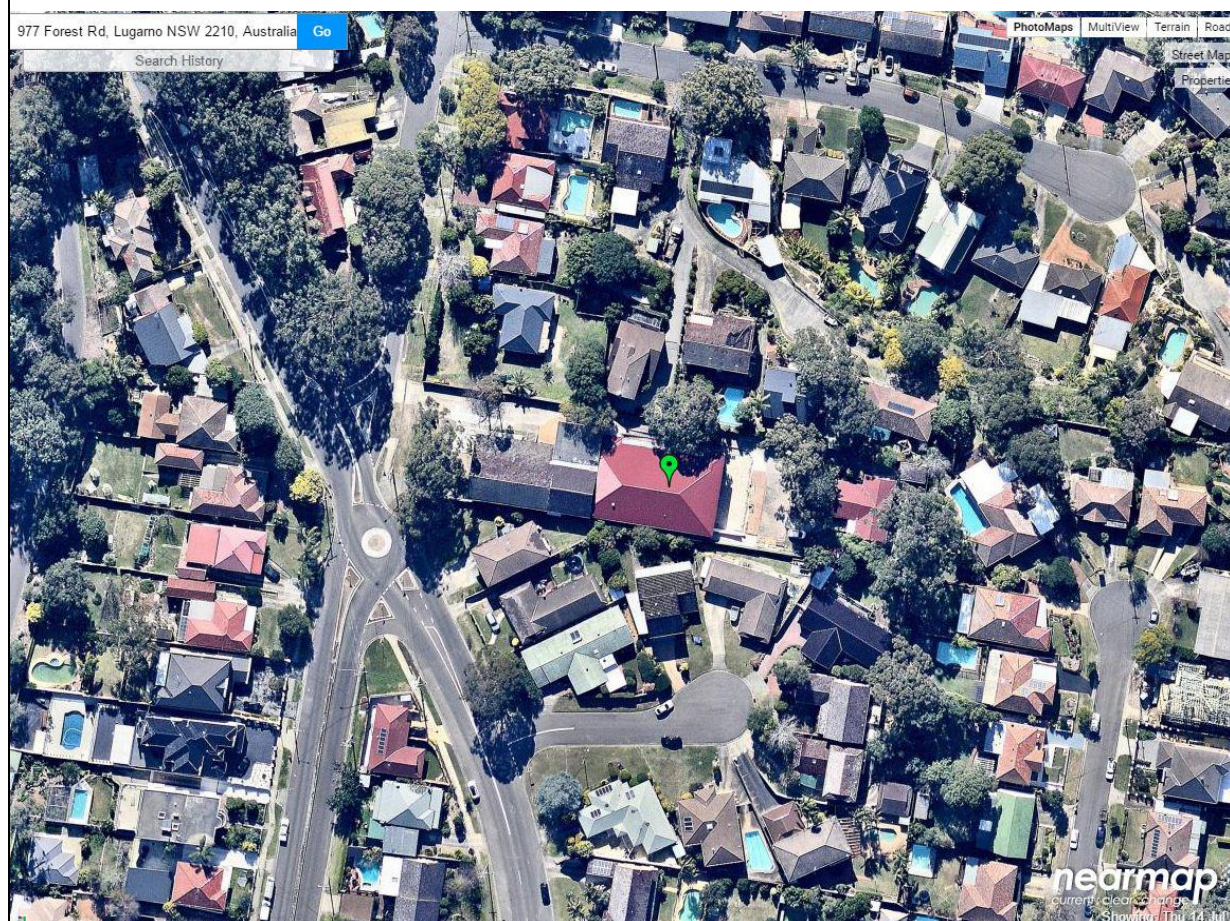


**REPORT TO GEORGES RIVER COUNCIL
IHAP MEETING OF 25 AUGUST 2016**

IHAP Report No	3	Development Application No	DA2015/0443
Site Address & Ward Locality	977 Forest Road Lugarno Peakhurst Ward		
Proposal	Fit out and use of ground floor of existing church building to be used as a child care centre for 34 children, associated landscaping and car parking works		
Report Author/s	Development Assessment Officer, Mr P Nelson		
Zoning:	Zone R2 - Low Density Residential		
Date of Lodgement	14 December 2015		
Owner	The Congregational Christian Church of Samoa Parish of Sydney Incorporated		
Applicant	Congregational Christian Church In Samoa Parish of Sydney		
Submissions	Forty five (45) submissions received		
Cost of Works	\$50,000.00		
Issues	Submissions received and variations to DCP1		
Recommendation	THAT the application be refused for the reasons included in the report		

Site Plan



EXECUTIVE SUMMARY

1. Development consent is sought for the fit out and use of the existing ground floor/sub-floor area underneath the existing church hall as a child care centre for thirty four (34) children.
2. The application results in variations to both the Hurstville Local Environmental Plan 2012 and Development Control Plan No 1 - LGA Wide which warrant refusal of the proposal.
3. The application was notified in accordance with the Development Control Plan No 1 on both the 13 January 2016 and the 15 February 2016 (following the lodgement of additional information) to twenty five (25) adjoining neighbours. Forty five (45) submissions and a petition with two hundred and twenty four (224) signatures was received objecting to the proposal.
4. Some internal framing and fit-out for the child care centre has been constructed without council consent. Council has issued a stop work order pending finalisation of this development application.

AUTHOR RECOMMENDATION

THAT the application be refused for the reasons included in the report.

FURTHER THAT the application be forwarder to Council's Manager Building Assessment for appropriate action to be taken in relation to the unauthorised works.

REPORT DETAIL

DESCRIPTION OF THE PROPOSAL

1. The Statement of Environmental Effects provided in support of the application identifies the proposal as *the "internal fit out and use of the ground floor level of the existing church building as a child care centre. The child care centre will operate between 7am and 6pm Monday to Friday."*

The centre will provide places for thirty four (34) children as follows:

0-2 year olds – Twelve (12) children
2-3 year olds – Twelve (12) children
3-5 year olds – Ten (10) children

These children will be supervised by a total of six (6) staff members.

The following car parking is proposed for the site:

Eight (8) spaces for child care staff
Five (5) spaces for children drop off
Thirteen (13) exclusive church spaces (with the child care centre spaces utilised for the church after the child care centre operating hours).

Provision of the proposed car parking spaces within the front setback of the existing Church building will require the removal of three (3) canopy providing trees including a Grey Gum (*Eucalyptus punctata*), a Blackbutt (*Eucalyptus pilularis*) and a Willow Gum (*Eucalyptus scoparia*).

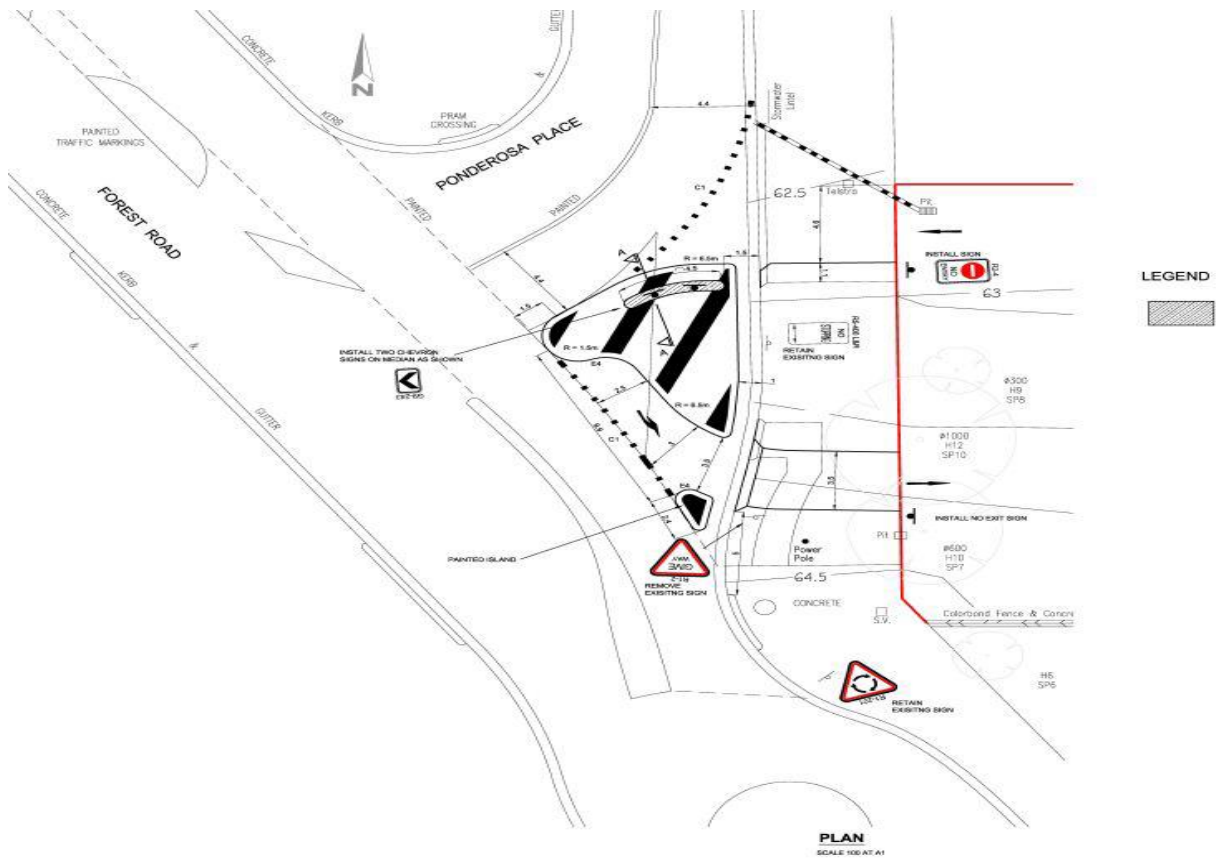
Provision of additional car parking at the rear of the site will require the removal of one (1) significant Willow Gum (*Eucalyptus scoparia*) and the removal of an exempt Silky Oak (*Grevillea robusta*).

Vehicular access to the site is to be amended to provide an additional driveway on the southern side of the site providing a drive through arrangement at the front of the site. This will enable vehicles to enter and exit the site in a forward direction.

2. The application also proposes an adjustment to the existing road line-marking and traffic island arrangement. The existing arrangement is as follows:



The application proposes the deletion of the southbound slip-lane exit from Ponderosa Place to Forest Road as follows:



The proposed new road markings will require south-bound traffic on Ponderosa Place to utilise the existing right turn lane to turn left onto Forest Road.

Stormwater disposal from the site is proposed to be by way of a charged line to Council's drainage system in Ponderosa Place.

3. HISTORY

- 23 Mar 07 Deferred commencement consent granted for an extension to the existing church building including the provision of a church hall under 06/DA-372.
- 21 May 07 Deferred commencement activated for 06/DA-372.
- 28 Sep 10 Pre-application advice is provided to the applicant in relation to the potential lodgement of a child care centre application.
- 15 Jul 11 Development application for a child care centre lodged under 11/DA-236 for the provision of additional sub-floor area under the approved church hall for use as a child care centre.
- Jul-Nov 11 Unauthorised excavation works for the provision of the rear child care centre commence on site, increasing the excavation permitted under a previous consent for the church hall.
- 6 Dec 11 Section 96 modification lodged under 06/DA-372REV01. This application applies for the provision of additional excavation to increase the area of the ground/sub-floor level underneath the approved church hall.
- 7 Mar 12 11/DA-236 is refused for variations to the Hurstville Local Environmental Plan 2012, numerous variations to Hurstville Development Control Plan No 1, insufficient information, traffic and parking issues and safety concerns.
- 4 Apr 12 Development modification 06/DA-372REV01 considered at a Council meeting where the application was approved by Council.
- 3 Jun 14 Pre-lodgement application for a child care centre lodged under PRE2014/0010.
- 7 Aug 14 The Hurstville Traffic Advisory Committee considered proposed alterations under PRE2014/0010 at the intersection of Forest Road and Ponderosa Place for a proposed child care centre. The committee resolved:
- “THAT the proposed channelisation of the intersection of Forest Road and Ponderosa Place to improve road safe at the vehicular access points of the Congregational Christian Church in Samoa and the proposed child care centre at 977 Forest Road Lugarno be approved.*

THAT a Section 138 Application under the Roads Act 1993 be lodged to Council's Traffic Section for determination. A detailed plan of the proposed channelisation of the intersection of Forest Road and Ponderosa Place, Lugarno be incorporated with the application.

THAT all costs associated with the proposed works be borne by the applicant.

FURTHER THAT the applicant be advised of Council's decision."

- 17 Sep 14 Formal pre-development advice provided to the applicant detailing issues with the proposed plans including tree removal, traffic, parking and disabled access. The applicant was advised to lodge plans and information that addressed these issues in detail.
- 23 Dec 15 Current application lodged DA2015/0443.
- 13 Jan 16 Application placed on neighbour notification until 4 February 2016.
- 2 Feb 16 Council requests the provision of acoustic report and landscape plan referred to in the Statement of Environmental Effects.
- 15 Feb 16 Application re-notified to neighbouring residents until 3 March 2016.
- 15 Mar 16 Council receives complaint from neighbour relating to unauthorised fit out of the ground/sub-floor level
- 16 Mar 16 Stop work order issued in relation to the fit out.
- 20 May 16 Council seeks quotations for independent acoustic report in relation to the proposal.
- 27 May 16 Acoustic Consultant, "Acoustic Dynamics" requested to prepare acoustic report on behalf of Council in relation to the proposal.
- 11 Aug 2016 Acoustic report provided.

DESCRIPTION OF THE SITE AND LOCALITY

4. The site is described as Lot 2 in DP 405732 and is known as 977 Forest Road, Lugarno. The site is a rectangular shaped site with a splayed south western corner 1.83m in length which fronts Forest Road and a frontage of 24.69m to Ponderosa Place. The allotment has an area of 3140sqm. The site is located on the eastern side of the street.

A single storey church/sanctuary building with an attached rear part ground/part first floor hall and part ground/part sub-floor hall is located on the western side of the site. This building has a 2m setback from the southern boundary and a 5.532m setback from the northern boundary. The northern boundary setback is occupied by a driveway that provides vehicular access to the rear (eastern side) of the site.

A concrete courtyard and an open car parking area are provided to the east of the church and associated buildings. A part one (1)/part two (2) storey dwelling house is located at the rear, eastern side of the site.

The allotment has a fall to the rear north eastern corner of 4.81m and a fall within the existing building footprint of the church building/sanctuary and attached rear part one (1)/part two (2) storey hall of 2.72m.

There are three (3) significant native canopy providing trees at the front of the site immediately adjacent to the front boundary. Two (2) significant native trees are also located in the eastern yard of the dwelling house on the eastern side of the site and two (2) significant native trees are located between the car park and the dwelling house on the eastern side of the site.

Adjoining the site to the north are five (5) residential neighbours comprising dwelling houses. There are also five (5) adjoining dwelling houses to the south and two (2) adjoining dwelling houses to the east of the proposal.

COMPLIANCE AND ASSESSMENT

5. The development has been inspected and assessed under the relevant Section 79C(1) "Matters for Consideration" of the Environmental Planning and Assessment Act 1979.

Environmental Planning Instruments

HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2012

6. The extent to which the proposal complies with the relevant standards of Hurstville Local Environmental Plan 2012 is outlined in the table below.

Clause	Standard	Assessment Under HELP 2012
Part 2 – Permitted or Prohibited Development	R2 Low Density Residential	The proposal is defined as a child care centre. Child care centres are permissible in the zone.
	Objectives of the Zone	The proposal does not comply with two objectives of the zone (1)
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	As existing
4.4 – Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map	As existing
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	N/A
5.9 – Preservation of trees or vegetation	Consent is required for pruning or removal of specified vegetation	Councils Tree Management Officer has assessed the application and advised that two significant trees at the front of the site listed for removal must be retained (2)
5.9AA – Trees or vegetation not	Any tree or vegetation to be removed that is not	Proposed tree removal is specified in DCP No 1 (2)

prescribed by Development Control Plan	specified in DCP No.1	
6.4 – Foreshore Scenic Protection Area	<p>Council cannot grant consent to the carrying out of development on land within a Foreshore Scenic Protection Area unless consideration has been made of the following:</p> <p>“(3)(a) affect the natural environment, including topography, rock formations, canopy vegetation or other significant vegetation, and</p> <p>(b) affect the visual environment, including the views to and from the Georges River, foreshore reserves, residential areas and public places, and</p> <p>(c) affect the environmental heritage of Hurstville, and</p> <p>(d) Contribute to the scenic qualities of the residential areas and the Georges River by maintaining the dominance of landscape over built form.”</p>	<p>The site is located in the Foreshore Scenic Protection Area. The proposal has been assessed against the matters for consideration and is concluded to be unacceptable.</p> <p>The development comprises work that requires the removal of two significant trees from the front of the site. (2)</p> <p>The proposal will not impact on view corridors.</p> <p>The proposal will not impact on any items of environmental heritage listed under Schedule 5 of the LEP</p> <p>The removal of the two significant trees at the front of the site and the provision of parking and driveways within the front setback does not result in the “dominance of landscape over built form.” (2)</p>
6.7 – Essential Services	<p>The following services that are essential for the development shall be available or that adequate arrangements must be made available when required:</p> <p>* Supply of water, electricity and disposal and management of sewerage</p> <p>* Stormwater drainage or on-site conservation</p>	<p>Adequate facilities for the supply of water and for the removal of sewage and drainage are available to this land</p> <p>Appropriate stormwater disposal is proposed</p>

	* Suitable vehicular access	Vehicular access from Ponderosa Place is proposed. The design as proposed cannot be achieved without the removal of two significant trees at the front of the site, as such the proposal cannot provide suitable vehicular access to meet the needs of the proposed use (3)
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(1) Zone Objectives

7. The proposed use seeks consent to provide a service that must satisfy the following objectives of the zone, including:

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The plans provided in support of the proposal do not sufficiently demonstrate that the proposal can provide a satisfactory facility for the proposed use. The proposal cannot provide appropriate car parking and vehicular access and retain the existing significant trees on the site.

The proposal does not provide sufficient natural light and ventilation to the child care centre.

The supporting information has not categorically demonstrated that the proposal will meet the following objective:

To ensure that a high level of residential amenity is achieved and maintained.

The existing building has already proved to be insufficient, in terms of acoustic treatment, to provide a satisfactory level of acoustic amenity to adjacent neighbours. The provision of a child care centre in the existing building without addressing the noise impact from the indoor child care centre use is unsatisfactory.

The application has not demonstrated that the proposal achieves suitable acoustic amenity from the use of indoor areas. The Acoustic Dynamics report advises that:

“...the calculated noise emission from the indoor playground will not achieve compliance with the relevant noise emission criteria when windows and sliding doors are open. Accordingly Acoustic Dynamics advises that air conditioning should be installed to service the Child Care Centre. This will provide the option for mechanical ventilation of the Child Care Centre, and provide the occupants with the option to leave external doors and windows closed.”

This suggested resolution of the internal noise generation will appropriately address noise generation, however for the operation of the child care centre it is considered to be inappropriate. Both DCP No 1 and the Children (Education

and Care Services) Supplementary Provisions Regulation 2012 require the provision of natural ventilation to child care centres. The provision of an entirely mechanically ventilated child care centre is not in accordance with this requirement.

As such the proposal cannot provide for appropriate acoustic amenity to the adjoining neighbours and fails to satisfy the objective of the LEP.

(2) Issues relating to tree removal

8. The application proposes the removal of a significant Grey Gum (*Eucalyptus punctata*) and a Blackbutt (*Eucalyptus pilularis*) located adjacent to the front boundary.

The Blackbutt is a species that is identified in Development Control Plan No 1 as significant and requires consent for removal irrespective of its size. The Grey Gum is identified as significant under Development Control Plan No 1 due to its height and diameter.

An inspection of the trees by Council's Tree Management Officer has also identified the trees as significant and requiring retention. This conclusion is identical to that reached by the "Arborist development assessment report" (Prepared by Moore Trees Arboricultural services, dated September 2015) lodged in support of the application which states that the trees:

"...are growing on the site frontage and provide good visual amenity to the site. Tree 1 is a mature Grey Gum (Eucalyptus punctata) growing 5.4m from the front boundary fence. Tree 2 is a mature Blackbutt (Eucalyptus pilularis) and is the largest tree on site. Both trees 1 and 2 are in excellent health and condition and are good specimens."

Both trees are identified as significant in terms of species, health and condition, height and diameter and, visual amenity. The removal of these trees will impact negatively on the natural environment and the character of the Foreshore Scenic Protection Area. The tree removal is not supported and will form a reason for refusal.

(3) Vehicular access

9. The tree removal is proposed in order to provide for dual driveway access to the site and to provide for seven (7) car parking spaces between the front boundary and the front building alignment.

The removal of the significant trees on site is not supported and as such the dual driveway and associated parking spaces at the front of the site cannot be achieved.

In addition to this the vehicular access to the rear car parking area is problematic for the use of the child care centre in terms of pedestrian safety. The driveway is of insufficient width to allow for the provision of pedestrian access and vehicular access. This impact is compounded by the need for the single driveway (2.8m side) to provide both pedestrian and two-way vehicular access to the child care centre and parking at the rear of the site.

STATE ENVIRONMENTAL PLANNING POLICY NO 55 - REMEDIATION OF LAND

10. Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for a place of public worship and for residential purposes for a significant period of time. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the proposed use.

GREATER METROPOLITAN REGIONAL ENVIRONMENTAL PLAN NO 2 – GEORGES RIVER CATCHMENT

11. The site is within the area affected by the Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment. The proposal, including the disposal of stormwater, is consistent with Council’s requirements for the disposal of stormwater in the catchment.

Draft Environmental Planning Instruments

12. No Draft Environmental Planning instruments affect the proposed development.

Any other matters prescribed by the Regulations

13. The Regulations prescribe the following matters for consideration for development in the Hurstville Council area:

Under the Children (Education and Care Services) Supplementary Provisions Regulation 2012, the following educator to child ratios apply in NSW:

Age of children	Educator to Child Ratio
Birth to 24 months	1:4
Over 24 months and less than 36 months	1:5
Over 36 months and not yet attending school	1:10

On the basis of the National regulation, the following staff provision is required:

Age and number of children proposed	Staff required	Staff Proposed	Complies
0-2 12 Children	3	3	Yes
2-3 12 children	3	2	No
3-5 10 children	1	1	Yes

The regulations also require the provision of appropriate natural light and ventilation to rooms used by children in child care centres. The existing building and proposed plans do not sufficiently demonstrate that appropriate access to natural light and ventilation can be achieved.

Development Control Plans

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.1 CAR PARKING

Section 3.1	Requirements	Proposed	Complies
3.1.4.1 (table) –	1 space per 2 staff (7 staff required) = 3.5 car spaces	4 proposed	Yes

Child care centres refers to requirements under 5.4.10	Short term drop off and pick up spaces at 1 space per 10 children (single access driveways) (34 children) = 4 car spaces	12 proposed	Yes (1)
	Total required = 8 car spaces	16 proposed spaces	Yes (1)
3.1.4.1 Place of Worship	1 space per 10 seats or 1 space per 10sqm GFA whichever is greater) GFA is 839.279sqm = 84 spaces	7 available – shared with proposed child care centre use (church approval required the provision of 7 spaces and 2 disabled spaces)	No (1)
3.1.4.1 Residential – refers to controls under 4.1	Dwelling House 2 car parking spaces required for 3 or more bedrooms	0	No (1)

(1) On site car parking

14. As demonstrated in the table above, the child care centre development proposes complying car parking spaces for the proposed child care centre use.

However this proposed car parking cannot be implemented for the reasons provided in point 16 below.

As the site is unsuitable to provide for appropriate car parking for both proposed uses, the application is to be recommended for refusal.

Intensification of car parking demand

15. The car parking approved at the site as part of the previous extensions to the hall under 06/DA-372 and later modified under 06/DA-372REV01 included the provision of nine (9) car parking spaces at the rear of the church hall. Two (2) of these spaces were to be designated disabled accessible spaces. Two (2) additional spaces were provided for the existing dwelling house resulting in a total of eleven (11) spaces for the site.

The original Council report identified a shortfall of car parking provision of fifty (50) spaces for the site for the church and church hall use. This existing shortfall of fifty (50) spaces was permitted to be increased (when the sub-floor area was increased in size) on the basis that existing congregation numbers were demonstrated to be low and the parking provided on site would be sufficient for the existing congregation size. The justification claimed the additional floor space would not result in an intensification of the use. This was supported by Council with the provision of the following condition of consent:

65. The proposed hall shall be used for purposes ancillary to the church only and shall not be hired or let to other persons for private use.
- 79B. The approved hall shall only be used for church activities and is not permitted to be leased for commercial activities, functions or the like.

The intention of these conditions was to ensure the intensity of use of the hall was in accordance with the existing approved place of public worship. That is the church hall was to be used by parishioners that would otherwise attend the church itself and that eleven (11) spaces were sufficient.

The "Assessment of Traffic and parking implications" (dated March 2015, prepared by Traffic Impact Services Pty Ltd) specifies that the weekday use of the proposed child care centre "*will not conflict with the church activities which are held only on a Sunday.*" However timetable information provided by the church indicates that the occasional church related activity occurs during the week. On occasions where church use and child care centre use overlap, it is claimed that church events during the week "*would be restricted to the hours of 9.30am-3.30pm which would be outside the child care drop off and pick up times.*" Demonstration of how events would be restricted has not been provided.

Potential instances of parking overlap are problematic as both the church/church hall use and the proposed child care centre use provide insufficient car parking. Insufficient information has been provided to demonstrate that there will be no parking conflict between any use of the church/church hall and the child care centre during the week. Existing conditions of consent relating to the use of the church and church hall do not specify that the church and ancillary uses cannot occur during the week. There is no capacity to provide conditions of consent under the current application that will prevent overlap in the use of the existing limited on-site car parking.

As such there is no certainty that the combined use will not result in an intensification of car parking demand. Insufficient management strategies have been provided in support of the application to demonstrate how this issue can be avoided.

Available car parking and site constraints

16. The "Assessment of Traffic and Parking Implications" has based its assessment on the provision of sixteen (16) car parking spaces on site with nine (9) spaces provided at the front of the site and six (6) spaces provided at the rear of the site. However, the required retention of the two (2) significant trees at the front of the site will result in the deletion of seven (7) of the car parking spaces located within the front building setback.

The application has not provided a car parking arrangement in accordance with the recommendations of the "Arborist development assessment report" (prepared by Moore Trees Arboricultural services, dated September 2015) submitted by the applicant in support of the proposal. This report requires the retention of two (2) significant trees at the front of the site and the provision of

a mulched area 6m x 17m for the maintenance of these trees. The provision of this tree retention measure would require the deletion of seven (7) spaces at the front of the site including both proposed disabled spaces and the deletion of the proposed secondary driveway.

In addition to this, Council's Traffic Engineer has indicated that:

'In the original application I had requested that the church parking at the back of the site must not at any time be allowed to be used for the children dropping off and picking up for the child care centre. This was not addressed in the SEE or the traffic report. The parking at the back is not safe as the access to the childcare centre sign in and sign out is at the front. Children cannot be walking that long driveway with conflicts of cars accessing the rear of the site. This needs to be addressed.'

The plans indicate that pedestrian access is proposed on the northern side of the site along a 10.5m long section of the northern driveway. This section of existing driveway is 2.8m wide which provides insufficient width for shared vehicular and pedestrian access. This is further complicated as vehicle conflict already exists as a result of the two-way vehicle movement required along this driveway.

Summary

17. The child care centre use will increase the current car parking demand for the site.

The dual driveway access and car parking proposed at the front of the site cannot be supported as it requires the removal of two (2) significant trees, which is not supported.

The rear car parking cannot be supported in the current arrangement for use with the child care centre as this is a safety issue for pedestrians accessing the child care centre via the driveway.

The site cannot suitably provide vehicular access and car parking on site and as such is not supported.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.3 ACCESS AND MOBILITY

18. This section of Development Control Plan No 1 requires the provision of *“access for all persons through the principal entrance and access to appropriate sanitary facilities in accordance with the BCA and relevant Australian Standards.”*

The Statement of Environmental Effects indicates that:

'The subject site currently is relatively flat. Appropriate measures have been incorporated into the design of the development ensuring ease of access throughout the development.'

The plans provided do not specify how complying disabled access is achieved from the front of the site to the main entry of the child care centre. The design and circulation available within the accessible toilet within the proposed child care centre is not provided on the plans. As such insufficient information is available to assess the application in relation to this section of Development Control Plan No 1.

An access consultant's report should be lodged to demonstrate compliance with these requirements.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.4 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

Section 3.4	Requirements	Proposed	Complies
Fencing	Allows natural surveillance to street	The front of the site has no fences and the proposal will not alter the existing level of natural surveillance to the street currently available	Yes
Blind Corners	To be avoided	Blind corners are generally overlooked by windows	Yes
Communal Areas	Provide opportunities for natural surveillance	The child care centre entry and outdoor play spaces are visible from within the centre or the adjacent church office	Yes
Entrances	Clearly visible and not confusing	The entry to the child care centre is at the rear of the premises and pedestrian access is via a driveway. This may be confusing without appropriate signage.	No
Site and Building Layout	<ul style="list-style-type: none"> - Provide surveillance opportunities - Building addresses street - Offset windows 	Surveillance opportunities provided at the rear of the premises only. The existing church provides street surveillance opportunities from the office window but this is proposed to be replaced with doors. To maintain this casual surveillance any doors introduced in this area should be glass doors.	Yes
Lighting	<ul style="list-style-type: none"> - Diffused/movement sensitive lighting provided externally - Access/egress points illuminated 	Can be conditioned to satisfy these requirements, should the application be approved	Yes

	<ul style="list-style-type: none"> - No light spill towards neighbours - Hiding places illuminated - Lighting is energy efficient 		
Landscaping	<ul style="list-style-type: none"> - Avoid dense medium height shrubs - Allow spacing for low growing dense vegetation - Low ground cover or high canopy trees around car parks and pathways 	The proposed landscaping will satisfy these controls	Yes
Building Identification	<ul style="list-style-type: none"> - Clearly numbered buildings - Entrances numbered - Unit numbers provided at entry 	Can be conditioned to satisfy these requirements, should the application be approved	Yes
Security	Provide an appropriate level of security	Sufficient level of security provided	Yes
Ownership	Use of fencing, landscaping, colour and finishes to imply ownership	Ownership is implied by the church building	Yes

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE - SECTION 3.5 ENERGY EFFICIENCY

19. The provisions of Section 3.5.2.1 specify a number of requirements relevant to the proposal.

Solar Access

20. Solar access to buildings is encouraged in order to provide for energy efficiency. The indoor play area occupies a central area of the floor plan and only has two (2) western glazed doors for solar access. As the indoor play area is 19.8m deep measured from these doors, solar access to the majority of the indoor play area is unavailable.

No windows and therefore no solar access is provided to any of the southern or western rooms in the centre.

Windows and cross ventilation

21. As described above no windows are provided to any of the southern or western rooms of the proposal and the indoor play area will not be cross ventilated should the doors to the rear play area be closed.

The design is entirely inappropriate for a child care centre in that natural light and ventilation is not provided to the majority of the centre. This will form a reason for refusal.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.7 DRAINAGE AND ON SITE DETENTION

22. The hydraulic plan provided with the site relates to a previous design of the proposal.

This plan does not take into account the excavation undertaken for the provision of the outdoor play area to the rear and the drainage of this area has not been detailed appropriately.

Insufficient information has been provided to enable assessment of the stormwater disposal from the site in accordance with this section of Development Control Plan No 1.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.9 WASTE MANAGEMENT

23. A waste management plan has not been provided. The Statement of Environmental Effects indicates that construction waste products will be removed by truck to the local tip.

An appropriate waste management plan for construction is required in order to undertake a full assessment of the proposal.

Inclusion of a plan of management with appropriate details of waste storage and disposal required for the child care centre use should also be provided.

Insufficient information has been provided to demonstrate compliance with this section of Development Control Plan No 1.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.11 PRESERVATION OF TREES AND VEGETATION

24. The application proposes the removal of a Grey Gum (*Eucalyptus punctata*) and a Blackbutt (*Eucalyptus pilularis*) from the front of the site. Both trees are identified as significant under this section of Development Control Plan No 1 and development consent is required for the removal of these trees.

As described previously in the report, consent cannot be granted for removal of these trees due to their assessed significance. The proposed removal of these trees will form a reason for refusal.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE - SECTION 5.4 CHILD CARE CENTRES

25. The proposed child care centre has been assessed against the requirements of Section 5.4 of Council’s Development Control Plan No 1 – LGA Wide as shown below.

Section 5.4	Standard	Proposed	Complies
5.4.5.1 Locational Criteria	Should be located close to community focal points	The site is located opposite Lugarno Public School	Yes
	Minimum site area of 500sqm	3140sqm	Yes
	Min. frontage of 20m where a combined entry and exit is provided	24.69m	Yes
	Sites must not have a	The site does not adjoin	Yes

	property boundary to a state road	a state road	
	Site must be at least 300m away from telecommunications towers, large over-head power wires, any other inappropriate area	High tension power lines, telecommunications towers or other inappropriate structures or uses are located within 300m of the site	Yes
	Approval will not be given to sites which are less than 55m from an LPG above ground gas tank or tanker unloading position	The site is not located near an LPG tank or tanker unloading position	Yes
	Analysis of existing and/or potential site contamination	As the previous use of the site was for a place of public worship, no significant contamination is likely to be present on the site	Yes
	Approval will not be given to sites located within cul-de-sacs or closed roads	The site is not located within a cul-de-sac or closed road	Yes
	Child care centres are not to be located on bushfire or flood prone land, or located adjoining drug clinics or other inappropriate land uses	The site is not bushfire or flood prone land	Yes
	Proposals must be accompanied by a Traffic Impact Statement provided by a qualified Consultant	A traffic report has been provided	Yes
5.4.6 Cumulative Impacts from Centres within Residential Areas	Only one child care centre is permitted at an intersection	No other child care centres are located at the intersection	Yes
	Child care centres will not be permitted on land adjoining any other existing or approved child care centre	The site does not adjoin any other existing or approved child care centres	Yes
	Only one child care centre is permitted per street block	No other child care centre is located on the same block	Yes
5.4.8 Size of Centres and Child Age Groups	Maximum 40 children within the R2 - Low Density Residential	Maximum 34 proposed	Yes
	Minimum number of	12 children = 35.29%	Yes

	places within the 0-2 year age group is to be the same as the % of 0-2 year olds in the under 5 years population at most recent census (which is 35% from the 2011 census) = 12 children		
5.4.9.1 Building Form and Appearance	Height – Single storey in the R2 Low Density Residential Zone	Within existing part single part two storey building	Yes
5.4.9.2 Setbacks	Front Setback 5.5m to primary frontage	>5.5m	Yes
	Side Setback - 0.9m	2m	Yes
	Rear Setback – 3m	48.1m	Yes
5.4.9.3 Relationships to Adjoining Properties	Impacts of the following to be considered:		
	<ul style="list-style-type: none"> Play areas – indoor and outdoor 	Acoustic barriers relating to the outdoor play areas may be designed so as to meet satisfy acoustic amenity. Indoor play areas have not been demonstrated to be capable of achieving appropriate acoustic amenity for adjacent neighbours	No (1)
	<ul style="list-style-type: none"> Windows and doors (particularly those associated with indoor play areas) 	Acoustic separation between internal spaces and the adjacent neighbours does not provide appropriate acoustic amenity when windows are open	No (1)
	<ul style="list-style-type: none"> Verandahs 	No verandah play area is provided.	N/A
	<ul style="list-style-type: none"> Point of entry Pick-up and drop-off points 	The point of entry is adjacent to the rear yards of the northern neighbours. The acoustic dynamics report has concluded that the child care centre may provide appropriate acoustic separation with a 2.2m high acoustic barrier of the playground and the undertaking of all	No (1) Yes
<ul style="list-style-type: none"> Any plant equipment which may be required within the context of the centre 		N/A	
<ul style="list-style-type: none"> Openings such as windows and doors 		No (1)	

	should not correspond with existing opening on adjoining properties	internal play with windows closed and mechanical ventilation provided. The current design however is not adequate as the acoustic barrier is not of sufficient size and the centre cannot operate in compliance with the DCP or regulation without the provision of natural ventilation..	
5.4.9.4 Solar Design and Energy Efficiency	A minimum of 3 hours sunlight between 9am and 3pm is to be maintained to adjoining private open space, habitable rooms and solar collectors	Complies	Yes
5.4.9.5 Building Detail	The design of the centre must provide strong visual links between indoor and outdoor spaces	Provided through two glazed double doors	Yes
5.4.9.6 Building Colours	No bright colours are permitted. A schedule of colours and materials is to be submitted.	No schedule of finishes is provided. The building is currently painted dark blue	Yes
5.4.10.1 Parking and Driveway	1 space for every 2 staff members = 4 spaces 1 space per 10 children = 4 spaces Total = 8 spaces	See assessment above	No (2)
	Vehicles must be able to enter and leave the site in a forward direction	Vehicles can enter and exit the site in a forward motion	Yes
	Bike racks must be provided on site. 1 required	No bike racks proposed	No (2)
	Driveway crossing on corner allotments must not be located closer than 9m to the property alignment at the intersection	11m from round-about	Yes
	Landscaping and paving design associated with driveways must achieve the following:	Driveway and pedestrian access provides for inappropriate pedestrian safety	No (2)

	<ul style="list-style-type: none"> • Pedestrian safety and visibility • Level, hard surface from vehicles to entry point • Satisfactory manoeuvrability for disabled persons and/or prams • Clear delineation between driveway and yard areas 		
	A “Neighbourhood Parking Policy” and a “Motor Vehicle and Pedestrian Risk Assessment Report” must be submitted for Council’s consideration	The submitted Traffic Report considers pedestrian safety and on street parking. The Traffic Report was assessed by Council’s Manager Infrastructure Planning and found to be acceptable on the basis of the proposed plans.	Yes
	Physical demarcation is required to be provided between pedestrians and vehicular access ways to ensure pedestrian safety	Area of shared pedestrian and two-way vehicular access on a 2.8m wide section of driveway is not appropriate	No (2)
5.4.10.2 Traffic Considerations	Council to consider traffic and safety impacts	A Traffic Report was submitted with the application. The report has been reviewed by Council’s Senior Traffic Engineer and found to be unacceptable in terms of pedestrian safety. Circulation must also be improved in relation to the dual driveway design.	No (3)
	Consideration of traffic impacts between 7.30am-9am and 3.30pm-6pm.	The submitted traffic report has considered traffic impacts. Council’s Senior Traffic Engineer has found this to be acceptable.	Yes
5.4.10.3 Access for Persons with Limited Mobility	A 1m wide landscaped area is required to be provided along the front setback	1.2m landscaped area is provided along the primary frontage	Yes

	Disabled access is to be provided from the street to the main entrance	Insufficient information provided to demonstrate ramps and footpaths satisfy disabled access requirements	No (4)
	Disabled access ramp is to be provided to the playground areas	A disabled access ramp is provided between the playground areas	Yes
5.4.11.1 Tree Preservation and Planting	A 1m wide landscaped area is required to be provided along the front setback Screen planting is to be provided along the side boundaries	1.2m along the frontage. Screen planting is provided along the side boundary of the site	Yes Yes
	Tree retention where required by Council's Tree Management Officer	Significant tree removal proposed contrary to TMO advice	No (5)
5.4.11.3 Drainage	Play areas must be capable of rapid clearance of surface water	Hydraulic plan does not provide sufficient information	No (6)
5.4.12.1 Indoor Spaces	Area for administration, private consultation and staff respite	An office and staff room is provided however this is inappropriate for respite as it provides no natural light or ventilation	No (7)
	3.5sqm unencumbered space per child (34 children proposed) = 119sqm	Indoor play area 168.44sqm	Yes (7)
5.4.12.2 Outdoor Spaces	7sqm per child (34 children proposed) = 238sqm required	238.83sqm unencumbered	Yes
	Must receive 2 hours sunlight during operating hours	More than 2 hours sunlight achieved	Yes
	Play area must not include areas with a width of less than 2.5m	All areas more than 2.5m in width	Yes
	Min 15m long lawn space	No lawn provided	No (8)
	Should generally include the following: Open area of 1/3 – 1/2 of the playground area Quiet area of 1/4 – 1/3 of the playground area	Subject to conditions requiring compliance with licensing requirements	Yes, subject licensing requirements

	Active area of 1/3 of the playground area		
	2.5sqm per child to be covered (19 children proposed) = 47.5sqm	No outdoor shaded areas provided	No (8)
	Sandpits to be designed meet controls	No sandpit indicated	N/A
5.4.12.3 Verandahs	Verandahs are to be equal to 1.25sqm per child if provided	No verandah provided	N/A
5.4.12.4 Signage	Signage to complement the streetscape and not be intrusive	No details of signage provided	N/A
5.4.12.5 Entry and Security Requirements	Legible entry points to be located within the view of the main office	Child care centre office does not provide view of entry area. Church Office provides view of entry area.	Yes
	Playground to be fenced	1.8m high acoustic wall detailed on site plan	Yes
	Gates or opening devices to be fitted with a childproof latch or self locking device	No gates provided, pedestrian access to outdoor play area is through the child care centre only	N/A
5.4.13.1 Toilet Facilities	1 toilet per 8 children 1 junior toilet or adult toilet with a step = 4 toilets	Toilet with sufficient area provided. No details of toilet provision detailed on the plans.	Yes
	1 disabled toilet for a child	Disabled toilet provided, it is unclear if this toilet is of sufficient dimensions for disabled access	Yes
	1 toilet per 6 staff = 2 required	1 provided	No (9)
	1 staff shower	Not detailed	No (9)
	Bathrooms to be a min. 12sqm + an additional 2.5sqm per toilet where more than 3 in one bathroom = 14.5sqm	22.34sqm	Yes
5.4.13.2 Staff Rooms and Office	Staff Room - Min. 12sqm + 2sqm for each staff member above 6 = 14sqm	12.77sqm	No (10)
	Outdoor staff facilities to be provided	Not provided	No (10)
	Office to be provided	Provided	Yes
5.4.13.3 Cot Rooms	Must include 1 cot per 2 children under 2 years	2 cots rooms provided with sufficient area for	Yes

	(max 5 cots per room) = 2 cots required	required cots	
5.4.13.4 Nappy Change Area	A separate nappy change room is to be provided for children under 3 years	A nappy change room is provided	Yes
5.4.13.5 Storage	8sqm of storage per playroom is to be provided = 24sqm	Total = 9.32sqm	Yes
5.4.13.6 Laundry	Minimum 10sqm	11.59sqm	Yes
5.4.13.7 Rubbish Removal	Waste storage area minimum 3m x 1m and not visible from the street	Waste storage area not identified	No (11)
5.4.13.9 Craft Preparation Facilities	One sink separate to the food preparation area is to be provided	No details of craft sinks provided	No (12)
5.4.13.9 Food Preparation Facilities	Separate designated area to be provided	Kitchen provided	Yes
5.4.13.10 Pools	N/A	N/A	N/A
5.4.13.11 Heating and Cooling Equipment	Heating and cooling equipment to be safely located	No details provided of heating and cooling equipment provided	No (13)
5.4.13.12 Play Equipment	Play equipment must not constitute a hazard	Play equipment will be subject to licensing requirements	Yes, subject to compliance with regulation
5.4.13.13 Hours of Operation	Max. 7am – 6.30pm	Mon – Fri: 7am – 6.00pm	Yes
5.4.14.1 Visual Privacy	Minimise overlooking through screening etc	A 1.8m high acoustic barrier is proposed to be constructed around the outdoor play area. The indoor play area is not visible from adjacent properties.	Yes
	Play equipment to be setback 3m from boundaries adjoining residential	No details of play equipment provided but sufficient outdoor play space is available to provide separation from neighbouring properties	Yes
5.4.14.2 Acoustic Amenity	Acoustic Report by a suitably qualified consultant to be provided	An Acoustic Report has been provided by Koikas Acoustics Pty Ltd. This report has been peer reviewed by	Yes

		Acoustic Dynamics	
5.4.14.3 Fencing	At least 1.2m high	Minimum 1.8m high acoustic wall proposed	Yes
	Where it is essential that side street boundaries be fully fenced, they are to be designed to allow landscaping along the boundary.	Front fence not required	N/A

Stormwater Assessment	
Existing Stormwater System	Hydraulic plan details pump out to from of site and gravity to street
Proposed Stormwater System	As existing
Stormwater objectives for development type met?	No (pump systems not permitted)
Slope to rear (measured centreline of site)	Yes
Gravity to street (from property boundary to street kerb)?	Yes from front property boundary
Discharge into same catchment?	Yes
Easement required?	No

(1) Relationship to adjoining properties

26. This clause requires the impacts of the proposed child care centre on existing adjoining development to be assessed. The primary issue in relation to the proposal is the provision of acoustic amenity to adjacent residential neighbours.

The application has been accompanied by an Acoustic report prepared by Koikas Acoustics Pty Ltd and Council has engaged an acoustic consultant to provide a review of this report and an assessment of the proposal in relation to acoustic amenity.

Both reports indicate that noise from outdoor play areas can be reduced to complying levels by means of an acoustic barrier to both the northern and southern boundaries and to the immediate north and east of the outdoor play area.

Noise from the internal play area is not identified as an issue in the Koikas Acoustics report. The Acoustic Dynamics Report indicates that internally generated noise will satisfy acoustic amenity if undertaken with the windows closed and mechanical ventilation provided. This is not considered to be an appropriate option for the indoor play areas as natural ventilation is a requirement for child care centres under the regulation.

On this basis the provision of acoustic separation to provide for an appropriate level of neighbour amenity is currently unresolved. This will therefore form a reason for refusal.

(2) Parking and driveway

27. The car parking, vehicular access and pedestrian safety for the site is unsuitable for the reasons provided elsewhere in this report (see previously).

(3) Traffic

28. The two-way narrow driveway shared with pedestrian access to the child care centre is inappropriate and is not supported by Council's Senior Traffic Engineer.

(4) Disabled Access

Insufficient details have been provided to demonstrate that disabled access to the site complies.

(5) Tree retention and planting

29. The proposal results in the removal of two (2) significant trees from the site. This is not supported for the reasons provided previously in the report.

(6) Drainage

30. A hydraulic plan has not been provided in association with the child care centre use. The plan provided relates to the original plan which does not take into account the new level of the outdoor play area and the drainage of this area. As such insufficient information has been provided to demonstrate that the drainage of the outdoor play space is appropriate.

(7) Indoor Spaces

31. The indoor spaces provided for the child care centre are generally inappropriate. While the majority of room sizes are satisfactory, the majority of rooms provide no natural light or ventilation and will require mechanical ventilation. This is considered to be unsatisfactory for a child care centre use.

(8) Outdoor Spaces

32. No shaded area is provided for the outdoor play area. This is not a major issue in the afternoon as the play area will be overshadowed by the child care centre/hall. However the outdoor play area will have no shade until the afternoon. Some shading for morning play must be provided.

(9) Toilet Facilities

33. The plans provided with the application provide a staff bathroom of insufficient dimensions to provide the two (2) required toilets and one required shower. There is no justification for this proposed variation.

(10) Staff Room/Office

34. The staff room is of insufficient dimensions for the required number of staff and provides no natural light (no window is provided) and no natural ventilation. No private outdoor staff area is provided. This is not supported.

(11) Rubbish

35. No area has been set aside for the storage of rubbish bins for the centre use.

(12) Craft Preparation

36. No wash facilities have been provided within the indoor play area for craft preparation.

(13) Heating and Cooling

37. With unsatisfactory cross ventilation provided to the proposal it is assumed that some form of mechanical ventilation will be proposed. No indication of the location of this system is provided on the plans or in the statement of environmental effects.
38. Comment: While it is likely that all required room dimensions and facilities required can be accommodated within the existing building footprint with some future design, the existing building is still considered inappropriate for the proposed use.

The existing floor plate only has available solar access and ventilation from the northern and eastern elevations. The southern and western sides of the building footprint have no windows as these portions of the site are within a sub-floor (basement) area. The provision of a child care centre within a building that has approximately half its floor area in a basement is not appropriate for this type of use as appropriate natural light and ventilation cannot be provided to the child care centre.

Impacts

Natural Environment

39. The proposal requires the removal of two (2) significant trees from the site. These trees are mature and provide good visual amenity and the removal of these trees would result in a negative impact on the natural environment. The tree removal is not supported.

Built Environment

40. The proposed development is unlikely to have an adverse impact on the built environment as no change to the building structure is proposed.

Social Impact

41. The proposal is likely to result in a social impact. The existing church use has resulted in multiple ongoing neighbourhood complaints in relation to noise, traffic and parking. The intensification of the existing use by way of the introduction of a child care centre will increase these existing social impacts which are already at an unacceptable level.

Economic Impact

42. The proposal is unlikely to impact on the local economy.

Suitability of the Site

43. The subject site and existing building is unsuitable for a development of this type. The existing site cannot accommodate the required car parking on site as a result of the requirement to retain existing significant trees on site and as a result of the existing narrow driveway.

The existing building is unsuitable for the provision of a child care centre as approximately half of the building elevation is excavated into the ground and insufficient natural light and ventilation is available to a large area of the child care centre. This is inappropriate for a child care centre use.

The site is unsuitable for the proposed use.

Unauthorised Works

44. Some internal framing and fit out for the child care centre use has already taken place on site. Council has issued a Stop Work Order in relation to this work. Further action is to be taken pending finalisation of the current development application.

REFERRALS, SUBMISSIONS AND THE PUBLIC INTEREST

Resident

45. The proposal was notified to twenty seven (27) adjoining neighbours for an initial period of twenty two (22) days. Following the lodgement of additional information the proposal was re-notified for a period of twenty three (23) during which time forty five (45) submissions and a petition with two hundred and twenty four (224) signatures was received objecting to the proposal. These submissions of objection raised the following issues.

Original application was deceptive

46. Many submissions have indicated that it was always the intention of the church to provide a child care centre in the new hall and that this should have been part of the application for the construction of the hall. These submissions have also indicated that the frequency of hall usage and the noise levels emitted are in excess of what was understood when the original application to build the hall was notified by Council.

Comment: These comments are noted.

Pedestrian safety

47. – From the two (2) driveways and the increase in traffic and congestion
- Removal of the traffic island leaves no safe crossing point for school children

Comment: Council's Senior Traffic Engineer has indicated that the proposed alterations on Ponderosa Place are appropriate with conditions.

The design of the on-site parking area and rear access driveway has been concluded to be inappropriate for the reasons provided in the report (above).

Traffic issues

48. - New roundabout
- Sight lines due to illegal parking
- Traffic report done on school holidays and not an accurate representation of daily traffic
- Congestion
- New traffic island will make the Ponderosa Place and Forest Road intersections will make access more difficult for residents
- Traffic report underestimates the amount of trips for the number of children proposed

Comment: Council's Senior Traffic Engineer has indicated that the traffic outcomes outside the site are satisfactory.

Inadequate Parking

49. – Use of the church currently results in illegal parking, parking across driveways and parking on neighbours driveways. The child care centre will exacerbate this.
- Driveway on insufficient width for two-way access to rear of site
 - No separate drop off and pick up area
 - Rear parking spaces block the driveway and parking of the rear residence
 - Rear parking spaces are too close to the outdoor play area and have insufficient manoeuvrability
 - Adjacent streets will have to provide on street parking for the child care centre

Comment: These comments are supported for the reasons mentioned previously in the report and add to reasons as to why the site is unsuitable for the intended additional use.

Litter

50. Parishioners currently throw litter on neighbouring front yards.

Comment: This comment is noted.

Noise

51. – Existing noise is currently intolerable. A proposal for a child care centre would make this worse. The proposed outdoor play area will exceed the noise requirements for residential areas.
- The acoustic report underestimates the potential for noise from children
 - Query as to how a child care centre could comply with the 5d(BA) noise requirement

Comment: The application has been supported by an acoustic report that specifies that the proposal can introduce physical measures to negate acoustic impacts on neighbouring properties.

A peer review of this report has concluded that acoustic barriers will provide sufficient acoustic amenity for the outdoor play area.

However this submission is supported in that acoustic amenity from the indoor use and the entry area has not been suitably resolved and further treatment is required to achieve compliance in these locations.

Privacy

52. Rear yards of neighbouring dwellings are visible from the outdoor play area.

Comment: The 1.8m high acoustic wall will provide adequate privacy separation of the outdoor play space from adjoining residential properties.

Tree removal

53. Some submissions have objected to the proposed tree removal on site.

Comment: The removal of the significant trees on site is not supported and this will form a reason of refusal.

No demand for child care centres in Lugarno exists to justify a child care centre in Lugarno

54. - A nearby child care centre operator has indicated it is difficult to fill child places at the moment and the provision of another centre in the area would impact on existing child care centres in the area
- A number of submissions have indicated that sufficient child care centres are provided for the Lugarno community.

Comment: These submissions are noted however Council does not take into account the likely commercial demand of a proposed centre into account.

Incorrect staff ratio provided

55. More than six (6) staff are required for the child ratios proposed

Comment: This comment is accurate. The staff ratio provided for the proposed child care centre does not satisfy the current regulations.

Drainage

56. Concern has been expressed in relation to the additional paving proposed and the downstream issues that will be caused if the existing drainage system cannot cope with this additional paved area.

Comment: This comment is supported. Insufficient information has been submitted to demonstrate that the proposal can satisfactorily dispose of the stormwater from the site.

Sewer

57. A query has been raised in relation to the capacity of the existing sewer to handle the additional load as a result of the proposed development.

Comment: Sydney Water is responsible for the sewer and this is not part of this assessment. Should the application be approved the applicant has to comply with Sydney Water requirements.

Bushfire

58. One (1) submission has queried the bushfire status of the property and has indicated that a back-burn of Gannons Park be conducted to mitigate this potential hazard.

Comment: The subject site is not within a bushfire area.

Inconsistent plans and documents

59. Neighbours have questioned if the application is for forty (40) children or thirty four (34) children as both the Statement of Environmental Effects and the Acoustic Report identify both thirty six (36) and forty (40) children as the proposed numbers.

Neighbours have also queried what “family services” refers to.

Comment: These comments are accurate. There are inconsistencies in the plans and supporting information lodged with the application.

Support

60. One (1) submission has indicated that there are no child care centres in Lugarno and that they would welcome one here that they could send their children to.

Note – this letter of support was subsequently withdrawn on the basis of a noise concern.

Council Referrals

Senior Traffic Engineer

61. Council's Senior Traffic Engineer has provided the following comment:

- *In regards to the channelization of the traffic along the intersection of Forest Road and Ponderosa Place, the entrance and exit to the off street parking at the front of the site, should be swapped around so that traffic enters from the northern driveway and exits from the southern driveway, which means that the design will need to be changed, but we are happy to work with the applicant on perfecting that design prior to Construction Certificate, if the applicant is able to resolve the issue of the trees that the arborist has recommended not to remove at the proposed parking spaces.*
- *In the original application I had requested that the church parking at the back of the site must not at any time be allowed to be used for the children dropping off and picking up for the child care centre. This was not addressed in the SEE or the traffic report. The parking at the back is not safe as the access to the child care centre sign in and sign out is at the front. Children cannot be walking that long driveway with conflicts of cars accessing the rear of the site. This needs to be addressed.*
- *Traffic generation and distribution from the Development is acceptable.*
- *Parking requirement as per DCP has been fulfilled*

Comment: This assessment is based on the plans as proposed. It is noted that the child care centre is deficient in relation to car parking when tree retention is taken into account.

Environmental Health Officer

62. Council's Environmental Health Officer has raised no objections to the development subject to conditions of consent. This assessment has also included consideration of the acoustic report and conditions requiring adoption of its recommendations and also acoustic report verification within three (3) months of the issue of the Occupation Certificate are recommended.

Tree Management Officer

63. Council's Tree Management Officer has provided the following comments:

Council supports the recommendations made in the Arborist Report that was submitted for the DA2015/0443.

1. **Retain and protect - Tree 1 - *Eucalyptus punctata* (Grey Gum) and Tree 2 - *Eucalyptus pilularis* (Blackbutt).**

The two (2) trees recommended for retention shall be protected and maintained during demolition, excavation and construction of the site. Hand excavation will be required to ensure no structural roots are affected by works that may encroach into TPZ. The tree protection measures must be undertaken in accordance AS4970-2009 Protection of trees on development sites. Details of the tree protection measures to be implemented must be provided with the application for a Construction Certificate by a suitably qualified Arborist (AQF Level 4 in Arboriculture) and must be retained through all stages of construction.

2. Council consent for the removal of three (3) trees. Tree 3 - *Eucalyptus scoparia* (Willow Gum), Tree 4 - *Eucalyptus scoparia* (Willow Gum), Tree 5 - *Grevillea robusta* (Silky Oak).

Comment: The development in its current form cannot retain the significant trees at the front of the site. The application is to be recommended for refusal on the basis of the proposed tree removal.

CONCLUSION

64. Development consent is sought for fit out and use of the floor area underneath the existing church hall as a child care centre for thirty four (34) children.

The proposal does not satisfy the objectives of the zone under the Hurstville Local Environmental Plan 2012 and results in multiple variations to the Development Control Plan No 1 - LGA Wide.

The subject site is unsuitable for the proposed development as significant trees are located within the proposed parking area. This parking area is required for the development to proceed.

Even if the trees were permitted to be removed, the existing building is considered to be unsuitable for a child care centre use as insufficient natural light and ventilation is available to half of the floor area of the centre. The building design and additional use also results in a number of variations to Council's DCP No 1 that makes it unsuitable for approval, as does the increasing detrimental impacts on the neighbours and the surrounding area.

The proposal was notified to twenty seven (27) adjoining neighbours for an initial period of twenty two (22) days. Following the lodgement of additional information the proposal was re-notified for a period of twenty three (23) days during which time forty five (45) submissions and a petition with two hundred and twenty four (224) signatures was received objecting to the proposal.

The provision of a Child Care Centre in addition to the existing Church use and associated hall is considered an unacceptable intensification of the site and as such the proposal is recommended for refusal.

DETERMINATION

65. THAT pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act, 1979, as amended, the Council refuses development

consent to Development Application DA2015/0443 for the fit out and use of ground floor of existing church building to be used as a child care centre for 34 children, associated landscaping and car parking works on Lot 2 in DP 405732 and known as 977 Forest Road, Lugarno, for the following reasons:

1. **REF1001 - Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the relevant environmental planning instruments in terms of the following:
 - (a) Clause 2.3 Zone objectives – the proposal does not satisfy the following objective of the zone: To ensure that a high level of residential amenity is achieved and maintained. The noise emission from the indoor play area will not provide for appropriate adjoining neighbour amenity when the windows and doors are open.
 - (b) Clause 5.9 and Clause 6.4 – The removal of two (2) significant trees in proposed. These trees are significant in terms of their height and dimensions and one (1) is of a species identified as significant. Both trees contribute significantly to the visual and environmental amenity of the Foreshore Scenic Protection Area.
 - (c) Clause 6.7 – insufficient vehicular access is available to the site.
2. **REF1003 - Refusal Reason - Development Control Plan** - Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Development Control Plan No 1 - LGA Wide
 - a) Section 3.1 Car Parking – insufficient car parking, vehicular access and pedestrian safety is provided on site for a child care centre use
 - b) Section 3.5 Energy Efficiency – insufficient solar access and natural ventilation is available to the child care centre
 - c) Section 3.11 Preservation of Trees and Vegetation – the proposal requires the removal of two (2) significant trees
 - d) Section 5.4 Child Care Centres – the proposal seeks variations to specific requirements for child care centres including Sections; 5.4.9.3 Relationships to adjoining properties, 5.4.10 Parking and driveway, 5.4.10.2 Traffic, 5.4.10.3 Disabled Access, 5.4.11.1 Tree Retention, 5.4.11.3 Drainage, 5.4.12.1 Indoor Spaces, 5.4.12.2 Outdoor Spaces, 5.4.13.1 Toilet facilities, 5.4.13.2 Office and staff room facilities, 5.4.13.7 Rubbish, 5.4.13.9 Craft Preparation areas, and 5.4.13.11 Heating and Cooling equipment
3. **REF1005 - Refusal Reason - Regulation** - Pursuant to Section 79C(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the relevant Children (Education and Care Services) Supplementary Provisions Regulation 2012 in terms of the following:

- a) Child to Staff Ratios
 - b) Provision of natural light and ventilation
4. REF1006 - **Refusal Reason - Impacts on the Environment** - Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the environment:
- a) Natural Environment – The proposal requires the removal of two (2) significant trees from the site
 - b) Social Impact – The proposal will result in an intensification of the existing noise, parking and traffic impacts on surrounding neighbours.
5. REF1007 - **Refusal Reason - Suitability of Site** - Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development for the following reasons:
- a) The site has two (2) significant trees on the front boundary that require retention. Adequate vehicular access and car parking cannot be provided to the site on this basis.
 - c) Inappropriate solar access and cross ventilation for a child care centre use is available to the existing building.
6. REF1009 - **Refusal Reason - Lack of Information**
- (a) The submitted hydraulic plans are insufficient and do not relate to the proposed design.
 - (b) Insufficient information has been submitted to demonstrate compliance with disabled access requirements

FURTHER THAT, the application be forwarder to Council's Manager Building Assessment for appropriate action to be taken in relation to the unauthorised works.