

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA21/0623
Proposed development:	Construction of Two-Storey Centre-Based Child Care Facility Catering for 104 x Children with Basement Car Parking and Associated Site Works
Property address:	32 Park Avenue, KINGSWOOD NSW 2747 31 Park Avenue, KINGSWOOD NSW 2747
Property description:	Lot 16 DP 29528 Lot 15 DP 29528
Date received:	24 August 2021
Assessing officer	Lauren Van Etten
Zoning:	SEPP WSA - Affected by Obstacle Limitation SEPP WSA - Affected by Wildlife Buffer Zone Zone R3 Medium Density Residential - LEP 2010
Class of building:	Class 9b
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for the construction of a two storey child care centre at 31 & 32 Park Avenue, Kingswood. The subject site is zoned R3 – Medium Density Residential under the provisions of Penrith Local Environmental Plan 2010. The proposal is a permissible land use in the R3 zone with consent.

Key issues identified with the application as initially lodged include:

- The 1-1.5m of fill and retaining walls proposed within the front setback exacerbated the apparent bulk and scale as viewed from the streetscape.
- The extensive ramping within the front setback was also incompatible with the character of the area where front setbacks are primarily landscaped.
- The basement substantially encroached upon the required rear setback, preventing a canopy corridor.
- The 1m eastern side setback provided inadequate space for landscape screening to the adjoining townhouses.
- The first-floor footprint was larger than the ground floor, contrary to the residential character of the area where smaller upper floors are provided.
- The 27m length was larger than typical buildings within the area and overbearing from adjoining properties and the park.
- The shade sails were visually prominent from adjoining properties and contrary to the character of the area.
- Excess space within the lobby and storage areas increased the overall building size.
- The number of shade sails proposed was considered excessive and out of character with the surrounding area.

- Impractical planter boxes were proposed on the upper floor that add to the bulk and scale.
- The scale of softplay area proposed did not create a cool outdoor environment or reduce summer heat contrary to Clause 7.4 of *Penrith Local Environmental Plan 2010*.
- The minimal articulation and blank walls did not relate to or contribute to the character of the area.
- The composition proposed along all elevations exacerbated the vertical emphasis, bulk and scale.
- Adverse overshadowing was likely to the adjoining town houses to the east in midwinter.
- The upper floor outdoor play area resulted in potential overlooking.
- The acoustic report contained inadequate detail regarding waste collection impacts.
- Insufficient information was provided to address State Environmental Planning Policy 55 Remediation of Land is required.
- The access ramp gradient was non-compliant with AS2890.1
- The On-site Stormwater Detention design was non-compliant with Council's Stormwater Drainage Specification for Building Developments Policy.
- The evacuation plan and flood study were insufficient relative to Clause 5.21 Flood Planning of *Penrith Local Environmental Plan 2010*.

Council staff issued an initial request for information letter in August 2021. The applicant was advised by letter to reduce capacity in order to address the matters raised. Further letters were issued by Council staff in December 2021 and January 2022 in response to amendments received in December 2021. Meetings were also held regularly during the assessment period.

Key amendments made, and documentation provided, by the applicant that resolved the issues raised included:

- On-site collection was removed from the basement, opting for private collection on-street. This reduced the clearance height within the basement to 2.6m and removed the need for an elevated finished floor level, excessive fill, retaining walls and ramping. These changes allowed for a more traditional landscaped front setback treatment with greater deep soil opportunities, minimal ramping and an appropriate response to topography.
- A reduction in capacity enabled the provision of adequate rear and side setbacks.
- The upper floor was reduced to remove the cantilevered component and step the built form along all sides, while also reducing the building length.
- Reconfiguration reduced the number of shade sails, utilising awnings and canopy cover instead. A condition can reduce this moreso while retaining adequate shade in the outdoor play areas.
- Excess space within the lobby and storage areas was removed to reduce the building's massing and increase setbacks.
- Deep soil landscaped setbacks were provided along all boundaries.
- The scale of softplay area was reduced to create a cool outdoor environment and reduce summer heat with more groundcover and turf instead.
- Articulation measures were incorporated to counter the vertical scale with a horizontal emphasis including delineating the upper and lower floors via material differentiation, corbel lines, traditional windows, recessing darker colours, and a greater variety of materials.
- A greater eastern setback was provided to the upper floor to mitigate adverse overshadowing.
- The upper floor outdoor play area, as revised, include 1.8m glazed acoustic treatment to mitigate any potential overlooking. The revised 3.3-5m side setback also reduces likely privacy impacts.
- The acoustic, contamination, flooding and stormwater reports were updated and their associated recommendations were incorporated into the proposal. Council's Technical Officers found the amended proposal to be satisfactory.

Pursuant to the requirements of Council's Community Participation Plan, the application was notified and advertised to adjoining and nearby residences and publicly exhibited from 6 September 2021 to 20 September 2021. No submissions were received.

Sydney Trains were referred the application regarding the proximity of the site to the railway lines opposite and concurrence was granted in accordance with State Environmental Planning Policy (Infrastructure) 2007.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval.

Site & Surrounds

The subject site is legally described as Lot 15 and Lot 16 DP 29528, commonly referred to as 31 and 32 Park Avenue Kingswood, respectively.

Location: The site is located on the northern side of Park Avenue, approximately 230sqm from its intersection with Walter Street. The site is situated east of Kingswood Railway Station, being approximately 700m walking distance from the Railway Station.

Site Context: The surrounding area consists of predominately residential development, comprising a mix of low density (single cottages) and medium density development (townhouses, dual occupancies). The site is located within a pocket of land zoned R3 Medium Density Residential, which acts as a transition area from higher density development located around the Kingswood Railway Station. To the immediate north, north-east and east of the site are townhouse developments. Adjoining the site to the west is a Council owned public park with a playground, and to the south of the site is the Railway line which is screened by an established hedge and fencing.

Site Properties: The site is regular in shape with a total land area of 1466m². The site has a 31m frontage to Park Avenue, lot depth of 52m (western boundary) and 44m (eastern boundary), and rear width of 30m. The site slopes from the rear to the front (north to south) with a total cross fall of approximately 2.5m. The land is partially affected by local flooding. Overhead power lines exist along the frontage of the site.

Proposal

The proposed development, as amended, includes:

- Construction of a two storey child care centre including basement parking, landscaping and associated drainage works;
- Standard hours of operation from 7am to 6pm Monday to Friday are proposed with staff 'shoulder times' of 6:30am to 6:30pm;
- 103 children with the occupancy rate of each age group:
 - 0-2 years: 18 children
 - 2-3 years: 20 children
 - 3-6 years: 65 children
- Up to 16 staff;
- 27 car parking spaces, including one accessible space;
- One double width driveway to the basement;
- Stormwater drainage is proposed via a pit and pipe system and on-site detention (OSD) tank;
- An acoustic fence 1.8m high along side and rear boundaries and along the upper floor outdoor play areas. The acoustic fence along the boundaries is to be of solid form (metal panels or acoustic equivalent) and on the upper floor they are to be 1.8m glazed panels (minimum thickness of 6.38 mm laminated).

Note: Demolition of existing structures will occur under a separate approval and no signage is proposed.

Pre-Lodgement Background

In 2021, a pre-lodgement meeting was held for a child care centre for 120 children (PL21/0029). Key issues discussed related to character and amenity impacts, hardstand areas/site coverage, landscape buffers, stormwater, and acoustic impacts. The design has since changed to address the pre-lodgement advice. The

revised design has reduced the proposed capacity to 103 children to reduce bulk, scale, amenity and parking/traffic impacts while simultaneously increasing deep soil opportunities. The reduced built form, coupled with the alternative architectural treatment has addressed character concerns. Stormwater and acoustic impacts have also been addressed.

Request for Information

21/9/21 - Request for information regarding character, setbacks, amenity, noise, land contamination, parking, drainage, traffic and waste.

1/11/21 - Additional Information submitted.

23/11/21 - Further request for information regarding overshadowing, shade for the children, inconsistencies in plans, drainage and parking.

6/1/22 & 13/1/22 - Additional Information received.

Education and Care Services National Regulations

It is noted that the proposed 16 staff is based on the requirements of the Regulations, more specifically as detailed in Part 4.4, Clause 123:

- (a) for children from birth to 24 months of age—1 educator to 4 children; (therefore 5 staff are required for the 18 children proposed);
- (b) for children over 24 months and less than 36 months of age—1 educator to 5 children; (therefore 4 staff are required for 20 children proposed);
- (c) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children; (7 staff are required for the 65 children proposed); and
- (d) for children over preschool age, 1 educator to 15 children.

Plans that apply

- Local Environmental Plan 2010
- Development Control Plan 2014
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 4.15 - Evaluation**

The proposed development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

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- **Section 7.12 - Developer Contributions**

The site and proposal are subject to Penrith City Council's City Wide Section 7.12 Development Contributions Plan for Non-Residential Development. Based on the applicable rate under this Development Contributions Plan, the following development contribution applies to the proposal:

$$1\% \times \$2,801,111.50 \text{ (cost of construction works)} = \$28,011.115$$

A recommended condition of consent has been recommended in this regard.

Section 4.15(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

An assessment against the relevant criteria under State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 has been undertaken and a detailed discussion is provided below.

Clause 22 Centrebased child care facility- Concurrence of Regulatory Authority required for certain development

The proposal complies with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations. The proposal also complies with the outdoor space requirements under regulation 108 (outdoor unencumbered space requirements). The proposal provides 347m² of indoor unencumbered space (334m² is required) and provides 721m² of unencumbered outdoor space (721m² is required). Accordingly, in this instance Clause 22 does not apply to the proposal and concurrence of the Regulatory Authority is not required.

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

Clause 23 requires that before determining a development application for development for the purpose of a centrebased child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline. An assessment was undertaken against the provisions of the Child Care Planning Guideline dated August 2017 and a detailed discussion is summarized below.

Child Care Planning Guideline (August 2017)

The proposal is consistent with Part 2 Design quality principles and considerations in Part 3 as detailed below.

Child Care Planning Guideline August 2017		
Section	Objectives	Proposed

<p>3.1 Site Selection and Location</p>	<ul style="list-style-type: none"> • <i>To ensure that appropriate zone considerations are assessed when selecting a site;</i> • <i>To ensure that the site selected for a proposed child care facility is suitable for the use.</i> • <i>To ensure the site for child care facilities are appropriately located;</i> • <i>To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.</i> 	<ul style="list-style-type: none"> • The proposed use is a permitted land use in the zone with Council consent, • The site is considered suitable for the development for the following reasons: • The site is not identified as being affected by mainstream flooding, land slope, bushfires, coastal hazards and other environmental hazards. • The site is not located along a major collector road. • Located near a school, parks and neighbourhood shops, the proposal is near compatible social uses. • The site, which has an area of 1466m² is of a sufficient size and width to accommodate the proposed centre-based child care facility. • The application has demonstrated that the site is suitable in respect to environmental impacts, specifically acoustic, privacy and excavation impacts, and does not incur risks from environmental hazards i.e. contamination.
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<p>3.2 Local Character, Streetscape and the Public Domain Interface</p>	<ul style="list-style-type: none"> • <i>To ensure that the child care facility is compatible with the local character and surrounding streetscape;</i> • <i>To ensure clear delineation between the child care facility and public spaces;</i> • <i>To ensure front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.</i> 	<ul style="list-style-type: none"> • The proposal provides an appropriate design response within the R3 Medium Density Residential zone, and contributes to the local area by being designed in character with the locality and existing streetscape. • The pitched, recessive roof form, stepped upper floor and articulation features are reflective of the residential character of the street. • The proposed palette of materials are compatible with the style of residential properties seen in the wider area, as is the recessive use of dark colours. • The proposal complies with the prescribed height control under the LEP and ample building setbacks have been provided for good separation. • Regarding the side setbacks, the centre's capacity was reduced from 116 to 103 children in order to scale back the building and provide greater setbacks to allow for adequate landscaping to reflect the character of the garden suburb with canopy trees. • The proposed setback and building design allows for surveillance of the street. • Clear delineation between the facility and the street is provided, along with a clear access path from the street to the legible entry. • The proposed front setback results in opportunities for landscaping. • The location and design of parking areas (within a basement) is consistent with the character of the locality in which parking areas are located predominately behind the primary building line.
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<p>3.3 Building Orientation, Envelope and Design</p>	<ul style="list-style-type: none"> • <i>To respond to the streetscape, while optimising solar access and opportunities for shade;</i> • <i>To ensure that child care facilities are designed to be accessible by all potential users;</i> • <i>To ensure that buildings are designed to create safe environments for all users..</i> • <i>Minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath</i> 	<ul style="list-style-type: none"> • The built form responds to the predominant built form, height and landscaped setbacks in the area to provide an acceptable streetscape, consistent with the transitioning area. • The proposal responds to the site with minimal fill and sensitive design to minimise overshadowing to the neighbouring residential properties. Refer to the earthworks clause of the LEP discussion for further details. • The proposed 6m setback within the front portion of the lot provides appropriate separation to the streetscape, with minor encroachments only • The proposed tree species within the front and rear yards are likely to result in shade opportunities. • The facility is oriented to the north, including the external play area to maximise solar access. • Where possible, play equipment is located away from common boundaries, noting acoustic fencing is situated along the site’s boundaries. • The Operational management mechanisms within the Acoustic report will further manage outdoor play times and the number of children accessing outdoor areas at any one time to minimise acoustic impacts. • An Access Report was submitted and the design will be accessible by all potential users. The building cannot be lowered further following significant investigation of options in order to appropriately balance OSD and the building positioning. Access can, however, still be achieved via the ramps proposed. • Additional room is provided for landscaping to soften the necessary ramping. Ramping in the revised design is considered minimal.
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<p>3.4 Landscaping</p>	<ul style="list-style-type: none"> • <i>To provide landscape design that contributes to streetscape and amenity.</i> • <i>Use the existing landscape where feasible to provide a high quality landscaped area by:</i> <ul style="list-style-type: none"> - <i>reflecting and reinforcing the local context</i> - <i>incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping</i> 	<ul style="list-style-type: none"> • The submitted Landscape Plan needs to be amended to reflect the amended building design. An appropriate condition of consent has been recommended in this regard. • Canopy trees are included within the front, side and rear setbacks. A recommended condition will ensure they are of a species that will reach a mature height of 10 metres to soften the built form and contribute to the streetscape and amenity. • Species detrimental to children with allergies have been removed. • The landscape plan will also alter so that proposed trees will be located a minimum setback of 1.2m-1.5m to ensure root growth does not disrupt adjoining properties. • In considering the existing streetscape and future desired character, this landscaping is sufficient to screen the proposal and improve the amenity of the site via high quality landscaping that incorporates local vegetation.
<p>3.5 Visual and Acoustic Privacy</p>	<ul style="list-style-type: none"> • <i>To protect the privacy and security of children attending the facility;</i> • <i>To minimise impacts on privacy of adjoining properties;</i> • <i>To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments.</i> 	<ul style="list-style-type: none"> • The proposed development has been designed to minimise direct overlooking of indoor rooms and outdoor play spaces from public areas via appropriate site and building layout, blank walls for sections of the side boundaries, locating suitable windows and doors and the use of fencing and landscape works to side boundaries. • The upper floor obscure glazing proposed is 1.8m in height to minimise overlooking. • The development proposes appropriate fencing along the site's side boundaries to minimise acoustic impacts to neighbouring properties in addition to the measures in the operational management mechanisms within the acoustic report aforementioned.

3.6 Noise and Air Pollution	<ul style="list-style-type: none"> • <i>To adopt design solution to minimise the impacts of noise on the children;</i> • <i>To ensure that outside noise levels on the facility are minimised to acceptable levels</i> 	<ul style="list-style-type: none"> • The subject site is not located near major roads, beneath flight paths. • The site is located opposite railways lines to the south. The play areas have been sited to the north. • Appropriate design measures have been undertaken including appropriate setbacks, use of landscaping and acoustic fencing to minimise acoustic impacts to neighbouring properties. • The site is not located close to any industrial areas and is therefore not exposed to major sources of air pollution.
3.7 Hours of Operation	<ul style="list-style-type: none"> • <i>Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays.</i> 	<ul style="list-style-type: none"> • Proposed operating hours are considered appropriate, being Monday to Friday 7:00am to 6:00pm.
3.8 Traffic, Parking and Pedestrian Circulation	<ul style="list-style-type: none"> • <i>To provide parking that satisfies the needs of users and demand generated by the centre;</i> • <i>To provide vehicle access from the street in a safe environment that does not disrupt traffic flows;</i> • <i>To provide a safe and connected environment for pedestrians both on and around the site.</i> 	<ul style="list-style-type: none"> • Under Penrith Development Control Plan 2014, child care centres are required to provide 1 space per 10 children, plus 1 space per employee. • The development proposes to employ 16 staff and provide for 103 children requiring 27 car spaces be provided on site. The proposal complies with this requirement with 27 parking bays being provided. Refer to DCP discussion. • A separate pedestrian access path is provided from the street to the main entry and is also provided within the basement parking area to the lift.

State Environmental Planning Policy (Infrastructure) 2007

Rail Corridor Excavation

Clause 85 of State Environmental Planning Policy (Infrastructure) 2007 relates to excavation near a railway corridor and states:

85 Development adjacent to rail corridors

- (1) *This clause applies to development on land that is in or adjacent to a rail corridor, if the development—*
- (a) *is likely to have an adverse effect on rail safety, or*
 - (b) *involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
 - (c) *involves the use of a crane in air space above any rail corridor, or*
 - (d) *is located within 5 metres of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.*

Note—

Clause 45 also contains provisions relating to development that is within 5 metres of an exposed overhead electricity power line.

- (2) *Before determining a development application for development to which this clause applies, the consent authority must—*
- (a) *within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and*
 - (b) *take into consideration—*
 - (i) *any response to the notice that is received within 21 days after the notice is given, and*
 - (ii) *any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*
- (3) *Land is adjacent to a rail corridor for the purpose of this clause even if it is separated from the rail corridor by a road or road related area within the meaning of the Road Transport Act 2013.*

Clause 86 of State Environmental Planning Policy (Infrastructure) 2007 relates to excavation within or near a railway corridor and states:

86 Excavation in, above, below or adjacent to rail corridors

- (1) *This clause applies to development (other than development to which clause 88 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land—*
- (a) *within, below or above a rail corridor, or*
 - (b) *within 25m (measured horizontally) of a rail corridor, or*
 - (b1) *within 25m (measured horizontally) of the ground directly below a rail corridor, or*
 - (c) *within 25m (measured horizontally) of the ground directly above an underground rail corridor.*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must—*
- (a) *within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and*
 - (b) *take into consideration—*
 - (i) *any response to the notice that is received within 21 days after the notice is given, and*
 - (ii) *any guidelines issued by the Secretary for the purposes of this clause and published in the Gazette.*
- (3) *Subject to subclause (5), the consent authority must not grant consent to development to which this clause applies without the concurrence of the rail authority for the rail corridor to which the development application relates.*
- (4) *In deciding whether to provide concurrence, the rail authority must take into account—*
- (a) *the potential effects of the development (whether alone or cumulatively with other development or proposed development) on—*
 - (i) *the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
 - (ii) *the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
 - (b) *what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*
- (5) *The consent authority may grant consent to development to which this clause applies without the concurrence of the rail authority concerned if—*

- (a) the rail corridor is owned by or vested in ARTC or is the subject of an ARTC arrangement, or*
- (b) in any other case, 21 days have passed since the consent authority gave notice under subclause (2)(a) and the rail authority has not granted or refused to grant concurrence.*

The application was referred to Sydney Trains and required concurrence. A response was received as follows:

"I refer to Council's Referral requesting concurrence for the above development application in accordance with Clause 86 of the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).

Council is advised that Sydney Trains, via Instruments of Delegation, has been delegated to act as the rail authority for the North Shore & Western Line heavy rail corridor, including infrastructure, and to process the concurrence for this development application.

As such, Sydney Trains advises that the proposed development has been assessed in accordance with the requirements of Clause 86(4) of the Infrastructure SEPP being:

- a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:*
 - i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
 - ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
- b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*

Sydney Trains has taken the above requirements into consideration and has decided to grant its concurrence to the development proposed in development application DA21/0623 subject to Council imposing the operational conditions as written in Attachment A that will need to be complied with."

The conditions from Sydney Trains have been included within the recommended conditions.

Rail Noise & Vibration

Clause 87 of State Environmental Planning Policy (Infrastructure) 2007 relates to rail noise and vibration and states:

87 Impact of rail noise or vibration on non-rail development

(1) This clause applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration—

- (a) residential accommodation,*
- (b) a place of public worship,*
- (c) a hospital,*
- (d) an educational establishment or centre-based child care facility.*

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—*

40 dB(A) at any time.

The application was accompanied by an Acoustic Report and recommendations included within the report will be recommended as conditions of consent to ensure a satisfactory outcome in terms of rail noise. Council's Environmental Management Officer raised no objection in this regard.

Traffic Generating Development

Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 relates to traffic generating development. The proposal does not trigger the requirements of Clause 104 or Schedule 3 of the SEPP.

State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 Obstacle Limitation Surface Map

The site is identified on the Obstacle Limitation Surface Map under the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020. Accordingly, the provisions under Clause 24 'Airspace Operations' have been considered. The objectives of Clause 24 are "*To provide for the effective and ongoing operation of the Airport by ensuring that its operation is not comprised by development that penetrates the prescribed airspace for the Airport*", and "*To protect the community from undue risk from the operation of the Airport*".

Clause 24(2) states that "*The clause applies to development on land shown on the Obstacle Limitation Surface Map that is a controlled activity within the meaning of Part 12, Division 4 of the Airports Act 1996.*"

The proposal is not a controlled activity, noting the proposed structure will not result in any penetration or intrusion into the prescribed airspace by way of the physical height of the structure, intense light, reflection, or emission of smoke/dust/other particulate matters. More specifically, the proposed development does not penetrate the prescribed air space given the OLS height relative to ground level is 192m and the proposal is for 8m. As such, the provisions under Clause 24 are not relevant and do not apply to the proposal.

Wildlife Buffer Zone Map

The site is mapped as affected by the Wildlife Buffer Zone. Accordingly, the proposal has been assessed against the provisions under Clause 21. Clause 21(2) requires that development consent must not be granted to relevant development on land in the 13 km wildlife buffer zone unless the consent authority has considered several matters (as listed a-c). In accordance with Clause 21(4) the proposal is not defined as relevant development for the purpose of the clause. As such, the provisions under Clause 21 are not relevant and do not apply to the proposal.

Given the above, the proposal is considered satisfactory in regards to the requirements under the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020.

State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) provides aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Under Clause 7 of SEPP 55, it must be considered as to whether the land is contaminated, and if so, Council must be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which development is proposed to be carried out.

The subject site has been used as two existing residential dwellings for a number of years. It is noted that aerial observation mapping has not identified any evidence of potential land contaminating activities or imported fill material. Further, the works proposed are unlikely to pose any land contamination risks. Notwithstanding, a Preliminary Site Investigation report was provided which concluded that the site is suitable for the child care centre.

Council's Environmental Management Officer reviewed the proposal and raised no objections in this regard. The proposal is satisfactory relative to Clause 7 of SEPP 55.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposal against relevant criteria within Sydney Regional Environmental Plan No. 20 - Hawkesbury/Nepean River (No. 2 - 1997) and the proposal is considerable capable of complying with the relevant provisions subject to conditions regarding sediment and erosion control.

Local Environmental Plan 2010

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 4.3 Height of buildings	Complies - See discussion
Clause 5.21 Flood planning	Complies - See discussion
Clause 7.1 Earthworks	Complies - See discussion
Clause 7.4 Sustainable development	Complies - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

The subject site is zoned R3 Medium Density Residential under the provisions of Penrith Local Environmental Plan 2010. The proposal, being a child care centre, is a permissible land use in the R3 zone with Council consent.

Clause 2.3 Zone objectives

The objectives of the R3 zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To enhance the essential character and identity of established residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The proposal is consistent with the R3 zone objectives as the proposed childcare centre provides a service that meets the day to day needs of families residing in the area. The proposal will enhance the essential character and identity of the residential area, ensuring a high level of residential amenity is maintained through suitable design and landscape treatment.

Clause 4.3 Height of buildings

The proposed development is below the maximum height limit of 8.5m given it reaches up to 8 metres at the ridge.

Clause 5.21 - Flood planning

The application was accompanied by a Flood Study Report that has acknowledged that the front of the lot is impacted by flooding from the College, Orth and Werrington Creeks Overland Flow Flood Study with an adopted 1% AEP flood level of RL 37.3m AHD.

The development is clear of the area impacted by flooding and flood safe access is available at the eastern side of the development.

Flood safe access is available to the street at the eastern side of the development. Flooding is only local overland flows with short duration of inundation.

The Flood Study Report has been updated to specifically address all points Clause 5.21 of the Standard Instrument Principal Local Environmental Plan and Council's Engineers have raised no objection with respect to flooding.

Clause 7.1 Earthworks

Clause 7.1 stipulates that prior to granting development consent for earthworks, Council must consider matters such as impacts on existing drainage patterns, environmental functions and processes, existing and likely amenity of adjoining properties and future land uses and any new impacts. The proposed child care centre will generate earthworks associated with the build.

Regarding cut and fill, the Child Care Planning Guidelines states cut and fill should be minimised. The basement results in a level difference at the front of the property which is 300mm- 1.1m above natural ground level.

Discussions were held between Council and the applicant, as aforementioned, as to whether the building could be lowered further and the transitions are to be softened within the front setback and along side and rear boundaries with landscape buffers, thus minimizing any visual impacts. Amended plans were submitted which lowered the building by 400mm.

Standard construction measures are proposed to avoid, minimise and mitigate the impacts of excavation.

Clause 7.4 Sustainable development

Clause 7.4 states that *"in deciding whether to grant development consent for development, the consent authority must have regard to the principles of sustainable development as they relate to the development based on a "whole of building" approach by considering each of the following—*

- (a) conserving energy and reducing carbon dioxide emissions,*
- (b) embodied energy in materials and building processes,*
- (c) building design and orientation,*
- (d) passive solar design and day lighting,*
- (e) natural ventilation,*
- (f) energy efficiency and conservation,*
- (g) water conservation and water reuse,*
- (h) waste minimisation and recycling,*
- (i) reduction of vehicle dependence,*
- (j) potential for adaptive reuse."*

The proposed landscaping is adequate to contribute to the amenity of the site and surrounds with compensatory trees proposed, groundcover and shrubs, noting the softplay area reduced in size with the amended design. In addition, the design does facilitate cross ventilation and the new building allows for a good design outcome in terms of energy efficiency.

The proposal satisfies the LEP in that it incorporates design elements to increase energy efficiency and reduce the consumption of natural resources.

Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrument Draft State Environmental Planning Policy (Remediation of Land) 2018

The proposal has been assessed against the applicable provisions of Draft State Environmental Planning Policy (Remediation of Land) 2018 and the associated guideline document, and is considered to be acceptable. The intention of this draft SEPP was to repeal SEPP 55 however the Draft EPI has not progressed since its public exhibition in 2018. The draft provisions do not alter requirements for development to demonstrate that the land is suitable or can be made suitable, and therefore the Draft Instrument has no further considerations beyond what has already been addressed within commentary against SEPP 55 in this report.

Draft State Environmental Planning Policy (Environment) 2017

The intent of the new State Environmental Planning Policy (Environment) 2017 is to combine seven existing State Environmental Planning Policies into a simple, modern and accessible instrument. The proposal has been assessed against the applicable provisions of Draft State Environmental Planning Policy (Environment) 2017. Refer also to the discussion under Sydney Regional Environment Plan No. 20 - Hawkesbury/Nepean River (No. 2 - 1997) for detail regarding the the proposal relative to this policy.

Explanation of Intended Effect (EIE) for a reviewed Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

The Department of Planning, Industry and Environment exhibited an Explanation of Intended Effect (EIE) for a reviewed State Environmental Planning Policy (SEPP) that aims to improve the operation, efficiency and usability of the current Education SEPP 2017 that will support the delivery of education infrastructure. This will allow education and child-care providers to build high quality facilities to meet the demands of the community.

The following amendments to the Education SEPP (as detailed per the EIE) include:

- providing changes to CIV thresholds to ensure planning assessment pathway is commensurate with scale and impacts of a proposed project;
- saving time and money through streamlined approval processes, making it easier for schools, TAFEs and universities to build new facilities and improve existing ones;
- supporting the new student housing strategy proposed in the Housing Diversity SEPP for student housing on schools and tertiary institution campuses including TAFEs;
- supporting the changing nature of tertiary institutions by making provision for innovation hub activities within existing tertiary institutions;
- addressing concerns about impacts of child-care centres within Low Density Residential Zones (R2 zone); and
- addressing existing policy anomalies in the Education SEPP.

The Explanation of Intended Effect (EIE) ended exhibition on 17 December 2020. The specific legislation detailed in the amended Education SEPP has not been released and there are no relevant matters for consideration in the EIE. As such, the proposal is not inconsistent with the EIE.

Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Complies - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Complies - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Complies - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Complies - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	Complies
C8 Public Domain	Complies
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
D2.1 Single Dwellings	Complies - see Appendix - Development Control Plan Compliance
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	N/A
D2.6 Non Residential Developments	N/A
D5.1. Application of Certification System	N/A
D5.2. Child Care Centres	Complies - see Appendix - Development Control Plan Compliance
D5.3. Health Consulting Rooms	N/A
D5.4. Educational Establishments	N/A
D5.5 Parent Friendly Amenities	N/A
D5.6. Places of Public Worship	N/A
D5.7. Vehicle Repair Stations	N/A
D5.8. Cemeteries, Crematoria and Funeral Homes	N/A
D5.9. Extractive Industries	N/A
D5.10 Telecommunication Facilities	N/A
D5.11 Boarding Houses	N/A

Section 4.15(1)(a)(iiia) The provisions of any planning agreement

The are no planning agreements applicable to the site or proposal.

Section 4.15(1)(a)(iv) The provisions of the regulations

The proposal complies with the requirements of the Regulations subject to conditions, including requirements for compliance with the Building Code of Australia and fire safety requirements.

Section 4.15(1)(b)The likely impacts of the development

Context and Setting

A streetscape and character analysis was undertaken as part of the application which showed that the two storey building and its design will complement existing features and form of buildings in the locality.

The proposed building has been designed to respect the location and siting of the surrounding residential area. The development provides a stepped first floor component, materials that take cues from the adjoining built forms and a combination of architectural features that reflect the residential character of the area. The building indents, staggered wall plane and suitable mix of materials reduce the overall visual mass of the building and prevents an attractive form as viewed from the public domain and park reserve in particular.

In addition to the building's scale, the setbacks are also compatible with the adjoining residential dwellings. Appropriate landscaping has been provided along the front boundary which will provide a visual screen and is consistent with the surrounding locality.

The acoustic fence proposed is 1.8m in height along the eastern and western (side) and northern (rear) boundaries. Along the upper floor it is 1.8m in height comprising of glazing and setback behind landscaped side setbacks which is typical in a residential area. It is noted no objections were received from the neighbours in relation to the proposed fence. Throughout the assessment, the number of shade sails was raised as a concern given their cumulative visual impact relative to the residential character of the area. As the provision of shade is well beyond the Child Care Planning Guidelines requirement, a few smaller shade sails will be removed in red pen from the plans to minimise visual impacts in this regard.

Visual Amenity

The proposal will not result in any adverse visual privacy impacts to the adjoining residential properties. There will be no windows along the eastern elevation. The potential views from the first floor outdoor play area to the adjacent townhouse to the east will be mitigated by the intervening stairwell and the balustrade with obscure glazing up to 1.8m and a generous setback of 4m to the boundary. There will be no privacy impacts to the residential development to the north from the first floor outdoor area due to a distance separation of more than 13.89m.

The proposal has also been designed to provide suitable surveillance and orientation to the park frontage above the existing dense screen planting along the western boundary, which is considered an improvement to the existing context.

Tree Impacts

The application was supported by an Arboricultural Impact Assessment due to the proposal involving the removal of four trees.

The proposal and report were referred to Council's Tree Management Officer who noted three of the trees in question are either exempt or non-native in a poor condition. The fourth tree proposed for removal is of a

valued species (*Brachychiton acerifolius*) however it is only 4-6m tall and thus does not provide any canopy cover. Quality replacement trees have been provided within the landscape design setback from the side and rear boundaries to ensure room for growth. Council's Tree Management Officer reviewed all additional information and raised no objections subject to adequate compensatory planting and recommended conditions regarding tree protection measures in adjoining properties.

It is also noted that a street tree was not identified within the Arborist report however it will be removed due to conflict with the proposed driveway. Given the poor condition of this tree, Council's Tree Management Officer recommended a condition which requires an additional two street trees be incorporated into the landscape plan. Smaller tree species shall be recommended given the existing overhead wires within Park Avenue.

Noise Impacts

The application was accompanied by an Acoustic Impact Assessment that concluded that the noise emissions associated with the proposed child care centre to the surrounding nearest residential receivers will comply with the relevant guidelines and other regulatory criteria. The report recommends operational and design mechanisms to ensure that the child care centre will operate in an acoustically compliant manner. These recommendations will form a condition of consent and as such, the development is not considered to have an adverse noise impact on the surrounding locality.

Overshadowing & Amenity

Throughout the assessment, overshadowing and amenity impacts have been considered extensively and changes made to the proposal to achieve an improved outcome.

It is noted that Section 2.4.9, Part D2 of Penrith DCP states that any proposed development provide a minimum of 4 hours sunlight between 9am and 3pm on 21 June, to living zone of any adjoining dwellings and a minimum of 3 hours sunlight between 9am and 3pm on 21 June, to 40% of the main private open spaces of any adjoining dwellings. In situations where the existing overshadowing by buildings and fences reduces sunlight to less than the minimums noted above, the development is to not further reduced sunlight to the specified areas by more than 20%.

As shown on the submitted shadow diagrams, the adjoining townhouse to the east facing the street (Unit 1/29-30 Park Avenue) does not currently achieve 4 hours solar access to living area windows or 3 hours sunlight to 40% of private open space (POS) between 9am to 3pm at midwinter due to site orientation and south facing POS. However, the proposal complies with Council's solar access controls given less than 20% additional overshadowing arises to the specified areas between 9am to 3pm at midwinter. Additional shadow diagrams at 1:100 scale were provided, upon request, distinguishing existing and additional overshadowing as well as 3D shadow diagrams have been provided to demonstrate that the shadows have been modelled correctly and comply with Council's requirements. While the proposal did retain adequate solar access to adjoining living areas, a further reduction/step in the upper floor along the east has been provided with a 5m eastern setback to the first floor outdoor play area and storage wall, as well as the deletion of the first floor stair structure roof to ensure compliance with Council's solar access controls. The neighbouring townhouse discussed above will receive approximately 2 hours of sunlight per day and this is considered satisfactory given the site constraints relative to orientation and existing developments.

Shade for the Upper Floor Outdoor Play Area

The proposal complies with the outdoor play area shading requirement of at least 30% shading of the outdoor play as per Section 4.11 of the Child Care Planning Guideline. Based on the amended first floor outdoor play area of 245.57sqm, a total of 73.67sqm shading is required and a total shaded area of

114.69sqm (or 46.7%) is provided from the proposed shade structures and covered awning (excluding any additional shading from the three proposed shade trees in the upper floor outdoor area).

The proposed first floor shade trees will also provide shading and cooling over and above the minimum shading requirements under the Child Care Guideline and ensure suitable cooling and shading of the first floor. The applicant's Landscape Architect has confirmed that the proposed shade trees will be suitably accommodated within the proposed large glass reinforced concrete pots (1.65m diameter and 1m depth).

Traffic, Access and Parking

The application was accompanied by a Traffic and Parking Impact Assessment which found that the volumes of traffic generated by the development are unlikely to result in any considerable impacts to the local road network.

The development proposes to provide 27 parking spaces including one accessible parking space complying with the rates specified in Penrith Development Control Plan 2014. The dimensions of the parking bays and circulation aisle comply with Australian Standards.

Council's Traffic Engineer reviewed the proposal and advised that no adverse traffic generation impacts are expected from the development and that the local road network has adequate capacity to cater for the traffic volumes generated by the development. Council's Traffic Engineer did request a revised traffic report given on-site waste collection was removed from the proposal. However, as the removal of on-site waste collection does not alter the anticipated traffic volumes, this was not considered necessary, nor a reason for refusal.

Waste

A satisfactory waste management plan was provided, however it will require amendment given the revised proposal does not proposed on-site waste collection. A recommended condition of consent will ensure an amended waste management plan is submitted to and approved by Council prior to the issue of a Construction Certificate.

Water Management

A condition will be recommended regarding the provision of suitable erosion and sediment controls during the construction phase.

The OSD system is provided as street system is under capacity. The Top Water Level of the above ground (vegetated) OSD basin adjoining the building is at RL 38.05m AHD requiring a floor level of RL 38.35 (0.3m freeboard) and appropriate conditions have been recommended in this regard.

A Flood Report was provided which suitably addressed the local flooding.

Crime Prevention through Environmental Design (CPTED) and Community Safety Principles

The operational hours of the centre are restricted and it is considered that the users of the centre will be safe during the operation hours and a Plan of Management has been prepared.

Safety and security procedures for child care centres are mandated across childcare regulations, and conditions are recommended to reinforce and enhance user safety and minimise any associated crime risk with this development.

Socio-Economic Impacts

Council's Social Strategy Officer reviewed the application and raised no objection from a social planning perspective. Childcare centres are an important component of urban development, providing a facility for parents and carers that supports employment, economic activity and community participation. The proposed site is situated in close proximity to recreational, community, educational and commercial areas such as Shaw Park, Chapman Gardens Oval, Werrington Public School, Cambridge Park High School, St Dominic's College, St Joseph's Primary School, Western Sydney University, TAFE (Nepean Kingswood), Nepean Hospital and Penrith Westfield. The site is also well serviced by public transport with Kingswood Train Station and bus services approximately 700m away. The site also has vehicular access to nearby surrounding regional road network of the Northern Road and Great Western Highway via Richmond Road.

Accessibility

The Access Compliance Report submitted details that wheelchair access is available to all areas where general access is available. This includes, parking area, common lobbies, play areas, toilets, kitchen etc, through the provisions of complying walkways, ramps, and lift.

Section 4.15(1)(c) The suitability of the site for the development

The site is suitable for the following reasons:

- The site is zoned to permit the proposed use.
- The use is compatible with surrounding/adjoining land uses.
- The grade of the site is suitable for the design proposed.
- The site is able to drain to Council's satisfaction.

Section 4.15(1)(d) Any Submissions

Community Consultation

Pursuant to the requirements of Council's Community Participation Plan, the application was notified and advertised to adjoining and nearby residences and publicly exhibited from 6 September 2021 to 20 September 2021. No submissions were received.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Development Engineer	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Traffic Engineer	Not supported
Community Safety Officer	No objections - subject to conditions
Tree Management Officer	No objections - subject to conditions
Social Planning	No objections

Section 4.15(1)(e)The public interest

The proposed development will not generate any significant issues of public interest.

Conclusion

In assessing this proposal against the relevant environmental planning policies, primarily being State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, State Environmental Planning Policy No. 55 - Remediation of Land, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development, the proposal is in the public interest, and there is likely to be negligible impacts arising from the proposed development. Therefore, the application is recommended for approval.

Recommendation

That DA21/0623 for the demolition of existing structures and construction of a Child Care Centre, including related car parking, fencing, tree removal, landscaping, drainage and site works at 31 & 32 Park Avenue, Kingswood, be approved.

CONDITIONS

General

1 A001

The development must be implemented substantially in accordance with the following stamped approved plans and documents, the application form and any supporting information received with the application, except as may be amended in red on the stamped approved plans and documents, and by the following conditions.

Drawing Title	Drawing No	Prepared By	Dated
Basement Plan	A01	Archidome	12/01/2022
Ground Floor Plan	A02	Archidome	13/01/2022
First Floor Plan	A03	Archidome	13/01/2022
Roof Plan	A04	Archidome	13/01/2022
Section	A05	Archidome	13/01/2022
Section BB	A06	Archidome	13/01/2022
Elevations_01	A07	Archidome	13/01/2022
Elevations_02	A08	Archidome	13/01/2022
Stormwater Management Plan	SW-2011C- Sheets DA-01 to DA-08	Multipro Consultants	30/12/2021

Supporting Documentation:

- Preliminary Site Investigation report prepared by NG Childs and Associates dated 28 October, 2021
- Arborist Report prepared by Monaco Designs PL, Job No. 5625m dated 16 October 2020
- Acoustic Report prepared by NG Childs and Associates dated 28 October 2021
- Access Report prepared by Archidome
- Traffic Report prepared by Mutipro Consultants Pty Ltd, Report V5, Reference Job 177, dated August 2021
- EMF, Electrolysis & Stray Current Assessment Report, prepared by NG Childs and Associates dated 28 October 2021
- Flood Study Report, prepared by Multi Pro Consultants Pty Ltd, Version V6, dated October 2021
- Plan of Management prepared by Thomas Mithen, dated 24 August 2021.
- Landscape Plans prepared by Canvas Landscape Architects, dated 28 October 2021 (to be updated prior to issue of the Construction Certificate)

2 A005 - APPROVED BODYS CONSENT (FOR INTEGRATED DAS)

The conditions listed in Attachment A of Sydney Trains approval dated 8 October 2021 shall be adhered to at all times, noting that additional reporting and approvals are required at various points in time, including prior to issue of the Construction Certificate.

Evidence is to be provided prior to issue of the Occupation Certificate that Sydney Trains is satisfied that all conditions in Attachment A have been satisfied.

3 A019 - Occupation Certificate

The development shall not be used or occupied until an Occupation Certificate has been issued.

A satisfactory inspection from an authorised officer of Council's Environmental Health Department is required prior to the issue of the Occupation Certificate. The occupier is to contact the Environmental Health Department to organise an appointment at least 72 hours prior to the requested inspection time.

4 [A021 - Business Registration](#)

The business is to be registered with Penrith City Council by completing the "Registration of Premises" form. This form is to be returned to Council prior to the issuing of the occupation certificate and operation of the business.

5 [A026 - Advertising sign \(not for residential\)](#)

A separate development approval for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be obtained.

6 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)

The approved operating hours are from 7am to 6pm, Mondays to Fridays. Staff are permitted on site during the shoulder period being 30 minutes before and after the hours listed above.

Delivery and service vehicles generated by the development are limited to:

- Mondays to Fridays, 7am to 6pm;
- Saturdays, 7am to 1pm, if inaudible on neighbouring residential premises, otherwise 8am to 1pm;
- No delivery is permitted on Sundays and Public Holidays.

7 [A046 - Obtain Construction Certificate before commencement of works](#)

A **Construction Certificate** shall be obtained prior to commencement of any building works.

8 [A Special \(BLANK\)](#)

The child care centre operator is required to obtain an operating licence from the NSW Department of Education and Communities prior to operation of the child care centre. The child care centre is to comply with the requirements of the Education and Care Services National Regulation at all times under the Education and Care Services National Law.

9 [A Special \(BLANK\)](#)

Any fencing and boundary retaining walls required as a result of this development shall be constructed as full cost to the persons benefiting from this consent. Any retaining walls across the site shall be of masonry construction and be to a maximum height of 1.5m within the rear yard area.

10 [A Special \(BLANK\)](#)

A maximum of 103 children (18 x aged 0-2; 20 x aged 2-3; 65 x aged 3-6) are to be enrolled to attend the premises at any one time.

11 [A Special \(BLANK\)](#)

Childproof fencing shall be provided to all outdoor play areas, and to the entrance of the child care centre. Details in this regard shall be shown on the Construction Certificate plans.

12 [A Special Condition \(BLANK\)](#)

Prior to the issue of a Construction Certificate, an updated Stormwater Management Strategy shall be prepared and be submitted to Council's Waterways Officer for approval. The updated strategy shall include details on the proposed water conservation measures as per the requirements of Section 3.1 of Council's WSUD Policy.

13 A Special CPTED Requirements

The following community safety and crime prevention through environmental design (CPTED) requirements are required to be implemented:

Lighting

- All outdoor/public spaces throughout the development must be lit to the minimum Australian Standard of AS 1158. Lighting must be consistent in order to reduce the contrast between shadows and illuminated areas and must be designed in accordance with AS 4282 - Control of the obtrusive effects of outdoor lighting.
- Lighting must illuminate pedestrian routes, entries into the building, internal and external communal areas such as foyers, lifts and stairwells.

Basement Car Parking

- A security system must be installed on any pedestrian and vehicle entry/exit points to the car park, including the lift and stairwell, to minimise opportunities for unauthorised access.
- All areas of the car park must be well-lit, with consistent lighting to prevent shadowing or glare.
- Car park surfaces including walls and ceilings are to be light coloured with details included with the **Construction Certificate** application.

Building Security & Access Control

- Intercom, code or card locks or similar must be installed for all entries to the building including to restricted staff only areas such as storage and bin rooms.
- Australian Standard 220 – door and window locks must be installed.
- CCTV is to be provided to cover communal public space areas, including the car park entrance. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.
- A monitored alarm system must be installed.

Wayfinding

- Centre facilities, including entrances to indoor play areas, admin and staff areas, must be clearly signposted and visible from stairwells and lifts, and the well signposted at the street level entrance.

Graffiti/Vandalism

- Graffiti resistant coatings must be used to external surfaces where possible, including signage, retaining walls, boundary fencing (in particular on the reserve facing side) etc.
- Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing, and common areas. This includes reporting incidents to police and/or relevant authorities.

Landscaping

- All vegetation must be regularly pruned to ensure that sight lines are maintained.

Demolition

14 B001 - Demolition of existing structures

Demolition does not form part of the proposed development. A separate approval is required for the demolition of existing structures on the subject site, prior to issue of the Construction Certificate for the approved works subject of this consent.

15 B003 - ASBESTOS

You should read Council's Fact Sheet titled "Handling and Disposal of Fibrous Cement Products" **before any demolition works commence on the site.**

Prior to commencement of demolition works on site, a portaloos with appropriate washing facilities shall be located on the site and the Principal Certifying Authority is to be satisfied that:

- Measures are in place so as to comply with the WorkCover Authority's "Short Guide to Working with Asbestos Cement" and
- The person employed to undertake the works is a licensed asbestos removal contractor and is holder of a current WorkCover Asbestos Licence.

Any demolition works involving the removal of all asbestos shall only be carried out by a licensed asbestos removal contractor who has a current WorkCover Asbestos Licence.

All asbestos laden waste, including asbestos cement flat and corrugated sheeting must be disposed of at a tipping facility licensed by the Environment Protection Authority to receive asbestos wastes.

Environmental Matters

16 D001 - Implement approved sediment& erosion control measures

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

(Note: To obtain a copy of the publication, you should contact Landcom on (02) 98418600).

Certification that the erosion and sediment control measures have been installed in accordance with the approved erosion and sediment control plan for the development and "Managing Urban Stormwater: Soils and Construction 2004" shall be obtained and issued a minimum 2 days before any other site works are to commence, including earthworks and clearing of the site.

The approved sediment and erosion control measures are to be installed **prior to and maintained throughout the construction phase of the development until the landscaping, driveway and on-site parking areas have been completed for the development.** These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

17 D003 - Fencing protection to part of site or adjoining property

Before any works are commenced on site,adequate fencing with star picket and wire fencing shall be installed to ensure that the adjoining area is not disturbed by the construction/demolition works or earthworks.

18 D005 – No filling without prior approval (may need to add D006)

No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.

19 **D007 - Cut and fill of land requiring Validation Certificate –limited to footprint**

Cut and fill operations on the property are only permitted in conjunction with the building works as detailed on the approved plans and specifications, and shall not extend more than 2 metres past the defined building footprint.

Before any fill material is imported to site, a validation certificate issued by an appropriately qualified person is to be provided to the Principal Certifying Authority. The validation certificate must demonstrate that the fill material is free from contaminants and weeds, that it is suitable for its intended purpose and land use, and that it will not pose an unacceptable risk to human health or the environment.

If Penrith City Council is not the Principal Certifying Authority, a copy of the validation certificate is to be submitted to Council for their reference.

{Note: Penrith Contaminated Land Development Control Plan defines an appropriately qualified person as “a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soils science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance.”}

20 **D008 - Filling compaction**

Where a building is to take place on any land that is to be filled, such filling is to be compacted in accordance with AS3798-1996. Certification is to be submitted to the Principal Certifying Authority by a Geotechnical Engineer verifying that the work has been undertaken prior to the commencement of the construction of any building.

If Penrith City Council is not the Principal Certifying Authority, a copy of the certification is to be submitted to Council for their reference.

21 **D009 - Covering of waste storage area**

All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

22 **D010 – Appropriate disposal of excavated or other waste**

All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

23 **D014 - Plant and equipment noise**

The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

24 **D131 - Approved noise level 2**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the acoustic report prepared by NG Childs and Associates dated 19 August 2021, reference number CA/21/172/2002. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

25 **D Special (BLANK)**

Should any unexpected finds in relation to land contamination be found during the excavation of the site, works are to immediately cease and the Certifying Authority and Penrith City Council are to be notified. An investigation is to be undertaken by an appropriately qualified and practicing environmental consultant in accordance with SEPP55. Works will not be able to commence until the site is cleared by the environmental consultant and the Certifying Authority and Penrith City Council are notified.

26 **D Special (BLANK)**

Within three months of the Occupation Certificate being issued, an acoustic report is to be undertaken by a suitably qualified and practicing person and is to be submitted to Penrith City Council's Environmental Management Officer for assessment. The acoustic report is to determine the actual noise emitted from the premises and whether it meets the acoustic requirements. Should the actual noise emitted not meet the acoustic requirements outlined in the acoustic reports, mitigation measures to be installed on the premises are to be outlined, including:

- their location;
- materials for construction; and
- the noise levels to be achieved by the installation of these further mitigation measures

27 **D Special (BLANK)**

The recommendations in sections 8.5 and 9.2 of the Preliminary Site Investigation report prepared by NG Childs and Associates dated 28 October, 2021 are to be implemented during construction.

28 **D Special (BLANK)**

Prior to the issue of the Construction Certificate, an acoustic report prepared by a suitably qualified and practicing person is to be submitted to Penrith City Council's Environmental Management Officer for assessment and approval. The acoustic report is to be prepared in accordance with the Interim Construction Noise Guideline and is to detail:

- Acoustic impacts on neighbouring premises;
- Should rock breaking be required, any additional noise impacts from this activity;
- Any mitigation measures required to minimise the noise impacts from the construction of the premises.

Should rock breaking be required during the excavation of the site, a vibration report is to be submitted to Penrith City Council's Environmental Management Team for assessment and approval. The vibration report is to be prepared by a suitably qualified and practicing person in accordance with the Department of Environment and Conservation NSW "Assessing Vibration: a technical guideline".

29 **D Special (BLANK)**

Prior to the issue of the Construction Certificate, an acoustic report prepared by a suitably qualified and practicing person is to be submitted to Penrith City Council's Environmental Management Officer for assessment and approval. The acoustic report is to be prepared in accordance with the Noise Policy for Industry and is to detail:

- The noise impacts of all mechanical services (the mechanical plant is to be selected and specified in this report) to be installed on the premises. This includes, but is not limited to any air conditioners, mechanical ventilation (for the bin room, car park or kitchen), roller doors to the car park and lift motor.
- Any mitigation measures required to be installed to alleviate the noise impacts to the neighbouring premises.

BCA Issues

30 **E001 - BCA compliance**

All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

- (a) complying with the deemed to satisfy provisions, or
- (b) formulating an alternative solution which:
 - complies with the performance requirements, or
 - is shown to be at least equivalent to the deemed to satisfy provision, or
- (c) a combination of (a) and (b).

31 **E009 - Annual fire safety-essential fire safety (Class 2-9 buildings)**

The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

- (a) deal with each essential fire safety measure in the building premises, and
- (b) be given:

- within 12 months after the last such statement was given, or
- if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

Health Matters and OSSM installations

32 F Sspecial (BLANK)

A detailed plan showing the information below must be submitted to and approved by Council's Environmental Health Officer prior to the issue of the Construction Certificate:

- Details of the finish of the walls and ceiling (note acoustic panels not permitted in food preparation areas);
- Details and location of coving to all floor wall joins;
- Details and location of shelving to the storage area for food and packaging;
- Construction material of shelving indicating lowest shelf at least 150mm above ground level;
- Details of materials used on benches in kitchen
- Reference to the construction of the premises being in accordance with the Australian New Zealand Food Standards Code, Food Safety Standard 3.2.3 "Food Premises and Equipment" and the AS 4674 – 2004 "Design, Construction and Fit Out of Food Premises";
- Hand wash facilities fitted with a hands free operation warm water through a common spout
- Location of separate sink for (a) washing of vegetables and fruit (b) hand washing (c) washing (required) and sanitizing sinks (if no dishwasher)
- Location of any floor wastes and hose connectors (if being installed) and/ or cleaners sink (may be in cleaners room or laundry);
- Details and location of all equipment in the kitchen including, but not limited to ovens, fridges, freezers, dishwasher etc.;
- Location of personal staff storage area
- Any fluorescent light fittings being fitted with a smooth faced diffuser and identified on the plan;
- Location and information of mechanical ventilation for dishwasher / oven / stove in accordance with Section 2.5.2 of AS 4674 – 2004 "Design, Construction and Fit Out of Food Premises";
- Location of any bottle preparation area including hand wash basin details.

No fit out works shall commence on the site will be granted until after the above plan has been supplied to Council and Council has advised the Certifying Authority in writing that it is satisfactory.

Utility Services

33 G002 - Section 73 (not for

A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

34 G004 - Integral Energy

Prior to the issue of a Construction Certificate, a written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

In the event that a pad mounted substation is necessary to service the development, Penrith City Council shall be consulted over the proposed location of the substation before the Construction Certificate for the development is issued as the location of the substation may impact on other services and building, driveway or landscape design already approved by Council.

35 [G006](#) -

Prior to the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:

- The requirements of the Telecommunications Act 1997;
- For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
- For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

Prior to the issue of an Occupation Certificate, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements above and the applicable legislation at the time of construction, must be submitted to the Principal Certifying Authority.

Construction

36 [H001 - Stamped plans and erection of site notice](#)

Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details is to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

37 H002 - All forms of construction

Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

38 H006 - Submission of and implement waste management plan

A revised waste management plan shall be submitted to Penrith City Council for consideration and approval prior to the issue of a Construction Certificate.

The waste management plan shall be prepared in accordance with the Waste Planning Development Control Plan (2004), and shall address all waste materials likely to result from the proposed development, with details of the estimated waste volumes, onsite storage and management, proposed re-use of materials, designated waste contractors, recycling outlet and / or landfill site.

The approved waste management plan must be implemented on-site and adhered to throughout all stages of the development including demolition, with supporting documentation / receipts retained in order to verify the recycling and disposal of materials in accordance with the approved plan.

39 [H036A - Rainwater Tank \(Also impose H037, H038, H039, G005 & Q010\)](#)

The rainwater tank(s) is to be:

- erected on a self-supporting base in the approved location on the property in accordance with the stamped-approved site plans for the development,
- structurally sound and constructed in accordance with AS/NZS 3500 1.2- 1998: National Plumbing and Drainage - Water Supply - Acceptable Solutions,
- fully enclosed and all openings sealed to prevent access by mosquitoes,
- fitted with a first flush device,
- fitted with a trickle system to top up from mains water,
- provided with an air gap, and
- installed by a licensed plumber in accordance with Sydney Water's "Plumbing requirements Information for rainwater tank suppliers and plumbers April 2003" and the NSW Code of Practice: Plumbing and Drainage.

Additionally, the following are to be provided:

- A back flow prevention device shall be provided at the water meter in accordance with Sydney Water requirements.
- In the event of a power failure, a back up supply of mains water shall be provided to at least one toilet in the dwelling.
- The rainwater tank(s) and associated piping is to be labelled 'Rainwater - Not for Drinking' in accordance with Sydney Water requirements.
- The rainwater tank and pipework is to be painted in colours matching the external finishes of the dwelling and is to be of non-reflective finish.
- The overflow for the rainwater tank is to be connected into the existing stormwater disposal system on the site.

40 [H036B - Rainwater Tank \(Also impose H037, H038, H039, G005 & Q010\)](#)

Before a rainwater tank(s) can be used, a certificate or suitable document is to be submitted to the Principal Certifying Authority stating that the rainwater tank has been installed in accordance with:

- the Manufacturer's Specifications, and
- Sydney Water and NSW Health requirements.

This certificate or documentation is to be provided by the licensed plumber who installed the rainwater tank on the property, and is to be submitted prior to the issue of the Occupation Certificate.

41 [H037 - Safe supply of water from catchment areas \(Also impose H036, H038 & H039\)](#)

The catchment area (for the rainwater tank) includes the parts of the roof of the dwelling(s) from which water is collected and includes gutters. To ensure a safe supply of water:

- roof catchment areas must be kept clear of overhanging vegetation,
- gutters must have sufficient fall to downpipes to prevent pooling of water,
- overflow, discharge from bleed off pipes from roof mounted appliances such as airconditioners, hot water services and solar heaters must not discharge into the rainwater catchment area,
- for roofs containing lead based, tar based or asbestos material the tank supply must not be connected to drinking, bathing and gardening tap water outlets,
- appropriate measures must be installed to prevent foreign materials from contaminating the water which enters the rainwater tank.

42 [H038 - Connection of rainwater tank supply \(Also impose H036, H037 & H039\)](#)

The rainwater tank supply must not be connected to drinking and bathing water tap outlets.

43 [H039 - Rainwater tank pumps \(Also impose H036, H037 & H038\)](#)

The rainwater tank pump must not exceed 5dBA above ambient background noise level at the nearest residential property boundary. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

Engineering

44 **K101 - Works at No Cost to Council**

All roadworks, stormwater drainage works, signage, line marking, associated civil works and dedications required to effect the consented development shall be undertaken by the applicant at no cost to Penrith City Council.

45 **K201 - Infrastructure Bond**

An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to commencement of any works on site or prior to the issue of any Construction Certificate or Subdivision Works Certificate, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

46 **K202 - S138 Roads Act - Minor Works in the Public Road**

Prior to the issue of any Construction Certificate or Subdivision Works Certificate, a Section 138 Roads Act application, including payment of application and inspection fees together with any applicable bonds, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b) Concrete footpaths and or cycleways
- c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
- d) Road occupancy or road closures (including temporary construction work zones and tower crane operation)
- e) The placement of hoardings, structures, containers, waste skips, signs etc. in the road reserve
- f) Temporary construction access
- g) Temporary ground anchors (for basement construction)

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

Contact Penrith City Council's Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

Note:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate or Subdivision Works Certificate.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.

47 **K210 - Stormwater Management**

The stormwater management system shall be consistent with the plan/s lodged for development approval, prepared by Multipro, reference number SW-2011C-DA-02 to SW-2011C-DA-08, revision C, dated 30.12.2021.

Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments and Water Sensitive Urban Design (WSUD) Policy.

The On-site Stormwater Detention (OSD) system shall be designed to ensure post developed stormwater discharge from the site does not exceed pre-developed discharge flows.

In addition, a Maintenance and operation manual which outlined maintenance requirements, shall be prepared for the stormwater treatment measures.

Engineering plans and supporting calculations for the stormwater management system are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate or Subdivision Works Certificate.

48 **K211 - Stormwater Discharge - Basement Car Parks**

Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that the stormwater drainage system for the basement car park has been designed in accordance with the requirements for pumped systems in AS3500.3 Plumbing and Drainage – Stormwater Drainage.

49 **K215 - Flooding - Floor Levels (Minor Development)**

Prior to the issue of any Construction Certificate, the Certifier shall ensure that the habitable ground floor level is at a minimum of **RL 38.35m** AHD (0.3m freeboard above the Top Water Level of 38.05m AHD of the On-site Stormwater Detention system).

50 **K220 - Overland Flow Flood Report Recommendations**

Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that the proposed development is compatible with the recommendations of the Flood Study Report prepared by Multipro, revision V6, dated October 2021.

51 **K222 - Access, Car Parking and Manoeuvring - General**

Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with Penrith City Council's Development Control Plan, AS2890.1, AS2890.2 and AS2890.6.

52 **K301 - Sediment & Erosion Control**

Prior to commencement of any works associated with the development, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate or Subdivision Works Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997 and Managing Urban Stormwater series from the Office of Environment and Heritage.

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

53 [K302 - Traffic Control Plan](#)

Prior to commencement of any works associated with the development, a Traffic Control Plan, including details for pedestrian management, shall be prepared in accordance with AS1742.3 Traffic Control Devices for Works on Roads and the Transport for NSW (TfNSW) publication Traffic Control at Worksites, and certified by an appropriately accredited TfNSW Traffic Controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Note:

- A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.
- Traffic control measures may require road occupancy / road closure approvals issued under Section 138 of the Roads Act by Penrith City Council prior to the issue of any Construction Certificate or Subdivision Works Certificate.

54 [K401 - Flooding - Surveyor Verification of Floor Levels](#)

A certificate by a registered surveyor verifying that all habitable floor levels are at or above RL 38.35m AHD (Top Water Level of OSD basin + 0.3m freeboard) shall be submitted upon completion of the building to that level. No further construction of the building is to be carried out until approval to proceed is issued by the Principal Certifier.

55 [K405 - Turf to Verge](#)

Upon completion of all works in the road reserve, all verge areas fronting the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.

56 [K501 - Penrith City Council Clearance - Roads Act / Local Government Act](#)

Prior to the issue of an Occupation Certificate, the Principal Certifier shall ensure that all works associated with a S138 Roads Act approval have been inspected and signed off by Penrith City Council.

57 [K503 - Works As Executed - Stormwater Management](#)

Prior to the issue of any Occupation Certificate, Works As Executed drawings, final operation and maintenance management plans and any other compliance documentation for the stormwater management system shall be submitted to the Principal Certifier in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, Stormwater Drainage Specification for Building Developments and WSUD Technical Guidelines.

An original set of Works As Executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Penrith City Council is not the Principal Certifier.

58 **K504 - Stormwater Compliance**

Prior to the issue of any Occupation Certificate, the Principal Certifier shall ensure that the:

- a) Stormwater management systems (including on-site detention and water sensitive urban design)
 - have been satisfactorily completed in accordance with the approved Construction Certificate or Subdivision Works Certificate and the requirements of this consent;
 - have met the design intent with regard to any construction variations to the approved design, and;
 - Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works As Executed drawings.

59 **K505 - Restriction on the Use of Land and Positive Covenant**

Prior to the issue of any Occupation Certificate, a restriction on the use of land and positive covenant relating to the:

- a) Stormwater management systems (including on-site detention and water sensitive urban design)

shall be registered on the title of the property. The restriction on the use of land and positive covenant shall be in Penrith City Council's standard wording as detailed in Council's Stormwater Specification for Building Developments - Appendix F.

60 **K511 - Directional Signage**

Prior to the issue of any Occupation Certificate, directional signage and line marking shall be installed indicating directional movements and the location of customer parking to the satisfaction of the Principal Certifier.

61 **K601 - Stormwater Management System Operation and Maintenance**

The stormwater management system shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan.

Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the stormwater management systems.

62 **K Special (BLANK)**

All car parking and manoeuvring areas must be in accordance with AS 2890.1-2004, AS 2890.6-2009 and Council's requirements. Car park ramp headroom clearances including at grade transitions and car park aisle widths, column locations and clearances (including in accordance with AS 2890.1, Figures 5.1 and 5.2) must be compliant with the above.

63 **K Special (BLANK)**

The required sight lines around the driveway entrances are not to be obstructed by landscaping, fencing or signage. Sight distance requirements must be in accordance with AS 2890.1 and / or AS 2890.2, Figure 3.2 Access driveways and Figure 3.3 Minimum sight lines for pedestrian safety.

64 **K Special (BLANK)**

All car spaces and access areas are to be dedicated for the parking of vehicles only and not to be used for storage of materials, products, waste materials, etc.

65 **K Special (BLANK)**

All vehicles are to enter and leave the site in a forward direction.

66 **K Special (BLANK)**

The sub-leasing of car parking spaces is not permitted by this consent.

67 **K Special (BLANK)**

Signage indicating the location of staff/visitor parking is required at the driveway entrance.

68 **K Special Condition BLANK**

Prior to the issue of a Construction Certificate, the Certifier shall ensure the architectural plans and landscape plans are amended to be consistent with the revised engineering plans by Multipro, revision C, dated 30-12-2021 with regards to the following items:

1. Levels and drainage of the rear playground area. The playground shall grade away from the building with surface flows captured by the drainage pits proposed in the engineering plans.
2. The location and extent of the amended On-site Stormwater Detention basins OSD1 (above ground) and OSD2 (below ground).
3. The level of the habitable ground floor is at a minimum of RL 38.35m AHD (Top Water Level of the OSD system + 0.3m freeboard).

Landscaping

69 **L001 - General**

Prior to the issue of a Construction Certificate, a revised landscape plan shall be submitted to and approved by Council to incorporate the following details:

- Reflect the amended approved Architectural Plans;
- Revised tree species and quantities;
- Shade structures are not to extend beyond the basement footprint, to ensure the setbacks allow for canopy cover;
- The driveway colour is to be a medium to light brown to reduce heat absorption;
- The materials proposed for any shade structures and any proposed slide shall be included in accordance with AS 4685 'Playground equipment and surfacing'; Part 0: Development, installation, inspection, maintenance and operation; ans
- Two street trees are to be incorporated in accordance with Council's Street and Park Tree Management Plan Appendix: Small Tree Species.

All landscape works are to be constructed in accordance with the landscape plans, approved by conditions within this consent and required to be updated prior to the issue of the Construction Certificate to reflect the amended building design, and the relevant provisions of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plans, and
- in a healthy state, and in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity as the vegetation which died or was removed.

70 **L002 - Landscape construction**

The approved landscaping for the site must be constructed by a suitably qualified and experienced landscape professional.

71 **L003 - Report requirement**

On completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development. This report shall be prepared by a suitably qualified and experienced landscape professional.

An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

72 **L005 - Planting of plant**

All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specification prescribed in Penrith Council's Development Control Plan 2014.

73 **L006 - Aust Standard**

All landscape works are to meet industry best practice and the following relevant Australian Standards:

- AS 4419 Soils for Landscaping and Garden Use,
- AS 4454 Composts, Soil Conditioners and Mulches, and
- AS 4373 Pruning of Amenity Trees.

74 **L008 - Tree Preservation Order**

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

75 **L Special (BLANK)**

An arborist with a minimum AQF (Australian Qualification Framework) Level 5 shall be engaged for the duration of the approved works to implement and comply with the measures within the approved Tree Protection Plan (Specification) and Drawing.

76 **L Special (Tree Protection)**

Prior to the commencement of any works, a project arborist with a minimum AQF (Australian Qualification Framework) Level 5 shall be engaged to prepare a Tree Protection Plan (Specification) and Drawing in accordance with AS 4970 - 2009 to appropriately retain and protect the hedge on the adjoining reserve to the west of the site.

The completed Tree Protection Plan (Specification) and Drawing is to be provided to the Penrith City Council's Tree Management Officer for approval prior to the commencement of any works.

The approved plan and its protection measures shall be in place prior to demolition commencing and a copy of the plan shall be retained on site at all times.

Development Contributions

77 **N001 - Section 94 contribution (apply separate condition for each Contribution Plan)**

This condition is imposed in accordance with Penrith City Council's Section 7.12 Development Contributions Plan for Non-Residential Development. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$28,011.115 is to be paid to Penrith City Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.12 plan.

The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule. Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.12 invoice accompanying this consent should accompany the contribution payment. The Section 7.12 Development Contributions Plan for Non-Residential Development may be inspected at Council's Civic Centre, 601 High Street, Penrith.

Note: The timing of contributions payable may be otherwise affected in accordance with Planning Circular PS20-003 dated 3 July 2020 and the associated NSW Government Ministerial Direction - Infrastructure Contributions.

In addition, given that the proposed cost of carrying out the development is greater than \$750,000, a cost summary report is provided by a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors in accordance with Section 3.2.3 of Council's Section 7.12 Contributions Plan for Non-Residential Development. The cost summary report is also required prior to the issue of a Construction Certificate.

Certification

78 **Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)**

Prior to the commencement of any earthworks or construction works on site, the proponent is to:

- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
- (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

79 **Q06F - Occupation Certificate (Class 2 - 9)**

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

In accordance with Clause 26(1)(d)(ii) of the Educational Establishments SEPP, the provisions of the Child Care Planning Guideline generally take precedence over a DCP, other than for building height, side and rear setbacks and car parking rates. Notwithstanding, matters not addressed within the Child Care guidelines are addressed below.

C1 Site Planning and Design Principles

Safety and Security (Principles of Crime Prevention Through Environmental Design - CPTED)

The proposal has been assessed as satisfactory with regard to the principles of CPTED and includes safety and security features applicable to the use of the site as a childcare centre. The design does not include areas where concealment or crime is likely to occur and includes a visible pedestrian entry foyer from the street. The entry foyer is centrally located and is provided with a visual connection to the stairwell and lift to the basement parking and the pedestrian pathway. Windows are provided to the street frontages from the admin/entry areas providing opportunity for passive surveillance. Public/private boundaries are adequately reinforced via the proposed landscaping.

In addition, the development application was referred to Council's internal Social Planner who has provided no objections.

Maximising Access and Adaptability

The proposal has been assessed as acceptable having regard to the seven principles of the section including equitable access, flexibility in use and simple and intuitive use. The development provides for one accessible parking space within the car park. An Access Report was provided with the application and is satisfactory subject to conditions of consent in this regard.

C3 Water Management

Water Quality

Section 3.1 of Council's Water Sensitive Urban Design (WSUD) Policy requires certain developments to have an 80% on-site water reuse. Council's Waterway Officer reviewed the proposal and noted that no details of a rainwater tank or water conservation measures were included on the plans. A recommended condition will require an updated Stormwater Management Strategy to include the use of rainwater to provide for some of the non-potable water requirements such as landscaping. Council's Waterways Officer raised no objections subject to conditions of consent. The development will comply with Council's WSUD Policy.

Water Quantity

Initially, the proposed design of the On-Site Stormwater Detention (OSD) system did not fully comply with Council's 'Stormwater Drainage Specification for Building Developments' Policy. A revised design was submitted and Council's Development Engineer reviewed the amended proposal and raised no objections subject to conditions of consent.

C5 Waste Management

Waste storage at ground floor is required and has been provided. Initially concerns were raised regarding the proposed waste collection in the basement and the amended plans provide waste

storage at ground level and on-street collection is satisfactory.

The storage, management and collection is proposed by a private contractor, not Council. As such, provided the dimensional storage is suitable to meet the needs of the development and collection is suitable having regard to road rules, the arrangement as proposed is considered supportable.

C6 Landscape Design

Council requires that all landscape designs promote best practice Environmentally Sustainable Development Principles such as the use of low maintenance, drought tolerant native or endemic species and the use of drip irrigation or the like, to reduce water consumption. There is adequate room within the front, side and rear setbacks for planting.

A recommended condition will ensure the landscape plan is updated to reflect the amended Architectural Plans.

C10 Transport, Access and Parking

The proposed development is assessed to comply with the General Objectives of the Transport, Access and Parking section of the DCP. Specifically, the proposal has provided safe and compliant pedestrian and car parking access and the site is located in close proximity to residential uses, local shops and public transport.

Under Penrith Development Control Plan 2014, child care centres are required to provide 1 space per 10 children, plus 1 space per employee. The development proposes to employ 16 staff and provide for 103 children, thus requiring 26.3 (rounded to 27) car spaces be provided on site. The proposal complies with this requirement with the provision of 27 parking bays. However, the allocation of spaces between staff and visitor spaces does not reflect the above calculations, with 14 staff and 13 visitor bays proposed. The DCP requires 16 staff and 11 visitor spaces. As such, a recommended condition of consent will ensure 16 of the spaces are allocated to staff and 11 to visitors.

The proposal also includes stacked car parking spaces for staff. The stacked parking arrangement is proposed to be managed under the parking plan of management that was submitted, whereby staff are allocated the tandem spaces based on their expected arrival and departure times. This is acceptable given the scheduling of shifts and spaces can be allocated at the same time.

Council's Development Engineer reviewed the amended design and information and found it to be satisfactory.

D2 Residential Development

It is noted that the controls within this section are overridden by the Educational Establishments and Child Care Facilities SEPP and associated Child Care Planning Guideline, other than those concerning side and rear setbacks. While there are no explicit setbacks for child care centres under the DCP, the Child Care Planning Guidelines states that on land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house (C14).

D2.1.2 Setbacks and Building Envelope

Penrith DCP requires that a front setback is the average front setback distance of the two adjoining properties, or a minimum 5.5m whichever is the greater distance be provided. The adjoining property to the east of the site provides a front setback of approximately 6m (30 Park Ave). To the west of the site is a Council owned park. As such, the front setback control has been considered on merit. The properties further along Park Avenue to both the east and west of the site (with the exception of 30 Park Ave) provide deep, landscaped front setbacks containing canopy trees. The proposed front setback varies to a minimum of 6m which sits behind the adjoining property to the east, which has a variable setback of a minimum of 5.5m. The front setback, in conjunction with the development's overall scale and built form is considered compatible with the streetscape.

In accordance with 2.1.2 B 1. d), the side setbacks to external walls should be a minimum of 900mm and the objective is to reflect the character of established garden suburbs, provide for establishment of vegetation and reasonable separation between buildings and provide a high level of visual and acoustic privacy for residents and neighbours in dwellings and private open space.

The proposed side setbacks vary across the levels proposed. The basement is 2m to 3.3m setback, the ground floor is 2m to 3.3m setback and the upper level outdoor play area is setback 3.3m and 3.5m (and increasing) from side boundaries. These setbacks are beyond the numeric requirement and allow for adequate landscaping to blend with the area and maintain amenity for neighbours.

In accordance with 2.1.2 B 1. e), the minimum rear setback for a single storey building (or any single storey component of a building) is 4m and the minimum rear setback for a two storey building (or any two storey component of a building) is 6m. Rear setback areas are to be used predominantly for the provision of a landscaped area. The rear setback to the basement is 3.2m to 4.5m, 12.9m to the ground level and 13.9m to the upper floor. These generous setbacks ensure there is appropriate room for landscaping.

D5 Other Land Uses

D5.2 Child Care Centres

As per the Educational Establishments and Child Care Facilities SEPP and associated Child Care Planning Guideline, the relevant DCP controls relate to building height, side and rear setbacks and car parking rates. These matters have been discussed elsewhere in this appendix under Section C10 Transport, Access and Parking (car parking rates) and Section D2 Residential Land Uses (side and rear setbacks) and under Clause 4.3 Height of Buildings of Penrith LEP 2010.