

Wollongong Local Planning Panel Assessment Report | 24 August 2021

WLPP Item No.	Item No. 3
DA No.	DA-2021/733
Proposal	Childcare – pergola
Property	Lot 2 Phillips Crescent, MANGERTON
Applicant	Jason Harb – JIH Building Design
Responsible Team	Development Assessment and Certification - City Centre Team (NL)
Prior WLPP meeting	No

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Local Planning Panel – Determination

The proposal has been referred to Local Planning Panel for determination pursuant to clause 2.19(1)(a) of the Environmental Planning and Assessment Act 1979. Schedule 2(1a) of the Local Planning Panels Direction of 30 June 2020 requires that development on land owned by Council be determined by the Panel.

Proposal

The proposal is for construction of a pergola attached to an existing approved and operating centre-based child care facility.

Permissibility

The site is zoned R2 Low density residential pursuant to Wollongong Local Environmental Plan 2009. Centre-based child care facilities are permissible in the zone with development consent.

Consultation

The proposal was notified in accordance with Council's Notification Policy and did not receive any submissions.

Main Issues

Nil

RECOMMENDATION

It is recommended that the proposal be approved subject to the draft conditions at **Attachment 4**.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development:

State Environmental Planning Policies:

- SEPP No. 55 – Remediation of Land
- SEPP (Infrastructure) 2007
- SEPP (Educational Establishments and Child Care Facilities) 2017

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan (WDCP) 2009

Other policies

- Wollongong City Wide Development Contributions Plan 2020
- Wollongong Community Participation Plan

1.2 DETAILED DESCRIPTION OF PROPOSAL

The proposal involves construction of a pergola structure over an existing deck attached to a childcare centre.



Figure 1: Site plan

1.1 BACKGROUND

There are a variety of approvals for a child care / pre-school facility on the site dating back to the 1960s.

The current facility running out of the building is the Peter Pan preschool, a community based, not-for-profit centre providing child care for up to 20 3-5 year-olds and open from 8.30am to 3.50pm daily

Customer service actions

There are no outstanding customer service requests of relevance to the development.

1.2 SITE DESCRIPTION

The site is located at Lot 2 Phillips Crescent, Mangerton and the title reference is Lot 2 DP 546160

The site is an irregular shaped block located on a narrow portion of land between Phillips Crescent to the east and the Princes Motorway to the west, and a single dwelling to the north as illustrated at **Attachment 1**.

The locality is generally characterised by low density residential development.

Property constraints

Council records identify the land as being impacted by the following constraints:

- **Flooding:** The site is identified as being located within an uncategorised flood risk precinct. The proposal does not alter the capacity or operation of the facility and does not pose any increased risk with regard to flooding.

There are no restrictions on the title

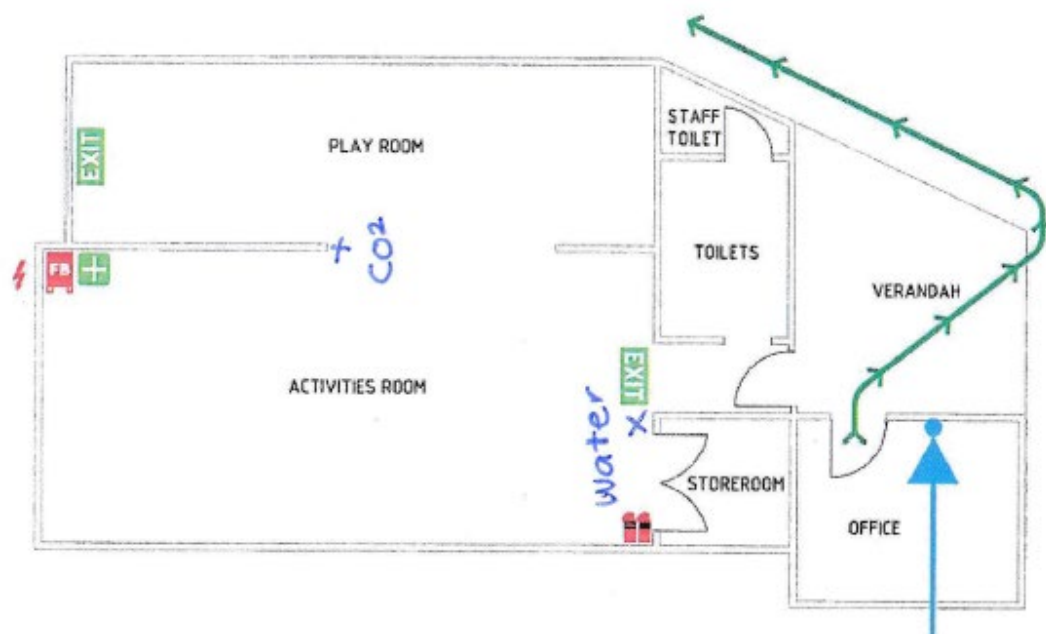


Figure 2: Internal layout

1.3 SUBMISSIONS

The application was notified between 12 July 2021 and 26 July 2021 in accordance with Council's Community Participation Plan 2019. No submissions were received following the notification.

1.4 CONSULTATION

1.4.1 INTERNAL CONSULTATION

None required.

1.4.2 EXTERNAL CONSULTATION

None required

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

N/A

2.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

A desktop audit of previous land uses does not indicate any historic use that would contribute to the contamination of the site. No earthworks are proposed and the proposal does not comprise a change of use and does not relate to any of the land specified in subclause (4) therefore a preliminary investigation is not required. No concerns are raised in regard to contamination as relates to the intended use of the land which is considered suitable for the proposed development under clause 7.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

102 Impact of road noise or vibration on non-road development

The site is adjacent to the Princes Motorway which has a daily traffic volume of greater than 20,000 vehicles and the use is one that would be adversely impacted by road noise or vibration. It is noted that the proposal itself is for a pergola only and does not seek to alter the existing operations of the facility. The facility is approximately 4.5m higher than the road and separated from the road by a concrete sound barrier and vegetation. It is not considered that there is any need to consider acoustic attenuation to be investigated under this application.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES) 2017

23 Centre-based child care facility—matters for consideration by consent authorities

Before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.

In this instance, there are not considered to be any provisions applicable given the application is only for construction of a small pergola over an existing paved area and does not involve any operational changes.

2.1.4 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

centre-based child care facility means—

(a) a building or place used for the education and care of children that provides any one or more of the following—

- (i) long day care,
- (ii) occasional child care,
- (iii) out-of-school-hours care (including vacation care),

(iv) preschool care, or

(b) an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)),

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned RE1 Public Recreation as indicated on **Attachment 2**.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To cater for the development of a wide range of uses and facilities within open spaces for the benefit of the community.*

The proposal is satisfactory with regard to the above objectives.

The land use table permits the following uses in the zone.

*Aquaculture; Boat sheds; Camping grounds; Caravan parks; **Centre-based child care facilities**; Community facilities; Environmental facilities; Environmental protection works; Extensive agriculture; Helipads; Information and education facilities; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Roads; Signage; Take away food and drink premises; Water recreation structures*

The proposal relates to an existing approved centre-based child care facility which is permissible in the zone.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposal does not alter the existing building height. The pergola complies with the height limit.

Clause 4.4 Floor space ratio

The proposal does not comprise any additional gross floor area.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The development is already serviced by electricity, water and sewage services.

Clause 7.3 Flood planning area

The site is not identified as being located at or below the “flood planning level” and does not pose any increased risk with regard to flooding.

2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

None applicable.

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

CHAPTER A1 – INTRODUCTION

8 Variations to development controls in the DCP

Setbacks

(a) The control being varied;

Chapter C5, Section 7.3.2(10): A minimum 2 metre side building line setback is required for any new child care centre in a residential zone or the B4 Mixed Use zone, except where no openings are provided to the subject boundary in which case a minimum 900 millimetre setback may be permitted.

(b) The extent of the proposed variation and the unique circumstances as to why the variation is requested;

The proposal seeks to construct a pergola structure to the boundary. The structure would sit above an existing outdoor paved area and the adjoining boundary is the southern boundary of a residential lot, behind a garage structure that is also built to the boundary.

(c) Demonstrate how the objectives are met with the proposed variations; and

The objectives of the various controls in this section of the DCP are as follows:

- (a) To ensure that child care centres are designed to be compatible with the existing or future planned character of the surrounding locality in terms of siting, scale, building form, height and external appearance.*
- (b) To ensure that the external appearance of any new child care centre is of a high visual quality and which enhances the streetscape character of the building.*

The pergola structure is minor in nature and largely obscured from the public domain. It is in a location that would not be considered to have any detrimental impact to the residential property it adjoins.

(d) Demonstrate that the development will not have additional adverse impacts as a result of the variation.

See discussion at c) above.

The variation

is supported in this instance.

CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT

There are no particular measures that could be implemented to respond to ecologically sustainable development. It is noted the materials used are considered durable.

CHAPTER C5: CHILD CARE CENTRES

There are no particular controls within this chapter or relevance to the proposal not already addressed under the child care planning guidelines other than the setbacks. A zero setback to the pergola structure is proposed and the variation discussed at Chapter A1.

CHAPTER E1: ACCESS FOR PEOPLE WITH A DISABILITY

No changes proposed or required.

CHAPTER E2: CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

No concerns are raised with regard to the principles of CPTED.

CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT

No changes are proposed to access, parking or servicing.

CHAPTER E13 FLOODPLAIN MANAGEMENT

The pergola structure does not raise any concerns with respect to flooding.

CHAPTER E14 STORMWATER MANAGEMENT

Stormwater is proposed to be disposed of to the existing stormwater system.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN

The estimated cost of works is \$33,000 and a levy is not applicable under this plan as the threshold value is \$100,000.

2.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

2.5 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

Conditions of consent are recommended with regard to demolition.

93 Fire safety and other considerations

N/A

94 Consent authority may require buildings to be upgraded

N/A

2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

The proposal is considered acceptable with regard to the likely impacts.

2.7 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site and is not expected to have any negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

2.8 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

No submissions were received.

2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST

The application is not expected to have any adverse environmental impacts and is satisfactory with regard to the zoning, applicable planning controls and the character of the area. No submissions were received following notification.

The site is Community Land, designed as General Community Use under Council's Generic Plan of Management. The proposal for a pergola does not alter the use or operational detail of the existing facility which is a permissible use on land categorised as general community use.

The proposal is considered to be in the public interest.

3 CONCLUSION

This application is satisfactory having regard to the Heads of Consideration under Section S4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies.

No submissions were received, and no referrals were required. The variation to WDCP2009 is considered satisfactory. The proposal is considered appropriate in the context of the existing controls in the R2 zone and on balance, the proposal is considered acceptable in the circumstances.

4 RECOMMENDATION

It is recommended that the development application as illustrated on the plans at **Attachment 3** be approved subject to the draft conditions contained at **Attachment 4**.

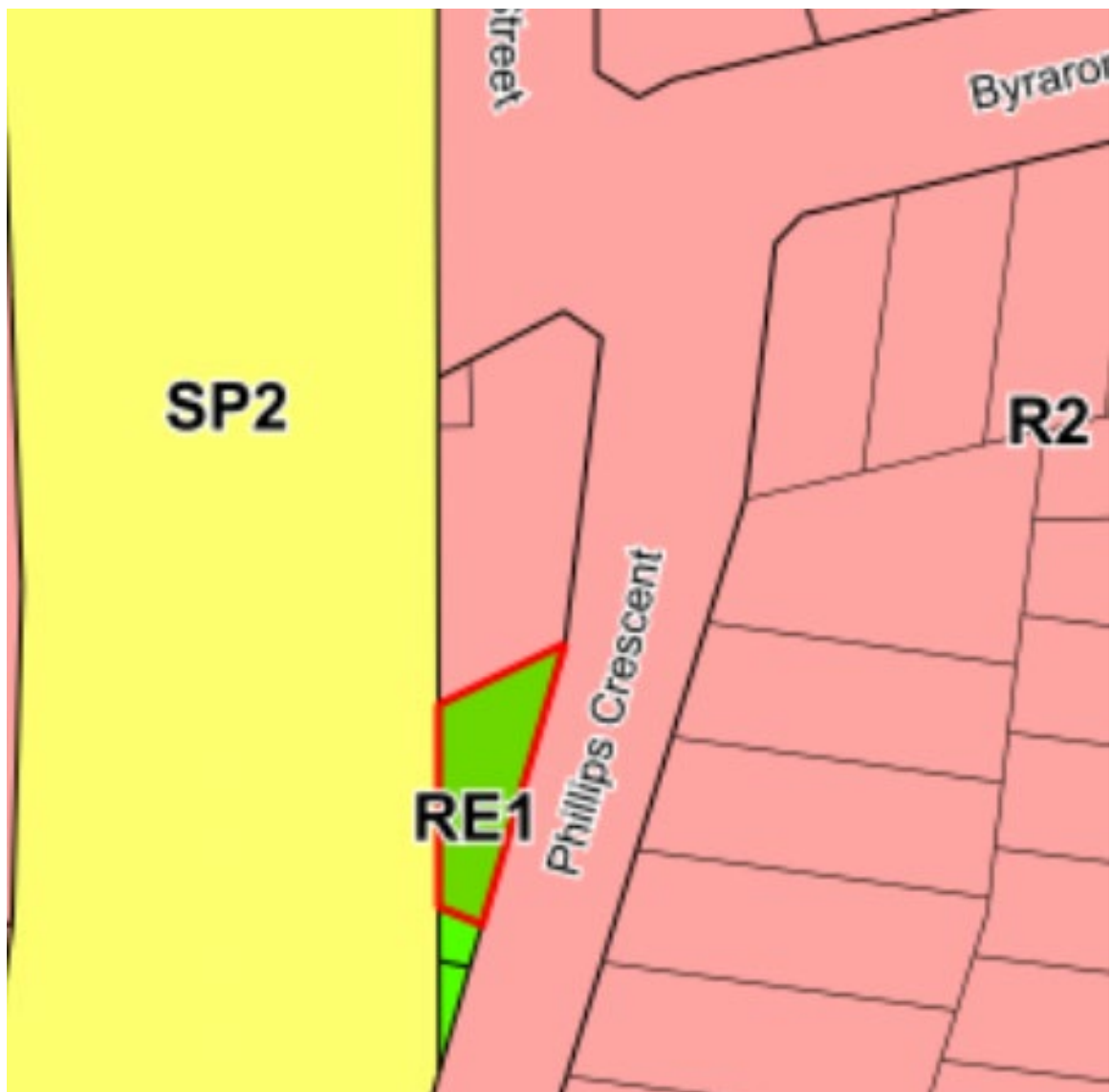
5 ATTACHMENTS

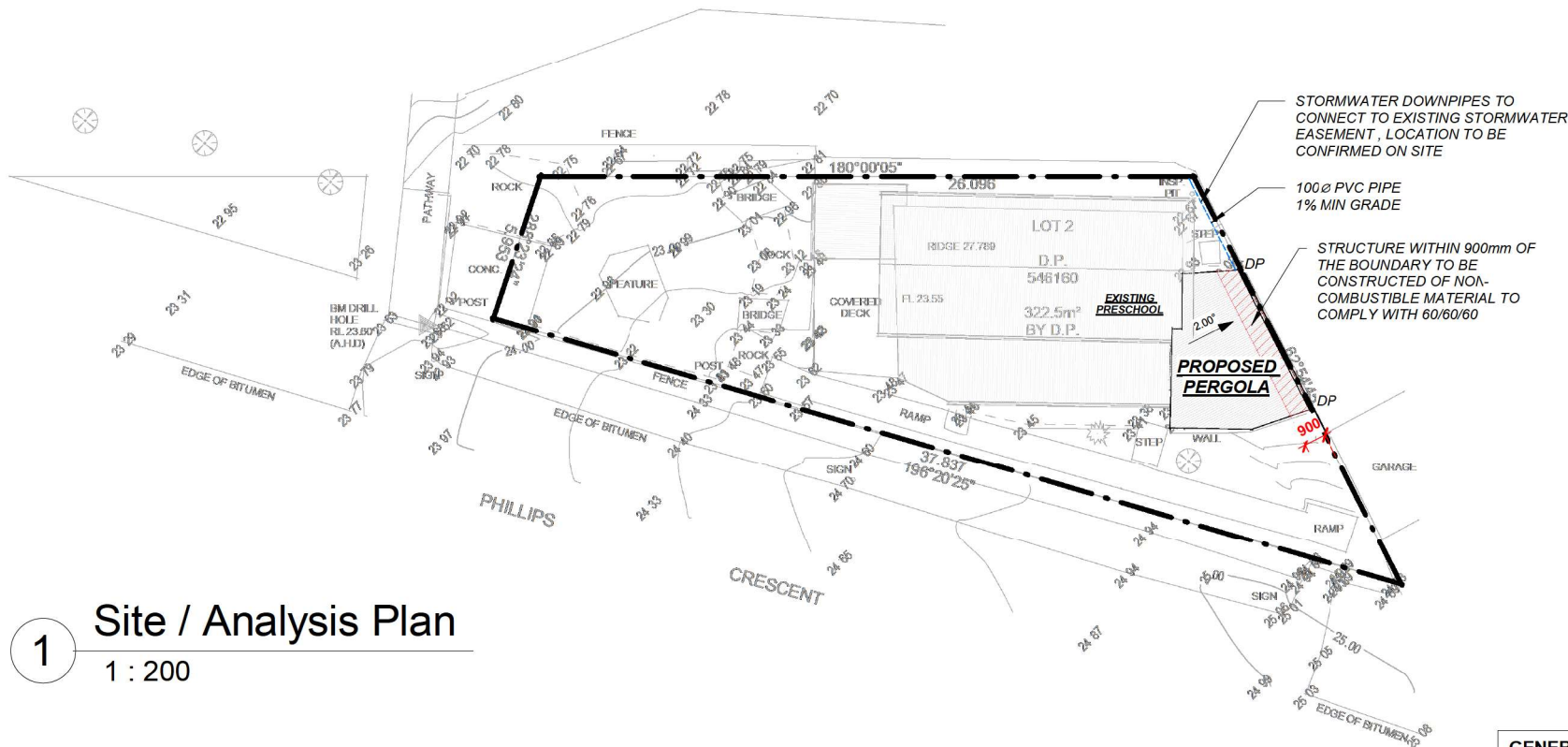
- 1 Aerial photograph
- 2 Wollongong Local Environmental Plan 2009 zoning map
- 3 Plans
- 4 Draft conditions of consent

Attachment 1 – Aerial photograph



Attachment 2 – WLEP zoning map





1

Site / Analysis Plan

1 : 200

**SITE CHECK ALL
DIMENSIONS
BEFORE
CONSTRUCTION**

GENERAL CONSTRUCTION NOTES:-

- ALL DIMENSIONS TO BE VERIFIED ON SITE PRIOR TO COMMENCEMENT OF WORK.
- KITCHEN, BATHROOM, ENSUITE AND LAUNDRY TO OWNERS REQUIREMENTS.
- ALL INTERNAL WALL RECESS FEATURES TO OWNERS DETAIL.
- VERTICAL CONSTRUCTION JOINTS TO BE CONSTRUCTED IN ACCORDANCE WITH THE B.C.A. VOLUME 2, CLAUSE 3.31.8.
- PROVIDE STRUCTURAL PLYWOOD BRACING IN ACCORDANCE WITH A.S. 1684.
- ONLY APPARENT SERVICES HAVE BEEN LOCATED BY SURVEY. NO SEARCH OF PUBLIC UTILITIES OR SUB SURFACE INVESTIGATION HAS BEEN CARRIED OUT TO DETERMINE THE LOCATION OF ANY UNDERGROUND SERVICES SUCH AS TELSTRA, INTEGRAL ENERGY, GAS, WATER OR SEWER. SEE THE ATTACHED DIAL BEFORE YOU DIG CAUTION IN THIS PLAN SPACE. NO INVESTIGATION OF LOCATION OF ANY FOOTINGS OR FOUNDATIONS HAS BEEN CARRIED OUT.
- CONTOURS ARE INTERPOLATED FROM SPOT LEVELS AS SHOWN & SHOULD BE USED AS A GUIDE ONLY. DO NOT RE-INTERPOLATE CONTOURS.

LEGEND:-

(B)	- DOMESTIC WASTE BINS	(WM)*	- WASHING MACHINE
(RWT)*	- RAIN WATER TANK	(CJ)	- BRICK CONTROL JOINT
(HWS)*	- HOT WATER SYSTEM	(MT)	- MAINS WATER TAP
(CL)*	- CLOTHES LINE	(ET)	- ELECTRICITY TURRET
(MB)	- MAIL BOX	(GP)	- GRATED PIT
(EMB)*	- ELECTRICAL METER BOX	(MH)	- MAINTENANCE HOLE
(DP)	- DOWN PIPE	(TP)	- TELSTRA PIT
(SD)	- SMOKE ALARM	(WM)	- WATER METER
*ALL ITEMS TO BE INSTALLED & SUPPLIED IN ACCORDANCE WITH BASIX REQUIREMENTS.		(SL)	- SKY LIGHT

AMENDMENTS:			
No:	DATE:	COMMENTS:	DWN:

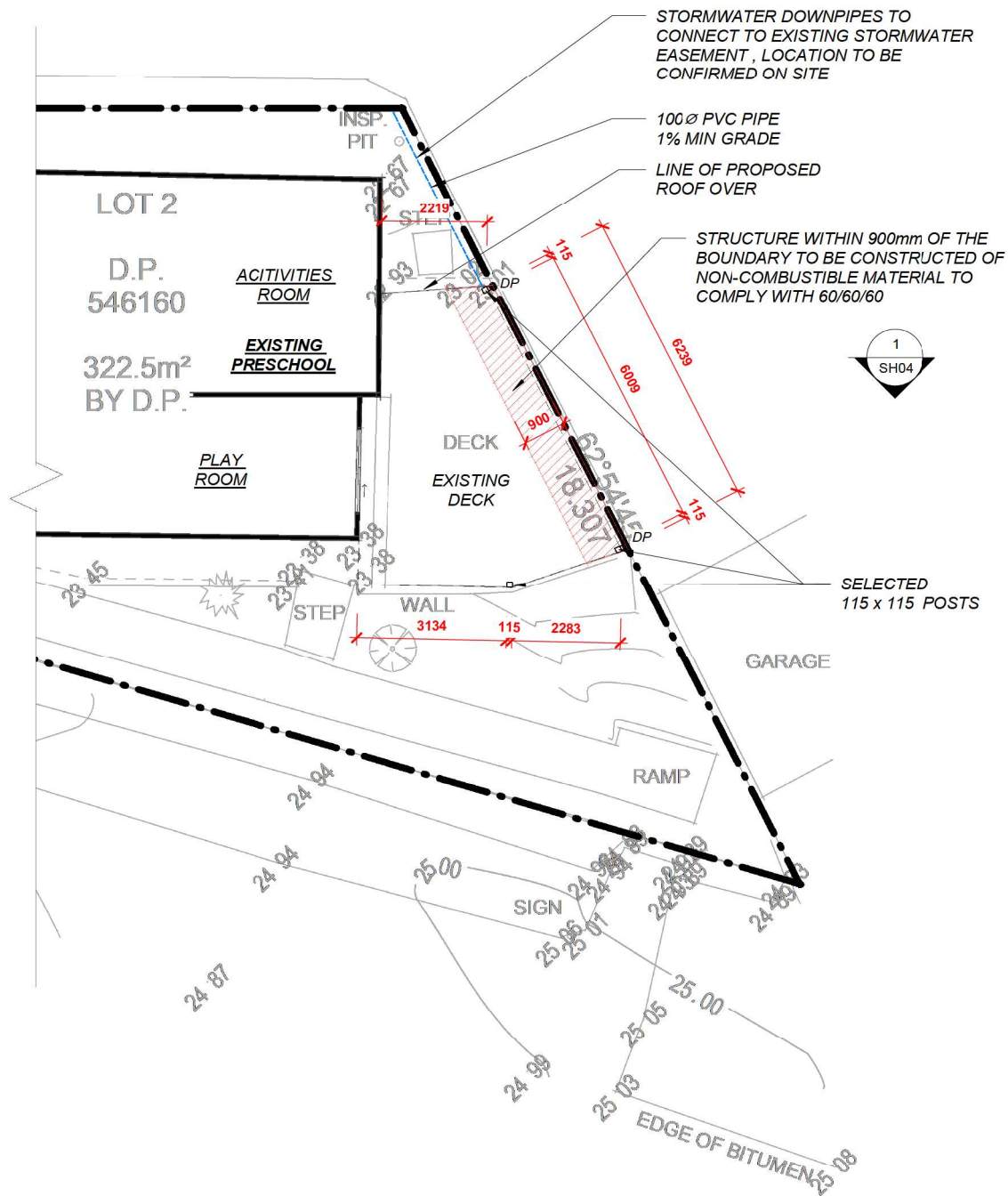
GENERAL NOTES:
- Dimensions in preference to scale
- All ground lines are approximate
- Window & Door sizes as shown- Nominal
- All work to be carried out in accordance with Local Council Codes, the B.C.A., Australian Standards and any relevant authorities
- Wind Rating refer to framing manufacturer's specification

DRAWING: SITE / ANALYSIS PLAN
PROJECT: PROPOSED PERGOLA
SUBJECT: DEVELOPMENT APPLICATION

CLIENT: ANCRO CONSTRUCTIONS
SITE: LOT 2 DP 546160, 2 PHILLIPS CRESCENT, MANGERTON, 2500, NSW

JOB No.: 00262021
DATE: 13.08.21
DRAWN: LM

BUILDING DESIGNS	SCALE: As indicated
ABN: 37 164 783 108 PH: 4295 4433 Suite 14, 2 Memorial Dr, Shellharbour City Centre © 2014 JIH BUILDING DESIGN PTY LTD	PAGE No.: SH01



GENERAL CONSTRUCTION NOTES-

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NOTE:

BUILDING WORK - COMPLIANCE WITH THE BUILDING CODE OF AUSTRALIA
ALL BUILDING WORK MUST BE CARRIED OUT IN COMPLIANCE WITH THE PROVISIONS OF THE BUILDING CODE OF AUSTRALIA.

STORMWATER CONNECTION DETAILS ARE TO BE PROVIDED AND DEMONSTRATE THAT THE STORMWATER AND DRAINAGE SYSTEM SHALL BE CONSTRUCTED AND CONNECTED TO COUNCIL'S PIPED SYSTEM/STREET GUTTER IN ACCORDANCE WITH COUNCIL'S DCP.

! SITE CHECK ALL DIMENSIONS BEFORE CONSTRUCTION

LEGEND:-

(B)	- DOMESTIC WASTE BINS	(WM)*	- WASHING MACHINE
(RWT)*	- RAIN WATER TANK	(CJ)	- BRICK CONTROL JOINT
(HWS)*	- HOT WATER SYSTEM	(MT)	- MAINS WATER TAP
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(SD)	- SMOKE ALARM	(WM)	- WATER METER
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AMENDMENTS:

No:	DATE:	COMMENTS:	DWN:

GENERAL NOTES:

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DRAWING: FLOOR PLAN

PROJECT: PROPOSED PERGOLA

SUBJECT: DEVELOPMENT APPLICATION

CLIENT: ANCRO CONSTRUCTIONS

SITE: LOT 2 DP 546160,
2 PHILLIPS CRESCENT,
MANGERTON, 2500, NSW

JOB No.: 00262021

DATE: 13.08.21

DRAWN: LM

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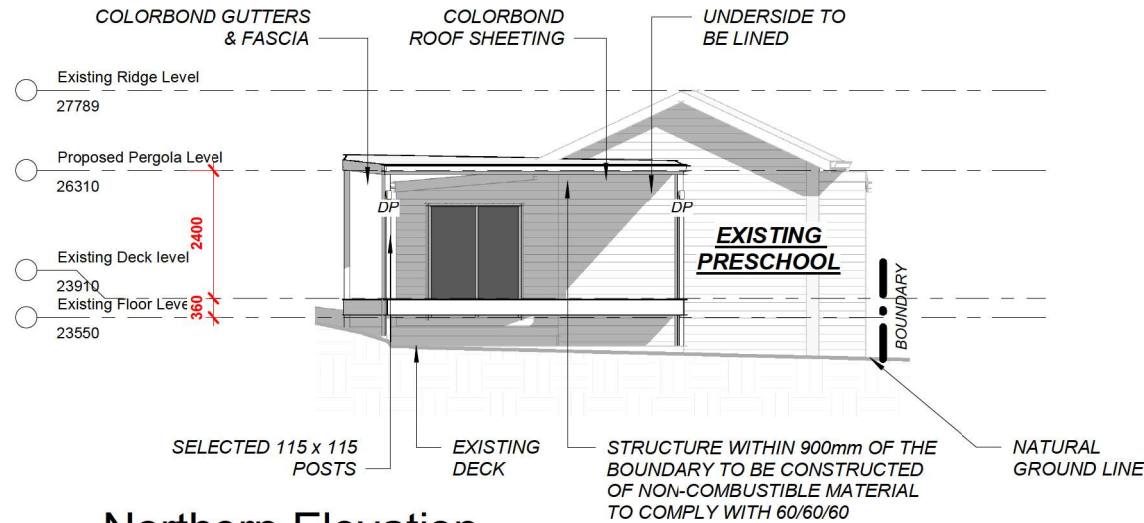
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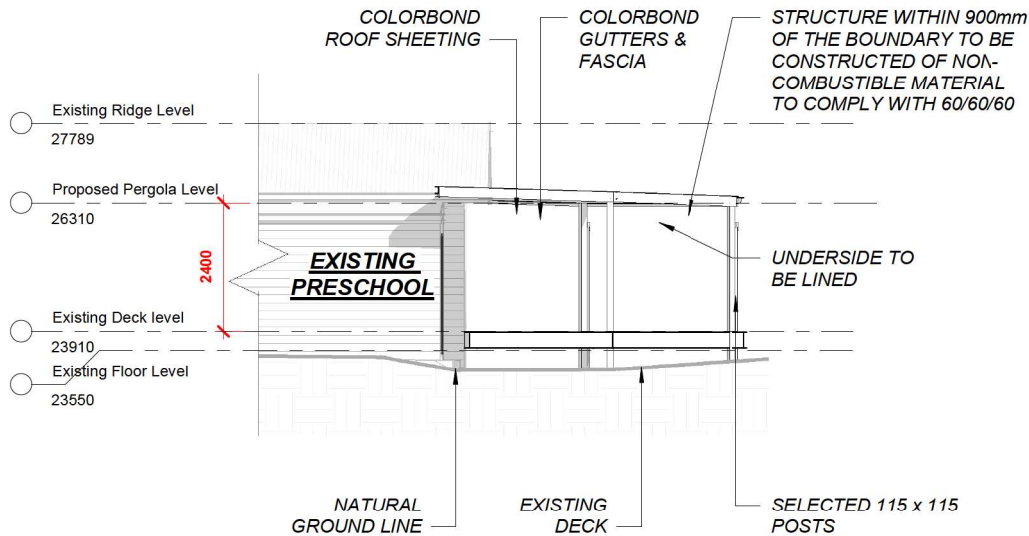
1 Northern Elevation
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! SITE CHECK ALL DIMENSIONS BEFORE CONSTRUCTION

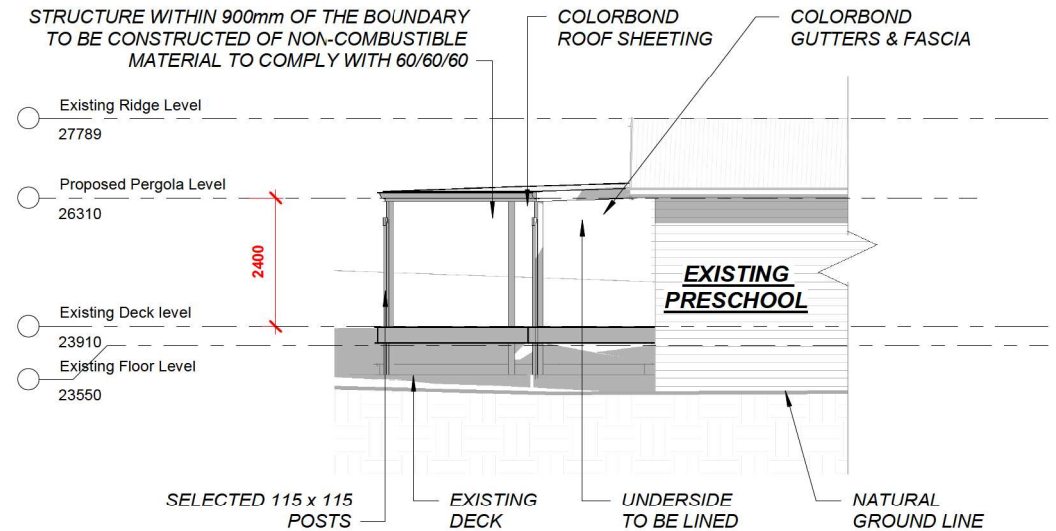
NOTE:

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2 Eastern Elevation
1 : 100



3 Western Elevation
1 : 100

AMENDMENTS:

No.	DATE	COMMENTS	DWN:

GENERAL NOTES:

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DRAWING: ELEVATIONS

PROJECT: PROPOSED PERGOLA

SUBJECT: DEVELOPMENT APPLICATION

CLIENT: **ANCRO CONSTRUCTIONS**

SITE: **LOT 2 DP 546160,
2 PHILLIPS CRESCENT,
MANGERTON, 2500, NSW**

JOB No.: **00262021**

DATE: **13.08.21**

DRAWN: **LM**

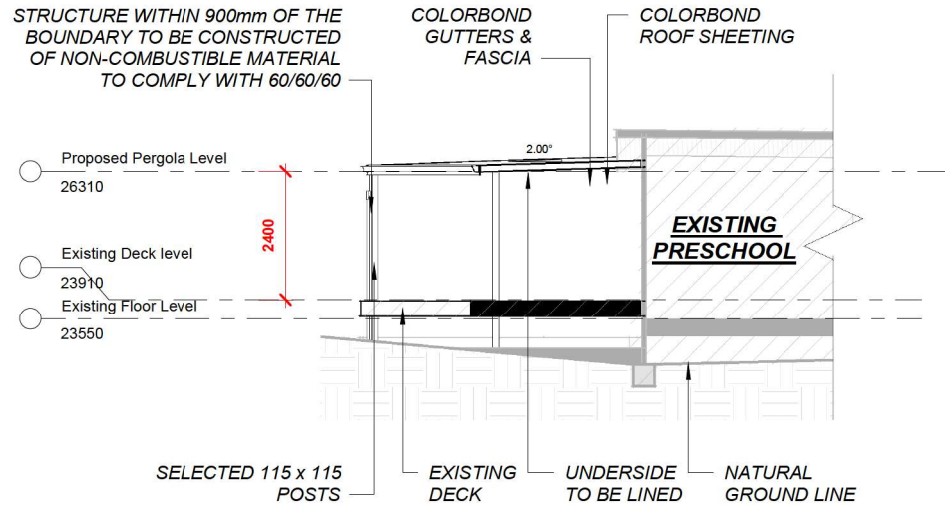
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NOTE:

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AMENDMENTS:				GENERAL NOTES:	DRAWING: SECTIONS	CLIENT: ANCRO CONSTRUCTIONS	JOB No.: 00262021		SCALE:
No:	DATE:	COMMENTS:	DWN:						
				<ul style="list-style-type: none"> - Dimensions in preference to scale - All ground lines are approximate - Window & Door sizes as shown- Nominal - All work to be carried out in accordance with Local Council Codes, the B.C.A., Australian Standards and any relevant authorities - Wind Rating refer to framing manufacturer's specification 	PROJECT: PROPOSED PERGOLA SUBJECT: DEVELOPMENT APPLICATION	SITE: LOT 2 DP 546160, 2 PHILLIPS CRESCENT, MANGERTON, 2500, NSW	DATE: 13.08.21 DRAWN: LM	ABN: 37 164 783 108 PH: 4295 4433 Suite 14, 2 Memorial Dr, Shellharbour City Center © 2014 JIH BUILDING DESIGN PTY LTD	1 : 100 PAGE No.: SH04

Attachment 4 – Draft conditions of consent

Approved Plans and Specifications

- 1 The development shall be implemented substantially in accordance with the details and specifications set out on Job No 00262021 Drawing page SH01 to SH04 dated 13 August 2021 prepared by JIH Building Designs and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

General Matters

- 2 **Building Work - Compliance with the Building Code of Australia**
All building work must be carried out in compliance with the provisions of the Building Code of Australia.
- 3 **Construction Certificate**
A Construction Certificate must be obtained from Council or a Registered Certifier prior to work commencing.

A Construction Certificate certifies that the provisions of Clauses 139-147 of the Environmental Planning and Assessment Regulation 2000 have been satisfied, including compliance with all relevant conditions of Development Consent and the Building Code of Australia.

Note: The Certifier must cause notice of its determination to be given to the consent authority, and to the council, by forwarding to it, within two (2) days after the date of the determination, the plans and documentation referred to in clause 142 (2) of the Environmental Planning and Assessment Regulation 2000.
- 4 **Occupation Certificate**
An Occupation Certificate must be issued by the Principal Certifier prior to occupation or use of the development. In issuing an Occupation Certificate, the Principal Certifier must be satisfied that the requirements of section 6.9 of the Environmental Planning and Assessment Act 1979, have been complied with as well as all of the conditions of the Development Consent.

Prior to the Commencement of Works

- 5 **Appointment of Principal Certifier**
Prior to commencement of work, the person having the benefit of the Development Consent and a Construction Certificate must:
 - a Appoint a Principal Certifier and notify Council in writing of the appointment irrespective of whether Council or an accredited private certifier is appointed; and
 - b notify Council in writing of their intention to commence work (at least two days notice is required).
The Principal Certifier must determine when inspections and compliance certificates are required.
- 6 **Sign – Supervisor Contact Details**
Before commencement of any work, a sign must be erected in a prominent, visible position:
 - a stating that unauthorised entry to the work site is not permitted;
 - b showing the name, address and telephone number of the Principal Certifier for the work; and
 - c showing the name and address of the principal contractor in charge of the work site and a telephone number at which that person can be contacted at any time for business purposes.
This sign shall be maintained while the work is being carried out and removed upon the completion of the construction works.

- 7 **Enclosure of the Site**
The site must be enclosed with a suitable security fence to prohibit unauthorised access, to be approved by the Principal Certifier. No building work is to commence until the fence is erected.

During Demolition, Excavation or Construction

- 8 **Piping of Stormwater to Existing Stormwater Drainage System**
Stormwater for the land must be piped to the existing stormwater drainage system.
- 9 **Restricted Hours of Construction Work**
The developer must not carry out any work, other than emergency procedures, to control dust or sediment laden runoff outside the normal working hours, namely, 7.00 am to 5.00 pm, Monday to Saturday, without the prior written consent of the Principal Certifier and Council. No work is permitted on public holidays or Sundays.

Allowable construction activity noise levels must be within the limits identified in the NSW EPA Interim Construction Noise Guidelines (ICNG) July 2009. ICNG are also applied for blasting, rock hammer and drilling, external plant and equipment.

<https://www.environment.nsw.gov.au/resources/noise/09265cng.pdf>

Any request to vary these hours shall be submitted to the **Council** in writing detailing:

- a the variation in hours required (length of duration);
- b the reason for that variation (scope of works);
- c the type of work and machinery to be used;
- d method of neighbour notification;
- e supervisor contact number;
- f any proposed measures required to mitigate the impacts of the works.

Note: The developer is advised that other legislation may control the activities for which Council has granted consent, including but not limited to, the Protection of the Environment Operations Act 1997.

- 10 **Provision of Waste Receptacle**
The developer must provide an adequate receptacle to store all waste generated by the development, pending disposal. The receptacle must be regularly emptied and waste must not be allowed to lie or accumulate on the property other than in the receptacle. Consideration should be given to the source separation of recyclable and re-usable materials.