion that the modification of the number of childcare places from 146 places to 152 places (increase of 6 places) as sought by this application will not result in any unreasonable impacts.

In forming this opinion, it is noted that:

1. The proposal does not seek approval to increase the height, bulk and scale of the approved building with the additional child care places capable of being accommodated within the approved built form.
2. The proposal does not seek to change the setbacks of the approved building from the site boundaries.
3. The proposal will not result in any increased impacts upon the streetscape of the locality, the character of the surrounding area or upon the amenity of adjoining property owners.
4. The proposal will remain substantially the same development as that which was originally approved by the Court.
5. The proposal will continue to provide for a compliant area of unencumbered indoor play area.

6. The proposal will continue to provide for a compliant area of unencumbered outdoor play area.
7. The proposal will not result in any unreasonable impacts upon adjoining properties particularly as a result of acoustic impacts.
8. The proposal is capable of providing compliant car parking upon the site subject to the use of the previously approved service/waste collection bay standard visitor (drop-off/pick-up) space for the peak hours of parking demand, with the waste collection hours restricted to before and after the operating hours and between 11 a.m. and 2 p.m.

Section 4.56 – Modification by consent authorities of consents granted by the Court - Environmental Planning & Assessment Act 1979, as amended

Section 4.56 of the Environmental Planning & Assessment Act 1979, as amended, permits an applicant to seek approval for the modification of a development consent in the following circumstances:

(1) *Modifications involving minimal environmental impact*

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into

consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

In response to the requirements of Section 4.56(1)(a) of the Act it is submitted that the proposal will remain substantially the same development for which consent was originally granted.

In forming this opinion, it is submitted that:

- The proposal will remain a centre-based childcare facility.
- The proposed development will have a built form which is identical to the approved development.
- The proposal will not result in any additional external impacts.

Section 4.15(1) of the Environmental Planning & Assessment Act 1979

The following assessment is provided against the requirements of Section 4.15(1) of the Act.

Environmental Planning Instruments – Section 4.15(1)(a)(i)

The proposed development remains permissible with the consent of the Council under the provisions of both the Warringah LEP 2011 and SEPP (Transport & Infrastructure) 2021.

The proposal will remain compliant with the numerical standards of the LEP in relation to height of building.

The proposal will remain compliant with Clause 3.26 of the SEPP in relation to unencumbered indoor and outdoor play space.

The proposal will continue to provide for car parking in accordance with the requirements of the Council.

The proposal is therefore considered to remain consistent with the determination of the Court dated 3rd May 2018 in relation to DA 2018/0697 and therefore should be supported by Council.

Draft Environmental Planning Instruments – Section 4.15(1)(a)(ii)

It is not considered that there are any Draft Environmental Planning Instruments applicable to the proposal.

Development Control Plans – Section 4.15(1)(a)(iii)

The proposal is considered to remain compliant with the requirements of Council's DCP except where they were previously varied by the Court granted consent. The proposal does not seek to increase the extent of any variation.

Impacts of the Development – Section 4.15(1)(b)

It is my opinion based upon the findings of this report and the accompanying documentation that there will not be any unreasonable impacts resulting from the proposal this is particularly the case in relation to car parking, traffic movements and acoustic impacts.

Suitability of the Site – Section 4.15(1)(c)

It is my opinion that the suitability of the site for this form of development has previously been demonstrated through the granting of the original consent.

It is therefore considered that in the absence of any unreasonable impacts attributable to the proposal that the site is suitable for the modified development as proposed.

Public Interest – Section 4.15(1)(e)

It is my opinion that the proposed development is in the public interest as it will ensure that the provision of high quality child care is provided upon the site in a manner which is compliant with all applicable controls.

It is not considered that the proposed modifications will result in any adverse impacts upon adjoining properties or the locality.

Summary

In summary, it is my opinion that the modifications proposed by this application will result in development substantially the same as that previously approved by the Court and will not result in any unreasonable impacts.

Accordingly, it is considered that the proposed modification of the approved development as detailed within this submission is worthy of the support of the Council.

It is requested that should you have any queries regarding this matter that you do not hesitate to contact me to discuss.



Andrew Minto

DIRECTOR

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