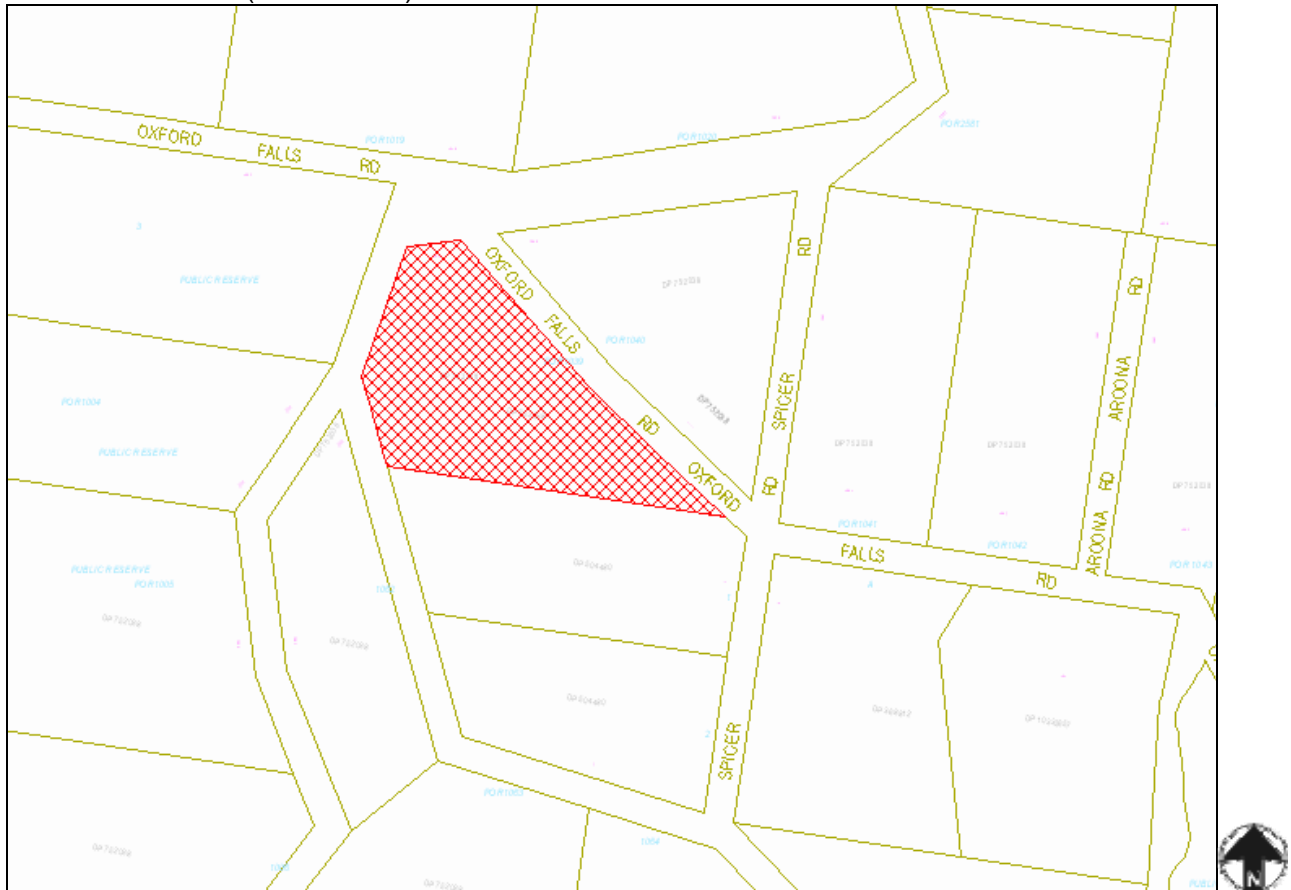


3.1	Lot 1039 Oxford Falls Road, Oxford Falls – Modification of DA2006/0339 to Modify Landscaping, Car Parking, Building Openings and Ancillary Structures
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SECTION 96 (2) MODIFICATION ASSESSMENT REPORT

Assessment Officer:	Alex Keller
Address / Property Description:	Lot 1039 DP 752038, Oxford Falls Road, Oxford Falls
Proposal:	Modification of DA2006/0339 granted for construction of a childcare centre, associated outdoor play areas, car park and gardeners shed to modify landscaping, car parking, building openings and ancillary structures.
Development Application No:	Mod2009/0177
Plans Reference:	Site Plan, Elevations Plan, Floor Plan, Details Plan drawn by <i>A.W Design Drafting</i> 24/6/2009. LP01A drawn by <i>Selena Hannon Landscape Design</i> dated 24/6/2009. On-site detention plan drawn by <i>Martens & Associates</i> dated 5/5/2009 & 19/10/2009
Applicant:	Russel Loel
Owner:	Russel Loel
Application Lodged:	26/6/2009
Amended Plans:	YES – OSD plans amended 19/10/2009
Locality:	C8 Oxford Falls Valley
Category:	Category 3 “Childcare Centre”
Clause 20 Variations:	Nil
Draft LEP 2009	E3 – Environmental Management (Prohibited)
Land and Environment Court Action:	NO
Referred to WDAP:	NO
Referred to ADP:	YES (discretionary provision under ADP Charter)
SUMMARY	
Submissions:	Two (2) submissions from one (1) party.
Submission Issues:	Privacy, illegal works, drainage, retaining wall, wastewater treatment, Department of Community Services licence, roof colour, on-site equipment
Assessment Issues:	Desired Future Character, On Site Detention.
Recommendation:	S96 (2) Approval
Attachments:	Site, Layout, Elevation and Landscaping Plans

LOCALITY PLAN (not to scale)



Subject Site: Lot 1039 DP 752038.
Oxford Falls Road, Oxford Falls

Notified Residences: Under the provisions of the applicable *Development Control Plan* the subject application has been advertised in the *Manly Daily* and notified by letter to the adjoining property owners and occupiers. As such, there were 39 notification letters sent dated 29/7/2009.

SITE DESCRIPTION

The subject site is identified as Lot 1039 in DP 752038 and is known as Lot 1039 Oxford Falls Road, Oxford Falls. The subject site is located on the south-western side of Oxford Falls Road, west of the intersection of Spicer Road and Oxford Falls Road.

The site is triangular in shape, has an area of 2.089ha and has a frontage of approximately 255m to Oxford Falls Road. Access to the site is via two (2) separate driveways from Oxford Falls Road.

The site slopes from west to east with a fall of approximately 27m between the western boundary and eastern tip of the allotment.

The western portion of the site is steeply sloping and contains dense vegetation cover. The eastern portion of the site is mostly cleared, and contains a partly completed childcare centre building, stone cottage house (not authorised for residential use), ancillary buildings, and an assortment of building materials and some shipping containers.

The surrounding environment is of a non-urban/semi rural character and generally comprises low intensity uses, with a majority of sites being undeveloped bushland and single dwelling houses on large allotments. Exceptions to this are the Christian City Church facility and Oxford Falls Grammar School.

The adjoining allotment to the south of the subject site contains a single dwelling and nursery.

RELEVANT BACKGROUND

DA2006/0399 was considered by an independent public hearing on 10/11/2007 and approved by Council 27/11/2009 for construction of a childcare centre, associated outdoor play areas, car park and gardeners shed. Works have since commenced and the building is substantially completed. During construction the applicant failed to comply with various conditions of consent and an Order dated 9/4/2009 was placed on the Applicant to rectify those issues identified by Council's Compliance Team in Council's Order. Modification application No.2009/0177 has been submitted to address those issues.

PROPOSAL IN DETAIL

The modification involves the following changes to the approved plans (and a reason given by the applicant for the changes is provided):

1. Repositioning and alterations of the window configuration along the south and east elevation. The size of the windows is determined by the manufacturers specifications and the use of standard windows (rather than custom made) will reduce construction costs. The repositioning is to allow maximum natural light to the interior to reduce artificial lighting needs.
2. Selected changes for new doorways have been provided to facilitate egress in the event of fire and to comply with the BCA. The new doors are not for normal operational purposes;
3. Two skylights have been added to assist in natural lighting and to reduce artificial lighting needs.
4. Retaining walls (maximum 900mm high) are proposed along the south-eastern side and within the car parking area. The walls will allow and even access way in the event of fire and will allow improved landscaping opportunities. The walls will also prevent any soil slip that might undermine the previous fill areas;
5. The gardeners shed is to be enlarged from 5m x 6m to 10m x 9m with a slab foundation. The approved shed was too small to accommodate equipment needed to maintain the facility – ride on lawn mover, tractor/slasher, push mowers and other garden tools.
6. Construct a small reflection pool 100 mm deep within the car park turning circle. The pool is to provide a focal point; water representing peace and tranquillity to persons attending the site.

7. Alteration of the configuration of the detention tanks. Following closer examination it was found that the existing tank was unsuitable and it is proposed to replace 2 tanks with one larger tank. There is no change to the OSD location.
8. A small amount of clean fill (top dressing) is to be added to the front and east side of the stone cottage (staff room) surrounds. The area is to be filled 50m x 25m and will be 500mm deep at the centre reducing to zero (existing ground level) at the edges.
9. A small amount of clean fill (approximately 40m x 10 m) to provide a base for the parking is required to the western portion of the car park to rectify a construction error by the contractors when laying the kerbing and guttering.
10. Rearrangement of the 26 car parking spaces to reduce the number of approved spaces within the 20m front setback.
11. Safety fence around the septic tanks system.
12. Adjustment of the disabled ramp access to the building.
13. Adjustment to stormwater drainage pits and lines leading to the OSD tank.
14. New solar panel 4m² on roof for the water heater on the western side of the building.
15. Adjustment to the position of the porte cochere due to changes to the carpark driveway and parking area.

AMENDMENTS TO THE PLAN

OSD plans were amended for additional details to the plans.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulations 2000
- c) Local Government Act 1993
- d) Disability Discrimination Act 1992
- e) Rural Fires Act 1997
- f) State Environmental Planning Policy No.55 – Remediation of Land
- g) Warringah Local Environment Plan 2000
- h) Draft Warringah Local Environment Plan 2009
- i) Warringah Development Control Plan
- j) Section 94A Plan

EXTERNAL REFERRALS

Rural Fire Services - Section 100B Rural Fires Act 1997

The application was referred to the *NSW Rural Fire Service* (RFS) on the 29/7/2009. The NSW RFS advised the following comments:

"The Service has viewed the amended submitted plans and raises no objections subject to compliance with our original terms of approval dated 27 October 2006"

No change to the RFS conditions is therefore recommended.

INTERNAL REFERRALS

Council's Development Engineers

Council's Development Engineer has assessed the modification proposal and advises of no additional conditions or changes to the existing consent except for an update to the approved plan references.

Council's Landscape Officer

Council's Landscape Officer has assessed the modification proposal and advised of modification to selected conditions to update plan numbers and current Australian Standards for tree protection.

Council's Compliance Services

Council's Compliance Services has assessed the modification proposal advises of additional conditions relating to BCA compliance and construction certificate requirements to address the new work and update to the approved document references.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application was publicly exhibited in accordance with the *EPA Regulation 2000* and the applicable Development Control Plan.

As a result of the public exhibition of the application Council received submissions from:

Name	Address
B & G Condon (2 submissions)	1 Spicer Road Oxford Falls

The following issues were raised in the submissions and are considered and addressed by the subsequent response comments:

i) Landfill placed on the boundary line is held back by a retaining wall made from rotten electricity poles.

Comment: The modification seeks to rectify these works and reduce the wall height from 2.5 metres to 900mm. Compliance have been unsuccessful in having the retaining wall fully removed, instead it will be reduced to 900mm. The electricity poles are of a substantial diameter, are decommissioned poles, and are suitable for the task of being used for a landscaped retaining wall. It is necessary for the soil and fill upon which the building is constructed to have a supported footing to prevent slippage of the foundation area. (Refer to condition 53 of DA2006/0339)

ii) Windows and doorways facing adjacent property causing loss of amenity.

Comment: Part of modification and replaces custom windows with standard window size frames. The window sizes do not substantially change the total glass areas previously approved and the separation distances around the building and between adjacent residences does not create a significant change to existing privacy between neighbours. Additional screen landscaping has been provided along the southern boundary to protect privacy and improve existing amenity.

iii) Variation to the level of the property from the end of the approved building to the property's eastern end.

Comment: This work involves minor top dressing of soil to remove ground depressions and create a smooth play surface free of hazards (water ponding, uneven contours). The maximum depth is 50cm and is smoothed down to zero depth at the property boundary. As discussed previously Council's Compliance Team was unsuccessful in having all the soil fill removed.

iv) A stormwater detention tank which effectively is about a metre above the property's level, will be directed to drain through private property.

Comment: The new OSD tank drains to Oxford Falls Road culvert as shown on the plans not private property. The previous dual tank system has been replaced with a single tank system and is of a satisfactory design as assessed by Councils Development Engineering Section.

v) An onsite Sewerage Treatment Plant (STP) proposed uses adjacent land as the dispersal area as part of its dispersal process.

Comment: The applicant must obtain a licence from NSW Health via Council prior to occupation. No licence is issued yet however the application for the operation of a treatment system has been made as required. The applicant has advised that additional details are being prepared be

submitted to Council's Environmental Health Section to satisfy licence requirements. This issue is not part of the modification application. (Refer to condition 47 of DA2006/0339)

vi) The application does not address the non-compliance generally with the original consent in relation to the construction process creating a non-approved road opening.

Comment: The completed road opening for service connection is not part of the modification application. This is a Compliance issue which is being dealt with by Council's Compliance Section. (Refer to condition 15, 17, 19, 43, 62 & 70 of DA2006/0339)

vii) The applicant has failed to have any defined materials storage compound.

Comment: The storage of construction materials is not part of the modification application. This is a Compliance issue which is being dealt with by Council's Compliance Section. (Refer to condition 126b & 126c of DA2006/0339)

viii) The applicant has failed to have any waste removal contract in place.

Comment: The removal of construction waste is not part of the modification application. This is a Compliance issue which is being dealt with by Council's Compliance Section. (Refer to condition 130 & 126b & 126c of DA2006/0339)

ix) The applicant is storing of materials which are totally unrelated to this project on the site.

Comment: The previous storage of other items on the property is not part of the modification application. This is a Compliance issue which is being dealt with by Council's Compliance Section. (Refer to condition 60a & 126b & 126c of DA2006/0339)

x) The applicant is turning the site into a compound for earthmoving equipment – (2 drotts, 4 excavators, a road grader and a backhoe on site).

Comment: The temporary parking of earthmoving equipment on site is not part of modification application. This is a Compliance issue which is being dealt with by Council's Compliance Section. (Refer to condition 60b, & 81 of DA2006/0339)

xi) The applicant is not draining stormwater to a detention pit during construction as specified.

Comment: Site management of water during construction is not part of the modification application. This is a Compliance issue which is being dealt with by Council's Compliance Section. (Refer to condition 27, 48, 77, 92, 93, 94, & 130 of DA2006/0339)

xii) Extension of the eastern end of the building to create an additional room notated as 'cot room'.

Comment: The cot room area is shown as part of the approved plans dated July-August 2007 drawn by AW Design for DA2006/0339.

xiii) There are seven different colours of colourbond roofing on the southern side of the new building.

Comment: Roof colour is not restricted on the number of colours only that it be not highly reflective or colours to suit the rural surroundings. This is a Compliance issue which is being dealt with by Council's Compliance Section. (Refer to conditions 31 & 32 of DA2006/0339).

xiv) The applicant has not obtained licence approval from the Department of Community Services.

Comment: The Department of Community Services (DoCS) does not licence the Centre until occupation stage once all DA conditions have been satisfied. The applicant advises that the Centre has been designed to satisfy all DoCS requirements for childcare.

The above issues that are not part of the modification and are a compliance issue have been referred on to Council's Compliance Team as a separate matter. In summary, the issues raised are

not considered to have determining weight and have been fully considered within the assessment of the modification and conditions imposed where necessary.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 79C of the *Environmental Planning and Assessment Act, 1979*, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on “Draft Warringah Local Environmental Plan 2009” in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan
Section 79C (1) (a)(iia) - Provisions of any Planning Agreement or Draft Planning Agreement	None applicable.
Section 79C (1) (a)(iv) - Provisions of the regulations	<p>Clause 7 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. Previous conditions of consent applied under DA2006/0339 suitably address this matter.</p> <p>Clause 92 of the EPA Regulations 2000 requires Consent Authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. Previous conditions of consent applied under DA2006/0339 suitably address this matter.</p>
Section 79C (1) (b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed modifications on the natural and built environment are addressed under the General Principles of Development Control in this report.</p> <p>(ii) The proposed modifications will not have a detrimental social impact in the locality considering the residential character of the proposal.</p> <p>(iii) The proposed modifications will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use.</p>
Section 79C (1) (c) – The suitability of the site for the development	The site is considered suitable for the proposed modifications to the existing approved development.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (d) – Any submissions made in accordance with the EPA Act or EPA Regs	In regards to public submissions refer to the discussion on "Notification & Submissions" within this report.
Section 79C (1) (e) – The public interest	The wider public interest is served by the development of the site in accordance with the provision of WLEP 2000, and the localised public interest is served by maintaining the rural amenity and local environment by conditions imposed.
Section 96 Modifications of Consent	Comments
<p>Section 96 (2) - Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:</p> <p>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The proposed modifications are of minimal environmental impact and the proposal is substantially the same development in that:</p> <ul style="list-style-type: none"> • The general appearance of the site in relation to the approved plans remains consistent and does not detract from the streetscape or adjacent development. • The proposed modifications are of minimal environmental impact and will not substantially change the function of the existing facilities. • The site use remains the same and does not expand the approved childcare enrolment or incorporated uses; • There is no change to building bulk, scale, and general appearance remains consistent with the original approved plans; • The street presentation and layout of parking areas (i.e turning areas, parking areas) is the same capacity;
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Notification was made to the NSW RFS and the RFS advised of no change to the existing conditions of consent.
(c) it has notified the application in accordance with:	Public notification by letter and including advertising in the <i>Manly Daily</i> was required for this modification.

Section 79C 'Matters for Consideration'	Comments
(i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	Public submissions were received and have been fully considered and addressed in the context of the modification assessment.
Subsections (1), (1A) do not apply to such a modification.	The application has been reviewed with regard to subsections (1), (1A). It is considered they do not apply to such a modification.

Local Government Act 1993

Council is empowered under the *Local Government Act* to be the approval authority for this proposal and grant any works or permits required in accordance with Section 68 of that Act as part of the development assessment process.

State Environmental Planning Policies

State Environmental Planning Policy No.55- Remediation of Land

The subject land was previously assessed for contamination under DA2006/0336 and determined to be suitable for the proposed childcare centre. Existing conditions of consent are adequate to address requirements for clean fill and soil brought to the site. No additional conditions, or changes to the existing conditions, are recommended in consideration of SEPP 55 matters.

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Definition: Child Care Centre

Land Use Zone: E3 Environmental Management

Permissible or Prohibited: Prohibited

Additional Permitted uses for particular land – Refer to Schedule 1: Nil within schedule applying to the site.



Principal Development Standards:

Applicable Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Height of Buildings:	8.5 m	No change	Yes	N/A

The modification involves changes to a land use that is presently a Category 3 land use under WLEP 2000, but is a prohibited use under Draft WLEP 2009, hence it will have 'existing use rights' when the new LEP is gazetted. Clause 1.8A contains a savings and transitional provision says that applications made before the commencement of the plan may regard the plan as not having been made if still not determined after the commencement of the plan.

The proposed modifications do not substantially change the development as originally approved. The modifications are of a minor nature and in this regard the modifications are consistent with the aims and objectives of the Draft WLEP 2009 and the objectives of the E3 Environmental Management Zone.

Warringah Local Environmental Plan 2000

Desired Future Character

The subject site is located in the C8 Oxford Falls Locality under the Warringah Local Environmental Plan 2000. The Desired Future Character (DFC) Statement for this locality is as follows:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

Consistency with the DFC

“The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.”

The modifications to the development will not result in any notable change in the overall character of the locality.

“Future development will be limited to new houses conforming with the housing density standards set out below and low intensity, low impact uses.”

With regard to the above requirement, the modifications do not fall under the ambit of a “...new house...” accordingly, the requirement of the proposal to comply with the housing density provision is not relevant, however, a test must be conducted as to whether the modified proposal remains to satisfy consistency with regard to “Future development will be limited to..., ...low intensity, low impact uses”. In this regard, WLEP 2000 is silent on interpretation of what a “...low intensity, low impact uses” is, however the Oxford Dictionary best defines (in context) the wording as follows:

Low: 4. of small or less than normal amount or extent or intensity; 5. small or reduced in quantity; 6. coming below the normal level.

Intensity: 1. the quality or an instance of being intense.

Impact: 2. have an impact on.

Based on the above, “...low intensity, low impact uses” should best be regarded as providing minimal variation which can be quantifiable by, but not limited to traffic generation, amenity impacts & the visual impact of structures to the existing status quo to an extent, and to the existing functionality of a locality.

It is considered that the modifications satisfy the requirement for “...low intensity, low impact uses” as a result of the following factors:

- The proposed building changes are consistent with the approved plans and are appropriate in size and scale for the purpose of the changes and other buildings in the rural locality;
- The proposed changes will have a low environmental impact.
- The proposed changes will have no appreciable visual impact from vantage points from the public domain;
- The proposed modifications will not change the present rural character of the B2 Oxford Falls Valley Locality
- The modifications do not alter the single storey construction with materials and finishes of the building being consistent (subject to conditions) with a bushland character so as to result in the development being a subservient feature upon the landscape;
- There is no impact upon any areas of natural flora, nor will there be any areas where significant disturbance of native wildlife might occur.
- The applicant proposes to provide additional landscape planting to the surrounds of the building in order to enhance the visual appearance of the building to surrounding areas.
- It is considered that the modifications would not result in a significant or adverse impact upon the existing road system within the locality by way of traffic generation whilst also providing adequate off street car parking to cater for the parent car parking and staff numbers.
- Given the location and distance from other adjoining and nearby residential land uses the modification works will not cause significant unreasonable changes to levels of noise generation.
- The hours of operation are unchanged to that permitted under the original consent.
- Bushland areas of the site are not affected by the modification works.

For the above reasons, it is considered that the proposed works are consistent with the allowances made for Category 3 development.

“There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.”

The development is not situated upon a ridgetop and the modification would not disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

“The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.”

It is considered that the modification works minimise the disturbance of vegetation and landforms. Accordingly, the proposal is considered to be consistent with this element of the locality's DFC statement.

“Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.”

External facade and roof colours, materials and finishes have been conditioned to be of muted bushland tones to ensure that the external colours blend with the colours of the natural landscape. The roof work is unfinished and final colours of the roof are to be addressed by Council's Compliance Team under the existing conditions of consent.

“Development in the locality will not create siltation or pollution of Narrabeen Lagoon.”

The modification work will ensure that development in the locality will not create siltation or pollution of Narrabeen Lagoon once all works are complete.

Conclusion on consistency with the DFC

As detailed above the proposed modified development is considered to be consistent with the Locality's DFC statement in that it retains the character of the area and is able to satisfy the desired environmental outcomes of the DFC.

Clause 16 (2) – Existing Category 3 Development

Clause 16 is not relevant to the assessment of a modification of consent.

Clause 20

The modification includes changes to the car parking area within the front setback. Clause 20 was previously applied under the approval of DA2006/0339 to permit the encroachment of a section of decking within the 20 metre front setback. The modification proposes an additional encroachment for part of 3 car spaces and the adjacent turning aisle within the front building setback.

Built Form Controls for Locality B2 Oxford Falls Valley

The approved work relates to landscaping, stormwater, car parking and building configuration and involves no significant changes to the approved DA plans. The following table outlines the compliance with the relevant elements of the B2 Oxford Falls Valley Locality statement.

Built Form Compliance Table			
Built Form Standard	Standard	Proposed	Compliance
Housing Density	1 Dwelling per 20ha	1 dwelling existing – unchanged.	No change
Building Height	7.2m to ceiling 8.5m overall building height	2.7m-4.3m 4.3m-6.0m	Yes - No change Yes - No change
Front Setback	20.0m to all roads	17m for car parking spaces.	No – Modification involves new encroachments pertaining to portions of 3 car parking spaces

		10 metre for turning aisle.	and adjacent turning aisle.
Side Setback	10.0m	4.7m to the child care centre and 2.8m to "play area 3"	No change to setback Existing landscaped retaining wall to be lowered to 900mm (maximum height)
Rear Setback	10.0m	N/A – no rear boundary	Not applicable (triangular lot with 2 road reserve frontages)
Landscaped Open Space	30% (6,267m ²)	72% (15,117m ²)	Yes

Clause 20 Variation

Consent may be granted to proposed development even if the development does not comply with one or more development standards, providing the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State Environmental Planning Policy.

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal is generally consistent with the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on "General Principles of Development Control" in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is consistent with the Locality's Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on "Desired Future Character" in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under 'State Environmental Planning Policies'). Accordingly the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Description of variations sought and reasons provided:

Front Setback Built Form Control (20 metres)

As detailed above, the proposed development includes a non-compliance with the front building setback. In particular, along the northern boundary, the carpark has a turning aisle 10 metres within the front setback and 3 car spaces are also partly being as close as 17.0 m from the front boundary.

The 20 metre front setback control seeks to achieve the following good planning outcomes:

- Create a sense of openness;
- Provide opportunities for landscaping;

- *Minimise impact of development on the streetscape;*
- *Maintain the visual continuity and pattern of buildings, front gardens and landscape elements;*
- *The provision for corner allotments relates to street corners.*

The car park area is a ground level facility and is not clearly visible from the public domain and therefore does not diminish the opportunity to maintain a sense of openness along the front boundary. The surrounding areas will be landscaped and the car park is partly gravel (crushed stone) pavement that blends with the natural surroundings. The car parking area will therefore generally remain as an open area.

Opportunities for landscaping have been integrated within the setback as much as practicable and the rural nature of the property will be maintained by retaining the existing dense screen planting along the front boundary.

The site is densely screened by existing landscape plantings along Oxford Falls Road and the car parking areas is not clearly visible to the street. The encroachment involves only ground level structures and therefore has not significant visual impact. Therefore, the car park and aisle area within the front setback have no significant impact on the existing streetscape.

The building on the site are set well back from the street with gardens and landscape interspersed with car parking areas and the front setback area is currently dominated by gravel driveway areas and no formal landscaping. The modified car parking will formalise this entire area and improve the visual appearance by creating proper formal parking and landscaped area based on a professional landscape design plan. The dense vegetation along Oxford Falls Road and variable surrounding topography creates a natural interruption of the visual continuity and pattern of buildings including front gardens and landscape elements along the street. Therefore the proposed encroachments within the front setback will have no significant impact on visual continuity.

The provision for corner allotments applies to this site, however the natural landform and wide rural frontage means there is not a visual relationship between the Oxford Falls Road frontage and the adjacent unnamed side road.

As detailed above, the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1). It is for the reasons detailed above that the variations to the control are not considered to warrant refusal, and that the variation to the Front Building Setback Built Form Control (Development Standard) pursuant to Clause 20(1) is supported.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

The following General Principles of Development Control as contained in Part 4 of the *Warringah Local Environmental Plan 2000* are applicable to the modified development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	YES	The minor change to the roof for small skylights and a small solar panel (4m ²) and will not affect the amenity of surrounding land by excessive glare or reflection. A minor change is recommended to the existing conditions in relation to this clause. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES (subject to conditions)
CL42 Construction Sites	YES	No major ground level change to the existing ground disturbance areas. Modification work is within the existing disturbed areas. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES
CL43 Noise	YES	The window changes will not affect noise	YES

General Principles	Applies	Comments	Complies
		amenity of the surrounding properties from childcare activities already approved. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	
CL48 Potentially Contaminated Land	YES	The source of existing fill that has been placed on site is uncertified in terms of being clean and free of contaminants. The previous development approval has permitted the fill following site assessment for the childcare centre under DA2006/0339. A minor amount of fill is required for topdressing and car park base material. Existing conditions are satisfactory to address requirements regarding the use of fill.	YES
CL50 Safety & Security	YES	The new parking layout gives improved safety within the driveway area and new top dressing addresses existing depressions to prevent water ponding by creating an even surface. A minor change is recommended to the existing conditions in relation to this clause to update the plan references. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES
CL58 Protection of Existing Flora	YES	Existing trees to be protected are identified within the arborist report provided by <i>Plateau Tree Services</i> dated 11/6/09. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES
CL63 Landscaped Open Space	YES	Landscaping area exceeds the 30% required under the B2 Locality and will be maintained and enhanced by a landscaping plan prepared for the site. The modification plans also indicate changes made to retaining walls. A revised landscaping plan has been submitted numbered LP01A drawn by <i>Selena Hannon Landscape Design</i> dated 24 June 2009. A minor change is recommended to the existing conditions in relation to this clause to update the plan references. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES (subject to conditions)
CL63A Rear Building Setback	YES	Technically there is not rear boundary so this clause does not apply. However owing to the relationship of the subject site to the adjoining property to the south the general principle should be considered. In this regard the southern boundary was previously impacted by a high log retaining wall structure (approx 2.5m high). This structure will be reduced to 900 mm and landscaped and battered back and	YES

General Principles	Applies	Comments	Complies
		stabilised to reduce the impact to adjacent land. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	
CL65 Privacy	YES	The new window locations to not significantly affect privacy between adjacent land. No change is recommended to the existing conditions in relation to this clause. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES
CL66 Building bulk	YES	The increase in the size of the garden shed is minor and the shed is substantially screened from the road and adjacent land. The section 96 modifications do not create any significant bulk to the existing structures. No change is recommended to the existing conditions in relation to this clause. Accordingly, the proposal is deemed to satisfy the requirements of this Clause.	YES
CL67 Roofs	YES	The new skylights and a solar panel are integrated to the roof profile and not a significant feature of the roof surface. A minor change is recommended to the existing conditions in relation to this clause to update the plan references. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES (subject to conditions)
CL68 Conservation of Energy and Water	YES	The use of solar panels and skylights will assist in improving energy conservation. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES
CL69 Accessibility – Public and Semi-Public Buildings	YES	The new ramp changes provide improved and fully compliant accessibility to the building in accordance with the <i>Disability Discrimination Act</i> and <i>AS1428</i> . Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES
CL71 Parking facilities (visual impact)	YES	Car parking area is fully screened from public view. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES
CL72 Traffic access & safety	YES	Traffic access and safety is improved by the new layout. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES
CL73 On-site Loading and Unloading	YES	Sufficient area is retained for loading and unloading during construction and for the childcare centre for pickup and drop off once	YES

General Principles	Applies	Comments	Complies
		completed. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	
CL74 Provision of Car parking	YES	Car parking provisions are retained as per the original approval. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES
CL75 Design of Car parking Areas	YES	The new car parking layout complies with AS2890 and AS1428. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES (subject to conditions)
CL76 Management of Stormwater	YES	The new OSD tank will replace 2 smaller tanks and drains to the road culvert. The OSD design satisfactory. Council's Development Engineers have assessed the new designs and determined the plans to be satisfactory. A minor change is recommended to the existing conditions in relation to this clause to update plan references. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES (subject to conditions)
CL77 Landfill	YES	Landfill has previously been carried out illegally and is retained on site as part of the modified proposal following the approval of DA2006/0339. The earth retaining wall along the southern boundary will be reduced in height and the soil battered back to an even slope with landscape screen planting. A minor change is recommended to the existing conditions in relation to this clause to update plan references. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES (subject to conditions)
CL78 Erosion & Sedimentation	YES	Existing conditions on DA2006/0339 are satisfactory to address potential water pollution from erosion and sedimentation runoff. Accordingly, the modified proposal is deemed to satisfy the requirements of this Clause.	YES

SCHEDULES

Schedule 8 - Site Analysis	The applicant has provided a satisfactory site analysis for the property under the original DA, including adjacent buildings and uses, geography of the site and surrounds, separations distances, access, building and site works footprints, and natural features of interest including landform and drainage points.
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Schedule 17 – Car parking Provision

Refer to assessment made under General Principle's - clause 71 to 75 previously.

POLICY CONTROLS

Warringah 94A plans contributions were levied on the original development approval and the modifications do not change the cost of development sufficiently to alter the Section94A levy.

MEDIATION

Mediation was not requested for this development application.

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C & S96 of the *Environmental Planning and Assessment Act, 1979*, *Warringah Local Environmental Plan 2000*, *Draft Warringah Local Environmental Plan 2009* and the relevant codes and policies of Council. The proposed modification works are relatively minor and inconsequential and generally consistent with the approved plans under DA2006/0339.

The modified proposal satisfactorily addresses the General Principles of Development Control and remains consistent with the Desired Future Character of the locality with respect to low intensity/low impact development. The proposed work primarily relates to changes to the retaining walls and car parking, reconfiguration of selected windows with other minor building changes and replacement of the OSD tank system. The work will not have a significant visual impact on Oxford Falls Road or impact on the privacy of neighbouring residents, and it enables the better access within the site and amenity for parents, staff and children using the centre.

It is considered that the modified development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed including issues raised in public submissions. Accordingly, the proposal is recommended for approval.

RECOMMENDATION (APPROVAL)

That the proposed modification application number MOD2009/0177, of DA2006/0339 granted for construction of a childcare centre, associated outdoor play areas, car park and gardeners shed to modify landscaping, car parking, building openings and ancillary structures at Lot 1039 DP752038 Oxford Falls Road, Oxford Falls be approved subject to the following modified conditions of consent.

i) Modify condition 1 to read as follows:

1. Approved Plans and Supporting Documentation

The development is to be carried out in compliance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Architectural Plans		
Plan No. (revision)	Designer	Date
0405012-1 (A)	AW Design Drafting Services	July 2007
0405012-2 (A)	AW Design Drafting Services	August 2007
0405012-3(B)	AW Design Drafting Services	July 2007
0405012-5	AW Design Drafting Services	August 2007
0405012-6	AW Design Drafting Services	August 2007
Plan A	Numbered and Dated by Council	5/5/07
Engineering Plans		
Plan No. (revision)	Designer	Date
0209-H2	Unnamed	Stamped by Council 25/10/06
06P107-C01 (C)	Hughes Trueman Consulting Engineers	09.10.06

As modified in accordance with the following plans:

Architectural Plans		
Site Plan - Sheet 1	<i>A.W Design Drafting</i>	24 June 2009
Elevations Plan - Sheet 2	<i>A.W Design Drafting</i>	24 June 2009
Floor Plan – Sheet 3	<i>A.W Design Drafting</i>	24 June 2009
Details Plan – Sheet 4	<i>A.W Design Drafting</i>	24 June 2009

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Note: Further information on Construction Certificates can be obtained by contacting Council's Call Centre on 9942 2111, Council's website or at the Planning and Assessment Counter.

Reason: *To ensure the work is carried out in accordance with the determination of Council and approved plans.*

ii) Modify condition 2 to read as follows:

2. Approved Landscaping Plan

Landscaping works on the site are to be undertaken generally in accordance with the landscaping plan detailed hereunder except where amended by other conditions of this consent:

Landscape Plans		
Plan No. (revision)	Designer	Date
LP01, Issue A	<i>Selena Hannan Landscape Design</i>	24 June 2009

Reason: *To ensure appropriate landscaped area and landscaping amenity at the final inspection stage of the development.*

iii) Modify condition 3 to read as follows:

3. Approved Supporting Documentation

The development is to be carried out in compliance with the following documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Supporting Documentation		
Report	Prepared By	Dated
Vegetation Management Plan	<i>Ariane Weiss & Stella Blay</i>	July 2006
Recommendations detailed under Section 6 of the Flora and Fauna Impact Assessment Report	<i>GIS Environmental Consultants</i>	March 2005
Arboricultural Appraisal	<i>Plateau Tree Services</i>	11 June 2009
Details under Section 4 of the Waste Water Management Strategy numbered P0501094JR01_V4	<i>Martens Consulting Engineers</i>	March 2009

In the event of any inconsistency, the more onerous requirement shall prevail to the extent of that inconsistency.

Reason: *To ensure the work is carried out in accordance with the determination of Council and approved plans.*

iv) Delete condition 43 – Submission of engineering plans for drainage works:

43. [Deleted]

v) Delete condition 44 – Bond for Engineering Construction Works – Stormwater:

44. [Deleted]

vi) Insert condition 47a to read as follows:

47a. On-site Stormwater Detention Certification

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification", the concept drawing by Martens & Associates Pty Ltd, drawing number P0902393JD01_V2 dated 19 October 2009, and letter prepared by Martens & Associates Pty Ltd, dated 19 October 2009 must be submitted to the Certifying Authority for construction assessment and approval. Stormwater is to be discharged to the existing headwall located in Spicer Road.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: *To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.*

vii) Insert condition 48a to read as follows:

48a. Modified Construction Certificate

A modified construction certificate is require to be issued prior to any further works being carried out or recommended in relation to the works yet to be completed resulting from the Section 96 modification.

Reason: *Approval requirements for building works.*

viii) Insert condition 48b to read as follows:

48b. Building Certificate

A Building Certificate is to be applied for and determined by Warringah Council for all unauthorized works which are identified as being retained under this Section 96 modification, prior to any construction Certificate being issued.

Reason: *Compliance requirements for building works.*

ix) Insert condition 61a to read as follows:

61a. Staff Facilities Building

The staff facilities building is to be upgraded so as to comply with Parts C, D and E of the Building Code of Australia.

***Reason:** Building Code of Australia compliance.*

x) Modify condition 72 to read as follows:

72. Protection of Trees

The following tree/trees are required to be retained as part of the development :

- All vegetation on Landscape Plan LP01A by *Selena Hannan Landscape Design* dated 24 June 2009 annotated for retention.

***Reason:** Protection of existing environmental infrastructure and community assets*

xi) Insert condition 72a to read as follows:

72a. Tree Pruning

Any tree pruning necessary for construction shall be carried out under the supervision of an appropriately qualified Arborist and be in accordance with the relevant Australian Standards.

Note: The following Australian Standard applied:

Australian Standard AS 4373.2007 - Pruning of Amenity Trees.

***Reason:** To ensure protection and longevity of existing trees.*

xii) Delete condition 91 – On Site stormwater Detention:

91. [Deleted]

xiii) Insert condition 109a to read as follows:

109a. On-Site Stormwater Detention Compliance Certification

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a “work as executed” (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

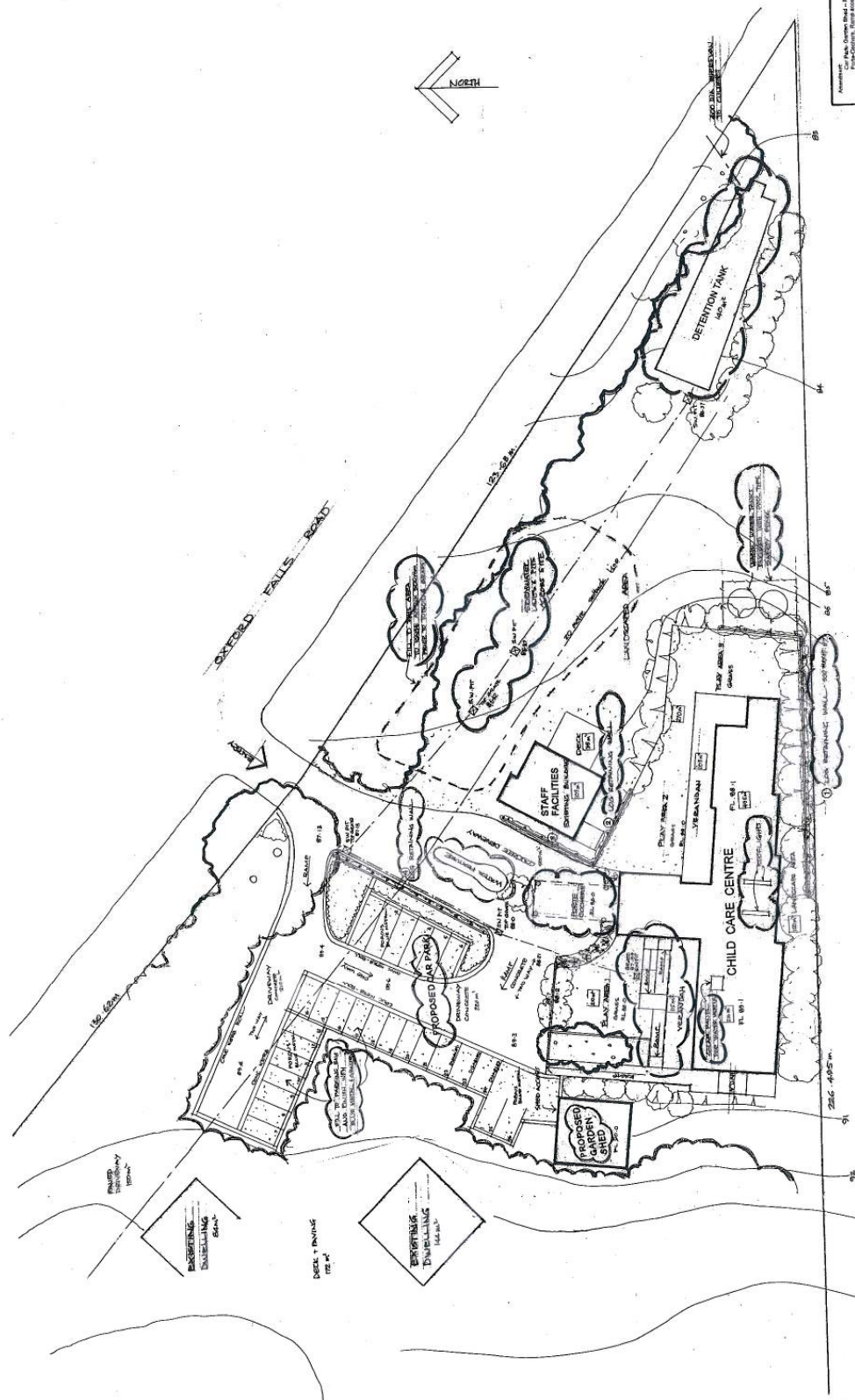
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

***Reason:** To ensure stormwater disposal is constructed to Council’s satisfaction.*

xiv) Delete condition 117 - Works as Executed Drawings and Video - Stormwater:

117. [Deleted]

Attendees:	Mr. Mack, Damien Bell - Bristaking Walls Pete-Coleman, Ramee Adams, Damien Turk
Client:	14 Farrer Place, Frenchs Forest NSW 2086
Project:	Proposed Child Care Centre 1036 Oxford Falls Road Oxford Falls NSW
Client:	Russell Loel
Drawn:	Site Plan
	Based on drawings submitted for A-15-2018-0000000 Drafting Services
Time:	1:250
Date:	24 June 2008
Sheet No:	1 of 1

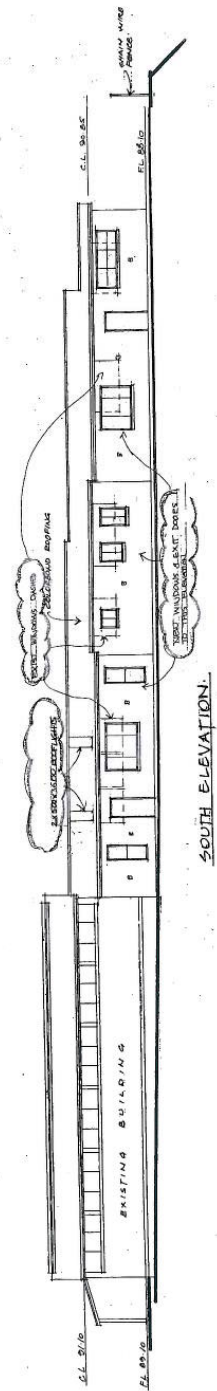
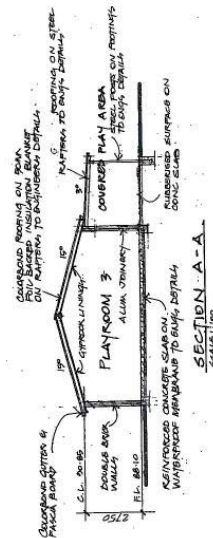
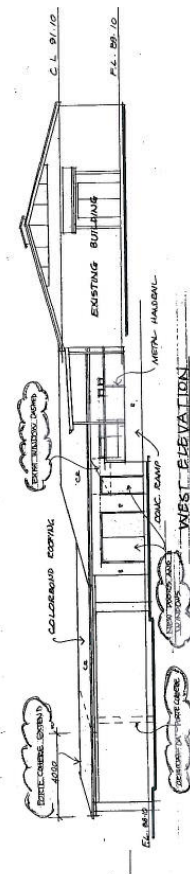
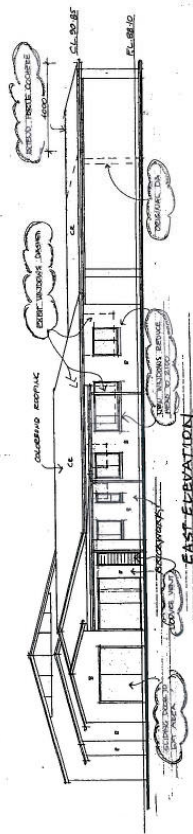


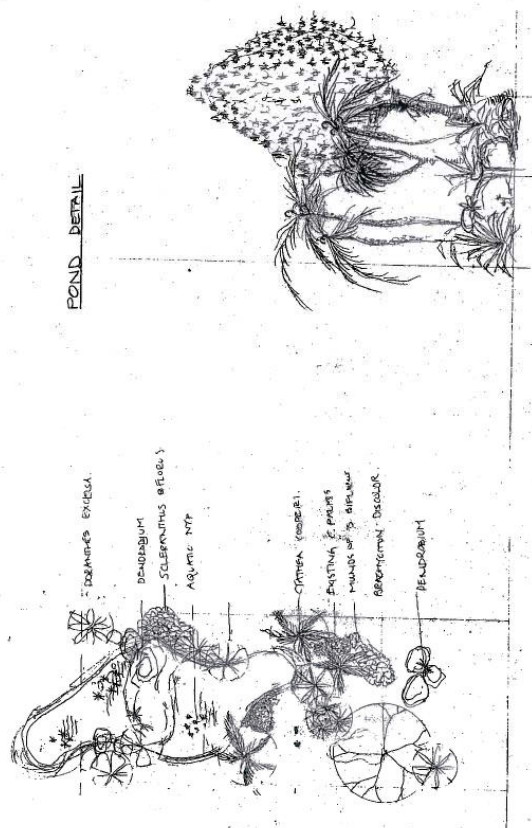
AREAS	20680 m ²	228 m ²	19000 m ²
Site Area		374 m ²	
BUILT UPON AREA		685 m ²	
Buildings Residence		163 m ²	
Residence Deck & paving		90 m ²	
Civil Buildings & Paving		800 m ²	
Serv. Facilities		140 m ²	
Garden Street		2890 m ²	
Driveways			
Detection Tank			
LANDSCAPED AREA			

PROPOSED CHILD CARE CENTRE
108 OXFORD FALLS ROAD
OXFORD FALLS NSW

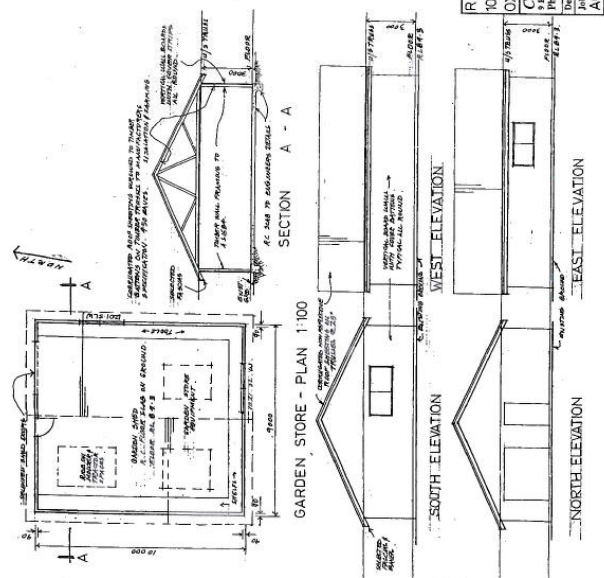
Client: RUSSELL LOEL
Architect: RUSSELL LOEL
Scale: 1:100
Date: 24 June 2009

Level	Height	Notes
000000	0.00m	Finished floor level
000001	0.15m	Finished floor level
000002	0.30m	Finished floor level
000003	0.45m	Finished floor level
000004	0.60m	Finished floor level
000005	0.75m	Finished floor level
000006	0.90m	Finished floor level
000007	1.05m	Finished floor level
000008	1.20m	Finished floor level
000009	1.35m	Finished floor level
000010	1.50m	Finished floor level
000011	1.65m	Finished floor level
000012	1.80m	Finished floor level
000013	1.95m	Finished floor level
000014	2.10m	Finished floor level
000015	2.25m	Finished floor level
000016	2.40m	Finished floor level
000017	2.55m	Finished floor level
000018	2.70m	Finished floor level
000019	2.85m	Finished floor level
000020	3.00m	Finished floor level
000021	3.15m	Finished floor level
000022	3.30m	Finished floor level
000023	3.45m	Finished floor level
000024	3.60m	Finished floor level
000025	3.75m	Finished floor level
000026	3.90m	Finished floor level
000027	4.05m	Finished floor level
000028	4.20m	Finished floor level
000029	4.35m	Finished floor level
000030	4.50m	Finished floor level
000031	4.65m	Finished floor level
000032	4.80m	Finished floor level
000033	4.95m	Finished floor level
000034	5.10m	Finished floor level
000035	5.25m	Finished floor level
000036	5.40m	Finished floor level
000037	5.55m	Finished floor level
000038	5.70m	Finished floor level
000039	5.85m	Finished floor level
000040	6.00m	Finished floor level
000041	6.15m	Finished floor level
000042	6.30m	Finished floor level
000043	6.45m	Finished floor level
000044	6.60m	Finished floor level
000045	6.75m	Finished floor level
000046	6.90m	Finished floor level
000047	7.05m	Finished floor level
000048	7.20m	Finished floor level
000049	7.35m	Finished floor level
000050	7.50m	Finished floor level
000051	7.65m	Finished floor level
000052	7.80m	Finished floor level
000053	7.95m	Finished floor level
000054	8.10m	Finished floor level
000055	8.25m	Finished floor level
000056	8.40m	Finished floor level
000057	8.55m	Finished floor level
000058	8.70m	Finished floor level
000059	8.85m	Finished floor level
000060	9.00m	Finished floor level
000061	9.15m	Finished floor level
000062	9.30m	Finished floor level
000063	9.45m	Finished floor level
000064	9.60m	Finished floor level
000065	9.75m	Finished floor level
000066	9.90m	Finished floor level
000067	10.05m	Finished floor level
000068	10.20m	Finished floor level
000069	10.35m	Finished floor level
000070	10.50m	Finished floor level
000071	10.65m	Finished floor level
000072	10.80m	Finished floor level
000073	10.95m	Finished floor level
000074	11.10m	Finished floor level
000075	11.25m	Finished floor level
000076	11.40m	Finished floor level
000077	11.55m	Finished floor level
000078	11.70m	Finished floor level
000079	11.85m	Finished floor level
000080	12.00m	Finished floor level
000081	12.15m	Finished floor level
000082	12.30m	Finished floor level
000083	12.45m	Finished floor level
000084	12.60m	Finished floor level
000085	12.75m	Finished floor level
000086	12.90m	Finished floor level
000087	13.05m	Finished floor level
000088	13.20m	Finished floor level
000089	13.35m	Finished floor level
000090	13.50m	Finished floor level
000091	13.65m	Finished floor level
000092	13.80m	Finished floor level
000093	13.95m	Finished floor level
000094	14.10m	Finished floor level
000095	14.25m	Finished floor level
000096	14.40m	Finished floor level
000097	14.55m	Finished floor level

[illegible]

[illegible]

of 1000 iterations. The procedure for generating a new trial solution is as follows. A new trial solution is generated by randomly selecting a value for each variable in the solution. The value for each variable is selected from the range of values that the variable can take. The new trial solution is then evaluated using the fitness function. If the new trial solution is better than the current best solution, it is accepted as the new best solution. This process is repeated until a stopping criterion is reached. The stopping criterion is reached when the fitness function value does not improve for a certain number of iterations. The final solution is the best solution found during the search process.



REVISED GARDEN SHED AT 1039 OXFORD FALLS ROAD OXFORD FALLS	CHRIS WARD CONSULTING SERVICES Chris Ward Consulting Services 1039 Oxford Falls Road, NW, NW 2103 Phone: 979-2177 Fax: 979-5477	Design: C W Scale: 1/8" = 1'-0"	Date: 12/1/01 Dwg No: A1
Job No: A08-675			

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