

**ELECTRONIC REPORT TO THE GEORGES RIVER LOCAL PLANNING PANEL
FOLLOWING DEFERRAL FROM MEETING OF PANEL ON 5 MARCH 2020**

LPP Report		Development Application No.	REV2020/0001
Site Address and Ward	977 Forest Road Lugarno Peakhurst Ward		
Proposed Development	Review of Determination – Fit-out and use of the ground floor of an existing church building to be used as an early childhood education facility for 34 children, associated landscaping and car parking works		
Owners	The Congregational Christian Church of Samoa Parish Sydney Inc.		
Applicant	The Congregational Christian Church of Samoa Parish Sydney Inc.		
Planner/Architect	Planner - Lee Environmental Planning; Draftsman - JMH Living Design		
Date of Lodgement	08/01/2020		
Submissions	Twenty (20) submissions/representations received following the LPP meeting on 5 March 2020 (refer to submissions section in this report)		
Cost of Works	\$10,000.00		
Local Planning Panel Criteria	The application is referred to the Local Planning Panel for determination as DA2019/0042 was determined by way of refusal by the Panel on 7 November 2019 and more than 10 unique submissions were received objecting to this application.		
List of all relevant s4.15 matters	State Environmental Planning Policy No 55 – Remediation of Land, State Environmental Planning Policy (Educational Establishments and Childcare) 2017, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental planning Policy – Infrastructure 2007, Greater Metropolitan Regional Environmental Plan No 2 - Georges River, State Environmental Planning Policy Infrastructure 2007, Draft Environment State Environmental Planning Policy, Draft Remediation State Environmental Planning Policy, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan 2013		
List all documents submitted with this report for the Panel's consideration	LPP Report from 5 March 2020 LPP Minutes from 5 March 2020 Submissions received following the meeting of 5 March 2020 Amended Plans BCA Statement Amended Arborist Report Amended Landscape Plan Preliminary Site Investigation Report		
Report prepared by	Senior Development Assessment Planner		

Recommendation	That the application be refused for the reasons stated in this report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not applicable
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not applicable
Conditions Have draft conditions been provided to the applicant for comment?	No. The application is recommended for refusal

EXECUTIVE SUMMARY

This report has been prepared following the deferral of the subject application (REV2020/0001). The Review application the subject of the deferral proposes the fit-out and use of the ground floor of an existing church building to be used as an early childhood education facility for 34 children, associated landscaping and car parking works on land known as 977 Forest Road, Lugarno.

The application was considered by the Georges River Local Planning Panel (LPP) on 5 March 2020. The Panel resolved to defer consideration of the application to allow the applicant to submit amended plans to address site access and parking in the front of the site and to provide documentation in relation to compliance with the childcare regulations and guidelines, a BCA Report, a Preliminary Site Investigation Report and a Plan of Management.

The Panel granted the applicant until 1 April 2020 to submit the required information.

On 1 April 2020 the applicant submitted the following information:

- Preliminary Site Investigation Report
- Amended plans
- Amended Arborist Report
- Amended Landscape Plan
- BCA Statement

An assessment of the submitted information has been undertaken by Council staff and is discussed within this report.

Despite the submission of revised and additional information in response to the minutes of the LPP meeting of 5 March 2020, there remain significant concerns with the proposal, as a result the application is recommended for refusal for the reasons outlined at the end of this report.

REPORT IN FULL

A. BACKGROUND

At its meeting of 5 March 2020, the Georges River Local Planning Panel considered the subject application and resolved the following:

Deferral

*Review Application No. REV2020/0001 for the fit-out and use of ground floor of existing church building as an early childhood education facility for 34 children, associated landscaping and car parking works at 977 Forest Road, Lugarno, be **deferred** and the Panel invites the applicant to submit the following:*

- 1. Amended plans to delete the proposed new access to Ponderosa Place and redesign of the front car park to allow access and egress to the existing driveway crossing, including a turning bay or the like.*
- 2. A BCA Report to demonstrate the proposed child care area is able to meet health and safety standards for use.*
- 3. A detailed Plan of Management to ensure the management of use of the child care centre and church do not cause overlapping parking demand, given the limited parking on site.*
- 4. Confirmation the proposal complies with key standards and requirements within Educations and Care Services National Regulations and the Child Care Planning Guidelines NSW 2017, including related to staff ratios, and indoor/outdoor space availability for the proposed number of children.*
- 5. A preliminary site investigation report in accordance with SEPP 55.*

Amended plans and documentation addressing the Panel's concerns, above must be submitted to the Council by 1 April 2020 otherwise the application will be determined on the information currently provided. Following receipt of this information, the same Panel (as practicable), will determine the application electronically, unless the Chair determines that a further public meeting is required.

Statement of Reasons

While the Panel understood the reasons for the recommended refusal, the use is conceptually suited to the site and may complement the church use, subject to a number of important matters being clarified and resolved. These matters are outlined above.

In terms of traffic and parking it appeared from site observations that appropriate access and egress could occur without additional roadworks close to the roundabout.

B. AMENDED PLANS AND REPORTS

On 1 April 2020 the applicant submitted the following information:

- A Preliminary Site Investigation Report
- Amended plans
- Amended Arborist Report
- Amended Landscape Plan
- A BCA Letter

The table below provides an assessment of the requirement of the Panel as per the minutes of the meeting and the information submitted by the applicant.

LPP Meeting Minute	Applicant's Submission
<i>1. Amended plans to delete the proposed new access to Ponderosa Place and redesign of the front car park to allow access and egress to the existing driveway crossing, including a turning bay or the like.</i>	Amended plans provided which show design changes to the proposed car park detailing the provision of a combined entry/exit from Ponderosa Place, parking for five (5) vehicles (including 1 x accessible space) and a turning area.
Comments Council's Traffic Engineer reviewed the amended plans and provided the following comments: <ul style="list-style-type: none">• <i>The channelisation of Forest Road is still shown on the plans. No application has been made for approval to the Assets and Infrastructure Division of Council.</i>• <i>Swept path diagrams were not submitted to demonstrate the turning bay complies.</i>• <i>The aisle width of the proposed car parking spaces at the front of the site is not sufficient. They are required to be a minimum of 5.8m or 6.1m if the other side is confined by a high vertical obstruction to the nominal edge of the aisle (such as the trees that are located at the front of the site). The amended plans do not show a measurement to the existing trees.</i>• <i>AS2890.1:2004,3.2.2 requires that on long driveways, passing opportunities should be provided at least every 30m. The proposed driveway leading to the rear parking spaces is more than 50m long without any passing</i>	

opportunities. This is likely to result in cars having to reverse along the driveway in the event of cars approaching each other from opposite directions at the same time. Reversing manoeuvres are not favoured in particular in developments where young children are involved such as in child care centres.

- The front car park contains 5 spaces, and the rear car park contains 6 spaces. The information submitted with the Review application indicates the front car park will be used for visitors and the rear car park for staff.
- No assessment was provided with the application on traffic movements or parking demand likely for the use, and as such it cannot be assumed that the number of parking spaces in the front car park will be sufficient/available during drop off in the morning and pick up in the afternoon. Council's Traffic Engineer considers that it is likely that during the peak times, visitors will need to use the rear car park as spaces in the front car park are occupied. In this regard this is a traffic comment/opinion.
- In addition, no details have been provided as to a management strategy to ensure the adequacy of available parking.
- The rear parking spaces are directly outside the outdoor Play Space. A crash barrier such as crash Omni-STOP ENERGY Absorbing Bollards is to be installed at a spacing no more than 1.2 metres apart measured (centre to centre) to protect the outdoor play area from accidental crashes of vehicles from the parking lot.
- Space 6 at the rear of the site can cause cars to reverse into the proposed pedestrian pathway. Once more this is not a favourable outcome as reversing around children is not encouraged. The design of the car park and pedestrian access to the centre from the rear car park is unsatisfactory. Pedestrian pathways cannot be safeguarded adequately from cars given insufficient space is available for both manoeuvring and provision of a protective barrier.

Planners Comments: The current approval for car parking in relation to the church use of the site is nine (9) spaces at the rear of the building (06/DA-372). The car park was never formalised in the arrangement approved and works to the building have been undertaken in a manner that is not consistent with that approved, or in part not undertaken at all, including ramp access to the church level on the first floor. The area approved for parking and ramp access at the rear of the building is now proposed to form the outdoor play area for the child care centre.

The applicant stated in the 2006 application that across the site 60 parking spaces can be accommodated, and at the time of the site inspection by the assessing officer there were no formal parking spaces line-marked.

The nine (9) car parking spaces were approved in conjunction with works associated with the church building and use of the lower ground level for workshops attended by the congregation before and after church services. As a result the assessment considered that those works/uses would not increase patronage of the site on the days services were held.

It is further noted that no parking was approved in the front setback of the site via 06/DA-372.

In 2012, Council refused (one of the reasons being parking location and design) an application (11/DA-236) that proposed a child care centre in the lower level of the building and changes to the approved (never constructed) parking areas. The proposed parking areas were located in the front setback and in various locations around the rear of the property.

In summary, the amended plans fails to adequately demonstrate compliance with the relevant Australian Standards for vehicle access, manoeuvring, parking and passing resulting in concerns regarding vehicular access, egress with respect to pedestrian safety. In addition adequate consideration has not been given to the protection of the proposed childcare centre from vehicles navigating the rear car park.

As a result the information provided remains deficient for Council to be satisfied that the proposed parking and access arrangement is safe for motorists and pedestrians.

2. A BCA Report to demonstrate the proposed child care area is able to meet health and safety standards for use.

A letter stating the proposal is capable of compliance subject to amendments and supporting documentation being provided.

Comments

The letter provided by My Building Certifier dated 1 April 2020 states that an inspection and review of the plans has been undertaken and that the development is the subject of a fire engineered report which has not been reviewed or considered in this commentary provided.

In addition, it is Council's understanding that the base building is operating under an Interim Occupation Certificate; this has not been addressed in this correspondence and the site is not in accordance with the approvals currently in place for the development.

There appears to be no consideration of the acoustic measures to be implemented which will impact the construction and operation of this space as a childcare centre.

It is noted that there are elements of the base building that will need to be remedied/upgraded or replaced for the space to be used as a child care centre. This work will be considerable which far exceeds the nominated cost of works of \$10,000.00.

3. A detailed Plan of Management to ensure the management of use of the child care centre and church do not cause overlapping parking demand, given the limited parking on site.

Operational Plan of Management (POM) dated March 2020.

Comments

The following comments are made on the POM submitted:

- The Plan states that there will be no overlap of child care and church activities. Given the history of the site, and ongoing compliance and legal action, the likelihood of the church not holding any functions, celebrations, activities, meetings or preventing visitors accessing the site for any reason during the child care centre operating hours is considered questionable. The number of parking spaces provided as part of the amended proposal will cater solely for the needs of the child care centre. There are no excess spaces that can be dedicated to the church use of the site during the operating hours of the childcare centre during weekdays.
- It states that access to the car park is from Forest Road when the amended design provides access from Ponderosa Place.

The Plan of Management submitted is considered deficient in detail as to how the site is to be managed given the proposed dual use of the site as proposed.

<p><i>4. Confirmation the proposal complies with key standards and requirements within Educations and Care Services National Regulations and the Child Care Planning Guidelines NSW 2017, including related to staff ratios and indoor/outdoor space availability for the proposed number of children.</i></p>	<p>The applicant did not submit any documentation in relation to compliance with standards in the Regulations or Guidelines, other than including calculations on the amended plans that the indoor/outdoor play spaces meet the numerical requirements.</p>
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Comments

Inadequate information has been provided to confirm compliance with the Regulations or Guidelines, and this remains a reason for refusal.

<p><i>5. A preliminary site investigation report in accordance with SEPP 55.</i></p>	<p>The Preliminary Site Investigation Report concluded that:</p> <p><i>“Based on the results of this Preliminary Site Investigation (PSI) a Scoped Detailed Site Investigation (DSI) is considered necessary to address the potential for asbestos on some areas of the site.”</i></p>
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Comments

The recommendation of the Preliminary Site Investigation Report was that a Detailed Site Investigation Report is considered necessary. This has not been provided. Accordingly at this time, it cannot be confirmed that the site is suitable or can be made suitable for use as a child care centre. The issue of site contamination remains a reason for refusal.

Other Additional Information Submitted – Landscape Plan and Arborist Report

The applicant also submitted an amended Arborist Report and Landscape Plan. Council’s Consulting Arborist has reviewed the report and plan and provided the following recommendations:

- *That the three trees at the front of the property be **retained and protected**. These trees over time have adapted to ground compaction due to the existing driveway entrance at the south front of the site and underneath each tree and*

- their TPZ. Underneath the trees within the site is bare soil, although compacted.*
- *Under the guidance from Councils traffic experts the minimum widths allowable for parking abutting the building and the allocation of a driveway out from the parking. The **minimum widths** allocated by traffic (Councils experts) will be a good opportunity to understand how close this will be to the trees at the front.*
 - *As mentioned within the Arborist report, I **recommend** permeable paving used within the total parking and driveway area forward of the building.*
 - *The existing driveway, south fence line be **retained** and not modified.... as the trees, especially tree 3 has adapted to this concrete around its TPZ*
 - *Any front fencing proposed at the front boundary line be post /rail type construction only, with no strip footings allowed, for the protection of three trees at the front.*

The amended plans and information in relation to trees and landscaping on the site have been updated to be more consistent with the works proposed than the landscaping plan and arborist report that were submitted in the past in relation to the refused DA and the current Review application. It would appear that the updated landscape plan improves the landscaping at the front of the site, which addresses the reasons for refusal in relation to streetscape impacts of the carpark, however the design of the car park remains unsatisfactory as discussed in traffic assessment of this report.

Outstanding Issues

In addition to the ongoing concerns in relation to parking, vehicular access, BCA compliance and management of the dual use of the site as child care centre and a place of public worship, the issues of acoustic amenity, solar access, ventilation and compliance with the childcare Regulations have not been addressed and remain reasons for refusal of this application.

Council's Environmental Health Officer provided the following comments pertinent to the consideration of the application beyond the required additional information requested by the Panel:

Considering the history of the site and the proposed mixed use of the building it is recommended that a request for a comprehensive site operation management plan be submitted and to include the child care centre and church activities including but not only for the parking.

Below is table showing the acoustic requirement applied to the church hall and the requirement applied when the acoustic report was prepared for the childcare centre. It is clearly showing inconsistency:

1. Original approval for church addition DA2006/DA-0372	2. Proposed operational management plan – amended – REV2020/00001	3. Point of discussion for the referral
<i>The original approval encompasses the church hall which</i>	<i>The current proposal includes a child care centre.</i>	<i>1. This application is proposing the use of part of an existing</i>

<p>included the ground floor and first floor.</p> <p>The first floor has an interim occupation certificate and has been is currently being used.</p> <p>The consent has no operating hours conditions.</p> <p>The following condition was imposed and was required to be met prior to occupation:</p> <p>64. Prior to Occupation Certificate being issued, submit to Council for approval documentation from suitably qualified and experienced acoustic consultant certifying, that the noise control measures as recommended in the acoustic report submitted with the Construction Certificate addressing noise impacts</p> <ul style="list-style-type: none"> • increase in floor area to church, • increase in floor area to new hall, • three (3) new workshops, • new kitchen, • two (2) new conference rooms • mechanical equipment; and use of air conditioning units vs open windows/doors, etc. <p>Comply with the following requirements;</p>	<p>Listed in the Operational Management Plan includes the following proposal:</p> <p>Monday to Friday – 7am - 6pm – Child Care Centre hours</p> <ol style="list-style-type: none"> 1. Child Care Centre organized activities. There will be no Church organized work or activity on site during these hours. 2. The Child Care Centre will operate according to any conditions of development consent issued for approval of the childcare centre applicable to the site. The Development Consent will be displayed on site. <p>The applicant is proposing that, there will be no church organized work or activity on site during the operation of the Child Care Centre which are between the hours of 7am and 6pm, Monday to Friday.</p> <p>Council DCP 5.3 Child Care Centres</p> <p>Note: Noise readings (measured at any point on the boundary of the site between the proposed Child Care Centre and adjoining property), should not exceed 10dBA above the background noise level during the hours of operation of the Centre. The noise readings are to be measured over a 15-minute period and are to be</p>	<p>building which has DA consent where no operation hours and acoustic requirements that not been complied with and it contradicts the proposed acoustic requirements proposed for childcare centre use.</p> <ol style="list-style-type: none"> 2. Amended operational plan for the child care centre proposing. There will be no church organized work or activity on site during these operation referring to the operation of the childcare centre. From a law enforcement point of view, it is difficult to envisage how this can be considering item 1 above. 3. In event of complaints received about the first floor (the hall) Monday to Friday will Council be able to enforce the proposed operational management plans commitments not to organise church work or event approved in the child care centre application? 4. Reviewing the submissions received for the child care centre a common factor for objecting to the proposal from neighbouring premises is noise. There has been a long history of
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<p>(a) The sound level output for all activities associated with the use and the running of the premise shall not exceed 5dB(A) above the ambient background level at the closest neighbouring boundary between the hours of 8:00pm-7:00am on weekdays and Saturdays, 8:00pm-8:00am on Sundays and Public Holidays.</p> <p>(b) Outside the above specified hours, the sound level output for all activities associated with the use and running of the premise shall not exceed the ambient background noise level.</p> <p>In addition, ongoing conditions was also imposed including an operational management plan:</p> <p>75. ZC14 - Amplified music/public address systems must not be audible outside the premises, unless approved by Hurstville City Council.</p> <p>79. The premise shall not give rise to 'offensive' noise as defined under the Protection of the</p>	<p>undertaken in accordance with the requirements of the NSW Department of Environment and Climate Change. No "offensive noise" as defined within the provisions of the Protection of the Environment Operations Act 1997, shall be emitted from the premises as a result of the use of activities associated with the site.</p> <p>The ambient background noise level was measured at 37dBA and applying the DCP the proposed child care centre specific criteria is 47dBA.</p>	<p>noise nuisance between the existing church and the use of the hall and the neighbouring properties which has demand a large amount of Council's attention and resources spent in court.</p> <p>5. In summary, Council need to give consideration to the following:</p> <p>a. That the DA conditions for the church and hall contradicts that of the requirement of the child care centre - Council's DCP 5.3 if both are being used at the same time.</p> <p>b. Different acoustic compliance requirement means the report provided with the childcare centre, only receiver 1 (14 Ponderosa Place) will comply with not exceeding 5dBA above the ambient background level. The other 4 receivers which are closer properties to the proposed development especially receiver 5 (3 Tara Place) will exceed the 5dAB. This requires to be resolved.</p>
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C. NEIGHBOUR NOTIFICATION

Following the submission of additional information on 1 April 2020, the application was placed on neighbour notification between 14 April 2020 and 28 April 2020. Twenty (20) submissions were received from the deferral of the matter at the LPP meeting and the finalisation of this report on 30 April 2020.

D. SUBMISSIONS

Following the LPP meeting, submissions were received from neighbours in relation to the minutes of the meeting. In addition formal complaints raising issue in relation to the consideration of the matter by the Panel and the resulting decision of the Panel. A submission of a video recording of a church service held on the subject site following the government ban on places of public worship due to COVID-19. The submitter also emailed Council on 21 April 2020 to advise another church service was held on 19 April 2020 during the ban on social gatherings. Council has been advised Police attended the site on this occasion.

Following re-notification of the proposal in April 2020, 14 submissions were received at the time of writing this report. Due to the time constraints that resulted from the submission of the additional information by the applicant being the last day provided to them by the Panel namely 1 April 2020 and the statutory timeframe within which this application must be determined (7 May 2020), only the submissions received before 30 April 2020 are addressed below. The submissions raised the following issues:

- Traffic impacts
- Safety concerns for pedestrians in regard to the amended car park design
- Acoustic impacts
- Ongoing compliance and legal matters
- Solar access and ventilation within the proposed centre

No new issues have been raised in these submission that were not addressed in the assessment report considered by the Panel at its meeting of 5 March 2020 with the exception of the comments about services being run during the COVID-19 restrictions and comments relating to the amended car park design and vehicular access from Ponderosa Place. This issue has been reviewed by Council's Traffic Engineer as discussed earlier in this report and considered to remain of concern.

All submissions are attached to this report.

E. TIMEFRAME FOR DETERMINATION

DA2019/0042 (the refused DA) was determined by the Georges River Local Planning Panel on 7 November 2019 and as such the determination of this Review application must be on or before 7 May 2020.

F. CONCLUSION

The additional information submitted by the applicant in response to the reasons for deferral by the Georges River Local Planning Panel has been addressed in this report. The assessment of the information concludes that the proposal cannot be supported and refusal of the application is recommended.

It is noted that the following concerns raised in the assessment report for the Panel meeting of 5 March 2020, in addition to the issues identified with the amended plans discussed above, remain outstanding:

- Acoustic impacts on neighbouring residential properties;
- Traffic and parking compliance;
- Solar access and ventilation of the indoor play area; and
- Compliance with the SEPP (Education Establishments and Child Care Facilities) 2017, Education and Care Services National Regulations and the Child Care Planning Guidelines NSW 2017.

The reasons for refusal recommended in the report to the Panel meeting of 5 March 2020 remain valid and have been modified where the additional information has adequately addressed certain issues, such as the landscaping and streetscape character.

G. DETERMINATION AND STATEMENT OF REASONS

The application has been assessed having regard to the Matters for Consideration under Section 8.2 Review and Section 4.15 (1) of the Environmental Planning and Assessment Act 1979 and relevant statutory provisions.

Statement of Reasons

The reasons for this recommendation are:

- The proposal fails to satisfy the aims and objectives of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.
- The proposal has been assessed against the provisions of both Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No. 1. The proposal fails to comply with the objectives of the zone and a number of objectives and controls in the Development Control Plan.
- Inadequate information has been submitted with the Review application to enable a full proper and holistic assessment of the proposal.
- The proposal is unsuitable for the site and would establish an undesirable precedent in the area. Its approval is not in the public interest.
- The application has failed to demonstrate the site is suitable for its proposed use under provisions and State Environmental Planning Policy 55 – Remediation of Land.

Determination

THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel refuse development consent to Review Application REV2020/0001 for the fitout and use of the ground floor of an existing church building for use as an early childhood education centre for

34 children, landscaping and car parking works at Lot 2 in DP 405732 known as 977 Forest Road, Lugarno, for the following reasons:

1. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development fails to demonstrate compliance with State Environmental Planning Policy No. 55 – Remediation of Land as a detailed site contamination report was not submitted with the application as required by the phase 1 assessment.
2. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, *Educations and Care Services National Regulations* and the *Child Care Planning Guidelines NSW 2017* as they relate to provisions in terms of the following:
 - a) Streetscape impacts;
 - b) Provision of natural light and ventilation;
 - c) Identifying a suitable site based upon compatibility with the existing streetscape character;
 - d) Disclosure of the educational programming and practice to be provided at the Facility;
 - e) Ensuring and illustrating that the development retains a landscaped character complimentary to the streetscape;
 - f) Ensuring and illustrating that outdoor open space areas have adequate solar access to 30% of the area year round;
 - g) Ensuring and illustrating that the internal floor space is appropriately designed to be naturally ventilated and natural lighting; and
 - h) Illustrating that the facility has a visible presence from the public road and safe/secure accessibility.
3. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the objectives of the R2 Low Density Residential zone under Hurstville Local Environmental Plan 2012 in terms of the following:
 - a) The proposal does not ensure a high level of residential amenity is achieved and can be maintained, and
 - b) Visual amenity of the site is not enhanced through landscaping in keeping with the landscaped residential setting of the site.
4. **Development Control Plan** - Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Hurstville Development Control Plan No. 1 with respect to:
 - a) Section 3.1 Car Parking – insufficient car parking, vehicular access and pedestrian safety are provided on site for a child care centre use and church operating concurrently.
 - b) Section 3.5 Energy Efficiency – insufficient solar access and natural ventilation is available to the child care centre.

- c) Section 5.3 Child Care Centres – the proposal does not comply with various specific requirements for child care centres.
5. **Adequacy of Information** - Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development fails to demonstrate compliance with relevant standards and controls in relation to:
- a) Acoustic impacts on neighbouring properties;
 - b) Safe and adequate vehicular access and car parking;
 - c) Solar access and natural ventilation; and
 - d) Permissibility of the use on the site with regard to the existing approved uses.
6. **Impacts on the Environment** - Pursuant to Section 4.15(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:
 - i. The proposal fails to provide adequate and consistent information in relation to the retention of the existing trees on the site and provision of additional landscaping on the site to maintain the landscaped residential setting of the site.
 - b) Built environment:
 - i. The proposal fails to adequately demonstrate the building is suitable for the use of child care centre.
7. **Suitability of Site** - Pursuant to Section 4.15(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 proposed siting and design of the outdoor play structure and acoustic fence results in unnecessary visual bulk and scale which results in an adverse impact to the built environment. Additionally an inadequate setback and screen landscaping is proposed adjacent to the acoustic fence.
8. **Public interest** - Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent within the locality.

Appeal Rights - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.